BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
SECURITIES AND EXCHANGE BOARD OF INDIA

Appeal No. 4691 of 2022

Keval Ashwin Gudka	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated February 15, 2022 (received by SEBI on February 16, 2022) under the Right to Information Act, 2005 ("**RTI Act**"). The respondent, by a letter dated March 15, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated March 22, 2022 (received by the Office of Appellate Authority on March 24, 2022), against the said response dated March 15, 2022. I have perused the application, the response and the appeal and find that the matter can be decided based on the material available on record.

2. In this appeal, the appellant has made a request for a personal hearing. On the issue of providing an opportunity of hearing by the First Appellate Authority (FAA) under RTI Act, a full bench of Hon'ble CIC in *Bombay Stock Exchange Limited vs Securities and Exchange Board of India* (File No. CIC/SM/A/2011/001687) observed that "*It is not practical to lay down an inflexible rule that PIOs and AAs will always offer an opportunity of hearing to the parties, let alone to the 3rd party. They may do so as per their discretion, keeping in view the complexity of legal and factual issues involved, without forgetting that timelines are to be adhered to, being the essence of the Act.*" Therefore, it is noted that there is no specific requirement under the provisions of the RTI Act, of providing a personal hearing by the FAA and that the discretion to give hearing to the appellant shall be exercised considering the complexity of the issues involved and the timelines specified under the RTI Act. In this context, reliance is also placed on the decisions of the Hon'ble CIC in the matters of *Mr. Milind Hemant Kotak, Mumbai vs. Canara Bank* (Decision dated April 24, 2008) and *Mr R.K Jain vs. UPSC* (Decision dated March 10, 2014). In view of the above observations, I have carefully considered the application, the response and the Appeal. I note that the grounds of appeal are self-explanatory. Hence, the matter can be decided based on the material that is available on record.

3. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent with respect to query numbers 1 to 10. I find that identically worded appeals in the matter of dealings in illiquid stock options at BSE, have been filed earlier before this forum.

Accordingly, I am dealing with the said queries, the response provided thereto and the submissions made by the appellant in the following paragraphs.

4. **Query numbers 1, 2, 3, 4 and 6-** The appellant, vide query numbers 1, 2, 3, 4 and 6 of his application dated February 15, 2022, sought the following information:

> *1. Please provide us the Investigation report a/w Annexures referred thereto as mentioned in Para 3 of the Show Cause Notice dated 11.02.2022 bearing reference no. SEBI/HO/OW/2022/5369/1*
> *2. Please provide us with complete market order log file executed in the contracts of HAIL on 26.03.2015.*
> *3. Kindly provide us with complete trade log file executed in the contracts of HAIL on 26.03.2015.*
> *4. Kindly provide us copy of all correspondences exchanged by SEBI with my counter party i.e Eden Trading Services Pvt. Ltd.*
> *6. Copy of statement of all persons recorded during course of investigation conducted by SEBI in captioned matter.*

5. The respondent, in response to the aforesaid queries, informed that the information sought by the appellant pertains to the internal functioning of SEBI and disclosure of which may hamper the decision making by SEB in its supervisory and regulatory role. Further, the information sought is exempt from disclosure under Sections 8(1)(d) and 8(1)(e) of the RTI Act as the same is available to SEBI in fiduciary capacity and includes commercial information of other entities which is confidential in nature, the disclosure of which could harm their competitive position. The respondent also informed that all documents relied upon in the quasi-judicial proceedings are provided to the noticees along with the show cause notice. The appellant, in his appeal, *inter alia*, submitted that the requested information does not pertain to the internal functioning of SEBI and that the information cannot be held in fiduciary capacity. Further, the statements of counter party will not harm the competitive position of counter parties.

6. I have perused the queries and the response provided thereto. I do not find any reason to disbelieve the observation of the respondent that the requested information may contain information which is available to SEBI in fiduciary capacity and include confidential information which is commercial in nature. I note that in Writ Petition (Civil) Nos. 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607 of 2007, the Hon'ble High Court of Delhi, held that the 'person' referred to in section 8(1) (e) of the RTI Act will include a public authority. It also held that: "*In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of*

and to protect the beneficiary and not oneself". Further, the Hon'ble CIC, in the matter of *Mr. Ashok Kumar Rajak vs. CPIO, SEBI*, (order dated December 21, 2021), held *that "Further the details such as investigation report, file noting, directions and various communication involves with the third party information which is received from other agencies is being held by them in fiduciary capacity hence the same is barred from disclosure under section 8(1)(e) & (j) of the RTI Act, 2005."* Further, I note that investigation report is the culmination of the part in the process of investigation wherein the information is sought, gathered and analyzed to crystallize the preliminary charges for which the entities/individuals are issued show cause notices. Such information gathered by SEBI may include information relating to commercial and business interest as submitted by the entities/individuals against whom the investigation is conducted by SEBI. Such information is summoned by SEBI in the discharge of its regulatory function and in its authority as a regulator of the securities market. Hence, the information thus called for, is provided by the entity irrespective of whether the same is confidential or in the nature of commercial confidence. Under the provisions of the law in force at the time, it is incumbent on the entities/individuals during investigation to provide the requisite information lest they be visited upon with the consequences of non-compliance with the summons issued by SEBI in the matter. Hence it is the duty of the entities/individuals during investigation to provide the requisite information to SEBI without any recourse to the claim of privacy or confidentiality. Furthermore, I note that under the scheme of the SEBI Act, 1992, Section 11C empowers SEBI to investigate and based on the investigation, appropriate actions are initiated in accordance with the provisions of the SEBI Act. Further, Section 11C embarks a duty upon every person to provide the information called for by Investigating Officer and any failure thereto, is a punishable Act under Section 11C (6) of SEBI Act. Further, such person by virtue of Section 11C of SEBI Act, is bound to disclose said information to SEBI, even though disclosure of such information is confidential and against business or commercial interest of such person or an entity relating to which the information is provided to the Investigating Authority. I note that such kind of information received by SEBI is third party information and the same is received in its fiduciary capacity. The said information may also contain personal information of other entities. I note that similar contentions were accepted by the Hon'ble CIC in the matter of *Arun Kumar Agrawal vs. The CPIO, SEBI* (order dated August 04, 2020). Further, the respondent has categorically informed that all documents relied upon in the quasi- judicial proceedings are provided to the noticees along with the Show Cause Notice. In view of the same, I do not find any deficiency in the response.

7. **Query number 5**- the appellant, vide query number 5, sought the following information-

> "*5. Please inform what action has been taken against the BSE for failure to check reversal trades as alleged in the SCN.*"

8. In response to the aforesaid query, the respondent informed that necessary direction has been issued to BSE. The appellant, in his appeal, sought the details of direction issued to BSE and their response thereto.

9. I have perused the query and the response provided thereto. I find that the respondent has adequately addressed the query by providing the information available with him. Hence, no further intervention is warranted at this stage.

10. Further, I note that the appellant, in his appeal, sought information regarding details of direction issued to BSE and their response thereto. I find that this request was raised by the appellant for the first time in this appeal. As held by the Hon'ble CIC in *Harish Prasad Divedi vs. Bharat Petroleum Corporation Limited* (decided on January 28, 2014), an information seeker cannot be allowed to expand the scope of his RTI enquiry at appeal stage. Accordingly, I find that the said request does not warrant consideration at this stage.

11. **Query numbers 7 and 10**- The appellant, vide query numbers 7 and 10, sought the following information-

> *7. Details of the complaint(s) received by SEBI and stock exchange with respect to our dealings in the illiquid stock options at BSE.*
>
> *10. Details of alerts/triggers generated by stock exchange/SEBI w.r.t our dealings in the said stock options.*

12. In response to the aforesaid queries, the respondent informed that as on date, there are no complaints in SCORES received against the appellant with respect to dealings in the matter of illiquid stock options at BSE. Further, the respondent informed that, SEBI has initiated proceedings against the entities who have engaged in reversal trades in illiquid stock options segment during the period April 01, 2014 to September 30, 2015. Further, it was informed that the appellant is one such entity who had allegedly engaged in reversal trade in illiquid stock options during the said period. The appellant in his appeal, *inter alia*, submitted that the query number 10 has not been dealt by the respondent.

13. On consideration, I find that the respondent has addressed both the query numbers 7 and 10 raised by the appellant. I note that the respondent has provided the information available with him. Further, it is reiterated that all documents relied upon in the quasi-judicial proceedings are provided to the noticees along with the show cause notice. Accordingly, I do not find any deficiency in the response.

14. **Query number 8-** The appellant, vide query number 8, sought the following information-

> *"8. Details of persons/entities who have been induced to sell/purchase the alleged illiquid stock options at BSE as a result of our dealing in said stock options."*

15. The respondent, in response to the aforesaid query, informed that the requested information is exempt from disclosure under Section 8(1)(h) of the RTI Act since the proceedings are in progress in the matter of Illiquid Stock Options and the matter has not yet reached its logical conclusion. The respondent also informed that disclosure of any information at this stage may impede the process of investigation/ prosecution of offenders. The appellant, in his appeal, *inter alia*, submitted that disclosure of any information at this stage will not impede the process of investigation.

16. I have perused the query and the response provided thereto. I note that the enforcement proceedings in the subject matter of the application are ongoing and the same has not reached a logical conclusion. In this context, I note that the Hon'ble CIC, in the matter of *Smt. Pushpa Devi Mohta vs. SEBI* (order dated February 08, 2022), held that " *The Commission observes that the information sought by the appellant is submitted to SEBI which is a quasi-judicial body for examination and the same has not yet reached a logical conclusion, therefore the respondent has denied the information under section 8(1)(h) and as per the said provisions of the RTI Act, such information cannot be provided to the appellant which would impede the process of investigation*." In view of these observations, I do not find any deficiency in the response.

17. **Query number 9**- The appellant, vide query number 9, sought the following information-

> *"9. Documents/statements showing and establishing our intention to 'manipulate' price or create artificial volume of the said stock options at BSE."*

18. The respondent, in response to the aforesaid query, informed that the query is in the nature of seeking clarification/ opinion and accordingly, cannot be construed as "information", as defined under section 2(f) of the RTI Act.

19. On perusal of the query, it appears to be in the nature of seeking clarification/opinion from the respondent. I note that the respondent is not supposed to create information; or to interpret information; or to furnish clarification to the appellant under the ambit of the RTI Act. I find that the said queries cannot be construed as seeking 'information' as defined under section 2 (f) of the RTI Act. In this context, reference is made to the mater of *Vineet Pandey vs. CPIO, United India Insurance Company Limited* (Judgment dated January 21, 2021), wherein similar observations were made by the Hon'ble CIC. Further, in the matter of *Shri*

Shantaram Walavalkar vs. CPIO, SEBI (Decision dated January 17, 2013), I note that the Hon'ble CIC held: *"... we would also like to observe that, under the Right to Information (RTI) Act, the citizen has the responsibility to specify the exact information he wants; he is not supposed to seek any opinion or comments or clarifications or interpretations from the CPIO..."*. In view of the said observations, the respondent did not have an obligation to provide such clarification/opinion under the RTI Act.

20. In view of the above observations, I find that there is no need to interfere with the decision of the respondent. The Appeal is accordingly dismissed.

Place: Mumbai
Date: March 25, 2022

ANAND BAIWAR
APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA