

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

Appeal No. 5375 of 2022

Abhishek Nidhi	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated July 19, 2022 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated August 30, 2021 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated August 08, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated August 20, 2022.

With

Appeal No. 5376 of 2022

	:	
Rajendra Kumar Pugalia HUF	Vs	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated July 19, 2022 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated October 22, 2021 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated August 08, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated August 20, 2022.

ORDER

1. I have perused the above mentioned applications, responses and appeals filed by the appellants. In all the applications, the appellants have sought similar information pertaining to respective Show Cause Notices issued to the appellants by different Adjudicating Officers, SEBI, in the matter of alleged dealings in Illiquid Stock Options at BSE. I note that the Adjudication Proceedings in the said matter, are ongoing. Further, I find that identically worded appeals (except date and number of Show Cause Notice, name of the company whose options were traded, date of trades and the details of broker/

counterparties/counterparty brokers), have been filed by the appellants in the matter of dealings in illiquid stock options at BSE. I also note that similar appeals had been filed earlier before this forum.

2. **Ground of appeal-** The appellants have filed the appeals on the ground that the response was not provided within the time limit. I note that the respective responses were issued by the respondent and uploaded on the RTI MIS portal within the time stipulated under the RTI Act. Hence, I do not find merit in the said submissions. Further, I note that the appellants, in their appeals, have reiterated the queries raised in the applications. Further, no specific submissions have been made with respect to the responses provided by the respondent. As the grounds of appeals and issues involved are identical, I am dealing with all the aforesaid appeals, in this order.
3. **Query numbers 1, 18, 19, 23, 24, 34-** The appellants, vide query number 1 of their applications, *inter alia*, sought Investigation Report for which the above mentioned SCNs were issued. Vide query number 18, the appellants sought the noting of satisfaction recorded by the Hon'ble WTM that the appellants have violated the provisions of law as alleged. The appellants, vide query number 19, sought details of counterparties to their trade viz. address, email and contact no. The appellants, vide query number 23, sought the copy of the material placed before the Whole Time Member to decide that there were sufficient grounds to enquire into the alleged violations. Vide query number 24, the appellants sought details of all the material placed before the WTM on the basis of which he decided to initiate proceedings against the appellants. Vide query number 34, the appellants sought the list of 14720 persons on whom SEBI is proposing to issue SCNs.
4. 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 notices. In addition to the above, the respondent informed that the information sought at query numbers 23 and 24, is also exempt from disclosure under Section 2(h) of the RTI Act as enforcement proceedings are in progress in the matter of Illiquid Stock Options and that the matter has not yet reached its logical conclusion. Further, disclosure of any information at this stage may impede the process of investigation and quasi-judicial proceedings.

5. I have perused query numbers 1, 18, 19 and 34 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 SCNs. 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 Notices. In view of the same, I do not find any deficiency in the response.

6. In addition to the above, I note that the information sought at query number 19 also pertains to personal information of other entities, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual. Accordingly, the same is exempt from disclosure under Section 8(1)(j) of the RTI Act.
7. With respect to query numbers 23 and 24, it is observed that the queries of the appellants are more in the nature of seeking clarification/explanation/opinion from the respondent. But the CPIO is not supposed to create information; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. In this context, reliance is placed on matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021) where similar information was sought by the appellant. The Hon'ble CIC, in the said matter, observe that “7. *The Commission, after hearing the submissions of both the parties and after perusal of records, observed that some queries of the appellant are in the nature of seeking explanation/opinion/advice/confirmation/clarification from the CPIO and he has expected that the CPIO firstly should analyze the documents and then provide information to the appellant. But the CPIO is not supposed to create information; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. As per Section 2(f) of the RTI Act, the reasons/opinions/advices can only be provided to the applicants if it is available on record of the public authority. The CPIO cannot create information in the manner as sought by the appellant. The CPIO is only a communicator of information based on the records held in the office and hence, he cannot be expected to do research work to deduce anything from the material therein and then supply it to him.*” In view of these observations, I find that the said queries cannot be construed as seeking ‘information’ as defined under section 2 (f) of the RTI Act.
8. **Query numbers 2, 3, 4, 5, 14, 17, 20 and 29-** The appellants, vide query number 2, *inter alia*, sought voice recording of “sauda” with their respective broker(s). Vide query number 3, the appellants sought voice recording of the counterparty(s) with counterparty broker(s). Vide query number 4, the appellants sought KYC with broker(s). Vide query number 5, the appellants, sought copy of complaints filed with SEBI by counterparty(s) for fraudulent profit earned / loss suffered by them. Vide query number 14,

appellants sought order placement records of the Noticees with the broker(s). Vide query number 17, the appellants sought copy of circular issued by BSE for prevention of fraud of illiquid options for investors showing amount of penalty payable by investors. The appellants, vide query number 20, sought copy of statements of various persons/entities recorded by SEBI during the course of investigation in the matter. Vide query number 29, the appellants sought copies of Government Orders for issuing SCN to Investors.

9. The respondent, in response to the aforesaid queries, informed that the information sought is not available with SEBI.
10. I have perused the queries and the response provided by the respondent. I do not find any reason to disbelieve the observation that the requested information is not available with SEBI. In this context, I note that the Hon'ble CIC, in the matter of *Sh. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: "... if it (SEBI) does not have any such information in its possession, the CPIO cannot obviously invent one for the benefit of the Appellant. There is simply no information to be given." In view of these observations, I find that the information sought by the appellant was not available with SEBI and therefore, the respondent cannot be obliged to provide such non-available information.
11. **Query numbers 6, 13, 21, 28 and 30-** The appellants, vide query numbers 6, 20 and 27, sought the following information-

6. Copy of investigation material that apparent transactions are not real.

13. Amount of penalty imposed on SEBI officials for violation of PFUTP Rules for the period 01/04/2014 to 31/09/2015.

21. The Order logs during my order placement and the prevention and the prevalent demand & supply for the Options.

28. Action taken against SEBI officers in the subject matter whose job was to protect the interests of the Investors.

30. Kindly inform as the person responsible for inspection of brokers during the period from 1/04/2014 to 30/09/2015.

12. The respondent, in response to the aforesaid queries, informed that the queries are vague and not specific and accordingly, the same cannot be construed as seeking "information", as defined under Section 2(f) of the RTI Act.

13. I have perused the queries raised by the appellants. I find that the same are vague and not specific. Further, it is difficult to ascertain what exact information has been sought by the appellant. In this context, I note that in the matter of *Shri S. C. Sharma vs. CPIO, Securities and Exchange Board of India* (Decision dated August 30, 2012), the Hon'ble CIC held: "*Since the Appellant had not clearly stated what exact information he wanted, the CPIO could not have provided any specific information to him. We would like to advise the Appellant that he might like to specify the exact information he wants from the SEBI and prefer a fresh application before the CPIO.*" In view of the same, I do not find any deficiency in the response.
14. **Query numbers 7, 8 and 16-** The appellants, vide said queries, sought the following information-
7. *Copy of Rules to be followed by Investors.*
8. *Copy of Rules giving power to SEBI to punish Investors.*
16. *Copy of SEBI circular issued for the governance of investors for prevention of fraud.*
15. The respondent, in response to the aforesaid queries, guided the appellants to access the information with respect to jurisdiction of SEBI, the provisions of the SEBI Act, 1992 (and its amendments thereof), Rules, Regulations and Circulars framed thereunder. The respondent also provided the link/path for accessing the relevant webpage on the SEBI website.
16. I have perused the queries and the response provided thereto. On consideration, I find that the answer to the queries can be found out by the appellant by accessing the information available on the SEBI website, which is in the public domain. I note that Hon'ble CIC in *Shri K Lall vs. Shri M K Bagri* (CIC/AT/A/2007/00112, order dated April 12, 2007) held that "*.... unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act.*" In view of these observations, I find that the respondent cannot be obliged to provide response to such requests for information, as made by the appellants through their applications. Notwithstanding the same, I find that the respondent has guided the appellants to access the relevant information which is available on the SEBI website. In my view, the queries have been adequately addressed. Accordingly, I do not find any deficiency in the response.

17. **Query number 9 and 33-** The appellants, vide query number 9, sought copy of incriminating materials to prove the cash dealings between the appellants and their respective broker(s). Vide query number 33, the appellants sought the reason for not taking action on the interim order dated February 17, 2016 passed by Shri Rajiv Agarwal.
18. In response to the aforesaid query, the respondent informed that the query is in the nature of seeking clarification/opinion and accordingly, the same cannot be construed as seeking “information”, as defined under Section 2(f) of the RTI Act.
19. I have perused the query and the response provided thereto. On consideration, I agree with the observation of the respondent that the query is in the nature of seeking clarification/opinion. In view of the judgements discussed at paragraph 7 supra, I do not find any deficiency in the response provided by the respondent.
20. **Query number 10-** The appellants, vide query number 10, sought copy of terms of Appointment of Adjudicating Officer (AO) and the salary including incentives and perquisites.
21. The respondent, in response to the query pertaining to copy of terms of appointment of AO, informed that the same has been provided along with the SCN. With respect to the query pertaining to salary including incentives and perquisites, the appellant was advised to refer to the relevant disclosures on pay and allowances, which are available on the SEBI website.
22. On consideration, I find that that respondent has adequately addressed the query by providing the information available with him. In view of the same, I do not find any deficiency in the response.
23. **Query numbers 11, 12 and 32-** The appellants, vide query number 11, sought the amount of penalty imposed on BSE for violation of PFUTP 2003 for the period from 01/04/2014 to 30/09/2015. Vide query number 12, the appellants sought the amount of penalty imposed on the respective broker(s) for violation of PFUTP Rules for the period 01/04/2014 to 30/09/2015. Vide query number 32, the appellant sought information regarding remedial action suggested after inspection.
24. The respondent, in response to the aforesaid queries, *inter alia*, informed that the information about any enforcement or regulatory action taken/ penalty imposed by SEBI is available on the SEBI website under the head “Enforcement”, which is in the public domain. The respondent also provided the link for accessing the same.

25. On consideration, I find that answer to such queries can be found out by the appellant by accessing the information available in the public domain. I find that the respondent has adequately addressed the queries by guiding the appellant to access the SEBI website. Accordingly, no further intervention of this forum is warranted at this stage.
26. **Query number 15-** The appellants, vide query number 15, *inter alia*, sought order logs and trade logs with the respective broker(s) for alleging the violations in the said SCN.
27. In response to the aforesaid query, the respondent informed that the information on order logs is not available. With respect to the query pertaining to trade log, the respondent informed that enforcement proceedings are in progress in the matter and has not yet reached its logical conclusion. The respondent also informed that the requested information is exempted from disclosure under section 8(1)(h) of the RTI Act as disclosure of any information at this stage may impede the process of investigation and quasi-judicial proceedings.
28. I have perused the query and the response provided thereto. I find that the respondent has addressed the query by providing the information available with him. I note that the respondent has already informed that all documents relied upon in the quasi-judicial proceedings are provided to the noticees along with the show cause notices. Accordingly, I do not find any deficiency in the response.
29. **Query numbers 22, 25, 26 and 27-** The appellants, vide said queries, sought the following information-
- 22. Date on which the findings of the investigation were put up for the information/ knowledge of the Whole Time Member.*
- 25. Date on which Investigation report was approved by WTM and the present proceedings was approved.*
- 26. Copy of reasons recorded by the Board, Chairman, Member or the Executive Director that there are reasonable grounds to investigate the affairs of the Noticee in the said matter.*
- 27. Copy of Order of the Board Authorizing Investigation in the matter.*
30. The respondent, in response to the aforesaid queries, informed that the requested information is exempt from disclosure under Section 8(1)(h) of the RTI Act since the enforcement 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 and quasi-judicial proceedings.

31. I have perused the queries and the response provided thereto. I note that the enforcement proceedings in the subject matter of the applications are ongoing and the same have not reached a logical conclusion. In this context, I note that the Hon'ble CIC, in the matter of *Smt. Pushpa Devi Mobta 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)(b) 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.
32. **Query number 31-** The appellants, vide query number 31, *inter alia*, sought the copy of inspection reports of the brokers during the year 1/04/2014 to 30/09/2015.
33. The respondent, in response to the aforesaid query, informed that the requested is exempt from disclosure under section 8(1)(d) of the RTI Act as the same includes commercial confidential information and the disclosure of which could harm the competitive position of the entities.
34. I have perused the aforesaid query and the response provided by the respondent. In this context, reference is made to the matter of *Ashok Kumar Jian vs. CPIO, SEBI* (order dated May 22, 2020), where in similar information was sought by an appellant and the respondent had submitted that "*It was further submitted that the inquiry and inspection was one of the tools available with SEBI (along with erstwhile FMC) to prevent or take action for any fraud or prevention of any unfair trade practices. Information received from various sources, if revealed, could give an inkling to the strategic issues involved in the matter and may even forewarn the violators and enable them to look for ways and means to protect themselves against SEBI's efforts to prevent fraud, etc. The disclosure of such strategic and confidential information may also affect and compromise interest of the securities market in specific and may affect the economic interest of the country. Further, there was no larger public interest involved in the disclosure of the said information. In view of the above, exemption was sought in terms of Section 8(1)(a), 8(1)(d), 8(1)(e) of the RTI Act, 2005.*" I note that in the said matter, the Hon'ble CIC held that no further intervention of the Commission was required. In view of these observations, I agree with the response of the respondent. Accordingly, no further intervention is warranted at this stage.

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

Place: Mumbai

Date: September 20, 2022

ANAND BAIWAR

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