

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

Appeal No. 1564 of 2012

Adesh Jain	:	Appellant
	Vs.	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated September 1, 2012 under the Right to Information Act, 2005 (hereinafter referred to as "**RTI Act**"). The respondent vide letter dated September 26, 2012, responded to the appellant. The appellant has filed this appeal dated October 25, 2012, against the said response. I have carefully considered the application, the response and the appeal and find that the matter can be decided based on the material available on record.

2. From the appeal, I note that the appellant is aggrieved by the respondent's response to the following queries as reproduced from his application, viz. –
 - i. *"Copies of policies/calculations, etc. on the basis of which net-worth of 100 Crore is fixed for all recognized stock exchanges and period of three years is determined for achieving the above net-worth of 100 Crore under regulation 14 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 dated June 20, 2012 (hereinafter referred to as "**SECC Regulations**")."*
 - ii. *Copies of policies/calculations, etc. on the basis of which trading members or clearing members or their associates and agents may be removed from the governing board of any recognized stock exchange or recognized clearing corporation under regulation 23(7) of SECC Regulations.*
 - iii. *Copies of policies/calculations, etc. on the basis of which the transfer of 25% of yearly profit for every recognised stock exchange to the Fund is decided as specified in regulation 39 of SECC Regulations.*
 - iv. *Copies of SEBI approved Schemes of Corporatization and Demutualization policy of Delhi Stock Exchange, Ahmedabad Stock Exchange, Jaipur Stock Exchange, Madhya Pradesh Stock Exchange and Baroda Stock Exchange.*
 - v. *Copies of policies/calculations, etc. on the basis of which valuation of shares of Delhi Stock Exchange, Ahmedabad Stock Exchange, Jaipur Stock Exchange, Madhya Pradesh Stock Exchange and Baroda Stock Exchange are done at the time of demutualization of respective exchanges.*
 - vi. *Copy of valuation report given by Delhi Stock Exchange, Ahmedabad Stock Exchange, Jaipur Stock Exchange, Madhya Pradesh Stock Exchange and Baroda Stock Exchange to the shareholder at the time of demutualization."*

3. In this appeal, the appellant has submitted that *"the (respondent's) reply is not clear and satisfactory as no documentary support is enclosed with the reply and the public domains referred by the (respondent) do not carry the whole information in the manner as requested by the application"*. Further, the appellant has submitted that *"the information sought by him does not fall within the restrictions contained in sections 8 and 9 of the RTI Act and (to the best of my knowledge,) it pertains to (SEBI)"*.
4. **Queries at para 2(i) - (iv) above** - I note that in his response, the respondent had informed the appellant that the provisions contained in regulations 14, 23(7) and 39 of the SECC Regulations were based on decisions of SEBI taken in the board meeting held on April 2, 2012, regarding the recommendations on the report dated November 22, 2012 submitted by the Committee on Ownership and Governance of Market Infrastructure Institutions. It was further informed that copy of the said report/agendas and decisions of said SEBI Board Meeting/Corporatization and Demutualization Schemes, etc. was available on the SEBI website. The respondent had advised the appellant to refer to the following links i.e. <http://www.sebi.gov.in/sebiweb/home/list/4/38/35/0/Reports-for-PublicComments> /<http://www.sebi.gov.in/sebiweb/meeting/boardmeetings.jsp> and <http://www.sebi.gov.in/sebiweb/home/list/2/9/5/0/Orders-of-Corporatisation-Demutaulisation-Scheme> for obtaining the same. I find that the information as sought by the appellant, in his application, was available in the public domain. In this context, I note the Hon'ble CIC in the matter of *Shri K. Lall vs. Shri M. K. Bagri (Decision dated April 12, 2007)*, had held that once information is placed on a website or in the public domain accessible to the citizens, that information cannot be said to be 'held' or 'under the control of' the public authority and thus ceases to be an information accessible under the RTI Act. I, therefore, find that the respondent is not expected to give information under the RTI Act, where the same is already available in the public domain.
5. Further, I note that in the matter of *S. K. Kapoor vs. SEBI (Decision dated February 21, 2007)*, the Hon'ble CIC had held that: *"The SEBI Act, Rules, all its instructions are properly in the public domain already, which the appellant can easily access by putting up little bit of extra effort. Far from it, he wishes to treat the public authority as his Consultants who should enable him to locate provisions of Acts & Rules at public cost. This is not what the RTI Act is all about"*. In view of these observations, it is, therefore, for the appellant to find out the answer to his query by a reading of the reports and agenda/decisions of SEBI board meetings, etc. which are available in the public domain, or seek advice from a professional. The appellant cannot expect the public authority to work as consultant or secretariat or back office for him. I am, therefore, of the view that the information as sought by the appellant in his application was beyond the scope and ambit of the RTI Act.
6. **Queries at para 2(v) - (vi) above** - I find that the appellant was clearly informed by the respondent that the information sought by him was not available with SEBI as the submission of valuation reports alongwith the Scheme for Corporatization and Demutualization was not

made mandatory to the stock exchanges. I do not find any reason to disbelieve the response provided by the respondent. I note that the Hon'ble Supreme Court of India in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors.* (Judgment dated August 9, 2011), had *inter alia* held that: *"The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant"*. In view of these observations, I find that the information sought by the appellant, in his application, was not available with SEBI and therefore, the respondent cannot be obliged to provide such information.

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

Place: Mumbai

Date: November 6, 2012

**PRASHANT SARAN
APPELLATE AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA**