

BEFORE THE CENTRAL INFORMATION COMMISSION

**Written Submissions in the matter of Mr. Murugappa Krishnan Vs CPIO, SEBI
(Hearing on 02-03-2020 at 01.10 PM - File No. CIC/SEBIH/A/2017/139953)**

- I. This has reference to captioned Notice of hearing dated February 05, 2020, received by SEBI on 10-February-2020 in the matter of Mr. Murugappa Krishnan Vs CPIO, SEBI.
- II. Vide RTI Application dated December 30, 2015 (**Annexure-A**), the appellant sought the following information relating to masks applied in reports of trading in respect of each distinct FII, which has ever traded.
 - a. Date of change of mask
 - b. Old mask
 - c. New mask

- III. Office of CPIO replied on January 29, 2016 (**Annexure-B**) to the applicant as under:

Reply to query: *It is informed that the information sought by you contains various entity specific information of commercial confidence disclosure of which may hamper the level playing field for the entities and may adversely affect their competitive position. Also, the information is personal in nature, the disclosure of which would cause unwarranted invasion of privacy of the individual. Disclosure of such information is therefore exempt from disclosure u/s 8(1)(d) and 8(1)(j) of the RTI Act, 2005.*

- IV. The applicant subsequently filed an appeal dated February 24, 2016 with the First Appellate Authority (FAA), SEBI. FAA vide its Order dated March 21, 2016 (**Annexure-C**) while dismissing the said appeal stated that there is no need to interfere with the decision of Respondent.
- V. The appellant approached Hon'ble CIC by way of second appeal dated July 05, 2016 with reference to the questions raised vide RTI application dated December 30, 2016 (**Annexure-A**).
- VI. With regard to the instant second appeal before Hon'ble CIC, our submissions are as follows:
 - a. Vide RTI application dated December 30, 2016, applicant had sought information related to masking of FPI trade-wise details that is being disseminated on the SEBI website with a lag of six months. CPIO vide letter dated January 29, 2016 responded to the RTI application stating that the information sought by the applicant is exempt from disclosure under section 8(1)(d) and 8(1)(j) of the RTI Act, 2005. The appellant filed an appeal with the First Appellate Authority (FAA). In its order dated March 21, 2016, FAA has dismissed the appeal stating that there is no need to interfere with the decision of respondent as the queries raised by the applicant are related to commercial confidence of third parties which are personal in nature and hence exempt u/s 8 (1) (d) and 8 (1) (j) of the RTI Act.

- b. Transaction details of FPIs/FIIs are disseminated on SEBI website with a 6 months lag after masking certain data fields. The masking is done dynamically by SEBI so as to ensure prevention of disclosure of identity of any particular FPI. It is submitted that the reports disclosed by SEBI in its website contains 19 heads relating to the transactions carried out by FPIs/ FIIs, out of which only 3 heads are masked, namely the FPI registration No., Sub-Account Registration No. and the Broker Registration No.
- c. As a matter of general practice, the mask is changed on a monthly basis in the first week of every month. The purpose for changing the mask periodically is to ensure that the identity of any particular FPI/FII is not revealed by analysing the disclosures made by the FIIs in public domain (shareholding pattern, disclosures under SAST/PIT Regulations).
- d. The appellant has contended that information pertaining to FPI/FII was received only because of the operation of statute and not because of any commercial arrangement. It is submitted that the statutory obligation under which information is submitted to SEBI by any of the intermediaries would not alter the nature of information submitted by such intermediaries. Therefore, the information pertaining to commercial confidence needs to be protected even if is the same is received by SEBI in exercise of its statutory powers.
- e. Further, the appellant has contended that not disclosing the information would lead to informationally inefficient financial market. It may be stated that all the relevant information relating to the transactions carried out by FIIs and FPIs is disclosed and only 3 heads are masked namely the FPI registration No., Sub-Account Registration No. and the Broker Registration No. The three heads which are masked relate to the personal and confidential information of FPI/FII. It is submitted that the information sought by the appellant has the potential of revealing the identity of the FIIs and FPIs by analysing the disclosures made by FIIs under SAST/ PIT Regulations. Hence, the submission of the appellant that the identity of the FIIs would be masked even after disclosure of the requested information is not valid.
- f. The appellant has also contended that as per the insider trading compliance rules, for all large and significant trades, disclosure of trades is done without any masking of IDs. It may be stated that the intent of PIT regulations is to prevent abuse by trading when in possession of unpublished price sensitive information. The disclosures under PIT Regulations act as a check for persons who are expected to have access to unpublished price sensitive information on the basis of their functional role in the organisation and thus it prevents abuse. However, the purpose of masking of identity of any particular FPI/FII is only to mask the personal information and information relating to commercial confidence. As stated earlier also, all the other information relating to the transactions carried out by FPIs/ FIIs is available in public domain.

- VII. In view of the aforesaid submissions, it is reiterated that the information sought by the appellant is entity-specific, involving commercial confidence of the FPI/FII disclosure of which may hamper the level playing field for the entities and may adversely affect their competitive position by exposing their investment strategies. Also, the information is personal in nature, the disclosure of which may cause unwarranted invasion of the privacy of the FPI/FII. Therefore, such information is exempt from disclosure u/w 8(1)(d) and 8(1)(j) of the RTI Act, 2005.
- VIII. Hon'ble Supreme Court of India in Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi: (2012) 13 SCC 61 has held that ". *Another very significant provision of the Act is Section 8(1)(j). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.*"
- IX. It is also submitted that the applicant has sought the information admittedly for the purpose of academic research and not for the purpose of or otherwise having an effect of achieving any of the intended objectives for which the RTI Act was enacted. In this regard, it is submitted that in ICAI v. Shaunak H. Satya, (2011) 8 SCC 781 the Hon'ble Supreme Court has held that:- *"We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Sections 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources."*

- X. In view of the observations above, the queries raised by the appellant do not have an intended effect of bringing transparency or of reducing corruption. Further existence of a larger public interest in disclosing the information as sought by the appellant is not established by the appellant. On the contrary, disclosure of the information sought by the appellant may adversely affect the securities market by influencing the investment decisions of Foreign Portfolio Investors. In this regard, it is also submitted that the Hon'ble Supreme Court in *Central Board of Secondary Education and Anr vs. Aditya Bandopadhyay and Ors.*, (Judgment dated August 9, 2011) observed that *"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties."*
- XI. A copy of this written submission as endorsed to Hon'ble CIC office has been sent by email at murgie@gmail.com (as given in his RTI application dated 30.12.2016) to the appellant / complainant.

Date : 27 February, 2020
Place : Mumbai

Office of Central Public Information Officer
Securities and Exchange Board of India