BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 17.11.2022

Date of Decision : 05.01.2023

Appeal No. 751 of 2022

Chanda Kochhar
45, CCI Chambers,
Dinshaw Vachha Road,
Churchgate,
Mumbai – 400 020. …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. …Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Rohan Dakshini, Mr. Vishesh Malviya, Ms. Deepa Shetty, Mr. Kyrus Modi and Mr. Samved Pradhan, Advocates i/b. Rashmikant and Partners for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora and Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated August 17, 2022 passed by the Adjudicating Officer (‘AO’ for short) of the

Securities and Exchange Board of India ('SEBI' for short) partly allowing the application of the appellant for supply of certain documents and inspection thereof.

2. The facts leading to the filing of the present appeal is, that the respondent issued a show cause notice dated May 23, 2018 raising allegations of conflict of interest in respect of approvals of loans / credit facilities by the Bank to the Videocon Group.

3. The appellant submitted a detailed response to the show cause notice on August 24, 2018. A personal hearing was held on November 19, 2018 and thereafter, the appellant submitted its written submissions on December 19, 2018. The matter thereafter was reserved for orders.

4. On November 19, 2020 the appellant received an e-mail from the respondent in which an amended show cause notice dated November 19, 2020 was enclosed. In this e-mail, the appellant was directed to respond to the amended show cause notice.

5. It is alleged that the amended show cause notice which was sent was incomplete as it was not accompanied by any enclosures / annexures / exhibits / appendices.

6. The appellant addressed a letter requesting the respondent to provide inspection and copies of the complete file relating to the amended show cause notice including copies of the annexures / appendices / enclosures / exhibits and underlying material.

7. Since the inspection of the documents were not provided nor furnished the appellant filed Appeal no. 312 of 2021 which was disposed of on June 14, 2022 with the following directions:-

> *(i) The appellant shall file a fresh application indicating with clarity and precision the documents sought for inspection and / or supply of the said documents.*
>
> *(ii) This application shall be filed within two weeks from today.*
>
> *(iii) Upon receipt of the application, the AO shall pass an appropriate order either providing inspection and / or supply of the documents sought for or pass appropriate order giving reasons as to why the appellant cannot be provided inspection or provided copy of the documents.*
>
> *(iv) Such order, if any, shall be passed within 4 weeks from the date of providing an opportunity of hearing.*
>
> *(v) While passing the order the AO will also take into consideration the decision of the Supreme Court in **T. Takano vs SEBI dated February 18, 2022**.*

8. While directing the appellant to file a fresh application for supply of documents this Tribunal had further directed the AO as under:-

> *"20. Whether these annexures / exhibits / appendices and underlying material etc. are essential or not and whether the analysis of these documents forms the basis of the report is a question which is required to be considered by the AO. It is not possible nor appropriate for this Tribunal to delve into this arena and hold as to which document is necessary and which document is irrelevant. We, however, hold that the respondent acted in haste in fixing a date for hearing without supplying the requisite documents to the appellant. If such documents were not relevant appropriate orders ought to have been passed."*

9. Based on the aforesaid order of this Tribunal the appellant filed a fresh application dated June 28, 2022 seeking supply of various documents and inspection thereof. This application was partly allowed by the AO and certain documents were denied. The appellant being aggrieved has filed the present appeal.

10. We have heard Shri Somasekhar Sundaresan, the learned counsel for the appellant and Shri Gaurav Joshi, the learned senior counsel for the respondent.

11. The learned counsel for the appellant contended that the documents sought for were essential and were required in order to give an appropriate reply to the amended show cause notice.

It was contended that the documents sought for were such documents which has been considered based on which certain findings have been given in the report and therefore it is part of the report which is required to be supplied. In support of his submission the learned counsel placed reliance upon the decision of the Supreme Court in the matter of ***T. Takano vs Securities and Exchange Board of India, Civil Appeal Nos. 487-488 of 2022 decided on February 18, 2022*** and in the matter of ***Reliance Industries Limited vs Securities and Exchange Board of India in Criminal Appeal No. 1167 of 2022 decided on August 5, 2022***.

12. On the other hand, the learned senior counsel for the respondent contended that there was no obligation to provide inspection or supply of documents which are not in possession of the respondent. Further, there was no obligation to provide inspection or to produce documents which were referred in the report. It was urged that the appellant is only making a roving and fishing enquiry which cannot be permitted as it is an abuse of the process of the Court. In support of his submission the learned senior counsel has placed reliance upon a decision of the Delhi High Court in ***Delhi State Industrial & Infrastructural Development Corporation Ltd. & Anr. vs Shiv***

Kumar in CM(M) No. 404/2012 and C.M. No. 6267/2012 decided on September 20, 2013, Pooja Wadhawan vs SEBI, Appeal no. 487 of 2021 decided by this Tribunal on September 13, 2021 and ***decision of the Supreme Court in T. Takano (supra)***.

13. In order to proceed further it would be appropriate to indicate as to what documents were sought and were supplied by the AO and what documents were rejected. In this regard a chart is being prepared below for a proper appreciation.

Sr. No.	**Documents to be supplied and inspection thereof**	**Documents supplied by the AO**
1.	Out of the 24 loan sanctions set out in Table 37 at page 99 to 102 of the CR Report, the minutes of only one meeting i.e. the minutes of the Sanctioning Committee meeting dated 26th April 2012 (incorrectly recorded as 24th April 2012 in the ASCN and the Addendum to the examination Report), has been supplied. The Minutes for the following 23 other Sanctioning Committee meetings are yet to be	Minutes for the following 7 Sanctioning Committee meetings where the Noticee has participated may be procured and provided i. August 26, 2009 ii. September 29, 2009 iii. October 31, 2011 iv. August 05, 2014 v. July 28, 2016 vi. September 14, 2016 vii. June 28, 2017

	supplied: (i) 14th May 2009; (ii) 3rd June 2009; (iii) 26th August 2009; (iv) 16th October 2009; (v) 29th September 2010; (vi) 3rd November 2010; (vii) 17th November 2010; (viii) 17th November 2010; (ix) 12th January 2011; (x) 30th May 2011; (xi) 13th July 2011; (xii) 31st October 2011; (xiii) 12th March 2012; (xiv) 11th December 2012; (xv) 30th April 2014; (xvi) 6th June 2014; (xvii) 5th August 2014; (xviii) 30th September 2014; (xix) 20th May 2015; (xx) 23rd December 2015; (xxi) 28th July 2016; (xxii) 14th September 2016 and (xxiii) 28th June 2017.	
2.	Out of the 71 loan sanctions set out in Table 38 at page 102 to 108 of the CR Report, the minutes pertaining to only 8 loan sanctions have	The minutes of the Sanctioning Committee meetings of the following 27 loan sanction meetings, where the

	been provided (i.e. 4 June 2010, 5 August 2010, 24 December 2010, 28 June 2011, 18 September 2012, 19 June 2013 and 17 June 2014). The minutes of the other 63 loan sanctions have not been provided. The minutes of the Sanctioning Committee meetings to be supplied are as under: (i) 2nd June 2009; (ii) 10th June, 2009; (iii) 5th October 2009; (iv) 16th November 2009; (v) 28th December 2009; (vi) 16th February 2010; (vii) 11th March 2010; (viii) 12th March 2010; (ix) 9th June 2010; (x) 25th June 2010; (xi) 28th June 2010; (xii) 16th July 2010; (xiii) 11th October 2010; (xiv) 6th December 2010; (xv) 20th December 2010; (xvi) 24th December 2011; (xvii) 10th March 2011; (xviii) 4th May 2011; (xix) 13th May 2011;	Noticee has participated may be procured and provided: i. June 02, 2009 ii. November 16, 2009 iii. December 28, 2009 iv. February 16, 2010 v. March 12, 2010 vi. June 25, 2010 vii. June 28, 2010 viii. July 16, 2010 ix. December 06, 2010 x. March 13, 2012 xi. March 26, 2012 xii. June 15, 2012 xiii. September 26, 2012 xiv. March 22, 2013 xv. August 29, 2013 xvi. March 27, 2014 (2 Meetings) xvii. August 11, 2014 (2 Meetings) xviii. February 13, 2015 xix. March 13, 2015 xx. June 17, 2015 xxi. June 26, 2015 xxii. March 23, 2016 xxiii. June 10, 2016 xxiv. June 28, 2017

	(xx) 2nd June 2011; (xxi) 1st July 2011; (xxii) 29th August 2011; (xxiii) 29th August 2011; (xxiv) 19th September 2011; (xxv) 17th October 2011; (xxvi) 23rd November 2011; (xxvii) 23rd November 2011; (xxviii) 13th March 2012; (xxix) 19th March 2012; (xxx) 26th March 2012; (xxxi) 12th June 2012; (xxxii) 15th June 2012; (xxxiii) 26th September 2012 (xxxiv) 31st October 2012; (xxxv) 20th November 2012; (xxxvi) 22nd March 2013; (xxxvii) 17th May 2013; (xxxviii) 21st June 2013; (xxxix) 29th August 2013; (xl) 22nd October 2013; (xli) 9th December 2013; (xlii) 27th March 2014; (xliii) 27th March 2014; (xliv) 13th May 2014; (xlv) 24th July 2014; (xlvi) 11th August 2014; (xlvii) 11th August 2014; (xlviii) 13th February 2015; (xlix) 13th March 2015;	xxv. March 14, 2018

	(l) 30th March 2015; (li) 17th June 2015; (lii) 26th June 2015; (liii) 3rd December 2015; (liv) 20th January 2016; (lv) 23rd March 2016; (lvi) 10th June 2016; (lvii) 24th June 2016; (lviii) 13th December 2016; (lix) 20th January 2017; (lx) 28th June 2017; (lxi) 19th December 2017; (lxii) 14th March 2018; and (lxiii) 16th March 2018.	
3.	(i) Minutes of the Recommending Committee meetings which recommended sanction of the said 24 loans (to Videocon Group) to the Sanctioning Committees of ICICI Bank; and (ii) Minutes of the Recommending Committee meetings which recommended sanction of the said 71 loans (to Essar Group) to the Sanctioning	CR Report and the Project Indus Report lists 8 Committee meetings in which the Noticee participated and where loans to Videocon Group were sanctioned and also lists 35 Committee meetings in which the Noticee participated and where loans to Essar Group were sanctioned, minutes of these meetings may be procured and provided.

	Committee of ICICI Bank.	
4.	The list of 33 employees / officials of ICICI Bank who were interviewed as set out at Section 9.11 of the CR Report is reproduced at Annexure "B" hereto. The transcripts / statements / recordings of these interviews are to be supplied.	These documents are not available. ICICI Bank has stated in its email dated June 01, 2021 – "no such documents are available with the Bank and nor were such documents a part of the report provided to by the Bank by Justice (Rtd.) Srikrishna."
5.	The transcripts / recordings / notes of the meetings conducted as listed in Section 9.8 of the CR Report are to be supplied.	These documents are not available. ICICI Bank has stated in its email dated June 01, 2021 – "recordings / minutes of 12 meetings conducted with 15 persons from different departments of the bank are not part of the Report, and are not available with the Bank. Hence, it is submitted that these are not available with the Bank. We note that the Report is a complete document by itself. We

		also disclaim any knowledge of any recordings, minutes, notes, transcripts or the like that Justice (Rtd.) Srikrishna or the law firm or the forensic firm engaged have had, and which at any rate did not form part of the Reports submitted to the Bank."
6.	Out of all the correspondence exchanged between the Bank and CBI, Exhibits 31e, 36c and 36d to the CR Report containing certain correspondence between the Bank and CBI has been furnished. This includes the following: (i) Letter dated 6th June 2018 from the Bank to CBI; (ii) Email dated 26th September 2018 from the Bank to CBI enclosing a letter dated 26th September 2018; and (iii) Email dated 26th	Such request is generic in nature and no specific request has been received regarding the relevance of such communication *vis a vis* the charges leveled in the ASCN. Further, ICICI Bank has stated in its email dated June 01, 2021 – "with regard to the correspondence between bank and CBI, we note that such correspondence ensued pursuant to investigation being conducted by CBI, the status of which we are

	September 2018 from the Bank to CBI with respect to "query regarding authorization for release of FD" Documents pertaining to the "key information received and reviewed" including all remaining "Correspondence between the Bank and CBI" are to be supplied.	unaware. We submit that it is not appropriate to provide any correspondence of an ongoing investigation by law enforcement agencies (including the CBI) which may compromise the efficacy of such investigation or undermine the same, and accordingly note that we will not be in a position to provide these documents. As such when prosecution is commenced by a law enforcement agency, all relevant documents as relied on for prosecution, are furnished to the accused, and not previously. If the Advocate of the Noticee No. 1 is of the view that such correspondence is useful or relevant for the subject matter of adjudication, then the appropriate course of action would be to seek

		the same from CBI, which could appropriately respond to such request.

14. Having heard the learned counsel for the parties, we find that the documents sought for at Sr. No. 1, 2 & 3 of the aforesaid chart were only supplied in part, namely, that the minutes of the Sanctioning Committee in which the appellant participated were provided to the appellant and the other minutes have been denied only on the ground that the appellant was not a participant in those meetings. This distinction made by the respondent for not supplying the documents is not only absurd but perverse. In the first instance, the CR report clearly states that they have reviewed the minutes of the committee meetings through which the loans were sanctioned to Videocon Group entities. These meetings formed the main subject matter of the allegations in the amended show cause notice. In this regard the appellant submissions in the Project Indus Report was recorded, namely, that she only attended some meetings in relation to loan granted to Videocon Group and, therefore, could not be responsible for the loans or credit facilities which was sanctioned when she was not present. This submission was rejected in the said report.

15. We are, however, of the opinion that when all the minutes of the Sanctioning Committee meetings in respect of loan sanctioned to Videocon Group was considered in the report, it was obligatory for the respondent to supply all the minutes of the Sanctioning Committee meetings instead of partially supplying the minutes of those meetings where the appellant was present. Denial of the documents sought for by the respondent was in gross violation of the principles of natural justice. Similarly, the documents which has been sought for at Sr. No. 2 and 3 have been rejected also on the same ground that the minutes cannot be supplied where the appellant was not present. The AO has failed to consider that the documents sought for were those documents which were considered exhaustively in the report.

16. We find that the charge levelled against the appellant in the show cause notice was conflict of interest in respect of approvals of loans / credit facilities granted by Bank to Videocon Group. In our opinion, the grant of loan were not confined to such loans which were granted where appellant had participated but takes into consideration all the loans granted by the Bank to the Videocon Group. The report considers all loans granted by Bank after taking into consideration the minutes of

the Standing Committee meetings. Thus, all minutes of the Standing Committee meetings are to be provided / supplied to appellants.

17. Insofar as the documents sought for in Sr. No. 4, 5 and 6 of the aforesaid chart, the AO has given a categorical finding that these documents cannot be supplied as they are not available with the ICICI Bank nor were such documents were part of the report provided to the Bank by Justice (Retired) B.N. Srikrishna. In this regard we find from a perusal of the Project Indus Report dated January 27, 2019 that it was categorically stated that no written statements were taken of the persons who were interviewed. Consequently, the plea that transcripts statements or recording of interviews conducted with 33 existing and former employees / officials of the Bank and recording / notes of the meetings conducted with individual employees of the Bank should be supplied cannot be accepted since those documents / records / notes are not on the record nor are part of the report. Further, in our opinion, correspondence between the Bank and the CBI are not part of the report and cannot be provided. Such request amounts to a roving and fishing enquiry which cannot be entertained.

18. We also find that the AO committed an error in holding that the decisions in ***T. Takano (supra) and Reliance Industries Limited (supra)*** are distinguishable. In this regard we may state that the facts in the present case may be distinct and different from the facts in the matter of ***T. Takano (supra) and Reliance Industries Limited (supra)*** but the principles of law which has been propounded by the Supreme Court in the matter of the ***T. Takano (supra) and Reliance Industries Limited (supra)*** is squarely applicable and binding on the subordinate authorities. It is not open to the AO to brush aside those judgments simplicitor stating that those decisions are distinguishable especially when a specific direction was given by this Tribunal to take into consideration that the decision of the Supreme Court in ***T. Takano (supra)*** dated February 18, 2022**.**

19. In this regard the decision of the Supreme Court in the case of **T. Takano vs Securities and Exchange Board of India, Civil Appeal Nos. 487-488 of 2022 decided on February 18, 2022** becomes relevant. One of the contentions raised in T. Takano was that he was entitled to a copy of the investigation report which was not provided. SEBI took a stand that only those material which have been relied upon is required to be disclosed and that the investigative report being an internal

document is not required to be disclosed. The Supreme Court found that if the report of the investigating authority is considered by the Board before satisfaction is arrived at on a possible violation of the Regulations, then the principles of natural justice require due disclosure of the report. Further, the Supreme Court held that once the subordinate legislation mandates that the investigating authority's report is an essential ingredient for the Board to arrive at the satisfaction, it requires due disclosure. The Supreme Court consequently held that the appellant had a right to disclosure of the material relevant to the proceedings initiated and that all information relevant to the proceedings must be disclosed in adjudication proceedings.

20. In view of the aforesaid, the appeal is partly allowed. Documents as mentioned at Sr. No. 1, 2 and 3 of the aforesaid chart is required to be supplied to the appellant. Documents mentioned at Sr. No. 4, 5 and 6 cannot be supplied and are rejected. In view of the partial success, parties are directed to bear their own costs.

21. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of

this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

05.01.2023
msb

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