

IN THE SECURITIES APPELLATE TRIBUNAL
AT MUMBAI

DATED THIS THE 2ND DAY OF MAY, 2025

CORAM: Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No.147 of 2025

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

(BY Mr. Pesi Modi, Senior Advocate with Mr. Kyrus Modi, Mr. Vishesh Malviya, Ms. Deepa Shetty, Ms. Taniya Dsouza and Mr. Athrarva Patvardhan, Advocates i/b. Rashmikanth and Partners for the Appellant.)

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
‘G’ Block, Bandra – Kurla Complex,
Mumbai – 400 051. Respondent

(BY Mr. Gaurav Joshi, Senior Advocate with Mr. Nitin Jain, Mr. Ravishekar Pandey, Mr. Ankit Ujjwal, Advocates i/b. Agama Law Associates for the Respondent).

THIS APPEAL IS FILED UNDER SECTION 15-T OF THE SEBI ACT, 1992 TO SET ASIDE THE HEARING NOTICE DATED MARCH 12, 2025 PASSED BY THE SEBI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON MARCH 25, 2025 COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE TRIBUNAL MADE THE FOLLOWING:

ORDER

Per : Justice P. S. Dinesh Kumar, Presiding Officer

This appeal is directed against hearing notice dated March 12, 2025 issued to the appellant by the AO¹, SEBI² under Section 15 I of the SEBI Act read with Rule 4 (3) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

2. Brief facts of the case as per pleadings are:

(i) The appellant is the former Managing Director and Chief Executive Officer of ICICI Bank Limited. SEBI issued a Show Cause Notice (SCN) dated May 23, 2018

¹ Adjudicating officer

² Securities and Exchange Board of India

to the appellant (Noticee No.1) and the ICICI Bank Limited (Noticee No.2). Appellant filed a detailed response and written submissions. A personal hearing was provided, however, no orders were passed.

(ii) After two years, on November 19, 2020, SEBI sent an email enclosing an 'Amended Show Cause Notice' without its enclosures/annexures, wherein appellant was the sole noticee. The amended SCN superseded the earlier SCN. Thereafter, a series of communication were exchanged for inspection and supply of documents between the appellant and SEBI. Meanwhile, appellant filed her preliminary reply on February 24, 2021 to amended SCN indicating about non-supply of documents and seeking inspection.

(iii) SEBI scheduled a personal hearing on May 4, 2021 without considering appellant's repeated requests for inspection and supply of documents. The appellant approached this Tribunal in appeal No.312 of 2021. This Tribunal *vide* order dated June 14, 2022 directed the AO

to consider appellant's application for inspection/supply of requested documents and to pass a reasoned order. On August 17, 2022, SEBI provided selective inspection of some of the documents and denied inspection of the remaining documents without any valid reason.

(iv) The appellant again approached this Tribunal in Appeal No. 751 of 2022. This Tribunal granted partial relief directing SEBI to furnish some of the requested documents. Thereafter, a series of communication were exchanged between the appellant and respondent.

(v) On February 21, 2025, SEBI sent an email stating that all documents pertaining to amended SCN had been supplied and called upon the appellant to submit a response to the amended SCN by March 7, 2025. On March 7, 2025 appellant requested for the copies of the submissions made by ICICI Bank in the ongoing parallel proceedings and also to provide data from ICICI Bank's Secretarial portal and electronic data stored on ICICI

Bank's servers. Final personal hearing was scheduled on March 26, 2025.

(vi) Appellant has approached this Tribunal with the prayers *inter alia*, to set aside the hearing notice dated March 12, 2025; to direct the SEBI to grant inspection; to provide copies of SCN/amended SCN issued to ICICI Bank, all replies, written submissions, documents filed by ICICI Bank under the SCN/amended SCN and data on ICICI Bank's Secretarial Portal, servers and devices which form the basis of amended SCN.

3. We have heard Shri Pesi Modi, learned Senior Advocate for the appellant and Shri Gaurav Joshi, learned Senior Advocate for the SEBI.

4. Shri Pesi Modi submitted that:

- The principles of natural justice require full and fair disclosure of all relevant material to enable the appellant to effectively defend herself.

- The appellant should be provided with the submissions and documents made by the ICICI Bank because all the allegations against the appellant are in respect of her conduct as MD and CEO of ICICI Bank. Initially a common SCN was issued because the case of the appellant and ICICI Bank are interwoven. SEBI is relying on material conveniently procured, provided by ICICI Bank to proceed against the appellant. The contention of SEBI that the stand taken by the ICICI Bank is not relevant to the defence of the appellant is untenable.
- The same AO is conducting the proceedings against the appellant and the ICICI Bank. Yet he is refusing to disclose SCN, replies and submissions made by the ICICI Bank. SEBI's refusal to provide relevant information/data on the ICICI Bank's Secretarial portal, servers and devices amounts to violation of principles of natural justice since the very same material was used

in the CR Report³ which formed the basis of Project Indus Report, based on which, the amended SCN has been issued.

- Though this Tribunal is not bound by CPC, 1908, it shall be guided by principles of natural justice and has all powers of a Civil Court under CPC, *inter alia* in respect of discovery and production of documents under Rule 1,3 and 5 of Order 11 of CPC, 1908 and that any party can seek directions from the Hon'ble Court at any stage for inspection or production of documents by any other party who has refused to provide the same and exemplary costs may be imposed upon him for such refusal.
- SEBI's suppression of the relevant documents and information is in violation of law laid down in ***T. Takano v. SEBI⁴, Milind Patel v. Union Bank of India⁵***. He also placed reliance on *Madhyam Agrivet*

³ Credit Rating Report

⁴Paras 44, 50,51 & 62 of T.Takano v. SEBI, 2022 SCC Online SC 210, decided on February 18,2022 by Hon'ble Supreme Court of India.

⁵Paras 25 & 26 of Milind Patel v. Union Bank of India, 2024 SCC Online Bom 745, decided on March 11, 2024 by Hon'ble Bombay High Court.

*Industries Limited v. SEBI*⁶ and urged that inspection of SCN issued to the other parties in the same matter must be given.

- With these submissions, the appellant prayed to set aside the hearing notice date March 12, 2025 and direct SEBI to grant inspection to provide copies of SCN/amended SCN issued to ICICI Bank, all replies, written submissions, documents filed by ICICI Bank under the SCN/amended SCN in respect of which proceedings are pending and also the data on ICICI Bank's Secretarial Portal, servers and devices which form the basis for the amended SCN.

5. Shri Gaurav Joshi, for SEBI raised a preliminary objection with regard to maintainability of this appeal, according to him a hearing notice is not an order appealable under Section 15T of SEBI Act, 1992⁷.

⁶Paras 11 to 14 of *Madhyam Agrivet Industries Limited v. Securities and Exchange Board of India*, 2024 SCC Online SAT 296, decided on May 22, 2024 by Securities Appellate Tribunal, Mumbai.

⁷Securities and Exchange Board of India, 1992.

6. He submitted that the proceedings before a quasi-judicial authority are inherently different from a trial court and each noticee is adjudicated on its independent case/merit before respondent. The reply and written submissions by co-noticees are not provided except in exceptional circumstances and the appellant has failed to establish any such 'exceptional circumstances'. As a matter of established principle and practice, the respondent cannot grant access to the documents submitted by ICICI Bank. The information provided by ICICI Bank includes confidential details which cannot be disclosed without the consent of ICICI Bank.

- ICICI Bank is not a party to amended SCN and the respondent affirms that none of the content submitted by ICICI Bank shall be relied upon by the respondent against the appellant. The charges and legal provisions under which ICICI Bank was charged are totally different from that of the appellant.

- That the data available on ICICI Bank's Secretarial Portal and servers is the property which belongs to the ICICI Bank and not within the possession of the respondent. Respondent is unable to provide access to the information that it does not possess.
- That documents not relied upon by the authority are not required to be furnished. To support this submission, he relied on *Kavi Arora v. SEBI*⁸. He submitted that the reliance placed by the appellant on *Madhyam Agrivet Industries and Ors v. SEBI* is entirely misconceived, as in that case this Tribunal has granted inspection of SCNs issued to the officers and independent directors whereas in this case the appellant is seeking access to documents submitted by ICICI Bank.
- That the present appeal is the third round of litigation by the appellant since issuance of amended SCN dated November 19, 2020. Appellant till date has not filed reply on merits to the allegations in the amended SCN.

⁸ Paras 48 to 52 of *Kavi Arora v Securities and Exchange Board of India*, 2022 SCC OnLine SC 1217, decided on September 14, 2022 by Hon'ble Supreme Court of India.

7. We have carefully considered the rival contentions and perused the records.

8. The allegations levelled against the appellant in the amended show cause notice pertain to appellant's acts and omissions committed whilst she was the MD and CEO of ICICI Bank. The proceedings against the appellant and ICICI Bank emanate from the same set of facts and cause of action pertaining to the ICICI Bank. After her removal from the Bank, obviously, the appellant shall not have any access to the materials/documents pertaining to the ICICI Bank. Every person has a right to defend his/her case. In the present case, respondent is independently proceeding against the appellant on the same cause of action/facts in which both the appellant and the Bank are facing enquiry. The respondents have initiated parallel proceedings against ICICI Bank as well as the appellant.

9. There should be absolute fair practice on part of the quasi-judicial authority while conducting an enquiry. The fundamental principle is that any material which has not

been brought to his notice, cannot be used against a delinquent. In ***Kanwar Natwar Singh v. Director of Enforcement***⁹, the Hon'ble Supreme Court held:

“The right to fair hearing is a guaranteed right. Every person before an Authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognized by this Court in Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal. However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing should be used against the person which has not brought to his notice. If relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing.”

10. Further, the adjudicating officer in both the proceedings against ICICI Bank as also the appellant are one and the same. Admittedly, he is privy to the documents submitted by the ICICI Bank. Therefore, his findings qua the appellant may be biased or exposed to the risk of bias.

⁹ Paragraph No.23 of *Kanwar Natwar Singh v. Director of Enforcement*, (2010) 13 SCC 255 decided on October 5, 2010

(See *Ranjit Thakur v. Union of India and Ors*¹⁰). It is elementary that the human mind does not function in compartments. When it receives impressions from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. (See *Khudiram Das v. State of West Bengal*¹¹).

11. In view of the above discussion, the following:

ORDER

1. Appeal is *allowed*.
2. SEBI is directed to furnish a copy of SCNs issued to the ICICI Bank and allow the appellant to inspect and take notes from all replies, written submissions/annexures/exhibits/documents filed by ICICI Bank with the respondent and also with respect to the ICICI Bank's Secretarial Portal and data stored in Bank's server and devices in respect

¹⁰ *Ranjit Thakur v. Union of India and Ors.* decided on October 15, 1987, (1987) AIR 2386

¹¹ *Khudiram Das v. State of West Bengal*, decided on November 26, 1974, (1975) 2 SCC 81

of ICICI Bank-Videocon Group saga and thereafter
fix a date of hearing.

3. Pending interlocutory applications, if any, stand
disposed of.

4. No costs.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

02.05.2025
RHN