

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

Appeal No. 5935 of 2024

Amit Gupta	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application (Reg. No. SEBIH/R/P/23/00359) dated December 22, 2023 (received by SEBI on December 22, 2023) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated January 16, 2024 responded to the application filed by the appellant. The appellant filed an appeal dated February 20, 2024 (received by the Office of Appellate Authority on February 26, 2024).
2. In this appeal, the appellant has made a request for a personal hearing. I have carefully considered the application, the response and the appeal. I note that the nature of the request, the response of the CPIO and the grounds of appeal are self-explanatory and not complex. On the issue of providing an opportunity of hearing by the First Appellate Authority (hereinafter referred to as “**FAA**”) under RTI Act, a full bench of Hon’ble Central Information Commission (hereinafter referred to as “**CIC**”) in *Bombay Stock Exchange Limited vs Securities and Exchange Board of India* (File No. CIC/SM/A/2011/001687) observed that “*It is not practical to lay down an inflexible rule that PIOs and AAs will always offer an opportunity of hearing to the parties, let alone to the 3rd party. They may do so as per their discretion, keeping in view the complexity of legal and factual issues involved, without forgetting that timelines are to be adhered to, being the essence of the Act.*” Therefore, it is noted that there is no specific requirement under the provisions of the RTI Act, of providing a personal hearing by the FAA and that the discretion to give hearing to the appellant shall be exercised considering the complexity of the issues involved and the timelines specified under the RTI Act. In this context, reliance is also placed on the decisions of the Hon’ble CIC in the matters of *Mr. Milind Hemant Kotak, Mumbai vs. Canara Bank* (Decision dated April 24, 2008) and *Mr R.K Jain vs. UPSC* (Decision dated March 10, 2014). Therefore, I am of the opinion that the appeal can be decided on the basis of material available on record.

3. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent. The appellant, in his appeal, has raised dissatisfaction only with respect to the reply to request nos. 1 - 6 of his application.
4. **Request nos. 1 - 3 of the application-** The appellant, vide request nos. 1 - 3 of his application dated December 22, 2024, *inter alia* sought two certified copies of all the communications/actions (including via email, letters, notings, comments, issuing notices, received replies etc.) in regard to his 3 complaints sent to SEBI against Ambition Learning Solutions (hereinafter referred to as “**ALS**”).
5. **Reply of the Respondent** - The respondent, in response to the request nos. 1 - 3, informed that the information sought relates to the activities of third party viz. Ambition Learning Solution (ALS), which includes commercial confidential information of other entities, the disclosure of which could hamper the competitive position of other entities. In view of the above, the information sought is exempt u/s 8(1)(d) of RTI Act.
6. I have perused the aforesaid request and the response provided thereto. I find that the response provided by the respondent does not justify the denial of the requested information on the ground that the same is exempt from disclosure under 8(1)(d) of the RTI Act. In my view, the respondent was obliged to ascertain availability of the requested information with SEBI and whether the same may be provided to the appellant in accordance with the provisions of the RTI Act. Accordingly, on consideration, I find that the said requests have not been adequately addressed by the respondent and the same warrants reconsideration.
7. **Request no. 4 of the application** - The appellant, vide request no. 4 of his application dated December 22, 2024, sought the following information:
“(04) Provide two certified hard copies of information about all the emails/letters issued/communicated by SEBI officials of the Investor Awareness Division, Office of Investor Assistance and Education (IAD-OIAE) to SMARTs about amendments/ changes in the Operational Guidelines on Securities Market Trainers (SMARTs) during November 2020 to December 2023.”
8. **Reply of the Respondent** - The respondent, in response to request no. 4 informed that the Operational Guidelines on SMARTS during November 2020 to December 2023 were amended twice on September 01, 2021 and on January 18, 2023 and the same were communicated to SMARTS via email on 25/08/2021 and on 20/01/2023. The respondent provided the copy of the aforesaid emails and the amended guidelines to the appellant. Further, as regards the copy of the Operational

Guidelines, the respondent informed the appellant to apply for the same against remittance of applicable fees to SEBI as the same consists of 83 pages.

9. I have perused the requests and the response provided thereto. I note that the appellant in his appeal has submitted that he had sought two certified hard copies of the all the emails/letters issued/communicated by SEBI to SMARTs regarding the amendments in the Operational Guidelines on Securities Market Trainers (SMARTs) during November 2020 to December 2023, however, the same was not provided to him. I find that while the copies of the emails have been provided by the respondent in his reply, however, the same are not certified copies. I note that section 2(j)(ii) of the RTI Act, confers the right to seek certified copies of documents for information which are under the control of any public authority. Accordingly, on consideration. I find that the said request has not been adequately addressed by the respondent and the same warrants reconsideration.
10. **Request no. 5 of the application** - The appellant, vide request no. 5 of his application dated December 22, 2024, sought the following information:

"(05) Provide two certified hard copies of the information about the LAP sessions' all photos related to the Investor Awareness Program (Offline or Classroom) conducted by the Organization category SEBI recognized SMART's Ambition Learning Solutions (ALS), Mumbai (Registration No. SEBI/SM/0/1-10/M1-1/02) from Nov 2020 to December 2023(till date).
11. **Reply of the Respondent** - The respondent, in response to the request no 5 of the application, informed that the information sought relates to the activities of third party viz. Ambition Learning Solution (ALS) which is available with SEBI in fiduciary capacity and includes commercial confidential information of other entities, the disclosure of which could hamper the competitive position of the entities. Hence the information sought is exempt u/s 8(1)(d) & 8(1) (e) of RTI Act.
12. I have perused the aforesaid request and the response provided thereto. As regards, the request of the appellant, seeking photos related to the Investor Awareness Programs. I concur with the response of the respondent that the requested information is available to SEBI in fiduciary capacity. In the context of non-disclosure of information under Section 8(1)(e) of the RTI Act, 2005, the decision of the Hon'ble Supreme Court of India in *Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors.*, in Civil Appeal NO. 7571 of 2011- dated 02/09/2011 is referred to, wherein it was held that: *"... In other words, anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship".* I, therefore, find that the requested information is exempt from disclosure under section 8(1)(e) of the RTI Act. Further, I am also of the view that

disclosure of the requested information may cause unwarranted invasion of the privacy of the individuals photographed. In view of the aforesaid information, I do not find any deficiency in the response of the respondent.

13. **Request no. 6 of the application** - The appellant, vide request no. 6 of his application dated December 22, 2024, sought the following information:

(06) Provide a certified hard copy of the information about all the documents (as per the empanelment guidelines/requirements) submitted during the empanelment process (including selection remarks, evaluation, notifications and communication by the SEBI/NISM team) during the year 2020-21 by Organization category SEBI recognized SMART's Ambition Learning Solutions (ALS), Mumbai (Registration No. SRI/W/O/HO/MLA/02). Also, provide a certified hard copy of the signed empanelment letter by Ambition Learning Solutions, Mumbai (A Recognized Organization SMART, Registration No. SEBI/SM/0/1-10/M1-1/02)."

14. **Reply of the Respondent** - The respondent, in response to the request no. 6 of the application, informed that the information sought relates to the activities of third party viz. Ambition Learning Solution (ALS) which is available with SEBI in fiduciary capacity and includes commercial confidential information of other entities, the disclosure of which could hamper the competitive position of the entities. Hence the information sought is exempt u/s 8(1)(d) & 8(1) (e) of RTI Act. Further, the respondent also informed that the information relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the officials and may also endanger the life or physical safety of the person(s). In view of the above, the information sought is exempt under Section 8(1)(j) of the RTI Act.
15. I have perused the aforesaid request and the response provided thereto. As regards, the request of the appellant, seeking copies of documents submitted during the empanelment process by ALS. I concur with the response of the respondent that the requested information is available to SEBI in fiduciary capacity. In the context of non-disclosure of information under Section 8(1)(e) of the RTI Act, 2005, the decision of the Hon'ble Supreme Court of India in *Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors.*, in Civil Appeal NO. 7571 of 2011- dated 02/09/2011 is referred to, wherein it was held that: "... In other words, anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship". I, therefore, find that the requested information is exempt from disclosure under section 8(1)(e) of the RTI Act.

16. Further, I concur with respondent that the aforesaid portion of the request is also exempt from disclosure under section 8(1)(j) of the RTI Act. I do not find any reason to disbelieve the observation of the respondent that the requested information pertains to personal information of third party. In this context, reference is made to the judgment of the Hon'ble Supreme Court of India in the matter of *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal* in Civil Appeal No. 10044 of 2010 with Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010 (judgement dated November 13, 2019) wherein "personal information" envisaged under Section 8(1)(j) of RTI Act has been exemplified in the context of earlier ratios laid down by the same Court in other matter(s). The Hon'ble Supreme Court held that: *"59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive..."* In view of these observations, I agree with the response of the respondent. Further, I note that the appellant, in his appeal, has cited few orders, however, the same are distinguishable from the facts of the instant case. Accordingly, I do not find any deficiency in the response of the respondent with respect to the aforesaid portion of the request.
17. However, as regards the request of the appellant, seeking certified copy of the signed empanelment letter by ALS, I find that the response provided by the respondent does not justify the denial of the requested information on the ground that the same is exempt from disclosure under 8(1)(d), 8(1) (e) and 8(1)(j) of the RTI Act. In my view, the respondent was obliged to ascertain availability of the requested information with SEBI and whether the same may be provided to the appellant in accordance with the provisions of the RTI Act. Accordingly, on consideration, I find that the said portion of the request has not been adequately addressed by the respondent and the same warrants reconsideration.
18. Considering the above observations, I remit the application to the respondent for *de novo* consideration of request nos. 1, 2, 3, 4 and 6 (pertaining to certified copy of the signed empanelment

letter by ALS) of the application and sending appropriate response to the appellant in terms of RTI Act, within 15 working days from the date of receipt of this order.

19. The Appeal is accordingly disposed of.

Place: Mumbai
Date: March 20, 2024

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