

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

Appeal No. 6370 of 2025

Prasanta Mazumdar : Appellant

Vs

CPIO, SEBI, Mumbai : Respondent

ORDER

1. The appellant had filed an application dated March 30, 2025 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated April 22, 2025, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/25/00079) dated April 28, 2025. 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. **Queries in the application** - The appellant, in his application dated March 30, 2025, sought the following information:

“ I, Mr. Prasanta Mazumdar, a senior citizen aged 78 and a resident of West Bengal, seek clarity on the operational framework, risk mitigation, and transparency measures governing Gold Exchange-Traded Funds (ETFs) in India.

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Given concerns raised globally about re-hypothecation and multiple claims on the same gold in Western Gold ETFs, I request details on the following:

1. *Gold Custody & Ownership Do Indian Gold ETFs hold fully allocated physical gold in investor names, or do they operate on an unallocated basis where gold is pooled?*

a) Who are the authorized custodians of physical gold for Gold ETFs in India? Are they independent, or do fund houses directly hold custody?

b) What percentage of assets in Indian Gold ETFs are backed by actual physical gold versus derivatives, paper claims, or gold-related securities?

2. Restrictions on Gold Lending & Re-Hypothecation Are Indian Gold ETFs permitted to lend, lease, or pledge gold holdings to third parties?

a) If yes, what are the restrictions in place to ensure gold remains available for redemption?

b) Do custodians or fund managers have the right to rehypothecate gold holdings under Indian regulations?

3. Redemption & Physical Gold Availability Can retail and institutional investors redeem their gold ETF units for actual physical gold, or is redemption restricted to cash settlement?

a) If physical redemption is allowed, what is the minimum threshold requirement (e.g., a full gold bar, specific weight limits)?

b) How does the ETF ensure that all investors units are backed by physical gold at all times?

4. Regulatory Oversight & Audits How frequently do SEBI/RBI or other regulatory bodies audit the physical gold reserves held by Gold ETFs?

a) Are Gold ETF custodians subject to independent thirdparty audits, and is there public disclosure of these audit reports?

b) What penalties or corrective actions are in place if an ETF is found under-backed or involved in improper gold lending practices?

5. Risk Management & Investor Protection What safeguards exist to ensure no multiple claims on the same gold holdings in Indian ETFs?

a) In case of fund house bankruptcy or custodian failure, how is investor gold secured and protected from creditors?

b) Do Indian Gold ETFs follow a 100% physical gold backing rule, or is any fraction of assets allowed to be in cash or derivative positions?

Given the global concerns over Gold ETFs exposure to counterparty risks in Western markets, it is crucial to understand how Indian ETFs are structured to prevent such vulnerabilities. I appreciate your response to these queries to ensure transparency and investor confidence.”

3. **Reply of the Respondent** –The respondent, in response to the queries in the application, informed that the queries are in the nature of seeking clarification/opinion. Accordingly, the same cannot be construed as "information", as defined u/s 2(f) of the RTI Act. However, the respondent also informed that the appellant can refer to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and Master Circular for Mutual Funds available on SEBI website.
4. **Ground of appeal** – The appellant has filed the appeal on the ground that he was refused access to information requested.
5. I have perused the application and the response provided thereto. On consideration, I agree with the response of the respondent that the appellant's queries are in the nature of seeking clarification/opinion/confirmation from the respondent. I find that the said queries cannot be construed as seeking 'information' as defined under section 2(f) of the RTI Act. Consequently, the respondent did not have an obligation to provide such clarification/opinion/confirmation under the RTI Act. In this context, reliance is placed on the matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021), wherein, Hon'ble Central Information Commission (**CIC**) observed that *"7. The Commission, after hearing the submissions of both the parties and after perusal of records, observed that some queries of the appellant are in the nature of seeking explanation/ opinion/ advice/ confirmation/ clarification from the CPIO and he has expected that the CPIO firstly should analyze the documents and then provide information to the appellant. But the CPIO is not supposed to create information; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. As per Section 2(f) of the RTI Act, the reasons/ opinions/ advices can only be provided to the applicants if it is available on record of the public authority. The CPIO cannot create information in the manner as sought by the appellant. The CPIO is only a communicator of information based on the records held in the office and hence, he cannot be expected to do research work to deduce anything from the material therein and then supply it to him."* Accordingly, I do not find any deficiency in the response of the respondent.
6. Further, I note that the appellant, in his appeal, has sought additional information pertaining to his application. I note that these requests have been made for the first time in this appeal. As held by the Hon'ble CIC in *Harish Prasad Divedi vs. Bharat Petroleum Corporation Limited* (decided on January 28, 2014), an information seeker cannot be allowed to expand the scope of his RTI enquiry at appeal stage. Accordingly, I find that the said submissions do not warrant consideration at this stage.

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

Place: Mumbai

Date: May 23, 2025

RUCHI CHOJER
APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA