

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

Appeal No. 5587 of 2022

Girish Mittal	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated December 27, 2022 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated January 11, 2023, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/23/00035) dated February 07, 2023. 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. **Ground of appeal-** The appellant has filed the appeal on the ground that access to the requested information was refused. On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent with respect to query number (b) of the application. In view of the submissions made by the appellant, I am only dealing with the query and the response provided thereto, in his order.
3. **Query number (b)-** The appellant, vide query number (b) of his application dated December 27, 2022, sought the following information pertaining to registration/approval of ICICI Prudential Corporate Credit Opportunities Fund AIF-I:

“(b) If it is registered/ approved, kindly provide the link where this scheme is given approval or correspondences exchanged with the company where this scheme is given approval or deemed approval.”

4. The respondent, in response to the aforesaid query, informed that the list of all registered AIFs is available on the SEBI website. The respondent also provided the link for accessing the same. However, the respondent informed that no link is available for any scheme approval. The respondent also informed that the said scheme was granted approval by SEBI on October 01, 2021. Regarding the

request for copy of correspondences exchanged with the company, the respondent informed that the same is exempt from disclosure under section 8(1)(d) and 8(1)(e) of the RTI Act since the same is available to SEBI in fiduciary capacity and includes commercially confidential information, the disclosure of which could harm the competitive position of the entities.

5. The appellant, in his appeal, inter alia, referred to the decision of the Hon'ble Supreme Court in the matter of *RBI vs. Jayantilal N. Mistry*. The appellant also stated that the Supreme Court had clarified that the relationship between a regulator and a regulatee is not a fiduciary relationship. The appellant also submitted that the contention of the CPIO is bereft of any legal basis.

6. I have perused the query and the response provided thereto. I find that the respondent has adequately addressed the query by providing the information available with him regarding registration of the entity. With respect to the query seeking correspondences exchanged with the entity, I agree with the response of the respondent that the requested information is held in a fiduciary capacity and includes information pertaining to commercial confidence. I have no reason to disbelieve the said observation. I note that in Writ Petition (Civil) Nos. 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607 of 2007, the Hon'ble High Court of Delhi, in its order dated November 30, 2009, held that the 'person' referred to in section 8(1) (e) of the RTI Act will include a public authority. It also held that: *"In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself"*. Further, the Hon'ble CIC, in the matter of *Mr. Ashok Kumar Rajak vs. CPIO, SEBI*, (order dated December 21, 2021), held that *"Further the details such as investigation report, file noting, directions and various communication involves with the third party information which is received from other agencies is being held by them in fiduciary capacity hence the same is barred from disclosure under section 8(1)(e) & (j) of the RTI Act, 2005."* I find that SEBI, being the regulatory authority for the securities market, gets various references/documents from market participants and the information contained therein are received in 'fiduciary relationship'. I also find that such reference/documents received by SEBI or correspondences made by SEBI with other entities may contain commercial information which is confidential in nature, disclosure of which may adversely impact the competitive position of the concerned entities. I, therefore, find that such information pertaining to commercial confidence and which contains information received in 'fiduciary relationship' from market participants etc. is exempted from disclosure under Sections 8(1)(d) and 8(1)(e) of the RTI Act. Accordingly, I do not find any deficiency in the response.

7. Further, I note that the appellant, in his appeal, has referred to the decision of the Hon'ble Supreme Court in the matter of *RBI vs. Jayantilal N. Mistry*. I note that the facts and circumstances of the said order were totally different. In this regard, reliance is placed on the matter of *Arun Damodar Sawant vs. SEBI* (Order dated September 26, 2018) wherein, the Hon'ble CIC had accepted the submission of SEBI regarding existence of fiduciary relationship even after considering the appellant's submissions wherein he had relied upon the aforementioned judgement of Hon'ble Supreme Court in the matter of *RBI vs. Jayantilal N. Mistry*. Further, I note that the appellant has not established how the information involves the element of larger public interest. In view of the said observations, I do not find any merit in the submission of the appellant.
8. 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: February 22, 2023

ANAND BAIWAR

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