

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

Appeal No. 6062 of 2024

Bipinchandra Shivilal Mehta	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated June 01, 2024 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated June 10, 2024 responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/24/00136) dated June 23, 2024. 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 the information provided is incomplete, misleading and false information.
3. **Request nos. 1 and 2 of the application** - The appellant, vide his request nos. 1 and 2 of the application, sought the following information with reference to an Arbitration Award dated 24/08/2023:

*“(1) Whether SEBI/NSE has hold an overall detail enquiry/forensic audit of the TM Sharekhan as per the said Award. If yes, present status/outcome of the same supported by copies of correspondence exchanged with different entities in the matter.
(2) If no to (1) above, reasons for the same with copies of supporting documents, if any.”*
4. **Reply of the Respondent** - The respondent, in response to the aforesaid requests nos. 1 and 2, informed that the information sought regarding enquiry/forensic audit held by NSE is not available with SEBI. The respondent further informed that as regards SEBI, SEBI conducts examination/inspection confidentially, hence, SEBI will neither confirm nor deny the existence of any examinations/inspection. However, any regulatory actions, if taken by SEBI pursuant to the examination are published on SEBI website.
5. I have perused the aforesaid requests and the response provided thereto. With respect to information sought regarding enquiry/forensic audit held by NSE, I note that the respondent has categorically stated

that the requested information is not available with SEBI. I note that the respondent can only provide information that is available in the records. In this context, I note that the Hon'ble Central Information Commission (hereinafter referred to as "**CIC**") in the matter of *Sh. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: "... if it (SEBI) does not have any such information in its possession, the CPIO cannot obviously invent one for the benefit of the Appellant. There is simply no information to be given." In view of these observations, I do not find any deficiency in the response.

6. Further, with respect to information sought regarding enquiry/forensic audit done by SEBI, I note that the respondent has informed the appellant that SEBI conducts examination/inspection confidentially, hence, it will neither confirm nor deny the existence of any examinations/inspection. I concur with the aforesaid response of the respondent, as SEBI receives alerts and references from various sources and these may or may not result in further action by SEBI such as examination or investigation. Further, such examination or investigation may or may not establish the suspected violations or lead to enforcement actions. Maintaining confidentiality of examination/ investigation is important since reports of the same may result in unwarranted speculation or concern in the market or may affect evidence collection during the examination/investigation or may result in unnecessary harm to third parties. Further, I note that information regarding any regulatory action taken by SEBI/penalty imposed against entities, would be available on the website of SEBI. The said rationale for neither confirming nor denying existence of any examination/ investigation was relied upon by SEBI before the Hon'ble Central Information Commission (hereinafter referred to as "**CIC**") in *Arun Damodar Sawant vs CPIO, SEBI* (order dated September 26, 2018 in Appeal No. CIC/SEBIH/A/2017/ 137139/BJ). The Hon'ble CIC, in the said matter, accepted the submissions and refused to intervene in the response of the CPIO. Similar observations were also made by the Hon'ble CIC, in the matter of *Anju Sharma vs. CPIO, SEBI* (order dated September 28, 2020). In view of these observations, I find that the aforesaid requests have been adequately addressed and no further interference of this forum is warranted at this stage.

7. **Request no. 3 of the application** - The appellant, vide his request no. 3 of the application, sought the following information with reference to an arbitration matter and arbitration award dated 24/08/2023:

(3) *"Is there any specific provision about reminders/follow ups to be made with TMs for making payment to clients as per the Award. If yes, please provide a copy of the relevant circular or guidelines with supporting correspondence with/follow up letters to TM and reply, if any, received from Sharekhan Ltd."*

8. **Reply of the Respondent** - The respondent, in response to request no. 3 of the application informed the appellant to refer to SEBI circular CIR/MRD/DSA/24/2010 dated August 11, 2010 for implementation of Arbitration award in favour of clients. The respondent also provided the relevant path to access the said circular on SEBI website.
9. I have perused the aforesaid request and the response provided by the respondent. On consideration, I find that the respondent has adequately addressed the said requests by providing the information available with him. Accordingly, no further intervention of this forum is warranted.
10. **Request no. 4 of the application** - The appellant, vide his request no. 4 of the application, has sought the following information with reference to an arbitration matter and arbitration award dated 24/08/2023:

(4) "Please provide copies of the correspondence exchanged, through which Sharekhan Ltd. have shown their intention to file a petition before the court to set aside the aforesaid Award"
11. **Reply of the Respondent** – The respondent, in response to request no. 4 of the application, informed that the information sought is not available with SEBI
12. I have perused the aforesaid request and the response provided thereto. I note that the respondent has categorically stated that the requested information is not available with SEBI. I note that the respondent can only provide information that is available in the records. In this context, I note that the Hon'ble Supreme Court of India in *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Judgment dated August 9, 2011) held that *"The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant."* Accordingly, I do not find any deficiency in the response of the respondent.

13. 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: July 22, 2024

RUCHI CHOJER

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