

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

Appeal No. 5423 of 2022

Globalworth Securities Ltd	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated July 22, 2022 (received by SEBI on July 22, 2022) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated August 18, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated September 17, 2022 (received by the Office of Appellate Authority on September 20, 2022).
2. The appellant, in the appeal, has made request for personal hearing. On the issue of providing an opportunity of hearing by the First Appellate Authority (FAA) under RTI Act, a full bench of Hon’ble 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 R.K Jain vs. UPSC* (Decision dated March 10, 2014) and *Mr. N. Saini vs. CPIO & Chief (RTI)* (Decision dated January 25, 2018). In view of the above observations, I have carefully considered the application, the response and the appeal. I note that the grounds of appeal are self-explanatory. Hence, the matter can be decided based on the material that is available on record.
3. **Ground of appeals-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent. In view of the submissions made by the appellant in his appeal, I am dealing with the queries and the response provided thereto, in this order.

4. **Query number 1-** The appellants, vide query number 1, *inter alia*, sought the following information:

“Copy of internal note for initiating proceedings against us vide issuance of SCN dated 07/06/2022”

5. The respondent, in response to the aforesaid query, informed that the information sought by the appellant pertains to the internal functioning of SEBI and disclosure of which may hamper the decision making by SEBI in its supervisory and regulatory role. Further, the information sought is exempt from disclosure under Sections 8(1)(d) and 8(1)(e) of the RTI Act as the same is available to SEBI in fiduciary capacity and includes commercial information of other entities which is confidential in nature, the disclosure of which could harm their competitive position. The appellant, in the appeal, *inter alia*, submitted that the requested information does not affect SEBI's fiduciary capacity and it does not hamper the decision making by SEBI in its supervisory and regulatory role. The appellant also stated that the internal note cannot contain information pertaining to other entities.
6. I have perused the query and the response provided thereto. On consideration, I agree with the response of the respondent that disclosure of the requested information would affect and compromise the regulatory functions and roles of SEBI. The same may also hamper decision making by SEBI. In light of the same, non-disclosure of information, which is internal to the functioning of SEBI and of strategic interest, will fall within the exemption offered under section 8(1)(a) of the RTI Act. Further, I do not find any reason to disbelieve the observation of the respondent that the requested information may contain information which is available to SEBI in fiduciary capacity and include confidential information which is commercial in nature. 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, 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.”* Further, I note that the requested document may contain information which has been sought, gathered and analyzed to crystallize the preliminary charges for which the entities/individuals are issued show cause notices. Such information gathered by SEBI may include

information relating to commercial and business interest as submitted by the entities/individuals against whom the investigation is conducted by SEBI. Such information is summoned by SEBI in the discharge of its regulatory function and in its authority as a regulator of the securities market. In view of these observations, I do not find any deficiency in the responses.

7. **Query numbers 2, 3 and 5-** The appellant, vide query numbers 2, 3 and 5, sought the following information:

“2. Copy of approved policy to deal in the matter of trading in option of individual stock listed in the Stock Options segment of BSE during the period from 01/04/2014 to 30/09/2015.

3. Copy of internal note in the matter of Mr. Arun Jain matter in Appeal No. 196 of 2013 filed before Hon’ble Securities Appellate Tribunal (Tribunal).

5. Any other documents/statements/papers in the matter of Appeal No 196 of 2013 filed before Hon’ble Securities Appellate Tribunal.”

8. The respondent, in response to the aforesaid queries, informed that the queries are vague and not specific and accordingly, the same cannot be construed as seeking “information” as defined under section 2(f) of the RTI Act. The appellant, in the appeal, reiterated the said queries and stated that the same are not vague and are very specific.
9. I have perused the queries raised by the appellant and I find that the same are vague and not specific. Further, it is difficult to ascertain what exact information has been sought by the appellant. In this context, I note that in the matter of *Shri S. C. Sharma vs. CPIO, Securities and Exchange Board of India* (Decision dated August 30, 2012), the Hon’ble CIC held: “*Since the Appellant had not clearly stated what exact information he wanted, the CPIO could not have provided any specific information to him.*” In view of the same, I do not find any deficiency in the response.

10. **Query number 4-** The appellant, vide query number 4, sought the following information:

“4. Copy of Internal note containing instructions given to the Ld Senior Advocate basis on which Ld Senior Advocate stated that in view of peculiar facts of present case, without going into merits of the case and without giving any reasons impugned order dated 09/10/2012 may be set aside.”

11. The respondent, in response to the aforesaid query, informed that the requested information is not available with SEBI. The appellant, in the appeal, *inter alia*, submitted that information was sought regarding the peculiar facts stated by the Senior Advocate for SEBI, on the subject matter.
12. I have perused the query and the response provided by the respondent. I do not find any reason to disbelieve the observation that the requested information is not available with SEBI. In this context, I note that the Hon'ble CIC, in the matter of *Sb. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: "... *if it (SEBI) does not has 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 find that the information sought by the appellant was not available with SEBI and therefore, the respondent cannot be obliged to provide such non-available information.
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: October 19, 2022

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