

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

Appeal No. 5837 of 2023

Shyam Lal Bansal	:	Appellant
Vs		
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated September 11, 2023 (received by SEBI on September 13, 2023) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated October 11, 2023, responded to the application filed by the appellant. The appellant filed an appeal dated October 25, 2023 (received by the Office of Appellate Authority on October 30, 2023).
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 queries, 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 (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. **Queries in the application** - The appellant, in his application dated September 11, 2023, referred to para 30 of Securities and Exchange Board of India (hereinafter referred to as “SEBI”) order dated August 25, 2023 in respect of Suresh Rathi Commodities Pvt. Ltd., wherein, there is a reference to a police complaint and FIR filed by SEBI against the said entity. In this regard, the appellant, in his application *inter alia*, sought the following:
- (1) Copies of the said complaint
 - (2) Copy of the said FIR
 - (3) Certified copy of the investigation report as prepared by the Investigating officer in respect of the above FIR.
4. **Reply of the Respondent** - The respondent, in response to the query nos. 1 and 2, informed that the information sought includes commercial confidential information of other entities, the disclosure of which could harm their competitive position. In view of the above, the information sought is exempt u/s 8(1) (d) of RTI Act, 2005. In response to the query no. 3, the respondent, informed that the information sought is not available with SEBI.
5. **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 cited few orders on the issue of providing copy of FIR, complaint and investigation report and has, *inter alia*, requested that the information sought by him in the application may be provided to him.
6. **Query Nos. 1 and 2** - As regard, queries nos. 1 and 2, I note that the requested information was denied by the respondent under Section 8(1)(d) of the RTI Act. I note that the respondent has clearly stated that the information sought includes commercial confidential information of other entities. I do not find any reason to disbelieve the said response. Hence, I concur with the reasons provided by the respondent for denying the information. In this regard, I note that the Hon'ble CIC in the matter of *Mrs. Lachmi Nand Somai vs. CPIO, Securities and Exchange Board of India* (Decision dated September 10, 2012), had held that: "...even if it (SEBI) has received any such complaints from others, it cannot disclose those complaints since these might contain information in the nature of commercial confidence. The disclosure of the complaints might adversely affect the competitive position of the individual complainants". Further, I note that the appellant, in his appeal, has cited few orders on the issue of providing copy of FIR, complaint and investigation report and the same are distinguishable from the facts of the instant case. In view of these observations, I, therefore, find that

information sought is exempted from disclosure under section 8(1)(d) of the RTI Act. Accordingly, I do not find any deficiency in the response provided by the respondent.

7. **Query No 3** - With regard to Query No. 3, I note that the respondent, in his response, has categorically mentioned that the requested information is not available with SEBI. In this context, I note that the Hon'ble 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.
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: November 9, 2023

ANAND BAIWAR

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