

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

Appeal No. 5782 of 2023

Nand Lal	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated June 29, 2023 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated July 27, 2023, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/23/00181) dated August 15, 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-** 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 in the appeal, I am dealing with the requests and the response provided thereto, in the following paragraphs.
3. **Request number 1-** The appellant, vide request number 1, *inter alia*, sought information regarding action taken by SEBI on his email dated June 28, 2023 sent to Chairperson.
4. The respondent, in response to the aforesaid request, informed that the said email was not received by the Chairperson, SEBI. The respondent also informed that SEBI has a secure e-mail gateway solution to filter out spam, malware attached mails and potential phishing emails and to deliver clean emails to end users. The respondent stated that the appellant’s email was quarantined by the SEBI secure email system following the ‘Default Spam Rule’ policy. The appellant, in his appeal, *inter alia*, submitted that the email was forwarded along with the RTI Application so that the same would be taken into consideration. The appellant, in his appeal, requested to inform clearly the reason why his email did not reach the Chairperson.

5. I have perused the request and the response provided thereto. On consideration, I find that the respondent has adequately addressed the request by providing the information available with him regarding the email dated June 28, 2023 being quarantined. In my opinion, no further intervention is warranted at this stage.
6. Further, I note that the appellant, in his appeal, *inter alia*, stated that the copy of the email dated June 28, 2023 was enclosed with the RTI application. I note that the appellant expected that the said enclosure would be taken into consideration for necessary action. In my opinion, the appellant cannot expect the respondent to take certain action under the RTI Act. In this regard, the Hon'ble CIC, in the matter of *Mohan Kumar Sharma vs. CPIO, Prime Minister's Office* (order dated November 26, 2019), held that "7. *In view of the above, the Commission observes that under the RTI Act the CPIO provides information available with him or held by him. Thus, the appellant cannot expect the respondent to take certain action or initiate action as desired by him.*" In view of these observations, I find that the request made by the appellant in the appeal, does not warrant consideration under the RTI Act.
7. I also note that the appellant, in his appeal, requested to inform clearly the reason why his email did not reach the Chairperson. I find that the answer to the said request was already provided by the respondent in his response. Accordingly, no further intervention is warranted.
8. **Request numbers 2 and 5-** The appellant, vide the said requests, sought the following information:

"2. What action SEBI took after completing 3 Months and time to resolve the pending complaints expired as per the Final order issued by SEBI against Capitalaim, point no. 16.b (Mentioned below) please provide me with an attested copy of that.

16.b- (Noticees 1 and 2 are directed to resolve the complaints pending against Capitalaim Financial on the SCORES platform and otherwise, within a period of 30 days from the date of this Order and furnish a report to SEBI. Such a report shall be filed within 3 months of this Order)

5. Upon "fails to comply with any direction of the Board for refund of monies" Mentioned in Section 28 of SEBI Act, 1992, have SEBI proceeded under Section 28 of SEBI Act? If yes please provide me the copy of that order/instructions."

9. The respondent, in response to the aforesaid requests, informed that pursuant to passing of final order, the noticee- Capitalaim Financial Advisory Private Limited had filed an appeal before Hon'ble Securities

Appellate Tribunal against the directions of the SEBI order. The respondent also informed that the order of the Hon'ble Tribunal is awaited in the said matter.

10. I have perused the requests and the response provided thereto. On consideration, I find that the respondent has provided the information available with him on record regarding the subsequent proceedings in the matter after passing of final order by SEBI. Accordingly, I do not find any deficiency in the response.
11. Further, I note that the appellant, in his appeal, *inter alia*, sought the date on which Capitalaim filed the appeal before the Hon'ble Tribunal. The appellant also submitted that SEBI had to take action in the matter. Further, the appellant sought reason for the delay. 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 requests do not warrant consideration at this stage.
12. **Requests numbers 3 and 8-** The appellant, vide request numbers 3 and 8, sought the following information-

“3. Kindly provide me the details of concerned police authorities where the copy of this order were sent as per the Final order issued by SEBI against Capitalaim point no. 18

A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with. A copy of this Order shall also be sent to concerned police authorities and the Government of Madhya Pradesh.

8. Please provide me the copy of documents shared with Maharajapura police station, Gwalior, M.P in this year 2023 and last year 2022 regarding my case. As the case belongs to me only, FIR also got registered in the same police station mentioned above. You are requested to share the details pointwise so it can be presentable in the Honourable Court.”

13. I have perused the requests and the response provided thereto. I note that the respondent provided copy of the Notice received from the Maharajapura Police Station, Gwalior and the reply provided by SEBI vide letters dated June 30, 2022 and April 24, 2023. In addition to the same, the respondent provided

copy of the letter dated January 12, 2023 sent to the Directorate of Institutional Finance (DIF) along with copy of the letter dated March 03, 2023 received from DIF. With respect to the request number 8, the respondent informed the fees payable for providing the copies of the documents shared with the Maharajapura police station, Gwalior. The appellant, in his appeal, *inter alia*, submitted that the information sought by him regarding the letter which was written by SEBI directly to Deputy Commissioner of Police (Zone2), Indore, was not given. The appellant also requested to provide the tax reference letter. Further, the appellant submitted that the letter received by SEBI from DIF, is not clearly readable. The appellant requested to provide a clear and readable copy.

14. I have perused the requests and the response provided thereto. On consideration, I note that the respondent has provided copy of the letter dated January 12, 2023 forwarded to the Government of Madhya Pradesh. I note that para 3 of the said letter states that *“the copy of the final order is also forwarded to Additional Deputy Commissioner of Police (Zone 2), Indore”*. Further, the appellant, in his appeal, submitted that the said letter was not provided to him. I also note that the said letter was not enclosed along with the Annexures provided by the respondent. In view of the submission made by the appellant, the copy of the letter forwarded to Additional Deputy Commissioner of Police (Zone 2), Indore, may be provided to the appellant. Further, the appellant also requested to provide a clear and readable copy of the letter received by SEBI from DIF. In view of the same, the respondent may provide a clear and readable copy of the letter, if available on record.

15. **Request number 4-** The appellant, in his appeal, requested to provide the following information-

“On the basis of point no. 18 of the Final order issued by SEBI against Capitalaim if there were any instructions/ Directions for any legal actions along with a copy of the Final order issued? If yes please provide me the copy of that order/ instructions.”

16. The respondent, in response to the aforesaid request, informed that the request is not clear and specific and accordingly, the same cannot be treated as seeking “information” as defined under section 2(f) of the RTI Act. However, the respondent informed that the final order passed by SEBI specifying the directions against Capitalaim Financial Advisory Private Limited is available on the website of SEBI. The appellant, in his appeal, *inter alia*, submitted that the question was clearly stated.

17. I have perused the request and the response provided thereto. On consideration, I agree with the response of the respondent that the request is not clear and specific. 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 find that the request cannot be construed as seeking "information", as defined under section 2(f) of the RTI Act. Notwithstanding the same, I note that if any regulatory action is taken by SEBI against any entity, the same would be available in the public domain, on the SEBI website under the head: Enforcement. I find that the respondent has already guided the appellant to access the same. Accordingly, I do not find any deficiency in the response.

18. **Request number 6-** The appellant, vide request number 6, sought the following information:

"6. Please provide me copy of the official document (ACT, Rule, Regulation, official authentic information) which I can produce in an honourable court that investors "acting on their own investors can seek to resolve the complaint through Courts, Consumer Courts or Arbitration." as per reply received earlier RTI appeal no. 4540 of 2021 point no. 8 mentioned below as it is (Attached below).....

Please provide me the official document for supporting the above said point no. 31 of FAQ, as FAQ is not a part of any act, rule or regulations, hence it can't be the valid document to show in honourable court, and if it is valid kindly provide me the attested copy of the FAQ."

19. The respondent, in response to the aforesaid request, informed that the request is 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 his appeal, *inter alia*, requested to inform regarding any rule or law of SEBI wherein point number 31 of the FAQ is mentioned.
20. I have perused the requests and the response provided thereto. On consideration, I agree with the response of the respondent that the same are vague and not specific. Further, the requests also appear to be in the nature of situational query. In the context of seeking replies to situational queries, I note that the Hon'ble CIC, in the matter of *Mr. Mahendra Kumar Mehta vs. CPIO, SEBI* (Judgment dated April 12, 2021), held that: "*9. This Commission observes that the appellant herein attempts to seek legal opinion/clarification from the CPIO to his situational queries with regard to 'the circular, rules, regulations, notification etc. regarding trading member for taking stock in pledge, collateral, or security for providing margin to do trade in reference to derivatives segment, charging of interest and GST, precaution to be taken by trading member for protection of constituents individual/HUF etc.'* Therefore, the CPIO is not supposed to interpret information; or to furnish replies to situational queries; or to furnish

clarifications. Hence, such queries seeking legal opinion/clarification from the CPIO are not covered within the definition of 'information' u/ Section 2(f) of the RTI Act, 2005. Accordingly, this Commission upholds the contention put forth by the CPIO." In view of the same, I find that the requests cannot be construed as seeking "information", as defined under section 2(f) of the RTI Act. Accordingly, I do not find any deficiency in the response.

21. **Request number 7-** The appellant, vide request number 7, sought the following information-

"As Capitalaim was involved in cheating and looting business with almost all of their customers which also got proved in SEBI Investigation and Final order against Capitalaim. Capitalaim had not only violated various SEBI acts but also committed several offences under violation of IPC act as mentioned below-

1. Criminal Breach of Trust (violation of IPC 406)

2. Capitalaim was involved in cheating by impersonation (violation of IPC 419)

.....

Are offences mentioned above also deal under SEBI act or any other Act, rule or regulation of SEBI? If yes please provide me with a copy of that document."

22. The respondent, in response to the aforesaid request, informed that the request is in the nature of seeking clarification/opinion and accordingly, the same cannot be construed as seeking "information" as defined under section 2(f) of the RTI Act. The appellant, in his appeal, *inter alia*, stated that just like Section 420 of the Indian Penal Code deals with fraud., section 2(1)(c) of the PFUTP regulations also deals with fraud. The appellant submitted that he wanted to know the corresponding provisions for the remaining sections of the Indian Penal Code (406, 419, 468).
23. I have perused the aforementioned request and the response provided thereto. On consideration, I find that the request is in the nature of seeking clarification/guidance/opinion from the respondent regarding provisions in the SEBI Act which corresponds to certain provisions of the IPC . In my opinion, the CPIO is not supposed to provide clarification/guidance/opinion; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. In this context, reliance is placed on matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021) wherein the Hon'ble 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.” In view of these observations, I find that the said request cannot be construed as seeking ‘information’ as defined under section 2 (f) of the RTI Act. Notwithstanding the same, I note that the respondent has guided the appellant to refer to the Acts/ Regulations/ Circulars etc. which are available on the website of SEBI. I also note that the same are in the public domain and accessible by the appellant himself.

24. Further, the appellant, in his appeal, requested to initiate penal action under Section 20 of the RTI Act. In this regard, I note that as per Section 20(1) and 20(2) of the RTI Act, the Central Information Commission or the State Information Commission has the powers to impose a penalty or recommend disciplinary action against the Central Public Information Officer or the State Public Information Officer, while deciding on a complaint or a second appeal. Hence, I find that this request is beyond the purview of the First Appellate Authority. In view of these observations, I find that the said request of the appellant does not warrant consideration at this stage.
25. In view of the above observations, I remit the application to the respondent for sending appropriate response to the appellant in accordance with paragraph 14 of this order pertaining to request number 3 and 8 of the application, within 15 days from the date of receipt of this order.
26. The appeal is accordingly disposed of.

Place: Mumbai

B RAJENDRAN

Date: September 14, 2023

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