

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

Appeal No. 6028 of 2024

Swamy KB	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated April 01, 2024 (received by SEBI on April 8, 2024) under the Right to Information Act, 2005 ("**RTI Act**"). The respondent, by a letter dated May 06, 2024, responded to the application filed by the appellant. The appellant filed an appeal dated June 04, 2024 (received by the Office of Appellate Authority on June 10, 2024). I have perused the application, the response of the respondent and the appeal and find that the matter can be decided based on the material available on record.
2. **Request in the application** - The appellant, in his application dated April 01, 2024, *inter alia*, sought the following information regarding SEBI's letter dated October 12, 2021 with respect to the matter of NEL Holdings South Ltd.:

"I request you to provide information, in the form of a copy of the noting in the concerned file, with regard to the details of the said "reasonable grounds" on the basis of which the forensic audit has been ordered for in the matter of NEL."

3. **Reply of the respondent** - The respondent, in response to the request informed that the information is being sought in the RTI application by a Company i.e. Satchmo Holdings Ltd. Whereas, RTI Act, 2005 gives the right to information only to the citizens of India.

However, the respondent informed that the subject matter is still under investigation and currently under abeyance due to stay by High Court. Further, the respondent informed that SEBI conducts examinations and investigations confidentially in a holistic manner. In view of the same, disclosure of details related to the matter may impede the process and is therefore exempt from disclosure in terms of Section 8(1)(h) of the RTI Act, 2005. Additionally, the respondent informed that post investigation, whenever violations are established, appropriate enforcement actions are taken under the provisions

of the SEBI Act, 1992 and Regulations framed thereunder which culminate in the issuance of Orders. Further, the respondent informed that these orders are available in public domain and can be assessed from the SEBI website.

4. **Ground of appeal** - On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent.
5. I have perused the request and the response provided thereto. I find that the appellant in his application has sought information in reference to SEBI's letter dated October 12, 2021 with respect to the matter of NEL Holdings South Ltd. I note that the respondent in his response has observed that the said RTI application has been filed by a company and the RTI Act gives the right to information only to the citizens of India. In this regard, the appellant in his appeal has denied the aforesaid observation and has, *inter alia*, submitted that he has identified himself as a citizen of India, hence, the current application has been filed by him and not the company, Satchmo Holdings Ltd. On consideration, I note that the appellant has filed both the RTI application and the appeal on the company's letter head and in the capacity of General Manager, Legal, Satchmo Legal Holdings Ltd. Therefore, the respondent is justified in concluding that the information is being requested by the company. Even if the application has been filed by the applicant as an individual rather than a company, I am of the opinion that the information sought is available to SEBI in fiduciary capacity and includes commercial confidential information, the disclosure of which could harm the competitive position of concerned the entity. Hence, the information sought is exempt u/s 8(1)(d) & 8(1)(e) of RTI Act. 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: "*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 Central Information Commission, (hereinafter referred to as "**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.*" Accordingly, in my opinion, no further intervention is warranted at this stage.

6. Notwithstanding the above, I note that the respondent has clearly informed the appellant that subject matter of the information sought is still under investigation and currently under abeyance due to stay by High Court. I agree with the response of the respondent that disclosure of the requested information at this stage may impede the process of examination. In this context, I note that the Hon'ble CIC in the matter of *Smt. Pushpa Devi Mohita vs. SEBI* (order dated February 08, 2022), held that " *The Commission observes that the information sought by the appellant is submitted to SEBI which is a quasi-judicial body for examination and the same has not yet reached a logical conclusion, therefore the respondent has denied the information under section 8(1)(b) and as per the said provisions of the RTI Act, such information cannot be provided to the appellant which would impede the process of investigation.....In view of the above ratio, the Commission is of the opinion that the CPIO has rightly denied the information sought under Section 8(1)(b) of the RTI Act as the forensic audit report is still pending and final decision is yet to be passed by the competent authority, therefore the said denial of information is being upheld by the Commission.*" I also note that the Hon'ble CIC, in the matter of *Deepti Maheshwari vs. CPIO, SEBI* (Order dated February 09, 2023), observed that "*The Commission also accepted the submissions advanced by the CPIO qua queries 8, 10 and 11 that since the proceedings were on-going, the disclosure of any information at that juncture may have impeded the process of investigation/prosecution of offenders. Therefore, the denial u/s 8 (1) (b) of the RTI Act, 2005 was upheld.*" In view of these observations, I do not find any deficiency in the response.
7. 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: June 19, 2024

B RAJENDRAN

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