

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

Appeal No. 4988 of 2022

Audi Suresh Babu : Appellant

Vs

CPIO, SEBI, Mumbai : Respondent

ORDER

1. The appellant had filed an application dated March 15, 2022 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated April 08, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated April 09, 2022. The appeal is being taken up for consideration and disposal today due to official exigency. 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 was incomplete, misleading or false. On perusal of the appeal, it appears that the appellant is not satisfied with the response provided with respect to query numbers 1 to 14. In view of the submissions made by the appellant in his appeal, I am dealing with the said queries and the response provided by the respondent, in the following paragraphs.
3. **Query number 1-** The appellant, vide query number 1, sought the surrendered copies/forms/documents pertinent to M/s Surya Shakti India financial (P)Ltd., SEBI registration number INB231145732 in the equities segment and INF231145732, Futures & Options segment, on November 24, 2020 with SEBI.
4. The respondent, in response to the aforesaid query, informed that the information sought is exempt under Section 8(1)(e) of the RTI Act as the same is available to SEBI in fiduciary capacity and there is no larger public interest involved in disclosure of the said information. The appellant, in his appeal, *inter alia*, submitted that the denial of information under Section 8(1)(e) defeats the objective of the RTI Act.
5. I have perused the query and the response provided thereto. I do not find any reason to disbelieve the observation of the respondent that the requested information is available to SEBI in fiduciary capacity. 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 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"*. I note that SEBI, being the regulatory authority for the securities market, gets various references/documents from market participants and the information contained therein are received in 'fiduciary relationship'. I, therefore, find that such information which is held in 'fiduciary relationship' is exempted from disclosure under Section 8(1)(e) of the RTI Act. Accordingly, I find that no further intervention is warranted at this stage.

6. **Query numbers 2, 4, 5, 7, 8, 10, 11 and 14-** The appellant, vide said queries, sought the following information-

2. *Provide the information, details of the online trading permission facility granted to M/s Surya Shakti India financial (P)Ltd , SEBI registration number INB231145732 in equities segment and INF231145732 Futures & Options segment and details of the online trading platform facility closed or surrendered or ceased*
4. *Provide the information about the Net worth of M/s Surya Shakti India financial (P)Ltd , SEBI registration number INB231145732 from 28.11.2000 to 24.11.2020 on every quarter wise/ half-yearly basis in funding of margin trading.*
5. *Provide the information/details of M/s Surya Shakti India financial (P)Ltd , SEBI registration number INB231145732 , accorded permission for funding clients and allowed for margin trading facility from time to time.*
7. *Provide the information, the details of the NCFM related user IDs allotted for off-line trading (Through VSAT) assigned/granted to M/s Surya Shakti India financial (P) Ltd SEBI registration number INB231145732 in the equities segment. Please also specify the name of employee details it is granted and issued to M/s Surya Shakti India financial (P)Ltd SEBI registration number INB231145732.*
8. *Provide the information, the details of the NCFM related user IDs allotted for off-line trading (Through VSAT) assigned/granted to M/s Surya Shakti India financial (P)Ltd SEBI registration number INF231145732, Futures & Options segment. Please also specify the name of employee details it is granted and issued to M/s Surya Shakti India financial (P)Ltd SEBI registration number INF231145732*
10. *Provide the information about the total amount STT revenue generated and its revenue sharing pattern among the agencies for the period 2015 to till date, quarter wise.*

11. *Provide the information about the interest collected or imposed in client accounts of M/s Surya Shakti India financial (P) Ltd , SEBI registration number INB231145732 in the equities segment and its records submitted with your office on the name of funding to clients.*
14. *Provide the details of the User Ids 11885,11886 & 13569 used by Surya Shakti India financial (P)Ltd SEBI registration number INB231145732 in equities segment and these IDs details, including person name, status of these IDs i.e., active or inactive at present.*

7. In response to the aforesaid queries, the respondent informed that the information sought by the appellant is not maintained by SEBI in normal course of regulation of securities market. Hence, the same is not available with SEBI. The appellant, in his appeal, *inter alia*, made certain allegations against the respondent and stated that the denial of information is intentional.
8. I have perused the queries and the response provided thereto. On consideration, I do not find any reason to disbelieve the observation of the respondent that the requested information is not available with SEBI as the same is not maintained by SEBI. In this context, I note that the Hon'ble CIC, in the matter of *Mrigesh Manubhai Thakkar vs. SEBI* (order dated December 28, 2016) observed that "*The Commission observes that the respondents can provide only that information which is existing and available with them and the RTI Act does not mandate it for the respondent authority to create information if it is not collected and collated in the normal course of their duties. The Commission, therefore, does not find any need to intervene in the matter. The appeal is disposed of.*" Further, 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.
9. **Query number 3-** The appellant, vide query number 3, sought the following information-
 3. *Provide the surrendered copies/forms/ documents of PSSG Capital (P)Ltd., SEBI registration number INB231145732 in equities segment on 28.02.2020 with your office (As per information provided by SEBI letter No.CPIO/NS/ 2290/ 2021-22 dated 28.02.2022).*
10. In response to the aforesaid query, the respondent informed that the query is vague and not clear. Accordingly, the same cannot be construed as "information", as defined under Section 2(f) of the RTI Act. The appellant, in his appeal, submitted that he partially agreed with the respondent. The appellant also submitted that the registration number was wrongly typed.

11. I have perused the query raised by the appellant. I agree with the observation of the respondent that the same is vague and not clear. In view of the same, I do not find any deficiency in the response.

12. **Query number 6-** The appellant, vide query number 6, sought the following information-

“6. Provide the copy of the inspection report of SEBI, inspection conducted in M/s Surya Shakti India financial (P) Ltd SEBI registration number INB231145732 in the equities segment and INF231145732, Futures & Options segment during January, 2011.”

13. In response to the aforesaid query, the respondent informed that the information sought includes commercial confidential information, the disclosure of which could harm the competitive position of the entities. Hence, the information sought is exempt under Section 8(1)(d) of the RTI Act.

14. I have perused the query and the response provided thereto. I note that inspection is one of the tools available with SEBI to prevent or take action for any fraud or prevention of any unfair trade practices. In this regard, I note that when SEBI conducts inspection, the resultant inspection report along with the information collected/exchanged during the course of such inspection, may contain commercial information of the concerned entity which is confidential in nature. Whenever such inspection is conducted by SEBI against any such entity, upon its completion, the inspecting authority submits an inspection report along with the related papers, to the competent authority, which contains the tentative findings about the conduct of the inspected entity. There is a subsequent process to determine the validity of such findings. Accordingly, depending on the nature of business of the inspected entity and the purpose of inspection, the inspection report along with the information collected/exchanged during the course of such inspection, may contain details of such entity, which are in the nature of commercial confidence. Having regard to the aforesaid observations, I find that the disclosure of requested information is exempt under section 8(1)(d) of the RTI Act. Accordingly, I do not find any deficiency in the response.

15. **Query number 9-** The appellant, vide query number 9, sought the following information-

9. Provide the details of the M/s Surya Shakti India financial (P)Ltd , SEBI registration number INB231145732 in the equities segment, operational premises address with SEBI for the period 28.11.2000 to February,2004.

16. In response to the aforesaid query, the respondent provided details of three addresses of Surya Shakti India Financial Private Limited, as per the available information. Appellant, in his appeal, submitted that

the respondent failed to provide the details of the operations period of the particular premises and refused to furnish the information.

17. On perusal of the query and the response provided by the respondent, I find that the respondent has provided the information sought by the appellant vide query numbers 9 of his application. I do not find any deficiency in the response.
18. Further, I note that the appellant, in his appeal, *inter alia*, sought information regarding operations period of particular premises. I find that this request was raised by the appellant 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 request does not warrant consideration at this stage.
19. **Query number 12-** the appellant, vide query number 12, sought the following information-

12. Provide the information, the nationality of Mr Peter Ketels Schneeberger declared with your office and documentary proof submitted with your office for obtaining SEBI registration.

20. The respondent, in response to the aforesaid query, informed that the requested information is exempt from disclosure under Section 8(1)(j) of the RTI Act as the same relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual. The appellant, in his appeal, *inter alia*, alleged that the respondent has concealed the requested information.
21. I have perused the query and the response provided by the respondent. On consideration, I agree with the respondent that the requested information pertains to personal information, disclosure of which may cause unwarranted invasion of privacy of individual. In this regard, I note that the Hon'ble Supreme Court, in the matter of *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal* (order dated November 13, 2019 passed in Civil Appeal No. 10044 of 2010 with Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010) observed that “ 59. *Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are*

personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive..." In view of these observations, I do not find any deficiency in the response.

22. **Query number 13-** The appellant, vide query number 13, sought the following information-

13. Provide the certified copies of the SEBI Letter No.CPIO/NS/2290/2021-22 dated 28.02.2022 issued under RTI application No.SEBIH/R/E/22/00206

23. The respondent, in response to the aforesaid query, enclosed the requested information as Annexure. The appellant, in his appeal, *inter alia*, submitted that the respondent has violated the RTI Act.

24. On perusal of query number 13, I note that that the appellant had sought certified copy of the letter dated February 28, 2022 issued by the respondent. In this regard, I note that the appellant has been provided with the letter dated February 28, 2022 and the same has also been signed by the respondent. I note that the query has been adequately addressed. In my opinion, no further intervention is warranted.

25. 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: May 10, 2022

S V MURALI DHAR RAO
APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA