

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

Appeal No. 5933 of 2024

Anil Kumar	:	Appellant
Vs		
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated February 11, 2024 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated February 26, 2024 responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/24/00038) dated February 29, 2024. 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. **Requests in the application** –The appellant, vide his application dated February 11, 2024, sought the following information:

“SEBI had invited for the implementation of cloud infrastructure vide EoI dated May 29, 2019 (Copy attached). Please provide a copy of the Purchase Order or agreement issued in this regard. Also, please provide a summary of financial bids of all the bidders indicating their ranking.”
3. **Reply of the Respondent** – The respondent, in response to the request, informed that the information sought includes commercial confidential information, available to SEBI in fiduciary capacity, the disclosure of which would hamper the competitive position of a third party, and hence is exempt under Sections 8(1)(d) and 8(1)(e) of RTI Act. Further, the respondent informed that as the information sought relates to details of a third party, consent of third party was sought and the third party did not wish to divulge the sought information. The respondent also provided the ranking of 4 shortlisted bidders.

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 note that in regard to Expression of Interest (“**EOI**”) for implementation of SEBI Private Cloud Infrastructure published on SEBI website dated May 29, 2019, the appellant in his application sought copy of purchase order/agreement and summary of financial bids of all the bidders with their ranking. In regard to the requests seeking copy of purchase order/agreement, I concur with the response of the respondent that the requested information is available to SEBI in fiduciary capacity and the same may contain confidential information which is commercial in nature and disclosure of which would harm the competitive position of the third party. In the context of non-disclosure of agreement copy with respect to a tender, the decision of the Hon'ble Central Information Commission (Decision dated November 26, 2020), is referred to, wherein it was held that: *“However, copy of the agreement & the measurement sheet which have commercial implications cannot be provided to the appellant and hence, the exemption claimed by the CPIO u/Section 8(1)(d) of the RTI Act, 2005 is justified. In this context with regard to non-disclosure of information under Section 8(1)(d) of the RTI Act, 2005, this Commission refers to the decision dated 24-11-2014 rendered by the Hon'ble Delhi High Court in W.P.(C) 85/2010 & CM Nos. 156/2010 & 5560/2011 titled as Naresh Trehan v. Rakesh Kumar Gupta, wherein, it has been held as under:- ‘14...Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.’”* Further, I note that the respondent has also informed the appellant that the concerned third party does not wish to divulge the sought information. I, therefore, find that the requested information is exempt from disclosure under Sections 8(1)(e) and 8(1)(d) of the RTI Act.

6. As regard the request of the appellant, seeking summary of financial bids of all the bidders along with their ranking, I note that the respondent has already provided the details of ranking of the shortlisted

bidders, however, he has not disclosed the summary of their financial bids. I find that the response provided by the respondent does not justify the denial of the requested information on the ground that the same is exempt from disclosure under Sections 8(1)(e) and 8(1)(d) of the RTI Act. I find that the respondent has already shared the ranking of the bidders to the appellant, I do not see how disclosing the summary of financial bids of the said bidders would harm the competitive position of the concerned third parties, especially as it is understood that the tendering process is over. On consideration, I find that the said portion of the request has not been adequately addressed by the respondent and the same warrants reconsideration.

7. Considering the above observations, I remit the application to the respondent for *de novo* consideration of request pertaining to 'summary of financial bids of the bidders' and sending appropriate response to the appellant in terms of RTI Act, within 15 working days from the date of receipt of this order.
8. The Appeal is accordingly disposed of.

Place: Mumbai

Date: March 15, 2024

B RAJENDRAN

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