

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

Appeal No. 5859 of 2023

Sandeep Khurana : Appellant

Vs

CPIO, SEBI, Mumbai : Respondent

ORDER

1. An application dated November 01, 2023 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (hereinafter referred to as “**RTI Act**”). The respondent, by a letter dated November 24, 2023 responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/23/00245) dated November 27, 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. 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 requests, 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. **Requests in the application** - The appellant, vide his application dated November 01, 2023, sought the following information pertaining to SEBI Master circular on KYC norms for securities market:

“1. Copy of file notings of discussion on draft and approval of the said circular.

2. In case the legal vetting of said circular has been done please provide a copy of the approval from legal department/ expert.

3. Please provide definition of “valid PAN” as stated in Paragraph 9 on page 8.

4. Please provide copy of directions issued to KRAs (KYC Registration Agency) related to display of KYC status of PAN Aadhaar linkage, in pursuance with para 10 of Master circular quoted above.

5. Whether any instructions have been passed to KRAs on what KYC status to show in case of PAN not linked to Aadhaar. If so, please provide copy of such instructions as issued related master circular quoted (dated 12 Oct 2023) and master circular on KYC norms before this circular came in force”

4. **Ground of appeal-** The appellant has filed the appeal on the ground that he has been refused access to information requested.

5. **Reply of the Respondent (Request nos. 1 and 2)** -The respondent, in response to request nos. 1 and 2 informed that the information sought has been received from various entities, which is available to SEBI in fiduciary capacity and includes commercial confidential information, the disclosure of which could harm the competitive position of the entities, the information sought is exempt u/s 8(1)(d) & 8(1)(e) of RTI Act, 2005.

6. I have perused the aforesaid requests and the response provided thereto. With respect to request nos. 1 and 2, I note that the respondent has categorically stated that information sought includes information received from various entities and the same is held in a fiduciary capacity and includes commercial information which is confidential in nature. I have no reason to disbelieve the said response. 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 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.”* I find that SEBI, being the regulatory authority

for the securities market, gets various references/documents from various entities and the information contained therein are received in ‘fiduciary relationship’. I also find that such reference/ documents received by SEBI or correspondences made by SEBI with other entities may contain commercial information which is confidential in nature, disclosure of which may adversely impact the competitive position of the concerned entities. I, therefore, find that such information pertaining to commercial confidence and which contains information received in ‘fiduciary relationship’ from other entities is exempted from disclosure under Sections 8(1)(d) and 8(1)(e) of the RTI Act. Accordingly, I do not find any deficiency in the response.

7. **Reply of the Respondent (Request no. 3)** - The respondent, in response to request no. 3, informed that Section 139AA of the Income Tax Act, 1961 states that every person who has been allotted a PAN is required to link the same with his Aadhaar. In case of failure to intimate the Aadhaar number, the PAN allotted to the person is deemed to be invalid.
8. I have perused the aforesaid request and the response provided thereto. With respect to request no. 3, I note that the appellant in his application has requested to provide the definition of “valid PAN” as referred in para 9 of the SEBI Master circular on KYC norms for securities market. The appellant, in his appeal, has submitted that the respondent has wrongly claimed that as per Section 139 AA of Income Tax Act “*In case of failure to intimate the Aadhaar number, the PAN allotted to the person is deemed to be **invalid***”, whereas, the Income Tax Act states that “*In case of failure to intimate the Aadhaar number, the PAN allotted to the person is deemed to be **inoperative***.” On perusal of the reply of the respondent, I note that in response to the appellant’s request regarding definition of a “valid PAN”, the respondent has referred to the relevant section of Income Tax Act. In my opinion, the said reference appears to have been made to infer the rationale regarding what would be considered as a valid PAN. Accordingly, I do not find any deficiency in the response of the respondent.
9. **Reply of the Respondent (Request nos. 4 &5)** - The respondent, in response to request nos. 4 & 5, informed that in terms of para 10 of SEBI master circular on KYC norms (dated Oct 12, 2023) the KRAs are required to flag the status of Aadhaar and PAN linkage in their systems. The respondent also provided the link for the said circular on SEBI website.
10. I have perused the aforesaid requests and the response provided thereto. On consideration, I find that the respondent has adequately addressed the request by providing the information available with him. In my opinion, no further intervention is warranted at this stage.

11. 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: December 12, 2023

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