

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

Appeal No. 6144 of 2024

Amar Kakaria : Appellant
Vs
CPIO, SEBI, Mumbai : Respondent

ORDER

1. The appellant had filed an application dated August 23, 2024 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated August 30, 2024 responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/24/00206) dated September 06, 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. **Request in the application** - The appellant, vide his application dated August 23, 2024 sought the following information:

“Since inception, IBC has been very effective and many companies had managed to turn around under new management. Defaulting company is put through corporate insolvency resolution process through Insolvency Professional. If CIRP process fails then in the next step, the company moves to liquidation and everything is liquidated. The objective of IBC is to protect value for all stakeholders and hence, even NCLT sometimes directs Liquidators / Insolvency Professionals to explore a possibility of selling company as a going concern so that public shareholders can realise some value of their investments. There had been multiple cases of liquidators selling the companies under liquidation as a going concern.

In order to protect interests of public shareholders in such companies, SEBI had carefully devised a mechanism for companies under CIRP whereby at least 5 percent has to be kept with public shareholders and then, Promoters can bring down their holding to 75 percent in the prescribed timeline of 2 years. This is a welcome step and millions of public shareholders in several listed companies have got benefitted out of it.

For sure, SEBI must have also devised similar mechanism for protecting interests of public shareholders in companies under liquidation, particularly when they are being sold by the Liquidator as going concern through public auction process.

As per SEBI mechanism, minimum 5 percent stake is needed for companies under CIRP if the bidder is planning to continue with listing status. Please provide information about minimum public shareholding to be maintained for companies under liquidation when the bidder wishes to continue with listing status.

Kindly inform whether companies under liquidation also need to comply with the SEBI Framework for protection of interest of public equity shareholders in case of listed companies undergoing Corporate Insolvency Resolution

Please also provide details of your Framework for protection of interest of public equity shareholders in case of listed companies under liquidation”

3. **Reply of the Respondent** - The respondent, in response to request no. 1 of the application, informed that as per Regulation 38 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the listed entity is required to comply with the minimum public shareholding requirements specified in Rule 19 (2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957. SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 and the Securities Contracts (Regulation) Rules, 1957. The respondent informed that the said Regulations and Rules are available on SEBI website.

In response to request no. 2, the respondent informed that the information sought is in the nature of seeking clarification. Accordingly, the same cannot be construed as “Information”, as defined u/s 2(f) of the RTI Act, 2005.

In response to request no. 3, the respondent informed that with respect to public equity shareholders, in case of liquidation, the listed company would be required to comply with applicable securities market regulations such as SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2015 and SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015. The respondent informed that the aforesaid regulations are available on SEBI website.

4. **Ground of appeal** – The appellant filed an appeal on the ground that the information provided is incomplete, misleading and false information.
5. I have perused the aforesaid request and the response provided thereto. With respect to request no. 1 and 3, I find that the respondent has adequately addressed the said requests by providing the information available with him. Accordingly, no further intervention of this forum is warranted. With respect to request no. 2 of the application, I concur with response of the respondent that the request of the appellant is in the nature of seeking clarification/legal opinion from the respondent. It is understood that the respondent is not supposed to create information; or to interpret information; or to furnish clarification to the appellant under the ambit of the RTI Act. I find that the said request cannot be construed as seeking ‘information’ as defined under section 2 (f) 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 Hon’ble Central Information Commission, in the said matter, observe 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.” Accordingly, I do not find any deficiency in the response of the respondent.

6. 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: October 03, 2024

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