

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

Appeal No. 5873 of 2024

R. Ramesh Kumar : Appellant

Vs

CPIO, SEBI, Mumbai : Respondent

ORDER

1. The appellant had filed an application dated September 30, 2023 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated October 09, 2023 responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/23/00255) dated December 17, 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. **Requests made in the application** –The appellant, vide his application dated September 30, 2023 sought the following information:

“I have filed a complaint dated 01.08.2023 with Chairperson, SEBI for investigation into the fraud in the financial statement published by BGR Energy Systems Limited, a listed company. The complaint was sent by email and speed post and both were delivered. Speed post was delivered on 04/08/2023. My RTI requests are:

- 1. What action was taken in respect of my complaint?*
- 2. What is the outcome of investigation and action taken, if completed?*
- 3. Copy of complete file relating to the investigation.*
- 4. If no action is taken so far, reasons therefor.*
- 5. If investigation is underway when the investigation will be completed and when will I be informed of the outcome of the investigation?”*

3. **Reply of the Respondent** - The respondent in response to request nos. 1, 2, 4 and 5 informed that the information provided on accounting manipulations, frauds/ etc. by listed companies are treated as confidential market intelligence. This information is analysed and if found necessary, further action is taken. Further action taken, if any, may involve examination of multiple factors other than those raised in the complaint. The status of information cannot be disclosed as SEBI conducts the examinations confidentially in a holistic manner: SEBI will neither confirm nor deny the existence of any examinations as the same may be a price sensitive information. Any regulatory actions taken by SEBI pursuant to the examination are published at SEBI website.

In response to the request no. 3 of the application, the respondent informed that the information collected or to be collected during the examination of the matter are available to SEBI in in the fiduciary capacity and there is no larger public interest involved in the said information, hence is exempt u/s 8(1)(c) of RTI Act, 2005.

4. **Ground of appeal-** The appellant has filed the appeal on the ground that he has been refused access information requested.
5. I have perused the application and the response provided thereto. I note that the appellant, in his application, *inter alia*, requested information pertaining to action taken or to be taken by SEBI w.r.t. his complaint dated August 01, 2023 sent to SEBI. Further, the appellant has sought copy of file relating to the investigation in the matter. I note that the respondent has clearly stated that information provided on accounting manipulation, frauds/etc. by listed complaints are treated as confidential market intelligence and such inputs are analysed and if found necessary, further action is taken by SEBI. Accordingly, SEBI conducts examinations confidentially in a holistic manner. Further, SEBI receives alerts and references from various sources and these may or may not result in further action by SEBI such as examination or investigation. Such examination or investigation may or may not establish the suspected violations or lead to enforcement actions. Maintaining confidentiality of examination/ investigation is important since reports of the same may result in unwarranted speculation or concern in the market or may affect evidence collection during the examination/investigation or may result in unnecessary harm to third parties. Further, I note that information regarding any regulatory action taken by SEBI/penalty imposed against entities, would be available on the website of SEBI. The rationale for neither confirming nor denying existence of any examination/investigation was relied upon by SEBI before the Hon'ble Central Information Commission (hereinafter referred to as "**CIC**") in *Arun Damodar Sawant vs CPIO, SEBI*

(order dated September 26, 2018 in Appeal No. CIC/SEBIH/A/2017/ 137139/BJ). The Hon'ble CIC, in the said matter, accepted the submissions and refused to intervene in the response of the CPIO. Similar observations were also made by the Hon'ble CIC, in the matter of *Anju Sharma vs. CPIO, SEBI* (order dated September 28, 2020). In view of these observations, I find that the application has been adequately addressed and no further interference of this forum is warranted at this stage.

6. Additionally, with respect to request no. 3 of the application, in regard to providing the file related to the investigation, I agree with the response of the respondent that the requested information is held in a fiduciary capacity. I have no reason to disbelieve the said observation. I note that 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.*" Accordingly, 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: January 5, 2024

B RAJENDRAN

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