

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

Appeal No. 5939 of 2024

Amit Gupta	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application (Reg. No. SEBIH/R/P/24/00001) dated December 29, 2023 (received by SEBI on December 29, 2023) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated January 24, 2024, responded to the application filed by the appellant. The appellant filed an appeal dated February 29, 2024 (received by the Office of Appellate Authority on March 04, 2024).
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 request, 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 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. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent.
4. **Request nos. 1 and 3 of the application-** The appellant, vide his request nos. 1 and 3 of the application *inter alia* sought two certified copies of all the communications/actions (including via email, letters, notings, comments, issuing notices, received replies etc.) in regard to his emails sent to SEBI pertaining to settlement of pending claims for conducting Investor Awareness Programs.
5. **Reply of the Respondent -** The respondent, in regards to the emails, informed that SEBI has already replied vide email dated March 09, 2023. Regarding the remaining part of the request, the respondent informed that the requested information is exempt from disclosure under section 8(1)(a) of the RTI Act as the same pertains to the internal functioning of SEBI and relates to the systems and procedures followed at SEBI. Further, the said information is strategic in nature, disclosure of which may hamper the decision-making by SEBI in its supervisory and regulatory role.
6. I have perused the aforesaid requests and the response provided thereto. In regard to requests seeking internal notings, comments, notices, received replies etc. related to the emails of the appellant, I note that the respondent, in his response, has *inter alia* invoked the provisions of Section 8(1)(a) of the RTI Act to deny information to the appellant. In this regard, I note that the information sought by the appellant appears to be strategic in nature and relates to the internal functioning of SEBI. I note that such strategic information, if disclosed, may hamper SEBI's supervisory and regulatory role. In this context, I note that in *ICAI v. Shaunak H. Satya*, [(2011) 8 SCC 781], the Hon'ble Supreme Court held that: - "*We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Sections 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.*" In view of these observations, I concur with the response of the respondent that the requested information is exempt from disclosure under section 8(1)(a) of the RTI Act. Accordingly, I do not find any deficiency in the response of the respondent. I note that the appellant, in his appeal, has, *inter alia*, submitted that the respondent has not provided any justification for denial of the requested information under Section 8(1)(a) and has not provided reasons as to which interest is likely to be hurt and how. The appellant has also cited a Central Information Commission order in regard to the said

submission. I note that the respondent has clearly stated in his reply the information sought pertains to the internal functioning of SEBI and relates to the systems and procedures followed at SEBI. The respondent, further informed, that as the said information is strategic in nature, disclosure of the same may hamper the decision-making by SEBI in its supervisory and regulatory role. In view of the above, I do not find any merit in the said submissions of the appellant.

7. However, as regards the request of the appellant for certified copies of SEBI's emails, sent in response to his aforesaid complaints, I note that Section 2(j)(ii) of the RTI Act, confers the right to seek certified copies of documents for information which are under the control of any public authority. Accordingly, on consideration. I find that the said portion of the request has not been adequately addressed by the respondent and the same warrants reconsideration.
8. **Request no. 2 of the application** - The appellant, vide his request no. 2 of the application, *inter alia*, sought two certified copies of all the communications/actions (including via email, letters, notings, comments, issuing notices, received replies etc.) in regard to his emails sent to SEBI with the subject title: *"Please provide clarity on the process of counting at least 50 participants during an LAP session. (Provide an authentic source to reference your point)."*
9. **Reply of the Respondent** - The respondent, in regards to the emails, informed that SEBI had already communicated telephonically to refer to the Operational guidelines on SMARTS. Regarding the remaining part of the request, the respondent informed that the requested information is exempt from disclosure under section 8(1)(a) of the RTI Act as the same pertains to the internal functioning of SEBI and relates to the systems and procedures followed at SEBI. Further, the said information is strategic in nature, disclosure of which may hamper the decision-making by SEBI in its supervisory and regulatory role.
10. I have perused the aforesaid requests and the response provided thereto. In regard to requests seeking internal notings, comments, notices, received replies etc. related to the emails of the appellant, I note that the respondent, in his response, has *inter alia* invoked the provisions of Section 8(1)(a) of the RTI Act to deny information to the appellant. In this regard, I note that the information sought by the appellant appears to be strategic in nature and relates to the internal functioning of SEBI. I note that such strategic information, if disclosed, may hamper SEBI's supervisory and regulatory role. In this context, I once again place reliance on the matter of *ICAI v. Shaunak H. Satya*, [(2011) 8 SCC 781], wherein, the Hon'ble Supreme Court held that: - *"We however agree that it is necessary to make a distinction*

in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Sections 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources." In view of these observations, I concur with the response of the respondent that the requested information is exempt from disclosure under section 8(1)(a) of the RTI Act. Accordingly, I do not find any deficiency in the response of the respondent.

11. Further, in regards to reply of the respondent, pertaining to SEBI's telephonic response to the emails sent by the appellant, I note that the appellant, in his appeal, has submitted that he does not recall having had any such telephonic communication with SEBI. However, I note that the respondent, in regard to the aforesaid emails of the appellant, has guided the appellant to refer to the Operational Guidelines on SMARTS. Hence, on consideration, I find that no further interference of this forum is warranted at this stage
12. **Request no. 4 of the application** - The appellant, vide request no. 4 of the application, sought certified copy of his instant RTI application along with some of the annexures with the said application.
13. **Reply of the Respondent** – The respondent, in response to the aforesaid request, informed that same is not an information as defined under section 2(f) of the RTI Act, 2005.
14. I have perused the aforesaid request and the response provided thereto. I note that the respondent has sought certified copy of his own RTI application along with the reply of the respondent to the said application. In my opinion, the appellant is not entitled to seek the copy of his own document as a matter of right under the RTI Act. In this context, the Hon'ble Madras High Court in the matter of *PIO, Registrar, High Court, Madras vs. Central Information Commissioner* (Order dated September 17, 2014 passed in W.P. No. 26781 of 2013) held that "*we fail to understand as to how the second respondent is entitled to justify his claim for seeking the copies of his own complaints and appeals. admittedly, they are the documents of the second respondent himself, and therefore, if he does not have copies of the same, he has to blame himself and he cannot seek those details as a matter of right, thinking that the High Court will preserve his frivolous applications as treasures/valuable assets. Further, those documents cannot be brought under the definition "information" as defined under Section 2(f) of the RTI Act. Therefore, we reject the contention of the second respondent in this aspect.*" The said

order was referred to by the Hon'ble CIC in the matter of *K N Rajasekar vs. CPIO, Department of Official Language, Chennai* (Order dated August 31, 2019) while observing that “*The Commission further observes that the appellant vide point no. 3 of the RTI application is seeking a copy of his own documents submitted by him at the time of his appointment in the Hindi Teaching Scheme (HTS), Chennai Office, which he is not entitled to seek as a matter of right under the RTI Act..... In view of the above ratio, information sought cannot be provided to the appellant.*” In view of these observations, I find that the requested information cannot be provided to the appellant. Accordingly, I do not find any deficiency in the response of the respondent.

15. Considering the above observations, I remit the application to the respondent for *de novo* consideration of request nos. 1 and 3 (regarding certified copies of the SEBI email) of the application and sending appropriate response to the appellant in terms of RTI Act, within 15 working days from the date of receipt of this order.
16. The Appeal is accordingly disposed of.

Place: Mumbai
Date: March 22, 2024

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