

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

Appeal No. 5348 of 2022

Abhaya Charan Naik	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated July 24, 2022 received by the respondent through RTI MIS portal, under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated August 08, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated August 12, 2022 (received by the Office of Appellate Authority on August 17, 2022). I have perused the application, the response of the respondent and the appeal and find that the matter can be decided based on the material available on record.
2. **Queries in the application-** The appellant, in his application dated July 24, 2022, sought the copy of the interlocutory application filed by SEBI before the Hon’ble Supreme Court on October 21, 2021 in respect of refund of money in the matter of Sahara India Real Estate Bonds.
3. The respondent, in response to the aforesaid application, informed that the SEBI had filed an Interlocutory Application dated October 21, 2021 before the Hon’ble Supreme Court in the matter of Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL). The respondent also informed that the original Interlocutory application is available with the Hon’ble Supreme Court as a primary holder and that SEBI is not obliged to provide the information sought as SEBI is not the original holder of the information.
4. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent. The appellant, in his appeal, *inter alia*, submitted that the public has a right to know the contents of the interlocutory application as the issue involve refund of money. The appellant also submitted that SEBI is the initiator of the Interlocutory Application.
5. I have perused the query and the response provided thereto. I note that the appellant has sought the copy of the Interlocutory Application dated October 21, 2021 submitted by SEBI before the Hon’ble

Supreme Court. In this context, I note that the Hon'ble CIC in *Shri Amiya Kanti Patnaik Vs. Central Excise Department* (Order dated August 31, 2009), held that: *"14. In my view, the holder of the information in cases where a set of information is held by more than one public authority and, only one of which holds it in original, only the public authority which holds the original of the information / document under a statute, rule, notification or instruction, etc., should be construed to hold that information within the meaning of Section 2(j) of the RTI Act. It is only this public authority which is in a position to decide whether a given information was liable to be disclosed because it is this public authority which is in know of the condition of the submission and retention of the information, the statutory or the other implications of such retention, the status of its confidentiality and the conditions in which either the whole, or a part of the information could be disclosed and whether - if that is the case - such an information is already in the public domain. These determinations could never be made by a public authority which came to receive this information in the form of photocopies - or even in original for a temporary period - for a specific purpose, which in this case is for audit. According to me, the latter public authority is a secondary holder of the information and received this information only incidentally and not directly as the other set of public authorities, who received the information authoritatively under statutes, rules and regulations. The manner in which a set of information / documents / records come into the possession of a public authority is a key determinant of who is the primary holder of such information under Section 2(j). 15. I, therefore, hold that the respondents as the secondary or the incidental holders of the requested information could not decide whether such information is disclosable within the provisions of the RTI Act. This decision can be made only by the primary or the principal holder of this information, which in the present case, is the Registrar of Companies and the Department of Income Tax."* In view of these observations, I agree with the respondent that SEBI is not the primary holder of the information. Hence, the respondent did not have an obligation to provide the information under the RTI Act. Accordingly, I do not find any deficiency in the response.

6. Further, the appellant, in his appeal, requested to initiate penal action against the respondent under Section 20 of the RTI Act. In this regard, I note that as per Section 20(1) and 20(2) of the RTI Act, the Central Information Commission or the State Information Commission has the powers to impose a penalty or recommend disciplinary action against the Central Public Information Officer or the State Public Information Officer, while deciding on a complaint or a second appeal. Hence, I find that this request is beyond the purview of the First Appellate Authority. Further, I note that the appellant has requested to direct the respondent to upload the Interlocutory Application on the SEBI website. In this regard, I note that the Hon'ble CIC, in the matter of *Mohan Kumar Sharma vs. CPIO, Prime Minister's Office* (order dated November 26, 2019), held that *"7. In view of the above, the Commission observes that under the RTI Act the CPIO provides information available with him or held by him. Thus, the appellant cannot*

expect the respondent to take certain action or initiate action as desired by him.” In view of these observations, I find that the said requests of the appellant do not warrant consideration at this stage.

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

ANAND BAIWAR

Date: September 15, 2022

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