

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

Appeal No. 5338 of 2022

K V Chowdary	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated July 20, 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 10, 2022. 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. The appellant, in his appeal, has made a request for personal hearing. On the issue of providing an opportunity of hearing by the First Appellate Authority (FAA) under RTI Act, a full bench of Hon’ble 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 R.K Jain vs. UPSC* (Decision dated March 10, 2014) and *Mr. N. Saini vs. CPIO & Chief (RTI)* (Decision dated January 25, 2018). In view of the above observations, I have carefully considered the application, the response and the appeal. I note that the grounds of appeal are self-explanatory. Hence, the matter can be decided based on the material that is available on record.

3. **Ground of appeal-** The appellant has filed the appeal on the ground that access to the requested information was refused. In view of the submissions made by the appellant in his appeal, I am dealing with the queries and the response provided thereto, in the following paragraphs.
4. **Query numbers 1, 2, 3, 4 and 5-** The appellant, vide query number 1, *inter alia*, sought the Settlement application dated January 17, 2022 filed by PNB Housing Finance Limited and 12 other applicants. Vide query number 2, the appellant sought the Show Cause letters dated June 25, 2021. Vide query number 3, the appellant sought the revised settlement terms dated April 5, 2022. The appellant, vide query numbers 4 and 5, sought the basis of fixing settlement fee at Rs. 7276533 and also queried whether the settlement amount was paid by PNB or the Directors.
5. The respondent, in response to the query numbers 1, 3, 4 and 5, informed that the information sought is available to SEBI in fiduciary capacity and there is no larger public interest involved in disclosure of the said information, hence is exempt under section 8(1)(e) of the RTI Act, 2005. The respondent, in response to query number 2, informed that the information sought is exempt under section 8(1)(d) and 8(1)(e) of the RTI Act as the same is available to SBEI in fiduciary capacity and includes commercial confidential information, the disclosure of which could harm the competitive position of the entities. The appellant, in his appeal, *inter alia*, submitted that the documents have been referred to in the orders placed by SEBI in public domain. The appellant also stated that a single penalty has been levied on the Company and the directors. The appellant also submitted that reliance on Section 8(1)(d) is inappropriate as no trade secret, intellectual property is involved.
6. I have perused the queries and the response provided thereto. I note that SEBI, being a public authority under the RTI Act as well as the regulatory authority for the securities market, would have received information from the third party in relation to consent proceedings in 'fiduciary relationship'. In this context, I note that while disposing of a batch of 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 the 'person' referred to in section 8(1)(e) of the RTI Act will include a public authority. It also 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"*. I note there is a strict understanding between consent/settlement applicants and SEBI that such information obtained in relation to consent/settlement proceedings shall be held by SEBI in fiduciary capacity and would not be released to the public. The process is so sacrosanct that

SEBI or the applicants cannot use any information relating to the consent/ settlement proceedings. This provides the necessary comfort to the applicants and SEBI for an open discussion to arrive at appropriate consent/settlement terms.

7. In addition to the above, I note that the Hon'ble CIC in the matter of *Shri Mahendra Singh vs. CPIO, SEBI* (Decision dated August 25, 2011), had held: *“About the consent applications, they (SEBI) pleaded that the consent mechanism put in place by the SEBI was based on the assurance given by it to the parties concerned that the information provided by them with the consent offer would never be disclosed and would be held in fiduciary trust. They argued that if the SEBI would be compelled to disclose the consent application and any other information provided by the company concerned, the entire consent mechanism put in place would collapse as the parties would lose complete faith and trust in the SEBI. ... In respect of the consent applications, we also tend to agree with the Respondents (SEBI). The public authority has received the consent applications and other related information from the company concerned in trust and with the pledge that it would not disclose it to anyone else. In fact, the Respondents showed us the relevant SEBI circular in which it is clearly stated that such information would not be shared with anyone else. Thus, this information is held by SEBI in commercial confidence. If disclosed, this can adversely affect the competitive position of the company concerned. Section 8 (1) (d) of the RTI Act exempts such disclosures.”* I note that similar information was sought by an applicant in the matter of *Arun Kumar Agrawal vs. CPIO, SEBI* (order dated August 04, 2020 passed by the Hon'ble CIC), and the respondent, while relying upon the above mentioned order dated August 25, 2011 passed by the Hon'ble CIC, submitted that *“consent applications and related correspondence were held by SEBI in fiduciary capacity, which is expressly exempt from disclosure under the RTI Act.”*. The Hon'ble CIC observed that no further intervention of the Commission was warranted in the said matter. In view of the aforementioned discussion, I, therefore, find no deficiency in the respondent's response informing the appellant that the information as sought by him, was exempted under Section 8(1)(d) and 8(1)(e) of the RTI Act. In this appeal, I find that the appellant has not established existence of larger public interest for disclosure of such information.
8. Further, on perusal of the appeal, it appears that the appellant has grievance regarding the settlement order passed by SEBI. I note that the Hon'ble CIC, in the matter of *Sh. Triveni Prasad Babuguna vs. LIC of India, Lucknow* (Decision dated September 6, 2012), held: *“The Appellant is informed that ... redressal of grievance does not fall within the ambit of the RTI Act rather it is up to the Appellant to approach the correct grievance redressal forum...”*. In view of these observations, I find that if the appellant has any grievance, the remedy for the same would not lie under the provisions of the RTI Act.

9. 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: September 06, 2022

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