

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

Appeal No. 5647 of 2023

Tonu Kumar	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated January 23, 2023 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated February 10, 2023, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/23/00075) dated April 06, 2023.
2. I note that under Section 19(1) of the RTI Act, an aggrieved person may prefer the first appeal within thirty days from the receipt of the response from the CPIO of the concerned public authority. In the instant case, the impugned response from the respondent is dated February 10, 2023. The appellant, therefore, should have filed the first appeal on or before expiry of thirty days from the date of receipt of the said response. As noted above, the appellant’s first appeal was received on April 06, 2023. The first appeal has been made after the last date permissible under the RTI Act. The appellant neither made a request for condoning the said delay in filing the appeal nor made any submission explaining the reasons which caused the delay. Considering the absence of a request for condoning the delay and any valid reason that prevented the appellant from filing the appeal in time, I consider this appeal as time barred and hence, liable to be dismissed on that count.
3. Notwithstanding the above observation, I am considering the appeal on merit. I have perused the application and the appeal and find that the matter can be decided based on the material available on record.
4. **Ground of appeal-** The appellant has filed the appeal on the ground that access to the requested information was refused. The appellant, in his appeal, submitted that the information was denied on flimsy ground. In view of the submission made by the appellant, I am dealing with the queries and the response provided thereto, in the following paragraphs.

5. **Query numbers 1 and 3-** The appellant, vide his query numbers 1 and 3, sought the following information pertaining to UTI Structured Debt Opportunities Fund I-

“1. Please provide the details of actions taken by SEBI against UTI Capital Private Limited or UTI Structured Debt Opportunities Fund I for acting in violation of SEBI AIF Regulation that is resolution plan submitted to acquire 68% equity shares of Mercator Petroleum Limited by become resolution application under the Insolvency and Bankruptcy Code 2016.

3. Please provide the details of actions taken by SEBI against UTI Capital Private Limited on behalf of UTI Structured Debt Opportunities Fund I without approval of its investment management or board of UTI Capital Private Limited.”

6. The respondent, in response to the aforesaid queries, informed that information about any enforcement action taken by SEBI would be available on the SEBI website, which is in the public domain. The respondent also provided the link for accessing the said website.
7. I have perused the queries and the response provided thereto. I note that information regarding regulatory action (if any) taken by SEBI would be available on the website of SEBI, which is in the public domain. Further, the respondent cannot be expected to research and compile the information which is already available in the public domain and then provide the same to the appellant. Notwithstanding the same, I note that the respondent has guided the appellant to access the information regarding the orders which are available in the public domain. In view of the same, I find that the queries have been adequately addressed and no further intervention is warranted at this stage.
8. **Query number 2-** The appellant, vide query number 2, sought the following information-

“2. Please provide copy of all documents of UTI Structured Debt Opportunities Fund I including but not limited to investment strategy, constitution document, trust deed, information memorandum, placement memorandum, etc.”

9. The respondent, in response to the aforesaid query, informed that the information pertaining to documents exchanged with the company, is exempt from disclosure under section 8(1)(d) and 8(1)(e) of the RTI Act as the same is available to SEBI in fiduciary capacity and it includes commercial information which is confidential in nature, the disclosure of which could harm the competitive position of the entities.

10. I have perused the query and the response provided thereto. With respect to the query seeking documents exchanged with the above mentioned entity, I agree with the response of the respondent that the requested information is held in a fiduciary capacity and includes commercial information which is confidential in nature. I have no reason to disbelieve the said response. I note that in 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*". Further, 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.*" I find that SEBI, being the regulatory authority for the securities market, gets various references/documents from market participants and the information contained therein are received in 'fiduciary relationship'. I also find that such reference/ documents received by SEBI or correspondences made by SEBI with other entities may contain commercial information which is confidential in nature, disclosure of which may adversely impact the competitive position of the concerned entities. I, therefore, find that such information pertaining to commercial confidence and which contains information received in 'fiduciary relationship' from market participants etc. is exempted from disclosure under Sections 8(1)(d) and 8(1)(e) of the RTI Act. Accordingly, I do not find any deficiency in the response.
11. 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: May 03, 2023

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