

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

Appeal No. 2444 of 2016

Sunita Kabra	:	Appellant
	Vs.	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated March 16, 2016, under the Right to Information Act, 2005 (hereinafter referred to as "**RTI Act**"). The respondent vide letter dated April 11, 2016, responded to the appellant. The appellant has filed this unsigned appeal dated April 26, 2016, against the said response. 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. In this appeal, the appellant has *inter alia* made a request for a personal hearing in the matter. In this regard, I note that Section 19(6) of the RTI Act mandates the disposal of the first appeal filed under Section 19(1) of that Act "*within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing*". I, therefore, find that there is no such obligation on the part of the First Appellate Authority to give disposal after giving hearing. 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)*.
3. From the appeal, I note that the appellant is aggrieved by the respondent's response to her application.
- 4.1 **Queries at points (a)–(e) and (h) of the appellant's application** – In this appeal, the appellant has *inter alia* submitted: "*Reply by (the respondent) to point a & b is as good as not giving any information as at a) Taparia Tools Ltd I have requested for details of action taken on my mails pertaining to Taparia Tools Ltd it is pertinent to note that SEBI and BSE has failed to take any action against this company in spite of repeated complaints for last so many years by investors meaning SEBI*

and BSE officers were sheltering the wrong doings of the company...(the respondent) had taken the shelter of section 8 (1) (b) without realizing that the said inquire/proceedings are not initiated by SEBI on their own but after the repeated complaints from investors... the SEBI officers have failed to realize that in the process of helping a wrong act of TM they have overlooked the important issues and implication of such act of TM on the SEBI Act and working as the TM has tampered with the documents and again failed to produce the original and if the said signature itself are not correct why SEBI and exchanged has not taken any action against TM itself raises doubts on the role of SEBI and exchange officers... it also appears (the respondent) has not gone through my RTI application and has given a reply for the purpose of replying it is pertinent to note that there are many complaints on SCORES and (the respondent) is only referring one for reason better known to him... (The respondent) has not given and or dealt with such information as stated at para (e)... (the respondent) has again rather giving the information has asked me to visit site and or link Sir respectfully I have requested information under RTI ACT and it is the duty of (the respondent) to give the information against Cost..."

4.2.1 In his response, I note that the respondent *inter alia* informed the appellant as under –

- i. E-mails dated February 4, 2016 and February 23, 2016, were sent as replies to the e-mail sent by her in the matter of *Taparia Tools Limited* (“**TTL**”).
- ii. As regards the information pertaining to Religare Securities Limited, issues raised by the appellant through the various e-mail IDs as mentioned by her were available on SEBI Complaints Redress System (“**SCORES**”) and the action taken in respect of the same could be accessed on its website <http://scores.gov.in>.
- iii. As regards the information pertaining to Universal Capital Securities Private Limited (RTA), a complaint was received from her on SCORES on November 27, 2015, in respect of which final reply was awaited from that entity.
- iv. Other than TTL, there were a total of 105 companies who had not complied with the listing norms. SEBI passed an Order dated June 4, 2013 (available on the SEBI website i.e. www.sebi.gov.in), against those companies.
- v. As regards the Organisation structure of SEBI, information was available on the SEBI website at the link: http://www.sebi.gov.in/cms/sebi_data/about_us/OrgChart.html.

4.2.2 Upon a consideration of the aforementioned, I find that the requisite information in respect of the appellant's request for information had been provided by the respondent. I, therefore, find no deficiency in the respondent's response to the appellant's application.

- 4.3 Without prejudice to the foregoing, in his response to query at point (a) of the appellant's application, the respondent *inter alia* informed her that enforcement proceedings were in progress in the matter referred to in her application and that the same had not reached a logical conclusion. In view of the aforesaid, the respondent had invoked the provisions of Section 8(1)(h) of the RTI Act to deny information to the appellant. Upon a consideration of the respondent's aforesaid reply, I find that disclosure of information would be premature to the enforcement proceedings and may also impede such proceedings. In this context, reliance is placed on the decisions of the Hon'ble CIC in the matter of *Shankar Sharma and Ors. vs. Director General of Income Tax (Inv)-II & CPIO, Department of Income Tax* (Decision dated 10.07.2007); *Smt. Durgesh Kumari vs. Income Tax Department* (Decision dated 26.8.2011), *Shri. Vinod Kumar Jain vs. Directorate General of Central Excise Intelligence, New Delhi* (Decision dated 20.07.2011), *Shri Narendra Bansal, Delhi vs. The Oriental Insurance Co. Ltd., Delhi* (Decision dated January 13, 2014), *Shri Arun Kumar Agrawal vs. SEBI* (Decision dated November 28, 2014 in F. No. CIC/SM/A/2012/000196) and *Shri Arun Kumar Agrawal vs. SEBI* (Decision dated December 19, 2014 in F. No. CIC/SM/A/2013/000834/MP). Upon a consideration of the aforesaid, I find no deficiency in the respondent's response to the instant query of the appellant's application.
- 4.4 Further, as regards query at point (h) of the appellant's application, I note the Hon'ble CIC in the matter of *Shri K. Lall vs. Shri M. K. Bagri* (Decision dated April 12, 2007), had held that once information is placed on a website or in the public domain accessible to the citizens, that information cannot be said to be 'held' or 'under the control of' the public authority and thus, ceases to be an information accessible under the RTI Act. Further, I note that the Hon'ble CIC in the matter of *Shri Subhash Chandra Agrawal, Delhi vs. CBSE, New Delhi* (Decision dated December 11, 2012), had observed that: "*The Commission has held in the case CIC/AT/A/2007/00112 dated 12.4.2007 that once the information is brought in to the public domain it is excluded from the purview of the RTI Act. The Hon'ble High Court of Delhi in the case of Registrar of Companies and others vs. Dharmendra Kumar Garg and Another decided on 1.6.2012, has held that Right to Information is specifically conferred by the RTI Act is that information which 'is held by or under the control of any public authority'. In the light of the above, the Commission cannot accept the contention of the appellant relating to the information available on the website be provided ...*" I, therefore, find no deficiency with the respondent's response to the instant query of the appellant's application.
- 5.1 **Queries at points (f) and (g) of the appellant's application** –In his response to the instant queries, the respondent informed the appellant that the same were not clear or specific and were in the nature of seeking clarification from SEBI; hence, the request for

information could not be construed as 'information' as defined under Section 2(f) of the RTI Act.

- 5.2 In this appeal, the appellant has *inter alia* submitted: "I fail to understand as to what is not clear and specific and if at all be needed any further clarification he could have called and I could have explained but giving such reply to avoid the information is making fool of us and RTI Act It is not correct that I am seeking clarification from SEBI as information requested at f) is very clear that I am seeking the grounds when a TM can terminate agreement as SEBI is a regulator and every act of TM/investor/Exchange is monitored and under guidelines of SEBI and there for it is they has to inform such grounds similarly information at g) is also same as because the market is regulated by SEBI and there are guide lines which SEBI has made and monitor and to my information no TM can refuse to trade and or open a a/c etc. and hence (the respondent) has to give me the copy of the draft SEBI has approved which TM and investor has to sign."
- 5.3 Upon a perusal of the instant queries of the appellant's application, I find that the request for information made therein, was not clear nor specific. In this context, I note that in the matter of *Shri S. C. Sharma vs. CPIO, Securities and Exchange Board of India* (Decision dated August 30, 2012), the Hon'ble CIC had held that: "Since the Appellant had not clearly stated what exact information he wanted, the CPIO could not have provided any specific information to him. We would like to advise the Appellant that he might like to specify the exact information he wants from the SEBI and prefer a fresh application before the CPIO". In addition, I note that in the matter of *Mrs. Bina Saba vs. CPIO, Securities and Exchange Board of India* (Decision dated November 6, 2012), the Hon'ble CIC had held: "It must be remembered that Section 2(f) of the RTI Act defines information as a material or virtual record. The citizen has every right to get copies of such records held by any public authority including the SEBI. However, in order to get the copies of such records, the information seeker has to specify the details of the records she wants. In fact, section 6(1) of the RTI Act very clearly states that the information seeker has to specify the particulars of the information sought by him or her". In view of these observations, I find that the respondent is not obliged to provide a response where the information sought is vague and not specific. However, if the appellant still wishes to get information, she may prefer a fresh application before the respondent specifying clearly the exact information she wants from SEBI.
- 5.4 Without prejudice to the foregoing, upon a perusal of the appellant's request for information as made through the instant queries of her application, I find the information sought therein was in the nature of seeking opinion, clarification, guidance, etc. from SEBI. Further, I find that the appellant had not requested for any 'information' as defined under Section 2(f) of the RTI Act. In this context, I note that the Hon'ble Supreme Court

of India in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Judgment dated August 9, 2011), had *inter alia* held that: "*A public authority is "...not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provided advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act".* Further, in the matter of *Shri Shantaram Walavalkar vs. CPIO, SEBI* (Decision dated January 17, 2013), I note that the Hon'ble CIC had held that: "*... we would also like to observe that, under the Right to Information (RTI) Act, the citizen has the responsibility to specify the exact information he wants; he is not supposed to seek any opinion or comments or clarifications or interpretations from the CPIO...*". In view of these observations, I find that the respondent cannot be obliged to provide a response to such request for information, as made by the appellant through her application.

6. I, therefore, find that there is no need to interfere with the decision of the respondent. The appeal is accordingly dismissed.

Place: Mumbai

Date: May 25, 2016

S. RAMAN

APPELLATE AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA