

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

Appeal No. 4372 of 2021

Satyendra Kumar Pandit	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated May 31, 2021 (received by SEBI on June 03, 2021) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated July 01, 2021 responded to the application filed by the appellant. The appellant filed an appeal dated July 19, 2021 (received by the Office of Appellate Authority on July 23, 2021), against the said response dated July 01, 2021. 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 ground of appeal:** The appellant has filed the appeal on the ground that he is not satisfied with the response provided by the respondent. In view of the submissions made by the appellant, I am dealing with the queries and the response in the following paragraphs.
3. **Query number 3(1)-** The appellant vide query number 3(1), *inter alia*, sought scheme wise amount of Sahara India Group of Companies (except Sahara India Real Estate Corporation), deposited with SEBI till 31st March 2021.
4. The respondent, in response to the query number 3(1), informed that pursuant to various orders passed by the Hon’ble Supreme Court and the attachment Orders dated February 13, 2013 passed by SEBI in the matter of Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL), an aggregate amount of Rs. 15,472.60 Crores has been realized by SEBI as on March 31, 2021. It was also informed that these amounts along with interest earned on them after providing for making refunds to the bondholders, have been deposited in ‘Nationalized Banks’ in terms of the judgment dated August 31, 2012 of the Hon’ble Supreme Court. Further, the respondent informed that as on March 31, 2021, the total amount deposited in ‘Nationalized Banks’ is around

Rs. 23,190.87 Crores. The appellant, in his appeal, submitted that scheme wise information was not provided.

5. I have perused the query and the response provided thereto. On consideration, I find that the respondent has adequately addressed the query by providing the detailed information as per the available records. Further, the respondent has categorically stated that an aggregate amount has been realized pursuant to various orders passed by the Hon'ble Supreme Court and the attachment orders passed by SEBI. In view of the same, I do not find any deficiency in the response.
6. **Query number 3(2)-** The appellant vide query number 3(2), *inter alia*, sought full details of investors (including the refund amount, names of the investors) who got refund till March 31, 2021. The appellant also stated that the details may be provided in pdf/ excel format in CD/DVD/E-mail (through link).
7. The respondent, in response to query number 3(2), informed that the requested information is exempt under section 8(1)(d) and 8(1)(e) of the RTI Act as the same is highly confidential in nature and is received by SEBI in fiduciary capacity. However, the respondent informed that as on March 31, 2021, SEBI has made refunds to 16,909 applications involving 45,451 accounts for an aggregate amount of Rs. 128.69 Crore.
8. On perusal of the query, I find that the appellant sought information which may relate to personal information (including name, amount refunded etc.) with respect to third parties and the disclosure has no relationship to any public activity or interest. Further, disclosure of the information may cause unwarranted invasion into the privacy of the individual. In this context, the Hon'ble Supreme Court, in the matter of *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal* (order dated November 13, 2019 in Civil Appeal No. 10044 of 2010 with Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010), held that: “ 59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive...”. In view of the same, the requested information is exempt under section 8(1)(j) of the RTI Act.

9. Further, I note that the in his response, the respondent had invoked the provisions of Section 8(1)(e) of the RTI Act to deny information to the appellant. 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 find that SEBI, being a public authority under the RTI Act as well as the regulatory authority for the securities market, gets various documents/information from market participants, etc. and the said information contained in those documents are received in 'fiduciary relationship'. In view of the aforesaid, I agree with the observation of the respondent that the information sought by the appellant is exempt from disclosure under Section 8(1)(e) of the RTI Act.
10. Notwithstanding the above, I note that the respondent has provided information regarding total amount refunded till March 31, 2021, number of investors to whom refund has been made and the total number of accounts involved. I find that the query has been adequately addressed. Accordingly, I do not find any deficiency in the response.
11. **Query numbers 3(3) and 3(4)-** The appellant, vide said queries, *inter alia*, sought the following information-
- 3(3). Provide information about the responsible officers of the concerned institution/ institution/ organization for social humiliation etc.
- 3(4). Effect on the country's economy due to unemployment and hardships faced by investors during April 1, 020 to May 2021 when the repayment was stopped by SEBI.
12. The respondent, in response to the said queries, informed that the queries are in the nature of seeking clarifications/opinion/guidance and hence cannot be construed as seeking 'information' as defined under Section 2(f) of the RTI Act.
13. On consideration, I agree with the observation of the respondent that the query is in the nature of seeking clarification/opinion/guidance from the respondent. It is understood that the respondent is not supposed to create information; or to interpret information; or to furnish clarification to the appellant under the ambit of the RTI Act. I find that the said queries cannot be construed as seeking '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 the abovementioned queries.

14. 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: August 11, 2021

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