

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

Appeal No. 1588 of 2012

Pappulal Sahoo	:	Appellant
	Vs.	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated September 24, 2012 under the Right to Information Act, 2005 (hereinafter referred to as "**RTI Act**"), before the Central Assistant Public Information Officer (hereinafter referred to as "**CAPIO**") at the SEBI Northern Regional Office (NRO), New Delhi. The respondent vide letter dated October 30, 2012, responded to the appellant. The appellant has filed this appeal dated November 28, 2012 (received at SEBI on December 17, 2012), 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. From the appeal, I note that the appellant is aggrieved by the respondent's response to the following queries as reproduced from his application having subject-matter "*Ashma Finance and Investment Company Limited*" (hereinafter referred to as "**AFICL**"), viz. –
 - i. "*What action has been taken since November 30, 2011?*"
 - ii. "*Details of the present proceedings in the matter.*"
 - iii. "*Details of action to be taken in future against the company.*"
 - iv. "*The complaint be redressed within the time limit.*"
3. In this appeal, the appellant has stated that he had purchased 2 bonds of ₹ 21000 each, on July 31, 1996, from Ashma Agro-tech India Ltd and for which 2 cheques were given to the appellant by the concerned branch, on the date of maturity i.e. July 31, 2011. However, as the cheques had bounced, a complaint was filed with the Reserve Bank of India (hereinafter referred to as "**RBI**"). Since the RBI had forwarded the said complaint to SEBI, the appellant had submitted that the information sought in his application was in respect of the enquiry or action being taken in the matter. In view of the same, the appellant has contended that the respondent had provided misleading information to his application.
4. **Queries at point nos. 2(i) - (ii) above** - I note that the appellant was clearly informed by the respondent that as the matter relating to AFICL was not under examination by the concerned

department of SEBI, the information sought was not available. I do not find any reason to disbelieve the response provided by the respondent. 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: *"The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant"*. In view of these observations, I find that the respondent cannot be obliged to provide the information sought by the appellant, in his application, as such information was not available.

5. **Queries at point nos. 2(iii) - (iv) above** - In his response, the respondent had informed the appellant that the information sought by him was hypothetical and in the nature of seeking an opinion and further, as he was seeking action in respect of his complaint, the same could not be construed as '*information*', as defined under section 2(f) of the RTI Act.
6. On a perusal of the query at point no. 2(iii) above, I find that the information sought therein, was an inquisition inviting/soliciting response from SEBI in the nature of seeking opinion, etc. 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 as discussed at para 4 supra, had 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"*. In view of these observations, I find that the respondent cannot be obliged to provide a response to such a query, as raised by the appellant in his application.
7. Upon a consideration of the query at point no. 2(iv) above, I find that what the appellant had sought therein was not factual information but rather action in respect of his complaint. I note that under the RTI Act, only such information can be supplied which already exists and is held by the Public Authority. In this context, I note that the Hon'ble CIC in the matter of *Sumanta Banerjee vs. Bharat Sanchar Nigam Limited* (Decision dated June 08, 2007), had held that an applicant/information seeker under the RTI Act should ask for information that may be available '*in any material form*' as envisaged under section 2(f) of that Act. Further, I note that the Hon'ble CIC in the matter of *Ram Balak Yadav vs. Sheikh Mohammad Anis* (Decision dated May

13, 2009), had held that: *"The appellant is not seeking any information but want certain administrative action by the department. It is apparent that no information was sought as defined under Section 2(f) of the Act"*. In view of these observations, I find that the information as sought by the appellant through the instant query was beyond the scope and ambit of the RTI Act.

8. In view of the above, I find that there is no need to interfere with the decision of the respondent. The appeal is accordingly dismissed.

Place: Mumbai

Date: January 8, 2013

S. RAMAN

APPELLATE AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA