

**EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

2nd Floor, Jeevan Vihar Building,
Sansad Marg, New Delhi - 110 001
Dated: 23rd December, 2020

RTI Appeal Registration No. ISBBI/A/E/20/00025

IN THE MATTER OF

Mr. Amar Kakaria

..... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India
2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110 001.

..... Respondent

ORDER

1. This appeal is borne out of the application under Right to Information (**RTI**) bearing Registration no. ISBBI/R/E/20/00184. The information sought by the appellant under section 6 of the Right to Information Act, 2005 (**Act**) and the reply given by the respondent are as under:

Sl. No.	Information Sought	Reply by CPIO
1.	<i>Swojas Energy Foods Ltd (Swojas) was a subsidiary of Paramalat SpA, Italy & it went under liquidation in 2000. On complying with different provisions of Companies Act, FEMA & SEBI regulations, we took over Swojas in 2014 & brought it out of liquidation in 2015. Swojas is an rare case of company under liquidation for which Open Offer was made despite ongoing winding up procceding. Though Swojas came out of liquidation in 2015, BSE never issued any invoices for annual listing fees (ALF) & so, Swojas could not pay ALF. Since no ALF invoices were raised by BSE, there were Zero ALF dues receivable in the books of accounts of BSE & Zero dues payable as per Swojas accounts. However, BSE insisted for payment from Swojas by sending emails to Swojas / its promoters & copy is attached. At the bottom of email, it is mentioned that BSE may initiate</i>	<i>Reply to 1-6- Information sought is not available with IBBI.</i>

	<p><i>proceedings under IBC against Swojas. When Government of India is trying hard for revival of ailing companies, it is shocking that BSE plans to initiate IBC proceedings despite knowing that Swojas had already been under liquidation for 15 years. On study of IBC, we learnt that while initiating proceedings under IBC, the creditor has to file petition with Hon. NCLT alongwith copies of valid ALF invoices issued on the company which remained unpaid. In the instant case, BSE has never issued any ALF invoices on Swojas but still it intends to initiate proceedings under IBC. We are aware that BSE is a very powerful Non-Government company with great connectivity with regulators and so, it must have got special concessions. So, we request IBBI to kindly inform us with:</i></p> <p><i>1) Circular issued by IBBI to allow stock exchanges to initiate insolvency proceedings against listed companies even without issuing any ALF invoices on listed companies</i></p> <p><i>2) Circular issued by IBBI to allow stock exchanges to initiate bankruptcy proceedings against promoters of listed companies even without issuing any ALF invoices on listed companies</i></p> <p><i>After introduction of IBC in 2016, over 1100 companies were delisted by BSE under SEBI Delisting Regulations. Many of them were under CIRP / liquidation at the time of delisting but no prior approval was taken from Hon. NCLT under IBC. BSE just gave a 15 days notice at the registered office of those companies to comply with its Listing Agreement and then directly advertised in newspaper about delisting. These companies are transferred to BSE Dissemination Board then. So, we request IBBI to kindly inform us with:</i></p> <p><i>3) Circular issued by IBBI to empower BSE to delist companies under CIRP / liquidation merely by giving newspaper advertisement</i></p>	
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<p>4) Circular issued by IBBI to exempt BSE from taking prior approval from Hon. NCLT before initiating proceedings under SEBI Delisting Regulations</p> <p>5) Circular issued by IBBI to exempt investors to seek prior approval from liquidator while dealing in shares of companies under liquidation on BSE DB</p> <p>6) Circular issued by IBBI to allow dealing in liquidated companies on BSE DB.</p>	
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2. In this appeal, the appellant has, *interalia*, submitted the following:

*“.....Instead of providing aforesaid information, CPIO informed that IBBI does not have any information available for above 6 queries. Due to ignorance of BSE towards IBC, large number of companies under CIRP / liquidation have already been delisted by BSE with newspaper advertisement and many are in pipeline due to which millions of investors are suffering. In order to get justice, it is essential to have correct information and so, **we request Your Honour to kindly advise CPIO to provide copies of relevant circulars / guidelines / letters instead of claiming that no such information is available. And if, IBBI has not issued any such circulars / guidelines then CPIO may inform accordingly.**”*

3. Comments of the respondent were called for. The respondent has submitted that since the information was not available, the same could not be provided to the applicant.
4. In this connection, the FAA notes that all the Regulations, Circulars and Guidelines issued by Insolvency and Bankruptcy Board of India (IBBI) are already available on the website of IBBI at <https://ibbi.gov.in/legal-framework> and there is no other Regulation, Circular or Guideline than the above. Accordingly, this FAA agrees with the CPIO that the information sought by appellant is not available with IBBI and therefore, no information could be provided.
5. With the above finding, the appeal is disposed of.

(Sd/-)

(K. R. Saji Kumar)

Executive Director and First Appellate Authority

Copy to:

1. Appellant, Mr. Amar Kakaria.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.