

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

2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110 001

Dated: 26th July, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00030

IN THE MATTER OF

CA Rajat Kumar Mehra

... 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. The Appellant has filed the present Appeal dated 29th June 2022, challenging the communication of the Respondent dated 23rd June 2022 with regard to his RTI Application No. ISBBI/R/P/22/00025 dated 16th June 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has in the context of his Valuation Examination *inter-alia* requested for the following –
“....
 1. Please provide me certified break up of my marks into 1 and 2 marks questions under following format borrowed from format result provided mechanically by machine for all my 14 attempts and future attempts till giving information.
 - a. Date
 - b. Bifurcation of marks obtained into 1- and 2-marks Questions
 - c. No. of Questions answered correctly of 1 mark and answered wrong as per you
 - d. No. of Questions answered correctly of 2 marks and answered wrong as per you....
 3. The syllabus as to IBC, 2016 has mention only three regulations but on 10.06.2022 I was asked a question on IBBI(Application to Adjudicating Authority) Rules as to number of Form to be submitted by a Financial Creditor. Options were Form 1,2,3 and 4. Kindly inform me of record of including Adjudicating Authority Rules in syllabus....
 5. Please provide me certified copies of questions asked from me today, my answers and correct answers as per your records with reasons and justification for alleged correct answer as per you from your records.
 6. Records, if any, as to cause of not keeping examination slots at Varanasi and few other cities from 18.06.2022 to 30.06.2022 when slots of available during this period in many other cities....”
2. Aggrieved by the response of the Respondent, the Appellant has broadly submitted the following: –
 - a. With regard to query (1), the Respondent has not provided certified copies as sought by Appellant,

- b. With regard to query (3), the reply of Respondent is evasive and correct and categorical reply be provided,
 - c. With regard to query (5),
 - (i) the information is denied for no reason,
 - (ii) revealing question and denying correct answer is unjustified,
 - (iii) the falsehood and *mala fide* of examination team is unjustified.
 - d. With regard to query (6), the Respondent should have given reasons and records of laxity and discrimination in providing slots in the constituency of the Hon'ble Prime Minister of India.
 - e. The information given by Respondent is incorrect, *mala fide*, vague, misleading and bad in law.
3. The Appellant also requested for opportunity of personal hearing. Considering several contentions raised in the Appeal in respect of response on merits, the Appellant was given opportunity of personal hearing on 19th July, 2022 through virtual mode. He also requested for copy of comments of the Respondent which was shared with him. The Appellant availed the opportunity of personal hearing and made submissions on the lines of written submissions made in the Appeal and pithily argued that Respondent has decided his information request without applying mind and has acted against law and practice relating to RTI Act. The Appellant strongly objected to the statements in comments of the Respondent that the Appellant displays an incomplete knowledge of the provisions of the laws and the RTI Act and that the Appellant has been asking for the question/answer data bank to gain an undue advantage. He claimed that he is entitled to know the correct answers to questions asked in examination conducted by IBBI. He was also given liberty to make additional written submissions, if he so chooses, which he declined.
4. I have carefully examined the application, the response of the Respondent and the Appeal. Before examining the request, I deem it appropriate to deal with scope of 'information' and right to receive the information under the RTI Act. It is noted that in terms of section 2(f) of the RTI Act 'information' means "*any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.*".
5. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advice, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. Section 2(j) of the RTI Act defines the "*right to information*" in term of information accessible under the Act which is held by or is under the control of a public authority and which can be disclosed subject to exemptions under section 8 of the RTI Act. Thus, if the public authority holds any 'information' in the form of data, statistics, abstracts, etc. an applicant can have access to the same under the RTI Act subject to exemptions under section 8.

6. It is also clear that the “right to information” under section 3 of the RTI Act is circumscribed by RTI Act itself as the right is limited within scope of ‘information’ as defined under section 2(f) and is subject to other provisions including those under section 8 of the Act. As stated in the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28th November 2013 –

“The Public Information Officer is not supposed to create information that is not a part of the record of the public authority. The Public Information Officer is also not required to furnish information which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.”

7. In the instant case, the Appellant has requested for certified copy of record as per query (1). Section 2(j)(ii) of the RTI Act provides the right to the RTI applicant to seek certified copies of documents and records from a public authority. Accordingly, the Respondent should have provided the Appellant with a certified copy of the records. As the copy provided is not a certified copy, the Respondent is directed to provide the Appellant with certified copy of the record within 10 days of receipt of this Order.
8. The Appellant has also requested for records pertaining to inclusion of questions on the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in the examination. The Respondent had provided the link to the syllabus to the examination. The Respondent is expected to provide information as available on record and not create any information. He is also not expected to provide reasons as to why a certain thing was done or not done. The Respondent is not bound to provide answer to such queries/inquisitions of the Appellant as the same are beyond the scope of ‘information’ and ‘right to information’ under the RTI Act.
9. The Appellant has also requested for certified copies of questions asked from him and his answer to the same and correct answers fed in the system. I have already provided detailed reasons to the Appellant *vide* my Order dated 8th June 2022 in RTI Appeal Registration No. ISBBI/A/E/22/00018 and Order dated 21st July 2022 in RTI Appeal Registration No. ISBBI/A/E/22/00027 as to how disclosure of the questions and answers will not only be against the confidentiality and integrity of the entire Examination process but also affect the competitive position of the other aspirants as the aspirants having questions and answers in advance will have an undue advantage as the questions are likely to be repeated in the future Examinations. It has been held therein that such information is exempted under section 8(1)(d) and 8(1)(e). Also, as the questions in the question bank are limited, if any Appellant is provided with the copy of questions and answers asked from him in a particular attempt, such disclosure can eventually lead to disclosure of the entire question bank. This may go against the confidentiality and integrity of the entire Examination process.
10. The Appellant has also requested for records, if any, of the cause for not keeping slots of examination at Varanasi and few other cities between 18th June 2022 to 30th June 2022. The Respondent has stated that the same is not covered in the definition of ‘information’ under RTI Act. As stated above, the Respondent is expected to provide information as available on

record and not create any information. He is also not expected to provide reasons as to why a certain thing was done or not done. Such queries of the Appellant are in the nature of grievances of the Appellant and are beyond the scope of 'information' and 'right to information' under the RTI Act.

11. Having held as above, I deem it fit to observe that in my view, the comments of learned Respondent, on the knowledge of the Appellant are unwarranted and not in consonance with the provisions of the RTI Act. The Respondent is advised accordingly with request to desist from casting such aspersions on the RTI applicants.
12. In view of the above, the Appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

1. Appellant, CA Rajat Kumar Mehra.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.