

**WHOLE TIME MEMBER AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

7TH FLOOR, MAYUR BHAWAN, NEW DELHI

DATED THE 2ND OF JANUARY, 2019

Appeal No. ISBBI/A/2018/00018 (F. No. IBBI/RTI/RISHABH KAPOOR/207)

Dated: November 29, 2018

Arising out of Order dated October 31, 2018 under RTI Request No.
ISBBI/R/2018/00043

IN THE MATTER OF

Mr. Rishabh Kapoor Appellant

Versus

CPIO, Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan

New Delhi Respondent

ORDER

1. The present Appeal No. ISBBI/A/2018/00018 dated November 29, 2018 received in the office of the First Appellate Authority (**FAA**), Insolvency and Bankruptcy Board of India under the Right to Information Act, 2005 has been preferred by Mr. Rishabh Kapoor against the order dated October 31, 2018 of the CPIO, Mr. Umesh Kumar Sharma, Insolvency and Bankruptcy Board of India with respect to his RTI Request No. ISBBI/R/2018/00043 dated October 11, 2018.
2. On a detailed perusal of the RTI Application of Mr. Rishabh Kapoor, it is observed that the appellant sought information pertaining to the Limited Insolvency Examinations, and *intern alia*, asked for-
 - (i) *“This information pertains to the Candidate Name: Rishabh Kapoor, IBBI Reg. No. IBBI/0002696, IBBI-Limited Insolvency Examination, Date of Examination 14-SEP-2018, Slot 1.30 pm to 03.30 PM, Test Centre: NSEIT Limited, Ludhiana.*
 - (ii) *Kindly provide the complete set of question paper of the above-mentioned exam stated in para 1.*
 - (iii) *Kindly provide me the answer sheet of the candidate Rishabh Kapoor.*
 - (iv) *Kindly provide the correct answer key of the above exam as stated in para 1.*

(v) *Whether there is any bar in sharing this information? If yes kindly provide under what law or notification?"*

3. The respondent, CPIO, Mr. Umesh Kumar Sharma, Insolvency and Bankruptcy Board of India with respect to the RTI Request No. ISBBI/R/2018/00043 of the appellant, have opined that the information so sought under (ii), (iii) and (iv) in para 2 above cannot be provided as per sub-clause (2) of clause (20) of the IBBI-Limited Insolvency Examination, Frequently Asked Questions provided thereto on the website.
4. The appellant raised the present appeal on the ground that-
 - (i) the order of the respondent is of not supplying the information is contrary to the provisions of the Right to Information Act, 2005.
 - (ii) the respondent erred in law by relying the IBBI-Limited Insolvency Examination Frequently Asked Questions provided on the official website of the Board.
 - (iii) Since the F&Q are only the opinion of the statute or the regulations of a particular person, they do not have the force of the regulations and therefore could not be considered at all.
 - (iv) By virtue of the section 22 of the Right to Information Act, 2005, the provisions of the Act would prevail over provisions of bye-laws/Regulations/F&Q issued by the respondent.
5. The appellant in the Grounds of Appeal (attached with the Appeal dated November 29, 2018) has sought an opportunity of personal hearing before deciding the Appeal. The appellant has been accorded an opportunity of personal hearing in the present matter vide letter dated December 05, 2018 to be scheduled on December 17, 2018 which was rescheduled to December 24, 2018 at the request of the appellant.
6. The appellant in his submissions in personal hearing relied upon the decision of the Hon'ble Supreme Court of India in the matters of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors (Civil Appeal No. 6454 of 2011)*, wherein, the Hon'ble Apex Court held that *"...the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations."*

7. Further, the appellant relied on *the Institute of Chartered Accountants of India vs. Shaunak H. Satya* ((2011) 8 SCC 781) wherein Hon'ble Supreme Court lay down that '*though the question papers, solutions/model answers and instructions in regard to any particular examination may not be disclosable before the examination is held but the position will be different once the examination is held in as much as the disclosure of question papers, model answers and instructions in regard to any particular examination would not harm the competitive position of any third party once the examination is held. It was further held that examining body should change their old mindsets and tune them to a new regime of disclosure of maximum information*'.
8. The appellant also relied upon the Hon'ble Delhi Court decision in the matter of *Rajat Mann vs. Guru Gobind Singh Indraprastha University and Ors.* (219(2015) DLT 791), submitted during course of hearing, supporting the grounds raised in the present appeal.
9. The respondent, CPIO, in the defence submitted that the questions asked in the Limited Insolvency Examination are the intellectual property of the Board and are held in confidence. The said set of questions are subject to repetition and reuse in the Examination. Hence, the disclosure of the same will not only be against the confidentiality and integrity of the entire examination process but also will be against the public interest. In support to this, the respondent relied and referred to the view of the Hon'ble CIC in *R. Seshadri Vs. CPIO, Medical Council of India, Delhi and Ors.* where it relied on the judgement given by Delhi High Court in *AIIMS vs. Vikrant Bhuria* [LPA 487/20111] and held:

"Per contra in the present case, the question papers comprise only of multiple choice questions and are such which cannot be carried out from the examination hall by the examinees and in which examination there is an express prohibition against copying or carrying out of the question papers. The Commission, having perused the Supreme Court's decision in the Institute of Chartered Accountants of India vs. Shaunak H. Satya ((2011) 8 SCC 781) quoted by the appellant and the decisions of the Commission, cited by the respondent, is of the view that disclosure of information sought by the appellant will not only seriously compromise the quality of the examination process but would endanger the safety of the public."
10. The respondent further submitted that while deciding similar issue in *Manish Kumar Sharma vs. CPIO, NBE* [CIC/YA/A/2014/001131], the Bench of the Hon'ble Central Information Commission upon a purposive interpretation of Section 8 of the RTI Act, 2005 held that:

“In light of the facts brought out by the respondent, the Commission accepts the contention that examination under reference falls in the category of Super Speciality and as such, the question papers & model answers thereof cannot be disclosed to the appellant...”

11. The present RTI appeal has been examined and I have perused the response provided by the respondent in respect of the queries raised in the RTI application.
12. In this regard, the Hon’ble CIC in *R. Seshadri Vs. CPIO, Medical Council of India, Delhi and Ors.* relied on the judgement given by Delhi High Court in *AIIMS vs. Vikrant Bhuria [LPA 487/20111]*, itself distinguished and separated the Supreme Court’s decision in *the Institute of Chartered Accountants of India vs. Shaunak H. Satya ((2011) 8 SCC 781)* quoted by the appellant.
13. Moreover, the disclosure of corresponding questions would result in IBBI incurring a huge expenditure since the setting up of question papers entails intellectual efforts and related expenditure. As a consequence of the increase in expenditure, the Board may also be required to off-set the estimated surge by increasing the examination fee, to be submitted by potential insolvency professionals, by a considerable amount. Henceforth, the opportunity cost of disclosing the question is vast and against the public interest.
14. Though the Respondents have vehemently opposed providing of question paper and answers in the RTI query. However, in the interest of justice, the Appellant may be allowed inspection of electronic copy pertaining to the information asked for. The CPIO is directed to facilitate the inspection of electronic copy of the same within three weeks of this order at the convenience of the appellant.
15. Accordingly, the appeal is disposed of.

Sd/-

(Dr. Navrang Saini)

Whole Time Member and First Appellate Authority

Copy to

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