

**EXECUTIVE DIRECTOR  
AND  
FIRST APPELLATE AUTHORITY**

**Insolvency and Bankruptcy Board of India**

2nd Floor, Jeevan Vihar Building 2

Sansad Marg

New Delhi- 110 001.

Dated the 19<sup>th</sup> September, 2019.

Appeal No. ISBBI/A/2019/60007 (F. No. – IBBI/BS/RTI/RTI APP/246)

*[Arising out of the reply under RTI Registration No. ISBBI/R/2019/50054 of the CPIO dated 17<sup>th</sup> July, 2019 ]*

IN THE MATTER OF

Mr. Kunwar Sachdev

..... Appellant

Vs.

Central Public Information Officer  
Insolvency and Bankruptcy Board of India  
7<sup>th</sup> Floor, Mayur Bhawan  
New Delhi

..... Respondent

**ORDER**

1. The present Appeal No. ISBBI/A/2019/60007 dated 25<sup>th</sup> August, 2019, received by the office of the First Appellant Authority (FAA), Insolvency and Bankruptcy Board of India (Board) under the Right to Information Act, 2005 (22 of 2005) (Act), has been preferred by Mr. Kunwar Sachdev (appellant) against the reply of the Central Public Information Officer -CPIO (respondent) dated 17<sup>th</sup> July, 2019.
2. It is observed that the appellant has requested the respondent the following information (RTI request) on 21<sup>st</sup> June, 2019, under section 6 of the Act:  

“(a) Advise me the status of the action taken on my aforesaid letter along with noting, if any, made thereon.

(b) Provide copy of said letter containing remarks/ nothings of IBBI officials and order sheet for the disposal of this letter, if any.

- (c) The reasons for delay in reply of this complaint and the person responsible for delay are also advised to me.
- (d) The names of the various officials to whom this letter has been marked.”
3. Pursuant to the above, the respondent replied on 17<sup>th</sup> July, 2019, as under:  
*“The Complaint dated 24.9.2018 against Mr. Rajiv Chakraborty, Resolution Professional in the matter of M/s Su-kam Power Systems Limited, is under process.”*
4. Aggrieved by the said reply, the appellant has preferred this appeal contending that the Resolution Professional has acted unprofessionally and negligently towards his functions which led to the liquidation of M/s Su-Kam Power Systems Limited.
5. The appeal and the relevant records have been examined. The respondent and the officer, who is dealing with the matter referred to in the RTI request have been heard on 12<sup>th</sup> September 2019. It is relevant to consider the RTI request above referred to, individually, to arrive at a decision in the appeal, namely: -
- I. “(a) Advise me the status of the action taken on my aforesaid letter along with noting, if any, made thereon.” and
- II. “(c) The reasons for delay in reply of this complaint and the person responsible for delay are also advised to me.”

The respondent contended that it was not incumbent upon the respondent to provide advice and opinions, if requested by a person. It has been brought to the notice of this appellate authority that the Hon’ble Supreme Court in *Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.* (Civil Appeal No. 6454 of 2011), inter alia, held that “A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also 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.”

6. In catena of decisions of the Hon’ble Central Information Commission (CIC), it has been held that applicants cannot seek advice, opinions, etc., whether legal or otherwise, under

section 6 of the Act. In *Sudha A. Mody Vs. Central Public Information Officer, Kanpur* (CIC/SBIND/A/2017/604711, dated 11<sup>th</sup> January, 2019), the CIC held:

*“...from a plain reading of Section 2(f) of the [RTI Act](#) it is clear that 'information' under the [RTI Act](#) refers to material in any form such as records, documents, memos, opinions, advices, circulars, reports, in electronic form, etc. Hence, 'information', which is requested under Section 6(1) of the [RTI Act](#) refers to only that information, which is available and existing on record and held by the public authority or is under control of the public authority.”*

In view of the above, the respondent is justified in not providing any advice on the status of action taken on his letter.

7. It has been held that the CPIO is not required to provide information regarding the reasons for doing something or not doing something. The Hon'ble High Court of Bombay in the matter of *Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education) Vs. The Goa State Information Commission* [2008 (110) Bom LR 1238], while interpreting Section 2(f) of the Act held: *“The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.”*

In view of the above, contention of the respondent that no information needs to be provided with respect to items (a) and (c) is justifiable.

III. “(b) Provide copy of said letter containing remarks/ nothings of IBBI officials and order sheet for the disposal of this letter, if any; and

IV. (d) The names of the various officials to whom this letter has been marked.”

8. Further, it was also contended that it is not necessary to provide reasons for delay in responding to a complaint made by a person and also providing the names of the officers dealing with a particular matter. In respect of (b) and (d), the respondent submits that the factual position was communicated to the applicant since the complaint dated 24.9.2018 against the Resolution Professional made by the appellant was under process. It has been submitted by the respondent that the IBBI is empowered under section 196 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Chapter VI of Part IV of the Code and the IBBI (Insolvency Professionals)

Regulations, 2016, to investigate into any matter relating to disciplinary proceedings of Insolvency Professionals and every complaint received by the IBBI would be processed to find out if any violation of the Code or any of the processes under the relevant regulations are made out. Where the Board finds prima facie grounds to proceed with any material on record, it could lead to investigation or inspection and issuance of show cause notice before proceeding with such other disciplinary action, as the disciplinary committee of the IBBI may deem fit. The Insolvency Professional may also be subject to prosecution if any offence committed by him during the insolvency process, is made out. Since the matter was under the aforesaid process, nothing more could have been provided to the applicant except the information provided as to the processing of the complaint. The respondent submits that whatever information, which was available to be provided to the appellant at the relevant stage of the processing of the complaint made by the appellant, was provided.

9. In this connection, it is relevant to consider provisions of section 8 of the Act, which, inter alia, provides as under:

*“(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -*

*xxxxxxx*

*(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*

*xxxxxxx.”* (Emphasis supplied)

10. The Hon’ble Supreme Court in *Directorate of Enforcement Vs. Deepak Mahajan* [Cr. A. No. 537 of 1990, 31<sup>st</sup> January, 1994], interpreted “investigation” as follows:

*“...the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.”* (Emphasis supplied)

11. Also, the Hon’ble CIC in *Shahid Anwar Vs. Central Bureau of Investigation* [order dated 17<sup>th</sup> January, 2011, CIC/WB/A/2009/000750] held:

*“The prosecution proceedings have neither been finally disposed of nor has the matter been finally concluded. The supply of the requested information, other than the RC numbers of the case, will make the Appellant privy to the extremely confidential information which was*

*meant for the exclusive use of the CBI for the purpose of prosecution. It can be sufficiently concluded that such information clearly falls well within exemption contemplated in Section 8(1)(h) given the fact that the process of "prosecution of offenders" will be impeded if that very information is provided by the CBI at this stage. Thus, the FAA was just and right in refusing to disclose the information sought by the Appellant by invoking Section 8(1)(h) of the RTI Act."*

12. The complaint was under process in order to find out any material that warrants investigation, disclosure of information relating to the same would have impeded the process of investigation or apprehension or prosecution of any offence. Hence, providing any more information under this circumstances is exempted under section 8(1)(h) of the Act.
13. In view of the foregoing, this first appellate authority is satisfied that nothing more than what was provided by the respondent on the RTI request made by the appellant was possible under the circumstances, and the appeal, thus fails.

(Sd/-)

**(K. R. Saji Kumar)**

Executive Director and First Appellate Authority

Copy to

1. Appellant, Mr. Kunwar Sachdev.
2. Respondent (CPIO, Insolvency and Bankruptcy Board of India  
7<sup>th</sup> Floor, Mayur Bhawan, New Delhi).