

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

7<sup>TH</sup> FLOOR, MAYUR BHAWAN, NEW DELHI

DATED THE 16<sup>th</sup> OF AUGUST 2019

Appeal No. ISBBI/A/2019/00028 (F. No. Board – 12011/43/2019 – IBBI/1505) Dated 10<sup>th</sup> July, 2019

Arising out of order dated 14 June, 2019 under RTI Registration No. ISBBI/R/2019/00027

IN THE MATTER OF

Dr. S.P. Sharma

..... Appellant

V/s

CPIO, Insolvency and Bankruptcy Board of India

7<sup>th</sup> Floor, Mayur Bhawan

New Delhi

..... Respondent

**ORDER**

1. The present Appeal No. ISBBI/A/2019/00028 dated 10<sup>th</sup> July, 2019, received on 17<sup>th</sup> July, 2019 by the office of the First Appellant Authority (**FAA**), Insolvency and Bankruptcy Board of India (**Board**) under the Right to Information Act, 2005, has been preferred by Dr. S.P. Sharma against the order of the CPIO, Dr. Anuradha Guru of the Board in RTI, bearing Registration No. ISBBI/R/2019/00027 dated 14<sup>th</sup> June, 2019.
2. The information sought by the appellant and the reply given by CPIO is produced as under: -

Sr. No.	Information demanded	Reply by IBBI
1.	Copies of all letters / mails sent to Mr. Bhupesh Gupta by Insolvency and Bankruptcy Board of India (IBBI) for reply / comments on the above Complaints, point wise etc.	<b>1 &amp; 2:</b> Same information was sought by the Applicant vide RTI Registration No. <b>ISBBI/R/2019/00016</b> . A copy of the reply already issued to the Applicant (25 <sup>th</sup> April, 2019) in that RTI request is enclosed (in hard copy) in that reply only internal notes prepared by IBBI were given and not the copies of the letters / replies as asked for.
2.	Copies of all replies sent by Mr. Bhupesh Gupta to Insolvency and Bankruptcy Board of India (IBBI) against the aforesaid Complaints/ objections etc.	

3. The present RTI appeal has been examined and I have perused the information in respect of the queries raised in the RTI application. The appellant vide his original RTI request has sought copies of all letters / mails sent to Mr. Bhupesh Gupta by the Insolvency and Bankruptcy Board of India (IBBI) for reply / comments and copies of all replies sent by Mr. Bhupesh Gupta against the complaints dated 15<sup>th</sup> January, 2018 and 19<sup>th</sup> February, 2018.
4. In the instant case, CPIO in reply to RTI of Dr. S.P. Sharma bearing Registration No. ISBBI/R/2019/00016 has provided copies of the noting processing the complaint dated 19/02/2018 after severing information exempt under Section 8(1)(g) of the RTI Act, 2005. The CPIO has also provided copies of the e-mails dated 30.05.2018, 07.06.2018, 08.06.2018 and 02.07.2018 sent by the Board to the RP / Liquidator while processing the complaint dated 19.02.2018. The CPIO in the aforesaid reply has further stated that the replies received by the Board from the RPO / Liquidator are exempt under Section 8(1)(d) & (e) of the RTI Act, 2005. As per the Standard Operating Procedure for handling RTI Applications details of communication between IRP or RP or Liquidator and the Board (Section 8(1)(d), (e) and (h) is not to be disclosed.
5. The limited point of consideration in this appeal is that whether the replies received by the Board from RP / Liquidator are exempt from the disclosure under Section 8(1)(d) & (e) of the RTI Act, 2005.
6. Section 8(1)(d) & (e) of the RTI Act, 2005 states thus:

*“(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*

*(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;”*
7. The Hon’ble Kerala High Court interpreted the term "fiduciary" in the matter of *Treesa Irish v. The Central Public Information Officer*, [W.P.(C) No. 6532 of 2006, 30<sup>th</sup> August, 2010]. The relevant portion is extracted below:

*"16...it is clear that 'fiduciary relationship', although arises out of a transaction involving trust between two parties, it requires something more than mere trust to make the relationship fiduciary. It also cannot be equated with mere privacy or confidentiality. At the heart of fiduciary relationship lie reliance, de facto control and dominance. A fiduciary relationship exists when confidence is reposed on one side and there is resulting superiority and influence on the other. The Canadian Courts have developed the following tests for determining whether fiduciary relationship has been established, viz.*

*(a) The fiduciary has the scope for the exercise of some discretion or power;*

*(b) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and*

*(c) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.*

*Based on the legal principles arising from the above discussion, I am inclined to add one more to the same viz.*

*(d) The fiduciary is obliged to protect the interests of the other party*

*From the material available on the subject, I am satisfied that those tests can be applied for deciding the question as to whether there is fiduciary relationship between two parties.”*

8. There is no doubt that there is a fiduciary relationship between the IBBI and the Resolution Professional. While providing any information received from the Resolution Professional to a third party (complainant/appellant), the Board should keep in mind that no harm is caused to the commercial transactions in process or to the persons associated with the process. However, keeping in view the spirit of the RTI Act, 2005, it should not deny the information which is of no commercial nature/confidential and providing of which will not cause any prejudice to the persons associated with the processes.
9. CPIO has claimed exemption under Section 8(1)(d) and (e) of the RTI Act, 2005 (with regard to replies received by the Board from the Resolution Professional). Since copies of e-mails sent to Mr. Bhupesh Gupta has already been sent and extract of the replies received from the Resolution Professional has already been provided (mentioned in the processing note sheet) I am not fully satisfied with the contention of the CPIO as to not provide copies of replies received from the Resolution Professional. However, keeping in view the fact that the Board has ordered inspection of the Resolution Professional relating to CIRP of M/S Supreme Tax Mart Private Ltd. and the same is in process, I am of the view that providing copies of the replies at this juncture may not be justified. Once the process of inspection is concluded, the CPIO should provide the copies of the replies received from the Resolution Professional to the Appellant after severing commercial / third party/confidential part.
10. In view of the above, the Appeal is disposed off.

**Sd/-**

**(Dr. Navrang Saini)**

Whole Time Member and First Appellate Authority

Copy to

1. Dr. S.P. Sharma.
2. CPIO, Insolvency and Bankruptcy Board of India  
7<sup>th</sup> Floor, Mayur Bhawan, New Delhi.