

**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: 9th January, 2023

RTI Appeal Registration No. ISBBI/A/E/22/00049

IN THE MATTER OF

Naveen Kumar

... 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 19th December 2022, challenging the communication of the Respondent dated 13th December 2022 with regard to his RTI Application No. ISBBI/R/E/22/00259 dated 14th November 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has stated the following –
“..I have filed 1 (one) Complaint with Insolvency and Bankruptcy Board of India regarding the Non Implementation of Resolution Plan by Kalyan Toll Infrastructure Limited(Company) in the matter of Lanco Hoskote Highway Limited(CD). Please reply to the following queries 1. Status of Action taken or Notice issued on Complaint filed with IBBI 2. The reply received, if any, either from Company or Resolution Professional in the matter 3. Please share the copy any reply received in this matter either from Company or Resolution Professional 4. The next course of action to be taken in this 5. Time limit required to dispose off the complaint I am attaching the copy of Complaint filed in this matter for ready reference...”
2. The Respondent has replied by stating the following –
“The grievance filed by the applicant regarding the non-implementation of resolution plan is under examination by the Board.”
3. Aggrieved by the same, the Appellant has stated the following in the Appeal –
“...Please give answer to at least query number 2 and 3. No answer was given to any query. Some basic reply must be given. At least give reply for query number 2 and 3. Time was fully taken but no status update was given...”
4. I have carefully examined the application, the response of the Respondent and the Appeal and find that the matter can be decided based on the material available on record. The scope of information disclosure under the RTI Act is circumscribed by RTI Act itself. While the “right to information” flows from section 3 of the RTI Act, it is subject to other provisions of the Act. 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. The Respondent has categorically stated that the grievance of the Appellant is under examination. The law does not mandate sharing of information which is not held by and which is not in control of the IBBI.

5. The other facet of the request is also worth mentioning here. Law permits IBBI to deal with grievances in accordance with the provisions of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (Regulations). These Regulations do not provide for furnishing of copies of correspondence between IBBI and IP to the complainants. Any grievance in this regard cannot be addressed by taking recourse to the RTI Act.
6. It is also relevant to mention that the communications between the IP and IBBI in the context of a complaint related to a corporate insolvency resolution process of a corporate debtor do contain details which are commercial in nature and disclosure of such details about IP or corporate debtor could harm their competitive positions. While providing any information received from the IP, the Respondent cannot be oblivious to the fact that by information disclosure, no harm is caused to the commercial transactions in corporate insolvency process or to the persons associated with the process. Accordingly, the requested information is exempted under section 8(1)(d) of the RTI Act.
7. It is trite to say that IBBI being the regulatory authority for Insolvency Professionals, receives their responses to complaints received against them in respect of processes under the Insolvency and Bankruptcy Code, 2016. Apart from the legal obligation of IP under the governing regulations to ensure confidentiality of the information relating to the insolvency resolution process, many of the information contained in those responses are received under this fiduciary relationship. Therefore, I am convinced that there is fiduciary angle to the relationship between the IP and IBBI, and the disclosure of requested information is exempted under section 8(1)(e) also.
8. Accordingly, in my view, the information as requested by the Appellant in this Appeal cannot be disclosed to him under the RTI Act and I do not find any reason to interfere with the decision of the Respondent.
9. The appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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