

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

2<sup>nd</sup> Floor, Jeevan Vihar Building,  
Sansad Marg, New Delhi- 110 001  
**Dated: 5<sup>th</sup> September, 2020**

**IN THE MATTER OF**

**Mr. Satyen Gupta**

..... Appellant

Vs.

**Central Public Information Officer**

The Insolvency and Bankruptcy Board of India,  
2<sup>nd</sup> Floor, Jeevan Vihar Building,  
Sansad Marg, New Delhi- 110 001.

..... Respondent

**ORDER**

1. This appeal preferred *vide* e-mails dated 8<sup>th</sup> August 2020, 13<sup>th</sup> August 2020 and 23<sup>rd</sup> August 2020 from the appellant is borne out of the application under Right to Information (**RTI**) Registration No. ISBBI/R/E/20/00090. The information sought by the appellant under section 6 of the Right to Information Act, 2005 (**Act**) and the reply given by the respondent are as under:

<b>Sl. No.</b>	<b>Information Sought</b>	<b>Reply by CPIO</b>
1.	<p><i>Mr Nilesch Sharma (IBBI/IP-002/IP-N00104/2017-18/10232) was appointed as Resolution Professional for handling the CIRP work for Dream Procon Private Limited. This company is undertaking a residential project on Plot No-02, Sector-143, Noida.</i></p> <p><i>We understand that IBBI Board is closely monitoring the CIRP process as well as performance of Resolution Professional. I came to know that IBBI has specified several application forms vide departmental circular no IBBI/CIRP/023/2019 dated 14th August, 2019. According to this circular, every Resolution Professional has to submit at these forms at different stages of CIRP process.</i></p> <p><i><u>I would like to have the copy of these forms along with the attachment submitted by him. I feel by now he must have submitted form no IP-1, CIRP-1, 2, 3, 4 and 5 to the board.</u> I would like to have the copies of all these forms as well as the attachment submitted by him along with these forms.</i></p>	<p><i>The information sought is exempt from disclosure under Section 8(1)(d) of the RTI Act, 2005.</i></p>

2. In this appeal, the appellant has submitted the following:
  - a. The RTI application was filed on 3<sup>rd</sup> July 2020, but the response did not come till 2<sup>nd</sup> August 2020. The response rather came on 13<sup>th</sup> August 2020 having an attachment which was neither signed nor dated.
  - b. The CPIO has not given any reasoning for claiming the exemption under section 8(1)(d). He has not given reasoning as to why this information is commercial and confidential in nature and how it will harm the competitive position of a third party.
  - c. The IBBI Circular No. IBBI/CIRP/023/2019 dated 14<sup>th</sup> August 2019 defines that the purpose is to collect, maintain and disseminate information and records relating to insolvency and bankruptcy processes. This objective clearly conveys that this cannot be treated as exempted information. The information is related to monitoring purposes and does not have any trade secrets or intellectual property. Further, the respondent has not understood that this information is meant for dissemination to the stake-holders, which means that information is for the larger public interest.
  - d. The appellant has also requested for a telephonic hearing for presenting his case before the First Appeal Authority.
3. On the contrary, the respondent has submitted the following:
  - a. As regards point (a) of the submissions by the appellant, the RTI application No. ISBBI/R/E/20/00090 was received through the online RTI Portal of the Government on 3<sup>rd</sup> July 2020 and the same was disposed of on the RTI Portal on 30<sup>th</sup> July 2020. The relevant proof of reply as duly submitted to the FAA is as follows:

5	REQUEST DISPOSED OF	30/07/2020	Sunil Kumar- (CPIO)	
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Further, providing a copy through post is not mandatory in the case of receipt of RTI application through online RTI portal.

- b. In respect of points (b) and (c), the respondent has submitted that there is no provision in the Code, which mandates disclosure of these forms to the public. The respondent has further submitted that these forms include commercial information/trade secrets like terms of engagement, details of authorised representative, details of creditors, information about claims, details of valuers, details of applications filed before AA, expression of interest, evaluation matrix, details of resolution applicants, resolution plan, information about preferential, undervalued, fraudulent and preferential transactions. These forms include trade secrets and disclosure of the same is likely to impact competitive position of the corporate debtor, insolvency professional and other stakeholders in the corporate insolvency resolution process of the company in distress. Also, there is no larger public interest that warrants the disclosure of such information and hence the information was not disclosed.
4. This FAA noted that with regard to point (a) under paragraph 2, records indicate that the CPIO had in fact received the RTI request through online RTI portal on 3<sup>rd</sup> July 2020 and same was

replied on the same portal on 30<sup>th</sup> July, 2020 which is within the prescribed limit of 30 days in the Act. In view of the above, this FAA is satisfied that the disposal was made by the CPIO on the online portal within the prescribed time limit of 30 days. Further, it was not obligatory for the CPIO to send a hard copy of the reply which has already been sent on the RTI online portal. The following observations of the Hon'ble CIC in *Shri Maniram Sharma Vs. Niti Aayog* [File No. CIC/SH/C/2014/900143, File No. CIC/SH/C/2014/900144 File No. CIC/SH/C/2014/900155] is relevant in this regard:

*“10. Regarding the RTI application dated 13.1.2014 (File No. CIC/SH/C/2014/900144), Ms. Mary B. Barla, Nodal CPIO stated that since the RTI application was received online, a response was given on 7.3.2014 on the RTI portal and it was elaborated upon on 18.3.2015. In the above context, we note that in OM No. 1/1/2013IR dated 22.4.2013, regarding launch of RTI web portal for online filing of RTI applications, the Department of Personnel & Training stated, inter alia, the following: “This system would work as RTI MIS also. The details of RTI applications received through post should also be entered into this system. The system would also provide for online reply of RTI applications, though reply could be sent by regular post also.”*

*From the above, it is seen that it was not obligatory for the CPIO to send a hard copy of the reply, entered on the RTI web portal, to the Complainant.”* (Emphasis supplied)

As regards the contention of the appellant that the document sent by CPIO is not signed or dated is concerned, this FAA finds that the reply provided on the RTI portal cannot have the signature of the CPIO and that the document is sent by CPIO through RTI portal will only have to reflect the fact that the same is duly authorised. Accordingly, this issue does not deserve to be further considered.

5. In regard to points (b) and (c) under paragraph 2, this FAA verified the IBBI Circular No. IBBI/CIRP/023/2019 dated 14<sup>th</sup> August 2019 and noted that the information sought by the IBBI from Insolvency Professionals in Forms Nos. IP-1, CIRP-1, 2, 3, 4, 5 and 6 are as follows:

Form No	Period Covered and Scope
IP 1	<b>Pre-Assignment:</b> This includes consent to accept assignment of an IP as IRP / RP / Liquidator / Bankruptcy Trustee, the details of IP and the Applicant, the details of the person which will undergo the process, terms of consent, terms of engagement, filing of application before AA and withdrawal before admission, etc.
CIRP 1	<b>From Commencement of CIRP till Issue of Public Announcement:</b> This includes details of IRP, CD, and the Applicant, admission of application by AA, public announcement, details of suggested Authorised Representatives, non-compliances with the provisions of the Code and other laws applicable to the CD, etc.
CIRP 2	<b>From Public Announcement till replacement of IRP:</b> This includes details of Authorised Representative selected by IRPs for a class of creditors, taking over management of the CD, receipt and verification of claims, constitution of Committee of Creditors (CoC), first meeting of CoC, confirmation / replacement of IRP, applications seeking co-operation of management (if any), expenses

	incurred on or by IRP, relationship of IRP with the CD, financial creditors and Professionals, support services sought from IPE, non-compliances with the provisions of the Code and other laws applicable to the CD, etc.
CIRP 3	<b>From Appointment of RP till issue of Information Memorandum (IM) to Members of CoC:</b> This includes details of RP, details of registered valuers, handing over of records of CD by IRP to RP, taking over management of the CD, applications seeking co-operation of management (if any), details in IM, non-compliances with the provisions of the Code and other laws applicable to the CD, etc.
CIRP 4	<b>From Issue of IM till issue of Request for Resolution Plans (RFRP):</b> This includes expression of interest, request for resolution plans (RFRP) and modification thereof, evaluation matrix, non-compliances with the provisions of the Code and other laws applicable to the CD, if any, etc.
CIRP 5	<b>From Issue of RFRP till completion of CIRP:</b> This includes updated list of claimants, updated CoC, details of the resolution applicants, details of resolution plans received, details of approval or rejection of resolution plans by CoC, application filed with AA for approval of resolution plan; details of resolution plan approved by the AA, initiation of liquidation, if applicable, expenses incurred on or by RP, appointment of professionals and the terms of appointment, relationship of the RP with the CD, financial creditors, and professionals, support services sought from IPE, non-compliances with the provisions of the Code and other laws applicable to the CD, if any, etc
CIRP 6	<b>Event Specific:</b> This includes: a. Filing of application in respect of preferential transaction, undervalued transaction, fraudulent transaction, and extortionate transaction; b. Raising interim finance; c. Insolvency resolution process of guarantors; d. Extension of period of CIRP and exclusion of time; e. Premature closure of CIRP (appeal, settlement, withdrawal, etc.); f. Request for liquidation before completion of CIRP; and g. Non implementation of resolution plan as approved by the AA.

6. On perusal of the above Forms, it is evident that these Forms seek from Insolvency Professionals, dealing with corporate insolvency resolution processes, commercial information/trade secrets such as terms of engagement, details of authorised representative, details of creditors, information about claims, details of valuers, details of applications filed before AA, expression of interest, evaluation matrix, details of resolution applicants, resolution plan, information about preferential, undervalued, fraudulent and preferential transactions. The said online platform hosted on the website of the IBBI at <https://www.ibbi.gov.in> is to facilitate filings by registered Insolvency Professionals for the purposes of monitoring corporate insolvency resolution processes. The Insolvency Professional is allowed to access the said platform with the help of a unique username and password provided by the IBBI, after affixing DSC or after e-signing. This being the nature of e-filing by Insolvency Professionals, it is concluded that the same involve trade secrets and disclosure of the same has every probability of impact competitive position of the corporate debtor, insolvency professional and other stakeholders and compromising such competitive position. In this regard, the 'Guide on Right to Information Act, 2005' issued vide OM No. 1/32/2013-IR dated 28th November, 2013 of DoPT, states that:

*“15. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such information shall not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.”*

7. The Hon’ble Central Information Commission (CIC) in the matter of *Dr. S. P. Udayakumar Vs. Mr. S.K. Srivastava*, CIC/SG/A/2012/000544, observed:

*“...in order to claim the exemption under Section 8(1)(d) of the RTI Act, the PIO must establish that disclosure of the information sought (which may include commercial or trade secrets, intellectual property or similar information) would result in harming the competitive position of a third party.”*

Similarly, in *P. Suresh Vs. Central Public Information Officer, GAIL India Limited*, CIC/SH/A/2016/000755, the Hon’ble CIC observed:

*“We have considered the submissions of both the parties and note that the quantity of APM gas to be supplied to various parties in Nariman Zone is a matter of commercial confidence between the Respondents and the parties concerned. The Appellant’s claim, that there should be transparency regarding the quantity of APM gas allotted to various parties so as to know whether the Respondents have fulfilled the supply commitment, cannot be treated as the ground of larger public interest... Therefore, we uphold the decision of the Respondents to deny the information under Section 8 (1) (d) of the RTI Act in this case also.”*

8. In view of the position above, points (b) and (c) under paragraph 2 are found against the appellant finding that the information sought by the appellant are exempted under Section 8(1)(d) of the Act. Also, no sufficient cause has been shown by the appellant to this FAA to satisfy that larger public interest warrants disclosure of such information.
9. With respect to point (d) under paragraph 2, the request of the appellant for telephonic hearing, this FAA has considered the same and found that it is not necessary as the facts and legal position in the matter are crystal clear and no useful purpose would be served.
10. The appeal is, accordingly, disposed of as per the foregoing.

(Sd/-)

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

Executive Director and First Appellate Authority

**Copy to:**

1. Appellant, Mr. Satyen Gupta.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2<sup>nd</sup> Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.