

**BEFORE THE 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: 21<sup>st</sup> June, 2024**

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI  
Appeal Registration No. ISBBI/A/E/24/00013**

**IN THE MATTER OF**

**Prashant Sheth**

... 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

- 
1. The Appellant has filed the present Appeal dated 26<sup>th</sup> May 2024, challenging the communication of the Respondent dated 30<sup>th</sup> April 2024 against his RTI Application number ISBBI/R/P/24/00015 dated 26<sup>th</sup> April 2024. In the RTI Application, the Appellant had stated the following -

“...

**3) Particulars of information required:**

*I had lodged a complaint with your organisation on or around June 19, 2019 which has been disposed of order vide File No.Comp-non/78/20i9-IBBI/64io on or around December 23, 2019 as the order is inconclusive and without application of mind.*

**i) Subject matter of the information:**

*I need all the documents in the File No.Comp-11011/78/2019-IBBI/ 6410 of December 23, 2019 and passed by the Competent Authority who was dealing with the said complain under the Insolvency and Bankruptcy Code 2016 (IBC, 2016).*

*This Complaint was lodged against one Mr. Kuldeep Verma appointed by the relevant tribunal which deals with Company Law Tribunal, New Delhi Bench No, III appointed as Interim Resolution Professional (IPR for Short) to resolve the dispute arose between myself and M/s Hindustan Paper Corporation Ltd.*

*This company has been declared as Corporate Debtor and owes me Rs 20 lakhs the Security Deposits which was paid to the said firm towards Stockistship Agreement dated September 06, 2012. This was a refundable amount with interest upon my terminating Authorised Stockist Agreement as per my letter dated. 31.10.2016.*

*In case of surrendering the Stockistship to the company, M/s Hindustan Paper Corporation Ltd is obliged to refund the same with interest as applicable. The said company is a Government of India undertaking.*

*It is an admitted position of the said company vide their letter dated. March 15, 2017 and it is bound by the same Stockistship Agreement to refund the Security Deposit with interest thereon and the matter was referred to the IPR on whose behalf Mr. Verma was looking into the matter.*

*However, Mr. Verma had unilaterally and arbitrarily declared me an Operational Creditor for HPC.*

*Further my Complaint was disposed without any hearing or according me any opportunity to dispose of my case without a fair trial and thereby placing my personal liquidity in red.*

**ii) Time period to which the information relates:**

*From January 2017 till date.*

**iii) Description of Information:**

- 1) Please furnish me reasons recorded by the concerned Interim Resolution Professional (IPR for Short).

2) *All the -written submissions submitted by M/s HPCL during the course of any hearing of the matter held by IPR.*

3) *Duly attested copies of any correspondence or submissions made by the Government of India in this case.*

4) *I am also filing a copy of this application online on the website of IBBI marked even date.*

5) *I have paid a fee of Rs.10=00(Rupees Ten Only) towards cost of seeking this information by enclosing Indian Postal Order No/s. 27F180647 of equivalent amount in terms of RTI (Regulation of Cost & Fees) Rule, 2005.*

***iv) Whether the information is required by post or in person:***

*Please furnish me the information/ document/ s sought in person after contacting me on my cell number furnished herein above and by registered post.”*

2. The Respondent had provided the following reply –

*“The copy of the noting in the matter and the letter sent to complainant is attached herewith. With respect to the reply filed by the IRP, the same is exempted from disclosure under section 8(1)(e) of the RTI Act, 2005.”*

3. Aggrieved by the same, the Appellant has submitted the following in the Appeal –

*“Grounds for challenge -*

*1. The information sought for by the Appellant is not covered under Section 8 (1) (e) of the RTI Act.*

*2. The information sought for by the Appellant is not information that is available to the Liquidator in his fiduciary capacity.*

*3. There are no reasons assigned for classifying the claim of Appellant as an operational creditor apart from the blanket statement that other similar cases have been treated as operational creditors.*

*4. There are no reasons assigned for classifying the case of Appellant as an operational creditor thereby breaching the principles of natural justice.*

*5. Observations of the Information Officer are prima facie in nature and a complaint cannot be closed on the basis of prima facie views.*

*6. The officer failed to give a personal hearing to the Appellant.*

*7. The records on the basis of which the claim of Appellant has been classified as operational creditor have not been provided by the officer.*

*8. A copy of the reply of the Liquidator to the Application of the Appellant has not been made available.*

*9. There has been a violation of Regulation 5 (3) of the IBBI (Liquidation Process) Regulations 2016 as the minutes of the meeting of stakeholders have not been made available to the Appellant.*

*10. The minutes of the stakeholders meeting ought to be provided to the Appellant.*

*11. The Appellant has sought for reasons for classifying the claim of Appellant as an operational creditor have not been provided.*

*12. In the above circumstances it cannot be said that there has been no breach of the Regulations.”*

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.
5. The question that falls for consideration is as to whether the response of resolution professional (RP) to a complaint can be disclosed to the Appellant by making request in the Appeal. In my view, the Appellant has no right to ask for a copy of the response of the IP to a complaint 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 complainant. Any grievance in this regard cannot be addressed by taking recourse to the RTI Act

6. I also deem it appropriate to examine the scope of provisions of section 8(1)(d) of the RTI Act, which reads as under: -

*"(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, (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;"*
7. It is pertinent to mention that in *Tata Motors Limited & Anr. v. State of West Bengal & Ors.* W.P.(C) No. 1773/2008 decided on 12/01/2010, the Hon'ble Calcutta High Court, while discussing scope of section 8(1)(d) of the RTI Act observed that- *"The term commercial confidence has not been defined as such. But the word commercial is defined in the Shorter Oxford English Dictionary as something 'pertaining to or engaged in commerce. Interested in financial rather than artistry; likely to make a profit; regarded as a mere matter of business'".* Thus, the term 'commercial confidence' comprises of commercial, business or financial information, which entities keep as confidential, or do not bring to the knowledge of the public, mostly with an intention to maintain an advantage over its competitors or to protect its commercial secrets from use by its competitors.
8. I note that the communications between the IP and IBBI are in the context of a complaint related to a corporate insolvency resolution process of a corporate debtor and 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).
9. I further note that in *Central Public Information Officer, Supreme Court of India V.s. Subhash Chandra Agarwal* (Civil Appeal Nos. 10044, 10045 and 2683 of 2010), Hon'ble Supreme Court of India observed that: *"Fiduciary relationships, regardless of whether they are formal, informal, voluntary or involuntary, must satisfy the four conditions for a relationship to classify as a fiduciary relationship. In each of the four principles, the emphasis is on trust, reliance, the fiduciary's superior power or dominant position and corresponding dependence of the beneficiary on the fiduciary which imposes responsibility on the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself..... What would distinguish non-fiduciary relationship from fiduciary relationship or an act is the requirement of trust reposed, higher standard of good faith and honesty required on the part of the fiduciary with reference to a particular transaction(s) due to moral, personal or statutory responsibility of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary."*
10. 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.

11. The Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information nor has he disclosed as to how his interest is affected by non-disclosure of requested information.
12. Further, it appears that the Appellant is aggrieved by the treatment given as operational creditor in the process under the Insolvency and Bankruptcy Code, 2016. = The grievances of the Appellant cannot be dealt under RTI Act. The Hon'ble CIC in *M Jameel Basha Vs. CPIO, Ministry of Personnel Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi -110001, File No: CIC/MPERS/A/2017/158527/SD* (Decision dated 06.05.2019), has observed the following:  
*“Commission concedes with the submission of the CPIO as no information has been sought as per Section 2(f) of the RTI Act. It may be noted that under RTI Act, CPIO is not supposed to create information or interpret/clarify/deduct information in respect of queries/clarifications. Similarly, redressal of grievance, non-compliance of rules, contesting the actions of respondent public authority and suggesting correction in government policies are outside the purview of the RTI Act.”*
13. In view of above, I find that there is no need to interfere with the decision of the Respondent. The appeal is accordingly dismissed

**Sd/**  
**(Jithesh John)**  
First Appellate Authority

**Copy to:**

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