

**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: 5th January, 2022

RTI Appeal Registration No. ISBBI/A/E/21/00036

IN THE MATTER OF

Satyen Gupta

... 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 12th December 2021, challenging the communication of the Respondent dated 18th November 2021 with regard to his application no. ISBBI/R/E/21/00173 dated 22nd October 2021 filed under the Right to Information Act, 2005 (RTI Act).
2. The Appellant, in his application, has requested for following documents with respect to his complaint filed with IBBI having grievance registration number COMP-11015/227/2021-IBBI dated 27.08.2021 -
 - a. Copy of the forwarding letter sent by IBBI to Insolvency Professional.
 - b. Copy of Response submitted by Insolvency Professional to IBBI.
 - c. Copy of Letter after the disposal of this complaint to Mr. Satyen Gupta.
3. The Respondent, in his response dated 8th December 2021, had replied stating that the complaint is under process.
4. Being dissatisfied with above response, the Appellant has filed this Appeal stating that ‘..... *para-wise response was not given by CPIO..... I have raised 3 questions and asked for 3 documents, however CPIO has not provided any document to me.*’
5. I have carefully considered the application, response of the Respondent and the Appeal; and find that the matter can be decided based on the material available on record. The Appellant’s “*right to information*” envisaged in section 3 of the RTI Act is subject to the provisions of the Act. In terms of section 2(f) of the RTI Act, ‘*information*’ means any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which

can be accessed by a public authority under any other law for the time being in force. Further, 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. Thus, if the public authority holds any information in the form of data, statistics, abstracts, etc. an applicant can have access to the same under the RTI Act subject to exemptions under section 8.

6. On perusal of Appellant’s request in his application and in this Appeal, I find that the Appellant has sought for three specific documents, however, the Respondent has disposed of the request summarily. The Respondent has not appreciated whether the documents asked for are held by or are under control of IBBI? and; if so, whether the disclosure thereof is exempted under section 8 or they cannot be shared under section 7(9) of the RTI Act. The response of the Respondent is obviously denial without any specific reason. The Respondent is advised to take into account the requirements of law while dealing with any information requests under the RTI Act
7. Coming to the specific information requests of the Appellant, I note that the communications between the IP and IBBI, in the context of a complaint handling, are 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 competent authorities 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.
8. 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. I note that in *Central Public Information Officer, Supreme Court of India Vs. 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.*”
9. 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.

10. Also, I am not satisfied as to how a larger public interest is involved warranting disclosure of requested information. As such I find no valid ground to outweigh the scope of exemptions under section 8(1)(d) and (e). The Appellant has no right to ask for a copy of letter sent by IBBI to the IP and the response of the IP to the same in accordance with the provisions of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (Regulations). If the complainant has any grievance regarding disposal of his complaint, the remedy is available to him by filing review under regulation 7(5) of the Regulations.
11. I find that copy of letter after the disposal of the complaint to the Appellant, if available on records is not exempt under the provisions of section 8 and can not qualify for withholding it under section 7(9). I, therefore, direct the Respondent to provide copy of the decision taken on the complaint of the Appellant to him within 10 days of receipt of this Order.
12. The Appeal is accordingly disposed of.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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