

**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: 3rd August, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00026**

IN THE MATTER OF

Ramesh Chandra

... 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

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1. The Appellant has filed the present Appeal dated 8th July 2023, challenging the communication of the Respondent dated 30th June 2023 in respect of his RTI application no. ISBBI/R/E/23/00079 filed under the Right to Information Act (RTI Act). 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.
 2. It is noted that in his RTI application, the Appellant had requested for the following in respect of the complaints filed against Mr. Vivek Raheja, Resolution Professional -
 - i). ... *Kindly provide Trading Engineers International Ltd MSME Registration Certificate attached with CoC meeting on 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020, submitted by Mr. Vivek Raheja & verified by IBBI in order date 17-02-2023.*
 - ii) *Please provide information on action taken by IBBI against Mr. Vivek Raheja while doing inspection in 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020, for violation of section IBC code section 24.*
 - iii) ... *Please provide information on action taken by IBBI against Mr. Vivek Raheja while doing inspection in 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020 for suspended director has not provided Inventory details, whereas same suspended Director was Resolution Applicant.*
 - iv) *Please provide information on action taken by IBBI against Mr. Vivek Raheja while doing inspection in 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020 for non-cooperation application u/s 19(2) against suspended director is pending & RP did not receive any documents, whereas same suspended Director was Resolution Applicant.*
 - v) ... *Please provide information on action taken by IBBI against Mr. Vivek Raheja while doing inspection in 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020 for action taken on 8.36 Crore funds siphoned from company, as specified in Transaction cum forensic report.*
 - vi) ... *Kindly provide information, documents based on which Mr Jayanti Prasad. WTM IBBI passed order date 17-02-2023 that Suspended Director was MSME during 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020 & section 240A, 29A is not Applicable."*
 3. The Respondent has provided the following reply –

“1) With respect to information sought in point (i) of para 4 of RTI application - The para 2.29 quoted by the applicant is the submission made by the Insolvency Professional. So far as MSME certificate mentioned in 10th, 11th and 12 CoC minutes is concerned, the same is not available with IBBI.

2) With respect to information sought in point (ii) to (v) of para 1 of RTI application - The Board has taken cognizance of certain new allegations including this brought to its notice through various complaints and grievances received subsequent to inspection earlier conducted in the matter of CIRP of Trading Engineers Limited. A fresh investigation into these allegations has been ordered in terms of IBBI (Inspection and Investigation) Regulations, 2017 and the same is underway.

3) With respect to information sought in point (vi) of para 4 of RTI application – The order dated 17.02.2023 is a self-contained reasoned speaking order passed by the DC following the principles of natural justice.”

4. Aggrieved by the same, the Appellant has, while reiterating the request made in the RTI application, has submitted the following in the Appeal –

“1. Hon Prime Minister declaring to take actions against fraud, corruption, whereas biggest fraud is being done in IBBI, directly under nose. PMO, CVC, MCA are forwarding all complaints to MCA, IBBI (who are itself doing fraud, corruption) PMO, CVC, MCA should get investigated thru CBI.

2. Fraud, Collusion, Cartel, Corruption of Resolution Professional Mr. Vivek Raheja, Ex-director Mr. Sushant Chhabra, CoC members i.e., SBI SAMG-ND, BoB SAMB ND, Mr. DP Goel, Conquerent Control System Pvt Ltd, IBBI Inspection team, Disciplinary Committee, Mr. Jayant Prasad Whole time member, IBBI (156 Crore) in Trading Engineers International Ltd IB-1416/2019

3. Fraud, corruption in IBBI deliberately preplanned order IBBI/DC/152/2023 date 17-02-2023 by Disciplinary committee, Mr. Jayanti Prasad, Whole time Member, IBBI, Mr. Vivek Raheja & others... Company Trading Engineers International was not MSME on 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020.”

5. 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. 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.*” It is pertinent to mention here that the Appellant’s “right to information” flows from section 3 of the RTI Act and the said right is subject to the provisions of the Act. 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. 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. I note that the Appellant asked for the copy of MSME Registration Certificate. In this regard, the Respondent is expected to provide information as available on record. The CPIO cannot be expected to create and provide any information which could be assumed or imagined by the information seeker. 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 that: “*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, noncompliance of rules, contesting the actions of respondent public authority and suggesting correction in government policies are outside the purview of the RTI Act.*”

It is also relevant to mention that the Hon'ble CIC in *Mr. Subrata Guha Ray Vs. CPIO, Appeal No. CIC/SB/A/2016/001025/CBECE-BJ* (Order dated 03.03.2017), has inter-alia observed that: "... under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions."

7. With regard to query 2, 3, 4 and 5, the Appellant has asked for the action taken by IBBI on the facts stated by him. In this regard, the Respondent has stated that a fresh investigation into these allegations has been ordered in terms of IBBI (Inspection and Investigation) Regulations, 2017 and the same is underway. 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. This definition contemplate providing of material in the forms of records, documents, opinions, advices, etc. It does not include giving opinions or initiating actions on representations/complaints as asked by the Appellant. The grievances of the Appellant against the conduct of CIRP by insolvency professional 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, noncompliance of rules, contesting the actions of respondent public authority and suggesting correction in government policies are outside the purview of the RTI Act.*"
8. With regard to query 6, it is pertinent to mention that IBBI handles the grievances and complaints against Insolvency Professionals in the manner specified in IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. If the prima facie case is made out, further course of action is followed in accordance with Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations). Neither the Insolvency and Bankruptcy Code, 2016 (IBC) nor these Regulations require IBBI to provide the Appellant with materials considered by the Disciplinary Committee. These documents are used and relied upon in respect of a disciplinary proceedings against a registered insolvency professional and law does not cast obligations to share these documents. Moreover, the order of the Disciplinary Committee reflects the final action taken against the IP and is final in all respects as asked for. Accordingly, no further interference is required with the response of the Respondent.
9. In view of the above, I do not find any reason to issue any direction to the Respondent as asked for in this Appeal. Accordingly, the Appeal is disposed of.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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