

**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: 17<sup>th</sup> March, 2023**

**IN THE MATTER OF**

**C. S. Maurya**

... 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. The Appellant has filed the present Appeal dated 17<sup>th</sup> February 2023, challenging the communication of the Respondent dated 13<sup>th</sup> February 2023 with regard to his RTI Application No. ISBBI/R/P/23/00001 dated 16<sup>th</sup> December 2022 (received by IBBI on 21<sup>st</sup> December 2022) filed under the Right to Information Act, 2005 (RTI Act). The request of the Appellant and the reply of the Respondent was as follows –

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Sl. No.	Information Sought	Response of CPIO
1.	<i>Copy of the clarification called by IBBI from Mr. Debashish Nanda and replies submitted by him.</i>	<i>The said document has been provided to this office in a fiduciary capacity, thus the information is exempted under Section 8(1)(e) of the Right to Information Act, 2005.</i>
2.	<i>Copies of the official notes to dispose of my complaint that the board has not found any actionable material in it.</i>	<i>Copy of the noting is attached.</i>
3.	<i>CIRP initiated on 26/11/2019 with no end in near future for whatever reason? What is the accountability of RP?</i>	<i>It is not covered under the ambit of “information” as defined under section 2(f) the Right to information Act, 2005.</i>
4.	<i>Suspended management can get status quo in month then what is the responsibility of RP to get it vacated</i>	<i>It is not covered under the ambit of “information” as defined under section 2(f) the Right to information Act, 2005.</i>
5.	<i>How can I appeal against IBBI Decision to dispose of my complaint No. 11011 vide letter 13.12.2022</i>	<i>Regulation 7 (5) of IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 stipulates that if the complainant is not satisfied with the decision of the Board under sub-regulation (4), he may request a review of such decision within thirty days.</i>

2. Aggrieved by the response of the Respondent, the Appellant has broadly submitted the following in this Appeal: –
  - a. With regard to query (1), the Respondent has submitted that section 8(1)(e) is not applicable since he is one of the stakeholders as he is a homebuyer in CIRP of RNA Corp Pvt. Ltd. As a stakeholder in CoC and due to delay in CIRP, it is his constitutional right to get all information, papers duly attested by concerned official from date of his complaint dated 01.08.2022 to date of disposal i.e. 13.12.2022.
  - b. With regard to query (2), he has submitted that the document provided is highly edited and cannot be treated as “*information*”. Further, even when the complaint was found to be “*non-frivolous*”, it was disposed by IBBI as no actionable material was found.
  - c. With regard to query (3) and (4), he has submitted that an RP is accountable for the CIRP, and he being a stakeholder have right to ask IBBI as to what action is being taken against him. Further, he has submitted that he being a stakeholders, victim and sufferer in CIRP, have 100% right to get all documents duly certified xerox copies of documents related to his complaint against Mr. Debashish Nanda, so as to enable him to file a review against disposal of his complaint.
3. 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.
4. The question that falls for consideration is as to whether the response of IP 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.
5. 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;”*
6. 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.*

7. 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).
8. 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."*
9. 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.
10. 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.
11. In reference to query (2), the Respondent has submitted that the document provided is highly edited and cannot be treated as "information". In this regard, 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 of the RTI Act. 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. It is also clear that the "right to information" under section 3 of the RTI Act is circumscribed by RTI Act itself as the right is limited within scope of 'information' as defined under section 2(f) and is subject to other provisions including those under section 8 of the Act. As stated in the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28<sup>th</sup> November 2013 –

*"The Public Information Officer is not supposed to create information that is not a part of the record of the public authority. The Public Information Officer is also not required to furnish information which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions."*

12. In the instant case, the Respondent has provided the information available on record. I note that the complaints received by the Board are to be dealt 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 aforesaid investigation report to the Appellant. Moreover, if any 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. The Appellant has liberty to pursue the same and raise his grievance before the appropriate forum. The RTI Act cannot be used for redressal of grievances.
13. With reference to query no. (3) and (4) pertaining to reasons for delay in CIRP, accountability of IP and responsibility of IP in vacation of *status quo* by suspended management, I note that these queries are in the nature of inquiries seeking a response from CPIO. The Respondent is not expected to provide replies to such inquiries or provide reasons as to why a certain thing was done or not done. Such queries of the Appellant are beyond the scope of 'information' and 'right to information' under the RTI Act. Merely because the Appellant is a stakeholder in CIRP, does not have a right to seek answers to inquiries under RTI Act.
14. In view of the above, the Appeal is disposed of.

**Sd/**  
**(Santosh Kumar Shukla)**  
First Appellate Authority

**Copy to:**

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