

**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: 29<sup>th</sup> January, 2024**

**Order under section 19 of the Right to Information Act, 2005 (RTI Act)**

**IN THE MATTER OF**

**Mr. Subrata Monindranath Maity**

... 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 this Appeal dated 16<sup>th</sup> December 2023 (received over e-office on 22<sup>nd</sup> December 2023) against the reply provided by CPIO on the RTI Application No. ISBBI/R/P/00023 *vide* letter dated 17<sup>th</sup> November 2023.
2. The request of Appellant and reply of Respondent were as follows –

Sl. No.	Information sought	Reply
1.	<i>Is an Insolvency Professional registered with IBBI a Public Servant in terms of the Criminal Procedure Code, 1973 and Indian Penal Code. 1860/ PC Act 2018 ?</i>	<i>The applicant has sought opinion which is not covered under the ambit of definition of 'information' under section 2(f) of the Right to Information Act, 2005.</i>
2.	<i>Please provide details as well as list of all sanctions granted / rejected by IBBI till the date of this RTI application.</i>	<i>Disclosure of details of sanctions provided is exempted under section 8(1)(g) and (h) of the RTI Act, 2005.</i>
3.	<i>Who is the Competent Authority to grant / reject sanction to Investigate / Prosecute an Insolvency Professional?</i>	<i>Executive Director is competent to grant / reject sanction to investigate/Prosecute an Insolvency Professional. The same was decided during GBM held on 18<sup>th</sup> August, 2023. Minutes of the same are attached herewith</i>
4.	<i>Please provide any circular / notice or any other document of IBBI relating the grant / rejection of sanction to Investigate /Prosecute</i>	<i>Provisions related to Investigation by IBBI are in accordance with Section 196 and 218 of IBC, 2016. Investigations are conducted in accordance with Inspection and Investigation Regulations, 2017. Further, provision related to prosecution has been mentioned in section 236 of IBC.2016</i>
5.	<i>What is the procedure adopted by IBBI for giving sanction to Investigate / Prosecute an Insolvency Professional?</i>	<i>Disclosure of details of sanctions provided is exempted under section 8(1)(g) and (h) of the RTI Act, 2005.</i>
6.	<i>Please provide any circular / notice or any other document stating the procedure to be adopted by IBBI for granting sanction to prosecute</i>	

7.	<i>Please provide details of sanction given to CBI under section 17 of PC Act or any other section of PC Act or any other act to Investigate / Prosecute Insolvency Professional Mr. Subrata Maity IBBI Reg. No. IBBI/IPA-001/IP00884/2017-2018/11481</i>	
8.	<i>Whether the sanction given is conditional or qualified?</i>	<i>The applicant has sought opinion which is not covered under the ambit of definition of 'information' under section 2(f) of the Right to Information Act, 2005.</i>

3. Aggrieved by the same, the Appellant has submitted the following in this Appeal –  
*“In these facts and circumstances of the present matter, the learned competent appellate authority may be pleased to direct the concerned officials (including the CPI) to comply with the following*  
A) *Full, Complete and Correct information duly certified/endorsed be supplied immediately without any further delay by registered/ speed post at my address with an advance scanned copy over email.*  
B) *The information be now supplied free of any cost(s), inclusive of annexures*  
C) *Impose of costs on the respondents and award of costs as compensation for undue delays and mental harassment along with expenses incurred on pursuing First Appeal*  
D) *Liberty for personal presence (or through duly authorized attorney or advocate) to argue/ defend the First Appeal.*  
*The following contentions for point nos. (1-8) in RTI for which the above prayers have been made and thus are requested to be perused in detail -*  
1. *The reply at sr. no. 2 “Disclosures of details of sanctions provided is exempted under section 8(1)(g) & (h) of the RTI Act, 2005” is partially incorrect in as much as the applicant is seeking a ‘list of all sanctions granted / rejected by IBBI’. Furnishing of a list would not in any manner endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose and would also not impede the process of investigation for law enforcement or security.*  
2. *The reply at sr. no. 3 is partial and incomplete. The respondent has purposefully and deliberately not attached the minutes of GBM dated 18.08.2023*  
3. *The reply at sr. no. 4 is not an information as the respondent has not provided any circular / notice or any other document as requested by the applicant. The respondent has merely reiterated of the sections of IBC without providing the correct information.*  
4. *The reply at sr. no. 5, 6 & 7 “Disclosures of details of sanctions provided is exempted under section 8(1)(g) & (h) of the RT Act, 2005” is incorrect as the applicant is seeking information that would neither endanger the life nor physical safety of any person. It would also not impede the process of investigation for law enforcement or security*  
5. *The reply at sr. no. 8 is covered under section 2(f) as the respondent sought documents pertaining sanction in order to ascertain if the sanction is conditional or qualified.”*
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 Appeal has been made on 7 out of 8 points above, and included detailed interpretation of provisions of RTI Act. In view of the research required to pass this Order and exigencies of other official work which was of urgent and unavoidable nature, it has taken time beyond 30 days to pass the Order. Accordingly, the Appeal is disposed in 45 days instead of 30 days.
5. 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. From the Appeal, it is noted that the Appellant has raised objections against query no. 2 to 8. With regard to query 2, the Appellant has asked for "*the details as well as list of all sanctions granted / rejected by IBBI*". I note that the information on sanctions will include the (i) name of sanctioning authority, (ii) party's details against whom sanction is granted and (iii) details of authority seeking sanction. The disclosure of name of parties and their details against whom sanction is granted / rejected, may cause unwarranted invasion on privacy of such individual against whom sanction has been granted / rejected. Also, such information may be used by anyone for impeding the prosecution / investigation under law against such people and there is apprehension regarding the same. The Respondent has to be cautious of the same. Also, the Appellant has not shown any larger public interest which warrants the disclosure of such information. Therefore, in my opinion, the information sought is exempted under section 8(1)(h) and (j) of the RTI Act.
7. With regard to query 3, the Appellant has asked for the competent authority for grant / rejection of sanction / investigation. In this regard, the Respondent has stated that the Executive Director in IBBI is the competent authority and a reference has been made to minutes of "GBM held on 18 August 2023". The Appellant is aggrieved that he has not received the minutes of the same. In this regard, I direct the Respondent to provide the said minutes within 10 days of this Order.
8. With regard to query 4, the Appellant has asked for "*any circular / notice or any other document of IBBI*" relating to the grant / rejection of sanction to Investigate /Prosecute. I note that the Respondent has provided the relevant sections of the Insolvency and Bankruptcy Code, 2016 along-with Regulations regarding investigation / prosecution by IBBI. I also note that the copy of the Insolvency and Bankruptcy Code 2016 and the IBBI (Inspection and Investigation) Regulations, 2017 are already available in public domain and therefore, same can be easily accessed by the Appellant and same are not required to be provided by the Respondent under the RTI Act as the same are in public domain. In this regard, the Hon'ble CIC has in the matter of *K. Lall Vs. M.K. Bagri* (File no. CIC/AT/A/2007/00112) had observed that "*...unless information is exclusively held and controlled by a public authority, that information cannot be said to be information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a predetermined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act.*"
9. With regard to query 5 and 6, the Appellant has asked for procedure adopted by IBBI (including any circular / notice or other document) to investigate / prosecute and insolvency professional. The Respondent has denied the information as being exempted under section 8(1)(g) and (h) of the RTI Act, 2005. I note that for procedure of investigation, the Respondent may refer to the Insolvency and Bankruptcy Code 2016 read with the IBBI (Inspection and Investigation) Regulations, 2017 and the Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017 which are already available in public domain. For knowing procedure on prosecution, the Respondent may refer to section

236 of the Insolvency and Bankruptcy Code 2016 read with Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017, which are already available in public domain.

10. With regard to query 7, the Appellant wants to know the details of sanction given to CBI under section 17 of PC Act or any other section of PC Act or any other Act to Investigate / Prosecute him. The Respondent has denied the information under section 8(1)(g) and 8(1)(h) of the RTI Act. Section 8(1)(g) exempts information which would endanger the life or physical safety of person or identify the source of information or assistance given in confidence for law enforcement or security purpose. As the information pertains to Appellant himself, how can the same be said to endanger his life or physical safety. In my view, the information requested is not exempted under section 8(1)(g).

On the other hand, section 8(1)(h) exempts information which would impede the process of investigation or apprehension or prosecution of offenders. Thus, if the information provided, would cause any hindrance to the investigation or apprehension or prosecution of offenders, same is exempted. The language employed is '*apprehension*'. Thus, the apprehension of the competent authority is also considered in the legislation. The Respondent is expected to consider in the event of furnishing such information, which all are connected with the investigation or prosecution of offenders and providing of such information, would impede the process, then, he is empowered to exercise power of discretion and reject the application of the information seeker. Thus, the scope of section 8(1)(h) is to be understood, with reference to the context and to the subjective satisfaction of the authorities competent. The Appellant wants to know details of any sanction given to Central Bureau of Investigation (CBI). I am of the view that such information, if provided, will create unnecessary hampering of the investigation or the prosecution. During the course of such investigation or prosecution, if information is provided, then undoubtedly the same may hamper further investigation and disrupt the prosecution to be conducted by the CBI. If such nature of information or documents are provided, then it may not be possible to proceed with the investigation / prosecution for the purpose of establishing the offence. Therefore, the requested information is exempted under section 8(1)(h) of the RTI Act.

Also, if sanctions for prosecutions to CBI are disclosed, then the exemption granted to CBI from applicability of the RTI Act, in terms of section 24(1) would become meaningless. If RTI applicants would get information from another public authority, the very information that they cannot get from the CBI or information, inexplicably linked to the information and materials provided by the CBI to the public authority, would become available to them. What an information seeker could not able to get from the CBI, cannot attempt to get from other agencies. Such calculated applications filed under the RTI Act, at no circumstances, are entertainable.

11. With regard to query 8, as the details of sanction to CBI cannot be disclosed, the information as to whether these prosecutions are conditional or qualified can also not be disclosed as the same is inter-linked with query 7.
12. Accordingly, the Appeal is disposed of with directions to Respondent to ensure compliance of this Order within 10 days.

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

Copy to:

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