

**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: 27<sup>th</sup> July, 2022**

**RTI Appeal Registration No. ISBBI/A/E/22/00031**

**IN THE MATTER OF**

**Rajat Kumar Mehra**

... 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 29<sup>th</sup> June 2022, challenging the communication of the Respondent dated 23<sup>rd</sup> June 2022 with regard to his RTI Application No. ISBBI/R/E/22/00158 dated 17<sup>th</sup> June 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has in the context of his Valuation Examination *inter-alia* requested for the following –

*“1. I am an aspirant appearing in Valuation Examination under Registration No. NISM-202100120643 Enrollment No. 2200157106*

*(i) Please provide me certified break up of my marks into 1 and 2 marks questions under following format borrowed from format result provided mechanically by machine for my attempt on 17.6.2022.*

*a. Date*

*b. Bifurcation of marks obtained into 1 and 2 marks Questions*

*c. No. of Questions answered correctly of 1 mark and answered wrong as per you*

*d. No. of Questions answered correctly of 2 marks and answered wrong as per you.*

*(ii) Please provide me certified copy of feedback submitted by me online after examination*

*(iii) Please provide camera recordings of Varanasi NSEiT from 1 PM till 4 PM of entry gate and inside.*

*(iv) Please provide certified copy of my working sheet taken back from me as also copy of my working in Open Office. It is most humbly requested not to quote Section 8(1)(d) which is applicable only for information as to third party and abide by Section 4(1)(d). Kindly provide hearing to this application before refusing, denying or misleading this applicant and abide by law*

*2. Please provide me certified of list of your, NISM and other Centres in which open office is provided by you, your centres and vendors across India*

*3. Please provide me certified List of Centres in which excel is provided*

*4. Please provide records with reasons as differentiation of IT software and functioning.*

*5. Kindly confirm that in insolvency Exam conducted by you case studies and Questions appears side by side and in Valuation Examination one window is to be closed and another window is to be opened resulting in sheer wastage of time when time is mostly short and this applicant could not answer all questions at least in examination today.*

*6. Kindly confirm that there is not possibility of copy/paste functions from Internet Explorer to Open Office*

7. *Kindly provide total number of passing/failing aspirants city wise, center wise, qualification wise in Valuation and Insolvency Examinations. Bifurcation qualification wise may be CA, CMA, CS, MBA Finance, LLB....*

9. *Kindly provide copy of your agreement with NISM and further Instructions to disable Copy/paste and few other functions on System.....”*

2. Aggrieved by the response of the Respondent, the Appellant has broadly submitted the following: –
  - a. With regard to query 1(i), the Respondent has not provided certified copies as sought by Appellant,
  - b. With regard to query 1(ii), the reply of Respondent is evasive and correct and categorical reply be provided,
  - c. With regard to query 1(iii), the Appellant got delayed by a minute and he failed by 1 mark. It is again requested to provide camera recordings of the examination centre.
  - d. With regard to query 1(iv), the response of the Respondent is false as the Appellant has himself handed over the working sheet to the guard. Therefore, a certified copy of the same be provided.
  - e. With regard to query 2 to 4, the reply of Respondent is evasive and misleading.
  - f. With regard to query 5 and 6, the sought information is covered within the scope of information.
  - g. With regard to query 7, the Respondent has given contradictory statements as in first part, he is saying that information is available in newsletter and on other part, he is saying that information is not available.
  - h. With regard to query 9, the Respondent has not explained as to who is the third party and whose commercial confidence is harmed.
  - i. The information given by Respondent is incorrect, *mala fide*, vague, misleading and bad in law.
3. The Appellant also requested for opportunity of personal hearing. Considering several contentions raised in the Appeal in respect of response on merits, the Appellant was given opportunity of personal hearing which he availed on 19<sup>th</sup> July, 2022 through virtual mode. He also requested for copy of comments of the Respondent which was shared with him before the hearing. During hearing, the Appellant made submissions on the lines of written submissions made in Appeal and vehemently argued that Respondent has decided his information request without applying mind and has acted against law and practice relating to RTI Act. He claimed that he is entitled to know the correct answers to questions asked in examination conducted by IBBI. He was also given liberty to make additional written submissions, if he so chooses, which he declined.
4. I have carefully examined the application, the response of the Respondent and the Appeal. Before examining the request, I deem it appropriate to deal with scope of ‘information’ and right to receive the information under the RTI Act. It is noted that 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.”.*

5. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advice, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. 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.
6. 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.”*
7. In the instant case, the Appellant has requested for certified copy of answers to query (1)(i). Section 2(j)(ii) of the RTI Act provides the right to the RTI applicant to seek certified copies of documents and records from a public authority. As such, the information pertaining to date of examination, list of correct and incorrect answers has been provided by the Respondent to the Appellant in a desired format as requested by the Appellant. Such information is not a copy of a document or record available on record. The right to obtain certified copy is limited to documents/records available on record and not to specific replies provided by the Respondent on the RTI queries. However, the Appellant has pleaded and insisted during hearing for a certified copy of the information provided, therefore, in the interest of transparency, the Respondent is requested to reduce the said information on paper, certify the same under his signature and provide to the Appellant within 10 days from the date of this order.
8. The Appellant has also requested for (i) certified copy of feedback submitted by the Appellant online after examination, (ii) camera recordings of Varanasi NSEiT from 1PM to 4 PM of entry gate and inside, (iii) certified copy of working sheet taken at examination centre, (iv) certified of list of IBBI's, NISM and other Centres in which open office is provided, (v) list of centres in which excel is provided and (vi) records with reasons as differentiation of IT software and functioning. The Respondent has replied stating that the information sought is not available. In my view, the Respondent is expected to provide information as available on record and not create any information. Accordingly, as no information is available with CPIO, he cannot be expected to provide any other information. Same is beyond the scope of ‘right to information’ under section 2(j) of the RTI Act which limits the information to one ‘*accessible*’

under the RTI Act and ‘which is held by or under the control of any public authority’. In this context, I note that the Hon’ble Supreme Court of India in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Judgment dated August 9, 2011), inter alia held: “The RTI Act provides access to all information that is available and existing. ...But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.” Further, I note that the Hon’ble CIC in the matter of *Sh. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: “... if it (SEBI) does not have any such information in its possession, the CPIO cannot obviously invent one for the benefit of the Appellant. There is simply no information to be given.” Also, the requests pertaining to list of centres where ‘open office’ is provided and differentiation between IT software and functioning, are not clear as to what ‘information’ is exactly wanted by the Appellant. To this extent the information request is also vague and the requests cannot be acceded to.

9. The Appellant has also requested for confirmations with regard to (i) if in valuation examination one window is closed and another window is opened resulting in wastage of time, and (ii) if there is possibility to copy/paste functions from internet explorer to Open Office. In this regard also, I hold that the Respondent is expected to provide information as available on record and not create any information or give clarifications / confirmations. He is not expected to provide reasons as to why a certain thing was done or not done. Such queries of the Appellant are in the nature of inquisitions and inquiries seeking clarifications and requesting confirmation from the Respondent and are beyond the scope of ‘information’ and ‘right to information’ under the RTI Act.
10. The Appellant has also requested for total number of passing/failing aspirants city wise, center wise, qualification wise in Valuation and Insolvency Examinations and bifurcation qualification wise may be CA, CMA, CS, MBA Finance, LLB. The Respondent has referred the Appellant to the following information as appearing in the Newsletter of IBBI and has stated that the information as being sought is not available.

### Valuation Examinations

The IBBI, being the authority, under the Companies (Registered Valuers and Valuation) Rules, 2017, commenced the Valuation Examinations for asset classes of: (a) Land and Building, (b) Plant and Machinery, and (c) Securities or Financial Assets on March 31, 2018. It reviews the Examinations continuously to keep it relevant to the changing times. The second phase concluded on May 31, 2020 and the third phase commenced on June 1, 2020. Syllabus for Phase 4 of the Valuation Examinations w.e.f July 01, 2022, was notified on March 31, 2022. It is a computer based online examination available from several locations across India.

National Institute of Securities Market is the current test administrator. The details of the Examinations are given in Table 22.

**Table 22: Valuation Examinations**

Phase	Period	Number of Attempts (some candidates made more than one attempt) in Asset Class			Number of Successful Attempts in Asset Class		
		Land & Building	Plant & Machinery	Securities or Financial Assets	Land & Building	Plant & Machinery	Securities or Financial Assets
First	Mar 2018 – Mar 2019	9469	1665	4496	1748	324	707
Second	Apr 2019 – May 2020	3780	757	4795	380	95	656
Third	Jun 2020 – Dec 2021	6250	1593	6745	478	112	645
Fourth	Jan 2022 – Mar 2022	905	154	554	56	15	47
<b>Total</b>		<b>20404</b>	<b>4169</b>	<b>16590</b>	<b>2662</b>	<b>546</b>	<b>2055</b>

11. I find that the Respondent, under the RTI Act, is required to furnish information/documents as available on record and is not supposed to collect and collate information in the manner in which it was sought by the Appellant. The Hon'ble Supreme Court in decision dated 09<sup>th</sup> August, 2011 in the matter of *CBSE & Anr. Vs. Aditya Bandopadhyay & Ors.* (C.A. No. 6454 of 2011) held:

*“35..... But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant..... 67..... The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing information furnishing, at the cost of their normal and regular duties”*

12. The matter has been further clarified by the Division Bench of Hon'ble Delhi High Court in its decision in *The Registrar of Supreme Court of India vs Commodore Lokesh K Batra & Ors.* dated 07<sup>th</sup> January 2016 (LPA 24/2015 & CM No. 965/2015) wherein it was held that:

*“15. On a combined reading of Section 4(1)(a) and Section 2(i), it appears to us that the requirement is only to maintain the records in a manner which facilitates the right to information under the Act. As already noticed above, “right to information” under Section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the applicant.”*

13. The Appellant has also requested for copy of agreement between NISM and IBBI and further instructions to disable copy/paste and few other functions in the system. The Respondent has stated that the said information is exempted under section 8(1)(d) of the RTI Act as the same is in nature of commercial confidence.

14. In so far as scope of this exemption under section 8(1)(d) is concerned, the Respondent would be right to refuse to give information, disclosure of which would harm the competitive position of a third party, unless he is satisfied that larger public interest warrants the disclosure of such information. 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.

15. I note that the agreement between IBBI and NISM and other instructions, do contain information which is confidential to the NISM and the disclosure of the same to a third party i.e. the Appellant may harm the competitive position of NISM and this Respondent must be cautious of the same. Therefore, the disclosure of the same is exempted under section 8(1)(d) of the Act. Also, the Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information. In fact, the reasons cited by the Appellant for disclosure of requested information are not cogent. Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him. I further find that the agreement contains information about NISM which are provided to IBBI in fiduciary relationship, and same is also exempted under section 8(1)(e) also.

16. In view of the above, the Appeal is disposed of.

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

**Copy to:**

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