

**EXECUTIVE DIRECTOR
AND
FIRST APPELLATE AUTHORITY**

Insolvency and Bankruptcy Board of India

2nd Floor, Jeevan Vihar Building 2
Sansad Marg
New Delhi- 110 001

Dated the 24th October 2019

Appeal No. ISBBI/R/2019/90004 (F. No. – IBBI/BS/RTI/RTI APP/246/1757)

*[Arising out of the reply under RTI Registration No. ISBBI/R/2019/90004 of the CPIO dated
11th September 2019]*

IN THE MATTER OF

Satnam Singh

... Appellant

Vs.

Central Public Information Officer
Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan
New Delhi

... Respondent

ORDER

1. The present Appeal No. ISBBI/R/2019/90004 dated 3rd October 2019, received by the office of the First Appellant Authority (FAA), Insolvency and Bankruptcy Board of India (IBBI) under the Right to Information Act, 2005 (22 of 2005) (Act), has been preferred by Mr. Satnam Singh (Appellant) against the reply of the Central Public Information Officer - CPIO IBBI (Respondent) dated 11th September 2019.
2. It is observed that on 27th June 2019, the appellant has requested the CPIO RBI Sector 17, Chandigarh for information regarding NPA and wilful defaulters under section 6 of the Act. The relevant extract of the application of the appellant which has been part-transferred to IBBI under Section 6 (3) of the Act for response, is reproduced below:

Sr. No	Information Sought	Comments
3	Kindly provide the details of NPA of each nationalised bank in India year wise w.e.f. April 2014 to till date and nationalized bank wise.	The matter is under examination.
11	Kindly provide the details of insolvency proceedings under Insolvency and Bankruptcy Code, 2016 against the defaulters in the list mentioned in Sr No 3 above	The RTI application has been part-transferred to Insolvency and Bankruptcy Board of India under Section 6(3) of the Right to Information Act, 2005 for responding to the query directly to the applicant.

3. In reply to the transfer application, the respondent, on 11th September 2019 informed as under:

“The RTI Application is part-transferred u/s 6(3) of the RTI Act, 2005 from RBI for replying to information sought at Sr. No.11. The information is not available.”

4. The appellant has preferred this appeal against the above stated reply of the respondent and has contended:
- That the CPIO IBBI has not applied his mind,
 - That he has failed to inform him why the information is not available or with whom it is available,
 - That the CPIO IBBI has intentionally violated the mandate of the Act for his own convenience and most probably has not read the request, and
 - That the CPIO IBBI has failed to provide the emails and contact phone addresses for the reason best known to him.
5. The present RTI appeal has been examined and I have perused the response provided by the respondent in respect of the queries raised in the RTI application. In this context, the respondent submits that the information as requested by the appellant was not available with them since a list of 100 wilful top defaulters of each nationalised bank in India was not provided by CPIO Reserve Bank of India (RBI) and was returned with

the following reply: “*The matter is under examination*”. Sr. No. 11 of the RTI request is linked to Sr. No. 3 of the request. Since the matters under Sr. No. 3 were under examination of the RBI, the details of insolvency proceedings against such defaulters under the Insolvency and Bankruptcy Code, 2016 could not have been provided, even if such information was available with RBI. Moreover, such information was not in the custody or possession of the IBBI and is beyond its mandate to come by.

In this connection, it is pertinent to consider the judgment of the Hon’ble Supreme Court of India in *Thalappalam Ser. Coop. Bank Ltd. & Ors, v. State of Kerala & Ors.* (Civil Appeal No. 9017 of 2013), in which the Court, while interpreting the term “information” under Section 2(f) of the RTI Act, 2005, observed that citizens have a right to get information, but can have access only to the information “held” and under the “control of public authorities”, with limitations. If the information is not statutorily accessible by a public authority, as defined in Section 2(h) of the Act, evidently, that information will not be under the “control of the public authority”. In view of the above, it is found that the respondent did not have control over the information requested by the appellant. The respondent had no superintendence, management or authority to access information held by RBI.

6. Further, in reference to the contention of the appellant under paragraph 4 (a) above, it is noted that the query transferred to IBBI was founded upon a related query directed to CPIO RBI. It was not incumbent upon the respondent to provide information which is based upon advice and opinions of the CPIO, even though the same is requested by the applicant. The Hon’ble Supreme Court in *Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.* (Civil Appeal No. 6454 of 2011), inter alia, held:

“A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority.”

In view of the above, it cannot be held that the respondent has not applied his mind as alleged in para 4(a) above and I find it justifiable that the respondent could only inform

the appellant that no information was available with respect to Sr. No 11 of the RTI request.

7. It is also observed that the appellant, at the first instance, approached CPIO RBI for information and the request was part-transferred to IBBI by him. This clearly indicates that the appellant was well aware that the information as requested was to be provided by CPIO RBI and further, CPIO RBI had already informed that *"The matter is under examination."* The respondent was thus justified in informing the appellant that the desired information was not available with him. In such circumstances, it cannot be inferred that the respondent failed to inform the appellant why the information was not available or with whom it was available as alleged in para 4(b) above.
8. It is seen that the Act mandates timely response to the requests made by citizens from the public authorities only when such information is under the control of the public authority. In the present RTI request, the information was not available with CPIO IBBI and thus it does not amount to violation of the mandate of the Act. Response was made by him after reading RTI request of the appellant and within the time limit as prescribed under the Act. The CPIO IBBI is not expected to create new records other than that are available on record. The Hon'ble CIC in the matter of *Sh. Alok Shukla Vs. CPIO, SEBI* (File No. CIC/SM/A/2012/001838, Order dated May 23, 2013), held: *"While dealing with RTI, we should not forget that information means only an existing material record. The CPIO can provide the copy of the available records; he cannot create new records in order to address specific queries of the Appellant."* The respondent informed the appellant that *"The RTI Application is part-transferred u/s 6(3) of the RTI Act, 2005 from RBI for replying to information sought at Sr. No. 11. The information is not available"* In view of the above, the allegation that the respondent has intentionally violated the mandate of the Act for his own convenience and that he has not read the request as alleged in para 4(c) above is unfounded.
9. It is also submitted by the respondent that appellant's request for information at Sr. No. 11 of the RTI request only was part transferred to IBBI under Section 6(3) of the Act. The request for providing details of FAA under Act with complete postal, land line and mobile contact address, email address etc was listed at Sr. No. 17 and the same was not

transferred to the CPIO IBBI. Furthermore, the respondent, while respecting appellant's right to appeal, did mention the particulars of his FAA as under:

*"Shri. KR Saji Kumar
Executive Director
2nd Floor, Jeevan Vihar Building
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Section 7(8)(iii) provides that the CPIO shall communicate to the person making the RTI request, the particulars of the FAA. This provision does not mandate that the email ID and the phone number of the FAA are to be provided to the applicant. Moreover, email ID and phone number of the FAA are provided on the website of the IBBI. From the above, it is seen that while dealing with the present RTI request, the particulars of FAA were clearly supplied by the respondent in response to the RTI request. The fact that the present appeal is being considered clearly indicates that the postal address provided by the respondent was sufficient to reach out to this FAA. The contention of the appellant under paragraph 4(d) above also, does not hold good.

10. In view of the foregoing, this FAA is satisfied that nothing more than what was provided by the respondent on the RTI request made by the appellant was possible under the circumstances, and the appeal is therefore, dismissed.

(Sd/-)

(K. R. Saji Kumar)

Executive Director and First Appellate Authority

Copy to:

1. Appellant, Mr. Satnam Singh.
2. Respondent (CPIO, Insolvency and Bankruptcy Board of India 7th Floor, Mayur Bhawan, New Delhi).