

**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: 22nd May, 2024

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

IN THE MATTER OF

Nelson James Macwan

... 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

1. The Appellant has first filed the Appeal dated 28th March 2024 challenging that the Respondent has not provided the information within 30 days as per the RTI Act. Same was disposed *vide* Order of this First Appellate Authority on 23rd April 2024.
2. The request of the Appellant and the reply of the Respondent was as follows –

Information sought	Reply
<i>1. Please provide copy of reply by the Authority to my following email or letter – A. Email sent to valuer@ibbi.gov.in dated (a) 1 August 2023 and (b) 19 August 2023 B. Email sent to satish.sethi@ibbi.gov.in dated (a) 16 January 2024 and (b) 30 January 2024</i>	<i>Information not available. However, the reply on similar issue raised in the above-said emails was already provided to Mr. Nelson James Macwan by the IBBI vide email dated 05 July 2023 and 18 April 2023.</i>
<i>2. I received an email reply on 5 July 2023 from valuer@ibbi.gov.in, regarding an administrative decision taken with the due approval of Chairman IBBI. I request you to provided copy that decision along with the reasons recorded for such decision as well as with the noting of the chairman IBBI's approval.</i>	<i>The reasons recorded for the administrative decision contains information which is confidential to the concerned University and therefore is exempted under section 8(1)(d) of the RTI Act, 2005.</i>
<i>3. Please provided copy of administrative decision, taken by the Authority, with due approval of the Chairman IBBI, under Second Proviso to Sub Rule (1) of Rule (5) of Company (Registered Valuer and Valuation) Rules, 2017 as published under Section 4(1)(c) of Right to</i>	<i>Information not available</i>

<i>Information Act, 2005 along with date of its publication in public domain.</i>	
<i>4. I am affected person by the administrative decision taken by the Authority, with due approval of the Chairman IBBI, under Second Proviso to Sub Rule (1) of Rule (5) of Company (Registered Valuer and Valuation) Rules, 2017. I, therefore, request you to provide reasons recorded for such an administrative decision as mandated under Section 4(1)(d) of the Right to Information Act, 2005.</i>	<i>The reasons recorded for the administrative decision contains information which is confidential to the concerned University and therefore is exempted under section 8(1)(d) of the RTI Act, 2005.</i>

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. 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.*”
4. 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. It is thus, 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.
5. With regard to query 1, the Appellant has requested the FAA to direct CPIO to expressly withdraw the information provided in second part of reply. It appears that the Respondent has provided more information than on requested in the RTI application. However, it is only to facilitate the Appellant. As such, no prejudice is caused to Appellant or takes away any right of the Appellant.
6. With regard to query 2, 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. In the instant case, the Respondent has not given any reason or justification for invoking section 8(1)(d) of RTI Act. Further, whether the information is relating to ‘commercial confidence’ or ‘trade secrets or intellectual property’? and how does he think that the disclosure of such information would harm the competitive position of any third party? It is obviously denial without any specific reason. The Respondent is advised to take into account these requirements of law while dealing with information

requests under the RTI Act. 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. The Appellant has requested for copy of file noting / decision made by the competent authority while examining representation of a university. The basis/reasons on which IBBI has come to a conclusion with respect to said university, do contain information which is confidential to the said university and the disclosure of the same to a third party i.e. the Appellant may harm the competitive position of the said University and this Respondent must be cautious of the same. Therefore, the disclosure of the basis/reasons on the basis of which IBBI has concluded with respect to said university 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. Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him.

7. With regard to query 3, the Appellant wants a direction to be issued to IBBI to place the copy of the decision taken in a particular case in public domain. The Appellant is aggrieved by the fact that the copy of the above decision has not been placed in public domain. The basis/reasons on which IBBI has come to a conclusion with respect to said university, do contain information which is confidential to the said university and the disclosure of the same on the website may harm the competitive position of the said University and this, IBBI need to be cautious of.
8. With regard to query 4, the Appellant has stated that "...I again state that I am directly 'affected person' by the said decision of IBBI being a student at that concerned University, i.e. Sardar Patel University, Vallabh Vidyanagar, Gujarat (SPU).... Section 4(1)(d) of RTI Act, 2005, the public authority is under obligation to provide reasons for its administrative decisions to the 'affected persons'. Therefore, it is my right to know reasons recorded for the said administrative decision as affected person by the said decision. I, therefore, pray to provide me the information requested as being an affected person." He has also stated that "... under Section 11 of RTI Act, 2005 that in case of third-party information, which relates to or has been supplied by a third party and has been treated as confidential by that third party can be disclosed by the following procedure laid down under this Section. This also means that the information is to be considered confidential only when that third party has treated that information as confidential otherwise it is not confidential. In my personal meeting with the Registrar, Sardar Patel University, I have been informed that SPU has not treated any of its information with IBBI as confidential. They further informed me that the SPU has also requested IBBI, vide letter No. D/E/11/4885, dated 21.12.2021, to provide reasons for its said administrative decision but IBBI has not provided reasons to SPU too. It is also to be noted that the concerned University is also a public authority. I, therefore, again pray to provide the information requested considering provision u/s 11 of the RTI Act, 2005." As noted above, the basis/reasons on which IBBI has come to a conclusion with respect to said university, do contain information which is confidential to the said university and the disclosure of the same to a third party i.e. the Appellant may harm the competitive position of the said University and this Respondent must be cautious of the same. Therefore, the disclosure of the basis/reasons on the basis of which IBBI has concluded with respect to said university 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. Merely being students of the university do

not trigger a larger public interest, warranting disclosure of information which is exempted under section 8(1)(d). Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him.

9. The appeal is accordingly, disposed of.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

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