

**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: 05<sup>th</sup> September, 2023**

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI  
Appeal Registration No. ISBBI/A/E/23/00029**

**IN THE MATTER OF**

**Abhishek Aryan**

... 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 the present Appeal dated 10<sup>th</sup> August 2023, challenging the communication of the Respondent dated 11<sup>th</sup> August 2023 in his RTI application no. ISBBI/R/E/23/00095. In his RTI application filed under the Right to Information Act (RTI Act), the Appellant had requested for the following -

*“With reference to financial fraud (Big Bazaar Profit Club Card and Future Fixed Deposit scheme) committed by Big Bazaar, under Future Retail Private Limited whose owner is Kishore Biyani. Kindly provide information available with Insolvency & Bankruptcy Board of India for*

*1. Provide information on action taken report, file notings and daily progress report on File number CL-II-07/128/2022-O/oDGC&A-MCA (kindly see attached file)*

*2. Disclose the status of CIRP of Big Bazaar and Future Retail*

*3. Provide forensic audit report and avoidance transactions.*

*4. Disclose the necessary strict action taken by your organization against the Company with respect to our grievance.*

*5. Provide copy of report submitted by you to Honourable Vice President Secretariat and Ministry of Corporate Affairs in respect of grievance petition VPS-18/01/2023-Adm. Dated 25.04.2023. Send all replies by Speed Post/Registered Post with”*

2. The Respondent has responded as follows –

*“1. The file number does not pertain to IBBI. Therefore, the request is being forwarded to MCA for necessary action.*

*2. The details of CIRP of Future Retail Limited, Corporate Debtor is available in public domain which may be accessed through the URL: <https://ibbi.gov.in/en/claims/innerprocess/L51909MH2007PLC268269>*

*3. The information is exempt from disclosure as per section 8(1)(d) of the Right to Information Act, 2005.*

*4. No complaint against the company has been received by IBBI yet.*

*5. The referred grievance is not being handled by IBBI.”*

3. Aggrieved by the same, the Appellant has filed the present appeal stating the following –  
*“Send all orders, decisions and replies by Registered Post with Acknowledgement Card/ Speed Post with Proof of Delivery Card. No reply has been given by CPIO within time limit of 30 days as per RTI Act 2005. Kindly provide pointwise reply and take necessary action, and direct CPIO to provide information.*

*The matter is a very serious matter and of immense public interest as BigBazaar Future Retail limited owned by Kishore Biyani has done forgery and fooled public of the country. Also this matter is very important matter and non-furnishings of information by CPIO within time limit is disrespect to RTI Act as well as disrespect to Honourable Vice President Secretariat.*

*Honourable Vice President Secretariat has taken up the matter and sent to Ministry of Corporate Affairs which then sent this matter to your office and hence I had sought information regarding Big Bazaar but your CPIO has not provided any information. Kindly order CPIO to provide information and take necessary action against him. Send all replies by Registered Post with AD Card/ Speed Post.”*

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. 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.
5. Before dealing with merits of Appeal, I deem it necessary to deal with the contention of the Appellant regarding the date of response of the CPIO and his delay condonation request. As per the records available on record, the Respondent has received the RTI request on 11<sup>th</sup> July 2023 and has sent the response on 11<sup>th</sup> August 2023. It is noted that as per section 7(1) of the RTI Act, the Respondent is required to respond within 30 days of the receipt of the request. As the RTI Application was not disposed till 9<sup>th</sup> August, 2023, I find merit in the claim of the Appellant that the Application was not disposed of by the Respondent within 30 days. I would urge learned CPIO, being a Public Authority, to be sensitive to timelines and disposal of information request.
6. With respect to query (1), the Appellant has requested for information on file of Ministry of Corporate Affairs (MCA). The Respondent has forwarded the same to MCA. I, thus, do not find any infirmity in the response of Respondent in handling such request.

7. With regard to query (2), the Respondent has provided the link of IBBI website where the information is available. The Respondent can visit the said link and access the information. Hence, no further action is required.
8. With regard to query (3), the Appellant has asked the Respondent for the forensic auditor report and avoidance transactions. The Respondent has stated that the same is exempted under section 8(1)(d) of the RTI Act. 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.
9. I note that the report on forensic audit and avoidance transactions do contain information which is confidential to the corporate debtor and other parties and the disclosure of the same to a third party i.e. the Appellant may harm the competitive position of corporate debtor and the parties involved 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. Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him. I further find that such information is provided to IBBI by IP in a fiduciary relationship, and same is also exempted under section 8(1)(e) also.
10. With regard to query (4) and (5), the Respondent has stated that that said complaint and grievance is not filed / handled by IBBI. Accordingly, no further information can be provided by the Respondent. The Respondent is expected to provide information as available on record and not create any information. 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.*".

11. In view of the above, I do not find any reason to interfere with the response of the Respondent. Accordingly, the Appeal is disposed of.

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

**Copy to:**

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