

**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: 07th July, 2022

IN THE MATTER OF

Anil Kumar Ojha

... 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

ORDER

1. The Appellant has filed the present Appeal dated 13th June 2022, challenging the response of the Respondent dated 10th June 2022 with regard to his RTI Application No. ISBBI/R/P/22/00016 dated 4th May 2022 (received by the Insolvency and Bankruptcy Board of India on 10th May 2022) filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has requested for soft copies (pdf) of CIRP Forms 1 to 8 submitted by Mr. C. Ramasubramaniam (IBBI/IPA-002/IP-N00052/2016-2017/10096) during CIRP of M/s S.L.O. Industries Limited.
2. The Respondent replied stating that the information being regulatory compliance by the insolvency professional (IP) is exempt under section 8(1)(j) of the RTI Act, 2005.
3. Aggrieved by the same, the Appellant has submitted in this Appeal that the information sought is not personal information of the IP and relates to public function entrusted to him and that the IP has committed serious financial and other irregularities. The Appellant has stated that he has also filed a complaint in this regard with the Insolvency and Bankruptcy Board of India (IBBI) and the public disclosure of the information is necessary to assess the real extent of the financial bungling done by the IP, which led to closure of a going concern and pushed the company into liquidation.
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 Appellant has asked for a copy of CIRP Form 1-8 filed by the IP. In this regard, it is not clear from the response of the Respondent as to how information being regulatory compliance by the IP could be deemed to be exempted from disclosure under section 8(1)(j) of the RTI Act. Section 8(1)(j) exempts information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless a larger public interest justifies the disclosure of such information. It is not clear as to how Form CIRP 1-8 contains personal information or the disclosure of same could cause unwarranted invasion on the privacy of the IP. 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. Having observed this, I deem it fit to deal with this request on merits in the interests of the right to information and scope of information disclosures under the RTI Act.

5. The particulars of Form CIRP 1-8 are filed by the IPs in the context of a corporate insolvency resolution process and *inter-alia* deals with commercial information / trade secrets such as terms of engagement, details of authorised representative, details of creditors, information about claims, details of valuers, details of applications filed before the Adjudicating Authority, expression of interest, evaluation matrix, details of resolution applicants, resolution plan, information about preferential, undervalued, fraudulent and extortionate credit transactions, etc.. The said online platform hosted on the website of the IBBI at <https://www.ibbi.gov.in> is to facilitate filings by registered IPs for the purposes of monitoring corporate insolvency resolution processes. The IP is allowed to access the said platform with the help of a unique username and password provided by the IBBI, after affixing DSC or after e-signing. This being the nature of e-filing by IPs, it is concluded that the same involve trade secrets and disclosure of the same has every probability of impact competitive position of the corporate debtor, insolvency professional and other stakeholders and compromising such competitive position.
6. Further, the communications between the IP and IBBI, are related to a corporate insolvency resolution process of a corporate debtor and do contain details which are commercial in nature and disclosure of such details about IP or corporate debtor could harm their competitive positions. While providing any information received from the IP, the competent authorities cannot be oblivious to the fact that by information disclosure, no harm is caused to the commercial transactions in corporate insolvency process or to the persons associated with the process. Accordingly, the requested information is exempted under section 8(1)(d) of the RTI Act.
7. Further, IBBI being the regulatory authority for IPs, receives the Forms in respect of processes under the Insolvency and Bankruptcy Code, 2016 and regulations made thereunder. Apart from the legal obligation of IP under the governing regulations to ensure confidentiality of the information relating to the insolvency resolution process, many of the information contained in those responses are received under this fiduciary relationship. I note that in *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal (Civil Appeal Nos. 10044, 10045 and 2683 of 2010)*, Hon'ble Supreme Court of India observed that: "*Fiduciary relationships, regardless of whether they are formal, informal, voluntary or involuntary, must satisfy the four conditions for a relationship to classify as a fiduciary relationship. In each of the four principles, the emphasis is on trust, reliance, the fiduciary's superior power or dominant position and corresponding dependence of the beneficiary on the fiduciary which imposes responsibility on the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself.... What would distinguish non-fiduciary relationship from fiduciary relationship or an act is the requirement of trust reposed, higher standard of good faith and honesty required on the part of the fiduciary with reference to a particular transaction(s) due to moral, personal or statutory responsibility of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary.*"
8. I am convinced that there is fiduciary angle to the relationship between the IP and IBBI, and the disclosure of requested information is exempted under section 8(1)(e) also. I am also not

satisfied as to how a larger public interest is involved. As such, I find no valid ground to outweigh the scope of exemptions under section 8(1)(d) and (e).

9. The Appeal is, accordingly, disposed of.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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