

**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: 16th September, 2021

RTI Appeal Registration No. ISBBI/A/E/21/00020

IN THE MATTER OF

Dibakar Ray

... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India
2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110001

... Respondent

ORDER

1. In his Application No. ISBBI/R/E/21/00136 dated 26th July 2021 filed under the Right to Information Act, 2005 (RTI Act), the Appellant had requested for the following: -

“Dear Sir, In terms of the order passed by the National Company Law Tribunal, Guwahati Bench, the Corporate Insolvency Resolution Process (CIRP) of Assam Company India Limited was initiated on 26th October, 2017 and Mr. Vinod Kumar Kothari was appointed as Interim Resolution Professional. Subsequently Mr. CA Kannan Tiruvengadam was appointed as Resolution Professional. In terms of the Regulation 27 of CIRP Regulations, the Resolution Professional shall within seven days of his appointment, appoint two registered valuers to determine the fair value and the Liquidation value of the corporate debtor in accordance with regulation 35. The CIRP of Assam Company India Limited concluded on 20th September, 2018 whereby the Resolution Plan submitted by BRS ventures Investment Limited has been approved by National Company Law Tribunal, Guwahati Bench vide order dated 20th September, 2018. Under the CIRP Regulation, Once a Resolution Plan is approved, the moratorium order under Section 14 shall cease to have effect and the RP shall forward all the records relating to the CIRP and the Resolution Plan to the Board to be recorded on its database. Please provide me the copy of the valuation of Assam Company India Limited done by the registered valuers.”

2. The Respondent, Central Public Information Officer– CPIO of Insolvency and Bankruptcy Board of India (IBBI) vide its communication dated 11th August 2021 informed the Appellant as follows: –

“The information sought is exempt from disclosure under section 8(1)(d) of the RTI Act, 2005 as the same is in the nature of commercial confidence.”

3. The Appellant has filed present Appeal No. ISBBI/A/E/21/00020 dated 23rd August 2021 challenging the aforesaid communication from the Respondent stating that:

“The information asked in the RTI application does not fall within commercial confidence as been claimed by the CPIO. The information pertains to the valuation of a company which has been admitted into Corporate Resolution Process and all the financial institutions have taken haircut on the claim amount which is in turn is the public money. In view of the above, the said information can be disclosed to the applicant.”

4. I have carefully examined the Application and the averments made in the Appeal and find that the matter can be decided based on material available on record. I proceed accordingly. 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 RTI 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.”*
5. In the instant appeal, the Appellant is seeking a ‘copy of the valuation of Assam Company India Limited done by the registered valuer’ and has argued that Section 8(1)(d) of the RTI Act, 2005 is not applicable as *financial institutions have taken haircut on the claim amount which is in turn is the public money*. It is noted that Assam Company India Limited is a private company which is undergoing insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 wherein it is seeking to resolve its outstanding debts. That information regarding the valuation of such a Company is market sensitive, the disclosure of which would prejudicially affect its competitive position. In fact, in regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 it has been specifically provided that the resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value of the Corporate Debtor and the regulation 36 provides that the details of the *assets and liabilities with such description, as on the insolvency commencement date* of the Corporate Debtor is to be included in the Information Memorandum and is only shared with members of the Committee of Creditors or the Resolution Applicant on receiving undertaking to maintain confidentiality of the information and on declaring to not cause an undue gain or undue loss to itself or any other person.
6. The RTI Act is meant for providing ‘information’ which is not exempted under section 8 of the RTI Act, 2005 including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party. In my view, the disclosure of valuation of the Company would have impact on the commercial confidence and may harm the competitive position of the third party. Apart from this, the information as asked in the Application is available to the Respondent in

fiduciary relationship and the disclosure of such information has no relationship to any public activity or interest. In this regard, I refer to the Order dated 5th September, 2012 of the Hon'ble Central Information Commission where it had ruled that the disclosure of valuation report was exempted under Section 8(1)(d) of the RTI Act, 2005, in *K.D. Agarwal Vs. Official Liquidator, Chandigarh* (Case No. CIC/SS/A/2012/001519), as under:

“The applicability of section 8(1)(d) of the RTI Act to the valuation report is upheld. However, the appellant has not shown any larger public interest in favour of its disclosure.”

7. The observation of the Hon'ble CIC was also reiterated in *C.P. Paul Vs. Official Liquidator, High Court, Madras* (Case No. CIC/SS/A/2012/002867), the relevant paragraphs are reproduced as under:

“The Commission held that the respondent have no disclosure obligation with respect to the Valuation report which include information in the nature of commercial confidence and the respondent has not established any larger public interest for its disclosure. Consistent with the decision taken by the Commission in case No.CIC/SS/A/2012/001519 dated 5.9.2012 the respondent have no disclosure obligation with respect to the Valuation Report which is exempted from disclosure in terms of section 8(1)(d) of the RTI Act, 2005. The matter is disposed of on the part of the Commission.”

8. In view the above, I agree with response of Respondent and find that there is no need to interfere with the decision of the Respondent.
9. The appeal is accordingly disposed of.

-sd-

Santosh Kumar Shukla
First Appellate Authority

Copy to:

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