

**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: 26<sup>th</sup> July, 2021**

**RTI Appeal Registration No. ISBBI/A/E/21/00016**

**IN THE MATTER OF**

**Mr. Tushar Mahendrabhai Patel**

... 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 present Appeal No. ISBBI/A/E/21/00016 dated 29<sup>th</sup> June, 2021, has been filed by Mr. Tushar Mahendrabhai Patel (Appellant), before the First Appellate Authority, Insolvency and Bankruptcy Board of India (IBBI) under the Right to Information Act, 2005 (RTI Act), against the disposal of the RTI Application No. ISBBI/R/E/21/00120 by the Central Public Information Officer - CPIO (Respondent) *vide* communication dated 23<sup>rd</sup> June, 2021.
2. In his application dated 20<sup>th</sup> June, 2021 the Appellant had raised following queries:-  
*“Suppose two persons (Person A and person B) have made an agreement (contract) on 10 November 2020. IBC for individuals has not been implemented on this date (10 November 2020). Suppose IBC for the individual is implemented on some future date, say for example 1 April 2025. Dispute between the above two persons arises on 15 April 2026 regarding the contract which was formed on 10 November 2020. Party A wants to sue for damages for breach of contract. Should party A approach IBBI (Insolvency and bankruptcy board of India) or civil court? What is the regulatory body in such case?”*
3. By the communication dated 23<sup>rd</sup> June, 2021 CPIO, had, informed the Appellant that –  
*“Information sought is in the nature of seeking opinion/suggestion and is not covered under the definition of 'Information' under section 2(f) of the RTI Act, 2005.”*
4. The Appellant has assailed the aforesaid view of the CPIO stating that -  
*“This is important to know all of us regarding authority that is going to handle cases of insolvency and bankruptcy. As IBC code is going to be implemented in nearby future for individuals. People may have*

*formed contract before IBC implementation and after IBC implementation. So, individuals are in desire to know the concerned body for insolvency and bankruptcy which is applicable to them based on the date of formation of contract which may be before IBC implementation. Please do the needful.”*

5. I have carefully considered the application, the response, and the appeal; and find that the matter can be decided based on the material available on record. 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. Section 2(j) of the RTI Act defines the “right to information” in terms of information accessible under the Act which is held by or is under the control of a public authority. The inclusive list provides for the right to - (i) *inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.*
6. 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.”
7. The aforesaid definitions contemplate providing of material in the forms of records, documents, opinions, advices, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. As stated in the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28th November, 2013 - “The Public Information Officer is not supposed to create information that is not a part of the record of the public authority. The Public Information Officer is also not required to furnish information which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.”
8. I find that all the issues raised by the Appellant in his application and concerns raised by him in this appeal are inquiries soliciting response in the nature of clarification, opinion; etc. In my view, the CPIO did not have any obligation to answer such questions as they are beyond the scope of ‘information’ under section 2(f) and ‘right to information’ under section 2(j) of the RTI Act. If the Appellant wants answer to his issues and concerns, the remedy is not under the RTI Act. In this regard, I note that Hon’ble Supreme Court of India in its judgment dated August 9, 2011 in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors.* had held that: - A public authority is “...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. Many public authorities have,

*as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”*

9. I, therefore, find that the request of the Appellant cannot be entertained and no interference with response of the CPIO is called for. The appeal is disposed of accordingly.

Sd/

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

**Copy to:**

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