

**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: 19th September, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00039

IN THE MATTER OF

Dharambir Singm

... 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 present Appeal dated 28th August 2022, challenging the communication of Respondent dated 16th August 2022 against the information requested by the Appellant *vide* his RTI Application No. ISBBI/R/E/22/00188 dated 5th August 2022 filed under the Right to Information Act, 2005 (RTI Act). The Appellant had cited NCLAT New Delhi order dated 27th May 2022 and had requested for the following –
 - (a) Copy of discussions on regulations as per NCLAT observations.
 - (b) Copy of action taken on NCLAT observations.
 - (c) Amendment done in IBC Code considering NCLAT observations.
 - (d) Copy of amendment, circular for protection of employees, workers PF, Gratuity.
2. The Respondent has provided the following information :-
 - (a) **Reply to Query 1 & 2:** The Discussion paper on ‘changes in the corporate insolvency resolution process to reduce delays and improve the resolution value’ was issued by the Board on 27th June, 2022 which is also available on the website of the Board at URL: <https://ibbi.gov.in/en/public-comments/comments-on>. Under the same, item No. 14 ‘Need for IRP /RP to communicate to call creditors to submit claims’ addresses the issues raised in the above stated Hon’ble NCLAT Order. The Board had invited public comments and the same is pending consideration before the Board.
 - (b) **Reply to Query 3:** Amendments to the Insolvency and Bankruptcy Code, 2016 (Code) are not within the powers of the Board.
 - (c) **Reply to Query 4:** Section 36 of the Insolvency and Bankruptcy Code, 2016 has provision regarding sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund etc. The Board has not issued any circular in this regard.
3. Aggrieved by the same, the Appellant has filed the present Appeal, *inter-alia*, stating that -
 - (a) He has filed a ‘*public interest application*’ to ‘*know deliberation, actions taken by IBBI to ensure that employees PF, Gratuity are included in Information Memorandum, Resolution Plan (even when PF authority are not submitting claim timely)*’.
 - (b) In the CIRP of Trading Engineers International Ltd. (the CD), (i) The Resolution Professional (RP) did not upload the provident fund (PF) claims on website, (ii) CD

did not provide deducted PF details to EPFO, and (iii) ex-directors of the CD were aware of PF, gratuity and other liability, but the same was not included in Information Memorandum and the resolution plan.

- (c) The PF dues are wiped out from the resolution plan due to connivance and cartel between ex-directors and the RP.
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. Before dealing with matter in issue in the instant appeal, I deem it appropriate to examine the scope of information and right to receive it from a public authority. 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. 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.
 5. The aforesaid definitions contemplate providing of material in the forms of records, documents, opinions, advices, etc. available on records of the public authority. The Respondent provided the aforesaid information such as Discussion paper on ‘changes in the corporate insolvency resolution process to reduce delays and improve the resolution value’, reference to section 36 of the Code.
 6. However, other the information request of the Appellant is *ex facie* raising questions in the nature of inquisition and clarifications. Further, the grievances of the Appellant against the corporate debtor, resolution professional and ex-directors, cannot be dealt under RTI Act. It is pertinent to mention that the RTI Act does not include in its ambit the giving opinions or initiating actions or providing guidance on compliance of NCLAT, New Delhi Order dated 27-05-2022. The Hon’ble CIC in *M Jameel Basha Vs. CPIO, Ministry of Personnel Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi -110001, File No: CIC/MPERS/A/2017/158527/SD* (Decision dated 06.05.2019), has observed the following: *“Commission concedes with the submission of the CPIO as no information has been sought as per Section 2(f) of the RTI Act. It may be noted that under RTI Act, CPIO is not supposed to create information or interpret/clarify/deduct information in respect of queries/clarifications. Similarly, redressal of grievance, non-compliance of rules, contesting the actions of respondent public authority and suggesting correction in government policies are outside the purview of the RTI Act.”*
 7. I also 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.”*
 8. Also, the Respondent is expected to provide information as available on record and not create any information. Accordingly, the information as available with CPIO, is provided to the Appellant. He cannot 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*'. Moreover, it is not clear as to how the Appellant is aggrieved from the information provided by the Respondent.

9. Accordingly, in my view, the information as requested by the Appellant has been disclosed to him under the RTI Act and no further information can be disclosed. The appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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