

**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: 4th May, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00014**

IN THE MATTER OF

Ramesh Chauhan

... 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

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1. The Appellant has filed the present Appeal dated 8th April 2023, challenging the communication of the Respondent dated 5th April 2023 in his RTI application no. ISBBI/R/E/23/00034 filed under the RTI Act. 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.
 2. It is noted that in his RTI application, the Appellant had requested for the following in respect of the complaints filed by him against Mr. Vivek Raheja, an Insolvency Professional registered with IBBI:-
*"1. Copy of Show cause Notice issued.
2. Documents sent to Respondents.
3. Reply received from Respondent.
4. Action taken Report.
5. Final closure report with approving authority."*
 3. By the impugned communication, the Respondent has informed the Appellant that –
*"1) Based on the complaints/grievances received against Shri Vivek Raheja, Insolvency Professional ("IP"), The Board had ordered an inspection.
2) The Inspection Report submitted by the Inspecting Authority was dealt as per IBBI (Inspection and Investigation) Regulations, 2017 and Show cause notice was issued to Shri Vivek Raheja, Resolution Professional. The same was disposed of vide DC order dated 17th February 2023 which is available at <https://ibbi.gov.in/en/orders/ibbi> .
3) So far as documents sent to IP and reply received therefor is concerned, the same is exempted under Section 8 (1)(e) of the RTI Act, 2005."*
 4. In the Appeal, the Appellant has stated that –
(a) *"...CPIO – IBBI did not provided details on Inspection documents on my complaints as above."*
(b) *"...The details of Inspection done in order date 17-02-2023, is not related to any of above complaints, but self-inspection by IBBI on other issue. ii) CPIO IBBI trying to wrap all above complaints of fraud, collusion, cartel, corruption, under carpet, in name of DC order date 17-02-2023. iii) Please direct IBBI to provide information on my separate complaints, as asked in RTI. Copy of complaints are attached with*

each RTI application. (Due to file size limit on RTI Appeal, I am not able to enclose copy of complaints again)."

- (c) "...CPIO - IBBI is hiding information to cover up fraud, in name of section 8(1)(e) of RTI Act, thus defeating RTI act. ii) Mr. Vivek Raheja & Mr. Sushant Chhabra doing fraud with each section of IBC. Mr. Vivek Raheja is submitting fabricated, forged documents, misleading information. Thus, information submitted by Mr. Vivek Raheja is required, to submit counter reply. iii) This is public interest RTI,..."

5. It is gainsaying 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. 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.*" 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. Section 8 provides for exemption from disclosure of information held by or under control of the 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.
6. I note that in request (4) and (5) the Appellant has asked for (a) Action taken Report and (b) Final closure report with approving authority with regard to his complaint. It is pertinent to mention that IBBI handles the grievances and complaints against Insolvency Professionals in the manner specified in IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. If the *prima facie* case is made out, further course of action is followed in accordance with Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations). Neither the Insolvency and Bankruptcy Code, 2016 (IBC) nor these Regulations require IBBI to prepare and maintain any such Action Taken Report or Final closure report as asked by the Appellant. If such reports are not held with IBBI, the Respondent can not create one and provide to the Appellant.
7. In his query number (1), (2) and (3), the Appellant has requested for (i) copy of show-cause notice, (ii) documents sent to Respondent, and (iii) Reply received from Respondent? The question that falls for consideration is as to whether these documents can be disclosed to the Appellant. In my view, the Appellant has no right to ask for such documents in accordance with the provisions of the IBC and the Inspection Regulations. These documents are used and relied upon in respect of a disciplinary proceedings against a registered insolvency professional and law does not cast obligations to share these documents with third parties. The RTI Act cannot be allowed for such roving inquiries by third parties as sought to be done by the Applicant in this case. The law permits IBBI to deal with complaints and grievances in accordance with the provisions of above stated Regulations of 2017 . Any grievance in this regard could be raised under regulation 7 of the Regulations that permits the complainant to request a review of decision of the Board, within thirty days, if he is not satisfied with such decision; and cannot be addressed by taking recourse to the RTI Act. RTI Act can not be used for grievance redressal as sought to be done in this case.
8. In addition to above, the requested information is exempt from disclosure under of section 8(1)(d) of the RTI Act, which reads as under: -

"(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which

would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;”

9. 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. I note that the communications between the IP and IBBI are in the context of 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 to a third party, the Respondent 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).
10. I further note that in *Central Public Information Officer, Supreme Court of India V.s. 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.”*
11. It is trite to say that IBBI being the regulatory authority for Insolvency Professionals, receives their responses in respect of processes under the IBC. 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. Therefore, 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.
12. The Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information nor has he disclosed as to how his interest is affected by non-disclosure of requested information.
13. It is also noted that in response to the complaint of the Appellant , IBBI had informed him that:- *“I am directed to refer to grievances filed by you on grievance portal on the above subject and to inform that appropriate action on various grievances earlier received in this matter has already been initiated in terms of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.”*

14. In this case, the order of the Disciplinary Committee was passed on the basis of the inspection report and show-cause notice. The order of the Disciplinary Committee reflects the final action taken against the IP and is final in all respects as asked for. As the CPIO is expected to provide the information available on record, the link to the order of the Disciplinary Committee has been provided to the Appellant. Accordingly, no further interference is required with the response of the Respondent.
15. In view of the above, I do not find any reason to issue any direction to the Respondent as asked for in this Appeal. Accordingly, the Appeal is disposed of.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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