

**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 June, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00018**

IN THE MATTER OF

Bhaskar Saxena

... 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 21st May 2023, challenging the communication of the Respondent dated 12th May 2023 in his RTI application no. ISBBI/R/E/23/00046 filed under the Right to Information Act (RTI Act). In his RTI application, the Appellant has requested for the following in respect of his complaint filed against Mr. Devendra Singh -
"With regard to the IBBI Complaint Application Number : IBBI/C/2023/00827 and Reference Number : IBBI/COMP/2023-24/01124 filed on 19th Jan 2023, the complainant i.e. myself request following information related to the investigation:
1) *Was any Show Cause Notice (SCN) issued to the IP in the above matter? If yes, please provide a copy of the SCN. If no, please state so.*
2) *Was any inspection u/s 218 of the Code ordered by the Board in the above matter? If yes, please provide a copy of the Inspection Report. If no, please state so.*
3) *Did the IP submit any written or oral reply to SCN or submit any additional documents in response to SCN? If yes, please provide a copy of such replies..."*
 2. With regard to query (1) and (3) of Appellant, the Respondent has stated that no SCN has been issued. With regard to query (2), the Respondent has stated that the same is exempted under section 8(1)(j) of the RTI Act.
 3. Aggrieved by the same, with respect to query (2), the Appellant has stated the following in the Appeal -
"...This should be kindly noted that the information sought is related to and investigation in serious charges related to integrity of Resolution Professional by IBBI, which is not at all personal. This is to bring to your notice that behavior of Resolution Professional is leading to delay in resolution of CIRP of SBPL. I have detailed all these behaviors in the complaint. There are more than 700 home buyers effected, many of which are leading miserable life in the concluding year of their life. Hence this is related to public interest. Sir I think that I am completely entitled to know all the details of investigation conducted on my complaint. Request you to kindly direct the relevant officers to share the details .:"
 4. 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.

5. With regard to query 2, I deem it appropriate to examine the scope of the information requests which ostensibly are exempted from disclosure under the provisions 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;”
6. 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, I hold that the requested information is exempted under section 8(1)(d).
7. I further 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. It is trite to say that IBBI being the regulatory authority for Insolvency Professionals, makes observations and receives their responses in respect of processes under the Insolvency and Bankruptcy Code, 2016. 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 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.
9. 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.
10. Also, I deem it appropriate to examine the scope of provisions of section 8(1)(h) of the RTI Act. A plain reading of section 8(1)(h) indicates that in order to deny information, it must be established that the information which is sought would impede the ‘process of investigation’ or apprehension or prosecution of the offenders. In *Bhagat Singh v. Chief Information Commissioner*, 146 (2008) DLT 385, the Delhi High Court observed that: *“...Under Section 8, exemption from releasing information is granted if it would*

impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.”

It is clear that the disclosure of the inspection report to the Appellant may impede the ‘process of investigation’ or apprehension or prosecution of the offenders as the same is under consideration with the Board. Accordingly, the requested information is also exempted under section 8(1)(h).

11. The Respondent has contended that the requested information is exempted under section 8(1)(j). 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. However, it is not clear as to how the inspection report is a personal information the disclosure of which has no relationship to any public activity or interest, or how it would cause unwarranted invasion of the privacy of the individual? This is obviously denial without reason and the CPIO is requested to deal with RTI applications in accordance with RTI Act.
12. Moreover, the Appellant has no right to ask for such documents under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (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. Accordingly, no further interference is required with the response of the Respondent.
13. 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, Bhaskar Saxena.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.