

**BEFORE THE FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

Dated: 1st March, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00008**

IN THE MATTER OF

Ashish Mohan Gupt

... 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

The Appellant has filed the present Appeal dated 31st January 2023, challenging the communication of the Respondent dated 30th January 2023 with regard to his RTI Application No. ISBBI/R/E/22/00289 dated 28th December 2022 filed under the Right to Information Act, 2005 (RTI Act). He had requested for the following information in the context of the Newsletter of IBBI -

- “1. List of these Real estate companies (17%) where liquidation commenced along with reasons for commencement of Liquidation.
2. Current status of liquidation of these Real Estate companies.
3. Total number of Real Estate Allottees (Financial Creditors) across all these Real Estate companies.
4. Admitted claims of these Real Estate Companies under CIRP
5. Fair Value and Liquidation value of the Real Estate Companies.”

2. The Appellant, in his Appeal has *inter-alia* stated that the information provided for point 1, 2 and 5 are not satisfactory and for point 2 and 3, the provided link is a humongous task as it needs to be segregated.
3. On the Appeal, the Respondent has submitted that “*With respect to point 1,2 and 5 the information as sought by the applicant is provided in complete. With respect to point 5. it is submitted that fair value and liquidation value of companies are commercial confidence. The disclosure of same would have bearing on the prospective resolution plans to be received for the ongoing CIRPs.*”
4. I have carefully considered the application, the response of the Respondent and the submissions made in the Appeal. 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 and which can be disclosed subject to exemptions under section 8 of the RTI Act. 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 the RTI Act. Thus, the “*right to information*” under section 3 of the RTI Act is circumscribed by RTI Act itself as the right is limited within scope of ‘*information*’ as defined under section 2(f) and is subject to other provisions including those under section 7(9) of the Act. Accordingly, the Respondent is expected to provide information as available on record.
5. 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.”

6. With regard to request no. 1, 2 and 3, it is observed that the Respondent has provided the information as available on record. The Respondent is expected to provide information as available on record and not to create any information. The scope of ‘right to information’ under section 2(j) of the RTI Act limits the information to one ‘*accessible*’ under the RTI Act and ‘*which is held by or under the control of any public authority*’. In this context, I note that the Hon’ble Supreme Court of India in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Judgment dated August 9, 2011), inter alia held: “*The RTI Act provides access to all information that is available and existing. ...But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.*” It is also observed that the Respondent is not supposed to create any information or give clarifications / confirmations on the information. The queries of the Appellant seeking clarifications from the Respondent on the information provided, are beyond the scope of ‘information’ and ‘right to information’ under the RTI Act.
7. Further, I find that the Respondent, under the RTI Act, is required to furnish information/documents as available on record and is not supposed to collect, collate or segregate the information in the manner in which it was sought by the Appellant. The Hon’ble Supreme Court in decision dated 09th August, 2011 in the matter of *CBSE & Anr. Vs. Aditya Bandopadhyay & Ors*. (C.A. No. 6454 of 2011) held:

“35..... But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant..... 67..... The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing information furnishing, at the cost of their normal and regular duties”
8. The matter has been further clarified by the Division Bench of Hon’ble Delhi High Court in its decision in *The Registrar of Supreme Court of India vs Commodore Lokesh K Batra & Ors*. dated 07th January 2016 (LPA 24/2015 & CM No. 965/2015) wherein it was held that:

“15. On a combined reading of Section 4(1)(a) and Section 2(i), it appears to us that the requirement is only to maintain the records in a manner which facilitates the right to information under the Act. As already noticed above, “right to information” under Section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the applicant.”
9. With reference to request number 5, I note that the Appellant has requested for Fair Value and Liquidation Value of the real estate companies. The Respondent has stated that the said information is exempted under section 8(1)(d) of the RTI Act as the same is in nature of commercial confidence.

10. In so far as scope of this exemption under section 8(1)(d) is concerned, the Respondent would be right to refuse to give information, disclosure of which would harm the competitive position of a third party, unless he is satisfied that larger public interest warrants the disclosure of such information. 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.
11. Fair Value and Liquidation Value of the companies is indeed a commercially sensitive information and the disclosure of the same to a third party i.e. the Appellant may harm the competitive position of such companies and the stakeholders involved in the process. The Respondent must be cautious of the same. I further note that as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the information related to Fair Value and Liquidation Value is mandated to be treated as confidential.
12. Therefore, in view of aforesaid, the disclosure of information pertaining to request number 5 is exempted under section 8(1)(d) of the Act. Also, the Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information. Accordingly, in my view, the Fair Value and Liquidation Value of the companies cannot be disclosed to the Appellant. I further find that these values are provided to IBBI in fiduciary relationship, and same is also exempted under section 8(1)(e) also.
13. Accordingly, I do not find any reason to interfere with the decision of the Respondent.
14. The appeal is disposed of accordingly.

Sd/
(Amit Pradhan)
First Appellate Authority

Copy to:

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