

**EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

2nd Floor, Jeevan Vihar Building 2

Sansad Marg

New Delhi- 110 001.

Dated the 1st December, 2019.

Appeal No. ISBBI/A/2019/60008 (F. No. – IBBI/BS/RTI/RTI APP/246)

Arising out of order dated 17th October, 2019 under RTI Registration No. ISBBI/R/2019/50084

IN THE MATTER OF

Mr. B. K. Nageswar

..... Appellant

Vs.

Chief Public Information Officer
Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan
New Delhi

..... Respondent

ORDER

1. The present Appeal No. ISBBI/A/2019/60008 dated 29th October, 2019, received by the office of the First Appellate Authority (FAA), Insolvency and Bankruptcy Board of India under the Right to Information Act, 2005 (22 of 2005) (Act), has been preferred by Mr. B. K. Nageswar against the order of the Chief Public Information Officer (CPIO).
2. On a perusal of the appeal and the relevant records, it is observed that the appellant has requested the following information (RTI request), under section 6 of the Act:

“This is with reference to my complaint 11011/110/2019-IBBI dated 9th September, 2019 against Mr. Guru Prasad Makam, Insolvency Professional.

(1) With reference to above complaint, please confirm notice has been issued to Mr. Guru Prasad Makam.

(2) If yes, please provide a copy of the notice.

(3) Also please provide me a copy of the reply of Mr. Guruprasad Makam with reference to your notice.”

3. Pursuant to the above, the Respondent replied, as under:
“The Complaint No. 11011/110/2019-IBBI dated 9th September, 2019 against Mr. Guru Prasad Makam, Insolvency Professional, is under process.”
4. Aggrieved by the said reply, the appellant has preferred this appeal against the reply of the respondent, contending that the respondent has neither given any specific reply to the queries raised by him nor has he claimed exemption under any of the provision of the Act. The appellant further contends that the questions asked in the RTI application fall very well in category of information as defined in section 2(f) the RTI Act. The appellant further contented that under such grounds it is mandatory for the CPIO to disclose all information sought in the RTI application.
5. The CPIO and the officer, who is dealing with the matter referred to in the RTI request have been heard. The appeal and the relevant records have been examined. Comments of the CPIO was specially sought as to the reason for not disclosing information as stated by the appellant. He responded by saying that the complaint sought information relating to a complaint made by him against one Mr. Guru Prasad Makam, Insolvency Professional. He submitted that the said complaint was under process in IBBI, at the time of RTI request and the details of which were unavailable to him. He, however, submitted that even if complete information was available, he would not have been able to provide as the same as it was exempted from disclosure under section 8(1)(h) the Act. He admitted the fact that he failed to mention the relevant section of the Act under which disclosure of information was exempted.
6. In this connection, it is relevant to consider provisions of section 8 of the Act, which, inter alia, provides as under:
“(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -
xxxxxxx
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;
xxxxxxx.” (Emphasis supplied)

7. The Supreme Court in *Directorate of Enforcement Vs. Deepak Mahajan* [Cr.A. No. 537 of 1990, 31st January, 1994], defined the word “investigation” as:
“...the word 'investigation' **cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.**” (Emphasis supplied)
8. Further, the Delhi High Court in order dated 3rd June, 2011 in *B.S. Mathur Vs. Public Information Officer of Delhi High Court* [WP (C) 295/2011] had interpreted the above stated provision thus:
“The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation.” (Emphasis supplied)
9. Also, the CIC in *Shahid Anwar Vs. Central Bureau of Investigation* [order dated 17th January, 2011, CIC/WB/A/2009/000750] held thus:
“The prosecution proceedings have neither been finally disposed of nor has the matter been finally concluded. The supply of the requested information, other than the RC numbers of the case, will make the Appellant privy to the extremely confidential information which was meant for the exclusive use of the CBI for the purpose of prosecution. It can be sufficiently concluded that such information clearly falls well within exemption contemplated in Section 8(1)(h) given the fact that the process of "prosecution of offenders" will be impeded if that very information is provided by the CBI at this stage. Thus, the FAA was just and right in refusing to disclose the information sought by the Appellant by invoking Section 8(1)(h) of the RTI Act.”
10. Matters relating to investigation against an Insolvency Professional might take a different turn once the investigating authority finds that there is material to proceed with disciplinary action/prosecution against a service provider under the Insolvency and Bankruptcy Code, 2016. Since the complaint was under process in order to find out any material that warrants investigation, disclosure of which would have impeded the process of apprehension or prosecution of any offence, providing information of which is exempted under section 8(1)(h) of the Act. Whatever information as available on the date of RTI request was provided to the appellant by the Respondent and if at all any more information available,

the Respondent could not have provided as it would be hit by section 8(1)(h) of the Act. Hence I find that there is merit in the submission of the Respondent.

11. In view of the foregoing, the information requested for by the appellant could not have been provided by the CPIO and the appeal, thus fails.

(Sd/-)

(K. R. Saji Kumar)

Executive Director and First Appellate Authority

Copy to

1. Appellant, Mr. B. K. Nageswar
2. CPIO, Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, New Delhi.