

**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: 28th September, 2021

RTI Appeal Registration No. ISBBI/A/E/21/00023

IN THE MATTER OF

Satyen Gupta

... 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 1st September 2021, challenging the communication of Respondent dated 17th August 2021 whereby he had denied the information requested by the Appellant vide his RTI Application No. ISBBI/R/E/21/00137 dated 27th July 2021 filed under the Right to Information Act, 2005 (RTI Act): –

| Sl. No. | Information sought by the Appellant | Response of the Respondent |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Copy of IBBI's letter sent to IP in respect of complaint disposal letter No Comp-11011/22/2021-IBBI/1029/ 2065 dated 22.07.2021 sent to Mr. Sanjay Jain and the response given by IP to the Board. | The complaint referred to was submitted by one Mr. Sanjay Jain and not the applicant (Mr. Satyen Gupta) in the present request. As such, the communication between the Board and the IRP/RP cannot be provided to the applicant in accordance with the provisions of section 8(1)(d) of the RTI Act. |

2. In his Appeal, the Appellant has submitted that: “.... section 8(1)(d) of RTI Act does not cover this particular scenario. It can be easily be concluded that that section is wrongly applied and a case of illegal denial of information. Going into background of this application, Mr Sanjay Jain has filed a complaint under the provisions of Regulation 7(3) of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017. The disposal of this complaint was not done in specified period. This delay is having bearing on the on-going CIRP exercise and it is in the interest of other members. Mr Sanjay Jain has already given his concurrence vide email 26th August to CPIO for release of information. My RTI application was for having basic details in order to understand the cause of delay on the part of the Board...”
3. In response to the Appeal, the Respondent has stated that: - “ *the information sought regarding the response of IP is in the nature of commercial confidence and is available with IBBI in its fiduciary capacity and hence is exempted from disclosure under section 8(1)(d) and (e) of the RTI Act. It is further submitted the appellant Mr. Satyen Gupta had not sought any information about Mr. Sanjay Jain. Hence, consent provided by Mr. Sanjay Jain is of no consequence.*”
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.
5. The scope of information disclosure under the RTI Act is circumscribed by RTI Act itself. While the “*right to information*” flows from section 3 of the RTI Act, it is subject to other provisions of the Act. 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. In the instant case, the Respondent denied the disclosure of information as according to him – “*the communication between the Board and the IRP/RP cannot be provided to the applicant in accordance with the provisions of section 8(1)(d) of the RTI Act.*” In the context of such response of CPIO, I deem it appropriate to examine the scope of 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. In so far as scope of this exemption is concerned, the Respondent would be right to refuse to give information relating to commercial confidence, trade secret or intellectual property, 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. The question, therefore, that falls for consideration is as to whether disclosure of IBBI’s letter to the Insolvency Professional (IP) and response of IP thereto, is a trade secret

or commercial confidence or intellectual property. In the instant case, the Respondent has not given any reason or justification for invoking section 8(1)(d) of RTI Act. Does he think it trade secret? commercial confidence? or intellectual property? or will the disclosure of the information would harm the competitive position of any third party? It is obviously denial without any specific reason. The Respondent is advised to take into account these requirements of law while dealing with information requests under the RTI Act.

7. I note that the complaint referred to by Appellant was not sent by him to IBBI but by one Mr. Sanjay Jain (complainant). Accordingly, the Appellant has no right to ask for a copy of letter sent by IBBI to the IP and the response of the IP to the same in accordance with the provisions of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (Regulations). These Regulations do not provide for furnishing of copies of correspondence between IBBI and IP to strangers to the proceedings. If the complainant has any grievance regarding disposal of his complaint, the remedy is available to him by filing review under regulation 7(5) of the Regulations which he, as informed vide his e-mail dated 26th August 2021, is availing. In addition, with consent of the complainant, the Appellant has raised the grievance, which is subject matter of review, in the garb of information request under the RTI Act by contending that the disposal of the complaint of Mr. Sanjay Jain was not done in specified period and the delay has bearing on the on-going corporate insolvency resolution process and it is in the interest of other members. I find that the issue as to whether or not the IBBI complied with the timelines stipulated in the Regulations, cannot be considered under the RTI Act.
8. Having observed as above, I deem it fit to deal with the Appeal on merits in the interests of the right to information and scope of information disclosures under the RTI Act.
9. It is noted that the Respondent in his comments to the Appeal has stated that the information sought by the Appellant is of commercial confidence and is available with IBBI in its fiduciary capacity. 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.

10. I note that the communications between the IP and IBBI are in the context of a complaint related to 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).
11. 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."*
12. It is trite to say that IBBI being the regulatory authority for Insolvency Professionals, receives their responses to complaints received against them 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 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.
13. 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. The consent of complainant cannot be a valid ground to outweigh the scope of exemptions under section 8(1)(d) and (e). In fact, the reason cited by the Appellant for disclosure of requested information are not cogent instead they are narration of hypothetical scenarios and information has been sought in order to understand the cause of delay in disposal of complaint of Mr. Sanjay Jain.
14. Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him under the RTI Act.

15. Before parting with this order, I would also observe that in the facts and circumstances of this case, the Appellant's questions are roving and fishing in nature. I think that this kind of roving requests in the RTI application and the appeal would go against the letter and spirit of the RTI Act and definitely affect the sanctity of right to information and disclosure obligations in accordance with the RTI Act. In this regard, it is useful to refer to the following observation of 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):

"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. 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 prioritising 'information furnishing', at the cost of their normal and regular duties."

16. In view of the above, I observe that the RTI Act discourages information requests as made in the instant case.

17. The appeal is disposed of accordingly.

Sd/

(Santosh Kumar Shukla)

First Appellate Authority

Copy to:

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