

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

2<sup>nd</sup> Floor, Jeevan Vihar Building  
Sansad Marg, New Delhi- 110 001

**Dated: 22<sup>nd</sup> September, 2022**

**RTI Appeal Registration No. ISBBI/A/E/22/00041**

**IN THE MATTER OF**

**CA Rajat Kumar Mehra**

... Appellant

Vs.

**Central Public Information Officer**

The Insolvency and Bankruptcy Board of India  
2<sup>nd</sup> Floor, Jeevan Vihar Building  
Sansad Marg, New Delhi - 110 001.

... Respondent

**ORDER**

1. The Appellant has filed the present Appeal dated 30<sup>th</sup> August 2022, challenging the communication of the Respondent dated 8<sup>th</sup> August 2022 with regard to his RTI Application No. ISBBI/R/E/22/00166 dated 9<sup>th</sup> July 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has requested for the following –  
“1. *The applicant is an aspirant for Valuation Examination under Registration No. NISM-202100120643 Enrollment No. 2200157106 and appeared in Valuation Examination on 8.7.22 at 13.30 hours to 15.30 hours:*  
(a) *Kindly provide certified copy(ies) of all 77 questions asked from this applicant with their correct answers as per your databank and justification for answer held with you.*  
(b) *Kindly also provide certified copy of the option chosen by me.*  
(c) *Certified copy of bifurcation of questions asked from this application into 1 and 2 marks*  
2. *Please provide certified copy of options chosen by this applicant.*  
(a) *Process of application for Revaluation*  
(b) *Records of Instructions to NISM Centers to accept requests for Revaluation* (c) *Records of instructions, orders or letters to accept the request for Revaluation to Varanasi NSEIT*  
(d) *Process of recourse when the staff at the Examination Centre refuse to receive the application for Revaluation*  
(e) *Total no. of requests for Revaluation received during the year 2021 and present year.*  
(f) *Results changed, if any, during the year 2021 and 2022 due to Revaluation*  
3. *Certified copy of the Decision of the Governing Board of IBBI resulting issue of Circular No. EXAM-13016/1/2022-IBBI dated 6.6.22 on alleged Improvement to the Scheme of examinations- frequency of attempts in LIE/ Valuation Examinations*  
4. *Certified copy of Board Resolution and Note for Governing Board in its 27th meeting dated 2nd March 2022.*  
5. (a) *Number of Questions in your question bank exclusively for asking questions for SFA Valuation Examination under new Syllabus w.e.f 01.07.2022*  
(b) *Number of Questions which can also be asked from SFA aspirants but held for other examinations too*  
(c) *Total no. of Questions, Answers and Solutions held with IBBI as on the date of providing this information*

6. (a) *Certified Copy of permission u/r 3 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 in the matter of your role of conducting Valuation Examination or otherwise granted to IBBI.*  
 (b) *Record of your authority and competence to use Ashok Stambha on your letter heads and website*  
 7. *Records of competence and authority for maintaining different frequency of examination in different cities and centres”*

2. Aggrieved by the response of the Respondent, the Appellant has broadly submitted the following: –
  - a. With regard to query (1)(a) and (b),
    - (i) Section 4(1)(d) has not been complied by the Respondent.
    - (ii) Section 8(1)(d) cannot be applied as there is no third party in the matter.
    - (iii) The Respondent and FAA cannot make poor aspirants as third party and is swallowing money from all to be self-sufficient.
  - b. With regard to query (1)(c),
    - (i) The correct enrolment number is 2200180040 and sought information be provided at appeal stage.
    - (ii) The Name, address, Registration No., Mobile number was sufficient retrieving information and the Respondent did not knowingly and deliberately provide information.
    - (iii) Against the same Enrolment number exemption was claimed u/s 8(1)(d) under reply to para 1 (a) and (b) but different reply under para (c) tells the truth of avoidance.
  - c. With regard to query (2)(a) to (c),
    - (i) The Respondent did not provide link and directed the Appellant to IBBI website having tonnes of data and information.
    - (ii) No information is available on the website.
  - d. With regard to query 2(d), no liberty to center person to receive application for revaluation is against principle of natural justice,
  - e. With regard to query 2(e) and (f),
    - (i) If there is no information, there is no need of claiming section 8(1)(e).
    - (ii) The information is concealed.
    - (iii) At the appeal stage, at least number of persons whose results were changed may be informed.
  - f. With regard to query 3 and 4,
    - (i) Actual minutes are not provided but draft minutes are provided.
    - (ii) The documents are not certified.
  - g. With regard to query 5(a) and 5(c),
    - (i) Section 8(1)(d) is not application.
    - (ii) Actual may be that millions of questions on google is put before aspirants, so that the Respondent is avoiding this information.
  - h. With regard to query 5(b),
    - (i) The Respondent failed to explain how the information is ‘hypothetical’,
    - (ii) The Respondent failed to understand the matter and never tried to understand the matter by contacting the Appellant.
  - i. With regard to query 6(a) and (b),

- (i) The Respondent failed to provide permission under State Emblem of India (Prohibition of Improper Use) Act, 2005,
    - (ii) The Respondent has to be Ministry, Department or Office of the Central Government to be entitled under Schedule I of the State Emblem of India (Regulation of Use) Rules, 2007.
    - (iii) The Respondent out of the way re-assigned the work related to Valuation Examination to NISM and not disclosing agreement with them and NISM is not abusing Ashok Stambha.
  - j. With regard to query 7,
    - (i) The discrimination (city wise) is admitted,
    - (ii) The Appellant was not allowed to sit in examination, because he dared to exercise his rights under RTI Act.
  - k. The information given by Respondent is incorrect, *mala fide* and discriminatory.
3. The Appellant also requested for opportunity of personal hearing. Considering several contentions raised in the Appeal in respect of response on merits, the Appellant was given opportunity of personal hearing which he availed on 19<sup>th</sup> July, 2022 through virtual mode. He also requested for copy of comments of the Respondent which was shared with him before the hearing. During hearing, the Appellant made submissions on the lines of written submissions made in Appeal and vehemently argued that Respondent has decided his information request without applying mind and has acted against law and practice relating to RTI Act. He claimed that he is entitled to know the correct answers to questions asked in examination conducted by IBBI. He was also given liberty to make additional written submissions, if he so chooses, which he declined.
  4. I have carefully examined the application, the response of the Respondent and the Appeal. Before examining the request, I deem it appropriate to deal with scope of 'information' and right to receive the information under the RTI Act. It is noted that 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.*".
  5. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advice, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. 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 section 8.
  6. It is also clear that 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 8 of the Act. As stated in

the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28<sup>th</sup> 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.”*

7. In the instant case, the Appellant has requested for (i) certified copy of all questions and their correct answers with justification, (ii) certified copy of options chosen and bifurcation of question into 1 and 2 marks, (iii) number of questions been exclusively asked for SFA Valuation examination. I have already provided detailed reasons to the Appellant vide my Order dated 8<sup>th</sup> June 2022 in RTI Appeal Registration No. ISBBI/A/E/22/00018 and Order dated 21<sup>st</sup> July 2022 in RTI Appeal Registration No. ISBBI/A/E/22/00027 as to how disclosure of the questions and answers will not only be against the confidentiality and integrity of the entire Examination process but also affect the competitive position of the other aspirants as the aspirants having questions and answers in advance will have an undue advantage as the questions are likely to be repeated in the future Examinations. It has been held therein that such information is exempted under section 8(1)(d) and 8(1)(e). Also, as the questions in the question bank are limited, if any Appellant is provided with the copy of questions and answers asked from him in a particular attempt, such disclosure can eventually lead to disclosure of the entire question bank. This may go against the confidentiality and integrity of the entire Examination process. Also, disclosing the number of total questions in the question bank or their bifurcation, will violate the integrity of the question bank, namely, breach the confidentiality/secretcy of the question bank and is therefore, exempted under section 8(1)(d).
8. The Appellant has mentioned his Enrollment No. as 2200157106 in his RTI application. Now, in the Appeal he has corrected the same as 2200180040 and has requested the information. The Respondent has checked the data and has stated that “*No such enrolment number exists for the said examination date.*” As the enrolment number was wrongly provided, the Respondent is not at fault. The Appellant, however, is free to ask for information with the correct enrolment number by filing a fresh application, and same can be dealt on its merits by the Respondent.
9. With regard to query 2(a) to (c), as per FAQs available at <https://ibbi.gov.in/uploads/faqs/Final%20FAQs%20Phase%204%20wef%2001072022.pdf>, it is stated that since the candidate’s responses are checked by computer without any human intervention, no re-evaluation is allowed. Accordingly, the Respondent has rightly referred the Appellant to the website of IBBI and the Appellant can access the FAQs from the link cited in this Order.
10. With regard to query 2(d) and (e), the Respondent has replied stating that the information sought is not available / not maintained. In my view, the Respondent is expected to provide information as available on record and not create any information. Accordingly, as no information is available/ maintained, he cannot be expected to provide any other information.

Same is beyond the scope of 'right to information' under section 2(j) of the RTI Act which 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.*" Further, I note that the Hon'ble CIC in the matter of *Sh. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: "... if it (SEBI) does not have any such information in its possession, the CPIO cannot obviously invent one for the benefit of the Appellant. There is simply no information to be given."

11. With regard to query 2(f), the Respondent has stated that the information related to results changed during the year 2021 and 2022 due to revaluation, is exempted under section 8(1)(e) of the RTI Act. It is not justified by the Respondent as to how the information is in fiduciary relationship. 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. Having observed this, the results of the examination are personal information of the candidate and the IBBI holds the same in fiduciary relationship. 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.*" It is trite to say that IBBI being the examiner for candidates, has results of all the candidates who have appeared in the examinations. I am convinced that there is fiduciary angle to the relationship between the examiner and the IBBI, and the requested information is also personal in nature. Accordingly, same is exempted under section 8(1)(e) and 8(1)(j) of the RTI Act. Also, 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. There is no valid ground to outweigh the scope of exemptions under section 8(1)(e) and (j).
12. With regard to query 3 and 4, the minutes as available on record have been provided to the Appellant. The minutes are generally confirmed in the next meeting. Accordingly, no further information could have been provided. However, as the Appellant has requested for a certified copy of the attachment sent by the Respondent in response to query (3) and (4), same may be provided to the Appellant within 10 days of the date of this Order.

13. The Appellant has also asked for questions which are asked from SFA aspirants but are for other examinations too. In this query, the Appellant has assumed that there are some common questions in the SFA examination and other examination and has requested the Respondent to provide number of such questions. Responding to such hypothetical questions is not within the scope of 'right to information' and 'information' under the Code. Also, the RTI Act cannot be used for redressal of grievances of the Appellant. Accordingly, no information could have been provided by the Respondent.
14. With regard to query 6(a) and 6(b), the Appellant has requested for certified copy of permission under State Emblem of India (Prohibition of Improper Use) Act, 2005 and record of authority and competence to use Ashok Stambha. The Respondent has responded '*As per State Emblem of India (Regulation of Use) Rules, 2007*'. The information as available on record has been provided by the Respondent to the Appellant. If the Appellant has any doubt the RTI Act is not the forum to resolve the same. Having held so, I would request the Appellant to be guided by Rule 10 of these Rules.
15. With regard to record of competence and authority for maintaining different frequency of examination in different cities, the Respondent has stated that no such information is available. In my view, the Respondent is expected to provide information as available on record and not create any information. Accordingly, as no information is available/maintained, he cannot be expected to provide any other information. Moreover, the fact that the Appellant was not allowed to sit in examination because he has exercised his rights under the RTI Act, is no ground for appeal under the RTI Act.
16. In view of the above, the Appeal is disposed of.

**Sd/**  
**(Santosh Kumar Shukla)**  
First Appellate Authority

**Copy to:**

1. Appellant, CA Rajat Kumar Mehra.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2<sup>nd</sup> Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.