

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

7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circle, New Delhi- 110 001

Dated: 14th November, 2024

RTI Appeal Registration No. ISBBI/A/E/24/00039

IN THE MATTER OF

Shilpi Asthana

... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circle, New Delhi - 110 001.

... Respondent

ORDER

1. The Appellant has filed the present Appeal dated 9th October 2024, challenging the communication of the Respondent dated 10th September 2024 with regard to her RTI Application No. ISBBI/R/P/24/00023 dated 8th August 2024 filed under the Right to Information Act, 2005 (RTI Act). As this Appeal required detailed examination of provisions of RTI Act, same is disposed within 45 days instead of 30 days. In the RTI Application, the Appellant has requested for the following –
“A. A copy of the reply or any communication sought from the Resolution Professional, Mr. Rohit Ramesh Mehra, in response to the complaint dated 02 January 2024 under reference number IBBI/C/2024/01051. Please provide the reply along with any enclosures received from the said Resolution Professional.
B. A copy of the reasons or factors recorded by the Insolvency and Bankruptcy Board of India (IBBI) that formed the basis for the rejection or dismissal of the said complaint. If the reasons have been separately recorded, please provide copies of the recorded minutes / written notes.
C. A copy of the detailed order or decision passed by the IBBI in relation to the complaint filed on 2nd January 2024, under application number IBBI/C/2024/01051.
D. A copy of the detailed order or decision passed by the IBBI in the review application filed by the Complainant in the review application received by IBBI on 26 April 2024.”
2. The Respondent has replied the following –
“**Reply to A:** “The reply received from the Resolution professional contains information regarding commercial confidence of the concerned corporate debtor and is held by IBBI in a fiduciary capacity. The disclosure of the same is exempted under section 8(1)(d) and (e) of the RTI Act, 2005.
Reply to B and C: The reasons for disposal for the complaint was recorded in the letter dated 15 April 2024+ sent to the complainant. The same is attached herewith.
Reply to D: The communication received from the applicant was disposed on the complaints and grievance portal of IBBI. The copy of the same is attached herewith.”
3. Aggrieved by the same, the Appellant has *inter-alia* stated the following in the Appeal –
“The **Reply to point A** is wholly inadequate. The CPIO should have recognized that IBBI failed to address the key issue concerning the actions of the Resolution Professional (RP) during the subsistence of the Corporate Insolvency Resolution Process (CIRP). Specifically, the RP permitted the transfer of exorbitant amounts to certain creditors through preferential transactions...”

The Reply to B and C is inadequate because the letter referenced by the CPIO does not provide any specific reasons. The order referred by CPIO is lacking in reasoning and appears to be issued without proper consideration....

The Reply to point D is similarly insufficient, as the review order issued by the IBBI was vague, lacking clarity, and demonstrated a failure to apply proper judicial reasoning. The order offers no substantive explanation or rationale, reflecting a cursory and inadequate examination of the issues at hand. In consideration with point D a detailed review order therefore, should have been provided...."

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 inquisitions. 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. 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.
6. Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (Regulations) do not provide for furnishing of copies of correspondence between IBBI and IP. If the complainant has any grievance regarding disposal of her complaint, the remedy is available to her by filing review under regulation 7(5) of the Regulations. It is noted that the Respondent 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.
7. 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).

8. 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."*
9. 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. Also, the Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information nor has she disclosed as to how her 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.
10. With regard to point B, C and D, 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." It is pertinent to mention here 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. Section 2(j) of the RTI Act defines the "*right to information*" in terms of information accessible under the Act which is held by or is under the control of a public authority.
11. The aforesaid definitions contemplate providing of material in the forms of records, documents, opinions, advices, etc. It does not include resolving grievances of the Appellant from the information provided. The grievances of the Appellant against the disposal of the complaint, cannot be dealt under RTI Act. The Hon'ble CIC in *M Jameel Basha Vs. CPIO, Ministry of Personnel Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi -110001, File No: CIC/MPERS/A/2017/158527/SD* (Decision dated 06.05.2019), has observed the following:
"Commission concedes with the submission of the CPIO as no information has been sought as per Section 2(f) of the RTI Act. It may be noted that under RTI Act, CPIO is not supposed to create information or interpret/clarify/deduct information in respect of queries/clarifications. Similarly, redressal of grievance, non-compliance of rules, contesting the actions of respondent public authority and suggesting correction in government policies are outside the purview of the RTI Act."

12. I also note that Hon'ble Supreme Court of India in its judgment dated August 9, 2011 in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors.* had held that: ...A public authority is “...not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”
13. Also, the Respondent is expected to provide information as available on record and not create any information. Accordingly, the information as available with CPIO, is provided to the Appellant. He cannot 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’.
14. Accordingly, in my view, the information as requested by the Appellant has been disclosed to her under the RTI Act and no further information can be disclosed. The appeal is disposed of accordingly.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

1. Appellant, Shilpi Asthana.
2. CPIO, The Insolvency and Bankruptcy Board of India, 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circle, New Delhi- 110 001.