

**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: 17th October, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00042

IN THE MATTER OF

Ashok Kriplani

... 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 the present Appeal dated 27th September 2022, challenging the communication of the Respondent dated 16th September 2022 with regard to his RTI Application No. ISBBI/R/E/22/00202 dated 17th August 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has requested –
“..In the Disciplinary proceedings initiated against the IP Ashok Kriplani vide order of the Board dated 20/05/22, please allow me, Ashok Kriplani, to inspect the complete file records of the Inspection and the Disciplinary proceedings in the case of the IP, Ashok Kriplani..”
2. The Respondent has denied the information stating that the sought information is exempted under section 8(1)(h) of the RTI Act as the proceedings are currently pending in the matter. In the Appeal, the Appellant has stated –
“The objection stated by the respective authority is unreasonable and invalid by relying on Section 8 (1) (h) of the RTI ACT, 2005 citing that the investigation and prosecution is going on and hence refused to provide the information in terms of inspection of the case file. However, it is submitted that the prosecution has come to an end since the order was passed by the Disciplinary Committee of the IBBI where the board suspended the registration of the Applicant for three years vide order dated 16.08.2022. The order dated 16.08.2022 is attached herewith.”
3. 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. 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 under section 8(1)(h) 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)(h) of the RTI Act, which reads as under: -

*“(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;”*

4. In so far as scope of this exemption is concerned, the Respondent would be right to refuse to give information which would impede the process of investigation or apprehension or prosecution of offenders. The question, therefore, that falls for consideration is as to whether disclosure of “*file records of the Inspection and the Disciplinary proceedings*”, would impede investigation or apprehension or prosecution of offenders. In the instant case, the Respondent has stated that due to pending proceedings before the Delhi High Court, section 8(1)(h) of RTI Act is applicable. He has not stated as to how the disclosure would “impede” the process of investigation or apprehension or prosecution of offenders? It is obviously denial without reason.
5. It is pertinent to note that in *Director of Income Tax v. Bhagat Singh*, LPA No. 1377/2007 and CM No. 17355/2007, the Delhi High Court observed that, “*Under Section 8(1)(h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason.*” Further, in *Bhagat Singh v. Chief Information Commissioner*, 146 (2008) DLT 385, the Delhi High Court observed that : “*Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.*” In *S. Mathur v. Public Information Officer of Delhi HC* [W. P. (C) 295/2011], the Delhi High Court observed that “*As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought “would impede the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would “impede” the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word “impede” would “mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation”, it has still to be demonstrated by the public authority that the information if disclosed would indeed “hamper” or “interfere” with the investigation, which in this case is the second enquiry.*”
6. In the instant case, the Disciplinary Committee (DC) of IBBI has *vide* Order dated 16th August 2022 disposed of the Show Cause Notice No. IBBI/IP/INSP/2020/50/532/3559 dated 20th May, 2022 issued to the Appellant. The same has been challenged by the Appellant in WP(C)

13504 of 2022, which is pending for adjudication before the Hon'ble Delhi High Court. As the disciplinary proceedings have concluded in IBBI and the order of DC is in public domain, the disclosure of requested information cannot be said to 'impede' any investigation or prosecution as envisaged under section 8(1)(h) of the RTI Act. Mere existence of challenge of the DC order cannot be a ground for refusal of the inspection. Accordingly, the Respondent is directed to provide an opportunity to the Appellant to inspect file records of the inspection and the Disciplinary Proceedings at IBBI, as per date and time mutually acceptable to the Appellant and the Respondent, within 10 days of this Order. The Appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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