

**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: 15th December, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00036, ISBBI/A/E/23/00037,
ISBBI/A/E/23/00038 and ISBBI/A/E/23/00039**

IN THE MATTER OF

Sundaresan

... 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

1. The Appellant has filed the present Appeals dated 5th November 2023, challenging the communication of the Respondent dated 17th October 2023 in respect of his RTI applications no. ISBBI/R/T/23/00005, ISBBI/R/T/23/00006, ISBBI/R/T/23/00007 and ISBBI/R/T/23/00008, filed under the Right to Information Act (RTI Act). These applications were forwarded by SEBI to the Respondent. I had joined Insolvency and Bankruptcy Board of India (IBBI) on forenoon of 1st December 2023 and was designated as the First Appellate Authority under the RTI Act with immediate effect. As the appeal was pending, it took me time to read through the documents and the dispose the time. Accordingly, this appeal is disposed in 45 days instead of 30 days.
2. I have carefully examined the applications, the responses of the Respondent and the Appeals and find that the matter can be decided based on the material available on record.
3. The request of the Applicant and the reply of the Respondent is as follows –

Para.	Information sought	Reply
1	Sec 196(1)(aa) of IBC states the duties of IBBI include promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code. Kindly furnish ATR with respect to promoting the development and working of other institutions institution wise in such a manner that entities under insolvencies maximise their recoveries of assets and also clawable transactions and increase the horrible percentage of recoveries	Activities undertaken by the Board promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code, are detailed in the Quarterly Newsletters and Annual Reports of Board available at https://ibbi.gov.in/en/publication

	from such clawable transactions and minimize losses under insolvencies.	
2	The above information may be furnished date wise and institution wise eg. separately for SEBI, separately for NFRA, separately for ICAI, separately for ICSI , etc etc etc.	
3	<p>In addition to the above have any of the following matters been referred to ICAI or NFRA or Ministry Corporate Affairs or SFIO or ED or CBI or others by IBBI or referred to IBBI by them and list of dates of significant events and milestones;</p> <p>3.1) Placing adverse audit reports at AGM and approving the same with or without creating adverse clawable interests insolvencies and losses in insolvencies</p> <p>3.2) Placing disclaimed audit reports at AGM and approving the same with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.3) Misstating adverse reports as disclaimer reports placing them at AGM with or without creating adverse clawable interests insolvencies and losses in insolvencies</p> <p>3.4) Misstating adverse / disclaimed audit reports as qualified / simpliciter qualified audit reports placing them at AGM with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.5) Misstating adverse / disclaimed / qualified / simpliciter qualified audit reports as audit reports merely modified by emphasis of matter para with or without creating adverse clawable interests insolvencies and losses in insolvencies</p> <p>3.6) Adverse / disclaimed / qualified / simpliciter qualified reports misstated as unqualified reports without emphasis of</p>	The sought information does not pertain to IBBI.

	<p>matter para with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.7) Audit reports and CAG reports and secretarial audit reports and corporate governance reports and corporate governance audit reports suppressing adverse matters and suppressing fraud and unlawful acts and suppressing maintenance of false books of accounts with or without creating adverse clawable interests and insolvencies and losses in insolvencies.</p> <p>3.8) Audit reports and CAG reports wilfully suppressing inconsistencies between audit and secretarial audit reports and CAG reports and Board Reports with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.9) Board Reports not offering explanations on remarks of auditors with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.10) Board Reports not offering explanations on remarks of auditors and in addition stating that audit reports and secretarial audit reports contain no qualification with or without creating adverse clawable interests and insolvencies and losses in insolvencies and suppression of these in audit reports , secretarial audit reports and other reports</p> <p>3.11) Accounting standard fraud, audit standard fraud, directors responsibility statement fraud, audit report fraud, CAG reports fraud, secretarial audit report fraud, Board Report fraud with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.12) Board of Directors unable to install a system for identifying threats to the</p>	
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	<p>existence of the organisation with or without failure and / or refusal to install internal audit and / or internal control systems with or without creating adverse clawable interests and insolvencies and losses in insolvencies and suppression of this fact in audit report , CAG report</p> <p>3.13) Auditors, secretarial auditors, CAG, Directors suppressing the fact that accounts cannot offer a true and fair view and are unreliable on account of unreliable opening balances as the audit reports were adverse and / or disclaimers</p> <p>3.14) Board of Directors, audit committee not going in for restatement and recasting of accounts and auditors and CAG not reporting this deficiency with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.15) Inconsistencies between auditors reports and various schedules to the audit reports, board reports, secretarial audit reports, CAG reports, accounting policies and accounts with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p> <p>3.16) accomodations, lendings etc made without any repayment tenure and schedule and repayable at option of borrower or when demanded by lender (whether parties are related or not) not reported as adverse by auditors of lenders / accommodators whether or not creating adverse clawable interests and insolvencies and losses in insolvencies and suppression of this fact in audit report, CAG report</p> <p>3.17) where the beneficiaries of clawable and similar contracts reportable under CARO or otherwise are personal guarantors or their related parties with or without creating adverse clawable interests and insolvencies and losses in insolvencies</p>	
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4	<p>Common types of AGM fraud creating adverse interests unclawable include the following -- have any of the following matters been referred to ICAI or NFRA or Ministry Corporate Affairs or SFIO or ED or CBI or others by IBBI;</p> <p>4.1)#commonfraud1_disclaimer_adverse_audit report : This is the fraud of circulating disclaimer and adverse audit reports , CAG reports , secretarial audit reports at AGMs and approving the same and creating adverse interests claw bale or not under IBC or SICA 1985</p> <p>4.2)#common_fraud1A_AGMfraud_para; This is the fraud of circulating fraud vitiated accounts , audit report and other documents to shareholders and getting those approved at AGMs</p> <p>4.3) #commonFraud1B_Sec134_3_f_ ; This is the fraud of Directors not explaining remarks of auditors and flouting Sec 134(3)(f) Companies Act 2013</p> <p>4.4)#commonFraud1C_Sec134_3_f_ ; This is the fraud of auditors , secretarial auditors , CAG not reporting violation of Sec 134(3)(f) and consequent fraud</p> <p>4.5)#common_fraud_1D_aadmin_Res_Prof_fraud; This is the fraud of administrators and resolution professionals</p> <p>4.6)#common_Fraud_2_audit_standard ; This is the auditor standard fraud perpetrated by auditors</p> <p>4.7)#common_fraud_3_false_1_Board Report_92; This is the fraud of false statements in board report</p> <p>4.8)#common_fraud_4_adverse_etc_para117_5This is the fraud of auditors and secretarial auditors and CAG not reporting as adverse violations of Sec 185,186 , 188,189 Companies Act 2013</p>	
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	<p>4.9)#Common_fraud_5_lenders_143_1_ ; This is the fraud of lenders and their auditors</p> <p>4.10)#Common_fraud_6_143_3_f_127 ; This is the fraud of auditors secretarial auditors not reporting adverse matters</p> <p>4.11)#CommonFraud7_emphasis_of_matterfraud_ This is the fraud of auditors reporting under emphasis of matter matters he should qualify or matters which warrant a disclaimed or adverse audit report.</p>	
5	Have any of the matters stated at paras 4 and 5 been referred to IBBI by insolvency professionals or administrators.	The applicant has sought clarification which is not covered under the ambit of definition of ‘ <i>information</i> ’ in terms of section 2(f) of the RTI Act, 2005.
6	ATR by IBBI on the above (paras 4 and 5) – along with a chronological list of significant events and milestones may be furnished including indicating to whom IBBI referred matters, feedbacks from those to whom IBBI referred and ATRs by them and subsequent ATRs by IBBI along with a chronological list of significant events and milestones .	Same as for para 3 above.
7	<p>Suo motto disclosures;</p> <p>7.1) Powers and duties of employees etc – we do not need service rules here – pls furnish the information.</p> <p>7.2) Procedures in decision making etc; pls synchronise all of “powers and functions assigned under the Code or rules or regulations made under the Code” and also The Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017, resolutions of governing Body etc etc and consolidate the same and pls do not expect the information seeker to do so;</p> <p>7.3) Norms of Board; only a code of conduct for members of governing body is attached – nothing else – no other norms ??? that too after 7 years of existence;</p> <p>7.4) Documents under its control – should IBBI not have several other documents eg annual reports of companies under insolvencies , offer documents of such companies , circulars</p>	<p>7.1) Employees of IBBI are governed by the Insolvency and Bankruptcy Board of India (Employees Service) Regulations, 2017.</p> <p>7.2) The Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017 is accessible at https://ibbi.gov.in/uploads/Revised%20DOP%20dated%2004%20January%202023.pdf</p> <p>7.3) and 7.4) – The applicant has sought clarification which is not covered under the ambit of definition of ‘<i>information</i>’ in terms of section 2(f) of the RTI Act, 2005.</p> <p>7.5) No information is sought in this para.</p>

	<p>guidelines issued by NFRA , SEBI , ICAI , ICSI , Ministry Corporate Affairs , orders and reviews of NFRA ????</p> <p>7.5) the expression “monthly remuneration” is not understood by IBBI</p>	
8	<p>Complete minutes , agenda papers etc in respect of Meetings of Governing Board of IBBI on placement of annual reports of IBBI for 2017-18 , 2018-19 , 2019-20 , 2020-21 , 2021-22, including indicating , names of those who attended , who voted for , who voted against , who proposed , who seconded etc etc., who abstained , who insisted his dissent be recorded and if the same was recorded --- names and names of nominators of members of the Governing Board may be mentioned separately if not mentioned in the minutes. In particular with respect to mandated contents of annual reports requiring interactions and /or coordination with RBI and others, the views of the nominees of the said organisations on the agenda papers if recorded in the minutes may also be forwarded. Any interest disclosed if any on the matter of annual report is also the information sought.</p>	<p>Agenda and decisions of the Governing Board are disclosed on IBBI website at https://ibbi.gov.in/en/about/board-meetings</p>
9	The annual reports of IBBI are first forwarded to Ministry Corporate Affairs who places the same before Parliament.	No information is sought herein.
10	What happens to the report when they are forwarded to the Ministry – does Ministry act as a department of Department / Ministry of Post and just forwards the same to the Parliament without examining the same.	Information sought does not pertain to IBBI.
11	What are the processes through which the annual reports go through from the time it enters the Department till its exit to Parliament .	The applicant has sought answers to his queries which is not covered under the ambit of ‘definition’ as per section 2(f) of RTI Act, 2005.
12	Who is responsible to see that the annual reports meet the requirements of law. Name, designation etc – pls indicate for each of the annual reports for the years mentioned at para 8	Sl. No. 6 of Part B of the Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017 details the delegation of powers for Annual Reports.

13	<p>IBBI Annual report rules; The following information suppressed in annual reports of IBBI may be furnished;</p> <p>13.1) Years under review (“(B)”) --- kindly as on date inform whether IBBI has found out the reasons for delay in insolvency resolution and difficulties in clawing clawable transactions , difficulties in identifying them , losses in insolvencies and why units become insolvent and if the nexus between these and inabilities and refusal of Directors , audit committee , auditors , secretarial auditors , CAG etc to identify threats to existence and install reliable systems of internal control and reliable financial and other statements and refusal of audit committee , auditors , secretarial auditors to report such inabilities and refusal</p> <p>13.2) have those finding been shared with SEBI, ICAI, NFRA, ICSI, Ministry Corporate Affairs, CAG etc and steps taken by them and ATRs by them to IBBI and subsequent steps by IBBI – a full and complete ATR with list of dates of achievements of significant milestones and landmarks</p> <p>13.3) policies, programmes and activities of the Board in respect matters stated above at para 13.1 (“(C)”)</p> <p>13.4) a review of the quasi-legislative, executive and quasi-judicial functions of the Board considering the matters stated at para 13.1 (“(D)”) -- PLS NOTE THE INFORMATION SOUGHT IS REVIEW – NOT ATR – ABSENCE OF ATR MAY BE A REVIEW – BUT ATR IS NOT</p> <p>13.5) analysis of outcomes in terms of transactions and transactional efficiencies (“(E)”) considering the matters stated at para 13.1</p> <p>13.6) assessment of the effectiveness and the efficiency of the Board in terms of its objectives and mandate keeping in view its resources, duties and powers considering the matters stated at para 13.1 (“(H)”)</p> <p>13.7) assessment of performance of the Governing Board and its vision, policies</p>	<p>a) Details of processes and outcomes of the CIRP and various activities undertaken by the Board is available in the Quarterly Newsletters and Annual Reports of Board available at https://ibbi.gov.in/en/publication</p> <p>b) Details of the same are presented in the Quarterly Newsletters and Annual Reports of Board available at https://ibbi.gov.in/en/publication and in the Report on Evaluation of Regulatory Performance of IBBI available at https://ibbi.gov.in/en/resources/reports</p>
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	and programmed for the following year (“(I)”) 13.8) Such other details as would enable the stakeholders to review and appreciate the performance of the Board: (“(M)”)	
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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. 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. 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. 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.

5. With regard to query 1 and 2, the Appellant has asked for ATR regarding institutions like SEBI, NFRA, ICAI, ICSI, etc. regarding promoting the development and their working in such a manner that entities under insolvencies maximise their recoveries of assets and also clawable transactions and increase the horrible percentage of recoveries from such clawable transactions and minimize losses under insolvencies. The Respondent has provided the link to the Annual Report and Newsletter which provide the advocacy activities, disciplinary actions of the Board and activities undertaken by IBBI to promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of the Insolvency and Bankruptcy Code, 2016 (Code). I note that the Respondent is expected to provide information as available on record and not create any 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 regard, it is relevant to mention that the Hon’ble CIC in *Mr. Subrata Guba Ray Vs. CPIO, Appeal No. CIC/SB/A/2016/001025/CBECE-BJ (Order dated 03.03.2017)*, has inter-alia observed that: “.... under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions.” Also, 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.*”. I note that the Respondent has provided the information as available on record.

6. With regard to query 3 to 6, the Appellant has submitted in the appeal that “*In so far as paras 3 to 6 of the matters mentioned in the attachment to my application are concerned , they are covered under matters stated at paras 7 and 8 above and thus to be acted upon by IBBI and reported in its annual reports BUT not*

done". It appears that the Appellant is aggrieved by the fact that certain information which ought to be part of Annual report as per him, has not been made part of the same and have not acted upon by IBBI. RTI is not the forum for redressal of such grievances of Appellant. In Sh. Triveni Prasad Bahuguna Vs. LIC of India, Lucknow in decision no. CIC/DS/A/2012/000906 dated 06.09.2012, the CIC had observed that: "*The Appellant is informed that ... redressal of grievance does not fall within the ambit of the RTI Act rather it is up to the Appellant to approach the correct grievance redressal forum...*". Also, in the matter of H. K. Bansal Vs. CPIO & GM (OP), MTNL in decision no. CIC/LS/A/2011/000982/BS/1786 dated 29.01.2013, the CIC had observed that: "*The RTI Act is not the proper law for redressal of grievances/disputes and there are other appropriate forum(s) for resolving such matters.*"

7. With regard to query 5, I note that the Appellant has not asked for clarification rather he wants to know if the listed information was received by IBBI from IPs and administrators. However, I also note that the list provided in the application appears to be vague and unclear. For example, it is not clear what is meant by "*fraud of circulating disclaimer and adverse audit reports , CAG reports , secretarial audit reports at AGMs and approving the same and creating adverse interests claw bale or not under IBC or SICCA 1985*" or "*#common_fraud_1D_aadmin_Res_Prof_fraud; This is the fraud of administrators and resolution professionals.*" Reply to such queries cannot be provided under the RTI Act. Also, such queries are in the nature of inquisitions seeking answers from the Respondent and do not fall within the scop of 'information' under the RTI Act.
8. With regard to query 7 and 8, I note that the Respondent has provided the relevant information as available on record. The Respondent is expected to provide information as available on record and not create any 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*'. Moreover, with regard to suo moto disclosures, the appellant can refer the IBBI website and peruse the same at https://ibbi.gov.in/uploads/faqs/RTI_Manual_New.pdf . Any grievances regarding the same do not fall within the scope of RTI Act.
9. With regard to query 10 and 11, I note that the Respondent has rightly stated that the same does not pertain to IBBI. However, in the interest of disclosure of information, I direct the Respondent to forward these 2 queries to the Ministry of Corporate Affairs for dealing the same in accordance with the provisions of RTI Act.
10. With regard to Para 13, it is noted that the Appellant is aggrieved by the fact that according to him, the Annual Report of IBBI is not as per applicable Rules. This is in the nature of a grievance and cannot be dealt under the RTI Act.
11. Subject to observations in para 8 above, I do not find any reason to interfere with the response of the Respondent. The appeal is accordingly, disposed of.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

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