

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

Dated: 20<sup>th</sup> February, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI  
Appeal Registration No. ISBBI/A/E/23/00007**

**IN THE MATTER OF**

**Nandish Patel**

... 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

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The Appellant has filed the present Appeal dated 22<sup>nd</sup> January 2023, challenging the communication of the Respondent dated 23<sup>rd</sup> December 2022 with regard to his RTI Application No. ISBBI/R/E/22/00278 dated 13<sup>th</sup> December 2022 filed under the Right to Information Act, 2005 (RTI Act).

2. In the RTI Application, the Appellant requested for the following in the context of Order dated 16.06.2022 with reference number IBBI/C/2021/00573/3679/1188 passed by IBBI on the review request of the Appellant in the compliant in the matter of M.V. Omni Projects (India) Limited – “... *information on the date wise actions taken based on the above stated order, date wise actions taken for the investigation and the current status of the investigation against both the IRP and the RP as directed in the above stated order dated 16.06.2022 with reference number IBBI/C/2021/00573/3679/1188.*” By the impugned communication, the Respondent denied the information request stating that - “*matter is under examination as per as per IBBI (Inspection and Investigation) Regulations, 2017 and requisite information is exempted as per section 8 (1)(h) of the RTI Act, 2005*”.
3. In this Appeal, the Appellant has stated that he seeks information-
  - a) on the date wise actions taken based on the order number IBBI/C/2021/00573/3679/1188 dated 16.06.2022;
  - b) date wise actions taken for the investigation; and
  - c) the current status of the investigation against both the IRP and the RP.
4. The Appellant has contended that section 8(1)(h) exempts “*information which would impede the process of investigation or apprehension or prosecution of offenders*” whereas the provisions of the IBBI (Inspection and Investigation) Regulations, 2017 requires prior notice to the professionals being investigated and at every step there is interaction for the exchange of information. It is unclear as to how can information for the date-wise steps being taken and given to the complainant can impede the process of investigation? He has submitted that under the garb of section 8(1)(h) of the RTI Act, the CPIO is merely mechanically avoiding disclosing the

information which inherently is basic in nature and has remotely no potential to impede and investigation.

5. In response to the above, the Respondent has submitted that: *“The applicant was informed that the matter is under examination in terms of IBBI (Inspection and Investigation) Regulations. Further, any details with respect to the inspection/ investigation during the pendency of such inspection/ investigation has potential to impede to the process. Accordingly, the same is exempted under section 8(1)(b) of the RTI Act.”*
6. 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. A plain reading of section 8(1)(h) indicates that in order to deny information, it must be established that the information which is sought would impede the ‘process of investigation’ or apprehension or prosecution of the offenders. It would be essential for the CPIO to indicate as to how such information would impede the process of investigation or apprehension or prosecution of the offender.
7. 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)(b) 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 is to 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)(b) and other such provisions would become the haven for dodging demands for information.”*
8. 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)(b) 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)(b) 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.”

9. In the present case, the petitioner has not indicated any possible reason or ground to establish that the disclosure of information as sought by the Appellant would impede prosecution of the offender. It will not be open for the CPIO to deny information merely for the bald reasons that ‘any details’ with respect to the pending investigation/inspection “*has potential to impede to the process.*” In this case, the Respondent 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, in my view.
10. In the facts of the present case, it has come to my notice that during the pendency of this Appeal the investigation stage is now over and necessary action has already been taken. Thus, the requested information will not be excluded by virtue of section 8(1)(h). I, therefore, direct the Respondent to provide the information as asked for as available on records.
11. The appeal is disposed of accordingly.

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

**Copy to:**

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