

**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: 10th September, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00037

IN THE MATTER OF

Ishrat Ali

... 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 present Appeal dated 12th August 2022, challenging the communication of Respondent dated 3rd August 2022 whereby he had denied the information requested by the Appellant *vide* his RTI Application No. ISBBI/R/E/22/00183 dated 31st July 2022 filed under the Right to Information Act, 2005 (RTI Act) in the context of Complaint No. COMP-11011/22/2022-IBBI dated 29th April 2022, wherein the Appellant has requested for –
 - (i) Copy of documents from where the fact that Corporate Debtor (CD) is not operational, which he claims as misleading or false, was sourced; and
 - (ii) Designation/s (with name) of Officer/s who prepared the information which stated that Corporate Debtor is not operational.
2. In his Appeal, the Appellant has *inter-alia* submitted that –
 - (i) The Appellant is the director of the CD and the fact that CD is not operational was maliciously mentioned in *Note # 4* and has misled the Board.
 - (ii) The information could have been given by the Resolution Professional (RP), against whom a complaint was filed.
 - (iii) Fraud was played within the IBBI to illegally and somehow support RP. It also indicates possibility of corruption.
 - (iv) Further, section 8(1)(d) is not applicable in the present case and the assumption of the Respondent is wrong and misplaced.
3. The Respondent had denied the requested information stating that “*Information sought is exempted under Section 8(1)(d) of the RTI Act, 2005 as the same contains information pertaining to commercial confidence of the CD.*”

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. The Appellant's "right to information" envisaged in section 3 of the RTI Act is subject to the provisions of the Act. 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. Further, 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. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advices, etc. It does not include giving opinions or initiating actions on representations/complaints as asked by the Appellant. It appears that the Appellant is aggrieved by the handling of complaint by IBBI. Such grievances of the Appellant 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."*
6. The Respondent has stated that the information sought is exempted under Section 8(1)(d) of the RTI Act, 2005 as the same contains information pertaining to commercial confidence of the CD. 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 basis of the Notes in the context of a complaint related to a corporate insolvency resolution process of a corporate debtor 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, 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). Further, I am also not satisfied as to how a larger public interest is involved. As such I find no valid ground to outweigh the scope of exemption under section 8(1)(j).

8. Also, I note that the complaints received by the Board are to be dealt in accordance with the provisions of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (Regulations). These Regulations do not provide for furnishing of aforesaid information to the Appellant. Moreover, if any complainant has any grievance regarding disposal of his complaint, the remedy is available to him by filing review under regulation 7(5) of the Regulations.
9. With regard to disclosure of designation of officers of IBBI, section 8(1)(j) of the RTI Act exempts information which relates to personal information, the disclosure of which has no relationship to any public activity or interest. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the Respondent is not legally obliged to provide that information. The Hon'ble Supreme Court in *Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and Ors.* (Civil Appeal No. 9052 of 2012 (Arising out of SLP (C) No. 20217 of 2011) vide Order dated 13th December 2012 observed that –

“In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions.”

In *Canara Bank v. C.S. Shyam and Anr.* (Civil Appeal No. 22 of 2009) vide decision dated 31st August 2017, the Hon'ble Supreme Court observed as follows -

“In our considered opinion, the aforementioned principle of law applies to the facts of this case on all four. It is for the reasons that, firstly, the information sought by respondent No.1 of individual employees working in the Bank was personal in nature; secondly, it was exempted from being disclosed under Section 8(j) of the Act and lastly, neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.”

In *H.E. Rajashekarappa v/s State Public Information Officer & Others*, Writ Petition No.10663 of 2006 (GM-RES) decided on, 01 July 2008, the Hon'ble High Court of Karnataka observed that –

“The object of the Act is to provide right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. In view of the above provisions excerpted, it cannot be said that Section 2(f) of the Act encompasses

the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority. Therefore, the respondent No.3 had no right under the Act to seek personal information of the petitioner...”

Further, the First Appellate Authority in Dr. Shivani Sandesh Mayekar Vs. CPIO, SEBI, Mumbai (Appeal No. 1608 of 2013) *vide* Order dated February 21, 2013 had also observed that -

“the disclosure of information relating to the name, designation, etc. of SEBI official(s), is exempt under sections 8(1)(g) and 8(1)(j) of the RTI Act. In view of these observations, I find that the respondent was justified in invoking the provisions of sections 8(1)(g) and 8(1)(j) of the RTI Act, in his response, while denying the information as sought by the appellant, through the instant query.”

10. In view of above, I hold that the name and designation of Officers of IBBI, is exempted under section 8(1)(j) of the RTI Act. Further, I am also not satisfied that a larger public interest is involved so that information disclosures can be allowed. As such I find no valid ground to outweigh the scope of exemption under section 8(1)(j).
11. Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him under the RTI Act. The Appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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