

**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/22/00038

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 4th August 2022 whereby he had denied the information requested by the Appellant *vide* his RTI Application No. ISBBI/R/E/22/00180 dated 29th July 2022 filed under the Right to Information Act, 2005 (RTI Act), wherein the Appellant has requested for copy of reply filed by the Resolution Professional (RP) filed with Insolvency and Bankruptcy Board of India (IBBI) with regard to Complaint no. COMP-11011/22/2022-IBBI (Ref. IBBI/COMP/2021-22/00813).
2. The Respondent has denied the information claiming exemption under section 8(1)(d) of the RTI Act, 2005. In this Appeal, the Appellant has *inter-alia* submitted that –
 - (i) The information sought has nothing to do with commercial confidence and therefore, section 8(1)(d) does not apply.
 - (ii) The information sought is in the larger public interest as the assertions of RP is false on fact and amounts to misleading IBBI by lies and deceit.
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. Before dealing with matter in issue in the instant appeal, I deem it appropriate to examine the scope of information and right to receive it from a public authority. It is pertinent to note that 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.
4. In the instant case, the Respondent has denied the disclosure of information as according to him – “*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.*” In the context of such response of CPIO, I deem it appropriate to examine the scope of provisions of section 8(1)(d) of the RTI Act, which reads as under: -

“(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;”

5. In so far as scope of this exemption is concerned, the Respondent would be right to refuse to give information relating to commercial confidence, trade secret or intellectual property, disclosure of which would harm the competitive position of a third party, unless he is satisfied that larger public interest warrants the disclosure of such information. The question, therefore, that falls for consideration is as to whether disclosure of response of IP to IBBI, is a trade secret or commercial confidence or intellectual property. It is noted that the Respondent in his comments to the Appeal has stated that the information sought is exempted under section 8(1)(d) of the RTI Act as the same contains information pertaining to commercial confidence of the CD. In this context, it is relevant to rely upon the judgement of Hon’ble Calcutta High Court in the matter of *Tata Motors Limited & Anr. v. State of West Bengal & Ors. W.P.(C) No. 1773/2008 decided on 12/01/2010*, wherein, while discussing scope of section 8(1)(d) of the RTI Act it 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.
6. 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).
7. 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.”*
8. It is trite to say that IBBI being the regulatory authority for Insolvency Professionals, receives their responses to complaints received against them in respect of processes under the Insolvency and Bankruptcy Code, 2016. 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.

9. 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)(d) and section 8(1)(e).
10. 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:

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