

**EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

2nd Floor, Jeevan Vihar Building,
Sansad Marg, New Delhi- 110 001
Dated: 25th July, 2020

IN THE MATTER OF

Mr. Anil Sharma

Vs.

..... Appellant

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. This appeal *vide* letter dated 26th June 2020 from the appellant is borne out of the application under Right to Information (RTI) Registration No. ISBBI/R/P/20/0020. The information sought by the appellant under section 6 of the Right to Information Act, 2005 (Act) and the reply given by the respondent are as under:

Sl. No.	Information Sought	Reply by CPIO
1.	<i>The Resolution Plan submitted by ARCELORMITTAL to the IRP (Resolution Professional) and or to any adjudicating authority specially giving details of status of the existing minority shareholders of ESSAR STEEL LTD and their Locus Standi after takeover of ESSAR STEEL by ARCELORMITTAL. Resolution Plans being submitted on 19.10.2018, 02/04/2018, 25/10/2018 and 27th March 2019, or any other.</i>	<i>The information relating to resolution plan sought in queries 1 and 2 are exempt from disclosure under section 8(1)(d) of the RTI Act, 2005. The Hon'ble Supreme Court, vide judgement dated 15th November, 2019, in the matter of Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. has upheld the resolution plan approved by Hon'ble NCLT and these orders are available in public domain.</i>
2.	<i>The final resolution plan as approved by Supreme Court order given by ArcelorMittal, which has been implemented for all stake holders.</i>	
3.	<i>Mr. Pankaj Chourasia, Company Secretary, operating under the IRP, has informed on behalf of Essar Steel India Ltd (now An Arcelor Mittal Nippon Steel Company), Via email as follows:</i>	<i>No information is available.</i>

	<p><i>“Section X, Part B of the resolution Plan provides for the capital reduction of the entire existing issued, subscribed and paid-up capital (both equity and preference) of the company held by the existing promoters ad public shareholders such that AMIPL (along with its nominees shareholders) will be the sole shareholders of the company. Accordingly, the entire existing issued, subscribed and paid-up share capital (both Equity and preference) of the company stood cancelled and extinguished with effect from December 16, 2019”</i></p> <p><i>"Pursuant to such capital reduction and cancellation, the shares of the company held by you will be or have been debited from your demat account".</i></p> <p><i>"If you are holding shares in physical form, please note that the share certificates are no more valid".</i></p>	
4.	<p><i>Pursuant to this email of Mr. Pankaj Chaurasia, operating under the IRP, all shares from Demat Accounts of all the equity minority shareholders of ESSAR STEEL LTD have been withdrawn and extinguished. That as per para 5 of NCLT Ahmedabad judgement dated 08.03.2019 para 50.3 of the Resolution Plan 25.10.2018 is "The Resolution Applicant has proposed to acquire 100% equity ownership" i.e not for extinguishment of the equity of small shareholders. The relevant questions arise of this illegal act to be answered by SEBI:</i></p> <p><i>a) Who issued orders for such withdrawal and extinguishment of equity shares and under what provision of Law. Please give details of orders and relevant permissions and provisions under law, particularly Section 2 (d) & (f) of Central Act 10 of 1994 granting all the human and economic rights under the Preamble 4th clause and Article 5 of the ICCPR, 1966 & under the Preamble 4th clause and Article 5 of the ICESCR, 1966, hence IBC Section 30 (2) (e) & Section 31(1) stand violated. See also Judgement of NCLT Ahmedabad dated 08.03.2019 in CP(IB) 39 & 40 of 2017 at paras 6, 24 & 28 read with para 5.50.3.</i></p>	<i>Transferred to SEBI.</i>

	<p><i>b) Whether prior Notice of such withdrawal is to be given to all minority shareholders by IRP, acting as interim CEO and / or by SEBI.</i></p> <p><i>c) Whether objections from Minority Equity shareholders of ESSAR STEEL LTD were obtained by IRP and / or by SEBI before withdrawal of shares from demat account.</i></p> <p><i>d) Although, ESSAR STEEL LTD shares were delisted, but trading of these shares was happening from the demat accounts of minority shareholders even till the last day 19th Dec 2019 (Before 20th Dec 2019) when shares were withdrawn from demat accounts. Who was permitting buying and selling of shares and transfer of ESSAR STEEL LTD shares from one demat account to other and under what authority and under which law or provision ?? How authorities like SEBI including the IRP were permitting such transactions and under which law ?</i></p> <p><i>e) What actions did authorities like SEBI & others, including the IBBI (Insolvency & Bankruptcy Board of India) take before the Resolution Professional of Essar Steel Ltd in protecting the interests of the minority shareholders while the proposal was under consideration at the adjudicating authority, NCLT, NCLAT or Supreme Court of India.</i></p> <p><i>f) How did authorities & SEBI including the IRP and IBBI protect the interest of minority shareholders of ESSAR STEEL LTD ?</i></p> <p><i>g) The defective decision of IRP on account of laxity of regulations framed by IBBI is apparent from examination of IBBI Regulations 36(2)(1), 38(1A), 39A (electronic record not available to small shareholder), 39C(2) & [Form H Para 8.1, Para 9 fourth row (f), Para 9 ninth row and Para 15B (a) & (h)]</i></p>	
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2. In response to RTI request at serial numbers 3 above, the respondent informed the appellant that no information was available. It is seen that this is a reply given to the appellant by the Company Secretary, operating under the Interim Resolution Professional (IRP) of the erstwhile corporate debtor *Essar Steels Ltd.* As regards RTI request under serial number 4, the

respondent has transferred the same to the Securities and Exchange Board of India as it pertains to them. The appellant has not challenged the above in the first appeal.

3. In respect of RTI request covered under serial numbers 1 and 2 above, the respondent informed that the appellant has requested for copies of all resolution plans submitted by certain resolution applicant to the IRP/adjudicating authority in the corporate insolvency resolution process (CIRP) of the corporate debtor under the Insolvency and Bankruptcy Code, 2016 (Code). The appellant specifically sought for information regarding the details of status of the existing minority shareholders of the erstwhile corporate debtor including their locus standi after takeover of *Essar Steels Ltd.* by the resolution applicant. The appellant has also requested for resolution plans which were approved by NCLT/NCLAT and Supreme Court of India.
4. The appellant has claimed that he has been a shareholder of the corporate debtor *Essar Steels Ltd.*, and his shares have been extinguished and debited from his demat account and are being treated at zero value. He has also stated that like him, there are thousands of other shareholders of *Essar Steel Ltd.*, whose shares have been debited from their demat account. The appellant, accordingly, has submitted that the resolution plan sought by him ought to be disclosed as it warrants in larger public interest for disclosure of resolution plans, as covered under Section 8(1)(d) of the Act. The appellant has also added that the CoC members, lawyers and advocates are already aware of the resolution plans and so the resolution plans are not secret and confidential documents. He has further stated that the resolution plans shall be available on public domain and should be shared with minority shareholder like him. Lastly, the appellant has submitted that he has a right to have resolution plans which have affected him financially, as decisions have been taken behind his back and he has not been given the opportunity to present his case before judicial forums like NCLT/NCLAT or Supreme Court of India. He is of the opinion that he has a constitutional right to get the requisite information.
5. However, the respondent has submitted that there is no provision in the Code, which mandates disclosure of resolution plans to shareholders of the corporate debtor. The respondent has further submitted that a resolution plan is a comprehensive plan to turnaround the fortunes of the corporate debtor that includes trade secrets and future business plans of the corporate debtor. It is also brought to the notice that a resolution plan contains information containing commercial confidence, trade secrets, etc., the disclosure of which would harm the competitive position of third parties. The competent authority is also satisfied that larger public interest does not warrant the disclosure of such information and hence the information was not disclosed.
6. In this connection, it is worthwhile considering the definition of “resolution plan” as contained in clause (26) of section 5 of the Code as “*a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.*” The *Explanation* to this clause makes it clear that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger. ‘Resolution plan’ of a corporate debtor under the Code makes provision for restructuring its business and this is how reorganisation of insolvency resolution under the Code is achieved. Business strategy and business secrets of corporates during CIRP are

required to be protected, disclosure of which is not in public interest. Thus, the respondent could not have divulged the details regarding the 'resolution plan'.

7. The Guide on Right to Information Act, 2005 issued vide OM No. 1/32/2013-IR dated 28th November, 2013 of DoPT, states that:

“15. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such information shall not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.”

8. The Hon'ble Central Information Commission (CIC) in the matter of *Dr. S. P. Udayakumar Vs. Mr. S.K. Srivastava*, CIC/SG/A/2012/000544, observed that “...in order to claim the exemption under Section 8(1)(d) of the RTI Act, the PIO must establish that disclosure of the information sought (which may include commercial or trade secrets, intellectual property or similar information) would result in harming the competitive position of a third party.” Similarly, in *P. Suresh Vs. Central Public Information Officer, GAIL India Limited*, CIC/SH/A/2016/000755, the Hon'ble CIC observed:

“We have considered the submissions of both the parties and note that the quantity of APM gas to be supplied to various parties in Nariman Zone is a matter of commercial confidence between the Respondents and the parties concerned. The Appellant's claim, that there should be transparency regarding the quantity of APM gas allotted to various parties so as to know whether the Respondents have fulfilled the supply commitment, cannot be treated as the ground of larger public interest.... Therefore, we uphold the decision of the Respondents to deny the information under Section 8 (1) (d) of the RTI Act in this case also.”

9. A Resolution Plan under the Code contains many business and trade secrets and commercial confidence. In view of this position, this FAA is satisfied that details of Resolution Plan that contains information relating to commercial confidence, trade secrets or intellectual property, which is likely to harm the competitive position of third parties, cannot be disclosed. The appellant claims to be a shareholder of a corporate debtor. That does not involve any larger public interest which warrants the disclosure of the Resolution plan to him. Accordingly, the respondent was right in denying the information sought by the appellant under section 8(1)(d) of the Act. Hence, no interference by this FAA is called for and the appeal is dismissed.

(Sd/-)

(K. R. Saji Kumar)

Executive Director and First Appellate Authority

Copy to:

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