

**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 May, 2024

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal**

RTI Appeal Registration Number – ISBBI/A/E/24/00007

IN THE MATTER OF

Kunal Gupta

... 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

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1. The Appellant has filed present Appeal dated 12th April 2024, challenging the communication of the Respondent dated 10th April 2024 with regard to his RTI Application No. ISBBI/R/E/24/00042 dated 11th March 2024 filed under the Right to Information Act, 2005 (RTI Act). The information sought in the Application is as follows:
“How many bilateral agreements has India signed with other countries related to the resolution of cross-border insolvency cases under sections 234 and 235 of the Indian Insolvency and Bankruptcy Code 2016? and if yes, with which country and in what year? and what is the status right now of such cases?”
 2. The Respondent had stated that the information sought is not available.
 3. In this Appeal, the Appellant has stated that his RTI Application that –
“As per the information provided in section 234 of the Insolvency and Bankruptcy Code (IBC), 2016, the Central Government is empowered to enter into agreements with foreign countries for the enforcement of the provisions outlined within the Code. This includes provisions related to cross-border insolvency cases. Given this statutory provision, it is evident that there should be records available regarding any agreements entered into by the Government of India with other countries for the purpose of cross-border insolvency. The response received citing "Information not available" is disconcerting, especially considering the statutory mandate outlined in section 234 of the IBC. It is important to note that the subject matter of insolvency falls under the purview of the Insolvency and Bankruptcy Board of India under the Ministry of Corporate Affairs. Therefore, it is reasonable to expect that the Board and Ministry maintain records of any agreements signed in this regard. Furthermore, the response received just a day before the expiry of the 30-day time limit raises concerns about the diligence in processing the request. If indeed the information was unavailable, it stands to reason that such a response could have been provided in a timelier manner. Hence, I urge a reconsideration of the response provided to my RTI request. I respectfully request a thorough review of the records within the Ministry of Corporate Affairs or any other relevant authority to ascertain the details of any agreements signed by India with other countries concerning cross-border insolvency cases.”

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. Before examining the request, I deem it appropriate to deal with scope of information and right to receive the information under the RTI Act. It is noted that 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."*
5. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advice, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. 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. 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. It is thus, clear that the *"right to information"* under section 3 of the RTI Act is circumscribed by RTI Act itself as the right is limited within scope of 'information' as defined under section 2(f) and is subject to other provisions including those under section 8 of the Act.
6. The appellant has asked for number of bilateral agreements signed, name of country signed with, year and status. It is settled position that the CPIO cannot be expected to create an information for sharing to a RTI Applicant. 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 that:
"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."
7. I also note that Hon'ble Supreme Court of India in its judgment dated August 9, 2011 in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors.* had held that a public authority is *"...not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."*
8. Also, the Respondent is expected to provide information as available on record and not create any information. Accordingly, as the information requested is not available with

CPIO, same is communicated to the Appellant. He cannot provide any other 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*'.

9. In view of the above, I find that there is no need to interfere with the decision of the Respondent. The Appeal is accordingly dismissed.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

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