

**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: 6th April, 2023

IN THE MATTER OF

Sunil Jain

... 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 the present Appeal dated 15th March 2023 (received by IBBI on 20th March 2023), challenging the communication of the Respondent dated 21st February 2023. In his RTI application filed under the Right to Information Act (RTI Act), the Appellant had requested for the following -

“1. Was any Show Cause Notice issued to the IP in the above matter? If yes, please provide a copy of the SCN. If no, please state so. Was any inspection u/s 218 of the Code ordered by the Board in the above matter? If yes, please provide a copy of the Inspection Report. If no, please state so. Did the IP submit any written or oral reply to SCN or submit any additional documents in response to SCN? If yes, please provide a copy of such replies.

2. Did the IP accept Resolution Plan from Amit Agarwal alias Sonu Agarwal of M/s. Shree Balaji Transport Pvt. Ltd. who indulged in criminal activities and have been confirmed to use proceeds of terrorism by competent authority and is an accused in a terrorism case filed by NLA? If yes, did the IP fail to conduct proper due diligence under the Code to identify the source of funds? If no, please state so.

3. Was it decided in the 8th CoC meeting dated 14.2.2018 that all resolution plans received after 2.2.2018 would be rejected? Was it confirmed in the same meeting that any documents received after 2.2.2018 had not been considered for voting by the internal approving committees of the financial creditors? If yes, was the approved resolution plan submitted before 2.2.2018? If no, please state so. Are the non-judicial stamp papers purchased for various undertakings forming integral part of the purportedly approved resolution plan dated after 2.2.2018 in violation of the resolution passed in the 8th CoC meeting dated 14.2.2018? If yes, please state if the approved resolution plan is a valid and eligible plan. If no, please state so. Was it confirmed in the 6th CoC meeting dated 19.1.2018 (Para 23) that all 5 resolution plan documents were initialed by all Committee members and RP for identification? If yes, do the approved resolution plan documents carry the signature of all Committee members and if not, is the approved resolution plan a valid and eligible plan and the same plan that was approved?

4. Did the IP allow the successful resolution applicant to play fraud by allowing it to give fake Fixed Deposits from Allahabad Bank bearing no. 50281843703 as source of fund for upfront payment toward liquidation value? If yes, has he contravened the provisions of the IBC Code? If no, please state so.

5. Was the successful resolution applicant not eligible to submit resolution plan as per EOI Eligibility Criteria as stated in Annexure A approved by CoC in the 3rd meeting of the CoC (Para 21) by failing to meet 50%

of prescribed eligibility criteria for consolidated network for a consortium applicant? Did the IP uphold the plan of the successful resolution even after successful resolution applicant failing to submit requisite declaration for extortionate credit transactions (tantamount to false declaration) to establish eligibility under the provisions of the Code? Did the IP fail to conduct proper due diligence of the successful resolution applicant as per the Code? If yes, has the IP contravened the provisions of the Code in handing over the CD to an ineligible applicant? If no, please state so.

6. Was it reported by the IP in the 6th CoC meeting dated 19.1.2018 (Para 15) that the statutory audit report by the statutory auditors of the CD would be received by the end of the month? If yes, please state if the findings of the report was made available by the IP? If no, please state why it was concealed. Does the said statutory report by A. Timary & Co confirm that the value of the inventories after physical verification was found to be at Rs. 23,15,33,885/- as on 20.1.2018? If yes, why was the value of the inventory assessed by the statutory auditor appointed by the IP not updated to achieve maximization of the value of the assets of the CD? Has the IP contravened the provisions of the Code in concealing the valuation done by the statutory auditor?

7. Were the valuers appointed by the IP for valuation of CD qualified and registered to value stocks/inventories either under the Companies (Registered Valuer and Valuation) Rules, 2017 or under Rule 34AB of Wealth Tax Act, 1957? If no, can the valuation arrived at by the valuers appointed by IP be accurately relied upon? In the absence of disclosure of much inventory values assessed by a qualified statutory auditor, has the IP grossly undervalued the CD? If yes, has the IP contravened the provisions of the Code?

8. Did the IP fail to maintain the confidentiality of the bid value and liquidation value of the CD? Did the IP share the liquidation value of the CD with the successful resolution applicant before submission of the plan to cause and undue gain and unfair advantage to the applicant? If yes, is the IP in contravention of the provisions of the Code? If no, please state so.”

2. With regard to query 1, the Respondent has provided the order of the Disciplinary Committee which disposes of the Show Cause Notice issued in the case. Further, the Respondent has claimed exemption under section 8(1)(f) (*sic.*) with regard to the copy of the inspection report. With respect to query no. 2 to 8, the Respondent has stated that they do not fall within the ambit of “information” under section 2(f) of the RTI Act.
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. 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.” It is pertinent to mention here that the Appellant’s “right to information” flows from section 3 of the RTI Act and the said right is subject to the provisions of the Act. 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. 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.
4. With regard to query (1), the Appellant has requested for (i) copy of show-cause notice, (ii) copy of inspection report, and (iii) copy of written reply of IP to SCN? The question that falls for consideration is as to whether these documents can be disclosed to the Appellant.

5. I also 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;”

6. 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. I note that the communications between the IP and IBBI are in the context of 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 V.s. 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 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. The Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information nor has he disclosed as to how his interest is affected by non-disclosure of requested information.

10. In my view, the Appellant has no right to ask for such documents in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations). These documents are used and relied upon in respect of a disciplinary proceedings against a registered insolvency professional and law does not cast obligations to share these documents with third parties. The RTI Act can not be allowed for such roving inquiries by third parties as sought to be done by the Applicant in this case.
11. The Appellant has made inquisitions and inquiries such as - : Did the IP accept plan from an accused under NIA? If yes, did the IP fail to exercise due-diligence? Did IP allowed the resolution applicants to play fraud? Was SRA not eligible to submit resolution plan? Did the IP fail to maintain confidentiality of bid value and liquidation value?, etc.
12. The Appellant has raised inquisitions in nature of clarification which is not covered in the scope of 'information' as held by 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.*, inter alia, that: "*A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also 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...*" Further, 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 also 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.*"
13. Such questions by Appellant, in my view, are in nature of inquisitions soliciting opinion or advice of the Respondent, and beyond the scope of right to information under the RTI Act. The Respondent is not bound to respond to such inquisitions under the RTI Act. In this regard, it is also relevant to refer to the Order dated April 21, 2006, of the Hon'ble CIC in the matter *Dr. D.V. Rao Vs. Shri Yashwant Singh & Anr*, wherein it was observed that: "*the RTI Act does not cast on the public authority any obligation to answer queries in which a petitioner attempts to elicit answers to his questions with prefixes, such as, 'why', 'what', 'when' and 'whether'. The petitioner's right extends only to seeking information as defined in section 2 (f) either by pinpointing the file, document, paper or record, etc., or by mentioning the type of information as may be available with the specified public authority.*"
14. These requests are observed to be more in the nature of a roving enquiry, which is admittedly carried out for the purpose of conducting a research regarding the aforesaid person/assignment, and not for the purpose of or otherwise having an effect of achieving any of the intended objectives for which the RTI Act was enacted. In this regard, I note that in *ICAI Vs. Shaunak H. Satya*, (2011) 8 SCC 781 the Hon'ble Supreme Court has held that:- "*We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Sections 4(1)(b) and (c) and other information which Appeal No. 3191 of 2018 may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.*"

15. In view of the observations above and in the circumstances under which the application and the appeal were filed by the Appellant, I note that the queries raised by the Appellant do not have an intended effect of bringing transparency or of reducing corruption and further that no larger public interest would be served in disclosing the information as sought by the appellant. In this regard, I also note that the Hon'ble Supreme Court in *Central Board of Secondary Education and Anr Vs. Aditya Bandopadhyay and Ors.*, (Judgment dated [August 9, 2011](#)) observed that "*Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties.*"
16. In view of the above, I do not find any reason to interfere with the response of the Respondent. Accordingly, the Appeal is disposed of.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

1. Appellant, Sunil Jain.
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