

**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 May, 2022

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 Appeals vide letters dated 9th April 2022 and 17th April 2022 (received by Insolvency and Bankruptcy Board of India (IBBI/Board) on 13th April 2022 and 25th April, 2022), challenging the communication of the Respondent dated 8th April 2022 with regard to his RTI Application No. ISBBI/R/P/22/00011 dated 5th March 2022 filed under the Right to Information Act, 2005 (RTI Act).
2. 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. It is noted that in the RTI Application, the Appellant had submitted that on 25th February 2022, the Adjudicating Authority (NCLT, Mumbai) passed an order admitting an application no. CP4108/2018 filed under section 7 of the Insolvency and Bankruptcy Code, 2016 and interim resolution professional (IRP) was appointed. In this context he asked for the following:—

“(1) .. information whether any FORM CIRP 7 has been filed by the IRP in respect of not completing the specified activity i.e. Publication of FORM A (the Public Announcement) in two news papers. If YES, kindly provide me a copy of the same.

(2) .. inform if FORM A (the Public Announcement) has been published on the web-site of the Board (IBBI) as mandatorily required vide the Regulation 6. If YES,

(a) .. give information as regards the Date of publishing the FORM A on the web-site of the Board.

(b) .. inform if any Form CIRP 7 was filed in this regard (assuming that there was delay in publishing since the same is not visible on the web-site as on this date).”
3. The Respondent, vide letter dated 08th April 2022, informed the Appellant that the public announcement (Form A) is uploaded on the website of the Board and same can be accessed. The Respondent also provided the weblink for the same. As regards, the request whether any Form CIRP 7 has been filed by RP in respect of not completing the specified activity i.e., Publication of Form A in two newspapers, the Respondent advised the Appellant that “*the information being regulatory compliance by the Insolvency Professional is exempt under section 8(1)(d) and (j) of the RTI Act, 2005*”.

4. In the Appeal, the first contention of the Appellant is that the response to his request was not provided by the Respondent within the prescribed timeline (i.e. 30 days from the date of receipt of Application). Relying on a copy of the printout of consignment tracking for consignment number ED973181855IN, the Appellant, has claimed that his Application was delivered to IBBI on 7th March 2022. It is noted that as per section 7(1) of the RTI Act, the Respondent is required to respond within 30 days of the receipt of the request. It is not out of place to mention here that in institutional set up of a public authority receipt of request at mailing desk is not the receipt of request by the CPIO. As per records, the Application was received by CPIO on 11th March 2022 and he responded on 8th April 2022 i.e., within prescribed time of 30 days. The reference of date of receipt on 21st March 2022 in the response dated 08th April 2022 is a typo and I do not find any laxity on the part of the Respondent as claimed by the Appellant since the Application was disposed of by the Respondent on 08th April 2022 within 30 days.
5. The Appellant has further claimed that the response is ambiguous and does not provide the complete information as requested by him. I note that the Appellant has, in his Application, made some inquiries - whether Form A has been published on website of the Board? And whether Form CIRP 7 was filed ?. In my view, the Respondent is not bound to respond to such inquiries 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."*
6. As regards giving copy of Form A, it is noted that the same is available in public domain on the website of the Board and can be easily accessed by the Appellant from the link provided to him by the Respondent. It is relevant to refer to the decision of Hon'ble CIC in *Shri Girish Prasad Gupta vs. CPIO, Indian Oil Corporation* (decided on March 30, 2015), wherein it has held that:- *".., we note that the information that is placed by a public authority on its website is already available in the public domain and is, therefore, not under the control of the public authority. It can be obtained by any interested person by consulting the relevant website. If public authorities are required to provide hard copies of the information, already available on their website as part of suo motu disclosure, such suo motu disclosure will become futile, because the very purpose of such disclosure is to ensure that applicants do not have to approach public authorities to get a good deal of information already placed by them on their website."*
7. The Appellant has contended that the date of publishing the FORM A on website of the Board has not been provided to him. I note that on the website the date of public announcement is shown as 03rd March 2022. However, the date when the public announcement was published on website of the Board is not available. The same may be provided to the Appellant if available on record of IBBI.

8. The Appellant has asked for a copy of Form 7 filed by the IRP. In this regard, it is not clear from the response of the Respondent as to how information being regulatory compliance by the Insolvency Professional could be deemed to be exempted from disclosure under section 8(1)(d) and (j) of the RTI Act. In so far as scope of exemption under section 8(1)(d) is concerned, the Respondent would be right to refuse to give information, 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. In the instant case, the Respondent has not given any reason or justification for invoking section 8(1)(d) of RTI Act. Further, whether the information is relating to 'commercial confidence' or 'trade secrets or intellectual property'? and how does he think that the disclosure of such information would harm the competitive position of any third party? Further, section 8(1)(j) exempts 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 unless a larger public interest justifies the disclosure of such information. It is not clear as to how Form CIRP 7 contains personal information or the disclosure of same could cause unwarranted invasion on the privacy of the Insolvency Professional. It is obviously denial without any specific reason. The Respondent is advised to take into account these requirements of law while dealing with information requests under the RTI Act. Having observed this, I deem it fit to deal with this request on merits in the interests of the right to information and scope of information disclosures under the RTI Act.
9. It is noted that the particulars of Form CIRP-7 were introduced vide Circular no. IBBI/CIRP/41/2021 dated 18th March 2021. Form CIRP 7 provides information about the performance of the actions of the interim resolution professionals or resolution professionals, which are not public authorities. Further, the communications between the IP and IBBI, are 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, the competent authorities 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) of the RTI Act.
10. Further, IBBI being the regulatory authority for Insolvency Professionals, receives the Forms 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. I 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.” 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. 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 exemptions under section 8(1)(d) and (e).

11. In view of the above, I direct the Respondent to provide the date of publishing Form A on website of the Board in this case to the Appellant in accordance with law, within 10 days from the date receipt of this order. The appeal is, accordingly, disposed of.

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.