

**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 June, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00016**

IN THE MATTER OF

Dharambir Singh

... 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 the present Appeal dated 13th May 2023, challenging the communication of the Respondent dated 12th May 2023 in his RTI application no. ISBBI/R/E/23/00045 filed under the Right to Information Act (RTI Act). In his RTI application, the Appellant has requested for the following in respect of his complaints filed against Mr. Vivek Raheja, Resolution Professional -
*"1. Copy of MSME registration certificate attached with 12th CoC meeting on 22-09-2020.
2. Copy of IBBI Inspection team, Disciplinary Committee, Mr Jayanti Prasad (Whole Time Member), finding, action report on following contravention to IBC Code.
i) Mr Hargovind Sachdeva (Ex-SBI officer), camouflage as representative of Trading Engineers International Ltd) was also in CoC meeting. Please provide copy of action taken report
ii) FAR & Inventory details was not provided by ex-director, Mr. Vivek Raheja wrapped matter under carpet Please provide copy of action taken report
iii) Mr. Vivek Raheja filed case under 19(2) of IBC but never persuaded. Please provide copy of action taken report."*
 2. With regard to queries of Appellant, the Respondent has stated that *"1) Information not available. 2) The information sought by the applicant is not clear."*
 3. Aggrieved by the same, while reiterating the information requested in RTI Application, the Appellant has stated the following in the Appeal –
 - (1) *"...This is open fraud by IBBI that without MSME Registration certificate, IBBI declared corporate debtor as MSME..."*
 - (2) *"i) ...As per IBBI Code, Suspended Director, one of Operational Creditor can attend CoC meeting, Whereas Mr. Vivek Raheja was regularly doing fraud & allowed Mr Hargovind Sachdeva (Ex-SBI officer), camouflage as representative of Trading Engineers International Ltd) was also allowed in CoC meeting. IBBI must have noted above fraud in CoC MoM. Information was asked was asked for copy of action taken report, for fraud in CoC meeting. ii) Similarly in above CoC meeting, it was recorded that Suspended Director did not provided FAR & Inventory details. Without FAR & Inventory details information, Corporate Debtor Fair & Liquidation value cannot be determined. Mr Vivek Raheja did not took any action & wrapped matter under carpet. IBBI must have noted above fraud in CoC MoM. Information was asked was asked for copy of action taken report, for fraud in CoC meeting iii) Similarly in above CoC meeting, it was recorded that Suspended Director is non cooperative & Mr. Vivek Raheja filed non-cooperation application under section 19(2) of IBC Code. iv) Mr. Vivek Raheja did not took any action & wrapped matter under carpet. IBBI must have noted above fraud in CoC MoM. Information was asked was asked for copy of action taken report, for fraud in CoC meeting."*
 4. It is gainsaying 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. 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.” 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. Section 8 provides for exemption from disclosure of information held by or under control of the 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.

5. It may be noted that the CPIO is not supposed to create information which otherwise is not available with him. The following observations of the Hon’ble CIC in *Shri H. Timari v. Airport Authority of India* in Appeal No. CIC/RK/A/2016/000911/MP, dated August 10, 2017, is relevant in this respect:
“...The Commission observes that the CPIO, under the RTI Act, is required to furnish information/documents as available on record and is not supposed to collect and collate information in the manner in which it was sought by the appellant.”

The Hon’ble Supreme Court in decision dated 09/08/2011 in the matter of *CBSE & Anr. Vs. Aditya Bandopadhyay & Ors.* (C.A. No. 6454 of 2011) held:

“35...But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant...”

6. Also, it is noted that the Appellant is aggrieved by the Order of the Disciplinary Committee in the matter. The order of the Disciplinary Committee was passed on the basis of the inspection report and show-cause notice. RTI Act do not contemplate redressal of such complaints or grievances against the orders passed by the Disciplinary Committee. RTI Act does not create a forum to decide on the orders of the Disciplinary Committee of IBBI. Also, the Appellant has no right to ask for such documents under 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. The RTI Act cannot be allowed for such inquiries by third parties. The order of the Disciplinary Committee reflects the final action taken against the IP and is final in all respect. Accordingly, no further interference is required with the response of the Respondent.
7. In view of the above, I do not find any reason to issue any direction to the Respondent as asked for in this Appeal. Accordingly, the Appeal is disposed of.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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