

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

2nd Floor, Jeevan Vihar Building,
Sansad Marg, New Delhi- 110 001
Dated: 29th August 2020

IN THE MATTER OF

Mr. Satyen 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

ORDER

1. This appeal preferred *vide* e-mail dated 2nd August 2020 from the appellant is in respect of the Right to Information (**RTI**) request Registration No. ISBBI/R/E/20/00083. 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.	<p><i>I have written two email dated 26th May and 6th June to Mr Pawan Kumar for the misuse of regulation 36(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the matter of submission of undertaking by the members of CoC. According to my understanding IBBI has not prescribed any specific undertaking. Even after that, the Resolution Professionals are drafting undertaking at their own and taking the same on dotted lines.</i></p> <p><i>I am attaching one such undertaking, used by Mr Nilesh Sharma (IBBI/PA-002/IP-N00104/2017-18/10232), a resolution professional for Dream Procon (P) Ltd. As IBBI is duty bound for giving response.</i></p> <p><i>I would like to have the copies of the response given by IBBI for my these two emails.</i></p>	<p>Copy of letter no. COMP-11015/99/2020-IBBI dated 30th June 2020 was sent to the appellant which stated the following:</p> <p><i>‘Subject: Complaint dated 26th May 2020 and 9th June, 2020 received from Mr. Satyen Gupta against Mr. Nilesh Sharma, in the matter of Dream Procon Pvt. Ltd.</i></p> <p><i>Dear Sir,</i></p> <p><i>This is in reference to email complaint dated 26th May 2020 and 9th June, 2020 received against Mr. Nilesh Sharma, Resolution</i></p>

		<p><i>Professional in the matter of Dream Procon Pvt. Ltd.</i></p> <p><i>2. The allegations made in the complaint have been duly examined by the Board. Based on the information on records, the Board has not found actionable material in the complaint. The complaint is accordingly closed.</i></p>
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2. In this appeal, the appellant has submitted the following:
 - a. The RTI application was filed on 17th June 2020, but the response came much after the prescribed time limit of 30 days *vide* IBBI's letter dated 21.07.2020.
 - b. CPIO has sent a response vide letter no IBBI/BS/RTI/RTI APP/246/440 dated 21.07.2020. However, this letter was completely silent on my RTI query.
 - c. The CPIO has provided a letter No COMP-11015/99/2020-IBBI dated 30.06.2020 of Mr Methil Unnikrishnan which only responds to one out of three points raised in my e-mails.
3. On the contrary, the respondent has submitted the following:
 - a. In regard to point (a) of the appellant, the RTI application No. ISBBI/R/E/20/00083 was received through the online RTI Portal of the Government on 17th June 2020 and the same was disposed of on 14th July 2020. The relevant proof of reply as duly submitted to the FAA is as follows:

5	REQUEST DISPOSED OF	14/07/2020	umeshk- (CPIO)	
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 - b. The information provided to the appellant reflects the actions taken by the Board in the context of his e-mails. Accordingly, no further information is available with CPIO. Further, the CPIO is not supposed to create information or provide reasons as to why such reply was given by the Insolvency and Bankruptcy Board of India against the appellant's e-mails.
4. This FAA noted that with regard to point (a), the CPIO had in fact received the RTI through online RTI portal on 17th June 2020 and same was replied on the RTI Portal on 14th July, 2020 which is within the prescribed limit of 30 days in the Act. The FAA is satisfied that the disposal was made by the CPIO on the online portal within the prescribed limit of 30 days, and accordingly, this issue is disposed of.
5. As regards points (b) and (c) raised by appellant, this FAA is satisfied with the submissions of the respondent that the CPIO is neither required to create information, which otherwise is not available, nor he is required to provide reasons behind a particular reply/action of the Board. For this purpose, the FAA noted that the order of the Hon'ble High Court of Bombay, in the matter of *Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education) vs The Goa State*

Information Commission on 3rd April, 2008 (2008 (110) Bom L R 1238) is relevant for consideration. It was held that:

“Section 2(f) - 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;

*The definition cannot include within its fold answers to the question “why” which would be the same thing as asking the reason for a justification for a particular thing. **The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.**”*

Further, in the Guide on Right to Information Act, 2005 issued vide OM No. 1/32/2013-IR dated 28th November, 2013 of DoPT, it is stated that:

*“The Public Information Officer is not supposed to **create information that is not a part of the record of the public authority.** The Public Information Officer is also not required to furnish information **which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.**”*

The observations of the Hon’ble Supreme Court in the matter of *CBSE & Anr. Vs. Aditya Bandopadhyay & Ors.*, SLP(C) NO. 7526/2009 is also relevant, wherein it was held 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. 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.”

6. However, the FAA noted that the appellant has alleged that he has sent two e-mails i.e. on 26th May 2020 and on **6th June 2020**. However, the information provided by the respondent pertains to e-mail of appellant dated 26th May 2020 and **9th June 2020**. In view of this, the respondent is requested to provide the copy of the ‘response given by Insolvency and Bankruptcy Board of India’ (Board) to appellant with respect to his e-mail dated **9th June 2020**, if such e-mail is available with the Board. In case no e-mail dated 9th June 2020 has been received by the Board or no response to such e-mail was provided by the Board, same may also be communicated to the appellant by 10th September 2020.

7. The appeal is disposed of as per the foregoing.

(Sd/-)

(K. R. Saji Kumar)

Executive Director and First Appellate Authority

Copy to:

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