

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

2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110 001

Dated: 11th April, 2021

RTI Appeal Registration No. ISBBI/A/E/21/00010

IN THE MATTER OF

Mr. Rajmal Ratanlal Kakaria

... 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 present Appeal No. ISBBI/A/E/21/00010 dated 13th March, 2021, has been filed by Mr. Rajmal Ratanlal Kakaria (Appellant), before the First Appellant Authority (FAA), Insolvency and Bankruptcy Board of India (IBBI) under the Right to Information Act, 2005 (RTI Act), against the disposal of the RTI Application No. ISBBI/R/E/21/00071 by the Central Public Information Officer - CPIO (Respondent) on 10th March, 2021.
2. The information sought by the Appellant under section 6 of the RTI Act and the response given by the Respondent are as under:

<i>S. No</i>	<i>Information Sought</i>	<i>Reply by CPIO</i>
1.	<i>Copy of circular / guidelines issued by IBBI to exempt stock exchanges from seeking prior approval of Honorable Court / NCLT before initiating legal proceedings under SEBI Delisting Regulations.</i>	<i>Information sought is not available with IBBI.</i>
2.	<i>Since these 9 companies under liquidation which have got over 5 lakh shareholders are yet to be delisted, please inform us about applicable legal provisions whereby IBBI is empowered to direct stock exchanges to stop delisting</i>	<i>Information sought is not available with IBBI.</i>

	<i>proceedings till completion of liquidation proceedings.</i>	
3.	<i>BSE and NSE have delisted hundreds of companies under CIRP / liquidation since 2016 in violation of IBC and companies Act merely by giving newspaper advertisements and they also disregarded powers of Honorable NCLT by not obtaining prior permission. Please inform whether IBBI is empowered to reverse such illegal delisting actions in the larger interests of stakeholders of these companies including millions of public shareholders.</i>	<i>The information sought is in the form of seeking opinion, inquisition and inquiry. Hence, the same is not covered under the definition of information under section 2(f) of the RTI Act.</i>
4.	<i>Please also inform us about steps taken by IBBI to spread awareness about IBC among stock exchanges for protecting interests of public shareholders of companies under CIRP / liquidation</i>	<i>IBBI has not conducted any distinct/particular awareness programme specifically for the issue of delisting of companies under CIRP / liquidation, for stock exchanges.</i> <i>Further, in general various awareness initiatives on IBC, 2016 have been undertaken by IBBI covering wide range of stakeholders like National Online Quiz on IBC, Webinars, participation by senior officers in programmes, etc. among others. Many of these programmes were open to wide range of stakeholders (including employees of stock exchanges).</i>

3. In this appeal, the Appellant has broadly stated the following:

For Query 1 and 2:

IBBI is government regulator which has played apex role while implementing IBC and so, it is confusing as to how IBBI does not have above information.

For Query 3:

The Appellant is not seeking a clarification.

For Query 4:

The appellant has reiterated his request for information.

4. Comments of the respondent were called for. The respondent has reiterated his reply to the RTI application.
5. On perusal of the application submitted by Appellant for seeking information under RTI Act and the appeal made thereafter, it is observed that Appellant is aggrieved by

the actions of delisting by stock exchanges of companies undergoing CIRP/liquidation proceedings and wants to know powers of IBBI to reverse these actions of stock exchanges.

6. In this connection, it is important to refer the definition of 'information' in the RTI Act. Section 2(f) of the RTI Act defines 'information' as follows:

'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.

7. It is stated in the Guide on the RTI Act issued by the DoPT under v OM No. 1/32/2013-IR dated 28th November, 2013 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."

8. 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), observed the following:

"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."

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) observed that:

"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, 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.”

9. The above being the position, the FAA has following observations:

Query 1:

The copy of all the circulars / guidelines issued by IBBI is available on www.ibbi.gov.in, and apart from these, no other circular / guideline has been issued by the IBBI. Accordingly, this FAA agrees with the CPIO that the sought information is not required to be maintained by IBBI and hence, is not available.

Query 2:

The Appellant wants to know the legal provisions whereby IBBI is empowered to direct stock exchanges to stop delisting proceedings till completion of liquidation proceedings. It appears that the Appellant is attempting to resolve his grievance through CPIO by seeking his opinion. Same is not permissible under the Act, hence, this FAA agrees with the submissions of the CPIO that he cannot provide such opinion and it does not fall within the RTI Act.

Query 3:

The Appellant wants an answer to his query which is ‘*whether IBBI is empowered to reverse such illegal delisting actions in the larger interests of stakeholders?*’ Giving answers to queries does not fall within the Act, hence, FAA agrees with CPIO that same does not fall within the domain of ‘information’ under the Act. Accordingly, this FAA agrees with the submissions of the CPIO, that the requested information is in the nature of seeking opinion and inferences and accordingly, does not fall within the ambit of ‘information’ under the RTI Act. The powers of IBBI are clearly laid down in the Insolvency and Bankruptcy Code, 2016, which is available on www.ibbi.gov.in, for any interpretation that the Appellant may want to make.

Query 4:

The Appellant has not challenged the information provided by the CPIO on this query. He has merely reiterated his query. This FAA being satisfied with the response of CPIO finds no reason to interfere with the same. However, the FAA would like to add that information about programmes conducted by IBBI is already available on the website www.ibbi.gov.in and also in the Newsletters published by IBBI.

10. In view of foregoing, the appeal is disposed of.

(Sd/-)

(Dr. Anuradha Guru)

Executive Director and First Appellate Authority

Copy to:

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