

**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: 9th May, 2024

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal**

IN THE MATTER OF

Krishna Chakrabarty

... 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 present Appeal dated 10th April 2024, challenging the communication of the Respondent dated 5th April 2024 with regard to his RTI Application No. ISBBI/R/E/24/00040 dated 4th March 2024 filed under the Right to Information Act, 2005 (RTI Act). The information sought in the Application is as follows:
*“We had booked flat No *** in the Pyramid Project of MKHS Realty LLP at Narayanpur, PO-Rajarhat-Gopalpur, Dt.-North 24 Parganas, Kolkata-700136 vide agreement dated August 26, 2015 entered into between the two parties and provisional allotment letter dated June 08, 2015 issued by the MKHS Realty LLP. Subsequently the MKHS Realty LLP went into liquidation and Corporate Insolvency Process was initiated by the Insolvency and Bankruptcy Board of India (IBBI). Accordingly, Ms. Manisha Biyani was appointed as Interim Resolution Professionals, MKHS Realty LLP by IBBI vide Ref No. IBBI/IPA-001/IP-P-02414/2021-22/13773. In response to the Advertisement published in the newspaper, we had submitted our claim to the temporary office of Ms. Biyani at CFB F-1, 1st Floor, Paridhan Garment Park, 19, Canal South Road, Kolkata-700015 on June 07, 2022. Since then we are trying hard to get the status of our application towards settlement of claim over phone as well as through email and speed post letter, but in vain. the temporary Office of Ms. Biyani ceases to exist. As such we approach to IBBI to know the fate of our claim settlement.”*
 2. The Respondent had stated that the Appellant has sought opinion which is not covered under the ambit of definition of ‘information’ under section 2(f) of the RTI Act, 2005..
 3. In this Appeal, the Appellant has stated that his RTI Application that –
“Insolvency and Bankruptcy Board of India (IBBI) had appointed Ms. Manisha Biyani as the Interim Resolution Professionals, MKHS REALTY LLP (Ref No. IBBI/IPA- 001/IP-P-02414/2021-22/13773) under Corporate Insolvency process of MKHS REALTY LLP. Accordingly, we had submitted our claim on June 7, 2022 to the temporary office of Ms. Manisha Biyani in Kolkata in response to advertisement published in the newspaper by her. However, since then we are not getting any response from Ms. Biyani about the fate of our claim even after sending repeated reminders. As such, we have no

other alternative than to approach your good self to know the result of Corporate Insolvency process of MKHS REALTY LLP or simply put to know the fate of our claim.

In reply to my RTI enquiry (Registration Number ISBBI/R/E/24/00040 dated March 04, 2024) on the above subject you have simply replied that my enquiry is not covered under the ambit of definition of information under Section 2(f) of the RTI Act, 2005, which is evasive in nature and not at all satisfactory because of the following reasons:-

1) IBBI had appointed Ms. Manisha Biyani as the Interim Resolution Professionals, MKHS REALTY LLP (Ref No. IBBI/IPA-001/IP-P-02414/2021-22/13773) under Corporate Insolvency process of MKHS REALTY LLP. Is your duty ends simply by appointing Interim Resolution Professionals and you are not concerned with the outcome of the Corporate Insolvency process of MKHS REALTY LLP.

2) In the normal course, it is expected that the Interim Resolution Professionals would submit a report to you about the outcome of the process and the modus operandi to distribute the acquired/ seized assets to the claimants.

3) If IBBI had no idea about the outcome of the process, then please advise us whom should we approach to get the latest news about the outcome of the insolvency process, particularly when the Interim Resolution Professional is not replying to any of our queries.

4) What course is open to me to get back my money If IBBI has no idea about the insolvency process initiated by them. As a public institution is it not your duty to educate the public about the insolvency process?

5) Being a public Institution how you can be so apathetic to the genuine grievances of the general public and shirk off your responsibility by simply mentioning that it is not coming under the definition of information.

6) Lastly, although I am not a legal person, prima facie it appears according to Section 2(f) of the RTI Act, 2005, the term "information" means any material in any form, including records, e-mails, opinions, advices, press releases, etc.,. Also 'information' covers 'information relating to any private body which can be accessed by a public authority under any other law for the time being in force', which is fitting in my case, as the corporate insolvency process was initiated by you.

7) Further, according to the powers and functions of your Board as defined in Section 196. (1) of the Act (as gathered from your website) - The Board shall perform all or any of the following functions viz.:-

POWERS AND TIONS OF THE BOARD

(h) Call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities

(k) Collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases

(q) Specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder.

(r) Conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board.

In view of the above, we shall be glad to have specific information from your office on the following points:-

1. Whether the corporate insolvency process of MKHS REALTY LLP was initiated by you?

2. Whether you had appointed Ms. Manisha Biyani as the Interim Resolution Professionals, MKHS REALTY LLP?

3. *If so, what were the terms and conditions of her appointment?*
4. *Whether you were monitoring the insolvency process?*
5. *Whether she has submitted a final report to you?*
6. *Whether the report is confidential or can be accessed by the individual creditors?*
7. *If so, where from the individual creditors can access the report submitted by the Interim Resolution Professionals?*
8. *What are the courses of action available to you to settle the claim of the Financial Creditors?*
9. *What is the modus operandi for distribution of assets acquired/ seized by the Interim Resolution Professionals?*
10. *Will the individual creditors get preference over the corporate creditors to get back their money?*
11. *If an individual creditor is not satisfied with the distribution of acquired assets, what are the courses of action available to him to get back his money?*
12. *While disposing of my RTI Application (Registration Number ISBBI/R/E/24/00040 dated March 04, 2024) whether your Board has exercised its power mentioned in para 7 above?*
13. *What mechanism you have specified for redressal of grievances against insolvency professionals?*
14. *May I get a copy of the grievances redressal mechanism against insolvency professionals, as specified by your Board?*

4. 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. Before examining the request, I deem it appropriate to deal with scope of information and right to receive the information under the RTI Act. It is noted that 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.*"
5. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advice, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. 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 and which can be disclosed subject to exemptions under section 8 of the RTI Act. 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. It is thus, clear that the "*right to information*" under section 3 of the RTI Act is circumscribed by RTI Act itself as the right is limited within scope of 'information' as defined under section 2(f) and is subject to other provisions including those under section 8 of the Act.
6. I find that the Appellant is aggrieved about the claim filed by her and wants to know the fate of her claim. Such requests of the Appellant are inquiries inviting and soliciting response in the nature of explanation, clarification, opinion, etc. and is beyond the scope of 'information' under section 2(f) and the 'right to information' under section 2(j) of the RTI Act. The CPIO is not bound to provide any such advice/guidance or opinion to the Appellant. In this context, I note that 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.* had held that: "...A public authority is "...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."

7. Also, as stated in the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28th November 2013 - "*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. Further, the questions raised by Appellant in appeal are raised for the first time. This was not a request in her application before the Respondent. I, therefore, do not find fault with the response of the Respondent on this count also. As the request in the Appeal and application of the Appellant are different, the Appellant cannot be permitted to enlarge the scope of her application in the appeal stage. In this regard, the following observation of Hon'ble CIC in *Shri Harish Prasad Divedi v. Bharat Petroleum Corporation Ltd.* (Case No. CIC/LS/A/2013/001477SS) is relevant:
"*... the Commission agrees with the Respondents that the information now sought by the Appellant in the present appeal did not form part of his original RTI application. Therefore, the Commission is not in a position to allow the disclosure of the information which had not even been sought by the appellant in his RTI application. An information seeker cannot be allowed to expand the scope of his RTI enquiry at appeal stage. No disclosure can, therefore, be directed to be made in the present appeal of the Appellant. The Appellant, however, may file a fresh RTI application, if he so desires.*"
9. In view of the above, I find that there is no need to interfere with the decision of the Respondent. The Appeal is accordingly dismissed.

Sd/

(Jithesh John)

First Appellate Authority

Copy to:

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