

**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: 17th November, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00045

IN THE MATTER OF

Firoz T Totanawala

... 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 Appeal dated 20th October 2022, challenging the communication of the Respondent dated 20th September 2022 whereby information was requested by the Appellant *vide* his RTI Application No. ISBBI/R/E/22/00209 dated 25th August 2022 filed under the Right to Information Act, 2005 (RTI Act). The request in the RTI Application and reply of the Respondent are as following: –

Sl. No.	Information sought by the Appellant	Response of the Respondent
1	<i>“Details of action taken on my complaint dt: 01-06-2022 about Violations of Terms of IRP Appointment by Sri Konderu Prasanth Raju,”</i>	<i>“The complaint received was duly examined and referred to Insolvency Professional Agency where the Insolvency Professional is registered for the redressal as per the provision 6(a) of the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. The Insolvency Professional Agency reported that that the Insolvency Professional has not violated any of the provisions of the Insolvency and Bankruptcy Code, 2016 and rules, regulations made thereunder. Accordingly the matter is disposed of.”</i>

2. In his Appeal, the Appellant has submitted that: *“IBBI provided incomplete information to my RTI dt-25-08-2022. It furnished the IIP letter in reply to my RTI but did not provide me a copy of the reply given by IP Konduru Prasanth Raju against my complaint. I request you to take action and please provide me complete information consisting of reply submitted by the IP Mr Konduru Prasanth Raju against my complaint.”*

3. In response to the Appeal, the Respondent has stated that: - *"The RTI Application sought details of action taken on complaint, which has already been provided. However, in the Appeal the Appellant is requesting for information not sought at the first instance. Hence, the same should be dismissed."*
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. The scope of information disclosure under the RTI Act is circumscribed by RTI Act itself. While the *"right to information"* flows from section 3 of the RTI Act, it is subject to other provisions of the Act. 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.
5. The question that falls for consideration is as to whether the response of IP to a complaint can be disclosed to the Appellant by making request in the Appeal. In my view, the Appellant has no right to ask for a copy of the response of the IP to a complaint in accordance with the provisions of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (Regulations). These Regulations do not provide for furnishing of copies of correspondence between IBBI and IP to the complainant. Any grievance in this regard cannot be addressed by taking recourse to the RTI Act
6. I also deem it appropriate to examine the scope of provisions of section 8(1)(d) of the RTI Act, which reads as under: -
"(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;"
7. It is pertinent to mention that in *Tata Motors Limited & Anr. v. State of West Bengal & Ors. W.P.(C) No. 1773/2008 decided on 12/01/2010*, the Hon'ble Calcutta High Court, while discussing scope of section 8(1)(d) of the RTI Act observed that- *"The term commercial confidence has not been defined as such. But the word commercial is defined in the Shorter Oxford English Dictionary as something 'pertaining to or engaged in commerce. Interested in financial rather than artistry; likely to make a profit; regarded as a mere matter of business'".* Thus, the term 'commercial confidence' comprises of commercial, business or financial information, which entities keep as confidential, or do not bring to the knowledge of the public, mostly with an intention to maintain an advantage over its competitors or to protect its commercial secrets from use by its competitors.

8. I note that the communications between the IP and IBBI are in the context of a complaint 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 Respondent 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).
9. I further 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."*
10. It is trite to say that IBBI being the regulatory authority for Insolvency Professionals, receives their responses to complaints received against them 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. Therefore, 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.
11. The Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information nor has he disclosed as to how his interest is affected by non-disclosure of requested information.
12. In his RTI Application, the Appellant had asked for details of action on his complaint which was duly provided by the Respondent vide the impugned communication dated 25th August 2022; but now in this Appeal he has requested for '*reply submitted by the IP Mr Konduru Prasanth Raju*' on the complaint. As the request in the Appeal and application of the Appellant are different, the Appellant cannot be permitted to enlarge the scope of his Application in the Appeal stage.

13. 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." The Appeal is liable to be dismissed on this ground also.

14. Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him under the RTI Act and I do not find any reason to interfere with the decision of the Respondent.

15. The appeal is disposed of accordingly.

Sd/

(Santosh Kumar Shukla)

First Appellate Authority

Copy to:

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