

**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: 31st January, 2023

RTI Appeal Registration No. ISBBI/A/E/23/00002

IN THE MATTER OF

ADV Menon

... 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 the present Appeal dated 6th January 2023, challenging the communication of the Respondent dated 23rd December 2022 with regard to his RTI Application No. ISBBI/R/E/22/00275 dated 7th December 2022 filed under the Right to Information Act, 2005 (RTI Act). In the RTI Application, the Appellant has in the context of his Valuation Examination *inter-alia* requested for the following –
“1. Total applications filed under Section 66(1) of IBC segregated by party, value and NCLT concerned;
2. Total applications filed under Section 66(2) of IBC segregated by party, value and NCLT concerned;
3. Number of orders passed by NCLT, NCLAT and the Hon’ble Supreme Court in terms of Section 66(1) of IBC;
4. Number of orders passed by NCLT, NCLAT and the Hon’ble Supreme Court in terms of Section 66(2) of IBC;
5. Total recovery by the Committee of Creditors in cases under Section 66(1) which have achieved finality;
6. Total recovery by the Committee of Creditors in cases under Section 66(2) which have achieved finality.”
2. The Respondent denied stating that the “*Information sought is not maintained by the Board in the format as requested*”. Aggrieved by the response of the Respondent, the Appellant filed this Appeal and has stated the following -
“... I had sought some information pertaining to Sections 66(1) and 66(2) of IBC, NCLT and the same was not sought in any format... I would request you... to kindly provide available information to me as per provisions of RTI Act 2005, in whichever format it is available with you, provided the content remains to my subject RTI application....”
3. I have carefully examined the application, the response of the Respondent and the Appeal. Before examining the request, I deem it appropriate to deal with scope of ‘information’ and right to receive the information under the RTI Act. In terms of 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 the RTI Act. It is also 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 7(9) of the Act. 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."

4. In the instant case, the Appellant has requested for "information". In my view the Appellant has not asked the 'information' in any format and to that extent I do not agree with the response sent by the Respondent. If the information is available with and held by IBBI, it could be disclosed subject to exemptions. However, in this case, this aspect has not been gone into by the Respondent.
5. It is gainsaying that those information can be shared which is held by or is under the control of the public authority. In the instant case, the information asked for is not held by or maintained by IBBI. In my view, the Respondent is expected to provide information as available on record and not create any information. Accordingly, as no information is available with CPIO, he cannot be expected to provide any other information. Same is beyond the scope of 'right to information' under section 2(j) of the RTI Act which limits the information to one 'accessible' under the RTI Act and 'which is held by or under the control of any public authority'. In this context, I note that the Hon'ble Supreme Court of India in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Judgment dated August 9, 2011), inter alia held: *"The RTI Act provides access to all information that is available and existing. ... 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."* Further, I note that the Hon'ble CIC in the matter of *Sh. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: *"... if it (SEBI) does not have any such information in its possession, the CPIO cannot obviously invent one for the benefit of the Appellant. There is simply no information to be given."*
6. I find that the Respondent can not be expected to collate information in the manner in which it was sought by the Appellant. Such attempt would divert the resources of IBBI and would not serve any public purpose. In this regard, it is relevant to rely upon the observations of the Hon'ble Supreme Court in decision dated 09th August, 2011 in the matter of *CBSE & Anr. Vs. Aditya Bandopadhyay & Ors*. (C.A. No. 6454 of 2011) wherein it held that :
"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..... 67..... The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI

Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing information furnishing, at the cost of their normal and regular duties”

7. Further, the Division Bench of Hon’ble Delhi High Court in *The Registrar of Supreme Court of India vs Commodore Lokesh K Batra & Ors.* (LPA 24/2015 & CM No. 965/2015) , vide order dated 07th January 2016 held that:
“15. On a combined reading of Section 4(1)(a) and Section 2(i), it appears to us that the requirement is only to maintain the records in a manner which facilitates the right to information under the Act. As already noticed above, “right to information” under Section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the applicant.”
8. I do not find any larger public interest for a direction to collate and compile the details of information and to provide the same to the Appellant. Despite this, if the Respondent resorts to provide such information after collating and compiling the same in a single point, it would have to devote very large amount of resources and time. Such exercise would defeat ‘the practical regime of right to information’ as envisaged in the preamble of the RTI Act and would disproportionately divert the resources of IBBI. I note that the Hon’ble CIC in the matter of *Shri Praveen Agarwal Vs. SEBI (Order dated October 1, 2008)* held that it is not open to appellant to saddle a public authority with elaborate queries, response to which could not be given without the public authority straining itself to wade through large volumes of information and data. Section 7(9) clearly forbids this form of disclosure.
9. The Appellant can very well have access to the desired information from the orders of NCLT, NCLAT and the Hon’ble Supreme Court, as available in public domain.
10. The Appeal is disposed of accordingly.

Sd/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

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