

**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: 12th January, 2024

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00040**

IN THE MATTER OF

Gopal Laddha

... 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 the present Appeal dated 15th December 2023, challenging the communication of the Respondent dated 6th December 2023 in his RTI application no. ISBBI/R/E/23/00163 filed under the Right to Information Act (RTI Act). In his RTI application, the Appellant has requested for the following -

“....

2. *Please provide the name of Corporate Debtor in AARTI INFRA-PROJECTS PRIVATE LIMITED along with their DIN, Designation and Date of Appointment.*

3. *During Insolvency and Bankruptcy / Liquidation processes, Asset / Property of all the Directors, related family member / Guarantor are considered or the property on the name of the Company are being considered.*

4. *During CIRP, on Private Ltd. companies only the Suspended Director is responsible for the Corporate default or the other Director as well. Please provide the section and clause specified under IBC-2016.*

5. *The Information available on the portal / website of the Ministry of Corporate Affairs in Company/LLP Master Data for the CIN no: U45201MH2006PTC161673, Company*

Name: AARTI INFRA-PROJECTS PRIVATE LIMITED, showing Directors/ Signatory

Details name as DIN: 01870680 , KANHAIYALAL SHIVPRATAPJI MANDHAN 10/04/2019 (Begin Date) DIN : 01870712 , VINOD KANHAIYALAL MANDHAN 28/08/2008 (Begin Date) would be considered as Corporate Debtor and liable under CIRP or not.

(Enclosed at pg.2 of this application)”

2. With regard to queries of Appellant, the Respondent has stated that –
- “2. *The name of corporate debtor is Aarti Infra-Projects Private Limited. The details of directors of the corporate debtor is not available with IBBI.*
3. *The seeking of opinion is not covered under the definition of 'information' under section 2(f) of the RTI Act, 2005.*
4. *The seeking of opinion is not covered under the definition of 'information' under section 2(f) of the RTI Act, 2005.*
5. *The seeking of opinion is not covered under the definition of information under section 2(f) of the RTI Act, 2005.”*
3. Aggrieved by the same, while reiterating the information requested in point 2, 3, 4 and 5 in RTI Application, the Appellant has stated the following in the Appeal –

“... With reference to my RTI application, the CPIO did not provide the information as desired and expected from the IBBI. Whenever any Order passed by the Hon'ble NCLT during CIRP and related issues with Corporate Debtor, it keeps the IBBI in loop for all information for record and future references.

In the case Corporate Insolvency Resolution Process (CIRP) on Aarti Infra-Projects Pvt. Ltd, the Hon'ble NCLT, Mumbai passed an order on dt. 03-02-2023 and all the information shared by the Hon'ble NCLT, Mumbai to IBBI. Therefore, with ref. to information sought at sr. no. 1 in my RTI application is expected to be answered. Hence please review it and provide me with the required information. If you also find that it is not maintained at your department then please forward the same RTI to the most relevant department which is responsible to reply under RTI under section 6(3).

It also requested to review all the information sought by me in Sr.no. 2, Sr. no. 3, Sr. no. 4 and especially sr. no. 5 which is rejected by the CPIO on the basis of seeking of opinion under section 2(f) of RTI act-2005. In the Sr. no 05, I've enclosed the copy of the information available on the Website/Portal of the Ministry of Corporate Affairs, under which your office also comes....”

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. 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.”* It is pertinent to mention here that the Appellant’s *“right to information”* flows from section 3 of the RTI Act and the said right is subject to the provisions of the Act. 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. 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.
5. With regard to query 2, the Appellant has asked for details of directors of the CD. I note that the Respondent is expected to provide information as available on record and not create any information. Anyway, the information on directors of the company can be taken from the website of the Ministry of Corporate Affairs, which are already in public domain. Creating information 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 regard, it is relevant to mention that the Hon’ble CIC in *Mr. Subrata Guha Ray Vs. CPIO, Appeal No. CIC/SB/A/2016/001025/CBECE-BJ* (Order dated 03.03.2017), has inter-alia observed that: *“.... under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions.”* Also, 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.”*. I note that the Respondent has provided the information as available on record.
6. With regard to query 3, 4 and 5, I find that the Appellant is soliciting opinion on interpretation of the provisions of the Insolvency and Bankruptcy Code, 2016 as to (i) which all property are

considered under IBC and whether properties of directors / related parties are also considered, (ii) whether only suspended directors are liable or other directors also are liable, and (iii) the listed directors on the website of Ministry of Corporate Affairs are liable. Such requests of the Appellant are inquisitions 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. These requests, of the Appellant, are certainly inquisitions soliciting a response for an answer rather than any 'information' within the scope and ambit of section 2(f) of RTI Act. This Act does not create obligation on the public authority to answer queries eliciting answers to questions. In this regard, it is relevant to refer to the Order dated April 21, 2006, of the Hon'ble CIC in the matter *Dr. D.V. Rao Vs. Shri Yashwant Singh & Anr.*, wherein it was observed that: "*the RTI Act does not cast on the public authority any obligation to answer queries in which a petitioner attempts to elicit answers to his questions with prefixes, such as, 'why', 'what', 'when' and 'whether'. The petitioner's right extends only to seeking information as defined in section 2 (f) either by pinpointing the file, document, paper or record, etc., or by mentioning the type of information as may be available with the specified public authority.*"
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, Gopal Laddha.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.