

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

2<sup>nd</sup> Floor, Jeevan Vihar Building  
Sansad Marg, New Delhi- 110 001

**Dated: 30<sup>th</sup> June, 2023**

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI  
Appeal Registration No. ISBBI/A/E/23/00024**

**IN THE MATTER OF**

**Robin Mittal**

... Appellant

Vs.

**Central Public Information Officer**

The Insolvency and Bankruptcy Board of India

2<sup>nd</sup> Floor, Jeevan Vihar Building

Sansad Marg, New Delhi - 110 001.

... Respondent

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1. The Appellant has filed the present Appeal dated 3<sup>rd</sup> June 2023, challenging the communication of the Respondent dated 31<sup>st</sup> May 2023 in his RTI application no. ISBBI/R/E/23/00059. The information sought in the RTI application, the reply of Respondent and submissions of Appellant in the Appeal are as follows -

Sl. No.	Information Sought	Reply by CPIO	Submissions of Appellant in the Appeal
1.	Kindly intimate inspection was conducted as per Insolvency and Bankruptcy Board of India (Inspection And Investigation) Regulations, 2017 Or Insolvency And Bankruptcy Board of India (Grievance And Complaint Handling Procedure) Regulations, 2017	In exercise of its powers under section 218 of the Insolvency and Bankruptcy Code, 2016 read with regulation 3(3) of the IBBI (Inspection and Investigation) Regulation, 2017, inspection of Mr. Vivek Raheja, Insolvency Professional was ordered in the matter of Century Communication Limited and on receipt of Complaints/Grievances in the matter of Trading Engineers International Limited, scope of Inspection was extended to cover CIRP of Trading Engineers International Limited as well.	CPIO is deliberately Providing misleading information to cover fraud by IBBI DC Team, Mr. Jayanti Prasad Whole Time Member.  IBBI DC order date 17- 02- 2023 did not refer any reference or Century Communications nor any reference of complaints / grievance in matter of Trading Engineers International Ltd but self-inspection by IBBI.
2.	Inspection was conducted by IBBI as per section 3(1) i.e The Board shall conduct inspection of such number of service providers every year, as		

	may be decided by the Board from time to time or section 7(1) i.e The Board may conduct investigation of a service provider under section 218.		
3.	In case investigation was conducted on complaints, please provide nature, content of each complainant, unique registration no, based on which inspection was conducted.	Recently on receipt of grievances in the matter of Trading Engineers International Limited another investigation has been ordered and the same is underway.	CPIO is deliberately providing misleading information to cover fraud by IBBI DC Team, Mr. Jayanti Prasad Whole Time Member. IBBI DC order date 17-02-2023. CPIO did not provided details on unique registration No of complaint, grievance, based on which order date 17-02-2023 in matter of Trading Engineers International Ltd, was issued.
4.	Copy of Inspection notice as per section 4(1) i.e Inspection or 8(1) i.e. Investigation.	The copy of the Inspection Notice is attached	CPIO is again & again deliberately providing misleading information to cover fraud by IBBI DC Team, Mr. Jayanti Prasad Whole Time Member. IBBI DC order date 17-02-2023. Inspection notice No IBBI/IP/INSP/2021/70 date 09-04-2021 is attached with Reply which did not include any reference of CD as MSME registration dealt in order date 17-02-2023.
5.	Copy of Show Notice issued to Mr. Vivek Raheja as per section 12. i.e "Show Cause Notice	The Inspection Report submitted by the Inspecting authority was dealt as per IBBI (Inspection and Investigation) Regulations, 2017 and Show cause notice was issued to Mr. Vivek Raheja, Resolution Professional. The same was disposed of vide DC order dated 17th February 2023 which is available at <a href="https://ibbi.gov.in/en/orders/ibbi">https://ibbi.gov.in/en/orders/ibbi</a> . The disclosure of reply of Mr. Vivek Raheja is exempted in terms of section 8(i)(e) of the Right to Information Act, 2005.	CPIO is again & again deliberately providing misleading information to cover fraud by IBBI DC Team, Mr. Jayanti Prasad Whole Time Member. IBBI DC order date 17-02-2023. Inspection notice No IBBI/IP/INSP/2021/70 date 09-04-2021 is attached with Reply which did not include any reference of CD as MSME registration dealt in order date 17-02-2023. CPIO IBBI is hiding all frauds done by IBBI & Mr.
6.	Copy of documents submitted by Mr. Vivek Raheja		

			Vivek Raheja in name of section 8(i)(e) of the Right of Information Act 2005, thus defeating RTI.
7.	Copy of Company Trading Engineers International MSME Registration certificate attached with CoC meeting on 10th CoC meeting date 04-08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020, submitted by Mr. Vivek Raheja.	Information not available.	CPIO is again & again deliberately providing misleading information to cover fraud by IBBI DC Team, Mr. Jayanti Prasad Whole Time Member. IBBI DC order date 17-02-2023. IBBI passed reasoned order date 17-02-2023 & declared CD as MSME. IBBI DC team, Mr. Jayanti Prasad WTM must have verified CD MSME Registration Certificate, during inspection.
8.	Copy of investigation report as per section 10(1).	Investigation is still under progress.	CPIO is again & again deliberately providing misleading information to cover fraud by IBBI DC Team, Mr. Jayanti Prasad Whole Time Member. IBBI DC order date 17-02-2023.  <b>IBBI already completed investigation &amp; passed reasoned order date 17-02-2023</b>
9.	Copy of Investigation report, action on other frauds in 10th CoC meeting date 04- 08-2020, 11th CoC meeting on 21-08-2020, 12th CoC meeting on 10-09-2020 i.e.b Ex-SBI officer allowed in CoC meeting camouflage as Trading Engineers International representative, Inventory details not provided, pending non-cooperation application u/s 19(2) against suspended director.		
10.	Inspection report, Disciplinary Committee noting or any other written documents, based on which DC concluded & passed reasoned order as per section 13, as under.	The disclosure of inspection report is exempted in terms of section 8(i)(e) of the Right to Information Act, 2005.	CPIO is again & again deliberately providing misleading information to cover fraud by IBBI DC Team, Mr. Jayanti Prasad Whole Time Member. IBBI DC order date 17-02-2023. <b>IBBI already completed</b>

			<p><b>investigation &amp; passed reasoned order date 17-02-2023 &amp; declared CD as MSME.</b></p> <p>CPIO IBBI is hiding all frauds, corruption done by IBBI &amp; Mr. Vivek Raheja in name of section 8(i)(e) of the Right of Information Act 2005, thus defeating RTI</p>
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2. 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.
  
3. I note that the Appellant in his first query has solicited a clarification rather than any information. The second query of the Appellant is not even an inquisition rather recital of provisions with his own understanding. Both the questions do not qualify to be an ‘*information*’ within the ambit of section 2(f) of the RTI Act. Despite the same, the Respondent informed about the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and the regulations under which the inspection was conducted by the Board and also about extension of inspection on receipt of a complaint. Now in the Appeal, the Appellant has sought to make allegations against the IBBI officers and the Disciplinary Committee without any basis and without the scope of the RTI Act. As stated in the Guide on the RTI Act issued by the DoPT under OM No. 1/32/2013-IR dated 28<sup>th</sup> 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.*”
  
4. Further, as held by 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.*, inter alia, 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..."*

5. In this regard, it is also 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."*
6. I do not find any basis in the submissions of the Appellant for directing any information disclosure other than what has been shared by the Respondent in response to the first two questions of the Appellant.
7. With regard to query 3, I note that the Appellant wants to know the *"nature, content of each complainant, unique registration no, based on which inspection was conducted"*. The Respondent has, instead of dealing with this request as per RTI Act, provided something in vague manner than that has been asked for. To this extent, I agree with submissions of the Appellant. Coming to the merits of this request, I note that the law permits IBBI to deal with complaints and grievances in accordance with the provisions of Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (Regulations). Further, the inspection and investigation is carried out as per provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations). The information sought is used and relied upon in respect of a disciplinary proceedings against a registered Insolvency Professional (IP) and law does not cast obligations to share such information with third parties. The RTI Act cannot be allowed for such inquiries by third parties. I also deem it appropriate to examine the scope of provisions of section 8(1)(d) of the RTI Act, which provides that :- *"(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;"*
8. 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. I note that the complaints against the IP (received by IBBI) are*

in the context of 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 to a third party, 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 V.s. 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 the complaints in respect of processes under the Insolvency and Bankruptcy Code, 2016. Many of the information contained in those complaints are received under this fiduciary relationship. Therefore, I am convinced that there is fiduciary angle to the relationship between the complainant and IBBI, and the disclosure of requested information is exempted under section 8(1)(e) also.
11. The Appellant has also 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. With regard to query 4, I note that the Appellant asked for the copy of inspection notice and same was provided. The Appellant, however, without asking for any other information or claiming any shortage of information disclosures, has sought to make allegations on IBBI officers. The same is devoid of any worth for consideration under the RTI Act.
13. With regard to queries 5, 6, 8, 9 and 10, the Appellant has *inter-alia* asked for the (i) copy of SCN, (ii) copy of documents provided by IP to IBBI, (iii) Copy of investigation report, (iv) inspection report and other documents on which DC concluded and passed the order. I note that the communications between the IP and IBBI are in the context of 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 to a third party, 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, I hold that the requested information is exempted

under section 8(1)(d). Apart from the legal obligation of IP under the governing regulations to ensure confidentiality of the information sought relates to the insolvency resolution process and many of the information contained are received under fiduciary relationship. Therefore, there is fiduciary angle to the relationship between the IP and IBBI also, and the disclosure of requested information is exempted under section 8(1)(e) also. The Appellant has also 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. Also, the Appellant has no right to ask for such documents under the provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations). These documents are used and relied upon in respect of a disciplinary proceedings against a registered insolvency professional and law does not cast obligations to share these documents with third parties.

14. With regard to query 7, the Appellant has asked for a copy of MSME certificate. In this regard, it is relevant to mention that the Hon'ble CIC in *Mr. Subrata Guba 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.” As Respondent has stated that the said information is not available, I find that the Respondent cannot provide the information which is not held by it.
15. In view of the above, I do not find any reason to interfere with the response of the Respondent. Accordingly, the Appeal is disposed of.

**Sd/**  
**(Santosh Kumar Shukla)**  
First Appellate Authority

**Copy to:**

1. Appellant, Robin Mittal.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2<sup>nd</sup> Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.