

**WHOLE TIME MEMBER AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

7TH FLOOR, MAYUR BHAWAN, NEW DELHI

DATED THE 3rd OF JANUARY, 2018

Appeal No. ISBBI/A/2017/60007 (F. No. IBBI/AI Div./RTI Appeal/2017-18/1)

Dated: December 09, 2017

Arising out of Order dated November 29, 2017 under RTI Request No.
ISIBBI/R/2017/50031 dated November 22, 2017

IN THE MATTER OF

Mr. Yogesh Sharma

██████████
██████████

..... Appellant

Versus

CPIO, Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan
New Delhi

..... Respondent

ORDER

1. The present Appeal ISBBI/A/2017/60007 dated December 9, 2017 received in the office of the First Appellate Authority (**FAA**), Insolvency and Bankruptcy Board of India under the Right to Information Act, 2005 has been preferred by Mr. Yogesh Sharma against the order of the CPIO, Insolvency and Bankruptcy Board of India, Ms. Anita Kulshrestha, with respect to his RTI request No. ISIBBI/R/2017/50031.
2. On a detailed perusal of the RTI Application of Mr. Yogesh Sharma and his subsequent RTI Appeal it is observed that the applicant seeks the following information from the Insolvency and Bankruptcy Board of India:

- “i. Is the stand of these lawyers, that section 138 of NI Act cases are prohibited from continuation of proceedings as long as moratorium under section 14(1)(a) of IBC, 2016 is in force, correct?
- ii. If the answer to the question in bullet ‘i’ is ‘yes’, then please provide the justification in light of the fact that section 138 of NI Act cases are criminal cases and not civil cases.”

3. The CPIO, Insolvency and Bankruptcy Board of India had disposed of the RTI Application on November 29, 2017 stating that the information sought is not covered by Section 2(f) of the RTI Act, 2005.
4. Upon a perusal of the appellant’s request for information as sought by the appellant through his RTI application and Appeal, I find that the appellant has averred that the definition of Section 2(f) of the RTI Act, 2005 includes “advices” and “opinions” hence the opinion or advice of IBBI may be provided in terms of his request. But the information sought by the appellant is not covered under the term “*information*” as defined under Section 2(f) of the RTI Act, 2005.
5. In this regard the Hon’ble Supreme Court of India in *Thalappalam Ser. Coop. Bank Ltd. & Ors, v. State of Kerala & Ors.* (Civil Appeal No. 9017 of 2013), while interpreting the term “information” enshrined in Section 2(f) of the RTI Act, 2005 has observed that citizens have a right to get information, but can have access only to the information “held” and under the “control of public authorities”, with limitations. If the information is not statutorily accessible by a public authority, as defined in Section 2(h) of the Act, evidently, that information will not be under the “control of the public authority”
6. Further, it is also to be noted that the Hon’ble Supreme Court of India in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Civil Appeal No. 6454 of 2011) has, inter alia held: “*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.

7. What the Appellant wants here is clearly in the nature of seeking opinion and not information. The information solicited by the appellant amounted to eliciting the opinion and advice of the Insolvency and Bankruptcy Board of India which does not fall under "information" as defined under the RTI Act, 2005.
8. Accordingly, the appeal is disposed of.

Sd/-

(Dr. Mukulita Vijayawargiya)
Whole Time Member and First Appellate Authority

Copy to

1. Mr. Yogesh Sharma

2. CPIO, Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan
New Delhi