

**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 April, 2023

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/23/00011**

IN THE MATTER OF

Robin Mittal

... 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 24th March 2023, challenging the communication of the Respondent dated 23rd March 2023 in his RTI application no. ISBBI/R/E/23/00025 filed under the Right to Information Act (RTI Act). 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.
 2. It is noted that in his RTI application, the Appellant had requested for the following in respect of the complaints filed against Mr. Vivek Raheja, Resolution Professional -

*“1. Status of Inspection Report as on date.
2. Copy of documents sent to Respondents.
3. Copy of reply received from Respondent.
4. Copy of action taken.
5. Final closure report with approving authority.”*
 3. With regard to query 1, the Respondent has stated that the inspection report was dealt as per IBBI (Inspection and Investigation) Regulations, 2017 and Show-Cause Notice (SCN) was issued to Shri Vivek Raheja, IP. With regard to query 2 and 3, the Respondent has stated ‘*not applicable*’. With regard to query 4 and 5, the Respondent has provided website link of copy of order of Disciplinary Committee *vide* which the SCN was disposed. In the Appeal, the Appellant has stated “...*Various complaints are filed since 2021, against Mr. Vivek Raheja for not uploading company balance sheet as on 31-3-2019, 31-3-2020, 31-3-2021, 31-3-2022 on MCA portal, due to same I am not able to download same, in spite of making payments. IBBI is not closing complaint.... Please instruct CPIO to provide specific information related to my complaints of Balance Sheet against Mr. Vivek Raheja*”.
 4. It is gainsaying 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. 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.” 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. Section 8 provides for exemption from disclosure of information held by or under control of the 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 (1), the Appellant has requested for the ‘*status*’ and the same was provided by the Respondent. As such, no further interference is required with the response of the Respondent.
6. With regard to query 2 and 3, I note from the cryptic response of learned CPIO that it does not explain whether information asked for is available and exempted or it is not held by or in control of the CPIO. I hope from and expect the learned CPIO to apply mind to such requests and deal with requests objectively with cogent reasons. Having said so, I deem it appropriate to examine the scope of the information requests which ostensibly are exempted from disclosure under the 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. 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).
8. 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.”

9. It is trite to say that IBBI being the regulatory authority for Insolvency Professionals, receives their responses 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.
10. 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.
11. In my view, the Appellant has no right to ask for such documents under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) 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. The RTI Act cannot be allowed for such roving inquiries by third parties as sought to be done by the Applicant in this case.
12. With regard to query 4 and 5, the order of the Disciplinary Committee reflects the final action taken against the IP and is final in all respect. Accordingly, no further interference is required with the response of the Respondent.
13. In view of the above, I do not find any reason to issue any direction to the Respondent as asked for in this Appeal. 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, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.