

**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: 9th March, 2022

RTI Appeal Registration No. ISBBI/A/E/22/00006

IN THE MATTER OF

Shreyans Shah

... 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 present Appeal dated 10th February 2022, challenging the communication of the Respondent dated 10th February 2022 with regard to his RTI Application No. ISBBI/R/E/22/00065 dated 9th February 2022 filed under the Right to Information Act, 2005 (RTI Act). The information sought in the Application is as follows: *“Kindly provide details for entities below on waterfall mechanism for insolvency resolution:- 1) Non Banking Financial Companies: Status of Non Convertible Debenture holders and Fix Deposit Holders in respect to bankers in waterfall mechanism for insolvency resolution. 2) Mutual Funds: Status of Mutual Fund unit holders in respect to banks and status of Mutual Fund promoter and Asset Management Company in case of insolvency resolution. Can Mutual Fund insolvency or liquidation trigger recovery proceedings against Mutual Fund promoter or Asset Management Company?”*
2. The Respondent had stated that the Appellant had sought legal opinion and the interpretation of the provisions of law, and the same is not covered under the definition of ‘information’ under section 2(f) of the RTI Act.
3. In this Appeal, the Appellant has stated that his RTI Application has been rejected on false grounds and *“IBBI has responsibility to provide clarity on waterfall mechanism. If IBBI itself is clueless on waterfall mechanism requested in original RTI then on what reference basis it is governing Insolvency mechanism? Kindly clarify the same.”*
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. Before examining the request, I deem it appropriate to deal with scope of information and right to receive the information under the RTI Act. It is noted that 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.”

5. The aforesaid definition contemplates providing of material in the forms of records, documents, opinions, advice, etc. It does not include giving opinions on issues raised or providing clarifications or advice to inquiries. 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 section 8. It is thus, 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 8 of the Act.
6. I find that the Appellant is soliciting opinion on interpretation of the waterfall mechanism under the Insolvency and Bankruptcy Code, 2016. Such requests of the Appellant are inquiries 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. In this Appeal, the Appellant has again questioned the role of IBBI and has raised questions in that regard. 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 inquiries 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/
(Santosh Kumar Shukla)
First Appellate Authority

Copy to:

1. Appellant, Shreyans Shah.
2. CPIO, The Insolvency and Bankruptcy Board of India, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110 001.