

**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: 18th June, 2024

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal**

IN THE MATTER OF

Nelson James Macwan

... 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 first filed the Appeal dated 28th March 2024 challenging that the Respondent has not provided the information within 30 days as per the RTI Act. Same was disposed *vide* Order of this First Appellate Authority on 23rd April 2024. Thereafter, on reply to RTI Application, the Appellant was again aggrieved, and approached this First Appellate Authority. His request was dealt on merits and a reasoned order was passed on 22nd May, 2024.
 2. On 23rd May 2024, he sent the following e-mail to the First Appellate Authority –
“To,
*THE EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110 001
Sir,
I acknowledge the receipt for your Order, dated 22.05.2024. I am grossly aggrieved of it.
In my First Appeal, I requested you to give me an opportunity of being heard but you did not give. You decided to decide the matter based on the material available on record.
I, therefore, request you to provide the material presented/ submitted before you by the Respondent, which you have taken into consideration to arrive at your decision, other than his CPIO's reply to my RTI application.
Regards,
Nelson Macwan*”
 3. In the interest of facilitating transparency and information sharing with stakeholders, it was decided to hear Mr. Macwan and he was again allowed to make oral submissions before the First Appellate Authority on 3rd June 2024. Mr. Nelson re-iterated his submissions made in the First Appeal dated 28th March 2024. He also made following written submissions –
“To,
*THE EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
2nd Floor, Jeevan Vihar Building
Sansad Marg, New Delhi- 110 001*

Sub: First Appeal in the matter of Nelson James Macwan (Appellant) v. CPIO (IBBI), dtd. 27.04.2024 and Order dtd. 22.05.2024 – regarding...

Ref. :

(1) Your order dtd. 22nd May 2024 disposing my First Appeal under Section 19 of RTI Act.

(2) My email dtd. 23rd May 2024

Dear Sir,

1.1 Thank you giving me an opportunity of being heard in the matter of my First appeal under Section 19 of RTI Act, 2005, on 03.04.2024 at 5.00 pm. Earlier, you have not granted such opportunity of being heard though I have requested in my Appeal to give such opportunity before disposing of my Appeal.

1.2 In a response to my First Appeal, dtd. 27th April 2024, you have issued the order dated 22nd May 2024, whereby disposing of my appeal by making up the view that information as requested by me, vide Point/query 2, 3 and 4, cannot be disclosed to me.

1.3 During hearing, you have been appraised about background of information requested and its content and nature and why it is not exempted u/s 8(1)(d) of RTI Act, even how does public interest warrant the disclosure of such information.

1.4 The following are the matters discussed:

1. I have applied for registration as a valuer as per Company (Registered Valuer and Valuation) Rules, 2017 (Company Rules) to become 'registered valuer' under section 247 of Companies Act, 2013.

2. One of the eligibility criteria for registration as a valuer under Rule 3(1) (C) is to pass Valuation Examination under Rule 5 of Company Rule.

*3. But, it is provided Under Second Proviso to Rule 5(1) as under -
"Provided also that the authority may recognise an examination conducted as part of a master's or post graduate degree course conducted by a University which is equivalent to the valuation examination."*

4. So I requested the IBBI to grant such equivalence to the examination passed by me from Sardar Patel University (SPU).

5. In the response, I received an email on 5th of July 2023 from Valuer Division, IBBI that the competent authority has taken a decision not to grant such equivalence under 2nd proviso to rule 5(1) and I have been informed that such a decision has been taken with the due approval of the Chairperson IBBI.

6. Therefore I requested the following under my request No. 2

a. The copy of administrative decision taken by the competent authority

b. Reason recorded for such administrative decision

c. Copy of noting of the approval of then the chairperson, IBBI on the said decision

7. At this point I drew your attention to following paragraph of Point No. 3.2 of my appeal

"The IBBI has already informed me that an administrative decision has already been taken with due approval of the Chairperson, IBBI without giving content of it or copy of order thereof. I am sure that the administration of IBBI is not running on oral decisions in significant matters. The said decision has relation with the Company (Registered Valuers and Valuation) Rules, 2017 framed u/s 247 of the Companies Act, 2013 (Company Rules). Hence, it cannot be an oral decision. Moreover, approval has also been taken from the Chairperson, IBBI, for this decision of the competent authority, which cannot be an oral approval."

8. With regard to Query 2, in so far as scope of exemption under section 8(1)(d), you have rightly observed that the respondent has not given any reason or justification for invoking section 8(1)(d) of RTI Act. You further noted that it is obviously denial without any specific reason.

9. But, you pertinently mentioned the observation in the case of Tata Motors Ltd. while discussing the scope of Section 8(1)(d) of the RTI Act that what is 'commercial confidence'.

10. I therefore stated that observation of Hon'ble Calcutta High Court in the matter of Tata Motors Ltd. is not applicable to the information requested by me looking to the nature and content of the information requested which is neither of commercial in nature nor business or financial information.

11. Further you noted that the basis/reason on which IBB has come to a conclusion with respect to said university, do contain information which is confidential to the said university and the disclosure of the same to a third party i.e. Appellant may harm the competitive position of the said university and this Respondent must be cautious of the same. Therefore, the disclosure of the basis/ reasons on the basis of which IBBI has concluded with respect to said university is exempted under section 8(1)(d) of the Act. Your belief that such information is confidential is erroneous because the said university is also a public authority and is also subjected to RTI Act. In fact, the said university has provided all its communications with IBBI only on an oral request and I am not required to use the RTI Act to seek such information. Therefore, there is no question of confidentiality in the matter.

12. Further you noted that the Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information. I have already established how a larger public interest is involved warranting disclosure of requested information at last paragraph on page no. 6 of my Appeal. The decision taken by the competent authority is not only affecting students of such course of Sardar Patel University including me but also to students of all such courses offered by the universities across India.

13. At paragraph 8 of your Order you have noted my statement at length but failed to apply contention raised therein regarding applicability of Section 11 of RTI Act and you kept on agreeing with CPIO in believing that information requested is confidential to the concerned university. I again state that the concerned university is not private entity, it is public authority established under a state legislation, Sardar Patel University Act, 1955, and providing educational services to the society at large and not carrying on any commercial activity or business, so there is on any question arises as to causing harm to its competitive position.

14. Further, at paragraph 8 of your Order you have noted that merely being students of the university do not trigger a larger public interest, warranting disclosure of information which is exempted under section 8(1)(d). Since the information requested in form of copy of order implementing decision of the competent authority is adversely impacting one and all students of such courses of all the university across the India.

15. You agreed that IBBI being a public authority is under obligation to publish its significant administrative decision in public domain under section 4(1)(c) of RTI Act. It clear that decision is taken, reasons recorded, approval of Chairperson IBBI has been taken then why order to execute such decision is not made public. Even RVOs are required to be informed about all such decision being a frontline regulator and they required to do due diligence of applicant and to recommend the applicant for Registration as valuer, but they are also not aware of such decision. Therefore, I request to issue appropriate direction to the concerned competent authority to assure the publication of such significant administrative decision in public domain.

16. Further, I again state that under Section 4(1)(d) of RTI Act, 2005, the public authority is under obligation to provide reasons for its administrative decisions to the 'affected persons'. Therefore, it is my right to know reasons recorded for the said administrative decision as affected person by the said decision.

1.5 I also take this opportunity to draw your attention to the following:

1. Even the IBBI has not given any reason to SPU that why its request to grant such equivalence has been declined. Please refer middle of third paragraph on page no. 6 of my appeal.

2. IBBI is merely kept retreating that such decision has been taken by the competent authority and approval of the Chairperson is obtained but nowhere on records of IBBI such decision exist in black and white, i.e. in form of order or circular, etc. Even Valuation Division is also not able to provide me a copy of such reasoned order to my many requests and now they do not reply request emails. Hence, this TI application. The respondent has taken recourse to the provisions of Section 8(1)(d) merely as a pretext to deny the information just to hide truth. Whereby the respondent/IBBI not only violating fundamental right to information but also violating fundamental right to practice a profession, i.e. as registered valuer.

3. The Central Information Commission in Appeal: No. CIC/OK/A/2006/00163, Dated 7th July, 2006 in the matter of Shri Dhananjay Tripathi v. Banaras Hindu University, Varanasi has given the following message -

"Through this Order the Commission now wants to send the message loud and clear that quoting provisions of Section 8 of the RTI Act ad libitum to deny the information requested for, by CPIOs/ Appellate Authorities without giving any justification or grounds as to how these provisions are applicable is simply unacceptable and

clearly amounts to malafide denial of legitimate information attracting penalties under section 20(1) of the Act.
“

4. Paragraph no. 3.5 of my appeal is reproduced here.

“3.5 The above submission makes it clear that the reply of the CPIO is incomplete, unjustified, arbitrary, evasive, without recording a reasonable reason for invoking provisions u/s 8 (1) (d) of RTI Act, 2005 as well as exemption contained under Section 8(1)(d) is wrongly invoked because the information requested is neither confidential to the concerned University (third party) nor it has been treated as confidential by the concerned University (third party) nor its disclosure would harm the competitive position of the third party and the larger public interest warrants its disclosure and the CPIO, u/s 4(1)(d) of RTI Act, 2005, is also under obligation to provide reasons (the information requested) for IBBI's administrative decision as me being an affected person.”

5. You have made up your view that the information as requested by me cannot be disclosed to me, which is without carefully examining content of my Appeal. The contentions stated in your Order have already been dwelt with and answered in my Appeal. Even, you have not given any justification or grounds as to how provisions u/s 8(1)(d) are applicable and denied the information requested. The case law you referred that of Tata Motors Ltd. Is not relevant in this matter looking to the nature and content of the information requested. 1.6 I, therefore, again pray to provide the information requested, vide Point No. 2, 3 and 4 of my RTI application.”

4. I have carefully examined the response of the Respondent above. With regard to query 2, the Appellant has requested for copy of file noting / decision made by the competent authority while examining representation of a university. The basis/reasons on which IBBI has come to a conclusion with respect to said university, do contain information which is confidential to the said university and the disclosure of the same to a third party i.e. the Appellant may harm the competitive position of the said University and this Respondent must be cautious of the same. Therefore, the disclosure of the basis/reasons on the basis of which IBBI has concluded with respect to said university is exempted under section 8(1)(d) of the Act. Also, merely because the said university is also subjected to RTI Act, does not infer that information can be disclosed without taking consideration exemptions under section 8. Also, the Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information. Accordingly, in my view, the information as requested by the Appellant cannot be disclosed to him. With regard to query 3, the Appellant wants a direction to be issued to IBBI to place the copy of the decision taken in a particular case in public domain. The Appellant is aggrieved by the fact that the copy of the above decision has not been placed in public domain. The basis/reasons on which IBBI has come to a conclusion with respect to said university, do contain information which is confidential to the said university and the disclosure of the same on the website may harm the competitive position of the said University and this, IBBI need to be cautious of.
5. Accordingly, I am not convinced to interfere with my earlier Order passed on 22nd May 2024. The appeal is disposed of.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

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