

**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: 29<sup>th</sup> October, 2021**

**RTI Appeal Registration No. ISBBI/A/E/21/00026**

**IN THE MATTER OF**

**R Jayanthilal**

... 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

**ORDER**

1. The Appellant has filed present Appeal dated 1<sup>st</sup> October 2021, challenging the communication of Respondent dated 30<sup>th</sup> September 2021 with regard to his RTI Application No. ISBBI/R/E/21/00151 dated 3<sup>rd</sup> September 2021 filed under the Right to Information Act, 2005 (RTI Act).
2. The Respondent had denied the information asked by the Appellant citing reasons that the information regarding the reply from the service provider is exempted from disclosure under section 8(1)(d) and (e) of the RTI Act as the information is available with IBBI in its fiduciary capacity and is of the nature of commercial confidence and if the information is provided to the Appellant that would prejudicially affect the competitive position of Insolvency Professional (IP).
3. Being aggrieved by the above decision of the Respondent, the Appellant has assailed the same and has *inter alia* submitted that his request was involving larger public interest which warrants the disclosure of such information. He has stated that there are more than 9000 shareholders in the Corporate Debtor in this case and their wealth of about INR 287 Crores is about to wipe out. According to the Appellant, the information asked by him is

not exempted and IBBI is bound to inform the basis of the decision that his grievance does not indicate contravention by the IP.

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. It is noted that in his Application dated 3<sup>rd</sup> September 2021, the Appellant had mainly asked following information with regard to IBBI's letter numbered COMP-11012/224/2021-IBBI/2351 dated 31<sup>st</sup> August 2021 whereby his complaint was disposed of:-
  - (a) a copy of the document (i.e., the reply received from the IP) as mentioned in para 3 of the above letter of IBBI and the information available on records.
  - (b) a copy of the amendment or circular which allow RP to publish fake communication address in Expression of Interest and to proceed with Expression of Interest without:
    - (i) collating the financial account for the previous 2 years.
    - (ii) obtaining the documents from creditors required for admission of the claim ;
    - (iii) having prepared the Transactional Audit Report.
    - (iv) filing an application under section 19(2) before the Adjudicating Authority in case of non-cooperation from the Corporate Directors and non-availability of books of account.
5. In the instant case, the Respondent dealt with first request but has not dealt with second request of the Appellant. Before dealing with merits of response of the Respondent, I deem it appropriate to deal with the claims of Appellant with regard to second request.
6. In this regard, I note that now in his Appeal, the Appellant has modified and enlarged the scope his original request by saying “ *I have asked for an amendment copy of the IBC act, 2016 based on which the IBBI has decided to exempt the Resolution Professional. As per the original IBC act, 2016 all these queries as mentioned in original RTI application are not exempted and IBBI had to initiate disciplinary action against the concerned Resolution Professional. But now IBBI in its reply to my grievance said all the queries are no more offence.*  
*So I once again appeal to you to provide the information sought in my RTI application to me, the copies of the amendments done in the IBC act 2016 confirming that these queries are no more offence. If nothing such amendment, please do confirm the same.”*
7. I further note that the Appeal with regard to this query is beyond the scope of right to Appeal under the RTI Act as the Appellant has sought confirmation and explanation to his understanding of the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and has raised hypothetical questions based on his assumptions rather than any grievance as contemplated under section 19 of the RTI Act.

8. 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 relevant to mention here that the scope of information disclosure under the RTI Act is circumscribed by RTI Act itself. 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 terms 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.
9. I am also of the view that an applicant under the RTI Act is expected to provide specific details in respect of each point/item of information sought by him/her. In this case, the Appellant has not specified his exact information requirement to the Respondent. In fact, he has raised doubts in vague and unclear terms and has sought confirmation to his apprehensions based on his assumptions and curiosity about applicable laws. This cannot be allowed. In the matter of *Shri Harmit Singh Vs. Central Excise Department, Chandigarh* (Order dated November 07, 2008) the Hon’ble CIC *inter alia* held that the respondents therein were right in rejecting the request as it is quite unclear and vague and no specific information can be identified on the basis of the signals contained in the query. In the matter of *Smt. Guninder Gill Vs. Shri Muktesh Chander* (Order dated June 01, 2006), the Hon’ble CIC held there is a certain lack of clarity regarding what exact information the appellant needs. In view of these settled position of law, I find that this request does not fall within the ambit of sections 2(f) and 2(j) of the RTI Act.
10. Further, by way of this query, the Appellant is in fact raising dispute with regard to closure of his complaint against IP, otherwise than as assumed by him. In my view, remedy in this respect is not an Appeal under section 19 of the RTI Act in the garb of information request. I note that Hon’ble CIC in *M Jameel Basha Vs. CPIO, Ministry of Personnel Public Grievances & Pension, Department of Personnel & Training*, File No: CIC/MPERS/A/2017/158527/SD (Decision dated 06.05.2019), has observed that: “... *It may be noted that under RTI Act, CPIO is not supposed to create information or interpret/clarify/deduct information in respect of queries/clarifications. Similarly, redressal of grievance, non-compliance of rules, contesting the actions of respondent public authority and suggesting correction in government policies are outside the purview of the RTI Act.*”
11. If at all, the Appellant is interested to have copies of IBC and amendments thereto or any circular issued by IBBI, he can take a copy from the website of the IBBI at <https://ibbi.gov.in/legal-framework> where all such legal instruments are accessible.

12. Coming to the first request of the Appellant, it is noted that the same squarely falls within the scope and ambit of the section 2(f) as the said information is held by IBBI and is under its control. However, the question that arise for determination is as to whether said information is exempted from disclosure under section 8(1)(d) and (e) of the RTI Act. In so far as the scope of exemption under section 8(1)(d) is concerned, the Respondent would be right to refuse to give information relating to commercial confidence, trade secret or intellectual property, disclosure of which would harm the competitive position of a third party. Further, the Respondent would be right in denying the disclosure of said information if the same is available to 'a person' in his 'fiduciary relationship'. Such information, however, cannot be withheld from disclosure if the Respondent is satisfied that the larger public interest warrants the disclosure of the information.
13. In *Central Public Information Officer, Supreme Court of India Vs. 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.*"
14. 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.
15. It is trite to say that IBBI being the regulatory authority for IPs, receives their responses to complaints received against them in respect of processes under the IBC. I note that the communications between the IP and IBBI are in the context of a complaint related to 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. 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 those information is received under this fiduciary relationship. Therefore, I am convinced that there is fiduciary angle to the relationship between the IP and IBBI.

16. While providing any information received from the IP, 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 reply of IP on the said complaint is exempted under section 8(1) (d) and (e) and the disclosure of requested information is exempted under section 8(1) (d) and (e).
17. Also, the Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information. The RTI Act also defines the legitimate aim, that is a public interest in the dissemination of information which can be confidential or private (or held in a fiduciary relationship) when larger public interest or public interest in disclosure outweighs the protection or any possible harm or injury to the interest of the third party. The information disclosure considering a larger public interest depends on the discretion of the Competent Authority. The statutory exemption of section 8 is a rule and only in exceptional circumstances of larger public interest, the information may be disclosed by the Competent Authority. The Hon'ble Supreme Court, in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizvi* (2012) 13 SCC 611) held that 'public purpose' needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information. Further, the satisfaction has to be arrived at by the Competent Authority objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy. In the instant case, the Appellant has claimed that larger public interest outweighs the protection available under the RTI Act since there are more than 9000 shareholders in the Corporate Debtor and their wealth of about INR 287 Crores is about to wipe out. It is unclear as to how the information is in public interest when the entire resolution process is being adjudicated in accordance with law by the Adjudicating Authority having jurisdiction to decide the questions of law and fact, both. Considering the facts and circumstances of the case, I do not find that there exists any larger public interest warranting deviation from the rule of law envisaged in the exemption provisions of section 8(1)(d) and (e) of the RTI Act.

18. In view of the above, I find that the request of the Appellant cannot be entertained and no interference with response of the CPIO is called for.

19. The Appeal is disposed of accordingly.

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

**Copy to:**

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