

**BEFORE THE EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circle, New Delhi- 110 001

Dated: 04th October, 2024

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in RTI Appeal
Registration No. ISBBI/A/E/24/00036**

IN THE MATTER OF

Kishorkkumar Bachuram Kapdi

... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Shankar Market,

Connaught Circle, New Delhi - 110 001.

... Respondent

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1. The Appellant has filed the present Appeal dated 11th September 2024, challenging the communication of the Respondent dated 05th September 2024 in his RTI application no. ISBBI/R/E/24/00162. In his RTI application filed under the Right to Information Act (RTI Act), the Appellant had requested for the following -

“Copy of SCN issued by IBBI against RP Nitin Narang for the complaint filed by KISHORKUMAR BACHURAM KAPDI Which was registered complaint applicant No. IBBIC202301018”

2. The Respondent has stated that *“The SCN issued against an Insolvency Professional is in nature of personal information of that Insolvency Professional, the disclosure of which is exempt under section 8(1)(g) of RTI Act, 2005.”*. Aggrieved by the same, the Appellant has filed the present appeal stating the following -

“1. The information sought in the application has been refused under section 8(1) (j), which is under 8(1) (j) which is as under -

“information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information”

AA has the authority to misinterpret the law while adjudicating the application by us. Following are the grounds for the appeal.

A. SCN is issued to RP Nitin Narang by IBBI based on the complaint filed by Mr. Kishorkkumar Kapdi. The details and facts of SCN are very well known to the appellant (applicant of RTI Application). Since the application for RTI was filed by Kishorkkumar Kapdi hence the documents issued based on the complaint are not third-party documents and the same cannot be protected by Section -8(1) of the RTI Act.

B. Even information that is protected by section 8(1)(j) of the RTI Act has the following exclusion Section 8(1) (j) of the RTI Act, 2005 encapsulates that information which relates to personal information the

disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, unless the CPIO or SPIO or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information should be exempted from disclosure. Further, the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person.

So, Section 8(1)(j) of the Act allows officials to refuse access to information if it intrudes on the privacy of an individual but permits disclosure of information if there is an overriding public interest.

In the CIRP proceeding going on in the NCLT -Ahmedabad for Company petition (IBC) under section -7 between Bank of Maharashtra Vs Afcan Impex Pvt Ltd having registration No. 289/2020 under which LA No. 480/2021 hon'ble NCLT -Ahmedabad has passed where the order has been passed to produce all material in respect of the complaint against RP Nitin Narang has to be produced on record (copy of the order has been attached as annexure-1)

C. The complaint has been filed by us against RP Nitin Narang for a false statement made to Hon'ble NCLT -Ahmedabad in the resolution plan which is nothing but public interest activity for the best interest of the public at large as Bank of Maharashtra. We need the copy of SCN to be produced in the procedure of NCLT to comply with an order of Hon'ble NCLT - Ahmedabad in LA of 480/2021 in CP(IBC) - 289/2020.

D. There are no details or documents that can provide details about what action has been taken by IBBI on our grievance application, which we can submit to Hon'ble NCLT -Ahmedabad in respect of the order in LA 480/2020. Any documents obtained for submission in court for the compliance of the court are not considered personal matters. In the Indian context, and especially in the context of the RTI Act, of 2005, a significant judgment of the Supreme Court of India can be taken note of in understanding the term "public interest". In 'S. P. Gupta v President of India', AIR 1982 SC 149, Justice Bhagwati⁶, in referring to 'public interest', maintained: "Redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests vindicate public interest... [in the enforcement of which] the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

E. Decision No. CIC/OK/A/2006/00046, dt. 02.05.2006 One of the decisions of the Central Information Commission also throws some light on this term. The public interest includes "disclosure of information that leads towards greater transparency and accountability" [in the working of a public authority] here the discloser of the information before NCLT -Ahmedabad provide transparency to Hon'ble NCLT - Ahmedabad about the illegal act of RP Nitin Narang and also it will help Hon'ble NCLT to decide accountability of RP Nitin Narang regarding its false submission and suppression of fact to court /NCLT even he is "officer of Court" and his job to comply guideline of IBC and assist the court for the facts and law points. The copy of SCN will assist the court / NCLT in deciding the subjective illegal action of RP Nitin Narang.

Therefore, considering complying with a court order that helps Hon'ble NCLT -Ahmedabad with the factual aspect of the action of RP and details of CP (IBC) 289/2020 will be a matter of assistance to the court and it also a matter of public interest which can be considered above details mention in the show cause notice as personal information of RP Nitin Narang and discloser of the same will be is matter of public interest.

Thanking you

Kishor Kumar Kapdi

Appellant of first appeal.?"

3. 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. 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 pertinent to mention here 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. 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. 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.

4. The Appellant has requested for copy of show-cause notice. It is not clear how the information is exempted under section 8(1)(g). The question that falls for consideration is as to whether this document can be disclosed to the Appellant. In this regard, I deem it appropriate to examine the scope of 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;"

5. 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, 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 requested information is exempted under section 8(1)(d).

6. 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.”

7. 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.
8. The Appellant has also 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.
9. In my view, the Appellant has no right to ask for such documents in accordance with 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. The RTI Act cannot be allowed for such purposes.
10. In view of the observations above and in the circumstances under which the application and the appeal were filed by the Appellant, I note that the queries raised by the Appellant do not have an intended effect of bringing transparency or of reducing corruption and further that no larger public interest would be served in disclosing the information as sought by the appellant. In this regard, I also note that the Hon'ble Supreme Court in *Central Board of Secondary Education and Anr Vs. Aditya Bandopadhyay and Ors.*, (Judgment dated [August 9, 2011](#)) observed that “*Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties.*”
11. In view of the above, I do not find any reason to interfere with the response of the Respondent. Accordingly, the Appeal is disposed of.

Sd/
(Jithesh John)
First Appellate Authority

Copy to:

1. Appellant, Kishorkkumar Bachuram Kapdi.
2. CPIO, The Insolvency and Bankruptcy Board of India, 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circle, New Delhi- 110 001.