

**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: 10th February 2025

Appeal under Right to Information Act, 2005

IN THE MATTER OF

Ramesh Chandra

... 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

ORDER

1. The Appellant had earlier filed an Appeal, challenging that the Respondent has not provided the information within 30 days as per the RTI Act. Same was disposed by FAA *vide* Order dated 03rd January 2025. The Appellant had also separately challenged the response provided to the RTI Application by the Respondent. As the Appeal required detailed examination of provisions of the RTI Act, same has been disposed within 45 days.
2. The request of the Applicant and the reply of the Respondent is as follows –

| Sl. No. | Request | Reply |
|---------|---|--|
| 1. | <i>I have submitted complaint No RC-TEIL-IBBI-MSME dater 15-01-2024, consisting of 163 pages with evidence, including following documents i) DIC Haridwar letter dated 17-11-2023, confirming that UAM UK06B2251 date 31-10-2017 was cancelled. ii) DI- MSME Haldwani letter date 27-12-2023, addressed to DC MSME, Delhi Kindly provide information on action taken by IBBI. Kindly provide documents on action taken as per law, results on verification the veracity of MSME Classification of certificate No UK06B0002251 date 31-10-2017</i> | <i>The clarification was sought from concerned department of Ministry of MSME. The information received thereto is under examination.</i> |
| 2. | <i>I have submitted complaint PMOPG/E/2024/ 0117381 date 26-07-2024 & No PMOPG/E/2024/ 0117385 date 26-07-2024, consisting of 75 pages with evidence, IBBI closed complaint on 14-09-2024 with remarks Please refer to your above grievances. It is informed that the Board has taken appropriate action against IP Mr. Vivek Rabeja, erstwhile RP in the matter of Trading Engineers International Limited in terms of the</i> | <i>The reply received from Ministry of MSME is held by IBBI in a fiduciary capacity and the same is exempted from disclosure under section 8(1)(e) of the RTI Act, 2005.</i> |

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| <p><i>provisions of the IBB I(Inspection and Investigation) Regulations. On the issue of MSME status of CD, clarification from M/o MSME, being nodal department in the matter, has since been received and the Board is further examining the matter.</i></p> <p><i>Accordingly, your grievance is disposed</i></p> <p><i>Kindly provide copy of reply received from MSME.</i></p> <p><i>Kindly provide documents on action taken as per law, results on verification the veracity of MSME Classification of certificate No UK06B0002251 date 31-10-2017</i></p> | |
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3. The grounds of appeal are as follows –

“While going through IBBI website, it is observed that CPIO IBBI is not providing information with RTI timelines.

2. In this application dated 19-10-2024 also, CPIO IBBI did not provided information’s within RTI time & thus First Appeal was filed on 02-02-2024 vide Appeal ISBBI/A/E/24/00049

3. CPIO replied to RTI application date 19-10-2024 on 11-12-2024

4. Thus, First Appeal is filed 2nd time, due to information’s denied by CPIO vide reply date 11-12-2024

5. CPIO denied information under section 8 (1) (e) of RTI Act. IBBI is regularly abusing the RTI act, by not providing information, which is leading to corruption and fraud.

6. CIC passed order date 16-12-2020 in similar case as under....”

4. On perusal of the RTI Application, it is noted that the Applicant wants to know the (a) reply received from MSME, and (b) action taken by IBBI in the matter. The Respondent has denied the first part, stating that the information is exempted under section 8(1)(e) of the RTI Act. 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:

“33. In Reserve Bank of India (supra) this Court had expounded upon the expression ‘fiduciary relationship’ used in clause (e) to sub-section (1) of Section 8 of the RTI Act by referring to the definition of ‘fiduciary relationship’ in the Advanced Law Lexicon, 3rd Edition, 2005, which reads as under:

“57. [...] Fiduciary relationship. — A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the fiduciary relationship. Fiduciary relationship usually arises in one of the four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another; (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.” Thereafter, the Court had outlined the contours of the fiduciary relationship by listing out the governing principles which read:

“58. [...] (i) No conflict rule — A fiduciary must not place himself in a position where his own interest conflicts with that of his customer or the beneficiary. There must be ‘real sensible possibility of conflict’.

(ii) No profit rule — A fiduciary must not profit from his position at the expense of his customer, the beneficiary.

(iii) Undivided loyalty rule — A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.

(iv) Duty of confidentiality — A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.

34. 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.”

5. Considering above, the reply of the Ministry of MSME is held by IBBI in a fiduciary relationship and same cannot be disclosed to the Applicant. Also, it is a third party information. 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. Accordingly, the information of a third party held by IBBI in fiduciary capacity and is exempt under section 8(1)(e) also. Also, with regard to action taken, the Respondent has already communicated that the matter is under examination. Accordingly, no further information can be provided.
6. 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. 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. It is pertinent to mention that 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 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(1)(a) to 8(1)(j) 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. The RTI Act should not be used to address grievances. The Hon’ble CIC in *M Jameel Basha Vs. CPIO, Ministry of Personnel Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi -110001, File No: CIC/MPERS/A/2017/158527/SD* (Decision dated 06.05.2019), has observed the following:

“Commission concedes with the submission of the CPIO as no information has been sought as per Section 2(f) of the RTI Act. 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.”

7. The appeal is accordingly, disposed of.

**Sd/
(Kulwant Singh)**
First Appellate Authority

Copy to:

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