

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

7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circus, New Delhi -110001

Dated: 12th February 2025

**Order under section 19 of the Right to Information Act, 2005 (RTI Act) in respect of RTI
Appeal Registration No. ISBBI/A/E/25/00007, ISBBI/A/E/25/00008,
ISBBI/A/E/25/00009, ISBBI/A/E/25/00010, ISBBI/A/E/25/00011**

IN THE MATTER OF

Jitendra Kumar Jain

... Appellant

Vs.

Central Public Information Officer

The Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Shankar Market,

Connaught Circus, New Delhi -110001

... Respondent

ORDER

1. The Appellant has filed the present Appeals dated 7th January 2025, challenging the communication of the Respondent, filed under the Right to Information Act (RTI Act). As the appeals required detailed analysis of provisions of the RTI Act, same are disposed within 45 days. Also, as the Appeals pertain to similar subject matter, same are disposed *vide* a common order.
2. I have carefully examined the applications, the responses of the Respondent and the Appeals 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.
3. With regard to RTI Appeal No. ISBBI/A/E/25/00007, the Appellant had requested for the number of cases wherein IBBI has filed caveat in High Court or Supreme Court against the order passed by it in disciplinary proceedings. The CPIO had replied stating that “*The Board does not maintain data in the manner as sought by the applicant*”. Aggrieved by the same, the Appellant

has filed the present Appeal stating that *"I have not asked to provide the information in any particular manner or format but still information is denied."* In this regard, I note that the purpose of the RTI Act is to provide information in documents, orders, etc. as is available on record. If the same is not available, the Respondent cannot be expected to create the same. In this regard, the data on total number of cases is not available on record. Also, the Respondent is expected to provide the readily available information to the Appellant in the manner that could be done by him within the scope of the RTI Act. In my view, compilation of such data to arrive at total number of cases will result in disproportionate diversion of resources of Insolvency and Bankruptcy Board of India (IBBI). In this regard, it is pertinent to refer to section 7(9) of the RTI Act, which provides that - *An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.*" Also, I do not find any larger public interest for a direction to collate and compile the details of information and to provide the same to the Appellant. Such exercise would defeat *'the practical regime of right to information'* as envisaged in the preamble of the RTI Act and would disproportionately divert the resources of IBBI. I note that the Hon'ble CIC in the matter of *Shri Praveen Agarwal Vs. SEBI (Order dated October 1, 2008)* held that it is not open to appellant to saddle a public authority with elaborate queries, response to which could not be given without the public authority straining itself to wade through large volumes of information and data. Section 7(9) clearly forbids this form of disclosure.

4. With regard to the RTI Appeal No. ISBBI/A/E/25/00008, the Appellant had *inter-alia* requested the following information –

*"Kindly provide the number of applications filed under section 19 of IBC since beginning of IBC to date
Please provide the number application filed as per query 1 that were decided by NCLT during CIRP of
that company*

Please provide the number of applications filed as per query 1 in which CIRP was not successful...."

The CPIO had *inter-alia* replied stating that, *"The Board does not maintain data in the manner as sought by the applicant"*. Aggrieved by the same, the Appellant has filed the present Appeal stating the following, *"IBBI takes information from Insolvency Professional relating to following applications under section 208 of IBC: (i) Please provide the number application filed as per query 1 that were decided by NCLT during CIRP of that company. (ii) Please provide the number of applications filed as per query 1 in which CIRP was not successful. But still this information is not provided."* In this regard, I note that the purpose of the RTI Act is to provide information in documents, orders, etc. as is available on record. If the same is not available, the Respondent cannot be expected to create the same. In this regard, the data on section 19 applications (i) that were decided by NCLT during CIRP, and (ii) where CIRP was not successful. The information as per this bifurcation is not maintained by IBBI. Also, the Respondent is expected to provide the readily available information to the Appellant in the manner that could be done by him within the scope of the RTI Act. In my view, compilation of such data will also result in disproportionate diversion of resources of Insolvency and Bankruptcy Board of India (IBBI). In this regard, it is pertinent to refer to section 7(9) of the RTI Act, which provides that - *An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.*" Also, I do not find

any larger public interest for a direction to collate and compile the details of information and to provide the same to the Appellant. Such exercise would defeat ‘*the practical regime of right to information*’ as envisaged in the preamble of the RTI Act and would disproportionately divert the resources of IBBI. I note that the Hon'ble CIC in the matter of *Shri Praveen Agarwal Vs. SEBI (Order dated October 1, 2008)* held that it is not open to appellant to saddle a public authority with elaborate queries, response to which could not be given without the public authority straining itself to wade through large volumes of information and data. Section 7(9) clearly forbids this form of disclosure.

5. With regard to the RTI Appeal No. ISBBI/A/E/25/00009, the Appellant had requested the following information, “*Kindly provide the number of avoidance applications filed under sections 43 to 55 and section 66 of IBC since beginning of IBC to date 2 Kindly provide the value involved in avoidance applications filed under sections 43 to 55 and section 66 of IBC since beginning of IBC to date 3 Please provide the number application filed as per query 1 that were decided by NCLT during CIRP of that company 4 Please provide the number application filed as per query 1 that are still pending in NCLT till date. 5 Please provide the amount involved in application filed as per query 1 that are still pending in NCLT till date. 6 Kindly provide the average time taken by NCLT to decide an avoidance application 7 Kindly provide the average time for which avoidance application is still pending in NCLT 8 Please provide the number of applications filed as per query 1 in which CIRP was not successful 9 Please provide the number of cases in which prosecution started by IBBI as per section 236 of IBC post order of the NCLT or otherwise in applications covered in query 1.*”

Regarding, the request for number and value of avoidance applications filed under sections 43 to 55 and section 66 of IBC till date, the Respondent had referred the Appellant to the IBBI quarterly newsletter, which is accessible on its website, while the other requests were denied on the ground of non-maintainability of the data in the requested manner. Aggrieved by the same, the Appellant has filed the present Appeal stating the following, “*IBBI takes quarterly updated on all applications IBBI including in physical and electronic format. Thus, IBBI has such information. I have not specified any particular manner and IBBI can provide the information in whatever form or manner it is available.*”

On perusal of IBBI's Newsletter (Jul-Sept 2024), I found that IBBI discloses the nature of avoidance transactions, the number of applications filed and applications disposed. Accordingly, the Respondent has rightly referred the Appellant to the Newsletter for his first two queries. With respect to query 3 to 9, I note that the Appellant wants further bifurcation of this data as to the time when they were decided by NCLT, how many are still pending, average time in disposal, cases where CIRP was not successful, etc. The information as per this bifurcation is not maintained by IBBI. Also, the Respondent is expected to provide the readily available information to the Appellant in the manner that could be done by him within the scope of the RTI Act. In my view, compilation of such data will also result in disproportionate diversion of resources of Insolvency and Bankruptcy Board of India (IBBI). In this regard, it is pertinent to refer to section 7(9) of the RTI Act, which provides that - *An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.*” Also, I do not find any larger public interest for a direction to collate and compile the

details of information and to provide the same to the Appellant. Such exercise would defeat *'the practical regime of right to information'* as envisaged in the preamble of the RTI Act and would disproportionately divert the resources of IBBI. I note that the Hon'ble CIC in the matter of *Shri Praveen Agarwal Vs. SEBI (Order dated October 1, 2008)* held that it is not open to appellant to saddle a public authority with elaborate queries, response to which could not be given without the public authority straining itself to wade through large volumes of information and data. Section 7(9) clearly forbids this form of disclosure.

6. With regard to the RTI Appeal No. ISBBI/A/E/25/000010, the Appellant had requested the following information –

"Please provide the following details with respect to form Liq 1 and Liq 2 prepared for filing of liquidation form on portal of IBBI : 1. Name of the service provider who developed these forms 2. details of selection process 3. copies of tender documents 4. Amount paid to the service provide and total value of contract 5. all other related documents with respect to selection of service provider." The CPIO *inter-alia* had stated that, *"The details regarding the selection of the service provider is in the nature of commercial confidence and is therefore exempted from disclosure under Section 8(1)(d) of the RTI Act, 2005"*. Aggrieved by the same, the Appellant has filed the present Appeal stating the following, *"IBBI refused to provide information on flimsy ground. I pay annual fees as well as 1% of earned fees to IBBI and thus I am entitled to know who created such forms and how much money spent on the same."* 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 follows, *"(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;"* 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. While providing any information received from the service providers, the Respondent cannot be oblivious to the fact that by information disclosure, no harm is caused to the commercial confidence of the party. Accordingly, the requested information is exempted under section 8(1)(d). It is trite to say that many of the information contained in these documents are also received under a fiduciary relationship. Therefore, there is also a fiduciary angle to the relationship between the vendors and IBBI, and the disclosure of requested information is also exempted under Section 8(1)(e) of the Act. the Appellant has failed to establish how a larger public interest is involved warranting disclosure of requested information.

7. With regard to RTI Appeal No. ISBBI/A/E/25/000011, the Appellant had requested the following information, *"Please provide details of cases wherein criminal prosecution launched by IBBI under*

section 236 of IBC since 2022". The CPIO *inter-alia* had stated that, "The information sought by the applicant is herein exempted from disclosure in terms of Section 8(1)(b) and (j) of the RTI Act, 2005". Aggrieved by the same, the Appellant has filed the present Appeal stating the following, "Refused to provide information that otherwise is public information as these being court matters." In this regard, I note that the Appellant has himself admitted that the information requested by him is already available in the public domain. The Hon'ble Delhi High Court, in the matter of *Registrar of Companies & Ors. vs. Dharmendra Kumar Garg & Anr. W.P.(C) 11271/2009*, has held that once certain information is placed in public domain accessible to the citizen either freely or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of the public authority and, thus would cease to be an information accessible under the RTI Act. Moreover, the Respondent cannot be asked to compile the information already available in public domain and furnish it to the Respondent as that will result in disproportionate diversion of resources of Insolvency and Bankruptcy Board of India (IBBI). In this regard, it is pertinent to refer to section 7(9) of the RTI Act, which provides that - *An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.*"

8. Therefore, I do not find any reason to interfere with the replies of the Respondent. The Appeals are, accordingly, disposed of.

Sd/
(Kulwant Singh)
First Appellate Authority

Copy to:

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