

WHOLE TIME MEMBER AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

7TH FLOOR, MAYUR BHAWAN, NEW DELHI

DATED THE 01ST AUGUST 2019

Appeal No. ISBBI/A/2019/00026 (F. No. – IBBI/BS/RTI/RTI APP/246)

Arising out of order dated May 27, 2019 under RTI Registration No. ISBBI/R/2019/50031

IN THE MATTER OF

Mr. Nipun Singhvi

..... Appellant

V/s

CPIO, Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan
New Delhi

..... Respondent

ORDER

1. The present Appeal No. ISBBI/A/2019/00026 dated 5th July, 2019, received by the office of the First Appellant Authority (**FAA**), Insolvency and Bankruptcy Board of India (**Board**) under the Right to Information Act, 2005, has been preferred by Mr. Nipun Singhvi against the order of the CPIO, Dr. Anuradha Guru of the Board in RTI, bearing Registration No. ISBBI/R/2019/50031.
2. After perusal of the appeal of Mr. Nipun Singhvi, it is observed that the appellant has asked for the following information:
 - a) Disclose the list of insolvency professionals against whom disciplinary proceeding is under process.
 - b) If the request/application is rejected, the reasons shall be given for the same.
3. The Respondent, CPIO of the Board in reply to the RTI request of the appellant, opined as under:

“Information sought is exempt under section 8(1)(h) of the RTI Act, since providing such information would impede the process of prosecution and adjudication of the insolvency professional under investigation.”
4. The appellant has preferred this appeal against the above stated order of the CPIO of the Board contending the following:

- a) That the reply of the CPIO is inappropriate and unreasonable as the CPIO has not given any satisfying reasons for not disclosing such vital information and there is no reason to keep the information under the ambit of exemptions.
 - b) That the reply of the CPIO is prejudicial to the interest of the stakeholders as it is necessary to conduct a background check of the IPs at the time of appointment and if such information is not provided to the general public, it will harm the interest of the legal process and the interest of the parties concerned.
 - c) That the reply of the CPIO is against the circular of the Board dated 23rd April, 2018 titled 'Commencement of Disciplinary Proceedings' which states that a disciplinary proceeding is considered as pending against an insolvency professional (IP) from the time he has been issued a show cause notice by the Board till its disposal by the disciplinary committee and during the pendency of such proceedings, the IP concerned shall not accept any fresh assignment as interim resolution professional (IRP), resolution professional (RP), liquidator, or a bankruptcy trustee under the Code.
5. The present RTI appeal has been examined and I have perused the information in respect of the queries raised in the RTI application.
 6. The Board by virtue of powers vested under Section 196 (f) of the Insolvency and Bankruptcy Code, 2016 (Code), conducts inspection and investigation of IPs. The whole process can be categorized into three stages namely – (i) inspection/investigation and preparation of detailed report, (ii) issuance of show-cause notice and (iii) consideration of detailed report by Disciplinary Committee (DC) of the Board and thereafter pass necessary orders as may be required for the compliance of the provisions of the Code and the regulations made thereunder. Several orders have been passed by the DC, appointed under Section 220 of the Code, disciplining errant IPs.
 7. As per circular dated 23rd April, 2018 of the Board titled 'Commencement of Disciplinary Proceedings', a disciplinary proceeding is considered as pending against an IP from the time he has been issued a show cause notice by the IBBI till the disposal by the Disciplinary Committee and for such period the IP concerned is not allowed to take any new assignment under the Code as IRP, RP or liquidator or a bankruptcy trustee. Show Cause Notice is a notice sent to any person by any authority i.e. government, employer, government employee's passport authority etc. in order to get a reply back with a reasonable cause as to why a particular action shouldn't be taken against him in regard to the defaulting act done by him. Generally, it is used in order to provide the defaulter with a chance to present himself with a reasonable cause because of which he committed the wrongful act.

8. The concern of the appellant is that these IPs against whom disciplinary proceedings are pending, may be appointed as IRPs by parties initiating corporate insolvency resolution process (CIRP) under the Code, which would defeat the legal process.
9. Under the Code, it is the Adjudicating Authority (AA)(which appoints the IRP under Section 16 of the Code after ascertaining that no disciplinary proceeding is pending against them.
10. To prevent IPs with disciplinary proceedings pending against them from being appointed as IRP, the IP proposed to be appointed as IRP has to give a consent in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the AA wherein, she has to certify that no disciplinary proceedings are pending against her with the Board. Further, the Board vide the Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019 dated 14th May, 2019 has prepared a common panel of IPs (valid for six months) who are clear from the disciplinary angle, for appointment as IRPs and Liquidators and shares the same with the Adjudicating Authority (AA). The AA may pick up any name from the panel for appointment of IRP or Liquidator. The panel has Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. In addition to the above, the Board also keeps the updated list of IPs on its website (login, password protected) and remark is given against the name of IP's against whom disciplinary proceedings is pending. The respective bench of the AA, before appointing any IP as IRP can satisfy itself that no disciplinary proceedings are pending against the proposed IP. Thus, sufficient checks have been built into the process to prevent such IPs from being appointed as IRPs.
11. Section 8(1)(h) of the RTI Act, 2005, reads thus:
*“(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -
xxxxxxx
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;
xxxxxxx.”*
The Supreme Court in *Directorate of Enforcement v. Deepak Mahajan* [Cr.A. No. 537 of 1990, 31st January, 1994], defined the word “investigation” as:

“...the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.”

The CIC in *Shahid Anwar v. Central Bureau of Investigation* [order dated 17th January, 2011, CIC/WB/A/2009/000750] held thus:

“The prosecution proceedings have neither been finally disposed of nor has the matter been finally concluded. The supply of the requested information, other than the RC numbers of the case, will make the Appellant privy to the extremely confidential information which was meant for the exclusive use of the CBI for the purpose of prosecution. It can be sufficiently concluded that such information clearly falls well within exemption contemplated in Section 8(1)(h) given the fact that the process of "prosecution of offenders" will be impeded if that very information is provided by the CBI at this stage. Thus, the FAA was just and right in refusing to disclose the information sought by the Appellant by invoking Section 8(1)(h) of the RTI Act.”

12. Disciplinary proceedings before the Board are quasi-judicial in nature and any disclosure of the names of IPs against whom such proceedings are ongoing would impede the investigation process due to unwarranted public attention. Moreover, such processes can be at various stages. Mere issuance of a show cause notice to an IP does not imply that such person is guilty of any misconduct. It is merely seeking an explanation from the IP of any aberration in the established process. If, there is any gap in the explanation provided by the IP, then further action is taken by the Board. Revealing the names of such IPs, is likely to harm their practice as most of the IPs are established professionals like Chartered Accountants, Company Secretaries, Cost Accountants, Advocates and managerial experts. Competition may get advantage of the same. Further, the concerns of the appellant have already been taken care of by sufficient checks provided by the Board, as explained in para 9 of this order. In view of this, the request of the appellant to disclose the list of insolvency professionals against whom disciplinary proceeding is under process cannot be accepted and accordingly, the appeal is disposed of.

Sd/-

(Dr. Navrang Saini)

Whole Time Member and First Appellate Authority

Copy to

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