

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

IN THE MATTER OF CANCELLATION OF CERTIFICATE OF REGISTRATION AS AN INSOLVENCY PROFESSIONAL GRANTED TO Mr. DHANAMJAYA REDDY LEBAKA UNDER REGULATION 7 READ WITH REGULATION 4(g) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

ORDER

I. **Issue involved:** Obtaining certificate of registration to carry on the activities of an Insolvency Professional (IP) through suppression of facts while submitting the application for registration.

II. **Procedural requirements:**

(i) Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (**IP Regulations**), stipulates the eligibility requirements for an individual to be registered as an insolvency professional, while, *inter alia*, providing that:

“No individual shall be eligible to be registered as an insolvency professional if he-(g) he is not a fit and proper person.

Explanation: For determining whether an individual is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria-

- (i) *integrity, reputation and character,*
- (ii) *absence of convictions and restraint orders, and*
- (iii) *competence, including financial solvency and net worth.”*

(ii) Regulation 6 of the IP Regulations, *inter alia*, provides the process of application for certificate of registration as below:

“6. (1) An individual enrolled with an insolvency professional agency as a professional member may make an application to the Board in Form A of the Second Schedule to these Regulations, along with a non-refundable application fee of ten thousand rupees to the Board.”

(iii) Further, regulation 7 of the IP Regulations, *inter alia*, stipulates the following with respect to grant of Certificate of registration to an individual and the conditions applicable thereupon:

“7. (1) If the Board is satisfied, after such inspection or inquiry as it deems necessary that the applicant is eligible under these Regulations, it may grant a certificate of registration to the applicant to carry on the activities of an insolvency professional”

...

“7. (2) The registration shall be subject to the conditions that the insolvency professional shall-

- (a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;
- (b) at all times continue to satisfy the requirements under Regulation 4;
- ...
- (h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and
- (i) abide by such other conditions as may be imposed by the Board”

III. Facts of the case:

- (a) The Certificate of Registration as an IP (bearing registration No. IBBI/IPA-002/IP-N00431/2017-2018/11386) was granted by the Insolvency and Bankruptcy Board of India (**the IBBI/the Board**) to Mr. Dhanamjaya Reddy Lebaka (**Mr. Lebaka**) on 09th January 2018. The application of Mr. Lebaka seeking grant of registration as an IP was duly forwarded to the Board by Insolvency Professional Agency of Institute of Company Secretaries of India (IPA) along with recommendation for registration as an IP.
- (b) On 09th July 2019, the Board received a complaint from Mr. Ravindranath Reddy vide (complainant), *inter alia*, raising concerns over grant of certificate of registration as an IP to Mr. Lebaka, alleging that Mr. Lebaka obtained registration by concealing the fact that criminal proceedings were pending against him at the time of applying for registration.
- (c) Upon examination of the aforesaid complaint vis-à-vis the application submitted by Mr. Lebaka seeking grant of registration as an IP, the Board observed that these facts were not disclosed by Mr. Lebaka in the said application.
- (d) Taking note of the same, the Board on 07th November 2019 issued notice to Mr. Lebaka seeking necessary explanation on the matter. Vide his communication addressed to the Board on 2nd December 2019, Mr. Lebaka admitted the fact about the pendency of the criminal proceedings against him. He *inter alia*, submitted that the non-disclosure of these proceedings was inadvertent, unintentional and bona fide. He further submitted that a contributory factor in this belief was the fact that he had not received any updates/ notice or any other communication regarding these proceedings from the High Court or the subordinate court. He reiterated the said facts at the time of personal hearing before the Board on 21st January 2020.

IV. Submissions of the IP post personal hearing and issuance of notice

Mr. Lebaka vide his communication addressed to the Board on 02nd December 2019 as well as during the personal hearing informed to the Board that the proceedings against him have been motivated by malice intentions and he has been wrongly accused. He further submitted that due to certain miscommunication between his lawyer and him, he was under the wrong, but bona fide impression that the matter had been laid to rest before the date of verifying the said Form A. Mr. Lebaka further placed reliance on the fact that the said criminal proceedings were stayed by Hon’ble High Court of Judicature at Hyderabad. The said stay order is still in force and has not been vacated by Hon’ble High Court. Mr. Lebaka further mentioned that he has clean and unblemished record of working as a Company Secretary for 23 years.

V. Observations of the Board

1. Upon careful examination of the material available on record, it is clear that Mr. Lebaka, while submitting his application for seeking grant of registration as an IP, had suppressed the fact that the criminal proceedings are pending against him. He suppressed the fact that a charge sheet has been filed under section 173 of Cr. P.C. against him under which he was charged under section 120(B), 406, 420, 468, 471, 201 r/w 109 of Indian Penal Code section 35, 66 (C & D), 72 (B), 74 of IT Act and the said case is pending before the XVI Metropolitan Magistrate, Kukatpally, Miyapur, Cyberabad, State of Telangana, as CC No. 1 of 2016.
2. Regulation 6 (1) of the IP Regulations, *inter alia*, requires an individual seeking grant of registration as an IP, to make an application to the Board in Form A of the Second Schedule to the Regulations. The part E of the said Form A seeks from the applicant the information on conviction for an offence, pending criminal proceedings, whether the applicant has ever been declared as an undischarged insolvent, or applied to be declared so, etc. It also requires the applicant to provide any additional information that may be relevant for the application. Further, part G of the said Form A, *inter alia*, secures an affirmation from the applicant, that the application and the information furnished by the applicant along with this application is true and complete and if found false or misleading at any stage, registration shall be summarily cancelled. Thus, the application format adequately provides for disclosure of any such facts by the applicant which are relevant for determination of applicant being a fit and proper person.
3. The submissions made by Mr. Lebaka that due to certain miscommunication between his lawyer and him, he was under the wrong impression that the matter had been laid to rest before the date of verifying the said Form A, therefore, does not hold merit.

VI. Conclusions and grounds for ineligibility to act as an IP

- (a) The Board needs to take into account these facts to determine if the applicant is a fit and proper person for registration as an IP keeping the explanation to regulation 4 in view. The said explanation reads as under:
“Explanation: For determining whether an individual is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria-
 - (i) *integrity, reputation and character,*
 - (ii) *absence of convictions and restraint orders, and*
 - (iii) *competence, including financial solvency and net worth.”*
- (b) The submissions made by Mr. Lebaka have been examined and it is observed that he has failed to make a required disclosure about the pendency of the criminal proceedings against him before the Hon’ble Court. The contention of Mr. Lebaka that these proceedings were stayed by the Hon’ble High Court and therefore, he was under a mistaken impression that such a disclosure was not warranted while filling the Form A does not hold ground as he was very well aware that stay on proceedings, by any way, absolve him from the serious charges as levied against him in the charge-sheet. The case is stated to be still pending for being decided on merits by the Hon’ble court.

- (c) Concealing any information, in the form of disclosure, on which balance of decision of being fit and proper person rests, infringes the reputation of the profession and therefore, requires to be dealt firmly in accordance with the provisions of the IP Regulations. Keeping this in view, I hold that Mr. Lebaka has clearly failed to make a true disclosure at the time of filing of Form A, which requires specifically the affirmation on the part of the applicant that no criminal proceedings are pending against him.
- (d) It is thus clear that reputation and character of the applicant is a material consideration. Let us now understand the role and responsibility of an IP. An IP is vested with the management of the affairs of the company and he exercises the powers of its board of directors. Such a company could be one of the largest companies in India with possible market capitalisation of thousands of crores. By virtue of being registered as an IP, he is qualified to become custodian of the property of such a company and manages the affairs of the company as a going concern. Further, he examines each resolution plan to confirm that it does not contravene any of the provisions of the law for the time being in force. These responsibilities require the highest level of integrity, reputation and character. Pendency of criminal proceedings against Mr. Lebaka adversely impacts his reputation and makes him a person who is not fit and proper to remain as an IP.
- (e) To meet the ends of natural justice, Mr. Lebaka was given opportunity for oral submissions by the Board.

VII. Decision

In view of the foregoing, it is evident that the continued requirement of being ‘fit and proper person’ has been breached in the instant case. Therefore, the registration granted to Mr. Lebaka under regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 hereby stands cancelled. However, he is at liberty to re-submit his fresh application for registration for consideration of the Board, once the defect as observed above is cured by due process and such application shall accordingly be dealt with as per provisions of relevant regulations framed under the code.

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(Sudhaker Shukla)

Whole-time Member

Insolvency and Bankruptcy Board of India

Date: 11th June 2020
Place: New Delhi