

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

7<sup>th</sup> October, 2021

## IN THE MATTER OF APPLICATION OF ██████████ FOR GRANT OF CERTIFICATE OF REGISTRATION AS AN INSOLVENCY PROFESSIONAL UNDER REGULATION 7 OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

### ORDER

#### UNDER REGULATION 8(3)(b) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

██████████ (the applicant), resident of ██████████, had submitted an application under regulation 6(1) of the IBBI (Insolvency Professionals) Regulations, 2016 seeking a certificate of registration as an insolvency professional (IP) on 3<sup>rd</sup> February 2021 (i.e., date of payment of fee). The Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI or the IPA), where the applicant is enrolled as a professional member, forwarded the application with a recommendation for registration of the applicant as an IP.

2. Regulation 5(c)(iii)(c) of the Regulations stipulate that an individual shall be eligible to be registered as an IP if he has experience of fifteen years in management after receiving a bachelor's degree from a university established or recognised by law or an Institute approved by All India Council of Technical Education.

3. While considering the aforesaid application, it was observed that the applicant had furnished details of work experience under Part C of 'Form A' with four entities starting from 1<sup>st</sup> June 2002 till 25<sup>th</sup> January 2021. The Board, on examination of the application, found the documents furnished by the applicant as inadequate to establish the nature and continuity of work experience. Thus, a question that arose for consideration was as to how the experience has been corroborated and established to determine his eligibility. Accordingly, clarification was sought from IPA which resubmitted the application along with its detailed note and additional information / documents. On consideration of the resubmitted application, a total experience of 16 years and 9 months is found to be claimed by the applicant as per details below:

S. No.	From / To Date	Duration of work experience	Name of Employer / Entity and Designation	Area of work
1	01/04/2011 to 25/01/2021	9 years and 9 months	Parag Milk Foods Ltd. [Equivalent to Sr. Manager]	Service Provider through Management Services Contract
2	12/05/2011 to 25/01/2021		Kamdhenu Realities [Equivalent to CFO]	Consultant to provide consulting services to the Client
3	01/01/2006 to 31/03/2011	5 years and 3 months	Anjali Twines and Filaments [CEO]	Managing overall operations of company and strategic decision making

4	01/06/2002 to 05/02/2004	1 year and 9 months	SAR Industries [General Manager (Operations)]	Management of the production process
<b>16 years and 9 months</b>			<b>Total work experience claimed by the applicant</b>	

4. After consideration of the resubmitted application, the Board did not find the documents as satisfactory to establish required experience in management. Thus, the Board formed a *prima facie* opinion that registration ought not to be granted to the applicant and communicated the same to him on 8<sup>th</sup> July 2021. In response, the applicant availed an opportunity for a hearing before me on 17<sup>th</sup> August 2021.

5. The application, the oral and written submissions made by the applicant and the material available on record have been considered. It is observed that the applicant joined SAR Industries as a partner in 1999 and is stated to have handled the responsibilities as General Manager (Operations) on a full-time basis since June, 2002 till February, 2004. Thereafter, he pursued higher studies for which degree was awarded in December, 2005. Later, he joined Anjali Twines and Filaments in January, 2006 as CEO, became its partner in July, 2006 while continuing his role as CEO till 31<sup>st</sup> March 2011. Simultaneously, he continued to be a partner with SAR Industries till July, 2008, without full time involvement in day-to-day operations. It is stated that he received remuneration from both the firms. However, these partnership firms are not found to be registered and the applicant could not furnish their audited accounts. It is noted that the applicant has also made contrary submissions as regards his experience with SAR Industries. At one place it is stated that he left the firm in February, 2004 and never joined it back after pursuing higher studies in 2005, however, on the other hand, it is stated that he continued to be its partner till July, 2008 without working in day-to-day operations.

6. Thereafter, it is noted that the applicant entered into Management Services Contract / Agreement with Parag Milk Foods Ltd. (from April, 2011) and Kamdhenu Realities (from May, 2011) and held the designations equivalent to Senior Manager and CFO, respectively. It is observed that with Parag Milk Foods Ltd., the applicant was entitled to a fixed retention fee payable on a quarterly basis and mutually agreed additional assignment-specific fees. As regards, Kamdhenu Realities, the applicant was entitled to receive fixed retention fees along with an assignment-based mutually decided variable fee.

7. It is pertinent to note that an IP is entrusted with the duty of management of affairs and operations of a corporate debtor. Such managerial competence comes from experience in management which primarily involves getting things done through and with the help of people and comprises functions such as planning, organizing, staffing, directing, and controlling. Consultancy, on the other hand, involves the activity of offering expert advice on a particular subject as per the requirements of the client and might not involve continuous services.

8. On careful consideration of the instant application, it is observed that the applicant is possessing staggered and overlapping experience with multiple entities. It is noted that he was the partner / service provider / consultant with these entities, however, has held mutually defined designations equivalent to that of an employee of these entities to facilitate him in his dealings with their stakeholders. He was not in full time employment neither with Parag Milk Foods Ltd. nor with Kamdhenu Realities. The income-tax return forms also indicate that

applicant has reported his income as pertaining to a partner in a firm or income from proprietary business or professions and never as a salaried individual. The designations may be used to facilitate routine dealings, however, such mutually assigned designations cannot be considered as a substitute of desired experience in management and only leads to ambiguity about the nature of experience possessed by the applicant. This is corroborated by the experience letter issued by Parag Milk Foods Ltd. where the applicant is certified to be working on a '**need basis**' and thus not engaged in a regular and continuous employments. His terms of engagement were non-exclusive, and he was allowed to take other assignment. Further, the Management Services Agreement dated 1<sup>st</sup> April 2018 has been entered with Kamdhenu Realities as 'CONSULTANT' to provide consulting services. Therefore, the nature of experience claimed by the applicant cannot be established as required experience in management in accordance with the Regulations.

9. In view of the foregoing, it is found that the eligibility of the applicant for grant of certificate of registration as an insolvency professional as stipulated under the Regulations is not being established with the information/ documents/ clarifications provided by the applicant and IPA. Thus, in exercise of powers under regulation 8(3)(b) of the Regulations, the application of [REDACTED] for registration as an insolvency professional is rejected.

-Sd-

(Dr. Navrang Saini)

Whole Time Member

Insolvency and Bankruptcy Board of India

Date: 7<sup>th</sup> October, 2021  
New Delhi