

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Authority specified by the Central Government under section 458 of the Companies Act, 2013)

ORDER

IN THE MATTER OF APPLICATION OF MR [REDACTED] FOR GRANT OF CERTIFICATE OF REGISTRATION AS A REGISTERED VALUER UNDER RULE 6 OF THE COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017.

Mr. [REDACTED] (applicant) had submitted an application under section 247 of the Companies Act, 2013 read with rule 6 (1) of the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) seeking a certificate of registration as a Registered Valuer (RV) in the asset class 'Land and Building'. The [REDACTED], where the applicant is enrolled as a valuer member, recommended the application for registration as an RV.

2. As per rule 3(1)(k) of the Rules, no individual shall be eligible to be registered as an RV if he is not a fit and proper person. Among others, integrity, reputation and character are considered to determine if an individual is a fit and proper person. While considering the aforesaid application for registration, it was observed that a criminal proceeding was pending against the applicant wherein chargesheet has been filed before Hon'ble Special Sessions Judge, Rajkot. It is observed from the chargesheet that charges under section 506 of Indian Penal Code and sections 3(1)(r) and 3(2)(va) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been pressed against the applicant. In view of this, the Authority formed a *prima facie* opinion that the registration ought not to be granted to the applicant, as he is not a fit and proper person to be registered as an RV. It communicated, vide its communication dated 09th September 2021, its *prima facie* opinion along with the reason for the same and provided an opportunity to explain why his application should be accepted, within 15 days of the receipt of the communication.

3. The applicant, vide his communication dated 16th September 2021 submitted that he is fit and proper to be registered as valuer on the basis of following –

a) as per rule 3(1)(i) of Valuation Rules, if a person has not been convicted by any competent court for an offence punishable then a person is eligible to be registered as a valuer until a person is convicted by court. So as the case is pending against the applicant and he is not convicted by the competent court he is eligible to be registered as a valuer.

b) the case is a fake accusation against the applicant.

4. On request of the applicant, personal hearing was granted on 26th October 2021 wherein the applicant re-iterated his afore-mentioned submission. The applicant further vide his email dated 01st November 2021 submitted that the case filed against him is fabricated and therefore, registration may be granted to him.

5. I have considered the application, the recommendation of the [REDACTED], the oral and written submission made by the applicant and materials available on record. The applicant has submitted that the accusations made against him are false and frivolous. At the outset, I must state that I am not the authority to decide on the merits of the case. Let the competent authority adjudicate on the same. The limited issue of consideration before me is whether the pendency of criminal proceedings impacts the integrity, reputation and character of the applicant.

6. I observe that the offences under which charges has been framed are severe in nature and carries maximum punishment as follows –

a) Section 506 IPC – Imprisonment upto 2 years and fine

b) Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Imprisonment upto 5 years and fine

c) Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Imprisonment upto 5 years and fine

7. In the matter of *Delhi Administration and Ors. Vs. Sushil Kumar* [(1996) 11 SCC 605], the Hon'ble Supreme Court decided as follows: *"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as constable to the disciplined force."*

The view taken by the appointing authority in the background of the case cannot be said to be unwarranted.

The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.”

8. While dealing with regulation 3 of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004, the Hon’ble Securities Appellate Tribunal, vide its order dated 6th September, 2006, examined the amplitude of fit and proper person as under: *“Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board (SEBI) in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good.”* What is material is what others feel about the applicant who has been charge-sheeted for such serious offences. Does such a person inspire confidence of the stakeholders who can entrust him with the responsibility of valuation based on which the economy would allocate resources and market participants would take economic decisions. Pendency of serious criminal proceedings against the applicant adversely impacts his reputation and makes him not a person ‘fit and proper’ to be eligible as a registered valuer.

9. It is pertinent to note that the foundation of valuation services in a market economy lies on mutual trust amongst the valuer and the stakeholders. Based on the professional opinion of a valuer, the market stakeholders undertake crucial economic decisions. Therefore, it becomes crucial to engender as well as safeguard the trust between the valuer and the stakeholders, so that the decision makers in the market have adequate comfort to take any crucial economic decision without any fear or doubt.

10. In view of the foregoing, I find that pendency of the serious criminal proceeding against the applicant, as noted above, adversely impacts his reputation and makes him a person who is not ‘fit and proper’ to be eligible as a registered valuer. In exercise of the powers conferred on

the Authority under rule 6 (9) (b) of the Companies (Registered Valuers and Valuation) Rules, 2017, I, therefore, reject the application of Mr. [REDACTED] for registration.

Sd/-

(Dr. Navrang Saini)

Whole Time Member

Insolvency and Bankruptcy Board of India

Date: 24th November 2021

New Delhi