

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

IN THE MATTER OF [REDACTED]
[REDACTED] UNDER REGULATION 7 READ WITH
REGULATION 4(g) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

ORDER

BACKGROUND OF THE CASE

1. [REDACTED] was granted a Certificate of Registration [REDACTED] [REDACTED] by the IBBI to act as an Insolvency Professional (IP).
2. On 29th April 2020, the Board received a complaint from an unknown sender and on 8th May 2020 and 26th May 2020, the Board received two grievances from CPGRAM Portal raising, *inter alia*, concerns over grant of certificate of registration as an IP to [REDACTED] alleging that [REDACTED] had obtained registration by concealing the fact that criminal proceedings were pending against him at the time of applying for registration. It was stated that CBI, ACB, Mumbai had registered a regular case *inter-alia*, against [REDACTED] [REDACTED] under Section 120-B read with Section 420 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.
3. Upon examination of the aforesaid complaint *vis-à-vis* the application submitted by [REDACTED] [REDACTED] seeking grant of registration as an IP, the Board observed that the details of the aforementioned case bearing [REDACTED] was not disclosed by [REDACTED] [REDACTED] in the application while seeking registration from the Board.
4. Taking note of the same, the Board, on 8th July 2020, sought explanation from [REDACTED] seeking in the matter. Vide his communication dated 29.07.2020, [REDACTED] stated that the matter pertains to 2009 and the same was closed. Thus, currently no such criminal proceedings are pending against him. He also provided a copy of the order dated 15.3.2017 passed by Hon'ble CBI Special Judge in CBI Special [REDACTED] and submitted

that the matter which subsequently got closed positively also had positive remarks passed by CBI Special Judge regarding his appointment and work. He has stated that he was informed by his Advocate *vide* letter dated 25.1.2017 that the matter is closed positively, and order will be received soon. Relying on this letter, in his *bona-fide* belief, he did not mention about the pendency of the matter in his application for registration as an IP. Further, he also stated that he had no intention to conceal any material fact about pending criminal proceeding. He always vows to upkeep the highest standards of professionalism in his work and works with full sincerity, honesty and integrity to maintain the professional standards. He apologized for the inadvertent mistake based on the *bona fide* belief and requested for personal hearing.

5. Due to COVID-19 pandemic, ██████████ was provided an opportunity for hearing through an e-hearing on 30th September 2020, when he appeared and reiterated the submissions made by him in his communication dated 29.7.2020. ██████████, *inter-alia*, stated that the CBI case was regarding the procedural lapses which were not under his purview. As reliance was placed on the advocate's letter to consider the case as closed, Board enquired from ██████████ to draw his attention to the exact statement corresponding to the averment. In response, ██████████ referred to the phrase '*favourable outcome*'. Board informed ██████████ that the said phrase means that the case is pending and not that the case is closed. Thereafter, as ██████████ reiterated that the lapse was based on *bona fide* belief. ██████████ stated that his advocate's letter is the documentary evidence relied upon by him. Subsequently, ██████████ admitted that the letter does not state that the case is closed, however, based on it, he believed the case to be closed. ██████████ apologized unconditionally and reiterated that he had *bona fide* belief and no intention to conceal facts.

CONSIDERATION OF THE ISSUE AND FINDINGS

6. I have carefully considered the material brought on record and the submissions made by ██████████. It is relevant to mention that Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations), *inter alia* stipulates the following eligibility requirements for an individual to be registered as an IP:

*“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.”*

7. 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...”

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”

8. Upon careful examination of the material available on record, it is clear that [REDACTED] while submitting his application for seeking grant of registration as an IP, had not disclosed in Part E (Additional Information) of the application, the fact that [REDACTED] [REDACTED] was pending against him. It is observed that the [REDACTED] was decided *vide* order dated 15.3.2017. Prior to the said decision, [REDACTED] had applied for registration with the Board and the registration was granted to him on 22.2.2017 solely based upon the information provided by him in his application form. Part E of the Form A stipulated in Regulation 6 (1) of the IP Regulations requires the applicant to disclose the information with regard to pending criminal proceedings, etc. It also requires the applicant to provide any additional information that may be relevant for the application. Thus, the application format adequately provides for disclosure of any such facts by the applicant which are relevant for consideration of the application for registration as an IP. 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.
9. In this case, [REDACTED] was granted registration by the Board on 22nd February, 2017 and the pending [REDACTED] against him was decided *vide* order dated 15.3.2017 when [REDACTED] was acquitted of the offences by the Court. Thus, [REDACTED] had clearly concealed the material information about pending CBI case against him at the relevant time. Subsequent acquittal or positive remarks as claimed by him are of no consequence as the aforesaid criminal proceeding [REDACTED] was pending before Hon'ble CBI Special Judge against [REDACTED] when he made the application seeking registration as an IP to the Board. This fact was within his knowledge and he has failed to demonstrate otherwise. His claim of having *bona fide* belief of no pendency at the time of filing application is not acceptable. Even if his advocate had given any understanding of his possibility of acquittal by the court of Hon'ble CBI Special Judge, the fact remains that the criminal proceedings were still pending against him when he made the application to the Board. Be that as it may, it is established that [REDACTED] has concealed the material information about pendency of material information against him when he made the application before the Board.

10. However, as [REDACTED] has been acquitted with positive remarks by the court of Hon'ble CBI Special Judge, the case does not warrant cancellation of his registration as a posterior nature.

Order:

11. In the peculiar circumstances of this case, I am of the view that registration of [REDACTED] as an Insolvency Professional should be suspended for three months from the effective date of this order. I order accordingly. During this period, it is directed that [REDACTED] shall not seek or accept any fresh process or assignment or render any services under the Code. He shall, however, continue to conduct and complete the assignments / processes he has in hand as on the date of coming into force of this order.

12. This Order shall come into force on expiry of 30 days from the date of its issue.

13. A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where [REDACTED] is enrolled as a member.

14. A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, for information.

-Sd-

(Dr. Navrang Saini)

Whole-time Member

Insolvency and Bankruptcy Board of India

Date: 30 October, 2020

Place: New Delhi