

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## 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

1. ██████████ (the applicant), resident of ██████████, submitted an application under regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (**Regulations**), through the Insolvency Professional Agency of Institute of Cost Accountants of India (**IPA**), seeking certificate of registration as an Insolvency Professional (**IP**) on the basis of experience as a Cost Accountant. The IPA forwarded the application to the Insolvency and Bankruptcy Board of India (**Board**) on 9<sup>th</sup> April, 2019 with a recommendation for registration of the applicant as an IP.
2. As per regulation 5(c)(iv)(c) of the Regulations, an individual is eligible for registration as an IP, if he possesses ten years' of experience as cost accountant registered as a member of the Institute of Cost Accountants of India. The Board after examination of the application, observed that the applicant has claimed experience of practice from 01.10.2017 to 15.03.2019 as a cost accountant in his application, which does not meet the criteria of ten years' experience as cost accountant as per aforesaid regulation and also found his application to be incomplete. Accordingly, the application was returned to the IPA for resubmission with necessary clarifications/documents after ensuring completeness of the application.
3. The IPA *vide* its letter dated 4<sup>th</sup> June 2019 resubmitted his application along with the details and documents of following work experience:-

<i>“SI. No.</i>	<i>From Date</i>	<i>To Date</i>	<i>Employment / Practice</i>	<i>If employed, Name of Organization and Designation</i>
<i>1</i>	<i>21.03.1983</i>	<i>30.04.2016</i>	<i>Employment</i>	<i>Sri Kumara Gurupara Swamigal Arts College  Associated Professor in Commerce</i>
<i>2</i>	<i>18.10.2016</i>	<i>Till date</i>	<i>Practice as CMA</i>	<i>-”</i>

4. While considering the resubmitted application for registration, the Board observed from the above table of experience that the applicant had 33 years and 1 month experience in teaching and teaching related activities and 2 years and 5 months of experience of practice as a cost accountant. The Board *vide* email dated 8<sup>th</sup> July 2019, further sought the duration wise and designation wise work profile of the applicant's experience.

5. The IPA, *vide* its letter dated 8<sup>th</sup> August 2019 had submitted the detailed work profile and the following recommendation for the grant of registration as an IP to the applicant:-

*“...it appears that besides teaching various subjects of the Commerce particularly from 1998 to 2016 including inter alia being Head of the Department, Residential warden for the hostel and convenor of Disciplinary committee which involved extensive planning, coordination, supervision, monitoring and control of various aspects / activities including preparing and monitoring budget, purchases, expense control etc. which reflects his engagement / association with extensive managerial work dimensions.*

*In view of the above we recommend the registration of [REDACTED] as an Insolvency Professional as he possesses the requisite experience as provided under Regulation 5 of IBBI (Insolvency Professionals) Regulations, 2016 read with amendment dated 23<sup>rd</sup> July 2019, regarding eligibility for Insolvency professionals.”*

6. In the context of above recommendation, the application was examined in terms of regulation 5(c)(iii) of the Regulations which stipulates that an individual is eligible for registration as an IP, if he has fifteen years’ of experience in management, after receiving a bachelor’s degree from a university established or recognised by law. After considering the details of employment of the applicant, the Board observed that the employment from 21<sup>st</sup> March 1983 to 30<sup>th</sup> April 2016 (33 years and 1 month), out of total experience of 35 years and 6 months, is primarily concerned with teaching and teaching related activities and cannot be classified as experience in management and, the balance experience falls short of the requirement of 15 years. The Board, therefore, had formed a *prima facie* opinion that registration as an IP ought not to be granted to the applicant as he is not having requisite experience in management and communicated the same *vide* an e-mail dated 19<sup>th</sup> September 2019 and also communicated him that he can avail an opportunity of personal hearing to explain as to why his application should be accepted.
7. The applicant responded *vide* e-mails dated 22<sup>nd</sup> September 2019 and 3<sup>rd</sup> October 2019, *inter alia*, submitting his eligibility in accordance with regulation 5(c)(iv)(c) as being a member registered with the Institute of Cost Accountants of India since 1996 and practising since 2016 as a CMA. He further stated that during his employment in a college spanning over a period of 33 years, he has acted in various capacities such as lecturer/senior lecturer in department of commerce in a college besides acting as a head of the department (commerce) in the absence of regular head of department, supervisor and residential warden in student hostel, etc.
8. The Board fixed the date of personal hearing on 5<sup>th</sup> November 2019 and communicated the same to him *vide* an email dated 14<sup>th</sup> October 2019. The applicant *vide* email dated 20<sup>th</sup> October 2019, expressed his inability to appear in person for another two months due to health concerns. The Board *vide* email dated 31<sup>st</sup> October 2019 granted him the opportunity to make the submissions in writing, if any. The applicant made written submission *vide* email dated 4<sup>th</sup> November 2019 reiterating his earlier submissions.
9. Before proceeding further, it is necessary to consider that an IP is a key pillar of the Insolvency and Bankruptcy Code, 2016 (Code) and has an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms and individuals. For example, an IP exercises the powers of Board of Directors of a corporate debtor

undergoing corporate insolvency resolution process (CIRP). He manages the affairs of the corporate debtor as a going concern. He is the custodian of the property of the corporate debtor and protects and preserves the value of such property. He conducts the entire CIRP and manages the operations of the corporate debtor during the CIRP period. Such duties and responsibilities require the highest level of professional and managerial competence on the part of an IP.

10. One needs to discern the predominant nature of duties of a person to determine, if he is having experience in management. Coming to the role of manager vis-à-vis teaching professional, it may be noted that in general, teaching professionals possess a cogent body of knowledge that they impart to students and sometimes are engaged in research and teaching related activities. While, the manager has to play multiple roles in an organisation, such as, to liaison, monitor, negotiate, disseminate information, delegate tasks to subordinates, to allocate resources, etc. As a strategist, the manager has to perform these roles simultaneously by integrating one with the another in decision-making and performing his tasks. In fact, the manager cannot play any role isolating the other roles. Thus, it is difficult to reckon the experience of teaching as also of teaching related activities as experience in management. Hence, the applicant does not qualify the requisite experience in management under regulation 5(c)(iii) of the Regulations.
11. In view of the above, the recommendation of IPA communicated *vide* letter dated 8<sup>th</sup> August 2019 for grant of registration to [REDACTED] cannot be accepted. I, therefore, in exercise of powers under regulation 8(3)(b) of the Regulations, reject the application of [REDACTED], for registration as an Insolvency Professional.
12. The efforts and resources spent on processing this application could have been avoided if the IPA was diligent while examining his eligibility for enrolment in terms of para 9 of Schedule to Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. Further, but for diligence of the IBBI, the applicant, who is not eligible to be registered as an IP, would have been registered. The Insolvency Professional Agency of Institute of Cost Accountants of India, which recommended registration of an ineligible individual as an Insolvency Professional, needs to review its process of examination of applications to avoid recurrence.

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(Dr. Ms. Mukulita Vijayawargiya)

Whole-time Member

Insolvency and Bankruptcy Board of India

Date: 5<sup>th</sup> December, 2019

Place: New Delhi