

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. ██████████ (applicant), who is a professional member of the ICSI Institute of Insolvency Professionals (ICSI IIP) with professional number ██████████, submitted an application under regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) seeking a certificate of registration as an Insolvency Professional (IP). The application carried the recommendation of ICSI IIP for registration of the applicant as an IP.

2. The application carried a statement of the applicant as under: *“I have one pending criminal proceedings against me in the matter of ██████████ before the Court of Learned M.M. Pataudi, Haryana, wherein I was representing the matter of the main accused before the various judicial and quasi-judicial forums. The deceased complainant maliciously dragged me to settle his personal ill will. I am no way directly / indirectly going to be benefitted with the said dispute among clients (the main accused in the FIR) and the deceased complainant. As my name was not mentioned in the FIR initially, I came to know about the inclusion of my name in the FIR at a very later stage, i.e. after 3 years of filing the initial FIR.*

Be noted that I have preferred the discharge application in said case which is currently pending.”

3. In support of the application, the ICSI IIP submitted a legal opinion which opined that ██████████ is a fit and proper person for registration as an IP. The legal opinion stated: *“It is observed that some of the alleged charges are serious but as of now ██████████ has not convicted of any of the offences. In fact, the charge sheet has not been filed in the court though the FIR was registered in 2010 trial is yet to commence.”*

4. As per regulation 4(g) of the Regulations, no individual shall be eligible to be registered as an IP if he is not a fit and proper person. Among others, integrity, reputation and character are taken into account to determine if an individual is a fit and proper person. While considering the aforesaid application for registration, the Board took note of the statement of the applicant, as stated in Para 2, and the legal opinion submitted by the ICSI IIP, as stated in Para 3 above. The Board also noted that the applicant has preferred

the discharge application in the said matter. It sought further clarification in relation to the pending criminal proceeding. Based on responses from the applicant and other material on record, the Board formed a prima facie opinion that the applicant is not a fit and proper person for registration as an IP. It communicated the prima facie opinion vide letter dated 25th April, 2018 along with the reasons for the same and provided an opportunity to the applicant to show cause as to why his application should not be rejected. It also accorded an opportunity of personal hearing to the applicant who appeared before me on 21st May, 2018 and made submissions.

5. Let me now turn to the purpose of the Insolvency and bankruptcy Code, 2016 (Code) and the role of an IP therein. The Code essentially provides a market mechanism for time bound and orderly resolution of insolvency, wherever possible, and ease of exit, wherever required. This ensures ease of doing business and the most efficient use of resources all the time. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, and individuals. Take the example of corporate insolvency resolution process of a company. When a company undergoes this process, 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 probably Rs.5 lakh crore of market capitalization. He becomes the 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. In sync with the responsibilities, the Regulations require the Board to take into account integrity, reputation and character of an individual for determining if an applicant is a fit and proper person. The Board needs to take into account the charge sheet, including the gravity of the offence and the punishment such offences may attract, if charges are established, to determine if the applicant has the required integrity, reputation and character to be eligible for registration as an IP.
6. I have considered the application, the recommendation of the ICSI IIP, the legal opinion, the submission made by the applicant and material available on record. I find that the charge sheet has been filed against the applicant in the matter of [REDACTED] for alleged rioting and unlawful assembly (section 147 and 149), causing hurt (section 323), criminal trespass (section 447), house-trespass after preparation for hurt, assault or wrongful restraint (section 452), and criminal intimidation (section 506) of the Indian Penal Code. As rightly observed by the learned Counsel in the legal opinion, the alleged charges are serious. I find that these offences are punishable with imprisonment up to seven years.
7. The applicant has averred that the alleged charges have been made on the basis of the false information. I am not the authority to determine whether the allegations have any merit. Let the competent authority adjudicate upon the same. The applicant has also stated that he has filed a discharge application. In a similar matter (Dr. Vidya Sagar Garg Vs. Insolvency and Bankruptcy Board of India, W.P.(C) 9520/2017, CM APPL.

38726-38727/2017), the Hon'ble High Court of Delhi allowed the petitioner with liberty to approach the Hon'ble High Court, once the discharge application is disposed of by the trial court.

8. The reputation, character and competence of the applicant are of material consideration. What is material is what others feel about the applicant who has been charge-sheeted for offences such as rioting, criminal trespass, house-trespass after preparation for hurt, assault or wrongful restraint and criminal intimidation which attract imprisonment up to seven years. Does such a person inspire confidence of the stakeholders who can entrust him with property of lakhs of crores for management under corporate insolvency resolution process? Pendency of serious criminal proceedings against the applicant adversely impacts his reputation and makes him not a person fit and proper to become an IP.
9. It is important to keep a person, whose antecedents are doubtful, away from this noble profession. The Hon'ble Supreme Court in Avtaar Singh v. Union of India & Ors. [With SLP [C] Nos.4757/2014 and 24320/2014] observed "*it cannot be disputed that the whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post.*"
10. In view of the foregoing, I find that pendency of serious criminal proceeding, as noted above, against the applicant adversely impacts his reputation and makes him not a person fit and proper for registration as an IP. In exercise of the powers conferred on the Board under regulation 8(3)(b) of the Regulations, I, therefore, reject the application of [REDACTED] for registration as an Insolvency Professional.
11. I am, however, disturbed by the conduct of the ICSI IIP, which is a front-line regulator. It has supported and recommended the registration of the applicant with a legal opinion which has held that the applicant is a fit and proper person, after explicitly recording that the charge sheet has not been filed against him. The fact is that a charge sheet has been filed against the applicant. Probably, the legal opinion would have been different if full and correct facts were placed before the learned legal Counsel.

Date: 19th June, 2018
New Delhi

Sd/-
(Dr. Navrang Saini)
Whole Time Member
Insolvency and Bankruptcy Board of India