

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) and a professional member of the ICSI Institute of Insolvency Professionals (**ICSI IIP**) 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. In terms of regulation 5(b) of the IP regulations, an individual is eligible for registration if he “*has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor’s degree from a university established or recognized by law*”. While considering the aforesaid application, it was observed that the applicant has the following experience:

Sl.	From	To	Employment/ Practice	Total Period
1	01/06/1997	31/08/2001	Employment	4 years 3 months
2	24/09/2001	20/02/2003	CS Management Training	1 year 4 months 20 days
3	24/02/2003	31/03/2013	Employment	10 years 1 month and 4 days
4	01/04/2013	Till date	Practice	More than 5 years.

3. The Insolvency and Bankruptcy Board of India (Board) formed a prima facie opinion that the experience during CS management training and the practice as a sole proprietor do not qualify as experience in management and hence the applicant does not have 15 years of experience in management, as required under regulation 5(b) of the IP regulations. The Board communicated its prima facie opinion vide its e-mail dated 21st March, 2018 to the applicant and provided an opportunity to explain why his application should be accepted. It also provided an opportunity of personal hearing.
4. The applicant, vide his mail dated 6th April, 2018, explained his position and availed of an opportunity of personal hearing before me on 23rd April, 2018. I have considered the application, written and oral submissions of the applicant and other material available on record.
5. The applicant does not have any professional qualification and is not practising as a member of professional body. Before proceeding further, it is necessary to appreciate why experience in management is required for a graduate (not having professional membership of ICAI, ICAI (Cost), ICSI, Bar Council, etc.). 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 managerial competence and integrity on the part of an IP that inspire confidence and trust of the society and the stakeholders.

6. The managerial competence comes from experience in management. What is meant by management? A few popular definitions, as given hereunder, help us to understand management:
 - a. Peter F. Drucker: *“Management is a multi-purpose organ that manages business and manages managers and manages workers and work”*.
 - b. Harold Koontz: *“Management is the art of getting things done through and within formally organized group.”*
 - c. Mary Parker Follet: *“Management is the art of getting things done through people.”*
 - d. Henry Fayol: *“To manage is to forecast and to plan, to organize, to command, to co-ordinate and to control.”*
 - e. Black's Law Dictionary (1999 7th Edition): the expression “management” as *“consisting of the people in a company who are responsible for its operation”*.

Thus, management is not a solo individual activity. It is primarily getting things done through and with the help of people and comprises functions such as planning, organizing, staffing, directing and controlling. Any person who performs these functions is considered to be in management.

7. In this background, it is useful to take note of a few judicial pronouncements. The Hon'ble Supreme Court, in the matter of National Engineering Industries vs. Shri Shri Kishan Bhageria & Ors., held: *“Whether a person was performing supervisory or managerial work is a question of fact. One must, therefore, look into the main work and that must be found out from the main duties. A manager or administrator's work may easily include supervision but that does not mean that supervision is the only function of a manager or an administrator. Where there is a power of assigning duties and distribution of work there is supervision”* The Hon'ble Bombay High Court, in the matter of Shri Aloysius Nunes vs Thomas Cook India Ltd., observed: *“another test that could be considered is whether in the discharge of his managerial or administrative duties did he perform any supervisory work.”* In the matter of S. B. Kulkarni vs. Indian Red Cross Society and Others, it held: *“It is not the designation but the nature of duties performed by or allocated to the post which have to be examined to find out whether the work is that of a supervisory character. To come to the conclusion that a person is working in a supervisory capacity, it is necessary to prove that there were at least some persons working under him whose work he was required to supervise. The mere fact that a person is in charge of a section would not make him a supervisor if there was nobody else in the section whose work was to be supervised. A clerk who has been given the assistance of a peon cannot be said to be working in a supervisory capacity....”*
8. The Hon'ble High Court of Bombay, in the matter of Cedric D' Silva vs. Union of India, in relation to pilots, observed: *“He performs a highly skilled technical work. The difference between a driver of the aircraft and that of any other machine e.g. motor car or a steam engine is one of the nature of machine to be driven and one of the nature of the training required for the work. The main work of a chief pilot is to drive the aircraft. All those who have undertaken air journey know it well that he hardly spends any time in exercise of control over the passengers. His position cannot be compared to that of the captain of a ship. A ship contains a much larger number of passengers and greater quantity of cargo. The trip of a ship is much longer in duration than that of an aircraft. A ship has many*

departments which an aircraft has not, e.g. medical. According to the wage structure given in the Services Committee Report, a senior captain of an aircraft can rise upto Rs.1,550 per mensem. Besides this basic wage, he has many allowances also. He is a technical worker. He does work with his own hands.”

9. Thus, one needs to discern the predominant nature of duties of a person to determine if he is having experience in management. A key element of management is supervision and getting the task done with the help of people. A person is said to be in a supervisory capacity when there is at least one person working with him and he supervises the work of the other person.
10. As regards the period of CS training (24th September, 2001 - 20th February, 2003), I do not wish to labour as the applicant himself has submitted that this period does not constitute experience in management.
11. The applicant has claimed that he has experience in ‘practice’ since 1st April, 2013 and he counts this period towards experience in management. He has stated: “...*I am doing advisory and company law compliances including incorporation of Company, LLP, Annual and other incidental filings with RoC..... The works that I have done and experience that I have gain from 01/04/2013 onwards is qualify as a managerial experience.....*”. It is intriguing as how the applicant could do company law compliances, when he is not professionally qualified. The applicant has produced copies of various E- receipts (such as G.A.R – 7) filed by him in support of his experience. A perusal of these forms indicate that the applicant has been merely uploading e-forms (after digital signature of Directors and certification from qualified professionals) under the Companies Act, 2013 on MCA 21 System. This work (uploading of E- forms and depositing fees on MCA 21 System) cannot be considered experience in management. I further observe that the applicant is not qualified to practise as a professional and does not have a single person to assist him in his work. His gross income is less than Rs.5 lakh in the last financial year. Therefore, I do not consider the experience during the period of practice from 1st April 2013 as experience in management. If the period of practice and the period of CS training is excluded, the applicant does not have 15 years of experience.
12. The applicant has claimed to have experience in management during the period 1st June, 1997 and 31st August, 2001. It is, however, observed that he was pursuing regular study of M. Com during this period. He was asked at the hearing to explain as to how he was in full time employment and regular study simultaneously. The applicant did not have any answer to this. I do not wish to labour on this, as he does not have the required experience in management even if he is given benefit for this period.
13. In view of above, I find that the applicant does not have required experience in management for registration as an IP, as required under regulation 5(b) of the IP regulations. Therefore, I, in exercise of powers under regulation 8(3)(b) of the IP Regulations, reject the application of [REDACTED] for registration as an IP.

Date: 22 May, 2018
New Delhi

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