

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

IN THE MATTER OF APPLICATION OF [REDACTED] 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. [REDACTED], (hereinafter 'the applicant') had submitted an application under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter 'Regulations'), through the Indian Institute of Insolvency Professionals of ICAI, (hereinafter 'IIPI') seeking a certificate of registration as an Insolvency Professional (hereinafter 'IP'). The application was recommended by the IIPI to the Insolvency and Bankruptcy Board of India (hereinafter 'Board') on 9th August, 2017 for registration with an observation:

'It is observed that some criminal proceeding u/s 138/141 of the Negotiable Instruments Act, 1881 and also some matters u/s. 420/34 of Indian Penal Code are pending against the applicant.'

2. Along with the application, the applicant has given an undertaking: *"liabilities under Section 141 of Negotiable Instrument Act, 1881 is vicarious liability caused by the law and is understood to be fiction created by law to ensure proper and timely justice to the affected. In some of the cases High Courts have decided this to be technical offence and does not involve Moral Turpitude."* He further stated that he is co-accused in all the criminal proceedings as CFO of [REDACTED].

3. As per regulation 4(g) of the Regulations, no individual shall be eligible to be registered as an insolvency professional 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, it was observed that the following proceedings are pending against the applicant:

- (i) 17 criminal proceedings under section 138 read with section 141 of the Negotiable Instruments Act, 1881 before Courts in Maharashtra;
- (ii) 7 criminal proceedings under section 34 read with section 420 of Indian Penal Code, 1860 before Courts in Maharashtra; and
- (iii) 20 criminal proceedings under section 138 read with section 141 of the Negotiable Instruments Act, 1881 before Courts in West Bengal.

4. Accordingly, the Board formed a *prima facie* opinion that the registration ought not be granted to the applicant, as he was not found to be a fit and proper person to be appointed as an IP. The Board communicated, vide an email dated 19th September, 2017, its *prima facie* opinion along with the reason for the same and provided an opportunity to the applicant to show cause as to why his application should not be rejected. It also offered an opportunity to seek personal hearing. Vide his mail dated 19th September, 2017, he stated that he did not want

personal hearing, but wanted certain clarification. On receipt of clarification, vide his mail dated 23rd October, 2017, he stated that he did not wish to provide any further information and / or representation. He further stated that he had accepted the grounds provided by the board for rejecting his application.

5. I have considered the application, the recommendation of the IIIPI, the acceptance of the grounds for rejection of application of the applicant and material available on records.

6. In view of the acceptance of the ground for rejection of his application by the applicant, that is, he is not a fit and proper person for registration as IP, I do not wish to labour on this excepting confirming the prima facie opinion of the Board. I, therefore, in exercise of the powers conferred on the Board under regulation 8(3)(b) of the Regulations, reject the application of [REDACTED] for registration as an insolvency professional. I would expect the IIIPI, which is the front-line regulator, to exercise the required due diligence in future while enrolling an individual as a member and recommending to the Board his registration as an IP.

Date: 14 November, 2017
New Delhi

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