

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 'the Regulations'), through the [REDACTED] seeking certificate of registration as an Insolvency Professional (hereinafter 'IP'). The application was forwarded by [REDACTED] the Insolvency and Bankruptcy Board of India (hereafter, 'the Board') on 24th January, 2022 with a recommendation for registration.
2. 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 and reputation are taken into account to determine if an individual is a fit and proper person or not. While considering the aforesaid application for registration, it was observed that Securities and Exchange Board of India (hereinafter 'SEBI') vide an adjudication order dated 30th April 2012 had imposed a penalty of Rs.1 Crore on the applicant under Section 15HA of the SEBI Act which reads as under-
"15HA. Penalty for fraudulent and unfair trade practices.— If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher".
3. Because of not depositing the penalty amount, SEBI on 22nd November 2013 initiated Recovery Proceedings against the applicant. Subsequently, Hon'ble Security Appellate Tribunal (SAT) vide its order dated 9th April 2014 also disposed off the appeal filed by the applicant, while upholding the aforesaid SEBI adjudication order. Aggrieved by the aforesaid order of Hon'ble SAT, the applicant filed an appeal before the Hon'ble Supreme Court of India and the said appeal was also dismissed by the Hon'ble Supreme Court of India vide its order dated 15th December 2017. In view of the recovery proceedings not concluded, SEBI vide its order dated 19th January 2018 read with order dated 28th December 2018 directed applicant to comply with SEBI directives on unpaid amounts. Subsequently, Hon'ble Supreme Court of India vide its order dated 8th November 2021 observed –
"During the pendency of the proceedings before this Court and pursuant to order of this Court dated 25.03.2021, the petitioner has deposited the penalty amount of Rs.1 Crore. In view of such payment, what remained, is only with regard to interest on the said amount of Rs.1 Crore penalty imposed by the Adjudicating Authority....
....
As much as, Adjudicatory Order was passed as early as on 30.04.2012 and further, the petitioner has already paid the entire penalty amount of Rs.100 lakhs during the

pendency of this Petition, and to put quietus to the litigation, we deem it appropriate to dispose of the Special Leave Petition by directing the petitioner to deposit a further sum of Rs.10 lakhs towards interest, within a period of eight weeks from today. Upon such deposit, the criminal proceedings initiated against the petitioner in Case No.SEBI/3/2019 on the file of the 5th Special Court, Calcutta stand quashed.”

Pursuant to the aforesaid, the applicant paid an amount of Rs.10 lakh to SEBI on 16th November 2021.

4. Taking note of the aforesaid developments, the Board formed a prima facie opinion that the registration ought not to be granted to the applicant, as he is not a fit and proper person to be registered as an IP. It communicated, vide its communication dated 7th February 2022, its prima facie opinion along with the reason for the same and provided an opportunity to explain why her application should be accepted, within 15 days of the receipt of the communication.
5. The applicant, vide her e-mail dated 6th April 2022, availed of an opportunity of personal hearing before me on 12th April 2022 and furnished written submissions vide here email dated 13th April 2022 *inter alia* submitting the following point:
 - In terms of Regulation 4(d) of IBBI (Insolvency Professionals) Regulations, 2016 [IP Regulations], it envisages that to fulfil the conditions of the regulation, there must be both conviction by a competent court, as well as imprisonment for a term exceeding six months or more.
 - SEBI had only imposed a monetary penalty, and no sentence for imprisonment had been imposed on the applicant.
 - The process of convicting someone falls under the realm of criminal proceedings. However, the provisions of SEBI Act, 1992 and SEBI Regulations, 2003 that have been relied upon, are not in the nature of criminal proceedings, and thus do not fall under the purview of the Regulation 4 (d) of IP Regulations.
 - SEBI adjudication order was issued in the year 2012 and that the penalty was paid by applicant in the year 2021. The date of sentencing would be the date of the imposition of the penalty which in the present case is 30th April 2012. The proceedings instituted by SEBI a decade ago have become infructuous in today's time and have no bearing on her application.
 - The observation by IBBI for holding the SEBI proceedings against her is bad in law as it tantamount to double jeopardy and against the objectives of the Insolvency and Bankruptcy Code, 2016 (the Code) and principles of equity and natural justice.
 - The Board should also consider the work experience and credentials of applicant while deciding on her application.
6. I have considered the application, oral and written submissions made by the applicant and other material available on record. I proceed to examine the explanations submitted by the applicant.
7. I find that the applicant has conveniently interpreted the Fit and Proper Person requirement under IP Regulations to arrive at a conclusion that imposition of penalty by SEBI in the year 2012 and her compliance in the year 2021 with respect to the aforesaid SEBI requirements, have no bearing on the present application. However, what is relevant to the Board is the fact that although the applicant has complied with the SEBI directives, and has paid the hefty penalty along with interest thereon, the violations committed by the applicant vis-à-vis involvement in front running, fraudulent and unfair

trade practices in the securities market are serious in nature, and raises doubt on integrity, reputation and character of the applicant. The Board needs to take into account these facts to determine if the applicant is a fit and proper person for registration as an IP keeping the explanation to regulation 4 in view. The said explanation reads as under:

“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.”*

8. Before I proceed further, it is useful to understand the purpose of the Code and the role of an IP therein. The Code essentially provides a market determined, transparent and time bound mechanism for 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. 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. At times, with market capitalization, corporate debtor undergoing the insolvency process may involve huge assets to be resolved in a fair and transparent manner. 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.

9. The SEBI regulations have similar provisions for determining fit and proper persons. While dealing with regulation 20 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 in the matter of U. P. Stock Exchange Brokers vs. SEBI (Civil Writ Petition 45893 of 2012), the Hon’ble Allahabad High Court, vide its order stated 23rd May, 2014, observed:

“Financial integrity, reputation, character and honesty are matters which have a serious bearing on the objective, transparent and fair functioning of the securities market.”

10. While dealing with regulation 3 of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004, the Hon’ble Securities Appellate Tribunal, vide its order dated 6th September, 2006, examined the amplitude of fit and proper person as under:

“Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board (SEBI) in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct. A person is known by the company he keeps. In the very nature of things, there cannot be any direct evidence in regard to the

reputation of a person whether he be an individual or a body corporate. In the case of a body corporate or a firm, the reputation of its whole time director(s) or managing partner(s) would come into focus. The Board as a regulator has been assigned a statutory duty to protect the integrity of the securities market and also interest of investors in securities apart from promoting the development of and regulating the market by such measures as it may think fit. It is in the discharge of this statutory obligation that the Board has framed the Regulations with a view to keep the market place safe for the investors to invest by keeping the undesirable elements out. The Regulations apply across to all sets of regulations and all intermediaries of the securities market including those who associate themselves with the market and they all have to satisfy the criteria of "fit and proper person" before they could be registered under any of the relevant regulations and this criteria they must continue to satisfy throughout the period of validity of their registration and throughout the period they associate with the market. The purpose of the Regulations is to achieve the aforesaid objects and make the securities market a safe place to invest. One bad element can, not only pollute the market but can play havoc with it which could be detrimental to the interests of the innocent investors. In this background, the Board may, in a given case, be justified in keeping a doubtful character or an undesirable element out from the market rather than running the risk of allowing the market to be polluted."

11. It is thus clear that reputation and character of the applicant is a material consideration. What is material is what others feel about the applicant who was imposed with hefty penalty by SEBI on the grounds of front running, fraudulent and unfair trade practices in the securities market. 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? The imposition of hefty penalty on the applicant on the grounds of front running, fraudulent and unfair trade practices in the securities market, thus adversely impacts her reputation and makes her not a person fit and proper to become an IP.
12. In view of the foregoing, I, in exercise of powers under regulation 8(3)(b) of the Regulations, reject the application of [REDACTED] for registration as an Insolvency Professional.

Date: 2nd May, 2022
Place: New Delhi

-Sd-
(Sudhaker Shukla)
Whole Time Member
Insolvency and Bankruptcy Board of India