

**High Court of Madhya Pradesh, Jabalpur**  
**Bench at Indore**

**BEFORE**  
**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 5<sup>TH</sup> OF SEPTEMBER, 2022**

**Writ Petition No.4285/2022**

Between: -

**Mr. Arvind Kumar Agrawal,**  
Resident of 310, B.M. Tower-2,  
Agrawal Nagar, Sapna Sangeeta Road,  
Opposite Lotus Showroom, Indore,  
District Indore (MP) 452 001

.....PETITIONER

(By Shri Amit Dubey, Advocate)

**AND**

**Insolvency & Bankruptcy Board of India (IBBI),**  
Through Chairperson, 7<sup>th</sup> Floor, Mayur Bhawan,  
Shankar Market, Connaught Circus, New Delhi 110 001

**Dr. Navrang Saini, Whole Time Member,**  
Insolvency & Bankruptcy Board of India (IBBI),  
7<sup>th</sup> Floor, Mayur Bhawan, Shankar Market,  
Connaught Circus, New Delhi 110 001

**Ministry of Corporate Affairs,**  
Through Secretary, Shastri Bhawan,  
Rajendra Prasad Road, New Delhi 110 001  
[secy.mca@nic.in](mailto:secy.mca@nic.in), +91 (11)23382324

.....RESPONDENT

(None present)

.....

This **petition** coming on for orders this day, the court passed the following:

**ORDER**

Heard finally.

None appears for the respondent (s), despite service of notice. On 12.07.2022 also, nobody appeared on behalf of the respondent (s), despite service of notice. On 12.07.2022, this Court had observed that the respondent (s) may also file their reply; however, till date, neither any appearance is tendered, nor any reply has been filed by the respondent(s) despite service of notice. Thus, the petition is heard finally, as a short point is involved in the matter.

2. This writ petition, under Article 226 of the Constitution of India, has been filed by the petitioner seeking the following relief: -

**“8. Relief Prayed For:**

It is therefore, humbly prayed that this Hon’ble Court may kindly be pleased to allow the Writ Petition and to issue a writ, order or direction to grant the following relief(s);

- a) Issue writ, order or direction in nature of mandamus or any other suitable writ declaring the actions of the Respondents as void and arbitrary.
- b) The Respondent Nos. 1& 2 may kindly be directed to grant the Petitioner his Certificate of registration as an Insolvency Professional, which the Petitioner rightly and truly deserves.
- c) The order dated 18.11.2021 passed by the Respondent No.1 & 2 may kindly be quashed as being void and arbitrary.
- d) Any other relief/direction which this Hon’ble Court may deem fit and proper may kindly be granted to the Petitioner.”

3. The petitioner is aggrieved by the order dated 18.11.2021 (Annexure P/1), passed by respondent No.2, whereby the petitioner’s application for grant of Certificate of Registration as an Insolvency Professional (IP) under Regulation 7 of the Insolvency & Bankruptcy Board of India (Insolvency Professional)

Regulations, 2016 (herein after referred to as the Regulations, 2016, for brevity) has been rejected by the Whole Time Member of Insolvency & Bankruptcy Board of India on the ground that the petitioner is self-employed and is running a Consultancy and Valuation business and does not have the managerial experience as a salaried employee.

4. Shri Amit Dubey, learned counsel for the petitioner has submitted that the word 'management' has not been defined in the Regulations, 2016; and even if a person is self employed, it cannot be said that he has no managerial experience, despite the fact that he is already managing his own business.

5. It is further submitted that the petitioner is also involved in consultancy and valuation of the property and other professionals have also been given the certificate of Insolvency Professional, hence, it is submitted that the respondents be directed to decide the petitioner's application for registration of individuals as an Insolvency Professional afresh after taking into account the fact that 'management' does not mean a person who is salaried employee.

6. On due consideration of the submissions and on perusal of the documents filed on record, it is found that so far as the petition is concerned, the petitioner has sought the following relief: -

**“8. Relief Prayed For:**

It is therefore, humbly prayed that this Hon'ble Court may kindly be pleased to allow the Writ Petition and to issue a writ, order or direction to grant the following relief(s);

a) Issue writ, order or direction in nature of mandamus or any other suitable writ declaring the actions of the

Respondents as void and arbitrary.

b) The Respondent Nos. 1 & 2 may kindly be directed to grant the Petitioner his Certificate of registration as an Insolvency Professional, which the Petitioner rightly and truly deserves.

c) The order dated 18.11.2021 passed by the Respondent No.1 & 2 may kindly be quashed as being void and arbitrary.

d) Any other relief/direction which this Hon'ble Court may deem fit and proper may kindly be granted to the Petitioner."

7. In the impugned order dated 18.11.2021 (Annexure P/1), in paras 6, 7 and 8, the Whole Time Member of Insolvency & Bankruptcy Board of India has given the following findings: -

"6. It is pertinent to note that an IP is entrusted with the duty of management of affairs and operations of stressed corporate debtor. In the Corporate Insolvency Resolution Process, once appointed, he has to perform the role of Chief Executive Officer as the erstwhile Board remains in suspended stage. Thus an IP is possess sufficient managerial experience in order to manage the corporate debtor which is already in distress. Such managerial experience primarily involves getting things done through and with the help of people and comprises functions such as planning organizing, staffing, directing, and controlling. Consultancy, on the other hand, involves the activity of offering expert advice on a particular subject as per the requirements of the client and might not involve continuous services.

7. On careful consideration of the instant application, it is observed that the applicant is providing consultancy and valuation services and is not in full time employment with any entity. It is also observed that Elite Construction was registered with PF authorities on 4<sup>th</sup> April 2001 under the category of Building and Construction. The income tax returns indicate that applicant has reported his income as income from business or profession and not as a salaried individual. Further, Form 26AS furnished by the applicant indicate that the tax is deducted at source under the head 'payment to contractors' and 'fees for professional or technical services'. The case laws submitted by the applicant

do not relate to counting of managerial experience and hence are not considered relevant. Also, the experience as a proprietor or non-executive director cannot be considered as a substitute of desired experience in management and only leads to ambiguity about the nature of experience possessed by the applicant. The experience certificate dated 19<sup>th</sup> February 2021 issued by B R Goyal Infrastructure Limited for the period 01<sup>st</sup> May 1995 to 31<sup>st</sup> December 2010 also specifies the designation of the application as a 'consultant for Engineering Services'. Therefore, the nature of experience claimed by the applicant cannot be established as required experience in management in accordance with the Regulations.

**8.** In view of the foregoing, I am of the view that the eligibility of the applicant for grant of certificate of registration as an insolvency professional as stipulated under the Regulations is not being established with the information/documents/clarifications provided by the applicant and IPA. Thus, in exercise of powers under regulation 8 (3) (b) of the Regulations, the application of Mr. Arvind Kumar Agrawal for registration as an Insolvency professional is rejected.”

A perusal of the aforesaid order reveals that respondent No.2 has relied upon the fact that the petitioner has no managerial experience as he is engaged in consultancy and valuation of the property. However, it is also found that in the case of Elite Construction, on which the petitioner has relied upon, which has already been referred to in para 7 of the impugned order, it was engaged in the business of 'Building and Construction', which can be said to be a business similar to that of the petitioner who is running a Consultancy and Valuation business.

**8.** Counsel for the petitioner has also referred to Regulation 5 of the Regulations, 2016, which reads, as under: -

“5. Subject to the other provisions of these regulations, an individual shall be eligible for registration, if he –

- (a) has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency;
- (b) has completed a pre-registration educational course, as may be required by the Board, from an insolvency professional agency after his enrolment as a professional member; and
- (c) has-
  - (i) successfully completed the National Insolvency Programme, as may be approved by the Board;
  - (ii) successfully completed the Graduate Insolvency Programme, as may approved by the Board; 5
  - (iii) experience of -**
    - (a) ten years in the field of law, after receiving a Bachelor's degree in law;
    - (b) ten years in management, after receiving a Master's degree in Management or two-year full time Post Graduate Diploma in Management; or**
    - (c) fifteen years in management, after receiving a Bachelor's degree, from a university established or recognised by law or an Institute approved by All India Council of Technical Education; or]**
  - (iv) ten years' of experience as –
    - (a) chartered accountant registered as a member of the Institute of Chartered Accountants of India,
    - (b) company secretary registered as a member of the Institute of Company Secretaries of India,
    - (c) cost accountant registered as a member of the Institute of Cost Accountants of India, or
    - (d) advocate enrolled with the Bar Council.”

(Emphasis supplied)

It is apparent that the definition covers various professionals who can apply for registration of IP subject to the conditions attached therewith.

9. In such circumstances, when the petitioner has already passed the Insolvency Professional Examination of IBBI and has already undergone 50 (fifty) hours Pre - registration Education Course as mandated by the IBBI under the Regulations, 2016, and claims to

have managerial experience, this Court is of the considered opinion, that application needs to be decided afresh, if the petitioner also submits other documents on record to demonstrate that he was actually managing a team which also requires management expertizes as provided under Regulation 5(3)(c)(iii)(b) or (c) and also possesses educational qualification as per the said Regulation.

**10.** In view of the same, the impugned order dated 18.11.2021 (Annexure P/1) passed by respondent No.2 is hereby quashed and the matter is remanded back to the respondent Whole Time Member of Insolvency & Bankruptcy Board of India with a liberty to the petitioner to file additional documents within two weeks time as observed by this court, to demonstrate his eligibility to claim the IP certificate, and the concerned respondent is also directed to take decision on the petitioner's application afresh, in accordance with law by passing a reasoned and speaking order within a period of **six weeks** from the date of receipt of certified copy of this order. It is made clear that this court has not adverted to the merits of the case.

**11.** Accordingly, Writ Petition No.4285/2022 stands **allowed and disposed of**.

All the other pending interlocutory applications, if any, shall stand **disposed of**.

**(Subodh Abhyankar)**  
**Judge**