

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

18th November 2021

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

[REDACTED] (the applicant), [REDACTED], had submitted an application under regulation 6(1) of the IBBI (Insolvency Professionals) Regulations, 2016 seeking a certificate of registration as an insolvency professional (IP) on 18th June 2021 (i.e., date of payment of fee). The Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI or the IPA), where the applicant is enrolled as a professional member, forwarded the application with a recommendation for registration of the applicant as an IP.

2. Regulation 5(c)(iii)(c) of the Regulations stipulate that an individual shall be eligible to be registered as an IP if he has experience of 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.

3. While considering the aforesaid application, it was observed that the applicant had furnished details of work experience under Part C of 'Form A' starting from 20th August 1992 till 4th May 2021. The Board, on examination of the application, found the documents furnished by the applicant as inadequate to establish the nature of work experience. Thus, a question that arose for consideration was as to how the experience has been corroborated and established to determine his eligibility. Accordingly, clarification was sought from IPA which resubmitted the application along with its detailed note and additional information / documents. On consideration of the resubmitted application, a total experience of 28 years and 8 months is found to be claimed by the applicant as per details below:

S. No.	From / To Date	Duration of work experience	Name of Employer / Entity and Designation	Area of work
1	20/08/1992 to 19/10/2003	11 years and 2 months	Worked as a consultant and contractor, served as a Proprietor of Elite Construction.	Contractor, Consultancy and Proprietorship
2	20/10/2003 to 04/05/2021	17 years and 6 months	Worked as a consultant and valuer (Registered with Wealth Tax Dept. and IBBI) and served as a non-executive director in Elite Construction (Indore) Pvt. Ltd.	Consultancy and Non-executive directorship
28 years and 8 months			Total work experience claimed by the applicant	

4. After consideration of the resubmitted application, the Board did not find the documents as satisfactory to establish required experience in management. Thus, the Board formed a *prima facie* opinion that registration ought not to be granted to the applicant and communicated the same to him on 25th August 2021. In response, the applicant availed an opportunity for a hearing before me on 5th October 2021. He made further submissions along with some case laws and Form 26AS (Annual Tax Statement) on 20th October 2021.

5. The application, the oral and written submissions made by the applicant and the material available on record have been considered. It is observed that the applicant was registered as a contractor with Public Works Department, Madhya Pradesh on 20th August 1992 for a period of five years. He worked as a consultant with a partnership firm namely Balkaran Ramkaran Goyal from 1st May 1995 to 31st March 2005 and with B R Goyal Infrastructure Private Limited from 1st April 2005 to 31st December 2010. He was registered as a valuer with Wealth Tax Department on 20th October 2003. The applicant submitted that he served as the proprietor of Elite Construction which was later converted into a private limited company namely Elite Construction (Indore) Pvt. Ltd., where the applicant served as a non-executive director since 8th March 2006. Further, the membership of the applicant with Institution of Valuers, Institution of Government Approved Valuers, The Institute of Appraisers, The Institution of Engineers (India) and empanelment as a valuer with Bank of Baroda, Vyaaparik Udyogik Sahkari Bank Ltd. Indore, Transport Cooperative Bank Ltd., State Bank of India, Union Bank of India, Bank of India, Federal Bank, Axis Bank, United Bank of India and Oriental Bank of Commerce is also taken on record.

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 supposed to 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 4th 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 'payments 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 19th February 2021 issued by B R Goyal

Infrastructure Limited for the period 01st May 1995 to 31st December 2010 also specifies the designation of the applicant 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 [REDACTED] for registration as an insolvency professional is rejected.

-Sd-

(Dr. Navrang Saini)

Whole Time Member

Insolvency and Bankruptcy Board of India

Date: 18th November 2021
New Delhi