

## **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 6 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], resident of [REDACTED] (hereinafter called "Applicant"), has submitted an application under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter 'IP Regulations'), through the Indian Institute of Insolvency Professionals of ICAI, (hereinafter called "IIIP"), seeking certificate of registration as an Insolvency Professional (hereinafter 'IP'). The IIPI forwarded the application to the Insolvency and Bankruptcy Board of India (hereinafter, 'Board') on 15<sup>th</sup> September, 2017 .
2. According to regulation 4(g) of the Regulations, no individual is eligible to be registered as an IP 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 as an IP, it was observed that a criminal proceeding had been initiated by CBI against the applicant. In this regard, the Board sought further information while processing the application vide e-mail dated 20<sup>th</sup> October, 2017. It formed a prima facie opinion that the registration ought not to be granted to the applicant, as he was not found to be a fit and proper person to be registered as an IP. The Board communicated, vide an email dated 17<sup>th</sup> November, 2017, its prima facie opinion along with the reason for the same and provided an opportunity to the applicant to explain as to why his application should be accepted. It also offered an opportunity to seek personal hearing.
3. In response, the applicant, vide email dated 23<sup>rd</sup> November, 2017 has made the following broad submissions i.e. First, he has been duly discharged by the Bank by accepting VRS and has got all his terminal benefits in full and getting monthly pension for the past 7 years continuously. Second, after his retirement, CBI filed a case against a borrower (" [REDACTED] ") and against 9 bank officials from CMD to branch head including him as regional head. Third, he has filed his discharge application in the CBI Special Court in January 2016 and matter is pending. Fourth, the Bank is holding immovable security of more than Rs. 35 crores for the dues of Rs. 30.96 crores of which the Bank has taken possession and the same is being put to sale. Therefore, no loss shall be accounted to the Bank. Fifth, the CBI case is based on the FIR lodged by the Bank against the borrower and STCI officials for fraud in discounting of bills at the Branch. He was not at all working in the Branch and he was Regional Head. Sixth, The RBI inspection team did not notice any irregularity in sanctioning the term loan.
4. [REDACTED] appeared before me on 23<sup>rd</sup> January, 2018 wherein he reiterated broadly all the submissions mentioned above.

5. The charge sheet filed by the Central Bureau of Investigation (CBI), Bank securities and Fraud Cell (BSFC) before the Court of Hon'ble Special Judge for CBI, City Civil and Sessions Court, Greater Mumbai, discloses that charges levelled against 9 retired officials including him was under section 120B read with sections 420 and 471 of the Indian Penal Code, 1860 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. These officials were sent for trial as they are public servants presently retired from the services of Dena Bank and have come to light in pursuance of a criminal conspiracy for cheating the Dena Bank in the matter of recommending, sanctioning, releasing, availing credit facility like term loan, LC on back to back basis, bill discounting facility etc. by abusing their official position by not making proper appraisal, recommending sanctioning facilities which is beyond the credit policy of Dena Bank, submission of forged document/ forged bill of lading along with the invoices, which was not backed by any genuine trade transaction, permitting/ authorized discounting of bills beyond the sanction limits and also when there was overdues in the account, permitting of diversion of funds/ diverted the term loan for purpose other than it was sanction for, by not ensuring the end use of the funds and by knowingly allowing the misuse of funds and thereby causing undue pecuniary and wrongful loss to an extent of Rs. 30.96 crores to Dena Bank and a corresponding wrongful gain to themselves or others.
6. I find that the offences allegedly against the accused are criminal conspiracy, cheating and dishonestly inducing delivery of property, forgery for purpose of cheating, using as genuine a forged document, etc. and each of these offences are punishable with imprisonment up to seven years.
7. Let us now understand the role and responsibility of an IP. An IP is vested with the management of the affairs of the company and he exercises the powers of its board of directors. Such a company could be one of the largest companies in India with probably Rs.5 lakh crore of market capitalisation. 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. The Board needs to take into account the charge sheet, including the gravity of the offence and the punishment such offences may attract, if charges are established, to determine if the applicant has the required integrity, reputation and character to be eligible for registration as an IP.
8. 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 dated 23<sup>rd</sup> 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."
9. It is thus clear that reputation and character of the applicant is a material consideration. What is material is that what others feel about the applicant who has been charge-sheeted for offences such as criminal conspiracy, cheating and dishonestly inducing delivery of property, using as genuine a forged document, involved in criminal

misconduct which attract imprisonment up to seven years. 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? Pendency of serious criminal proceedings against the applicant adversely impacts his reputation and makes him not a person fit and proper to become an IP.

10. I find that all the submissions made by him relates to charges which are under consideration of the Hon'ble Court. Further, mere filing of the discharge application does not alter the reputation of the applicant unless he is actually discharged.
11. I have perused the application, the recommendation of the IIIPI, criminal proceedings pending against the applicant, representation and material available on records. At this stage I cannot conclude on his representation that he is not involved in the fraud.
12. In view of the foregoing, I find that pendency of serious criminal proceeding, as noted above, against the applicant adversely impacts his reputation and makes him not a person fit and proper for registration as an IP. In exercise of the powers conferred on the Board under regulation 8(3)(b) of the Regulations, I, therefore, reject the application of [REDACTED] for registration as an Insolvency Professional.

Date: 26.02.2018

Place – New Delhi

Sd/-  
(Dr. Navrang Saini)

Whole Time Member  
Insolvency and Bankruptcy Board of India