

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], [REDACTED] (the applicant) a resident of [REDACTED], had submitted an application under regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations), through the [REDACTED], seeking registration as an Insolvency Professional (IP). The application was forwarded by the IPA to the Insolvency and Bankruptcy Board of India (the Board) on 16th May, 2023 with a recommendation for registration.
2. Sub-regulation (1) of regulation 7 of IP Regulations states that *“If the Board is satisfied, after such inspection or inquiry as it deems necessary that the applicant is eligible under these Regulations, it may grant a certificate of registration to the applicant to carry on the activities of an insolvency professional”*
3. Further, regulation 4 of IP Regulations stipulates certain eligibility criteria for registration as an IP. As per clause (g) of sub regulation (1) of regulation 4 of the IP Regulations, no individual shall be eligible to be registered as an IP if *“he is not a fit and proper person. “Further the explanation under this clause states that “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”
4. In the light of the above, the Board has considered the application and the documents provided by the applicant in his application for registration as an IP. Upon perusal of the documents produced with the application, it is observed that the applicant had rendered professional services as a statutory auditor in the company viz. [REDACTED] a company incorporated under the provisions of the Companies Act and engaged in the business of [REDACTED]
5. Initially, a complaint was filed against [REDACTED] for an alleged involvement in money circulation scheme assuring quick money and an FIR was registered vide [REDACTED] Prakasam District, Andhra Pradesh for the offences under section 420 of Indian Penal Code (IPC) and sections 4 & 5 read with section 3 of the Prize Chit and Money Circulation Schemes

(Banning) Act-1978 (PC&MCSBA) and section 5 of the Andhra Pradesh Protection of Depositors of Financial Establishment Act, 1999 (APPDFEA). FIRs were also registered at various places against the said company totalling thirteen in number. Though the applicant's name was not mentioned in the FIR, however, while filing the charge sheet before the Hon'ble Court of Principal District and Sessions Judge-Cum-Special Court, by the Inspector of Police, Regional Office, CID Vijayawada the name of the applicant was listed at S.no 13 as accused. The chargesheet was filed under sections 120(B), 406, 420, 212 of IPC and section 4, 5 & 6 read with section 2 (c) of the PC&MCSBA and section 5 read with section 3 of APPDFEA. It was mentioned in the chargesheet that applicant, A13, conspired together and designed the Money Circulation Scheme. It was further mentioned that the accused collected deposits in the name of advances from the customers for its business activities and defaulted in return of deposits and retail goods as agreed upon wherein the accused, including the applicant, cheated the depositors. Thus, it was observed in the said chargesheet that along with the others, the applicant is made party to the charges of criminal conspiracy to commit an offence liable for punishment under section 120(B), 406, 420, 212 read with 34 of IPC.

6. Taking note of the aforesaid, the Board formed a *prima facie* opinion that the registration ought not to be granted to the applicant to act as an IP. A communication stating the reasons for forming such opinion was sent to the applicant on 28th June 2023 by giving an opportunity to the applicant to explain within 15 days as to why his application should be accepted.
7. The applicant, vide his e-mail dated 5th December 2023, requested for availing an opportunity of personal hearing. Accordingly, the Board heard the applicant on 9th January 2024, as per Regulation 8 of the IP Regulations. During the personal hearing, the applicant submitted the following;
 - a. That he is a [REDACTED] and got enrolled with [REDACTED] as member after passing the Limited Insolvency Examination.
 - b. That he was auditor of Company viz. [REDACTED] and an FIR was registered against the company for the offences under section 420 of IPC and section 4&5 read with section 3 of the PC&MCSBA and section 5 of APPDFEA.
 - c. That his name was mentioned as Accused no.13 in the chargesheet though his name was not mentioned in the FIRs registered and in the chargesheet his name was merely mentioned as auditor of the company. However, no specific charges/allegations were mentioned against the applicant except his name is listed as the accused in the chargesheet. It was also mentioned by the applicant during the hearing that his report as an auditor of the said company was qualified audit report.
 - d. Applicant further stated that there is no specific material/evidence to prove and substantiate the allegations mentioned in the chargesheet.
 - e. It was also stated that the applicant was only reprimanded in the instant matter by his parent organisation i.e. [REDACTED]

- f. The applicant further submitted that he has filed a quash petition before Hon'ble Andhra Pradesh High Court dated 02.04.2019 denying the charges as false and frivolous. The matter was admitted by the Hon'ble High Court, however, the same is pending for hearing.*
8. In the above background, I have carefully considered the application based on the material available on record and additional submissions made by the applicant and my observations thereto are detailed as under:
- a. It was not denied that the applicant being a [REDACTED] was acting as auditor of the company [REDACTED] against which the Inspector of Police, Regional Office, CID Vijayawada has filed a charge sheet before the Hon'ble Court of Principal District and Sessions Judge-Cum-Special Court based on an FIR registered [REDACTED], Prakasam District, Andhra Pradesh.
 - b. It was also not denied that the name of the applicant was listed as accused no. 13 while filing the charge sheet before the Hon'ble Court of Principal District and Sessions Judge-Cum-Special Court. Consequently, he was reprimanded by [REDACTED] for the acts/charges as mentioned in para 5 supra.
 - c. The applicant has further stated that he has filed a petition before the Hon'ble High Court of Andhra Pradesh denying the charges as false and frivolous and the matter was admitted by the Hon'ble High Court but the same remained pending for hearing.
9. I have perused the various provisions in which the charge sheet has been filed in the matter viz. section 120 B, 212 and 406 of IPC which speaks about punishment for criminal conspiracy, harbouring or concealing a person whom he knows or has reason to believe to be the offender, punishment for criminal breach of trust and also section 420 of IPC relating to cheating and dishonestly inducing delivery of property which are punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
10. Section 5 of the APPDFEA states that *"where any financial establishment defaults in the return of the deposit either in cash or kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the promoter, Manager or Member of the financial establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakh."*
11. Further, Section 3 of the PC&MCSBA under *"Banning of prize chit and money circulation schemes or enrolment as members or participation therein"* states that *"no person shall promote or conduct any prize chit or money circulation scheme or enrol*

as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme. Section 4 of the said act imposes penalty for contravening the provisions of section 3 by imposing punishment with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.”

12. It is useful to understand the purpose of the Code and the role of an IP therein. The Code essentially provides a market determined 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. For example, when a company undergoes corporate insolvency resolution, an IP is vested with the management of the affairs of the company. He exercises the powers of its board of directors. Such company could be one of the largest companies in India. 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.

13. 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 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.”

14. Further, 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.”

15. In the matter of Pooja Menghani Vs. Insolvency and Bankruptcy Board of India & Anr the Hon’ble High Court of Delhi has observed that “...An Insolvency Professional virtually takes over the company during the period it goes through the insolvency resolution process. An Insolvency Professional in fact becomes the heart and brain of the company under the insolvency resolution process and a person having slightest of disqualification cannot be permitted to be appointed as an Insolvency Professional otherwise the entire purpose of the IBC will get vitiated.” It was further observed that “even though the Petitioner can be registered as an Insolvency Resolution Professional but for determining as to whether the Petitioner is fit and proper candidate it is for the Board to take account of any consideration as it deems fit, including but not limited to the criteria of integrity, reputation and character.”
16. In light of the above, I am of the opinion that the pendency of criminal proceedings of the nature stated above against the applicant, adversely impacts his reputation and makes him a person not fit and proper to become an IP. Therefore, I, in exercise of the powers conferred to the Board under regulation 8(3)(b) of the IP Regulations, reject the application of [REDACTED] for registration as an Insolvency Professional.

Date: 5th February 2024
Place: New Delhi

-Sd/-
(Satish Sethi)
Executive Director
Insolvency and Bankruptcy Board of India