

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

IN THE MATTER OF CANCELLATION OF CERTIFICATE OF REGISTRATION AS AN INSOLVENCY PROFESSIONAL GRANTED TO MR. RASHMI NAVAL THAKERIA UNDER REGULATION 7 READ WITH REGULATION 4(g) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

ORDER

I. Issue involved: Obtaining certificate of registration to carry on the activities of an Insolvency Professional (IP) through suppression of facts in the application for registration

II. Procedural requirements:

- (i) Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (**Regulations**), stipulates the eligibility requirements for an individual to be registered as an insolvency professional, while, *inter alia*, providing that:

“No individual shall be eligible to be registered as an insolvency professional if he-(g) he is not a fit and proper person;

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.”*

- (ii) Regulation 6 of the Regulations, *inter alia*, provides the process of application for certificate of registration as below:

“6. (1) An individual enrolled with an insolvency professional agency as a professional member may make an application to the Board in Form A of the Second Schedule to these Regulations, along with a non-refundable application fee of ten thousand rupees to the Board.”

- (iii) Further, regulation 7 of the Regulations, *inter alia*, stipulates the following with respect to grant of Certificate of registration to an individual and the conditions applicable thereupon:

“7. (1) 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”

...

“7. (2) The registration shall be subject to the conditions that the insolvency professional shall-

- (a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;*
- (b) at all times continue to satisfy the requirements under Regulation 4;*

- ...
- (h) *abide by the Code of Conduct specified in the First Schedule to these Regulations; and*
 - (i) *abide by such other conditions as may be imposed by the Board”*

III. Facts of the case:

- (a) The Certificate of Registration as an IP (bearing registration No. IBBI/IPA-001/IP-P00938/2017-18/11542) was granted by the Insolvency and Bankruptcy Board of India (**the IBBI/the Board**) to Mr. Rashmi Naval Kumar Thakeria (**Mr. Thakeria**) on 5th February 2018. The application of Mr. Thakeria seeking grant of registration as an IP was duly forwarded to the Board by The Indian Institute of Insolvency Professionals of ICAI (IPA) along with recommendation for registration as an IP.
- (b) On 31st May 2018, the Board received a complaint from Phoenix ARC Private Limited (complainant), *inter alia*, raising concerns over grant of certificate of registration as an IP to Mr. Thakeria, while also alleging that Mr. Thakeria does not qualify the criteria of ‘Fit and Proper’ person as stipulated vide the Regulations on the ground that he is being a promoter/ director/ guarantor of the defaulting borrower entity and that the proceedings (in OA 474/2014) are pending against Mr. Thakeria before Debt Recovery Tribunal (DRT).
- (c) Upon examination of the aforesaid complaint vis-à-vis the application submitted by Mr. Thakeria seeking grant of registration as an IP, the Board observed that these facts were not disclosed by Mr. Thakeria in the said application.
- (d) Taking note of the same, the Board on 28th February 2019 issued notice to Mr. Thakeria seeking necessary explanation on the matter. Vide his communication dated 21st March 2019 addressed to the Board, Mr. Thakeria, *inter alia*, submitted that at no stage of the proceedings before DRT, the notice of the application was served on him. He reiterated the said facts at the time of personal hearing before the Board on 13th May 2019.
- (e) Another notice was issued to Mr. Thakeria on 19th September 2019 based on following facts observed by the Board subsequently:
 - Vide order dated 27th October 2018, DRT observed“*Added to this, the conduct of defendants no. 1 and 2 (i.e. Natural Textiles Pvt Ltd and Mr Thakeria respectively) after their appearance have not been filed written statement in spite of sufficient opportunities which indicates that they have no objection to allow the present OA so also admit the claim made by the applicant bank against the defendants...*”
 - Board took on record the Vakalatnama dated 14th August 2015 executed by Mr. Thakeria in favour of Mr. James P Arun Kumar wherein he, in the capacity of authorized signatory of Natural Textiles Pvt Ltd, appointed Mr James P Arun Kumar to appear on behalf of Defendant No 1 and 2 (i.e. Natural Textiles Pvt Ltd and Mr. Rashmi N Thakeria respectively) in all the proceedings connected with OA 474/2014

IV. Submissions of the IP post personal hearing and issuance of notice

Mr. Thakeria vide his communication dated 21st October 2019 informed to the Board that the order dated 14th August 2015 in OA No. 474 / 2014 specifically records that "D2 called out absent and placed ex party." Therefore, he had been placed in the matter ‘ex parte’ and was not aware that he had been arrayed as a party to the dispute before DRT. He also submitted that the

application for seeking grant of registration does not provide for a specific column requiring disclosure of such information.

V. Observations of the Board

1. Upon careful examination of the material available on record, it is clear that Mr. Thakeria, while submitting his application for seeking grant of registration as an IP, had suppressed the fact that proceedings (in OA 474/2014) are pending against him before DRT and that the Natural Textiles Pvt Ltd, of which he is a promoter/director/guarantor is a defaulting entity.
2. Regulation 6 (1) of the regulations, *inter alia*, requires an individual seeking grant of registration as an IP, to make an application to the Board in Form A of the Second Schedule to the Regulations. The part E of the said Form A seeks from the applicant the information on conviction for an offence, pending criminal proceedings, whether the applicant has ever been declared as an undischarged insolvent, or applied to be declared so, etc. It also requires the applicant to provide any additional information that may be relevant for the application. Further, part G of the said Form A, *inter alia*, secures an affirmation from the applicant, that the application and the information furnished by the applicant along with this application is true and complete and if found false or misleading at any stage, registration shall be summarily cancelled. Thus, the application format adequately provides for disclosure of any such facts by the applicant which are relevant for determination of applicant being a fit and proper person.
3. The submissions made by Mr. Thakeria that application does not provide for a specific column requiring disclosure of such information, therefore, does not hold merit.

VI. Conclusions and grounds for ineligibility to act as an IP

- (a) 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.”*
- (b) 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.
- (c) It is thus clear that reputation and character of the applicant is a material consideration. 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. Here comes the question, does such a person who is a promoter/director/guarantor of a defaulting entity inspire confidence of the stakeholders who can entrust him with property of lakhs of crores for management under corporate insolvency resolution process? Pendency of proceedings against Mr. Thakeria before DRT adversely impacts his reputation and makes him a person who is not fit and proper to remain as an IP.

- (d) To meet the ends of natural justice, Mr. Thakeria was given opportunity for oral submissions by the Board.

VII. Decision

In view of the foregoing, the non-fulfilment of the requirements of being ‘fit and proper person’ at all times has been clearly established in the instant case. Therefore, the registration granted to Mr. Thakeria under regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 hereby stands cancelled. However, he is at liberty to re-submit his fresh application for registration for consideration of the Board, once the defect as observed above is cured by due process and such application shall accordingly be dealt with as per law.

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(Mr. Sudhaker Shukla)

Whole-time Member

Insolvency and Bankruptcy Board of India

Date: 24th January, 2020

Place: New Delhi