

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

[REDACTED] (the applicant), resident of [REDACTED] submitted an application under regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (Regulations), through the [REDACTED] (IPA), seeking certificate of registration as an Insolvency Professional (IP). The IPA forwarded the application to the Insolvency and Bankruptcy Board of India (Board) on 21st December, 2018.

2. While considering the aforesaid application for registration, the Board observed that a case under section 498 of the Indian Penal Code, 1860 (IPC) was pending against the applicant. On verification, the Board found that a charge sheet was filed under section 498A of IPC, not section 498 as stated in the application, along with sections 3 and 4 of the Dowry Prohibition Act, 1961 (DPA), against the applicant.

3. As per regulation 4(g) of the Regulations, no individual shall be eligible to be registered as an IP if he is not a fit and proper person. Among others, integrity, reputation and character are considered to determine if an individual is a fit and proper person. In view of the charge sheet, the Board formed a *prima facie* opinion that the registration ought not be granted to the applicant, as he was not a fit and proper person to be registered as an IP. The Board communicated, vide an email dated 13th February, 2019, 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. The applicant, vide e-mail dated 19th February, 2019, submitted that he has no further explanations and would not avail the opportunity of being heard.

4. I have considered the application, the recommendation of the IPA, and other material available on record.

5. I have perused the provisions of section 498A of the IPC and sections 3 and 4 of the DPA, under which the applicant has been charge sheeted. Section 498A of the IPC relates to husband or relative of husband of a woman subjecting her to cruelty and attracts imprisonment for a term up to three year. Section 3 of the DPA relates to giving or taking dowry and attracts imprisonment of not less than five years. Section 4 of the DPA relates to demanding dowry and attracts imprisonment of not less than six months. The Board has no jurisdiction determine whether the charges will sustain or not. It, is, however, presented with the facts that the applicant has been charge-sheeted under section 498A of the IPC and sections 3 and 4 of the DPA, which, if established, would attract imprisonment of the durations stated in the respective sections. Does a charge sheet with such allegations affect integrity, reputation and character of the applicant?

6. 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. Take the example of corporate insolvency resolution process of a company. When a company undergoes this process, 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.

7. 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."* Therefore, the reputation and character of the applicant is a material consideration. What is material is what others feel about the applicant who has criminal proceedings of the nature stated above pending against him. Does such a person inspire confidence of the stakeholders who can entrust him with property and management of the company under corporate insolvency resolution process? The answer is 'No'.

8. It is important to keep a person, which antecedents are doubtful, away from this noble profession. The Hon'ble Supreme Court in Delhi Administration and Ors. Vs. Sushil Kumar, decided the matter as follows: *"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found fit and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record and the view taken by the appointing authority in the background of the case cannot be said to be unwarranted as though the candidate was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint."*

9. 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 on the Board under regulation 8(3)(b) of the Regulations, reject the application of [REDACTED] for registration as an insolvency professional.

-Sd-
(Dr. M. S. Sahoo)
Chairperson

Date: 20th March, 2019
Place: New Delhi

Insolvency and Bankruptcy Board of India