

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

I. **Issue Involved:** Meeting the eligibility criteria by the individuals for being registered as Insolvency Professional

II. **Procedural requirements:**

(i) Box item 4.18 under Para 4.4.2 of Bankruptcy Law Reforms Committee inter-alia lays down that “No one will be allowed to perform the activities that an IP may perform, without being registered with the Regulator.” Further, “Only “fit and proper” individuals who clear the IP exam and satisfy an IP agency’s entry requirements will be issued membership certificates.”

(ii) Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) 2016 Regulations as amended w.e.f 1st April 2018, stipulates qualifications and experience “Subject to the other provisions of these regulations, an individual **shall be eligible for registration**, if he –

(a) has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency;

(b) has completed a pre-registration educational course, as may be required by the Board, from an insolvency professional agency after his enrolment as a professional member; and

(c) has-

(i) successfully completed the National Insolvency Programme, as may be approved by the Board;

(ii) successfully completed the Graduate Insolvency Programme, as may approved by the Board;

(iii) **fifteen years’ of experience in management, after receiving a Bachelor’s degree from a university established or recognised by law; or**

(iv) ten years’ of experience as –

(a) chartered accountant registered as a member of the Institute of Chartered Accountants of India,

(b) company secretary registered as a member of the Institute of Company Secretaries of India,

(c) cost accountant registered as a member of the Institute of Cost Accountants of India, or

(d) advocate enrolled with the Bar Council.”

(iii) **Refusal to grant certificate:** Section 8 of the regulation further lays down that,

“8 (3) After considering the explanation, if any, given by the applicant under sub-regulation (1), the Board shall communicate its decision to-

(a) accept the application, along with the certificate of registration, or

(b) reject the application by an order, giving reasons thereof, within thirty days of receipt of the explanation”

III. Facts of the case:

- (a) [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 Insolvency Professional Agency of Institute of Cost Accountants of India (**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 23rd September 2019 with a recommendation for registration of the applicant as IP.
- (b) While considering the aforesaid application for registration, the Board observed that the following experience as claimed by the applicant in the application is not supported by adequate documents:

Sl. No.	From	To	Employment / Practice	Experience
1	20.07.2004	31.07.2005	Avis Commercial Co Private Ltd, Assistant Manager	1 Year
2	01.08.2005	17.03.2019	HLP & Associates Chartered Accountants, Senior Manager	13 Years and 8 Months
3	18.03.2019	17.09.2019	[REDACTED], Partner	06 Months
Total				15 Years and 2 Months

- (c) Accordingly, vide communications dated 14th October 2019 through the concerned IPA, information was sought to substantiate the claim of work experience by way of providing authentic documents which can substantiate the claim.
- (d) IPA resubmitted the application along with additional information / documents on 23rd October 2019. Same day Board again wrote to IPA, while submitted additional documents are being examined, applicant may be asked to submit Form 16 to substantiate her income claims. On 24th October 2019, Applicant through IPA communicated that her salary being below the taxable limit, Form 16 has not been issued by the employer.
- (e) On 19th Nov. 2019, the application was returned to IPA for seeking their inputs/views/comments on eligibility of the applicant for registration as an IP and accordingly, re-submit the application. In response to this, IPA resubmitted the application along with their comments on 21st November 2019.
- (f) While considering the resubmitted application for registration, the Board observed that the documents furnished by the applicant are not sufficient to establish her work

experience as exhibiting the nature of experience in management as per regulation 5(c)(iii) of the Regulations which provides that an individual is eligible for registration as an IP, if he has fifteen years' of experience in management, after receiving a Bachelor's degree from a university established or recognised by law. The Board, therefore, had formed a *prima facie* opinion that registration as an IP ought not to be granted to the applicant and communicated the same vide an e-mail dated 6th December 2019 while also providing an opportunity to explain as to why her application should be accepted.

- (g) The applicant made her submissions vide e-mails dated 10th December 2019 and 12th December 2019 and requested to appear in person to represent her case. Vide e-mail dated 13th December 2019, the Board communicated the schedule of personal hearing to the applicant which was fixed for 18th December 2019.

VI. Outcome of personal hearing held on 18th December 2019

During the process of personal hearing, the applicant was asked to present her case and she was asked to specifically elaborate her response on issues emerging from the documents and asked to substantiate the following:

- a) Circumstances in which she was able to get the managerial post at the time of just concluding bachelor's degree without any prior work experience.
- b) Mode and manner of selection process.
- c) To explain her connection with the top management functionary who was been common thread in all the assignments she has handled.
- d) Explain the nature of managerial job she has handled to count it as relevant for being considered as IP.
- e) Provide the documentary evidence about the regular flow of income in commensuration with the job requirements.

Response of the Applicant

The applicant asserted that being meritorious student, on completion of graduation, the employer who was known to her, has not insisted for any other work experience relevant with the post. Technically other conditions were waived by the employer in consideration of merit of her case. Responding to a common thread a single employer across the firms she has worked with, she told the Board that [REDACTED] is a friend of her father. Notwithstanding, her promotions were reflection of her hard work and utility to the firm then any other consideration based on acquaintances. On work profile she mentioned that her career has been around accomplishing audit functions and her passion was driving her work ethos which she considered more valuable then the remuneration she was getting.

Outcome of personal hearing:

As assertions of the applicant were not backed by documentary evidence, in the context of natural justice, it was found appropriate to give some more time to the applicant to get the relevant documents collected. It was decided that the applicant may submit following additional documents and based on that case will be disposed on merits without any further need for hearing:

- Recruitment Rules of Avis Commercial Co. Pvt. Ltd since, the applicant submitted that she was promoted to the post of 'Assistant Manager' (upon completion of her graduation) from the post of 'Trainee.'
- Charter of duties/responsibilities as communicated to her by Avis Commercial Co. Pvt. Ltd and HLP & Associates at the time of joining as well as from time to time.
- Proof of salary payments made to her by previous employers including copy of cheques issued, bank statements/ledgers of entities indicating transfer of funds.
- Detailed Income-tax Return (including computation of total income) for the financial years from 2013-2014 till 2018-2019.

VII. Response of the Applicant

The applicant responded vide e-mails dated 31st December 2019 and 6th January 2020 and made her submissions along with additional documents.

VIII. Observation of the Board on the fresh evidence:

1. The applicant was working as a trainee with Avis Commercial Co Private Ltd and was promoted as an Assistant Manager (from a trainee) just after completion of bachelor's degree. Upon seeking proof in terms of recruitment rules of the organisation to indicate its policy to recruit incumbent trainee/employee on such an important managerial position without requisite experience, the applicant had furnished an **unsigned letter dated 22nd May 2015 reflecting the HR Policy document** (Ver 9. Effective from 1st June 2015) which indicated that the promotion may be considered to better match the skills and aspirations of the employee and spontaneous promotion may be granted if a business need arises. **As the document pertains to the period much after the time when the applicant had worked with this employer, the premise of her promotion/appointment as Assistant Manager could not be verified.**
2. Additionally, in support of the charter of roles and responsibilities communicated to her from time to time by her employers, the applicant had submitted appointment letter dated 1st July 2005 and another letter dated 12th July 2005 issued by HLP & Associates. **While the designation assigned to the applicant was found to be different in both these letters (viz. Assistant Manager mentioned in letter dated 1st July 2005 and Senior Manager mentioned in letter dated 12th July 2005), there was also material incongruence in the facts and contents mentioned therein like date of acceptance of offer by the applicant. This makes it difficult to establish the authenticity of these documents and the applicant possessing credible employment experience.**
3. **The Salary slips submitted for some selected month of 2017, 2018 and 2019 appear to be hastily prepared as columns of designation and date of joining are not filled in.** Only in the last slip of March 2019 as submitted by her designation as Senior Manager has been filled in.
4. Further, in order to substantiate her employment, the applicant denied in writing that Form 16 (issued under income-tax laws) was not required to be issued in her case. In view of this, she was asked to provide salary payment details by providing cheque details, bank details and copy of the ledger of the employers as a proof of being gainfully employed in managerial capacity. In response, she had submitted salary payslips for the

period January to March issued during the financial years 2016-2017, 2017-2018 and 2018-2019 by HLP & Associates. **Neither Cheque details in favour of receipt of salary from time to time nor the bank entries substantiating the regular credit flow of salary to her account has been provided.**

5. The applicant had also submitted a letter dated 15th October 2019 issued by HLP & Associates giving details of her CTC including salary, perquisite allowances (non-taxable) and conveyance expenses pertaining to financial years 2004-2005 till 2017-2018. Upon perusal of these documents, it is observed that the income of the applicant had crossed the thresholds of maximum amount of income not chargeable to tax under the tax laws applicable for the financial years preceding F.Y 2015-16 but still applicant failed to file any evidence to substantiate its claim of having earned salary income.
6. In the aforesaid context, it is also worthwhile to note that for a person claiming to have exemplary work experience of over 15 years in managerial capacity, the salary compensation could marginally increase from a range of Rs. 2 lacs to Rs. 5 lacs during such a significant long period and with majority stint being with one particular organisation. In common parlance, **it is difficult to appreciate the congruence of such compensation with the position claimed to have been held by the applicant over a long period of time.**
7. **Thus, taking into account all the above mentioned factors, the claim of having held a managerial role appears to be deceptive and can't be counted as experience within the meaning of regulation 5(c) (iii) of the Regulations for a person applying for an impeccable role of an IP.**

IX. Conclusions and grounds for rejection of Application

- (a) It is necessary to understand that as an IP is a key pillar of the Insolvency and Bankruptcy Code, 2016 (Code) and has an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms and individuals, there are certain minimum qualification and eligibility criteria which have been laid down for entry into this profession. Keeping in mind, such critical role of an IP, the Bankruptcy Law Reforms Committee (BLRC), which conceptualised the Code, had noted that *"In India today, there are professionals and intermediaries that offer services to resolve financial distress of both registered entities as well as individuals. These include lawyers, accountants and auditors, valuers and specialist resolution managers. However, given the critical role that the Code envisages for these entities in the resolution process, the Committee believes that the Board should set minimum standards for the selection of these professionals, along with their licensing, appointment, functioning and conduct under the Code."*
- (b) Moreover, on one hand, the regulations have specified the eligibility criteria for professionals such chartered accountant, company secretary, cost accountant, advocate while, on the other hand, for individuals having experience in management after securing a bachelor's degree. It is worthwhile to note that the regulations have also distinguished the aforesaid eligibility criteria by the number of years of prior experience which is required i.e. for professionals, 10 years' experience and for others 15 years of experience in management. Thus, for an applicant to become eligible as per the latter criteria, additional number of years of experience needs to be demonstrated when compared with the experience held by a professional.

- (c) I have considered the oral and written submissions made by the applicant, recommendation of the IPA and after considering material available on record, I find that the **applicant has not been able to furnish adequate documentary proof in respect of nature of assignment handled by her in managerial capacity which could be considered as possessing a gainful employment for being counted as experience in management.**
- (d) **Her selection for the stated post does not refer to any market driven selection on merits.** Further, any rigorous selection process which is, normally, associated with such a placement in any firm is also found to be absent.
- (e) Other considerations are apparent as she has herself stated that **there is a common linkage in terms of top management across her employers during her stint with these organisations as a person at organizational helm was friend of her father.**
- (f) **Additionally, the present address of the applicant (including address for correspondence as well as permanent address) as well as the address of her three employers was also observed to be similar and all these parties are apparently related to the applicant.** The aforesaid facts fortify doubts over the veracity of the documents furnished by the applicant in support of her experience in management.

X. Decision:

In view of the foregoing, I, in exercise of powers under regulation 8(3)(b) of the Regulations, reject the application of [REDACTED], for registration as an Insolvency Professional.

- XI.** The IPA needs to take serious note of the lapses in processing of such applications before recommending them to IBBI and needs to comprehensively review its process of scrutiny of applications to avoid recurrence. Had the IPA been diligent in its statutory duties, the efforts and resources spent on processing this application could have been avoided.

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(Sudhaker Shukla)

Whole-time Member

Insolvency and Bankruptcy Board of India

Date: 21st January 2020

Place: New Delhi