

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

IN THE MATTER OF APPLICATION OF ██████████ 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. ██████████
(hereafter 'the applicant') was enrolled on 24th March, 2017 as a professional member of the Insolvency Professional Agency of Institute of Cost Accountants of India (hereafter, 'the IPA'). He submitted an application dated nil under regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter 'Regulations'), through the IPA, seeking certificate of registration as an Insolvency Professional (hereinafter 'IP'). The application was forwarded by the IPA to the Insolvency and Bankruptcy Board of India (hereafter, 'Board') on 26th March, 2017 with a recommendation for registration.
2. The regulation 5(b) of the Regulations requires an individual to have fifteen years' experience in management after he received a Bachelor's degree to become eligible for registration as an IP. The applicant has submitted in the application that he has a total experience in management of fifteen years and ten months, that is, from May, 2001 till March, 2017. The experience in management comprised as under:
 - (i) as a stipendiary officer trainee with Standard Chartered Bank for one year;
 - (ii) as a regional sales manager with Standard Chartered Bank from 22nd January, 2003 to 14th May, 2010; and
 - (iii) in self-employment with Alleato Advisory Services Private Limited, Gurgaon (hereafter, 'Alleato') from 15th May, 2010 till March, 2017 comprising:
 - (a) as Director with Alleato from 15th May, 2010 to 1st August, 2010;
 - (b) as Executive Director with Alleato from 2nd August, 2010 till March, 2017 with a salary of Rs.25,000 per month and an annual bonus of 33% of the profits;
 - (c) as student of full time one year post graduate programme in management (PGPM) at Indian School of Business, Hyderabad (ISB) from 11th April, 2011 to 7th April, 2012.
3. On seeking a clarification, the applicant, vide his mail dated 5th April, 2017 stated that he was working as an Executive Director of Alleato during the PGPM and was discharging all his official responsibilities during that time. He produced a testimonial dated 30th March, 2017 from Alleato stating that the applicant has been managing the affairs of Alleato since August, 2010. The testimonial further stated that it had been internally decided to reimburse all expenses on PGPM to him in the form of a special bonus after the company achieves a revenue of Rs.5 crore. Vide his e-mail dated 10th April, 2017, he clarified that he did not draw salary from Alleato since December, 2009 till August, 2012.

4. From the above, it appeared that the applicant does not have 15 years of experience in management, as required under regulation 5(b). The Board accordingly formed a *prima facie* opinion that the registration ought not to be granted to the applicant as he does not meet requirements under regulation 5(b). It communicated, vide its letter dated 26th April, 2017, its prima facie opinion along with the reason for the same and provided an opportunity to explain why his application should be accepted, within 15 days of the receipt of the communication.
5. The applicant, vide his e-mail dated 28th April, 2017, explained that the PGPM was one of his job objectives. While pursuing the PGPM, he travelled six times to Delhi for work. He stated that the PGPM has classes for around 20 hours a week and hence he was available at ISB for the remaining time for work. He wanted an opportunity to present his case in person.
6. Accordingly, the applicant was provided with an opportunity to present his case in person on 8th June, 2017 when he reiterated his earlier submissions. To a query if he is eligible for registration as an IP as he is in employment as Executive Director of Alleato, he has clarified, vide his mail dated 7th June, 2017, that he is not an employee and the salary mentioned earlier was indicative. He has produced a testimonial dated 9th June, 2017 from Alleato to the effect that the applicant is not drawing any salary from Alleato from 1st April, 2017.
7. In support of the claim that the period of post-graduate programme in management should count towards experience of management, the applicant has cited:
 - (i) the judgement dated 2nd August, 2004 in the matter of Kesari Devi vs. Municipal Corporation of Delhi [WP(C) 7560/2001] available at: www.delhicourts.nic.in/aug/7560.htm, where Hon'ble High Court of Delhi held that the period of adhoc service shall be included in qualifying service for pension, while observing: "qualifying service is to commence from the date of taking charge either substantively or in an officiating or temporary capacity."
 - (ii) regulation 11 of the All India Service (Study Leave) Regulations, 1960 which counts study leave for promotion, pension, etc.
 - (iii) an UGC clarification available at: http://ugc.ac.in/pdfnews/4478237_UGC-clarification-.pdf: "the period of active service spent on pursuing Research Degree i.e. for acquiring Ph.D. degree simultaneously without taking any kind of leave may be counted as teaching experience for the purpose of direct recruitment/promotion to the post of Associate Professor and above."
8. Since testimonials were produced from Alleato, the officers of the IBBI visited the web site: <http://www.alleato.co.in/core-team/> on 19th May, 2017. It is stated therein that the applicant is the first member of the two-member core team of the company, the other being [REDACTED]. On its page, <http://www.alleato.co.in/organisational-overview/>, it is stated: "We are promoted by Qualified Insolvency Professionals with accreditation from Insolvency and Bankruptcy Board of India."
9. I have considered the application, recommendation of the IPA, the explanations submitted by the applicant, and other material available on record.
10. It has been very difficult to glean the facts from the material provided by the applicant. Nevertheless, what emerges is as under:

- (i) The applicant has produced a testimonial dated 2nd August, 2010 to the effect that he was appointed as an Executive Director on a monthly salary of Rs.25,000 plus annual bonus. In the application, he has stated that he was still working as an Executive Director. He has subsequently produced a testimonial dated 31st March, 2017 to the effect that he has been working as Executive Director from 2nd August, 2010. As per web site of the company, he is a member of the core team of the company. When he was asked if he is in employment that makes an individual ineligible to be registered as an IP, he has clarified that he is not in employment and the salary stated earlier was only indicative. He produced a testimonial dated 9th June, 2017 to the effect that he is not drawing any salary from 1st April, 2017. From this, I find that the applicant is employed as an Executive Director, is a member of the core team and is entitled to salary and bonus. Only to counter his ineligibility, he has produced a testimonial to the effect that he stopped drawing salary immediately after he applied for registration as an IP. In any case, drawing of salary is no test of employment. Since he is employed, he is not eligible for registration as an IP.
- (ii) The applicant has clarified vide his mail dated 10th April, 2017 that he was not drawing salary during the period of PGPM. He has produced a testimonial to the effect that the cost of PGPM has not yet been borne by Alleato. He has stated that PGPM is a full time programme. Yet, he has produced several testimonials that he was in employment as Executive Director during PGPM. I find it difficult to believe that the applicant was simultaneously in full time employment as Executive Director of a company at Gurgaon and full-time student of PGPM at Hyderabad. It is also difficult to believe that the post graduate study was the objective of employment. Hence, the period of PGPM cannot count towards experience in management. If the period of PGPM is excluded, the applicant does not have the required experience and is not eligible for registration as IP.
- (iii) The applicant has made certain citations, as stated in Para 7 above, in support of his claim that PGPM is experience in management. These citations consider the periods of adhoc service, study leave, active service for pursuing research degree, etc. towards qualifying service at the same employment in the same organisation, that too, when the person is paid salary and cost of study is borne by the employer. Hence these situations are not comparable with the PGPM of the applicant. If the arguments of the applicant is accepted, the period of PGPM will not count towards experience in management where an individual has joined it after quitting a job and will count towards experience in management where he has joined the same PGPM without quitting the job. This would be absurd.
- (iv) I am not examining if the role of stipendiary officer trainee can be considered experience in management, as the applicant is otherwise ineligible.

11. 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.

12. I cannot, however, lose sight of the fact that Alleato has misrepresented on its web site that it has been promoted by Qualified Insolvency Professionals with accreditation from Insolvency and Bankruptcy Board of India. I advise the Board to take appropriate action

permissible under the Code against Alleato, its Board of Directors and its core team members.

Date: June 29th, 2017

Place: New Delhi

(Dr. Navrang Saini)
WHOLE TIME MEMBER
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA