

**Insolvency and Bankruptcy Board of India**

**IN THE MATTER OF APPLICATION OF ██████████ FOR GRANT OF  
CERTIFICATE OF REGISTRATION AS AN INSOLVENCY PROFESSIONAL  
UNDER REGULATION 6 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. ██████████ (hereinafter ‘the applicant’), resident of ██████████, had submitted an application under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter ‘IP Regulations’), through the Indian Institute of Insolvency Professionals of ICAI, (hereinafter called “IIPI”), seeking certificate of registration as an Insolvency Professional (hereinafter ‘IP’). The IIPI forwarded the application to the Insolvency and Bankruptcy Board of India (hereinafter, ‘Board’) on 9<sup>th</sup> October, 2017.
2. The Board, while processing the application sought for further information vide e-mail dated 20<sup>th</sup> October, 2017. The applicant, vide e-mail dated 23<sup>rd</sup> October, 2017 submitted a copy of the letter dated 16<sup>th</sup> July, 2007, written by ██████████ to the Sr. Inspector of Police, Mumbai for registration of FIR, representation made by the applicant to the National Commission for Woman and resignation letter of ██████████. On perusing the application and the material available on record, the Board has observed as under : -
  - i. ██████████, a Director in the TS practice of ██████████ (“hereinafter the complainant”), vide letter dated 16<sup>th</sup> July, 2007 had requested the Sr. Inspector of Police, Mumbai for registration of a FIR against one of the senior partners of ██████████ for outraging her modesty with an intention to insult in front of clients, peers and others. She also made allegation that the applicant had aided and abetted the offence of outraging her modesty with an intention to insult her.
  - ii. As mentioned in the application, the Police Report charges the applicant under section 509 of the Indian Penal Code, 1860 (hereinafter ‘IPC’) i.e. *“509. Word, gesture or act intended to insult the modesty of a woman - Word, gesture, or act intended to insult the modesty of a woman – Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”*
  - iii. The applicant has submitted that the matter is pending before the Metropolitan Court, Mumbai, since 2007 and there have only been postponements till date. The latest hearing was on 16<sup>th</sup> February, 2013 and thereafter, one of the senior partner against whom case was filed has appealed before the Hon’ble High Court for quashing the matter. Hence, the hearing in the lower courts has been deferred until High Court’s appeal is cleared.

3. Accordingly, the Board formed a prima facie opinion that the registration ought not be granted to the applicant, as he was not found to be a fit and proper person to be appointed as an IP. The Board communicated, vide an email dated 17<sup>th</sup> November, 2017, 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. It also offered an opportunity to seek personal hearing. The applicant vide e-mail dated 18<sup>th</sup> November, 2017 contended that *“All the same, Regulation 4 (eligibility for registration as IP talks about Conviction). Based on the above facts, there is no conviction but just criminal proceedings which require disclosure in the application form which I have duly done....Accordingly, I would like to state that I am eligible under Regulation 4 of the Rules”*. Further, the Board vide e-mail dated 4<sup>th</sup> December, 2017 has sought point wise clarification on the allegations made by the complainant in her letter dated 16<sup>th</sup> July, 2007 written to the Sr. Inspector of Police, Mumbai for registration of a FIR to which a detailed response was submitted by the applicant vide e mail dated 12<sup>th</sup> December, 2017.
4. ██████████ appeared before me on 24th January, 2018 and reiterated the submissions made earlier.
5. Let me now turn to the purpose of the Code and the role of an IP therein. The Code essentially provides a market mechanism for time bound and 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 all the time. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, and individuals. Take 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 and he exercises the powers of its Board of Directors. Such a 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. The Board needs to take into account the charge sheet, including the gravity of the offence/s and the punishment such offence/s may attract, if charges are established, to determine if the applicant has the required integrity, reputation and character to be eligible for registration as an IP.
6. The integrity, conduct, reputation, character and competence of the applicant are of material consideration. It is material to note how/ what others feel about the applicant who has been charge -sheeted for offence under section 509 of the Code i.e. for word, gesture or act intended to insult the modesty of a woman, using foul language, ill – treating etc. Pendency of such cases questions the conduct, behaviour of an individual which impacts his reputation.
7. The Hon’ble Supreme Court in Avtaar Singh v. Union of India & Ors. [With SLP [C] Nos.4757/2014 and 24320/2014] observed *“it cannot be disputed that the whole idea of verification of character and antecedents is that the person suitable for the post in*

*question is appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post.”*

8. I find that though the allegations are yet to be established before the Hon'ble Court, I am no authority to ascertain, if the charge levelled will sustain or not. Pendency of serious charge under section 509 of the IPC which attracts punishment of simple imprisonment for a term which may extend to one year, or with fine, or with both, is material.
9. In view of the foregoing, I find [REDACTED] not a fit and proper person for registration as an IP. I, therefore, 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.

Date: 26.02.2018

Place: New Delhi

Sd/-

(Dr. Navrang Saini)  
Whole Time Member  
Insolvency and Bankruptcy Board of India