

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

4th February 2022

**IN THE MATTER OF APPLICATION OF [REDACTED]
[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]
[REDACTED], had submitted an application on 27th June 2021 (i.e., date of payment of
fee), under regulation 6(1) of the IBBI (Insolvency Professionals) Regulations, 2016
(**Regulations**) seeking a certificate of registration as an insolvency professional (IP). The [REDACTED]
[REDACTED], where the applicant is enrolled as a
professional member, forwarded the application with a recommendation for registration of the
applicant as an IP.

2. Regulation 5(c)(iii)(c) of the Regulations stipulate that an individual shall be eligible to be
registered as an IP if he has experience of fifteen years in management after receiving a
bachelor's degree from a university established or recognised by law or an Institute approved
by All India Council of Technical Education.

3. While considering the aforesaid application, it was observed that under Part C of 'Form A,'
the applicant had claimed 18 years and 3 months of work experience in the areas of
'Managerial, Taxation, Audit & Budgets' through an employment with a firm namely [REDACTED]
[REDACTED], during the period 10th September 2002 to 1st December 2020
while holding the designation as 'Head & Lead Consultant.' Also, the applicant had furnished
a letter dated 24th March 2021 issued by [REDACTED], giving details
of various designations held by the applicant from time to time, during the aforesaid
employment. These details are tabulated below:

S. No.	From / To Date	Designation and Role	Duration of work experience (approx.)
1	10/09/2002 to 23/01/2005	Manager- Taxation & Audits	2 years & 4+ months
2	24/01/2005 to 12/12/2007	Senior Manager- Taxation & Audits	2 years & 10+ months
3	13/12/2007 to 23/04/2010	Team Manager- Management Consultancy, Reporting Tax, Audits & Budgets	2 years & 4+ months
4	24/04/2010 to 09/11/2014	Head- Taxation, Audits, MIS, Financial Accounting	4 years & 6+ months
5	10/11/2014 to 01/12/2020	Head & Lead Consultant- Financial & Management Consultant	6+ years

Total	18 years and 3 months
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4. The Board, upon examination of the application, found the supporting documents furnished by the applicant as inadequate to establish the nature of work experience of the applicant, as experience in management. Thus, a question that arose for consideration was as to how the experience has been corroborated and established to determine his eligibility. Accordingly, necessary clarifications were sought from IPA. Subsequently, IPA vide its letter dated 23rd July 2021 *inter alia* submitted that “we are satisfied that [REDACTED] is eligible for registration as an Insolvency Professional.” Vide said letter, IPA also furnished to the Board, a copy of another letter dated 1st March 2021 issued by [REDACTED], giving details of job description of the applicant. It is not clear as to why the applicant did not furnish the aforesaid letter dated 1st March 2021 along with his application.

5. After consideration of the resubmitted application, along with its clarifications, the Board did not find the documents/clarifications as satisfactory to establish required experience in management. Thus, the Board formed a *prima facie* opinion that registration ought not to be granted to the applicant and communicated the same to him on 2nd August 2021. In response, and as requested, the applicant availed an opportunity for a hearing before me on 9th September 2021, while submitting additional documents during the interim. Post hearing, the applicant made further submissions including the last one made on 7th January 2022.

6. The application, oral and written submissions made by the applicant, and the material available on record have been considered. It is also observed that in support of credibility of his employer, the applicant has furnished documents such as copy of acknowledgement of Form ITR 5 filed by the firm with the income-tax authorities, copy of information on status of empanelment of the firm with Office of CA&AG, and details of registration of the firm with Institute of Chartered Accountant of India (ICAI).

7. Further, upon seeking records to substantiate his employment such as appointment letter, promotion letter(s), statutory documents like Form 16, audited books of accounts of the firm, the applicant has furnished letter of appointment dated 30th August 2002, promotion letter dated 15th January 2005, letter of promotion dated 6th December 2007, promotion letter dated 12th April 2010, letter of promotion dated 6th November 2014 and experience letter dated 7th January 2022. While the said letters depict his designation and salary, there is no mention of his job description. It is only in the subsequent letters dated 1st March 2021 (submitted by IPA on 23rd July 2021 and resubmitted by applicant on 15th August 2021) and 24th March 2021 issued by the employer, that the job description of the applicant is found to be outlined.

8. It is further observed that the letter dated 1st March 2021 (resubmitted by applicant on 15th August 2021) provide for additional information about the employee strength and turnover of the firm. The letter mentions that the firm has around 30 individuals employed comprising of qualified chartered accountants (CAs), semi-qualified CAs, audit assistants, articles, management consultant, computer data operator and that its turnover was in the range of Rs. 9 to 12 lacs approx. during the financial years 2018-19, 2019-20 and 2020-21. However, it is difficult to establish the nature of experience of the applicant as experience in management, basis this information.

9. The applicant has also furnished copy of annual pay slips from financial years 2007-08 to 2016-17, year 2018, 2019 and 2020 as a proof of being gainfully employed with the firm. The incorrect permanent account number (PAN) reflecting on these documents make it difficult to

establish their authenticity. Moreover, the bank account number has been mentioned on these documents, however, applicant has not furnished any proof towards receipt of salary into his account as an additional proof to corroborate the experience claimed by him. Vide his communications dated 9th November 2021 and 7th January 2022 read with communication dated 24th November 2021, the applicant expressed his inability to furnish any supporting documents, other than those already submitted by him.

10. For the individual statutory records, applicant has submitted copy of acknowledgement of ITR-4 for financial years from 2006-07 to 2014-15 (except 2011-12) and of ITR-1 from financial years 2015-16 to 2019-20. These documents indicate that for majority of the duration, applicant has filed return in the category of 'income from business or professions' which may or may not have included 'income from salaries'. To this effect, the applicant could not furnish copy of complete income-tax return forms instead he has furnished self-certified statement of income depicting computation of income and tax. Moreover, the applicant also expressed inability to submit copy of statutory document(s) issued by the employer while stating that old records of Form 16 (issued under income-tax laws) are not available for download from the new income-tax website. It is difficult to discern that applicant was not in possession of his crucial statutory records for any of the years for which experience has been claimed. The nature of association of applicant with the firm is also not clear from the records. While the applicant has claimed his experience as 'experience in employment', however, the aforesaid documents indicate a combination of different nature of experience. Thus, the applicant has failed to substantiate his claim of possessing credible employment experience.

11. It is pertinent to note that an IP is entrusted with the duty of management of affairs and operations of a corporate debtor. Such managerial competence comes from experience in management which primarily involves getting things done through and with the help of people and comprises functions such as planning, organizing, staffing, directing, and controlling. 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.

12. Further, employment is a sort of a contract between the employer and the employee, wherein, in lieu of the services rendered by the employee, compensation by way of salary/ remuneration is paid. Under the Contract Act 1872, there are four things to consider with regard to employment contract, first, offer made by the employer, second, acceptance of the offer by the employee, third, clear communication between the employer and the employee and lastly, consideration, without which a contract is incomplete. Employment, therefore, is directly related to the remuneration paid by employer as nobody generally works for free. If the certificate of employment or pay slip issued by the employer indicates payment of salary with bank account number of the employee, then it should be supported with documentary evidence about deposit/ transfer of the same, from the bank account of the employer to that of the employee.

13. The applicant has provided the experience certificate from [REDACTED], mentioning the details about the period of employment and per month salary.

However, in spite of repeated requests to him over a course of time and specifically by email dated 21st December 2021, he has not been able to provide any corroborative document which shows payment of salary from [REDACTED], to him.

14. Furthermore, the firm [REDACTED], where the applicant was apparently employed, has shown its turnover in financial year 2018-19 as Rs. 9,83,010/-. However as per the statement of Income of the applicant, he has been paid Rs. 5,97,700/- in the same financial year. It is not understood how a firm of five qualified Chartered Accountants and 25 other employees can pay approximately Rs. 6 lakhs, which is over 61% of its turnover in above stated financial year, to one single employee. Similarly, Statement of Income for financial year 2019-20, indicate a similar pattern of significant proportion of salary, where applicant has been paid Rs. 4,42,500/- even though the turnover of the firm was Rs. 12,16,935/-.

15. Additionally, the applicant has claimed employment with the firm from 10th September 2002 to 1st December 2020. However, in the pay slips issued by [REDACTED], though the total days have been mentioned as 300 days, effective working days has not been mentioned in the pay slips of 2012-13, and 2013-14. For the year 2014-15, the pay slip indicates only 144 effective working days of the applicant.

16. It is prudent to mention that under the provisions of Income Tax Act 1961, an employer is required to issue Form 16 to the employee and after the end of the financial year, an employee is required to file income tax return (ITR) wherein the details of employer are reflected. Also, the Form 26AS available on the income-tax portal in taxpayer's individual account depicts the details of tax deducted at source along with the name of employer. The same is also not available on records. Though, the applicant has provided pay slips from [REDACTED], and self-attested copies/ acknowledgement of ITR filed, he has not provided the copy of Form ITR-1 and ITR-4, which indicate the source of the income (in case of salaried employee, name of organisation from which the salary has been received.)

17. On careful consideration of the instant application, it is found that the applicant has not been able to furnish adequate documentary proof in respect to nature of experience which could be considered as possessing a gainful employment for being considered as experience in management. Thus, taking into account all the above-mentioned factors, the applicant's claim of having held a credible employment experience in the nature of experience in management appears to be inadequate, and cannot be considered as experience within the meaning of regulation 5(c)(iii)(c) of the Regulations for a person applying for an impeccable role of an IP.

18. In view of the foregoing, it is found that the eligibility of the applicant for grant of certificate of registration as an insolvency professional as stipulated under the Regulations is not being established with the information/ documents/ clarifications provided by the applicant and IPA. Thus, in exercise of powers under regulation 8(3)(b) of the Regulations, the application of [REDACTED] for registration as an insolvency professional is rejected.

-Sd-

(Dr. Navrang Saini)

Whole Time Member

Insolvency and Bankruptcy Board of India

Date: 4th February 2022
New Delhi