

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

(Membership Committee)

ICSI IIP/MC/1/2019

Date:

IN THE MATTER OF APPLICATION OF MR. BHUMITRA VINODCHANDRA DHOLAKIA FOR GRANT OF CERTIFICATE OF ENROLMENT AS AN INSOLVENCY PROFESSIONAL UNDER BYE LAW 10 OF THE BYE LAWS OF ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

ORDER

UNDER BYE LAW 10 (9) OF THE BYE LAWS OF ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

- Mr. Bhumitra Vinodchandra, the applicant, submitted an application for enrolment as an Insolvency Professional to the ICSI Institute of Insolvency Professionals on 11th March, 2019. While examining the application of Mr. Bhumitra Vinodchandra, it was observed that he fulfils all the criteria for enrolment as an Insolvency Professional except that three criminal proceeding are pending against the applicant. Two under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 and one before Deputy Registrar, MHADA, Bandra East, Mumbai. In view of the same, his application for enrolment as an Insolvency Professional was rejected by ICSI IIP on 9th August, 2019.
- Mr. Bhumitra Vinodchandra filed an appeal against the rejection of application for enrolment before the Membership Committee of ICSI Institute of Insolvency Professionals on 17th August, 2019. The matter was placed before the Membership Committee at its 2nd meeting held on 20th August, 2019. As per the decision taken by the Membership Committee an email was sent to Mr. Bhumitra Vinodchandra on 18th September, 2019 to submit submissions as to why his appeal should be considered and his application should not be rejected as per the directions of the Membership Committee. Mr. Bhumitra Vinodchandra vide his e-mail dated 27th September, 2019 filed his submissions. The submissions made by Mr. Bhumitra Vinodchandra were sent to the Membership Committee for its consideration and decision on 19th November, 2019.
- The Membership Committee was of the view that the applicant was independent non executive director in Calyx Chemicals and Pharmaceuticals Limited and he had resigned on 30th November, 2013. The cheque of SBI Global Factor Limited was dishonoured on 20th March, 2014 and cheque of SBI Global Factor Limited was dishonoured on 9th February, 2019. These dates are much after the date of resignation of the applicant.
- The membership committee relied upon the decision of Hon'ble Supreme Court in the matter of Harshendra Kumar D. Vs. Rebatilata Koley wherein it held as follows:

"Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court.

- Further, the membership committee also relied upon the decision of Hon'ble Bombay High Court in the matter of Baba Chandrashekhar Radhakrishnan Vs. The State of Maharashtra wherein it held as follows:

"Looking to the facts and circumstances of the case and law laid down by the Supreme Court, I am of the opinion that the present applicants have already resigned from the posts of directors. Secondly there are no specific and sufficient allegation against the applicants that they were looking Cri.Appln.813.17.odt after and responsible for day today affairs of the company. Thus for the reasons stated above, application is allowed and the relief is granted in terms of prayer clause B. Application is disposed of."

- With reference to the other matter pending with Maharashtra Cooperative Societies Act, 1960 the Committee took note that the Registrar has withdrawn the notice which was issued under Section 75(5) of the Maharashtra Cooperative Societies Act, 1960.
- In view of the aforesaid the Membership Committee decided that the application of Mr. Bhumitra Vinodchandra for enrolment as an Insolvency Professional should be considered and approved by the ICSI Institute of Insolvency Professionals.

Mr. Ashishkumar Chauhan
Chairman, Membership Committee

Dated:

Place: