

**ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
(Membership Committee)**

ICSI IIP/MC/2/2020

Date: 25th March, 2020

**IN THE MATTER OF APPLICATION OF MR. ANKIT GARG FOR GRANT OF
CERTIFICATE OF ENROLMENT AS PROFESSIONAL MEMBER 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**

An appeal is preferred by Mr. Ankit Garg (appellant) before the Membership Committee of ICSI Institute of Insolvency Professionals (ICSI IIP) against the rejection of enrolment application by the ICSI IIP.

The brief facts of the case are as mentioned below:

1. Mr. Ankit Garg had submitted an application for enrolment as Professional Member to the ICSI Institute of Insolvency Professionals on 18th September, 2019.
2. The application was rejected on the following grounds:
 - Non Disclosure of fact that Disciplinary Proceedings were pending against the applicant with IIIPI of ICAI which implies that on the date of filing of application he was not complying with the criteria mentioned in the Regulation 4(g) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (“IP Regulations”).
 - Non disclosure of the fact that his application was pending with Indian Institute of Insolvency Professionals of ICAI and same had not been withdrawn.
3. Information regarding pendency of disciplinary proceedings and enrolment application of the applicant was intimated by IIIPI of ICAI on pursuance of verification mail from Institute of Chartered Accountants of India (ICAI) as he is also a member of ICAI.
4. The order declaring the appellant ‘Not Guilty’ was passed on 3rd February, 2020, which was after the lapse of duration within which an applicant should be enrolled with the Insolvency Professional Agency. The appellant had cleared the LIE on 11th October, 2018, accordingly he was required to get himself enrolled by 11th October, 2019. Since disciplinary proceedings were pending against the appellant, ICSI IIP could not enrol him due to non disclosure of complete information and pending disciplinary proceedings. *As per Regulation 5(a) of IP Regulations an individual shall be eligible for registration as an Insolvency Professional if he has passed the Limited Insolvency Examination (LIE) within twelve months before the date of his application for enrolment with the insolvency professional agency.*

5. Every applicant while filing of application for enrolment at the ICSI IIP portal gives a declaration in **Clause F** of the application form that :
- He has no pending/concluded disciplinary proceedings against me (if yes, please provide relevant documents).
 - He has not applied for enrolment as an Insolvency Professional with any other Insolvency Professional Agency (Yes/No).
 - If yes, his application is pending/rejected by other Insolvency Professional Agency (provide relevant documents in this regard).

The applicant has submitted the declaration and signed form without going through the same as per our observation

In view of the aforementioned facts and circumstances, his application for enrolment as a Professional Member was rejected by ICSI IIP on 21st February, 2020.

On aggrieved against the rejection of application for enrolment Mr. Ankit Garg filed an appeal before the Membership Committee of ICSI Institute of Insolvency Professionals on 24th February, 2020 on the following grounds:

- (i) As per Regulation 4(g) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 “ *no individual shall be eligible to be registered as an insolvency professional if he is not a fit and proper person*” and merely on the pending disciplinary proceedings, a person cannot be construed as “not a fit and proper person” as per the said regulation where appellant has not been found guilty of any professional misconduct or no disciplinary action has been taken against him by the professional body.
- (ii) Disciplinary Proceedings was initiated on the basis of complaint filed by ex-wife of the appellant vide letter dated 18th September, 2015. However Institute of Chartered Accountants of India(ICAI) issued a Good Standing Certificate in favour of the Appellant on 21.07.2015 which was valid till six month from the date of issue i.e. upto 20th January, 2016. So his conduct and character was good in the records of ICAI.
- (iii) ICSI IIP vide its mail dated 29th January, 2020 had intimated to the appellant that the application of the appellant for enrolment is pending because of disciplinary proceedings and application for enrolment pending with IIIPI of ICAI. In this regard appellant is of the view that as per order dated 3rd February, 2020, he is found ‘No Guilty’ and the Disciplinary Proceedings have been closed so there remains no reason for rejection of application for enrolment on the grounds of disciplinary proceedings pending on the date of filing of application for enrolment.
- (iv) There is no specific clause in the entire application for enrolment to disclose the fact relating to pending application with any other Insolvency Professional Agency, the clause is in relation to disclosure of information related to rejection of any application by Insolvency Professional Agency.

The Membership Committee carefully examined the application submitted for enrolment, email communications, submissions of appellant and other documents available on record.

The undisputed facts of the case are as under:-

- (i) The appellant had filed application with all the Insolvency Professional Agencies without disclosing the same.
- (ii) The appellant had tried to mislead the agency by concealing the required information in the enrolment application form and disciplinary proceedings.

Therefore, the Membership Committee of ICSI IIP relied upon the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (“IP Regulations”) and Model Bye Laws :

- Regulation 4(g) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

“no individual shall be eligible to be registered as an insolvency professional if he is not a fit and proper person”

- As per Regulation 5(a) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

“an individual shall be eligible for registration as an Insolvency Professional if he has passed the Limited Insolvency Examination (LIE) within twelve months before the date of his application for enrolment with the insolvency professional agency.”

- Clause 10(5) of Bye – Laws of ICSI Institute of Insolvency Professionals

The Agency may reject an application if the applicant does not satisfy the criteria for enrolment or does not remove the deficiencies or submit additional documents or information to Its satisfaction, for reasons recorded in writing.

In view of the aforementioned facts and on the basis of information and documents available on record, the Membership Committee has decided to dismiss the appeal.

Appellant can make fresh application after complying with the requisite guidelines and disclosures as per Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and Model Bye Laws of the Agency without repeating similar action in future.

Sd/-

(Ashish Kumar Chauhan)

Chairman, Membership Committee

For and on behalf of Membership Committee of ICSI IIP