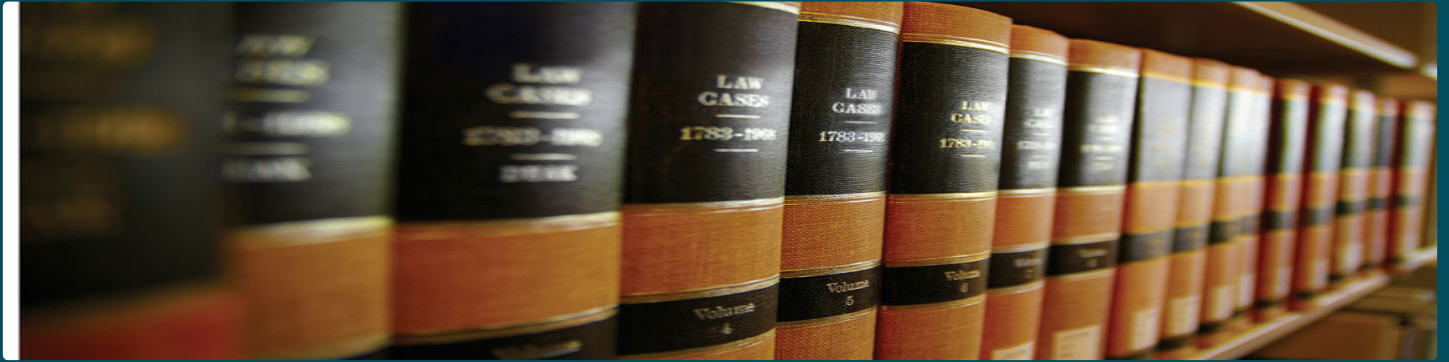




COMMERCIAL/CORPORATE

Insolvency Professional cannot play two roles viz. 'profession' and 'employment' simultaneously

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The Insolvency and Bankruptcy Board of India (“IBBI”), the regulatory body constituted under the Insolvency and Bankruptcy Code, 2016 (the “Code”), in its first order rejected an application for registering an Insolvency Professional (“IP”). The order has been issued in an application submitted by the vice president of a leading accountancy firm under the IBBI (Insolvency Professionals) Regulations 2016 (“Regulations”) for registering his self as an IP. Under the Regulations, an individual registered with an Insolvency Professional Agency (“IPA”) as a professional can make an application for registration as an IP. In this case, the Indian Institute of Insolvency Professionals of ICAI was the IPA, which recommended the registration.

IBBI rejected the application on the ground that the applicant is currently under employment and the code of conduct specified in the Regulation requires that an IP must not engage in ‘any employment’.

The applicant on his behalf contended that the code of conduct only prohibits an IP from employment with the entity where he was appointed as a resolution professional, liquidator, bankruptcy trustee etc. as the objective was to maintain independence and avoid conflict of interest. The applicant also argued that the requirements of the code of conduct cannot be used to determine the eligibility for registration as an IP.

IBBI rejected the arguments of the applicant on the following grounds:

1. IBBI held that the code of conduct requires that an IP must not engage in ‘any employment’, therefore an employed person cannot hold registration as an IP. It envisages that a person must not play two roles- profession and employment – simultaneously. It is similar to the requirement that a person in employment cannot practice as an advocate and vice versa.
 2. IBBI rejected the contention that the objective of the above requirement is to avoid conflict of interest on the ground that there are many other provision under the Regulations to avoid such conflict. According to IBBI, the sole objective behind such a requirement is that a professional must have undivided loyalty and unflinching attention towards his professional obligations. IBBI observed the crucial role played by the IP under the Code such the requirement that the IP has to submit the resolution plan within 180 days of the resolution commencement, beyond which the corporate is pushed into liquidation. Therefore, according to IBBI, it is beyond comprehension to have an employed person simultaneously act as an IP. The objective of the clause was total commitment for the profession. The only exception is the provision, which allows an IP to temporarily surrender the registration and thereafter engage in employment. However, this is only an exception and this exception does not allow a person to engage in employment without surrendering registration.
- IBBI also rejected the contention that the requirements of the code of conduct cannot be used to determine the eligibility for registration as an IP. According to IBBI, the Regulations require an IP to follow the code of conduct always. The code of conduct does not allow an IP to engage in any employment. The current applicant is engaged in an employment. Assuming the code of conduct is not an eligibility requirement, as contended by the applicant, what purpose would it serve if IP cannot render services as an IP after granting registration? He would be violating the code of conduct the moment he is granted the registration.

The order is significant as it clarifies current confusion regarding the eligibility of an IP. From a regulatory perspective, the order makes it clear that the requirement of the code of conduct shall be read together with provisions of the regulations.A