

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

[Authority delegated by the Central Government under section 458 of the Companies Act, 2013 read with rule 2(1)(b) of the Companies (Registered Valuers and Valuation) Rules, 2017.]

IBBI/Valuation/Disc./2/2020

24th November, 2020

Order

In the matter of PVAI Valuer Professional Organization, under rule 17 of the Companies (Registered Valuers & Valuation) Rules, 2017

This Order disposes of the Show Cause Notice ('SCN'), dated 17th June, 2020 issued to Mr. Avinash Pendse, who is Managing Director of the PVAI Valuer Professional Organisation ('PVAI-VPO') registered with the Insolvency and Bankruptcy Board of India ('IBBI') as a registered valuer organization in all the three asset classes *vide* registration number IBBI/RV/2018/007.

2. Background

- 2.1 The IBBI has been delegated by the Central Government to perform the functions of the 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 ('Valuer Rules'). The IBBI granted recognition to PVAI-VPO as a Registered Valuer Organisation ('RVO') under the Valuer Rules read with section 247 and section 458 of the Companies Act, 2013 in all the three asset classes with registration number IBBI/RV/2018/007 on 20th June, 2018.
- 2.2 It had come to the notice of the IBBI that PVAI-VPO enrolled Mr. Dhaval Chheda as its member and issued him a certificate on completion of 50 hours of educational course as a member, despite Mr Chheda not being eligible to become a registered valuer. PVAI-VPO also allowed the application of Mr. Nikhil Chandak and Mr. Kapadia Jai Vikram to be forwarded to the IBBI for registration as registered valuers even though they were neither eligible to be enrolled as members of PVAI-VPO nor were eligible to be registered as registered valuers as per clause 9 of Model Bye-Laws of a Registered Valuers Organisation under Part-II of Annexure-III of the Valuer Rules.
- 2.3 Upon consideration of the material available on record, the Authorised Officer (AO) of the IBBI was of the *prima facie* opinion that sufficient cause existed to take actions under the rule 17 of the Valuer Rules and accordingly issued SCN dated 17th June, 2020 to PVAI-VPO, addressed to Managing Director of PVAI-VPO, Mr. Avinash Pendse, seeking his written reply within 15 days of its receipt.

2.4 On behalf of PVAI-VPO, Mr. Avinash Pendse submitted the reply to the SCN *vide* his reply dated 1st July, 2020 and availed virtual hearing on 13th October, 2020.

3. Show Cause Notice

The alleged contraventions in the SCN are summarised as follows:

- (a) The IBBI, acting as the Authority under the Valuer Rules, has granted registration to PVAI-VPO as a registered valuer organisation under the Valuer Rules read with section 247 and section 458 of the Companies Act, 2013 in all the three asset classes with registration number IBBI/RV/2018/007 on 20th June, 2018.
- (b) As per the provisions of rule 14 (e) of the Valuer Rules, the IBBI had issued a Circular No. RVO/12/2018 dated, 30th May, 2018 regarding “Enrolment as Valuer Member by Registered Valuers Organisation and Registration as Registered Valuer by the Authority”, wherein paragraphs 2 and 3 of the said Circular provides as under:

“2. As a condition of recognition of an RVO under Rule 14 (c) of the Rules, it shall admit only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 of the rules and as specified in its recognition certificate, as valuer members. Clause VI (9) of the Governance Structure and Model Bye-Laws for RVO requires that an RVO shall not enroll an individual as a valuer member if he is not eligible to be registered as a registered valuer with the Authority.

3. Accordingly, recognized RVOs are advised to admit only individuals, who possess the educational qualifications and experience and meet other eligibility requirements, as valuer members. They are also advised to recommend only those valuer members, who have completed the recognized educational course and passed valuation examination of the relevant asset class, to the Authority for registration.”

- (c) The issue of a valuer being in ‘employment’ at the time of enrolling for the educational course with the RVOs was clarified by the IBBI in the 5th meeting of the CEOs/MDs of the RVOs held on 9th July, 2018 wherein a clarification was sought as to whether, a valuer can be in employment, at the time of enrolling for the educational course with the RVOs. It was clarified that since the RVOs can grant membership and provide educational course only to those individuals who are eligible under the Valuer Rules, this was not permitted. The RVOs were directed to ensure that all members who are enrolled, satisfy the eligibility criteria as provided in the Valuer Rules. The Circular issued by IBBI in this regard may be referred to.
- (d) In view of the clarification provided by the IBBI as above, a person in employment during the relevant period is not eligible to be enrolled with an

RVO and he cannot submit an application for registration as a registered valuer. However, in the case of Mr. Nikhil Chandak, PVAI-VPO enrolled him as a member, imparted the educational course to him and recommended his name for registration as a registered valuer in the Form A prescribed in the Valuer Rules although Mr. Chandak was in employment at the relevant time. It is evident from Part C of Form A – Application for registration as a valuer filled in by Mr. Chandak wherein it was stated by him that he was in employment at that time.

- (e) In respect of Mr. Dhaval Chheda, he was not eligible to be a member as he did not have the requisite number of years of experience. However, PVAI-VPO enrolled him as a member and also imparted the educational course to him, as is understood from the certificate issued to him. The issue came to light when Mr. Dhaval Chheda wrote an email to the Valuation Examination Division of the IBBI with a request to permit him to appear for the valuation examination which provided all the facts of the case.
- (f) In case of Mr. Kapadia Jai Vikram, PVAI-VPO recommended his application for registration after verifying the contents of an experience certificate enclosed with the same, although he was not eligible to be a registered valuer. In this case, Mr. Kapadia provided an experience certificate dated 23rd March, 2019 from 'Delta Valuers and Appraisers LLP' which stated that the applicant was employed as a valuation engineer with the aforesaid LLP from 1st April, 2013 till 12th October, 2018 for land and building assignments. When a query was raised as to how the professional experience can be obtained from the year 2013, since the degree was obtained in 2014, the applicant removed the earlier experience certificate dated March 23, 2019 by the Delta Valuers and Appraisers LLP and attached two different experience certificates. The experience details as per the said two experience certificates were not submitted by the applicant in Form A while applying for registration as valuer. The experience certificates from Delta Valuers and Appraisers LLP dated 23rd March, 2019 and from Mr. Devendra M Rangrej dated 2nd January, 2020 contradict each other as the applicant cannot be in employment with the two employers simultaneously. The contents of both these experience certificates were verified by PVAI-VPO. The RVO has an obligation to carefully scrutinize the application as per the applicable Valuer Rules, bye-laws and the decisions taken in the monthly meetings held with the CEOs/MDs of all the RVOs every month with IBBI. The RVO has failed in its due diligence while verifying the contents of the experience letter and thereafter recommending the application to the IBBI.
- (g) Therefore, based on materials available on record, it is observed that PVAI-VPO has contravened the following provisions of the Valuer Rules:
 - (i) Rule 5 (1) of the Valuer Rules prescribe that the authority shall, either on its own or through a designated agency, conduct valuation examination

for one or more asset classes, for individuals, who possess the qualifications and experience as specified in rule 4, and have completed their educational courses as member of RVO, to test their professional knowledge, skills, values and ethics in respect of valuation.

(ii) Clause 9 of Model Bye-Laws of a Registered Valuers Organisation under Part-II of Annexure-III of the Valuer Rules stipulates that - *“No individual shall be enrolled as a member if he is not eligible to be registered as a registered valuer with the authority....”*

(iii) Rule 14 of the Valuer Rules stipulating conditions of recognition provides in its clause (e) that — *“The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-*

“....(e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority...”

(iv) Rule 4 of the Valuer Rules reads as under-

“4. Qualifications and experience.— An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

... (b) a Bachelor’s degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter....”

(v) Annexure-IV of these Valuer Rules provides for the eligibility qualification and experience for registration as Valuer for various classes of assets in an indicative manner. A combined reading of the Annexure IV with rule 4 of the Valuer Rules implies that the qualifying education and experience for Land and Building asset class is that the applicant must be-

(a) having a Bachelor’s degree in Civil Engineering, Architecture, Town Planning or equivalent from a recognized University and an experience of at least 5 years after graduation in the discipline same as of graduation, or;

(b) having a post graduate degree in Civil Engineering, Architecture, or Town Planning from a recognized University and an experience of at least 3 years after post-graduation in the discipline same as of post-graduation;

(c) having a post graduate degree in valuation of Land and Building or

real estate valuation from a recognized University and at least 3 years of experience after post-graduation in the discipline same as of post-graduation.

4. Submissions by PVAI-VPO

Written submissions made on behalf of PVAI-VPO in the reply dated 1st July, 2020 and oral submissions made on its behalf by Mr Pendse on 13th October, 2020 are summarized as follows:

- 4.1 It has been submitted at the outset that the IBBI has found four errors by PVAI-VPO, over a period of June 2018 to June 2020, *i.e.*, two years. It was stated that in the last two years, PVAI-VPO had processed 2000 applications, trained more than 1200 students, out of which at least 700 went for examination and at least 350 successfully passed exam, which is very good performance compared to many other RVOs in terms of percentage, number and that too in all three classifications. It was further submitted that the margin of error is less than 1%, which he requested to be considered as a human error. He submitted that PVAI-VPO is learning “hands-on” as there was no formal training and experience to run a regulatory body extension Organisation of this nature. He stated that PVAI-VPO being a welfare Organisation, takes time to change governance and functioning to become a regulatory body.
- 4.2 It is submitted that in case of Mr. Nikhil Chandak, he was admitted in a very first batch and PVAI-VPO was not aware that he was in service/employment when he passed the Valuers examination. Mr. Chandak submitted/uploaded Form A without consulting PVAI-VPO. When PVAI-VPO came to know about his engagement in service, it refused to process his application initially, however, with human consideration, they took his resignation letter with an affidavit and processed it further.
- 4.3 It was further stated in the reply of PVAI-VPO that Mr. Chandak was relieved in 3 days from service much before further processing by the IBBI. Moreover, it was stated that this was the first mistake of PVAI-VPO. Mr. Pendse admitted on behalf of PVAI-VPO that this is a case of human error and he expects relief in this case.
- 4.4 With respect to the case of Mr. Dhaval Chheda, it was submitted that Mr. Chheda joined PVAI-VPO only for obtaining knowledge. However, the Certificate was issued to him due to oversight which, he tried to utilize instantly, however, he was caught by NISM when he showed less experience. It was stated by PVAI-VPO that the IBBI was relying on the correspondence from Mr. Dhaval Chheda only and, that PVAI-VPO expects relief in this case as the certificate was issued erroneously for the first time and to a person who joined only for knowledge purpose.
- 4.5 As regards the case of Mr. Kapadia Jai Vikram, it was submitted that Mr. Kapadia cleared his graduate examination in 2013 and joined a Mumbai based firm - M/s Delta Valuers and Appraisers LLP from 23rd March, 2013 at Surat as their representative. Thereafter, he completed Post Graduation in 2017. It was submitted

that while filing Form A in early 2019, Mr. Kapadia suppressed the fact that he was simultaneously working with Mr. Rangrej as well at Surat in 2013 and 2014. It was stated that Mr. Kapadia had a tiff with his employer, Mr. Rangrej in 2014 due to which, the latter refused to give experience certificate to him when he left his job. Later, PVAI-VPO directly contacted his employer Mr. Rangrej who provided certificate to Mr. Kapadia in 2019-20. It was further clarified that Mr. Kapadia always had the receipts of payment available in his accounts from Mr. Rangrej as evidence of his experience, however, he never used the same due to fear of exposing himself for concealing facts. It was further submitted that Mr. Kapadia kept on changing his statements to cover up further scrutiny from the IBBI. It was stated in the reply that PVAI-VPO never suspected him as well because, the employer of Mr. Kapadia confirmed the period of his employment during mobile call/personal visit. It was submitted that in small towns, new employees are paid in cash and that makes it difficult to prove at a later stage, the period of employment of the concerned candidate.

- 4.6 It was further submitted that Mr. Kapadia gave Valuers examination on 27th January, 2019, after completing 5 years of experience after graduation and less than 3 years after post-graduation. Initially, PVAI-VPO refused to entertain his application based on period of experience after post-graduation. Therefore, he submitted his application based on his experience after Graduation. It was submitted that eventually due to concealment of facts and variation in statements by Mr. Kapadia during scrutiny, PVAI-VPO decided to stop supporting him and insisted that Mr. Kapadia may directly approach the IBBI for representing himself for further relief.
- 4.7 On behalf of PVAI-VPO, it has been stated that during the initial days of the new regulations, this procedural irregularity committed by it was *bonafide* error and none of the mistakes mentioned in the SCN were deliberate. The said mistakes occurred due to haste, lack of experience and understanding to deal with the procedural issues.
- 4.8 During the personal virtual hearing dated 13th October, 2020, Mr. Pendse admitted on behalf of PVAI-VPO that the error was inadvertent and unintended. In view of the same, he requested the Authority to take a lenient view. He further submitted that as the valuation profession was still at an emerging stage, the said errors/mistakes were unintentional and inadvertent and he prayed for relief from the IBBI for errors caused by PVAI-VPO as the same were due to lack of clarity as to the procedural issues.

5. Findings and Analysis

- 5.1 It is noted that during CIRP process, the valuation is to be done by the registered valuers. Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that in all CIRPs the resolution professional has to appoint two registered valuers within seven days of his appointment but not later than forty-seventh day of insolvency commencement date. A valuer to be registered with the IBBI has to first enrol himself/herself with RVO recognized by the IBBI and complete the 50 hours

mandatory educational programme. Subsequently, the valuer has to clear the valuation examination conducted by the IBBI and thereafter he may register with IBBI.

- 5.2 The CIRP Regulations further envisage under regulation 35(1)(a) that estimation of fair value and liquidation value of the assets of the corporate debtor is required to be done in accordance with internationally accepted valuation standards after physical verification of the inventory and fixed assets of the corporate debtor. These values serve as a reference for evaluation of choices, including liquidation and selection of the choice decides the fate of the corporate debtor. In consequence of an error in valuation, a viable corporate debtor could be liquidated. Further, if market participants undertake transactions at a value which is not reflective of market or different from market price, the resources in the economy could be misallocated. Such outcomes are disastrous for the economy and also impinge economic growth. Thus, there exists a need for transparent and credible determination of value of the assets of the corporate debtor to facilitate comparison of choices and for taking informed decisions.
- 5.3 Valuation standards and ethical principles ensure accountability and uniformity in valuation services. India has adopted a two-tier mechanism for regulation for valuer professionals where valuers are enrolled with an RVO as a member, and thereafter registered with the Authority. They are subject to a detailed Code of Conduct to maintain credibility of the process of valuation and ultimately the resolution process. The Hon'ble Delhi High Court in the matter of Cushman and Wakefield v. UOI W.P.(C) 9883/2018, had observed:

“The endeavor of the Rules is to introduce a class of professionals where the focus is on the professionals skills of the individuals rather than a business venture. Professionalism is introduced into the profession of valuation, which involves sophisticated skills and a high degree of integrity, impartiality and ethics for the purposes of the Companies Act and IBC, through Valuation Rules which can regulate this area and make valuers more accountable and professionally trained.”

- 5.4 The IBBI Circular No. RVO/12/2018 dated 30th May 2018 on ‘Enrolment as Valuer Member by Registered Valuers Organisation and Registration as Registered Valuer by the Authority’ provides in para 1 as follows:

“Subject to meeting other requirements, an individual is eligible to be a registered valuer under the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules), if he:

- (i) is a fit and proper person,*
- (ii) has the necessary qualification and experience,*
- (iii) is a valuer member of a Registered Valuers Organisation (RVO),*
- (iv) has completed a recognised educational course as member of an RVO,*
- (v) has passed the valuation examination conducted by the Authority, and*
- (vi) is recommended by the RVO for registration as a valuer.”*

- 5.5 In the case of Mr. Nikhil Chandak, it is found that PVAI-VPO enrolled him as a member while he was in active service and imparted 50 hours educational course to

him. Thereafter, PVAI-VPO recommended his application for registration as a registered valuer to the IBBI. At the time of his registration as a registered valuer, he was engaged in employment and this was admitted by him also in Part C of Form A of his application for registration. He also submitted an affidavit to the IBBI mentioning that he would resign from his employment on receiving the registration from the IBBI. In this regard, submission on behalf of PVAI-VPO that initially, it was unaware of the fact of employment of Mr. Chandak and later, when this information came to the knowledge of PVAI-VPO, his application was forwarded on compassionate humanitarian grounds is not tenable. The Companies (Registered valuers and Valuation) Rules, 2017 do not provide for recommendation of an application for registration on humanitarian grounds. It only provides for meeting the requirements of eligibility in terms of qualification, experience and other conditions. It is not a question of human survival and dignity where humanitarian grounds are to be applied.

- 5.5.1 As provided in Clause 9 of Model Bye-Laws under the Valuer Rules, RVO can enroll a person as a member if he is eligible to be registered as a registered valuer. He will continue to be a member till he clears the valuation examination, after which the RVO can recommend the enrolled member to the IBBI for registration as an RV. It has been clarified by the IBBI that RVOs can grant membership and provide educational course to those individuals who are eligible under the Valuer Rules and should not be in employment while applying for registration. In the present case, Mr. Chandak was in employment at the time of submission of his application and he also submitted an affidavit to that effect.
- 5.6 With respect to the case of Mr. Dhaval Chheda, it is noted that the contention on behalf of PVAI-VPO during personal hearing that Mr. Chheda was granted membership of PVAI-VPO only for the limited purpose of imparting knowledge and he further admitted that the certificate was granted erroneously to him. It was also admitted by Mr. Chheda in his email dated 26th August, 2019 to the IBBI that he completed his graduation in the year 2018 and would be completing his post-graduation in the year 2020 whereas the certificate was issued to him in August 2019 by RVO without having the requisite years of experience.
- 5.7 In the case of Mr. Vikram Jai Kapadia, the submission of Mr. Pendse, on behalf of PVAI-VPO, that Mr. Kapadia was simultaneously working with two firms at the relevant time is impractical and implausible. PVAI-VPO has not provided any justification for removal of the earlier experience certificate dated 23rd March, 2019 by the applicant, nor was he able to explain the contradiction in the experience certificate from Delta valuers dated 23rd March, 2019 and from Mr. Davendra Rangrej dated 2nd January, 2020. This shows that PVAI-VPO had been casual while verifying the contents of the experience certificate and thereafter recommending the application to the IBBI for registration.
- 5.8 RVOs being the frontline regulators, it is incumbent them to screen the applications for enrollment as member and thereafter for registration as a registered valuer with utmost care and professionalism to ensure that only those people join the profession who meet the prescribed eligibility norms in terms of qualification and experience. Any lapse, whether intentional or by negligence, has huge cost to the profession and users of valuation services. It also frustrates the role assigned to RVOs under the

Rules. They must, therefore, have adequate and matching institutional arrangement to ensure compliance with the Rules in law and spirit and must make every endeavour to discharge their responsibilities as envisaged under the Rules.

5.9 In the present case, PVAI-VPO is an RVO recognized under sub-rule (5) of rule 13 of the Valuer Rules. It allowed ineligible candidates to be enrolled as members of its organization even though they did not have proper credentials as per the eligibility norms, qualification and forwarded the applications of candidates who did not meet the length of experience required for an individual to be registered as a valuer to the IBBI. It failed in its institutional obligations in not scrutinizing the credentials of some of the candidates in a professional manner while enrolling, granting certificate of completion of educational course and forwarding the applications to IBBI for registration. This is evident from the following:

- (i) PVAI-VPO allowed the application of Mr. Nikhil Chandak to be forwarded to the Authority for registration as a registered valuer despite not being eligible for the same as he was engaged in employment at the relevant time of his enrollment with PVAI-VPO.
- (ii) PVAI-VPO enrolled Mr. Dhaval Chheda as a member and issued him a certificate on completion of 50 hours of education course as a member, despite not being eligible to become an RV in terms of not having requisite experience.
- (iii) PVAI-VPO recommended the application of Mr. Kapadia Jai Vikram to IBBI for registration as a valuer without verifying the content of contradictory experience documents submitted by him.

5.10. In the aforesaid matters, it is also noted that PVAI-VPO took corrective course of action after taking notice of the aforesaid irregularities. In case of Mr. Nikhil Chandak, when PVAI-VPO came to know about his engagement in service, it refused to process his application initially, however, PVAI-VPO took his resignation letter with an affidavit and processed it further. Mr. Chandak was relieved within three days from service much before further processing by the IBBI. Thus, PVAI-VPO took corrective course of action. In the case of Mr. Dhaval Chheda, the contention that he joined the organization only for knowledge purpose and admission on behalf of PVAI-VPO that the certificate was issued erroneously due to oversight by PVAI-VPO for the first time is accepted. In case of Mr. Kapadia Jai Vikram, PVAI-VPO refused to entertain his application based on the period of experience after post-graduation. Subsequently, Mr. Kapadia submitted his experience after graduation but PVAI-VPO stopped supporting his application and advised Mr. Kapadia to directly approach the IBBI for representing himself due to variation in his statements. Further, the admission on behalf of the RVO that procedural irregularity committed by it for the first time was a *bonafide* and inadvertent error and occurred due to haste, lack of experience and understanding to deal with the procedural issues relating to emerging profession of valuers, calls for a lenient view.

6. Order

In view of the above, the Authority, in exercise of powers conferred under section 458 of the Companies Act, 2013 read with rule 17 of the Companies (Registered Valuers and Valuation) Rules, 2017 hereby warns the PVAI-VPO that it should be extremely careful, diligent and take effective steps to improve the process of enrolling the members, providing educational course and certificate thereof as also recommending the applications to the IBBI for registration as valuers in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017.

Accordingly, the show cause notice is disposed of.

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(Dr. Mukulita Vijayawargiya)

Whole Time Member, IBBI

Dated: 24th November, 2020

Place: New Delhi