

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.]

No. IBBI/Valuation/RVO/01/2022

12th January, 2022

ORDER

In the matter of IIV India Registered Valuers Foundation, under Rule 17 of the Companies (Registered Valuers and Valuation) Rules, 2017.

This order disposes of the Show Cause Notice (SCN) No. RVO-15018/4/2021 dated 16.07.2021, issued to Mr. Iliyas Amin Shaikh, who is Managing Director of the IIV India Registered Valuers Foundation (IIV RVF) registered with the Insolvency and Bankruptcy Board of India (IBBI) as a registered valuer organization in all the three asset classes *vide* Registration No. IBBI/RVO/2018/004.

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 IIV RVF 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/RVO/2018/004.
- 2.2 It had come to the notice of the IBBI during the annual inspection of IIV RVF, conducted on 23rd – 24th February, 2021, that all meetings of the Governing Board of IIV RVF, total 15 meetings, were conducted under the Chairmanship of Mrs. Anjum Shaikh, who was not an Independent Director. As per clause 4(6) of the Governance Structure and Model Bye Laws of Registered Valuers Organization under Annexure III of Valuer Rules, the Chairperson of the Governing Board shall be an independent Director elected by the directors.
- 2.3 Upon consideration of the material available on record, the Authorised Officer of IBBI was of the *prima facie* opinion that sufficient cause existed to take actions under rule 7 of the Valuer Rules and accordingly issued SCN No. RVO-15018/4/2021 dated 16.07.2021 to IIV RVF, addressed to Managing Director of IIV RVF Mr. Iliyas Amin Shaikh, seeking his written reply within 15 days of its receipt.
- 2.4 On behalf of IIV RVF, Mr. Iliyas Amin Shaikh submitted his reply to the SCN *vide* his reply dated 26.07.2021 and availed an opportunity of e-hearing on 17.09.2021 before the Whole Time Member of IBBI to whom the matter was referred to. The independent director

of IIV RVF Mr. F.X. Nelson Leo made submissions on behalf of the IIV RVF.

3. Contravention

- 3.1 The IBBI, acting as the Authority under the Valuer Rules read with sections 247 and 458 of the Companies Act, 2013, has granted certificate of recognition to IIV RVF as a registered valuers organization under the Valuer Rules, in all the three asset classes bearing number IBBI/RVO/2018/004.
- 3.2 The annual inspection of IIV RVF was conducted on 23rd -24th February,2021. It was found that all the 15 meetings of the Governing Board of IIV RVF, were conducted under the Chairmanship of Mrs. Anjum Shaikh, who was not an independent director.
- 3.3 The IBBI was of the *prima facie* view that IIV RVF was in violation of Clause 4 (6) of Governance Structure and Model Bye laws of Registered Valuer Organisation under Annexure III of Rules.

4. Submissions

- 4.1 The managing director of IIV RVF Mr. Iliyas Amin Shaikh submitted that they registered as a company on 18.07.2018 as Royal Registered Valuers Foundation, with the following as promoter and directors:
 - a) Mr. Iliyas Amin Shaikh – Promoter & Director
 - b) Ms. Anjum Amin Shaikh - Promoter & Director
 - c) Dr. Amin Abdul Shaikh – Promoter
 - d) Mr. Varun Dhawan – Promoter
- 4.2 It was submitted that Mr. Iliyas Amin Shaikh and Ms. Anjum Amin Shaikh were the first directors on the day of adoption of the Articles. It was submitted that the during the financial year 2018-19 only 2 directors were available on the board of the company. It was submitted on behalf of IIV RVF that in order to comply with requirements of Companies Act, 2013 and Secretarial Standard for Board Meeting (SS-1), Ms. Anjum Amin Shaikh was appointed as Chairman for all the board meetings held in the financial year 2018-19.
- 4.3 It was submitted that Mr. Tushar Ravindra Naik (w.e.f. 17.06.2019), Mr. Kishore Anand Solanki (w.e.f. 17.06.2019) and Mr. Nelson Leo Francis Xavier (w.e.f. 19.06.2019) were appointed as additional director (independent category) to meet the requirements of Annexure III of the Governance Structure and Model Bye-laws for registered valuers organization. Further, it was submitted that since the requirement of having more than half of the directors as independent directors was to be fulfilled within one year, three independent directors were appointed as independent directors.

4.4 It was admitted that there was procedural irregularity committed by the RVO which was *bona fide* and inadvertent error. It was submitted that a lenient view may be taken as the error occurred due to lack of clarity of procedural requirements. It was submitted on behalf of the RVO that it had issued Corrigendum *vide* resolution dated 18.09.2021 whereby it was resolved that corrigendum to the minutes of Board Meeting held on 02.12.2019, 15.07.2020, 09.09.2020 and 18.12.2020 be made with respect to the correction in appointment of Chairperson at the meeting of Board of Directors i.e. to be considered Mr. Nelson Leo Francis Xavier, as Chairperson for all the above 4 Board meeting minutes.

5. FINDINGS AND ANALYSIS

5.1 It is noted that during corporate insolvency resolution process (CIRP), 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 (CIRP Regulations) provides that in all CIRPs the resolution professional must 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 enroll 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 process gets adversely affected and outcome thereof, is disastrous for the economy and also impedes economic growth. 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 DC notes that Rule 14 of the Valuer Rules provides the conditions for recognition of registered valuers organization. Sub-rule (g) of rule 14 provides that a register valuers organization shall have a governance structure and it shall incorporate in its bye-laws the requirements specified in Annexure -III within one year of commencement of the rules if it is an organization referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of the rules. The Governance structure and model bye-laws for registered valuers organization have been provided in Annexure III. Sub-clause 6 of clause 4 of the model bye-laws provides that the directors shall elect an independent director as the Chairperson of the Governing Board.

5.5 The IBBI Circular No. IBBI/RVO/033/2020 dated 23.04.2020 on ‘Governance Structure of the Registered Valuers Organisation’ provides as follows:

“3. In the meetings with MDs/CEOs of the RVOs, the issue of eligibility to be an independent director has been discussed a few times, in view of the likely conflict of interests. It has been clarified that a member of the promoter organisation, which has promoted an RVO, shall not be an independent director in the RVO.

4. A promoter organisation may have its members - share holder member in case the promoter is a company, a trustee in case the promoter is an association of persons/ trust, or a professional member in case the promoter is a professional body - as directors on the Governing Board of the RVO. However, such directors shall not be appointed as independent directors. Illustratively, a share-holder / professional member of the Institution of Valuers (IOV), who is a director on the Governing Board of the IOV RVO or a professional member of the ICAI, who is a director on the Governing Board of the ICAI RVO shall not be considered as an independent director for the purposes of sub-clause (5) of clause (4) of Part - I of Annexure - III of the Rules. It is further advised that if any RVO does not have composition of its Governing Board taking this clarification into account shall reconstitute the Governing Board within three months from the date of issue of this Circular to meet this requirement.”

5.6 The DC notes that the Indian Institution of Valuers, a registered society was recognized by IBBI on 20.04.2018. As per Rule 12(3) of the Valuers Rules, the RVO which is an entity under proviso to sub-rule (1), i.e., a society or a trust, then within period of one year, conversion of such entity into a corporate entity is required. The promoters of the society incorporated a company on 18.07.2018 by the name Royal Registered Valuers Foundation (India). Thereafter, they changed the name of the RVO to IIV India RVF. The certificate of incorporation pursuant to change of name was issued on 08.04.2019

and the Board issued the certificate of recognition on 03.10.2019.

- 5.7 One of the conditions provided under Rule 14 (g) of the Valuers Rules is that the RVO shall have the governance structure as specified in Annexure III of the Rules and incorporate in its bye-laws the requirements specified in Annexure -III. The Authority notes that the Valuers Rules and the Circular dated 23.04.2020 clearly provide that only an independent director can be the Chairperson of the governing board. As per sub-clause 6 of clause 4 of the model bye-laws, directors shall elect an independent director as the Chairperson of the Governing Board.
- 5.8 In the instant matter, there were in all 15 meetings of the governing board of the RVO which were all chaired by Ms. Anjum Amin Shaikh who is one of the director of the RVO and not an independent director. The IIV RVF was recognized as a RVO on 20.04.2018 and had one year time to meet the requirements of the Annexure – III. It is seen that the independent directors were appointed only in June 2019, after completion of one year period. Further, it is seen that even after the appointment of the independent directors, the meetings were held with Ms. Anjum Amin Shaikh as the Chairperson of the governing board. The fact that the meetings were chaired by Ms. Anjum Amin Shaikh as Chairperson was admitted by the RVO.
- 5.9 Thus, IIV RVF explicitly did not comply with the conditions provided under Rule 14 of the Valuers Rules and sub-clause (6) of clause 4 of the Model Bye-laws. Therefore, the DC finds that the IIV RVF has contravened the conditions under Rule 14 of the Valuers Rules, Circular dated 23.04.2020 and the requirements of governance structure under sub-clause (6) of clause 4 of the Model Bye-laws.

6. Order

6. 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 directs that the IIV RVF shall not enroll any new member for a period of six months with effect from the date of issue of this Order.
7. Accordingly, the show cause notice is disposed of.

Dated: 12^h January, 2022
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI