

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

[Authority delegated by the Central Government vide notification no. GSR 1316(E) dated 18.10.2017 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./08/2023

28th February, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/1/2022-IBBI/283/4233, dated 04.11.2022 issued to Ms. Gunjan Agarwal under rule 17 read with 15 of Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules). The Insolvency and Bankruptcy Board of India (IBBI/Board) has been delegated authority by the Central Government to perform the functions of the Authority under the Valuation Rules. Ms. Gunjan Agarwal is registered with IBBI as a valuer of Securities or Financial Assets (SFA), with the registration number IBBI/RV/06/2019/11466 on 02.05.2019.

1. Issuance of Show Cause Notice (SCN) and hearing before DC

1.1 Rule 17(1) of the Valuation Rules provides that based on findings of an inspection, if the authorised officer is of the prima facie opinion that sufficient cause exists to cancel or suspend the registration of a valuer, it shall issue a SCN to the valuer.

1.2 In this regard, an Inspecting Authority (IA) was appointed to conduct inspection of the valuation report submitted by Ms. Gunjan Agarwal in the Corporate Insolvency Resolution Process (CIRP) of M/s Global Coke Limited (Corporate Debtor/CD). A draft inspection report (DIR), prepared by the IA, was shared with Ms. Gunjan Agarwal on 31.08.2022, to which she submitted response on 13.08.2022. The IA submitted its inspection report to the Board.

1.3 Based on the findings of the inspection, a prima facie opinion was formed that sufficient cause exists to consider actions under sub rule (5) of rule 17 of the Valuation Rules and accordingly it issued SCN dated 04.11.2022 for contravention of the rule 8(3)(g)(h) and (j) of the Valuation Rules and sought for her written reply and offered it an opportunity of personal hearing in accordance with the said Rules. Ms. Gunjan Agarwal responded to the SCN on 18.11.2022 and the matter was referred to the Authority for disposal of the SCN. Later, Ms. Gunjan Agarwal availed the opportunity of personal hearing on 14.02.2022.

2. Alleged contraventions and submissions of the Ms. Gunjan Agarwal, Registered Valuer (RV)

Contraventions alleged in the SCN and Ms. Gunjan Agarwal's written and oral submissions are summarised as follows:

2.1 Contravention-I with respect to valuation of Deposits against offtake Agreements under Long Term Loans and Advances.

2.1.1 It has been observed that no justification for the estimates of Fair Value (FV) and Liquidation Value (LV) of the deposits against offtake Agreements under Long Term Loans and Advances has been provided in the valuation report. The estimation of FV and LV @ Rs 2.49 crore appears to be abrupt as the Ms. Gunjan Agarwal has not specified the basis of calculation which enabled her to reach the estimated figure of Rs 2.49 crore. Hence it was observed that Ms. Gunjan Agarwal has violated rule 8(3)(h) and (j) of Valuation Rules.

2.2 Submissions made by RV

2.2.1 Ms. Gunjan Agarwal submitted that the deposit of Rs. 31.29 crores pertain to a deposit of \$5 million made by the Global Mineral & Metals Limited (Singapore) to BHR Coal (Mauritius) in respect to the agreement as on 24.11.2011 in which coking coal has to be delivered by the latter. Given that Global Mineral & Metals PTE Limited has been struck off by Singapore Authority ACRA and CD has been following up for the recovery of this amount through legal channels, therefore nominal amount equal to 8% of the book value, i.e., Rs. 31.29 crores amounting to Rs. 2.49 crores (which is interest as per proof of the debt to filed before the administrator) of the book value had been taken as FV and LV in view of the legal proceedings. Ms. Gunjan Agarwal submitted that 8% was the compounding rate, hence it was taken as the discounting rate.

2.3 Findings

2.3.1 The Authority notes the submission of Ms. Gunjan Agarwal that FV and LV has been taken at 8% of the book value considering the ongoing legal proceeding and the rate of 8% was opted on the basis of compounding rate in the agreement. The Authority observes that said fact did not come out in the valuation report. Rules 8(3)(h) and (j) of the Valuation Rules specifically provides that procedures adopted in carrying out the valuation and valuation standards followed and major factors that were taken into account during the valuation should form part of the report. Hence, the Authority finds that Ms. Gunjan Agarwal is in violation of rule 8(3)(h) and (j) of the Valuation Rules

2.4 Contravention-II with respect to the Estimation of the value of Inventories.

2.4.1 It has been observed that as per the norms, the valuation of inventories is to be carried out by the valuer engaged for valuation of SFA only. Moreover, it is not clear whether the valuers engaged for valuation of assets under Plant & Machinery category have actually covered this item or not. As this item is generally not covered by the Registered Valuers (RVs) of Plant & Machinery, there appears to be strong probability that the item has been missed in the valuation leading to under valuation of the asset. Hence, it has been observed that Ms. Gunjan Agarwal has violated Rule 8(3)(h) and (j) of Valuation Rules.

2.5 Submissions made by RV

2.5.1 Ms. Gunjan Agarwal submitted that for information and data for physical verification in CIRP cases, they are heavily dependent on the liquidator or insolvency professional. She further submitted that during the valuation process, she was informed and assured by the management, i.e., liquidator Mr. Avishek Gupta that inventories comprised of tangible ores, which have been specifically covered by Plant & Machinery valuer Mr. Dharampal Bhatia. Thus, she mentioned the same fact in limited words and therefore inventories were not included in her report and did not take any further step. She further submitted that it would amount to including the same inventories twice in both Plant & Machinery and SFA reports. On the basis of definition of SFA in Ind AS and internationally accepted accounting standards that SFA by nature are not tangible. She has mentioned in the report that inventories being tangible are covered by respective valuer.

2.6 Findings

2.6.1 The Authority notes the submission and observes that Ms. Gunjan Agarwal reportedly relied on verbal communication, of the liquidator and no proof exists to substantiate this claim. Hence, Authority does not accept the submission of Ms. Gunjan Agarwal.

2.7 Contravention-III with respect to estimation of the value of trade receivables -

2.7.1 It has been observed that there appears to be lack of convergence between the assumptions and actual calculations/estimations of the value of trade receivables. For example, in case of Hindustan Coal Mover Pvt Ltd, the FMV is 12.78 percent of the book, which is not covered under any of the six categories made by the RV. Moreover, in the report, there is no clue on how the Ms. Gunjan Agarwal has used the other technicalities as mentioned by her to estimate the FV and LV. Hence, it has been observed that Ms. Gunjan Agarwal has violated rule 8(3)(h) and (j) of Valuation Rules.

2.8 Submissions made by RV

2.8.1 Ms. Gunjan Agarwal submitted that she has done aging analysis of trade receivables and thereby categorized in six categories A (15%) to E (2.5%) based on the aging factor of more than or equal to 2 years as on CIRP date. The older the debtor, i.e., more than 2 years, lesser fair value has been assigned as per category falling in. The major factor estimating value as mentioned in the report was the management / liquidators' several notices to the debtors who have denied or not responded.

2.8.2 She submitted that three parties have replied to notices sent and acknowledged their dues as per information provided by the liquidator, the FV in these debtors categorised as F, FV and LV taken as value confirmed by debtors.

2.8.3 Further, there are some debtors whose balance consists of 2 categories, i.e., within 2 years (on the basis of sales and debits within 2 years) and also included an amount outstanding for more than 2 years, accordingly FV of such debtor calculated as per categories falling in. For Hindustan Coal Mover Pvt Ltd. She submitted as follows:

Book value as on liquidation date	Rs. 9,26,677/-	Category	FV
Less than 2 years	Rs. 3,37,780/-	Category A @15%	50,667
More than 2 years	Rs. 5,88,897/-	Category B @11.5%	67,723.17
FV			1,18,390.17

2.9 Findings

2.9.1 The Authority notes the submission of Ms. Gunjan Agarwal that she has done aging analysis of trade receivables and thereby categorized in six categories A (15%) to E (2.5%) and that some debtors whose balance consists of 2 categories, i.e., within 2 years and also included an amount outstanding for more than 2 years, accordingly FV of such debtor calculated as per categories falling in. The Authority further notes the submission of Ms. Gunjan Agarwal during personal hearing that detailed calculation has been done in separate excel sheet which was not attached with the report. The Authority observes that Ms. Gunjan Agarwal did not provide the calculation and method of reaching a particular figure in the valuation report and finds her in violation of rule 8(3)(h) and (j) of the Valuation Report.

3. Order

3.1 Observing above procedural contravention, the Authority, in exercise of powers conferred vide notification of Central Government no. GSR 1316(E) dated 18.10.2017 under Section 458 of the Companies Act, 2013 and in pursuance of rule 15 and rule 17 of the Valuation Rules hereby warns Ms. Gunjan Agarwal to be cautious and transparent while conducting valuation under the Insolvency and Bankruptcy Code, 2016 and the Companies (Registered Valuers and Valuation) Rules, 2017.

3.2 In accordance with provisions of Rule 17(8) of the Valuation Rules, this Order shall come into force immediately.

3.3 A copy of this order shall be forwarded to ICAI Registered Valuers Organisation where Ms. Gunjan Agarwal, Registered Valuer is enrolled as a member.

3.4 Accordingly, the show cause notice is disposed of.

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Dated: 28th February, 2023
Place: New Delhi

(Sudhaker Shukla)
Whole Time Member, IBBI