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./13/2023 26th April 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/3/2022-IBBI/292/885, dated 24th January 2023 issued to Mr. Debasish Ghosh under rule 17 read with rule 15 of the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules). The Insolvency and Bankruptcy Board of India (IBBI/Board) has been delegated by the Central Government to perform the functions of the Authority under the Valuation Rules. Mr. Debasish Ghosh is registered with IBBI as a valuer of Plant and Machinery, with the registration number IBBI/RV/01/2019/11265 on 9th April 2019.

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

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 Mr. Debasish Ghosh in the Corporate Insolvency Resolution Process (CIRP) of RNB Cements Private Limited (CorporateDebtor/CD).

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 24th January 2023 for contravention of the rule 8(3)(g),(h)and (j) of the Valuation Rules and sought for his written reply and offered him an opportunity of personal hearing. Mr. Debasish Ghosh responded to the SCN on 7th February 2023 and the matter was referred to theAuthority for disposal of the SCN. Mr. Debasish Ghosh availed the opportunity of personal hearing on 10th April 2023.

2. Alleged contraventions and submissions of Mr. Debasish Ghosh, Registered Valuer (RV)
Contraventions alleged in the SCN and Mr. Debasish Ghosh's written and oral submissions are summarised as follows:

2.1 Use of Specific Valuation Standards.

2.1.1 It was observed from the valuation report that the RV has not specifically indicated the valuation standard followed by him. This according to the Board was contravention of sub-rule

3(h) of Rule 8 of the Valuation Rules

Submission by the RV

2.1.2 The RV has submitted that while disclosure of the particular valuation standard is mandatory, specific paragraph of the valuation standard being followed in not a statutory stipulation. The RV has further submitted that he had done valuation by following International Valuation Standard (IVS) and the same has been disclosed in page no 3 of the valuation report in point no 4. Also, the disclosure regarding the "Cost approach" adopted for carrying out the valuation has also been disclosed in page no 6 of the valuation report in paragraph "Notes" in 2nd sub para. These according to the RV are adequate to cater the requirements of law.

Findings of the Authority

2.1.3 Rule 8(3)(h) of the Valuation Rules provides as below:
*"**8. Conduct of Valuation.-***
(3) The valuer shall, in his report, state the following:-
... (h) procedures adopted in carrying out the valuation and valuation standards followed;"

2.1.4 As stated by the RV, the relevant excerpts of point No. 4 on page no. 3 of the Valuation Report is as follows:
"4. However, as a general guideline, I have explained the methodologies.
In this chapter I have tried to explain the different methodologies that are being followed under the International Accepted Valuation Standard" to assess the fair value and liquidation value of the different class of assets that a professional valuer needs to work in the corporate sector. ……"

2.1.5 The Authority notes that the RV has mentioned that he has explained different methodologies followed under the Internationally Accepted Valuation Standard. However, he has not stated which internationally accepted valuation standard he has followed while conducting valuation exercise for the CD. The term internationally accepted valuation standard is a generic term and does not reflect any specific valuation standard that would have been followed by the RV, which is a mandatory requirement in the valuation report as per rule 8(3)(h) of the Valuation Rules.

2.1.6 Therefore, the Authority finds RV in violation of rule 8(3)(h) of the Valuation Rules.

2.2 Non-inclusion of justification for estimates made in Valuation Report

Estimation of 'Liquidation Value' in respect of Productive Assets (P&M).

2.2.1 It was observed that the 'Fair Market Value' (FMV) of the P&M was estimated by the RV based on the Original Cost, Written Down Value (WDV) as on 13th June 2019. Further, the RV estimated the current reproduction cost of the asset and charged depreciation on the same to derive the depreciated value of the asset as on 13th June 2019. However, it was observed that the RV has applied 70% obsolescence discount on the depreciated value to estimate the FMV of the asset without discussing the technical aspects of P&M, which did not appear to be correct. A flat discounting factor without taking into account the capacity, condition and alternative uses of the P&M did not appear to be justified to the Authority, especially when the RV had not made any attempt to logically justify the basis of his assumptions.

2.2.2 Accordingly, it was observed that the RV is in contravention of sub rule 3(h) and sub rule 3(j) of Rule 8 of Valuation Rules.

Reply of RV

2.2.3 The RV has submitted that in page no 3 of the valuation report at the last sentence of "VALUATION METHODOLOGIES", it is clearly stated that *"Assessment of liquidation value will depend on the prospects of its marketability"*. He further submitted that detailed reasons and justifications behind the conclusion on discount factor for arriving at liquidation value had been elaborated in the reply to the findings of the IA. However, he has requested that the unforeseen oversight of the explicit mention of these points in the valuation report may be condoned.

Findings of the Authority

2.2.4 The authority observes that the statement by RV *"Assessment of liquidation value will depend on the prospects of its marketability",* in his valuation report is a generic statement and does not explain the basis or reason of the 70% obsolescence discount while estimating the FMV. The reasons or basis of estimation are the major factors which an RV considers while conducting the valuation. Although, the RV has now tried to explain the same through his reply to the IA, the same should have been done in the valuation report itself for the consideration of users of valuation report.

2.2.5 Therefore, the Authority is of the view that the RV is in contravention of sub rule 3(h) and sub rule 3(j) of Rule 8 of Valuation Rules.

Estimation of FMV and LV in respect of Non-Productive Assets

2.2.6 It was observed in the Valuation Report of the RV that Furniture & Fixtures, Vehicles, Electrical Installations, Computers, Office Equipment etc. were clubbed under 'Non-Productive Assets'. The WDV of electrical installations as indicated in the report was Rs 680 lakhs. However, while estimating the FMV of this item, he had assumed that the FMV would be only 5% of the WDV. He had followed this assumption of all the items, included under 'Non-Productive Assets' in the report, irrespective of their nature, alternative uses, condition etc. He had again used the similar approach while estimating the LV also, by assuming that LV would be 80% of the FMV.

2.2.7 The Board noted that generally an RV had to record all such reasons while estimating the FV and LV of any asset having relatively higher technical specification. However, in this case, the RV has assumed the FV of the asset to be just 5% of WDV without assigning any reason.

2.2.8 Therefore, the RV was *prima facie* found to be in violation of sub-rule 3(h) and sub-rule 3(j) of Rule 8 of the Valuation Rules.

Submissions of the RV

2.2.9 The RV submitted that the non-productive assets could not be valued individually as the original procurement or installation dates were not made available to him and no detailed list of the assets were made available to him. He stated that the site guide could not show each and every item of Furniture & fixture and office equipment, and did not give any list. Therefore, it was not possible to identify all the individual assets in the group.

2.2.10 The RV further submitted that on physical inspection, it was found that the all NPA assets were lying as if in scrapped condition and vehicles and other such nonproductive assets were covered with vegetation and jungles, where many such assets were found in rusted condition.

2.2.11 Thus, he submitted that the assets were in such a bad condition that he could not place even the salvage value of 5% on the original cost. He submitted that, rather, it was decided to place a value around 2% on the original cost, which means (Total Fair value / Total original cost) = approx. 2%. However, the same figure incidentally became 5% of the W.D.V., therefore, it was written as 5% of W.D.V.

Findings of the Authority

2.2.12 The Authority notes that the valuation report prepared by the RV does not mention any of these above-stated reasons for estimation of FMV and LV of the assets. The RV has not provided any justifiable basis in his valuation report, for his assumptions. Therefore, the RV is found to be in violation of sub-rule 3(h) and sub-rule 3(j) of Rule 8 of the Valuation Rules.

2.3 Purchase Price, Installed Capacity and condition of the P&M

2.3.1 The Board noted that the valuation of P&M assets is always guided by the techno-economic factors such as installed capacity, present condition of the assets and purchase price of the assets etc. The Valuation Report submitted by the RV is silent on most of these issues, giving rise to point that the estimation of value was more abrupt than procedure oriented. It was observed that such an evaluation leads to confusion among stakeholders.

2.3.2 Therefore, the RV was *prima facie* found to be in violation of sub rule 3(g) and sub rule 3(j) of Rule 8 of the Valuation Rules.

Submission by RV

2.3.3 The RV submitted that he did not receive any detailed asset list from the corporate debtor. The RV only received a list of machinery sectional blocks, e.g., “cement mill section”, “limestone crushing section” etc. with original cost and year of installation of that particular block. The RV estimated the replacement cost as per IVS 2017 page no 79 para 70.2 (a) by using cost inflation index and made it clear in the report in page number 6 under "Notes". The RV provided the relevant portion of the IVS as follows:

"70.2 An entity's actual costs incurred in the acquisition or construction of an asset may be appropriate for use as the replacement cost of an asset under certain circumstances. However, prior to using such historical cost information, the valuer should consider the following: (a) Timing of the historical expenditures: An entity's actual costs may not be relevant, or may need to be adjusted for inflation/indexation to an equivalent as of the valuation date, if they were not incurred recently due to changes in market prices, inflation/deflation or other factors."

2.3.4 The RV has further submitted that as the detailed list of assets was not available, the complete technical specifications were also not available, because of which the current market replacement cost could not be traced. Although the RV was aware that the plant production capacity was 1200 TPD, the current purchase price could not be arranged based on the capacity alone. For collecting current price complete bill of materials is required which the RV did not receive. Therefore, the RV found the current replacement cost by treating the original costs data available as per methodology prescribed by IVS 2017 as mentioned above.

2.3.5 The RV has assured that despite the constraints, during valuation, he took care of techno economic factors to arrive at the fair value.

Findings of the Authority

2.3.6 On perusal of the valuation report, the Authority observes that the valuation report nowhere discusses the condition of the assets and the RV has only provided the estimates of valuation of such assets along-with the discounting figures applied on the assets. It is pertinent to note that the SCN does not raise question on the methodology applied by the RV in estimating the value of the assets. The RV has liberty to adopt the cost approach to estimate the value of plant and machinery assets in accordance with International Valuation Standards. However, by not mentioning the details of the assets including present condition, which forms the basis of his estimation, the RV is in violation of sub rule 3(j) of Rule 8 of the Valuation Rules.

3. Order

3.1 The estimates of the value of assets in a valuation report are based on the professional opinion of the valuer and therefore is subjective in nature. The valuer has liberty to exercise his professional judgment to choose any appropriate method for valuation of assets, in accordance with any internationally accepted valuation standards. However, the valuer has a parallel duty to disclose in his valuation report, all the material information, including valuation standards adopted by him, the conditions of the assets being valued, the assumptions made by the valuer for such assets, the basis of discounting taken for the assets, etc. Such disclosures are necessary for the sake of transparency of the valuation report. A transparent valuation report not only holds the valuer accountable for his work, but also enhances the trust of the stakeholders on the valuation report.

3.2 In view of the foregoing, after considering the allegations made in the SCN, the limited reply provided by the RV and the materials available on record, the Authority in exercise of powers conferred vide notification of Central Government no. GSR 1316(E) dated 18th October 2017, under Section 458 of the Companies Act, 2013 and in pursuance of rule 15 and rule 17 of the Valuation Rules hereby suspends the registration of Mr. Debasish Ghosh bearing registration number - IBBI/RV/01/2019/11265, for a period of six months to serve as deterrent for being cautious about dealing sensitive nature of valuation exercise under the aegis of IBC with due diligence and care.

3.3 In terms of sub-rule (8) of rule 17 of Valuation Rules, this Order shall come into force after 30 days from the date of its issuance.

3.4 A copy of this order shall be forwarded to RVO Estate Managers and Appraisers Foundation where Mr. Debasish Ghosh is enrolled as a member.

3.5 Accordingly, the show cause notice is disposed of.

Sd/-

Dated: 26th April 2023 (Sudhaker Shukla)
Place: New Delhi Whole Time Member, IBBI