

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./09/2023

22nd March, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/4/2022-IBBI/288/8847, dated 18.01.2023 issued to Mr. Hemant Kumar Lakhotia 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 by the Central Government to perform the functions of the Authority under the Valuation Rules. Mr. Hemant Kumar Lakhotia is registered with IBBI as a valuer of Securities or Financial Assets (SFA), with the registration number IBBI/RV/06/2018/10181 on 29.10.2018.

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 Mr. Hemant Kumar Lakhotia in the Corporate Insolvency Resolution Process (CIRP) of Kohinoor Paper and Newsprint Private Limited (Corporate Debtor/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 18.01.2023 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 in accordance with the said Rules. Mr. Hemant Kumar Lakhotia responded to the SCN on 30.01.2023 and the matter was referred to the Authority for disposal of the SCN.
- 1.4 Mr. Hemant Kumar Lakhotia availed the opportunity of personal hearing on 16.03.2023 where on his request, time was granted to submit additional documents. Mr. Hemant Kumar Lakhotia submitted additional documents on same day.

2. Alleged contraventions and submissions of Mr. Hemant Kumar Lakhotia, Registered Valuer (RV)

Contraventions alleged in the SCN and Mr. Hemant Kumar Lakhotia's written and oral submissions are summarised as follows:

2.1 Contravention-I with respect to Non-inclusion of inventory in Valuation Report.

2.1.1 It was observed that the RV was appointed to determine the fair value and liquidation value of the SFA of CD on 17.02.2020. In this case, since CD is a paper production unit, inventories consist of Finished Good (Writing Paper, Newsprint), Raw Material (Coal), Stores and Spares etc. which are important segment of the assets of CD. As per prevalent practice, inventories are part and parcel of SFA for valuation purposes until terms of reference otherwise specifies. However, the RV completely ignored this aspect by not taking into consideration this particular item, while determining the fair and liquidation value of SFA. This has potential effect of under valuation of the assets which is in violation of Sub Rule 3 (g) and Sub Rule 3 (j) of Rule 8 the Rules.

Submissions made by RV

2.1.2 The RV in his submission has referred to the definition of 'securities' as defined under section 2(81) of the Companies Act, 2013 and section 2(h) Securities Contracts (Regulation) Act, 1956 (SCRA). The RV has also referred to definition of 'financial asset' as defined under Indian Accounting Standard (Ind AS) 32- Financial Instruments: Presentation, notified under Companies (Indian Accounting Standards) Rules, 2015. Based on these, the RV has submitted that as per the definition of "securities" provided under SCRA and "financial asset" provided under Ind AS, "inventories" have not been included. Further, the valuation of inventories, especially newsprint, writing paper, raw material etc., shall require specialised knowledge and expertise of the underlying product and industry and accordingly, should not form part of asset class "Securities or Financial Assets". Therefore, he had excluded inventories from his scope.

2.1.3 During the personal hearing, the RV further submitted that the scope of engagement was communicated by him to the Resolution Professional in his letter of acceptance of assignment. The valuation of inventories was not part of his scope of assignment.

2.2 Contravention-II with respect to nil estimation of trade receivables in Valuation Report.

2.2.1 It was observed in that although the estimated book value of trade receivables is 12.26 Cr., the RV had outrightly rejected the possibility of receiving anything from the said amount. The RV had not considered various factors concerning scope or possibility of realization such as pendency, efforts of the creditor, reasons of pendency, past track record of debtors etc. This indicated arbitrariness in valuation approach which is in violation of Sub Rule 3 (g), 3 (h) and Sub Rule 3 (j) of Rule 8 of the Rules.

Submissions made by RV

2.2.2 The RV has submitted that during the course of his review, he had enquired for bill wise details of trade receivables, the reason for pendency and status of realisation from the Resolution Professional. The RV was only provided with the list of debtors and details of outstanding invoices or ageing was not provided to him. In the absence of any details, he had rolled out balance confirmations to all the parties. The reply was received from one party only which had confirmed amount outstanding as Nil. For other parties, the status of realisation along with action taken for realisation was discussed with the RP. However, in the absence of relevant details of receivables, confirmations/replies from respective parties on letters issued by the RV and any confirmation or probability of realisation by Resolution Professional, the value of receivables was considered as NIL.

2.3 Contravention-III with respect to Security Deposits and Advances - Book Value- 12.37 lakh, FV- 12.37 lakh, LV- 12.37 lakh

2.3.1 It was observed that the RV has not discussed the figures pertaining to security deposits and advances anywhere else in the report rather these items were only reflected in the final evaluation statement where the fair value and liquidation value was assigned the same amount as indicated in the books of accounts. The RV did not Considered the nature and tenure of the security deposit and advances. Accordingly, the RV was termed to be in violation of Sub Rule 3(g), 3(h) and 3(j) of Rule 8 of the Rules.

Submissions made by RV

2.3.2 The RV has submitted that as on the CIRP date, the corporate debtor had total financial assets amounting to INR 3100.47 lakhs, of which INR 12.27 lakhs related majorly to deposits paid to electricity board and for taking property on lease. He had asked for party wise details along with status and probability of realisation of the said receivables. He was provided with party wise details and was confirmed that the amount will be realised. As valuation for all the receivables categorised under class “Security Deposits and Advances” were considered, the list was not appended with the final report.

3. Findings

3.1 The Authority notes the submission of the RV regarding the definition of ‘securities’ and ‘financial instruments’ under the afore-referred statutes as well as Indian Accounting Standards (Ind AS) 32. The objective of the standard as mentioned in the standard is to establish principles for presenting financial instruments as liabilities or equity and for offsetting financial assets and financial liabilities. Therefore, the application of definitions provided therein does not necessarily be imported in the valuation under Valuation rules.

The Valuation Rules provides only for three asset classes viz. Land and Building, Plant and Machinery, and Securities or Financial Assets. The valuation of inventory has already been accepted as the part of exercise by the SFA valuer. Even, the ICAI Valuation Standard 103 (Valuation Approaches & Methods) provides guideline on valuation of inventory. Accordingly, the RV being the valuer under the asset class of SFA should have included inventory valuation in his exercise.

- 3.2 The Authority however considers the scope of engagement provided by the RV and notes the justification provided by RV regarding his valuation estimate of trade receivables and security deposits and advances. The Authority finds that since valuation is more of a subjective exercise, a valuation report must be transparent and set out all the necessary information behind the valuation estimate provided by a valuer.

4. Order

- 4.1 Observing that procedural contraventions as mentioned above fall in the category of minor procedural deviations, hence the Authority is inclined to take a lenient view and 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 Mr. Hemant Kumar Lakhota to be cautious and transparent while conducting valuation under the Insolvency and Bankruptcy Code, 2016 and the Companies (Registered Valuers and Valuation) Rules, 2017.
- 4.2 In view of para 4.1 above, this Order shall come into force immediately.
- 4.3 A copy of this order shall be forwarded to ICAI Registered Valuers Organisation where Mr. Hemant Kumar Lakhota, Registered Valuer is enrolled as a member.
- 4.4 Accordingly, the show cause notice is disposed of.

Sd/-

Dated: 22nd March 2023
Place: New Delhi

(Sudhaker Shukla)
Whole Time Member, IBBI