

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./24/2025

21st February 2025

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/2/2023-IBBI/364/415, dated 19th July 2024 issued to Mr. Nitin Ashok Garg under rule 17 read with rule 15 of the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules). Mr. Nitin Ashok Garg is registered under Valuation Rules as a valuer of Plant and Machinery Assets, with the registration number IBBI/RV/02/2019/11590 on 16th May 2019 and in Securities or Financial Assets, with the registration number IBBI/RV/02/2019/12271 on 29th August 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. Nitin Ashok Garg (hereinafter also referred as “Registered Valuer” or “RV”) in the liquidation of East Coast Energy Private Limited (Corporate Debtor/CD) to examine compliance with section 247 of the Companies Act, 2013 read with relevant provisions of the Valuation Rules.
- 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 SCN dated 19th July 2024 was issued to RV for contravention of the rules 8(3)(g), (j) and (h) of the Valuation Rules, 2017. The written reply was sought from the RV and an opportunity of personal hearing was accorded to him. Mr. Nitin Ashok Garg had submitted reply to the SCN vide email dated 05th August 2024. The matter was referred to this Authority for disposal of the SCN where Mr. Nitin Ashok Garg availed the opportunity of personal hearing on 08th January 2025.

2. Examination of contraventions alleged in the SCN

The contravention alleged in the SCN, the response of RV and the findings of the Authority are summarised as follows:

2.1 **Issue regarding valuation of current/ non-current assets.**

- 2.1.1 It has been observed from the valuation report that RV has assigned zero value to current assets such as bank deposits, current investment, short term loan etc. Further, RV has mentioned in his report that no information was provided by the CD and had assigned zero or very minimal value in comparison to substantial book value to following items:
- a) Valuation of Term Loan & Advances of Rs.494.40 crore considered as zero value.
 - b) Current investment of Rs.0.15 crore considered zero value.
 - c) Cash & Bank Balances of Rs.10.13 crore considered Rs.0.31 crore.
 - d) Short Term loan of Rs.57.04 crore considered zero value.
 - e) Other CA of Rs.0.05 crore considered zero value.
- 2.1.2 It is mentioned in the SCN that the RV in his reply to draft inspection report (DIR) had submitted that “..... *Since no data is available hence it is difficult to formulate an opinion about realizability of same. Thus, we have considered this value as “Nil”*”.
- 2.1.3 The SCN further states that the reply of the RV indicates that he had only relied upon non-submission of documents from management for assigning such low valuation and have not exercise proper care due diligence and independent professional judgement. Further RV has also not done any independent verification from relevant sources of information.
- 2.1.4 This according to the SCN is allegedly in violation of Rule 8(3)(g) of the Valuation Rules and clause 6 of Model Code of conduct for Register Valuers provided in Annexure I of Valuation Rules.

Submissions of the RV

- 2.1.5 The RV in his response has submitted that out of total of Rs. 561.78 Crore, as per balance sheet Rs. 432 Cr. pertained to CWIP (Capital Advance), however, name of the vendors / supplier / contractor against which payment was done was not available. The RV further submitted that despite repeated request to liquidator team, even the name of the party was not known, accordingly, the professional judgement was applied after verifying the facts, site inspection and physical verification. The value of Rs. 137.43 Crore was ascribed only once to CWIP (Chapter -2 of report) for material at site, since CWIP (Capital Advance) and CWIP (Refer, Chapter -2 of report) cannot be distinguished due to non-availability of Work Order / Scope of Work / Purchase Order or Work Contracts, thus value was considered only once for material at site, under CWIP (Chapter -2 of report). (Refer, Chapter - 2 page 62 to 93).
- 2.1.6 The RV in his response further submitted that outstanding amount of Rs. 60 Crore, as per analysis of trial balance pertained to Abir Infra and further, it was informed that a court

case was pending in the matter, however, no further details were shared despite repeated reminders vide email dated 27th March 2020 and 7th April 2020. The RV also submitted that even the case number, name of the court, whatsoever no details were available to able to extract further details from other independent sources.

- 2.1.7 The RV in his response has submitted that there was outstanding amount of pre-paid expenses of Rs. 50 Crore under the current assets and as a process of due - diligence to know type of expenses, request was placed for supporting documents to which liquidator team confirmed in the discussion meetings that no such expenses were incurred as there is no business activity since year 2015. Further, delay in procurement of material was separately enquired which was replied as no data available.
- 2.1.8 The RV in his response has submitted that under Cash and Bank Balance of Rs.10.13 Crore, Rs.9.78 Crore was margin money for which no details were shared neither the information whether Bank Guarantees against which this money was available or revoked was also not known. The RV further submitted that it was confirmed by the liquidator that this money could not be realized since the CIRP/Liquidation period. The RV in the absence of any data, could not done any independent verification and therefore, applying professional judgement, had ascribed Nil value. Additionally, bank balance was verified independently and ascribed value of Rs.0.31 Crore.
- 2.1.9 The RV in his response further submitted that analysis was done on limited data to extract party wise breakup from trial balance under different heads in Balance Sheet and as part of due - diligence a request was then placed for "supporting documents", vide email dated 27th March 2020 and a reminder email dated 7th April 2020, however, no incremental data was shared despite repeated reminder emails. The RV further submitted that the Resolution Professional/Liquidator has direct access to the corporate debtor, empowered under the law, has all powers to extract the data from company by all means. Hence, there is no reason to believe that best efforts were not deployed to source the data. It was confirmed that there has been no recovery under current / non - current assets for previous 2 years, since CIRP. Even "Margin Money" available with COC members could not be recovered.
- 2.1.10 The RV in his response has submitted that after applying professional judgement, in absence of any documentary evidence and there being no other source to gather further details, as nature of expense was of current assets which are generally realized within 12 months of their recognition, a nil value was ascribed.

Findings of the Authority

- 2.1.11 The Authority has perused the email communications of the RV with the liquidator whereby the data tracker in form of excel sheet was shared by the RV seeking information

from the liquidator with respect to the financial assets of the corporate debtor. The Authority notes that the said tracker excel sheet contains separate columns pertaining to - the particulars of the assets (both non-current and current assets) such as copy of ownership documents of land, copy of latest title search report of the land, copy of machine layout, cash on hand certificate, details of balances held as margin money against LC, etc.; the amount pertaining to such assets; the status of availability of documents; comments of RV; and comments of liquidator. The perusal of the email communication between RV and the liquidator (as shared by the RV) reflects that the RV had sought information with the liquidator for all the listed assets (including the ones mentioned in the SCN) at various times through successive email communications.

2.1.12 Accordingly, the Authority is of the view that there seems to be no lack in due diligence on the part of RV in seeking necessary information and documents from the liquidator for the purpose of his valuation.

2.2 **Issue regarding valuation of steel material.**

2.2.1 It has been observed from the valuation report that for the purpose of valuation, the quantity of steel is bifurcated as—steel structures, steel sections and machineries. The CD has a total of 38931.05 MT of steel material. In the valuation report, RV had mentioned that detailed market survey was conducted for the value of steel material and the value was concluded at Rs.32000/MT. However, the valuation report nowhere states the evidence for basis of such rates. RV has also nowhere mentioned the market rate of steel price of the area in his valuation report.

2.2.2 It is mentioned in the SCN that RV in his reply to the DIR, has sought to refer to Section 2.2.3. Page 93 of the valuation report which states- *"Detailed market survey was conducted for value to the steel scrap material..... "*. Further, RV has stated that *"Itself means that market survey was conducted to gather the knowledge of steel price in the micro-market. Interaction with local dealers, scrap dealers, online sites were carried to make an opinion on market rate of the steel at the local level of plant location. Steel mint price being one of the indicators was considered. "*

2.2.3 The SCN further states that perusal of the valuation report does not reveal any indication regarding the reference rate considered for valuation of the asset. Rule 8(3)(g) and 8(3)(j) of the Valuation Rules provide that RV shall state the nature and sources of the information used or relied upon and the major factors that were taken into account during the valuation in his report.

2.2.4 This according to the SCN was not mentioned by RV in his report in contravention of Rule 8(3) (g) of the Valuation Rules and clause 6 of Model Code of conduct for Register Valuers provided in Annexure I of Valuation Rules.

Submission of the RV

- 2.2.5 The RV in his response has submitted that it was not RV's intent to, not disclose sources or nature of information and he has reported all the facts to the best possible extent keeping in mind my professional responsibility. The collation of data points, working papers though not part of the report summarizes the rate of steel adopted, which is in-line with prevalent market rate of date of valuation and same is submitted before this Authority.
- 2.2.6 The RV in his response had further submitted that section 2.2.1 on page 80, 81,82 of the report, details out major factors considered by the RV while evaluating. The bullet points of the section 2.2.1 clearly state the major factors, such as condition of material at site, specification of the material available at site, concept of material value etc considered for valuation.

Findings of the Authority

- 2.2.7 The Authority notes that the RV in his valuation report has considered a flat rate of 32,000/- MT for valuation of machinery which included boiler tank, steel structure, steel section and balance of plant. The RV has nowhere indicated in his valuation report the source of taking 32,000/-MT as the market rate. Although in his submission to the Authority, the RV has stated that he had taken rates from Indian Mineral Book 2019, on perusal of the working sheet in this regard, as provided by the RV, the Authority finds that rate mentioned therein relates to the price of melting scrap and no justification is provided by the RV as to how such prices would be applicable in the case of valuation of machineries of the CD. Neither has he provided any justification for taking same rate for all types of machineries, as mentioned above.
- 2.2.8 Accordingly, the Authority finds the RV in violation of rule 8(3)(g) of the Valuation Rules as the RV has not provided the nature and sources of information in his valuation report, for valuing the plant and machinery of the CD.

2.3 Valuation Standards not stated in the Valuation Report:

- 2.3.1 Rule 8(1) of the Valuation Rules specifically states that the registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18, provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-
- (a) internationally accepted valuation standards.
 - (b) valuation standards adopted by any registered valuers organization.
- 2.3.2 The SCN further states that Rule 8(3)(h) of the Valuation Rules provides that the RV shall state the valuation standards followed in his report. RV has not specifically

mentioned the valuation standards followed by him in his valuation report. In your reply to the draft inspection report, you have submitted that "*...Since I am member of IOVRVF which has adopted International Valuation Standards, by IVSC sole standards, it is deemed that my report is as per said standards...*". The reply submitted by RV also indicates that he has not mentioned the valuation standards followed by RV in his report in contravention of Rule 8(3)(h) of Valuation Rules.

Submission of the RV

- 2.3.3 The RV in his report has submitted that report was prepared in accordance with the standards issued by the International Valuation Standards Council and the RV has fully adhered to these standards, being part of IOVRVF, who has adopted these standards. The RV further submitted that there is no deliberate intent to not to mention the Valuation Standards, as entire report is in conformity to International Valuation Standards.
- 2.3.4 The RV in his report has submitted that in all sections of the report, methodology followed is itself evidence that standards have been followed duly and therefore, it was prayed to kindly take a considerate view in this regard and not to consider the contravention of Rule 8(3)(h), as the report adheres to the IVSC standards.

Findings of the Authority

- 2.3.5 Rule 8 of the Valuation Rules provides as follows:

8. Conduct of Valuation.— (1) *The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:*

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-

(a) internationally accepted valuation standards; or

(b) valuation standards adopted by any registered valuers organisation.

- 2.3.6 The Authority notes that above-mentioned rule mandates a valuer to make valuation either as per the internationally accepted valuation standards **or** valuation standards adopted by **any** registered valuers organisation. Therefore, it is not necessary for a registered valuer to follow the valuation standards adopted by its own Registered Valuers Organisation. He may follow the valuation standards adopted by any other Registered Valuers Organisation or any other internationally accepted valuation standard. Therefore, the submission of RV that since he is a member of a particular Registered Valuers organisation viz., IOV RVF, it is deemed that he has followed the valuation standards adopted by the IOV RVF, does not sustain. Moreover, the RV has also not led any evidence to establish that IOV RVF mandates all its members to follow International Valuation Standards (IVS).

2.3.7 The Authority further notes that rule 8(3)(h) of the Valuation Rules is aptly clear on the point that it mandates the valuer to state in his valuation report *inter alia* the procedures adopted in carrying out the valuation and the valuation standards followed. Therefore, it was the duty of the RV to mention in his report, the valuation standard followed by him.

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

3. Order

- 3.1 The valuation report submitted by an RV serves as a critical document for the Committee of Creditors to take crucial decision about the resolution plan in CIRP and reserve price of asset during liquidation. The stakeholders decide the course of action based on the valuation report and accordingly the reliability of the valuation report becomes important. Therefore, it is necessary that the valuation report is transparent and complete in itself such that there is clarity to the stakeholders while relying on valuation report and decisions taken are optimal. The RV must disclose all the relevant and essential information with respect to the valuation of the assets so that this purpose is served.
- 3.2 In view of the foregoing, after considering the allegations made in the SCN, the detailed 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 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 suspends the registration of Mr. Nitin Ashok Garg for a period of six months.
- 3.3 In accordance with provisions of Rule 17(8) of the Valuation Rules, this Order shall come into force after 30 days from the date of issue of this order.
- 3.4 A copy of this order shall be forwarded to IOV Registered Valuers Foundation where Mr. Nitin Ashok Garg is enrolled as a member.
- 3.5 Accordingly, the show cause notice is disposed of.

Sd/-

(Sandip Garg)

Whole Time Member

Insolvency and Bankruptcy Board of India

Dated: 21st February 2025

Place: New Delhi