

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Authority specified by the Central Government under section 458 of the Companies Act, 2013)

6th February, 2019

ORDER

IN THE MATTER OF APPLICATION OF [REDACTED] FOR GRANT OF CERTIFICATE OF REGISTRATION AS A REGISTERED VALUER UNDER RULE 6 OF THE COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017.

[REDACTED], a resident of [REDACTED] (applicant) had submitted an application under section 247 of the Companies Act, 2013 read with rule 6 (1) of the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) seeking a certificate of registration as a Registered Valuer (RV) in the asset class 'Plant and Machinery'. The [REDACTED], where the applicant is enrolled as a valuer member, forwarded the application on 6th September, 2018, with a recommendation for registration as an RV.

2. As per rule 3(1)(k) of the Rules, no individual shall be eligible to be registered as an RV if he is not a fit and proper person. Among others, integrity, reputation and character are considered to determine if an individual is a fit and proper person. While considering the aforesaid application for registration, it was observed that a criminal proceeding was pending against the applicant. After obtaining details from the applicant, it became clear that the proceeding had been initiated against the applicant and nine others in the matter of [REDACTED] before the Special Judge (PC Act), CBI. It has been alleged in the charge sheet that in furtherance to a criminal conspiracy, the applicant gave a false / fabricated (valuation) report which was submitted by [REDACTED] for financing the project to [REDACTED], and thereby committed offences under section 120B read with 420 of the Indian Penal Code, 1860 (IPC) and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. In view of this, the Authority formed a prima facie opinion that the registration ought not to be granted to the applicant, as he is not a fit and proper person to be registered as an RV. It communicated, vide its communication dated 4th December, 2018, its prima facie opinion along with the reason for the same and provided an opportunity to explain why his application should be accepted, within 15 days of the receipt of the communication.

3. The applicant, vide his communications dated 19th December, 2018, sought a personal hearing after 2nd January, 2019. He appeared for a personal hearing before me on 23rd January, 2019 when he submitted a written statement dated 23rd January, 2019. He has made two broad submissions:

- a. The applicant is not the prime accused. The allegations are not backed with any shred of evidence, and
- b. It is a pending criminal proceeding. In the absence of conviction, the applicant is a fit and proper person.

4. Before proceeding further, let me now turn to the role of a valuer in a market economy:

- a. Market usually discovers price, which reflects the worth of an asset (or liability) and the parties exchange the asset at the price. It is often, however, neither feasible nor desirable to

pass an asset through the market to discover its worth. At times, there may not even exist a competitive market for an asset. In such cases, a valuer estimates worth of an asset, which is known as 'value'. The parties buy or sell an asset at the value estimated by a valuer. Therefore, the value is what the price ought to be. In fact, price could be dirty occasionally for a variety of reasons failing to reflect the true worth of an asset, while value is always pure and authentic.

b. Market participants use value for a variety of transactions. They use it as price for all practical purposes. Different statutes and authorities in India require valuation of assets for different purposes and prescribe the manner of such valuation. For example, the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 envisages estimation of fair value and liquidation value of the assets of the corporate debtor. These values serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the corporate debtor and consequently of the stakeholders. If valuation is not right, a corporate debtor having economic value (viable firm) could be liquidated, or a corporate debtor not having economic value (unviable firm) could be rehabilitated. Further, if market participants undertake transactions at a value which is not reflective of market or different from price, the resources in the economy could be misallocated. Such outcomes are disastrous for an economy and impinge economic growth.

c. Given the role of valuation in a market economy, several jurisdictions have dedicated legislation to ensure accountable valuation services. For example, Queensland in Australia has the Valuers Registration Act, 1992, Malaysia has the Valuers, Appraisers and Estate Agents Act, 1981 and New Zealand has Valuers Act, 1948. In Europe too, many countries have their own domestic laws for certifying and monitoring valuers. For instance, the German valuation profession is supported by specific expert bodies - called 'municipal committees of valuation experts' - regulated by the German federal building code. There are valuation standards as well as ethical principles across the World to ensure accountable valuation services. India has adopted a two-tier, regulated self-regulation 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 in the interest of credibility and objectivity.

d. Section 247 (2) of the Companies Act, 2013 mandates that a valuer shall-

- (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
- (b) exercise due diligence while performing the functions as valuer;
- (c) make the valuation in accordance with such rules as may be prescribed; and
- (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

This envisages a valuer to have the necessary qualifications, ability and experience to undertake a valuation in an objective, unbiased and competent manner. The Rules, therefore, require a valuer to have the qualification and experience and to be a fit and proper person. The reputation, character and competence of the applicant are of material consideration while granting registration as a valuer.

e. It is, therefore, imperative that only individual with absolute integrity and unblemished reputation is registered as a valuer. As a profession is known by the individuals practicing it, the members of the profession must inspire confidence of the stakeholders and the society at large. They have a collective responsibility to build and preserve the reputation of the fledgling valuation profession. It is, therefore, necessary that an individual, whose reputation is doubtful, is kept out of the profession.

6. In this background, I have considered the application, the recommendation of the [REDACTED], the oral and written submission made by the applicant and material available on record. I proceed to examine the explanations submitted by the applicant:

a. The applicant has averred that the alleged charges are not sustainable. I am not the authority to determine whether the allegations have any merit or not. Let the competent authority adjudicate upon the same.

b. What is material is whether the offences alleged are serious to impact the reputation of the individual. I find that the alleged offences, namely, criminal conspiracy (section 120B of IPC), and cheating and dishonestly inducing delivery of property (section 420 of IPC) are serious in nature and attract punishment with imprisonment up to seven years. More importantly, the alleged offence relates to professional conduct as valuer.

c. While dealing with regulation 3 of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004, the Hon'ble Securities Appellate Tribunal, vide its order dated 6th September, 2006, examined the amplitude of fit and proper person as under: *"Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board (SEBI) in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good."* What is material is what others feel about the applicant who has been charge-sheeted for such serious offences. Does such a person inspire confidence of the stakeholders who can entrust him with the responsibility of valuation based on which the economy would allocate resources and market participants would take economic decisions. Pendency of serious criminal proceedings against the applicant adversely impacts his reputation and makes him not a person 'fit and proper' to be eligible as a registered valuer.

d. It is important to keep away an individual who has been convicted. It is also important to keep an individual, whose antecedents are doubtful, away from this noble profession. The Hon'ble Supreme Court in *Avtaar Singh Vs. Union of India & Ors.* [With SLP [C] Nos.4757/2014 and 24320/2014] observed: *"It cannot be disputed that the whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post."* In the matter of *Delhi Administration and Ors. Vs. Sushil Kumar* [(1996) 11 SCC 605], the Hon'ble Supreme Court decided as follows: *"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service."*

7. In view of the foregoing, I find that pendency of the serious criminal proceeding against the applicant, as noted above, adversely impacts his reputation and makes him a person who is not 'fit and proper' to be eligible as a registered valuer. In exercise of the powers conferred on the Authority under rule 6 (9) (b) of the Companies (Registered Valuers and Valuation) Rules, 2017, I, therefore, reject the application of [REDACTED] for registration.

Date: 6th February, 2019
New Delhi

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(Dr. M. S. Sahoo)
Chairperson
Insolvency and Bankruptcy Board of India