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./14/2023 09th May 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/3/2022-IBBI/297/8869, dated 2nd February 2023 issued to Mr. Ajay Kumar Chakrabarti 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. Ajay Kumar Chakrabarti is registered with IBBI as a valuer of Plant and Machinery Assets (P&M), with the registration number IBBI/RV/02/2019/12153 on 7th 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. Ajay Kumar Chakrabarti in the Corporate Insolvency Resolution Process (CIRP) of RNB Cements Pvt. Ltd (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 2nd February 2023 was issued to RV for contravention of the rules 8(3)(g),(h) and (j), and clauses 6, 7 and 8 of Model Code of Conduct specified under Annexure-I of the Valuation Rules. The written reply was sought from the RV and an opportunity of personal hearing was accorded to him. Mr. Ajay Kumar Chakrabarti responded to the SCN on 3rd March 2023, where he submitted that almost all the contraventions mentioned in the SCN have been responded earlier. He also submitted that he has assumed that the charges framed in the SCN were based on technical review done by a reviewer as provided in the International Valuation Standards and therefore sought the copy of the technical reviews by the reviewer for responding to instant SCN.

1.4 In this regard, Mr. Ajay Kumar Chakrabarti availed the opportunity of personal hearing on 11th April 2023. The statement of Mr. Ajay Kumar Chakrabarti regarding response to the allegations in SCN already being provided earlier to the IA is taken on record. Accordingly, the SCN shall be examined based on the submissions made by RV to these allegations in his reply to IA on the Draft Inspection Report.

1.5 Further, it is noted that the provisions of the Valuation Rules deal with procedural issues and related contraventions and there is no requirement, as such, to examine the contraventions based on any valuation standards. Further, the SCN is prepared on the basis of the findings in the inspection report which has already been shared with the RV along-with the SCN. Therefore, the Authority hereby finds no reason to share with the RV the background material for issuance of SCN again.

2. **Contraventions alleged in the SCN**

Contraventions alleged in the SCN, the RV's submissions to the IA on these contraventions and the findings of the Authority are summarised as follows:

2.1 **Use of Specific Valuation Standards**

2.1.1 It was observed that the RV in his report has stated that he has neither verified the record nor has he conducted the complete physical verification of assets. This, according to the Board, leaves a wide scope for undervaluation or over-valuation of assets. Further, the RV has mentioned that he had assumed that machinery mentioned in the list are physically available on site. Simultaneously, while estimating the Fair Market Value (FMV) of assets, the RV gave the estimation for 507 items under 'Plant and Machinery', 70 items under 'Electrical Installations' and 13 items under 'Various Charges'. The table contains information on the 'Description of machinery', Date of purchase/ Date of Acquisition', FMV including installation cost and salvage value. It appeared to the Board that the RV has copied items from Asset Register with complete nomenclatures and date of purchase and assigned some value to each item without going into the details and without conducting physical verification. This is alleged in SCN to be in violation of sub-rule 3(h) and sub-rule 3(j) of Rule 8 of Valuation Rules.

Submission of the RV

2.1.2 The RV has submitted that –

(a) no exhaustive documents i.e. original tax invoices were available for verification of records. The RV had however collected photocopies of invoices which were verified with the details in the asset register. The term "Verification" here meant with the original copies.

(b) the statement that *"I have assumed for the purpose of this valuation that all the machinery mentioned in the asset list are physically available at the site"* relates to only very small items of insignificant value which are large in numbers, randomly scattered, total value very insignificant.

(c) the *"nomenclatures and date of purchase etc"* are technical statements and when they are transferred to some other part will not and should not change. Any change may lead to wrong statement indicating sometimes a different asset. While taking them from the FAR, the RV had read the nomenclature carefully and re-written in his report verbatim because they were found to be correct. The RV has also asserted that he had not put the values randomly. Each original price has gone through the RV's standard process of arriving at the current price after consideration of price inflation, salvage value, depreciation, obsolescence to arrive at present "Fair Market Value".

Findings of the Authority

2.1.3 The Authority notes that bare reading of the statements of assumption made in the valuation report reflects that the RV has not verified the records relating to the assets and has also not conducted the physical verification of assets in the premises of the CD. The RV in his submission has now qualified the term "verification" used in the valuation report was in relation to original copies which were not made available with him.

2.1.4 Further, the statement specifically states that "all machinery" have been assumed to be physically available at the site. But the RV in his submission has qualified this statement also to the extent of only very small items of unsignificant value, large in numbers and randomly scattered.

2.1.5 However, such qualifications are not to be seen in the valuation report itself. The submission of the RV seems to be an afterthought for the purpose of only defending the observations made in the inspection report. Therefore, the same cannot be accepted as valid counter to the allegations made in the SCN. Therefore, the Authority holds the contraventions alleged in the SCN against the RV.

2.2 **Issue regarding methodology adopted for the valuation and application of specific approach as prescribed in the 'Valuation Standard by the RV"**

2.2.1 It was observed that in page no. 5 under 'Regulatory Approvals', the RV has mentioned the assumption that "*all necessary approvals such as approvals from Inspector of Factories, Consent to Establish from competent authorities, Pollution Control Board, Local Nodal Agency, Water & Sewage board, Ministry of Environment, Fire Department etc. have already been received from relevant authorities for commissioning and operation of the plant and machineries at the site and the same has been considered for the purpose of this exercise. I have not made any further enquires with relevant authorities to validate the legality of the same.***"**

2.2.2 It was noted in the SCN that para 20.5 of IVS 300 (Plant and Equipment) clearly states that, "***A valuation of plant and equipment will normally require consideration of a range of factors relating to the asset itself, its environment and physical, functional and economic potential****. Therefore, all plant and equipment valuers should normally inspect the subject assets to ascertain the condition of the plant and also to determine if the information provided to them is usable and related to the subject assets being valued. Examples of factors that may need to be considered under each of these headings include the following:*

(a) Asset-related:
(b) Environment-related
(1) the location in relation to the source of raw material and market for the product. The suitability of a location may also have a limited life, eg, where raw materials are finite or where demand is transitory.
(2) the impact of any environmental or other legislation that either restricts utilization or imposes additional operating or decommissioning cost…"

2.2.3 It is alleged in the SCN that the RV should have invariably taken into account the above factors in the valuation specially when the CD is a Cement Plant located in the environmentally and strategically sensitive North-eastern Region of the country. By ignoring the above facts, the RV has missed an important aspect of valuation. This is allegedly in violation of sub rule 3(h) and sub rule 3(j) of Rule 8 of the Valuation Rules.

2.2.4 Further, under IBC, 'Valuation Date' is the 'Insolvency Commencement Date'; thus, restricting the discretion of Insolvency Professional or Registered Valuer in this regard. It was observed that the RV has indicated that he had used 06th January 2020 i.e. the date of site visit as date of valuation, which is clear deviations from the norms. This is allegedly in violation of sub rule 3(h) of Rule 8 of the Valuation Rules.

Submission of RV

2.2.5 With respect to the contravention regarding assumption, the RV has submitted that it has not got direct impact on the valuation of assets and being not readily available, they were not being insisted upon as it was delaying the submission of report.

2.2.6 The RV has further submitted that logically, the status of any asset is assessed on the date of inspection and valuation of this asset is taken on this date. The RV has however admitted that as per the Insolvency and Bankruptcy Code, the date of valuation should have been insolvency commencement date.

Findings of the Authority

2.2.7 The Authority notes that although a valuer is required to consider various factors including environmental concerns while conducting the valuation, the legal vetting of the sanctioned approvals from various authorities is not a mandatory requirement for the valuer and the reliance can be placed on the documents provided to him in this regard by the Insolvency Professional. Therefore, the Authority does not find RV having made contravention in this regard. However, as averred in the SCN, under the Insolvency and Bankruptcy Code, 2016, the date of valuation of assets is the insolvency commencement date. The RV must adhere to this while conducting the valuation.

2.3 **Issue regarding Estimation of 'Fair Value' and methodology adopted for the valuation:**

2.3.1 It was observed that the RV has quoted 'International Valuation Standard' IVS 105 to explain various concepts such as 'Fair Value', 'Liquidation Value' 'Valuation Approaches' etc. However, the RV has not indicated the specific approach adopted by him for the valuation of CD. Moreover, the RV has directly assumed the Fair Market Value of the 590 items just on the basis of sample verification. The book value of these items is not at all mentioned in the report.

2.3.2 It is further alleged in the SCN that nowhere in the valuation report, the RV has specifically indicated that he had used 'Cost Approach' for this exercise. Moreover, the SCN alleges that using the cost approach without taking into account the base cost, did not appear appropriate and thereby concluded that the valuer has been negligent in his approach. The SCN further alleges that the methodology adopted by the valuer appeared to be abrupt.

Submission of RV

2.3.3 The RV has submitted that he has adopted cost approach for each and every machine. The RV has asserted that he has not put the values randomly. The original price has gone through the RV's standard process of arriving at the current price after consideration of price inflation, salvage value, depreciation, obsolescence to arrive at present "Fair Market Value". The RV has further submitted that he has not directly assumed FMV and admitted that there was an inadvertent omission on his part to mention about the book value of these items.

Findings of the Authority

2.3.4 The Authority notes that rule 8(3)(h) of the Valuation Rules mandates an RV to mention in his valuation report, the procedures adopted in carrying out the valuation. The approach adopted for valuation therefore becomes an important constituent of the valuation report. The Authority also takes on record the admission of RV regarding omission on his part to mention about the book value of the items valued.

2.4 **Estimation of 'Fair Value' and 'Liquidation Value' in respect of Productive Assets:**

2.4.1 It was observed that the RV in his report has mentioned that "*For assessment of Liquidation Value (LV), I have assessed the value on their distressed sale basis with them in their in-situ position. These are assessed as percentage of their FMV. This percentage is my assessment of the FMV based on their Realisable Value.*"

2.4.2 The SCN provides that the RV has classified the assets in three parts. Annexure A is the list of 'Plant and Machinery' containing 50 items, Annexure B is the list of 'Electrical Installations' containing 70 items and Annexure C is various other charges containing 13 items. Annexure A contains items such as whole units, sections, parts, spares etc. However, the RV has assumed that LV would be 66 percent of the FMV in respect of all types of Plant & Machinery without giving any reasoning or justification for such assumption. In the same manner for items in Annexure B (Electrical Installations) the LV is 75 percent of the FMV. Assuming a flat discounting factor without taking into account the capacity, condition and alternative uses of the 'Plant & Machinery' does not appear to be justified especially when the RV has not made any physical verification of complete asset, nor did he make any attempt to logically justify the basis of his assumptions.

2.4.3 It is further alleged in the SCN that there is always a possibility that different assets would be in the different conditions specially when they were purchased/acquired on different years ranging from 2007 to 2012. They might be having different uses. There is a huge gap between the book value and cost of the individual items as reflected in the report. Therefore, clubbing them all and calculating the arithmetical average to estimate the liquidation value of all such assets may never be able to reflect the true valuation of the asset.

2.4.4 This is alleged to be in violation of sub rule 3(h)and sub rule 3(j) of Rule 8 of the Valuation Rules in the SCN.

Submission of RV

2.4.5 The RV has submitted that his practice is to assess the Liquidation value based on present condition of the assets, their in-situ used value, salvage value, etc of all the major value items and average them out on the total FMV which in this case comes to about 66% for the "Plant and Machinery" items and 75% for "electrical installations".

Findings of the Authority

2.4.6 The Authority notes that rule 8(3)(h) and (g) mandates an RV to list down the procedures adopted in carrying out the valuation and also the major factors taken into account during the valuation. In the instant case the RV has not provided any basis for his assessment with respect to the liquidation value of the assets. Therefore, the Authority holds the contraventions made in the SCN in this regard.

2.5 **Issue regarding Purchase Price, Installed Capacity and condition of the P&M:**

2.5.1 It is noted in the SCN that valuation of Plant and Machinery Asset 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 report is silent on most of these issues, giving rise to point that the estimation of value is more abrupt than procedure oriented. Although, the RV has claimed that he has relied on all the above said factors, but the valuation report does not substantiate the same. This is allegedly in violation of Sub Rule 3 (g) and Sub Rule 3 (j) of Rule 8 of the Valuation Rules.

Submissions made by the RV

2.5.2 The RV has submitted that he had relied on factors such as present condition, future use, purchase price) obtained from FAR), salvage value, depreciation, obsolescence.

Findings of the Authority

2.5.3 The Authority notes that rule 8(3)(g) mandates an RV to mention the nature and sources of information relied upon during the valuation. Further, rule 8(3)(j) mandates the RV to mention major factors that were taken into account during the valuation. Therefore, the Authority finds that the factors considered by the RV during the valuation, and as stated by him in his reply to the IA, must also be part of the valuation report. Accordingly, the Authority holds the contravention by RV as mentioned in the SCN in this regard.

3. Order

3.1 The conduct of valuation is a professional exercise which relies heavily on the professional judgment of the valuer, based on the skills and expertise of the valuer. The valuation exercise is inherently subjective in nature. Therefore, it becomes important for the valuer to carry out his duty diligently which includes physically verifying the existence of the assets to be valued and following accepted norms and standards for valuation. In addition, for making the valuation exercise more objective, it is necessary that assumptions, criteria and analysis being used for drawing specific conclusions shall be elaborated in the valuation report. The valuation report prepared by him needs to be transparent for the sake of relevant stakeholders as economic outcomes hinges upon the value as contained in the valuation report. Accordingly, the report should contain needed clarity on the procedures adopted by the valuer and also all the factors considered by him to arrive at a specific valuation. From reading the valuation report, it should be apparently clear that document being read does not pertain to the realm of fiction; in the contrary, it has to be made abundantly clear that the document and findings are based on scientific scrutiny of corroborative evidences and facts on ground. Any valuation estimate bereft of background or base, assumptions and discounting factors used will potentially remain under shroud of mystery.

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. Ajay Kumar Chakrabarti bearing registration number - IBBI/RV/02/2019/12153, for a period of six months.

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 IOV Registered Valuers Foundation where Mr. Ajay Kumar Chakrabarti is enrolled as a member.

3.5 Accordingly, the show cause notice is disposed of.

Sd/-

Dated: 09th May 2023 (Sudhaker Shukla)
Place: New Delhi Whole Time Member, IBBI