

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/4/2021

12th March, 2021

ORDER

In the matter of Mr. Lakhan Lal Gupta, Registered Valuer under Rule 15 and 17 of the Companies (Registered Valuers & Valuation) Rules, 2017

This Order disposes of the Show Cause Notice (SCN) No. RV-13/2/2020-IBBI/85/653 dated 26th August, 2020 issued to Mr. Lakhan Lal Gupta, G-183, Basement, Preet Vihar, New Delhi -110092, who is a Member of the IOV Registered Valuer Foundation, the registered valuer organization and registered with the Insolvency and Bankruptcy Board of India (IBBI) as valuer in asset class of Land and Building with the Registration No. IBBI/RV/02/2019/10738.

1. Background

- 1.1 The IBBI has been delegated by the Central Government to perform the functions as the 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuer Rules). Mr. Lakhan Lal Gupta who is a member of the IOVRVF, was registered with the IBBI as valuer in asset class of Land and Building with the Registration No. IBBI/RV/02/2019/10738 on 31st January, 2019.
- 1.2 It has come to the notice of the IBBI from the application referred by the Divya Jyoti Foundation, Registered Valuer Organisation (RVO), for registration of IBR Consulting Private Limited as Registered Valuer Entity (RVE) that Mr. Lakhan Lal Gupta was the authorized signatory on behalf of IBR Consulting Private Limited. During the process of examination of the referred application, certain observations were made regarding the object clause of the company as provided in its Memorandum of Association (MoA) which did not satisfy the eligibility conditions for registration as per the Valuer Rules.
- 1.3 Upon consideration of the material available on record, SCN dated 26th August, 2020 was issued under the rule 17 of the Valuers Rules to Mr. Lakhan Lal Gupta, seeking his written reply and offering him an opportunity of a personal hearing for disposal of the same in accordance with the said Valuer Rules.
- 1.4 Mr. Gupta responded to the SCN vide his reply dated 7th September, 2020 and availed

an opportunity of personal e-hearing before the Authority on 20th November, 2020 wherein he expressed that he is not aware of such application for registration having been made by him. Subsequently, Mr. Gupta was given another opportunity of personal hearing on 21st December 2020 to which he expressed his inability to appear before the Authority. Finally, the personal hearing was conducted on 11th January 2021 wherein Mr. Gupta reiterated his submissions made in written statement.

2 Show Cause Notice

The alleged contraventions in the SCN are summarised as follows:

- 2.1. The IBBI, acting as the Authority under the Valuer Rules, has granted Mr. Gupta registration as a valuer, in the asset class of Land and Building with the registration number IBBI/RV/02/2019/10738.
- 2.2. It is observed that Mr. Gupta was authorized signatory on behalf of IBR Consulting Private Limited (Company) for the purpose of making application of the Company for registration as RVE. During the process of examination of the application, as referred to by Divya Jyoti Foundation, RVO, certain observations were raised regarding the object clause of the Company as provided in the MoA. It was observed that post raising of the query, false and misleading document of MoA of the Company was provided to the Authority for the purpose of obtaining registration of the Company as RVE.
- 2.3. In view of the foregoing, Mr. Lakhan Lal Gupta has contravened provisions of rules 3(1)(k), 7(a) (b) and (g) of the Valuer Rules and Clauses 2, 3 and 4 of the Model Code of Conduct for Registered Valuers. These contraventions are serious in nature making Mr. Gupta a person not “fit and proper” to continue as a registered valuer and has led to breach of his condition of registration.

3 Submissions by Mr. Lakhan Lal Gupta

Written submissions as provided by Mr. Gupta in his reply dated 7th September, 2020 and e-mail dated 27th November, 2020 and oral submissions made during personal e-hearing on 20th November, 2020 and 11th January, 2021 are summarized as follows:

- 3.1 Mr. Gupta submitted that he was appointed as Director in the Company on 12th September 2019. The application and affirmations in Form B dated 18th September 2019 for registration of the Company as valuer entity was signed by the then Director Mr. Vekas Kumar Garg (Registration Number-IBBI/RV/11/2019/12330) as authorized signatory on behalf of the Company. The application was submitted to IBBI on 26th September 2019 by the Divya Jyoti Foundation (IBBI/RVO/2018/011), RVO after scrutinization.
- 3.2 Mr. Gupta submitted that altered MoA of the Company is available on MCA Portal which was modified on 17th July 2019 before his appointment as director in the Company, but no authentic document has been provided to him. The object clause in the uploaded altered MoA is “*Rendering professional or financial services including valuation*”

services". He submitted that an error has been committed by the then directors while writing different object of the Company in notice of Extra Ordinary General Meeting issued on 18th June 2019 and subsequently resolution dated 17th July 2019 passed by Board of Directors to this effect.

- 3.3 Mr. Gupta submitted that due to outbreak of Covid-19 followed by countrywide lockdown, he has been in home isolation at Lucknow and the Company affairs are being looked after by other professionals and Delhi based Director, Sri Satish Chandra Bogra (Registration Number-IBBI/RV/11/2019/12680). The documents submitted by the professionals of the Company to the Authority on 11th May 2020 were without Mr. Gupta's scrutiny and knowledge. Mr. Gupta further submitted that Divya Jyoti Foundation, RVO has clarified that due to clerical error, unaltered MoA was submitted to the Authority.
- 3.4 Mr. Gupta submitted that he was not authorized signatory on behalf of the Company for purpose of application for registration as valuer entity. Mr. Gupta submitted that he had resigned from the directorship of the Company on 9th September, 2020.
- 3.5 Mr. Gupta submitted that he had no knowledge of making of the application for registration of the Company as RVE in Form B dated 14th February 2020 and that he had not attended the board meeting of the Company on 13th February 2020 and denied any knowledge of the resolution dated 13th February 2020 passed at the board meeting which authorized him for submission of application for registration of the Company as RVE. He submitted that both the documents came to his knowledge for the first time during the personal hearing on 20th November 2020. During the personal hearing, Mr. Gupta reiterated the submissions made in reply to SCN dated 7th September, 2020.

4 Analysis and Findings

- 4.1 It is the objective of the Insolvency and Bankruptcy Code, 2016 (Code) to have a transparent, credible and consistency in determination of the value of assets of the corporate debtor and which can only be ensured by adopting uniform valuation standards and best practices. On the basis of the information supplied in the valuation report, the CoC takes an informed decision as to whether to continue with the resolution process or resolve to liquidate and the realization in a CIRP/Liquidation is also based on the valuation of assets of the corporate debtor. Moreover, it also facilitates the resolution professional to invite prospective resolution plans and inaccuracies in determining the liquidation value could undermine the resolution plan that may be approved on the basis of an incorrect liquidation value. Therefore, the fate of the corporate debtor and its stakeholders hinges on an accurate valuation of assets.
- 4.2 The valuation profession has diverse practices and to establish the integrity in the process of valuation and inspire confidence among the stakeholders, the Code as well as the Valuer Rules require the resolution professional to engage registered valuers for the purpose of valuation of the corporate debtor. The Hon'ble Delhi High Court in the matter of Cushman and Wakefield v. UOI, W.P.(C) 9883/2018, observes as follows:
"The endeavor of the Rules is to introduce a class of professionals where the focus is on

the professionals skills of the individuals rather than a business venture. Professionalism is introduced into the profession of valuation, which involves sophisticated skills and a high degree of integrity, impartiality and ethics for the purposes of the Companies Act and IBC, through Valuation Rules which can regulate this area and make valuers more accountable and professionally trained.”

4.3 Rules 3 and 7 of the Valuer Rules provide for eligibility and conditions for registration of valuers which read as under:

“3. Eligibility for registered valuers.— (1) A person shall be eligible to be a registered valuer if he-

(k) is a fit and proper person:

Explanation.— For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) integrity, reputation and character,*
- (ii) absence of convictions and restraint orders, and*
- (iii) competence and financial solvency.”*

“7. Conditions of Registration.— The registration granted under rule 6 shall be subject to the conditions that the valuer shall –

(a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;

(b) at all times comply with the provisions of the Act , these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;

(g) comply with the Code of Conduct (as per Annexure-I of these rules) of the registered valuers organisation of which he is a member;”

4.4 Further, the Code of Conduct as per Annexure-I to the Valuer Rules provides as follows:

- (i) A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships. (clause 2)*
- (ii) A valuer shall endeavor to ensure that he/it provides true and adequate information and shall not misinterpret any facts or situations. (clause 3)*
- (iii) A valuer shall refrain from being involved in any action that would bring disrepute to the profession. (clause 4)*

4.5 The Authority notes that the Company, IBR Consulting Private Limited was registered under the Companies Act, 2013, with registered office at B-1/276 G/F Yamuna Vihar, Delhi- 110053 having CIN- U74999DL2018PTC337098. At the time of incorporation the MoA of the Company did not provide the objective of providing valuation services and the objective was ‘*All types of consultancy service*’. In the Annual/ Extra Ordinary General Meeting held on 07.08.2018, the objective in the MoA was altered to “*provide support services to Insolvency Professionals, who are its Directors.*” The objective clause of the MoA was further altered to “*carry business of Surveyors, Valuers, Agents,*

Representatives and loss assessors for and on behalf of the Insurance/Assurance Companies of all type, kinds, description and Nationals” in the Annual/ Extra Ordinary General Meeting held on 25.03.2019. Subsequently, another amendment to the objective clause of the MoA was made in the Annual/ Extra Ordinary General Meeting held on 17.07.2019, wherein it was proposed for the amendment to the MoA to reflect its objective to “rendering professional and financial services including valuation services.”

- 46 The Authority also notes that the Registrar of Companies had also issued a certificate of registration of the special resolution confirming alteration of the object clause to that effect on 31.07.2019. In meeting dated 12.09.2019, Mr. Lakhan Lal Gupta was appointed as a Director and Mr. Vekas Garg was authorized as the signatory for the IBR Consulting Private Limited. A letter dated 12.09.2019 was also issued to Mr. Lakhan Lal Gupta informing his appointment. Initially an application dated 26.09.2019 for registration as RVE was made through Divya Jyoti Foundation, RVO to IBBI, wherein Mr. Vekas Kumar Garg had signed and affirmed the application. However, due to change in composition of the directors, the application was made again.
- 47 The Authority observed that Mr. Gupta was authorized by resolution dated 13.02.2020 passed at meeting of Board of Directors of the Company for filing an application with the IBBI for registration of the Company as RVE. The Form B application dated 14.02.2020 for registration of the Company as RVE on being verified and recommended by Divya Jyoti Foundation, the RVO, was forwarded to IBBI on 13.03.2020, wherein it is observed that signature affixed is of Mr. Lakhan Lal Gupta dated 14.02.2020. Further, it was found that the objective defined in MoA submitted by the Company along with application for registration of the Company as RVE was mentioned as “*All type of consultancy services*”. It is also pertinent to refer to the paragraphs 1 and 3 of the affirmations annexed with the application form, wherein the signatory undertakes that,

“1. Copies of documents, as listed in section F of this application form have been attached/uploaded. The documents attached/uploaded are proof of residence and identity of all the directors, Educational Qualifications, Professional Qualifications and Valuation Qualification, ITR for last 3 years, Copy of membership of RVO, Passport size photograph, Demand Draft of Rs. 10,000 for payment.”

...

“3. The application and the information furnished by me along with this application is true and complete. If found false or misleading at any stage, my registration shall be summarily cancelled.”

- 48 The Authority also notes that the rule 3(2)(a) of the Valuer Rules clearly provides guidelines as to the objects of the applicant entities for the purpose of registration which reads as under:

*“3(2) No partnership entity or company shall be eligible to be a registered valuer if-
(a) it has been set up for objects other than for rendering professional or financial*

services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;”

- 4.9 The Authority on scrutiny of the MoA submitted by the Company found that the objective in MoA of the Company was not as per the provisions of rule 3(2)(a) of the Valuer Rules, therefore, an e-mail dated 16.04.2020 was sent by IBBI informing that the object of the applicant Company is not in compliance with the Valuer Rules. Thereafter, an altered MoA was submitted vide e-mail dated 11.05.2020 to the Authority. The IBBI vide e-mail dated 17.06.2020 informed the Company that the earlier submission of the unaltered MoA which was made prior to 17.07.2019 meeting was in contravention to the Affirmation submitted. The IBR Consulting Private Limited in its reply e-mail dated 03.07.2020 stated that there was a filing error while submitting the earlier MoA and there was no *malafide* intent on their part. Also the RVO vide e-mail dated 25.06.2020 informed that on account of some clerical/filing error, the altered MoA was not furnished and the unaltered version was forwarded by them.
- 4.10 The Authority observes that as per the documents submitted by Mr. Gupta, the MoA was altered on 17.07.2019 to reflect objective of the Company *to provide support services to Insolvency Professionals, who are its Directors*. This alteration was made in Extra Ordinary General Meeting held on 17.07.2019 which was signed and certified. Therefore, the submission made by Mr. Gupta that in the meeting dated 17.07.2019, the objective in MoA was changed to *“rendering professional and financial services including valuation services”* is correct as the amended MoA was filed with the RoC. Hence, the allegations of contravention in this regard are not made out.
- 4.11 The Authority finds that, submission by Mr. Gupta of not having any knowledge of resolutions dated 13.02.2020 authorizing him to take all steps for registration of the Company as RVE and submission of the Form B application dated 14.02.2020 cannot be accepted especially when Mr. Gupta has failed to provide any plausible explanation for his lack of knowledge. It is the duty of a professional to be responsible and accountable, however, the casual conduct of Mr. Gupta affects his integrity and his ability to adhere to standards of professional ethics.
- 4.12 The Authority further notes that there is incongruity in the documents relating to the MoA referred by Divya Jyoti Foundation, RVO, as the unaltered MoA was furnished while forwarding the application to IBBI. Divya Jyoti Foundation, RVO has stated in its e-mail dated 25.06.2020 that they have verified the document but while forwarding the application to IBBI due to clerical error, the altered MoA was misplaced, and the unaltered MoA was forwarded. This absolves Mr. Gupta from the allegation of submitting misleading documents as the authorized signatory of the IBR Consulting Private Limited and as a registered valuer professional.

Order

5. In view of the above, 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 Companies (Registered Valuers and Valuation) Rules, 2017, hereby warns Mr. Lakhan Lal Gupta that he should take reasonable care and due diligence while performing his functions under the Insolvency and Bankruptcy Code, 2016 and the Companies (Registered Valuers and Valuation) Rules, 2017.
6. In accordance with provisions of Rule 17(8) of the Rules, the directions of this order shall come into force with immediate effect as Mr. Lakhan Lal Gupta has only been issued a warning.
7. A copy of this order shall be forwarded to IOV Registered Valuer Foundation where Mr. Lakhan Lal Gupta is enrolled as a member.
8. Accordingly, the show cause notice is disposed of.

-sd-

(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 12th March, 2021

Place: New Delhi