

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./10/2023

22nd March 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/4/2022-IBBI/289/8848, dated 18.01.2023 issued to Mr. Neeraj Kumar Sureka 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. Neeraj Kumar Sureka is registered with IBBI as a valuer of Securities or Financial Assets (SFA), with the registration number IBBI/RV/06/2019/11436 on 30.04.2019.

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. Neeraj Kumar Sureka (RV) 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 with an opportunity of personal hearing in accordance with the said Rules. The RV responded to the SCN on 31.01.2023 and the matter was referred to the Authority for disposal of the SCN. Mr. Neeraj Kumar Sureka availed the opportunity of personal hearing on 16.03.2023 where he and his advocate Mr. Arjun Asthana were present.

2. Alleged contraventions and submissions of Mr. Neeraj Kumar Sureka, Registered Valuer (RV)

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

2.1 Contravention with respect to Inclusion of transportation cost of inventory while calculating the value.

- 2.1.1 It was observed that the RV in his reply to the IA on draft inspection report had submitted that he had applied a discount of 20% and 40% on the total cost of coal (invoice value of Rs 5500 per MT) to arrive at Fair Value and Liquidation Value respectively. It was also submitted that in the total cost of 5500/-, purchase price of coal was Rs 3000/- MT and transportation cost was Rs 2500/-MT. Therefore, it was observed that by applying a discount of 20% of the total cost which includes transportation charges, the RV has included transportation cost while calculating Fair Value and Liquidation Value.
- 2.1.2 The authorised officer was of the view that this is a wrong presumption as the buyer would only pay for the actual cost of the coal and not for the transportation component borne by the CD. By including the transportation component while calculating Fair Value and Liquidation Value, RV has violated sub rule 3(g) and sub rule 3(j) of rule 8 of Valuation Rules.

Submissions made by RV

- 2.1.3 The RV in his submission has submitted that the observation that transportation cost should not be added while calculating Fair Value and Liquidation Value of coal would have been correct, had the CD purchased that coal from the Kolkata based coal dealers and the transport charges would have been from the Kolkata coal dealers depot to the factory premises of the CD in Kolkata i.e. in the same market. However, in the present case the coal was not purchased locally, but was purchased from a coal dealer based in Jharkhand which is approximately 470 Kms away. Therefore, transport cost is the major cost of the coal.
- 2.1.4 The RV has also referred to the International Valuation Standards (IVS) 105 (Valuation Approaches and Methods) where in para 70.11 under the heading “Cost Considerations” it is provided that the cost element should include direct and indirect costs that would be required to replace/ recreate the asset as of the valuation date. The indirect cost includes transportation cost also. The same is also reiterated in the “Background guidance on the valuation process under IBC, 2016 – Best Practices” released by Indian Institute of Insolvency Professionals of ICAI.

3. Order

- 3.1 The Authority notes the submission of the RV. 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 and assumptions behind the valuation estimate provided by a valuer so as to enable the stakeholders to form a judicious economic opinion on the report.

- 3.2 The RV acknowledged that since the issue was related to inventory and not the fresh purchases, additionality of transport cost could have been avoided. He conceded that inclusion of transport cost was based on his understanding of the provisions as existed in different guidelines and has been taken into account inadvertently.
- 3.3 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 Valuation Rules hereby disposes the SCN without any action.
- 3.4 In view of para 3.3 above, this Order shall come into force immediately.
- 3.5 A copy of this order shall be forwarded to ICAI Registered Valuers Organisation where Mr. Neeraj Kumar Sureka, Registered Valuer is enrolled as a member.
- 3.6 Accordingly, the show cause notice is disposed of.

Dated: 22nd March 2023
Place: New Delhi

Sd/-
(Sudhaker Shukla)
Whole Time Member, IBBI