

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.(A)/03/2023

22nd June 2023

ORDER

This Order disposes the appeal preferred by Mr. Debasish Ghosh against the Order dated 26th April 2023 passed by Insolvency and Bankruptcy Board of India (IBBI). The IBBI has been delegated powers by the Central Government to perform the functions of the Authority under the Companies (Registered Valuers and Valuation Rules), 2017 (Valuation Rules). Mr. Debasish Ghosh is registered with IBBI as a valuer of Plant and Machinery Assets (P&M), with the registration number IBBI/RV/01/2019/11265 on 9th April 2019.

1. Brief Background

- 1.1. The IBBI, in accordance with rule 15 read with rule 17 of the Valuation Rules, had suspended the registration of Mr. Ghosh vide its Order dated 26th April 2023 (hereinafter referred as “Order”). The said Order disposed of the SCN No. RV-13012/3/2022-IBBI/292/885, dated 24th January 2023, issued to Mr. Ghosh in respect of his valuation assignment in the Corporate Insolvency Resolution Process (CIRP) of RNB Cements Pvt. Ltd (Corporate Debtor/CD).
- 1.2. In terms of rule 17(9) of the Valuation Rules, Mr. Debasish Ghosh has now preferred an appeal against the Order dated 26th April 2023. He availed the opportunity of personal hearing before the appellate authority on 15th June 2023.

2. IBBI Order dated 26th April 2023

- 2.1. The IBBI in its Order dated 26th April 2023 examined the allegations mentioned in the SCN dated 24th January 2023 and the reply of Mr. Ghosh on such allegations, which is presented here in brief as follows-
 - 2.1.1. **Use of Specific Valuation Standards** – The SCN alleged that Mr. Ghosh has not specifically indicated the valuation standard followed by him. Mr. Ghosh in his reply to the SCN had stated that on page no 3 of the valuation report it has been disclosed that he had followed International Valuation Standard and on page no 6 it has been disclosed that “Cost approach” has been adopted for carrying out the valuation. The Authority noted that page 3 of the valuation report mentions that Mr. Ghosh has followed International Accepted Valuation Standard. However, it is not stated as to which internationally accepted valuation standard he has followed while conducting valuation exercise for the CD. The term internationally accepted valuation standard is a generic term and does not reflect any specific valuation standard that would have been followed by the RV. Therefore, the Authority found RV in violation of rule 8(3)(h) of the Valuation Rules.

2.1.2. Estimation of 'Liquidation Value' in respect of Productive Assets (P&M) – The SCN alleged that Mr. Ghosh had applied 70% obsolescence discount on the depreciated value of the assets to estimate the fair market value without discussing the technical aspects of the plant and machineries and did not justify the basis of his assumptions. Mr. Ghosh in his reply to SCN had submitted that in page no 3 of the valuation report at the last sentence of “VALUATION METHODOLOGIES”, it is clearly stated that *"Assessment of liquidation value will depend on the prospects of its marketability"*. He further submitted that detailed reasons and justifications behind the conclusion on discount factor for arriving at liquidation value had been elaborated in his reply to the findings of the Inspecting Authority. The Authority noted that the above-referred statement is generic in nature and does not explain the reason of discounting factor. Therefore, the Authority found RV in violation of rule 8(3)(h) and (j) of the Valuation Rules.

2.1.3. Estimation of FMV and LV in respect of Non-Productive Asset – The SCN alleged that Mr. Ghosh had assumed the fair market value to be only 5% of the written down value of the non-productive assets without assigning any reason for such assessment. Mr. Ghosh in his reply to SCN submitted that the assets were in such a bad condition that it was decided by him to place a value around 2% on the original cost, which means (Total Fair value / Total original cost) = approx. 2% which incidentally became 5% of the W.D.V. The Authority noted that the valuation report did not mention the reason for his assumption and therefore Mr. Ghosh was found to be in violation of rule 8(3)(h) and (j) of the Valuation Rules.

2.1.4. Purchase Price, Installed Capacity and condition of the P&M – The SCN alleged that the valuation report submitted by Mr. Ghosh is silent on most of the techno-economic factors of the assets issues, giving rise to point that the estimation of value was more abrupt than procedure oriented. Mr. Ghosh in his reply has submitted that he had not received any detailed list from the corporate debtor and also complete technical specifications of the assets were also not available. However, during valuation, he took care of techno economic factors to arrive at the fair value. The Authority noted that the valuation report nowhere discusses the condition of the assets, and Mr. Ghosh has only provided the estimates of valuation of such assets along-with the discounting figures applied on the assets, which is in violation rule 8(3)(j) of the Valuation Rules.

2.2. Based on the above-mentioned allegations, the Authority suspended the registration of Mr. Debasish Ghosh bearing registration number - IBBI/RV/01/2019/11265, for a period of six months to serve as deterrent for being cautious about dealing sensitive nature of valuation exercise under the aegis of IBC with due diligence and care.

3. Appeal by Mr. Ghosh

3.1. Mr. Ghosh in his appeal has submitted that he did the valuation on the basis of available data and it was a fact that sufficient data was not available. Also, the plant condition was very poor and unsafe and huge vegetation got developed inside the plant resulting in difficult access to some of the areas which resulted in difficulties on collection of technical specification of the

machineries while the same was not available with the client. He admitted that although the valuation was done in accordance with IVS 300, the same was not mentioned in the report.

4. **Analysis and Findings**

4.1. On perusal of the Order, it is observed that mainly the violations made out against Mr. Ghosh is on two counts, namely non-indication of valuation standards followed by him and non-mentioning of important information including basis of assumptions made by him with respect to valuation of the assets.

4.2. It is pertinent to note that rule 8 of the Valuation Rules explicitly provides as to what all mandatory contents should be there in a valuation report submitted by registered valuer. It includes the background information of the asset being valued, nature and sources of the information relied upon, procedures adopted in carrying out the valuation and valuation standards followed and major factors that were taken into account during the valuation.

4.3. Mr. Ghosh had explained to the inspecting authority, the whole-time member of IBBI and also to this authority, the basis of making the assumptions while providing valuation estimates. However, the same can not be found in the valuation report which is in violation of rule 8 of the Valuation Rules. Further, the importance of transparency in valuation report is aptly summarised in para 3.1 of the Order dated 26th April 2023 as follows–

“The valuer has liberty to exercise his professional judgment to choose any appropriate method for valuation of assets, in accordance with any internationally accepted valuation standards. However, the valuer has a parallel duty to disclose in his valuation report, all the material information, including valuation standards adopted by him, the conditions of the assets being valued, the assumptions made by the valuer for such assets, the basis of discounting taken for the assets, etc. Such disclosures are necessary for the sake of transparency of the valuation report. A transparent valuation report not only holds the valuer accountable for his work, but also enhances the trust of the stakeholders on the valuation report.”

4.4. Therefore, this authority agrees with the findings in Order dated 26th April 2023, that the valuation report falls short of having all the mandatory contents as required under rule 8(3) of the Valuation Rules

5. **Order**

5.1. In view of the foregoing, this Authority does not find any reason to interfere with the Order of IBBI dated 26th April 2023. Accordingly, 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 17(9) of the Valuation Rules, the appeal is hereby disposed of.

Dated: 22nd June 2023

Place: New Delhi

Sd/-

(Ravi Mital)

Chairperson, IBBI