

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./07/2023

28th February, 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/1/2022-IBBI/284/4234, dated 04.11.2022 issued to Mr. Sandeep Kumar Agarwal 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 authority by the Central Government to perform the functions of the Authority under the Valuation Rules. Mr. Sandeep Kumar Agarwal is registered with IBBI as a valuer of Securities or Financial Assets (SFA), with the registration number IBBI/RV/06/2019/10705 on 29.01.2019.

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. Sandeep Kumar Agarwal in the Corporate Insolvency Resolution Process (CIRP) of M/s Global Coke Limited (Corporate Debtor/CD). A draft inspection report (DIR), prepared by the IA, was shared with Mr. Sandeep Kumar Agarwal on 31.08.2022, to which she submitted response on 15.09.2022. The IA submitted its inspection report to the Board.
- 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 04.11.2022 for contravention of the rule 8(3)(g)(h) and (j) of the Valuation Rules and sought for his written reply and offered it an opportunity of personal hearing in accordance with the said Rules. Mr. Sandeep Kumar Agarwal responded to the SCN on 18.11.2022 and the matter was referred to the Authority for disposal of the SCN. Later, Mr. Sandeep Kumar Agarwal availed the opportunity of personal hearing on 14.02.2022.

2. Alleged contraventions and submissions of the Mr. Sandeep Kumar Agarwal, Registered Valuer (RV).

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

2.1 Contravention-I with respect to the Valuation Standards followed.

2.1.1 It has been observed that nowhere in the aforesaid valuation report, Mr. Sandeep Kumar Agarwal has mentioned about the 'Valuation Standards' or 'Valuation Approach' used by him to estimate the Fair Value (FV) and Liquidation Value (LV) of the assets. Hence it was observed that Mr. Sandeep Kumar Agarwal has violated rule 8(3)(h) of the Valuation Rules.

2.2 Submissions made by RV

2.2.1 Mr. Sandeep Kumar Agarwal submitted that in the Valuation Report, adopted Valuation methodology & approach has been clearly described as stated in Point 2 of Part B of the report elucidated on Page No. 5 to 9 and in remarks and notes section of each Annexure. The basic reference for the standards is adopted from IVS and ICAI Valuation Standards, 2018 only. However, due to the nature of security and financial assets involved in the subject case no particular derivation or inference can be taken from the said standards related to current assets, therefore for this reason only the name of the standards has not been specified in the report. In these standards the basic approach is defined in relation to stock valuation, enterprise valuation as per DCF, etc. only whereas in our case we were dealing with current asset items for which nothing is described in the said standard.

2.3 Findings

2.3.1 The Authority observes that reference to any standard like IVS and ICAI Valuation Standards has been made only in reply to DIR and SCN by Mr. Sandeep Kumar Agarwal. There has been no mention of any standards or methodology adopted for valuation in the report. The submission of Mr. Sandeep Kumar Agarwal that due to the nature of security and financial assets involved in the subject case no particular derivation or inference can be taken from the said standards related to current assets, therefore the name of the standards has not been specified in the report is not acceptable. Hence, the Authority finds Mr. Sandeep Kumar Agarwal in violation of rule 8(3)(h) of the Valuation Rules

2.4 Contravention-II with respect to the Estimation of the value of Trade Receivables.

2.4.1 It has been observed that Mr. Sandeep Kumar Agarwal has recorded in the remarks column that "information taken as provided by company/liquidator." He has classified all the 'Trade Receivables' as more than 2 years old which doesn't appear to be reasonable especially when the basis of estimation itself is guided by the 'period of pendency'. It gives an impression that 2 years old receivable and 6 years old receivable are treated at par. Hence it was observed that Mr. Sandeep Kumar Agarwal has violated rule 8(3)(g)(h) and (j) of the Valuation Rules.

2.5 Submissions made by RV

- 2.5.1 Mr. Sandeep Kumar Agarwal submitted it is incorrect to say that all the Trade receivables are treated at par and that no reasonable justification has been provided. Proper reasonable justification with detailed breakup of the information has been very well mentioned in Annexure-I and its remarks as per best of his knowledge and professional ability. he couldn't see any other best approach which could have taken in this regard.
- 2.5.2 He submitted that as a standard practice he shared the questionnaire with the liquidator to provide details regarding the debtors/ Trade Receivables having the following fields: S.No. I Party Name I Amount pending I Payment pendency since or Invoice date I Reason of pendency I Last communication held with the party for realization of payment on Chances of Recovery I Remarks. Based on the information received from the customer in the above format further scrutiny and discussion is done and based on the overall details/ data/ discussion and based on the combination of all the above fields & factors, assessment and probability is fixed for its recoverability. That is what is done in the said matter too.
- 2.5.3 He submitted that in the said matter also the value is assessed for each debtor individually based on the combination of factors like aging, chances of recovery, last communication held and reason for pendency. Accordingly different % factor from 10% to 25% is taken to arrive at FMV based on the probability of recovery. So, it is incorrect to say that all Trade receivables are treated at par.
- 2.5.4 He submitted that most of these debtors are standing for more than 2 years and reason of pendency was mainly "dispute in services offered or in invoicing" which is clearly mentioned against each debtor.
- 2.5.5 Mr. Sandeep Kumar Agarwal explained that during the preparation of financial statements of any company as an industry practice he only categorises the trade receivables under 2 categories: Less than 6 months as good and more than 6 months as bad. However, in the subject case since this was to determine maximum realizability of the asset under liquidation, therefore a more prudent approach of up to 2 years is adopted along with other combination of factors. The realizability of any debtor amount more than 1 year in any sector/ industry reduces significantly and then whether it is more than 2 years of 6 years doesn't matter in our view and then it depends on various other factors which have been taken into account prudently.
- 2.5.6 He further submitted that it was mentioned in the report that this is just a general assessment on the basis of general industry practice, based on the details which the liquidator could provide to him as per his queries & discussions with the officials of CD/ Liquidator. He submitted that even though the details were fetched from liquidator/CD but no details were taken blindly and each and every item was checked thoroughly & prudently before taking any decision.
- 2.5.7 He further submitted that it is mentioned in the report that ultimate recovery depends on efforts, extensive follow-ups and close scrutiny of individual case made by the CD/

liquidator. So, their values should not be regarded as any judgment in regard to the recoverability of SFA.

2.6 Findings

2.6.1 The Authority observes that Mr. Sandeep Kumar Agarwal has not detailed the aging analysis in his valuation report. The criterion for assigning FV and LV could have been more explanatory for better understanding of the valuation report. The valuation report does not explain the criterion for assigning a discounting factor to a particular advance. The valuation report being opaque in this aspect, the Authority finds him in violation of rule 8(3)(g)(h) and (j) of the Valuation Rules.

2.7 Contravention-III with respect to Short-term Loans and Advances.

2.7.1 It has been observed that a total sum of Rs 13.97 crore was pending under this category of receivables. Without going into the item-wise details, Mr. Sandeep Kumar Agarwal has assumed that the entire amount is not recoverable, which appears to be irrational. Hence it was observed that Mr. Sandeep Kumar Agarwal has violated rule 8(3)(g)(h) and (j) of the Valuation Rules.

2.8 Submissions made by RV

2.8.1 Mr. Sandeep Kumar Agarwal submitted that as per the data/information provided by the client/liquidator against the query in his prescribed format regarding the short-term loans and advances, he had received the item wise details as on 31.03.2018, which was not relevant to be considered for the purpose of valuation as a trial balance on valuation date. On further request, item/party wise breakup details post 31.03.2018 was not provided on request. Hence, in this scenario he has considered the trial balance as mentioned in the unaudited provisional balance sheet shared by liquidator as on 18.02.2019 which was Rs. 13.97 crores. However, since the breakup of Rs. 13.97 crores were not provided therefore it was not shown in the report.

2.8.2 He submitted that on further going into the details as per available old item wise details, liquidator could provide or clarify to him, it was found that the nature of these advances parked under this head is in actual "the amount transferred from debtors/receivables" which were mainly nature of disputed and pertain to various deductions in relation to supply of coke/ coal. While notices were sent to them previously, majority of them have rejected/ denied having any obligation to pay. Going further into detail he found that there were three quality claims found in the item wise bifurcation provided by the client, out of which Rs. 9.50 Crore were of previous years which were not written off.

2.8.3 He submitted that item-wise scrutiny as well as even preparation of the sheet has also been done, however as stated earlier since the breakup of Rs. 13.97 crores were not provided therefore same was not shown in the report. Therefore, since these were disputed amounts and pertain to various deductions in relation to supply of coke / coal and claims from the customers and moreover not the actual advances, therefore he had considered it as defunct

since based on the details and facts available on record in front of him there was no probability of any recovery. Thus, he assigned FV and LV as nil, which seems to be reasonable and logical in this scenario as per the facts & records available with him.

2.9 Findings

2.9.1 The Authority notes the submission of Mr. Sandeep Kumar Agarwal that item/party wise breakup details post 31.03.2018 was not provided on his request by the liquidator. Hence, he considered the trial balance as mentioned in the unaudited provisional balance sheet shared by liquidator as on 18.02.2019 which was Rs. 13.97 crores. Mr. Sandeep Kumar Agarwal did not state such fact in his report. This non-disclosure jeopardises his assessment that they were disputed amounts and pertain to various deductions in relation to supply of coke / coal and claims from the customers and not the actual advances, therefore he considered it as defunct since based on the details and facts available on record in front of him there was no probability of any recovery. The Authority finds him in violation of rule 8(3)(g)(h) and (j) of the Valuation Rules.

2.10 Contravention-IV with respect to Long-term Loans and Advances.

2.10.1 It has been observed that Mr. Sandeep Kumar Agarwal has not indicated the nature and past record of the debtors. Moreover, it is also not clarified in the report whether he has made any communication with the said parties. Outrightly discarding all the 10 items figuring under the group 'Capital Advances' does not prima facie appear to be logical and gives an impression that the valuation is more abrupt than procedure oriented. Even in the case of Capital Advances of Rs 4.48 crores given to 'Thermax Limited, where it is categorically mentioned in the Remarks Column that "*Except Thermax, which was selected as an EPC for the Power Plant, has indicated to adjust the amounts if the power plant is re-launched. This will however be subjected to their adjustment of any dues from the Company*", the FV and LV has been estimated as 'Nil'. Hence it was observed that Mr. Sandeep Kumar Agarwal has violated rule 8(3)(j) of the Valuation Rules.

2.11 Submissions made by RV

2.11.1 In regard to indicating nature of the parties, Mr. Sandeep Kumar Agarwal submitted that same is very much mentioned in the valuation report against these advances as "*These advances were made for the supply of various machineries, equipment's and other related activities to erections etc. for Power Plant and Coke Oven Plants at Sindhudurg.*"

2.11.2 He submitted that indicating the past record of the debtor and to establish communication with the debtors from his side is never a scope of work of valuation assignment and same was also not covered in this assignment as well. Such works comes under the role of the auditor and in the said report it has been clarified that any kind of audit work is not in the scope of this report. Also, he did not have any such authority to seek clarification from the debtor since neither he was acting as an auditor, administrator, bank, statutory authority

nor court to whom the parties would have responded. Also, when the amount is already coming in the audited balance sheet and have also been seen by the liquidator and have full information on it then he didn't have any reason to doubt it to again do this exercise from our end.

2.11.3 He submitted that reasonable care has been given while carrying out the assignment and while taking details/ information/ data from the CD, clarification has been sought about the authenticity and credibility of the information been passed. As per the information provided by the liquidator, CD has given these advances to various counterparties for supply of various machineries, equipment and other erection related activities and these parties had already started working on the same and have put up their resources and money for the supply but the project was shut down in mid-way and the counterparties have adjusted the deposited amounts against their dues. As per the discussion held and as per the Balance Sheets all this amount pertained to period prior to 2016. He also requested for the conversation/ documentary evidence/ contract agreements held with the parties in this regard to which only verbal explanation is provided. He further submitted that as per his experience dealing with several other such similar companies there is very low probability in recovering any such advance amount without litigation and the outcome of which depends on the terms and conditions of the contract agreement and is a time taking activity.

2.11.4 He submitted that based on the facts available on record and based on his assumptions he reached to the conscious decision to not to consider any amounts in this head since he did not have anything on record favourably in support of to consider any amount. Similarly, in case of Thermax limited also same treatment is done, since as per the discussion he came to know that Thermax is only willing to adjust the amount of the power plant when work again starts which as per the site situation he felt unlikely and moreover it was informed that Thermax has even supplied some components against the advance.

2.12 Findings

2.12.1 The Authority notes the submission of Mr. Sandeep Kumar Agarwal. However, the Authority observes that above clarification should form part of the valuation report which would have avoided any speculation on part of any stakeholder reviewing the valuation report.

2.13 Contravention-V with respect to valuation of Inventories.

2.13.1 It has been observed - In spite of the fact that valuer has classified the stocks of cooking coal and met Coke as 'Dead Stock'. The estimation that it would fetch Rs 27.20 lakh as FV and LV without giving any basis or justification for his calculation, appears to be arbitrary. Hence, it was observed that Mr. Sandeep Kumar Agarwal has violated rule 8(3)(j) of the Valuation Rules.

2.14 Submissions made by RV

- 2.14.1 Mr. Sandeep Kumar Agarwal submitted that inspite of being dead stock as per the details available, salvage value (5-6%) has been considered prudently for FV and LV since it was presumed that inspite of the material having lost its major chemical properties due to weathering and climatic condition being lying unattended since past 5 years but still the new taker of the plant may give some value to it considering trying to utilize the coking coal blending it with fresh material or may process to remove some moisture content from the coal to reuse it.
- 2.14.2 He submitted that for Met coke it was considered if it is tried to dispose of for alternate inferior use, only salvage value may be paid. Since this is a physical asset, therefore from the point of view of the buyer of the complete Plant as a whole Plant who apparently doesn't know about its quality as such, salvage value has been consciously given in this case to achieve maximization of the value for recovery purpose.
- 2.14.3 He submitted that he has considered a FV and LV as Rs. 27.20 lakhs out of Rs. 4.53 crores as on valuation date which seems to be reasonable as per his assessment which was a conscious decision. He submitted that in working notes for the case, he found that the statement "*So, for potential value assessment, we have given only salvage value.*" has been mentioned in the report which somehow got missed from being printed in final report as a human error due to format change of the report.

2.15 Findings

- 2.15.1 The Authority observes that Mr. Sandeep Kumar Agarwal was unaware of the actual quantity of Met Coke available with the CD. Further, no site visit was done to evaluate the quality of Met Coke regarding its further usage in light of moisture content, weathering and climatic conditions. Moreover Met Coke being non-perishable, the Authority does not accept the presumption of Mr. Sandeep Kumar Agarwal that material has lost its major chemical properties due to weathering and climatic condition being lying unattended since past 5 years. The report is also silent about the description of current condition of Met Coke and based totally on input from the liquidator. Hence, the Authority finds that Mr. Sandeep Kumar Agarwal is in violation of rule 8(3)(j) of the Valuation Rules.

2.16 Contravention-VI with respect to valuation of Cash & Cash Equivalents.

- 2.16.1 As per the IBC norms the RV should have checked the assets and liabilities as on the date on which liquidation order is issued, i.e., 19.02.2019 in this case. The phrase used by Mr. Sandeep Kumar Agarwal that "*the said FDs might have been adjusted by the bank against their dues, the details of which is not available*" gives an impression that he has not gone through the Bank Statement at all. Moreover, in case of 'Cash in Hand' also, he has assumed that liquidation value will be just 20% of the FV without giving any justification for the same. Hence it was observed that Mr. Sandeep Kumar Agarwal has violated rule 8(3)(g) and (j) of the Valuation Rules.

2.17 Submissions made by RV

- 2.17.1 Mr. Sandeep Kumar Agarwal submitted in regard to the book value, unaudited provisional balance sheet has been provided as on 18.02.2019 and previous years audited balance sheets have been referred which is very well mentioned in the report. It may not be said that the assets and liabilities as on the date on which liquidation order is issued i.e., 19.02.2019 has not been considered. He submitted that as per his scope of work, he has not performed any kind of audit work during valuation and same is mentioned in the report and therefore we have relied upon the data/information provided by CD/Liquidator through verbal/written communication in good faith. Therefore, for liquidation order dated 19.02.2019 balances as per unaudited provisional balance sheet as on 18.02.2019 has been considered prudently.
- 2.17.2 He submitted that item-wise details have been checked and reviewed prudently and same is clearly mentioned against every item and report notes and that is how details of Corporation bank and Allahabad Bank is also mentioned in the report in this head. The major amount under "Cash & Cash Equivalents" head was of FDs. As per details provided by the liquidator this FD was against the LC opened by CD in Corporation bank. Reasonable review is done accordingly.
- 2.17.3 He submitted that from the balance sheet under long term liabilities head breakup is cross checked and found liability to Corporation bank is standing in terms of Term Loan. Therefore, as a normal banking practice it is assumed that Corporation Bank would definitely adjust this FD against its dues and accordingly nil amount is considered. Other items cash in hand and balances with bank accounts is taken as per the details provided by the liquidator and has been reviewed prudently through discussion. Hence in this scenario, the recoverability of these amounts became very low and we considered it as nil in case of liquidation of the CD as recoverability of these amounts became the subject to a financial institution/bank.
- 2.17.4 Regarding the Bank statement, he submitted that from his end all details have been diligently asked and pursued from liquidator and CD. Some have come and some could not be provided and accordingly same has been transparently mentioned in the report everywhere. Since he is the third party and not any authority, neither he was acting as an auditor, administrator, bank, statutory authority nor the court and therefore bank would not have responded to us for providing bank statement directly.
- 2.17.5 He submitted that 20% LV is taken in cash-in-hand since it was presumed that during the course of the liquidation this amount will be utilized in administrative & operational work and accordingly the deduction is considered for such petty expenses as discussed with the liquidator.
- 2.17.6 He submitted that in professional work certain professional judgements are taken based on experience & knowledge and for each small thing elaborative justification is not possible.

2.18 Findings

- 2.18.1 The Authority does not agree with the assumption of Mr. Sandeep Kumar Agarwal that as a normal banking practice Corporation Bank would definitely adjust this FD against its dues and accordingly nil amount is considered. Mr. Sandeep Kumar Agarwal did not check with banks or liquidator whether actual adjustment has been done and whether the adjustment was before the moratorium period or after. Mr. Sandeep Kumar Agarwal has made assumption based on inputs received from the liquidator.
- 2.18.2 Further, the presumption that during the course of the liquidation cash in hand will be utilized in administrative & operational work and deduct for such petty expenses and considering 20% LV for cash-in-hand is not acceptable. The LV of CD is taken on a particular date which is mostly Liquidation Commencement Date (LCD). The future deduction for operations does not seem to be on any firm basis. The DC finds Mr. Sandeep Kumar Agarwal to be in violation of rule 8(3)(g) and (j) of the Valuation Rules.

3. Order

- 3.1 In view of the above, keeping the gravity of contraventions in mind, 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 suspends the registration of Mr. Sandeep Kumar Agarwal for a period of six months.
- 3.2 In accordance with provisions of Rule 17(8) of the Valuation Rules, this Order shall come into force within 30 days from the date of issue of this order.
- 3.3 A copy of this order shall be forwarded to ICAI Registered Valuers Organisation where Mr. Sandeep Kumar Agarwal, Registered Valuer is enrolled as a member.
- 3.4 Accordingly, the show cause notice is disposed of.

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Dated: 28th February, 2023
Place: New Delhi

(Sudhaker Shukla)
Whole Time Member, IBBI