

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./03/2022

28th February 2022

ORDER

In the matter of Mr. Vishwanath Shridhar Prabhu, Registered Valuer (RV) under Rule 15 and 17 of the Companies (Registered Valuers & Valuation) Rules, 2017.

This Order disposes of the Show Cause Notice ('SCN') dated 04th May 2021 issued to Mr. Vishwanath Shridhar Prabhu, who is a member of the IIV India Registered Valuers Foundation ('IIV RVF') and registered with the Insolvency and Bankruptcy Board of India ('IBBI') as a valuer in the asset class of Securities or Financial Assets with the registration number IBBI/RV/04/2019/11447.

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 ('Valuers Rules'). Mr. Vishwanath Shridhar Prabhu, who is a member of the IIV RVF and registered with the IBBI as a valuer in the asset class of Securities or Financial Assets with the registration number IBBI/RV/04/2019/11447 on 30th April 2019.
- 1.2 It has come to the notice of the IBBI that a charge-sheet has been filed against Mr. Vishwanath Shridhar Prabhu by the Economic Offences Wing, Mumbai, for his alleged role in misconduct committed by Punjab and Maharashtra Cooperative Bank Limited ('PMC Bank'). The charge-sheet is filed for offences under sections 201, 406, 420, 465, 467, 468, 471, 477A read with section 120B of the Indian Penal Code, 1860 ('IPC') & sections 46(1) and 47A of the Banking Regulation Act, 1949.
- 1.3 Upon consideration of the material available on record, SCN dated 04th May 2021 was issued under rule 17 of the Valuers Rules to Mr. Vishwanath Shridhar Prabhu for contravention of the provisions of the Rules and sought for his written reply and offered him an opportunity of personal hearing in accordance with the said Rules. Mr. Vishwanath Shridhar Prabhu responded to the SCN through his advocate Mr. Mithilesh Mishra on 28th May 2021 and the matter was referred to the Authority for disposal of the SCN. Later, Mr. Vishwanath Shridhar Prabhu availed the opportunity of personal hearing through his advocate Mr. Mithilesh Mishra on 4th August 2021.

2. **Show Cause Notice**

The alleged contraventions in the SCN are summarised as follows:

- 2.1 It has been observed that a charge-sheet has been filed against Mr. Vishwanath Shridhar Prabhu by the Economic Offences Wing, Mumbai, ('EOW') for his alleged role in misconduct committed by PMC Bank. The charge-sheet is filed for offences under sections 201, 406, 420, 465, 467, 468, 471, 477A read with section 120B of the IPC & sections 46(1) and 47A of the Banking Regulation Act, 1949.
- 2.2 It is further noted that Mr. Prabhu had been held under judicial custody, for his alleged conduct. The filing of charge-sheet under such serious offences and subsequent events may significantly impinge on his integrity, reputation and character and may make him not 'fit and proper' for being eligible for registration as a valuer, as stipulated under rule 3(1)(k) of the Valuers Rules.
- 2.3 In terms of rule 7(a) of the Valuer Rules, the registration granted to Mr. Prabhu is subject to the condition that he shall "*at all times possess the eligibility and qualification and experience criterion as specified under rule 3 and rule 4.*" In view of above facts, he was rendered as not 'fit and proper person' to hold registration as a registered valuer under the Valuer Rules and therefore, the above said condition of registration is contravened. Accordingly, it is *prima facie* observed that Mr. Prabhu's certificate of registration is liable to be cancelled in terms of Rule 17(5)(c) of the Valuers Rules.
- 2.4 The aforesaid conduct of Mr. Prabhu is in violation of Rule 3(1)(k) and 7(a) of the Companies (Registered Valuers and Valuation) Rules, 2017.

3. **Submissions by Mr. Vishwanath Shridhar Prabhu**

- 3.1 Mr. Vishwanath Shridhar Prabhu *vide* reply dated 28th May 2021 submitted through his advocate that he is fit and proper to be registered as valuer. He admitted that a chargesheet has been filed against him by the EOW, Mumbai, however, he stated that filing of a chargesheet by itself does not prove anything and that, the Economic Offences Wing had been put to strict proof to prove each and every allegation against him. He submitted that the entire case put up against him was based on conjectures and surmises in an attempt to tarnish his image and propriety and there was no material which can be termed as evidence against him. He further submitted that the matter is sub-judice before a Court of Law and any action on part of IBBI would prejudice the said matter against Mr. Prabhu. During the personal hearing, the submissions made hereinbefore were reiterated by his advocate Mr. Mithilesh Mishra as Mr. Prabhu was in judicial custody.

4. **Analysis and Findings**

- 4.1 The Insolvency and Bankruptcy Code, 2016 (Code) envisages valuation to be conducted for the purpose of corporate insolvency resolution process (CIRP) to ensure maximization

of the value of the Corporate Debtor. The process entails that the valuation is to be conducted by two registered valuers to estimate the fair value and liquidation value of the assets of the Corporate Debtor in a transparent, credible and consistent manner by adopting uniform valuation standards and best practices. Further, based on the valuation report the Committee of Creditors (CoC) and the prospective resolution applicants can make an informed decision as to whether to continue with the resolution process or resolve to liquidate the Corporate Debtor. The valuation of the Corporate Debtor also facilitates the resolution professional to invite prospective resolution plans and any inaccuracies or exaggeration in the liquidation value could undermine the entire resolution process and affect the interests of all the stakeholders. Hence, to establish the credibility of the process of valuation and to inspire confidence among the stakeholders, the Code as well as the Valuer Rules requires the resolution professional to engage registered valuers with integrity and unblemished reputation for the purpose of valuation of the Corporate Debtor. Even the Hon'ble Delhi High Court in the matter of Cushman and Wakefield v. UOI W.P.(C) 9883/2018, had observed that, *“The endeavor of the Rules is to introduce a class of professionals where the focus is on the professional 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.”*

4.2 The rule 3 of the Companies (Registered Valuers and Valuation) Rules, 2017 provides as follows:

“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.”

4.3 Further, the rule 7 of the Valuers Rules, 2017 also provides as follows:

“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;”

4.4 As per rule 3(1)(k) of the Valuer Rules, no individual shall be eligible to be registered as an RV if he is not a fit and proper person. Among others, integrity, reputation and character are considered to determine if an individual is a fit and proper person. The Authority observed that a charge-sheet has been filed against Mr. Prabhu by the EOW for his alleged role in misconduct committed by PMC Bank by providing altered property valuation report to enable PMC Bank to extend favourable credit facility to the relative of director or to facilitate mortgage of low value

property against comparatively high value withdrawal. The charge-sheet was filed for offences under sections 201, 406, 420, 465, 467, 468, 471, 477A read with section 120B of the IPC and sections 46(1) and 47A of the Banking Regulation Act, 1949. Also as per the chargesheet Mr. Prabhu was arrested on 12th March 2020 and has been remanded to judicial custody.

4.5 The Authority has considered the SCN, the reply of Mr. Prabhu and the oral submissions made by his advocate and materials available on record. Mr. Prabhu has submitted that the entire case put up against him was based on conjectures and surmises in an attempt to tarnish his image and propriety and there was no material which can be termed as evidence against him. At the outset, the Authority notes that the limited issue for consideration before it is whether the pendency of criminal proceedings impacts the integrity and reputation of the registered valuer and whether the same affects his eligibility for continuing as RV. In the instant matter, the Authority finds that the chargesheet has been filed against Mr. Prabhu. The provisions of IPC under which charges have been framed are severe in nature and pertain to professional conduct of a valuer which are as follows –

- (a) Section 201- Causing disappearance of evidence of offence, or giving false information, to screen offender— punishable with imprisonment may extend from 7 years to one-fourth part of the longest term of the imprisonment provided for the offence.
- (b) Section 406- Punishment for criminal breach of trust- punishable with imprisonment up to 3 years, or with fine, or with both.
- (c) Section 420- Cheating and dishonestly inducing delivery of property- punishable with imprisonment up to 7 years and fine.
- (d) Sections 465 and 471- Punishment for forgery and using as genuine a forged document or electronic record- punishable with imprisonment up to 2 years or fine.
- (e) Section 467 - Forgery of valuable security, will, etc.- punishable with imprisonment for life or with imprisonment up to 10 years and fine.
- (f) Section 468 - Forgery for purpose of cheating- punishable with imprisonment up to 7 years and fine.
- (g) Section 477A read-with section 120B - Falsification of accounts and punishment of criminal conspiracy- punishable with imprisonment up to 7 years or fine or both.

4.6 It is pertinent to note that the foundation of valuation services in a market economy lies on mutual trust between the valuer and the stakeholders. Based on the professional opinion of a valuer, for the purposes of Corporate Insolvency Resolution Process, CoC takes prudent commercial decisions. Therefore, it becomes crucial to engender as well as maintain the reputation and integrity of the valuation profession and the trust of the stakeholders, so that the decision makers in the market have adequate comfort to take any crucial economic decision without any fear or doubt.

4.7 In view of the foregoing, the Authority finds that pendency of the criminal proceeding against Mr. Prabhu for the offences as stated above, adversely affected his integrity and reputation and makes him a person who is not '*fit and proper*' to be eligible as a RV. Hence, the Authority finds that this is in violation of Rule 3(1)(k) and 7(a) of the Companies (Registered Valuers and Valuation) Rules, 2017.

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, suspends the registration of Mr. Vishwanath Shridhar Prabhu as a registered valuer till he is exonerated of the charges.
6. In accordance with provisions of Rule 17(8) of the Valuer Rules, the directions of this order shall come into force with immediate effect in view of para 5 above.
7. A copy of this order shall be forwarded to IIV India Registered Valuers Foundation where Mr. Vishwanath Shridhar Prabhu is enrolled as a member.
8. Accordingly, the show cause notice is disposed of.

Dated: 28th February 2022
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI