

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)/02/2023

22nd June 2023

ORDER

This Order disposes the appeal preferred by Mr. Asim Maity against the Order dated 19th 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 Valuation Rules. Mr. Asim Maity is registered with IBBI as a valuer of Plant and Machinery Assets (P&M), with the registration number IBBI/RV/04/2019/10999 on 8th March 2019.

1. Brief Background

- 1.1. The IBBI, in accordance with rule 15 read with rule 17 of the Companies (Registered Valuers and Valuation Rules), 2017 (Valuation Rules), had suspended the registration of Mr. Asim Maity (herein referred also as “RV”) vide its Order dated 19th April 2023 (hereinafter referred as “Order”). The said Order disposed of the Show Cause Notice (SCN) No. RV-13012/3/2022-IBBI/291/8855, dated 24th January 2023, issued to Mr. Maity 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. Asim Maity has now preferred an appeal against the Order dated 19th April 2023. He availed the opportunity of personal hearing before the appellate authority on 24th May 2023.

2. IBBI Order dated 19th April 2023

- 2.1. The IBBI issued SCN dated 24th January 2023 to Mr. Asim Maity which contained allegations on following counts which led to the violation of rule 8(3)(g)(h) and (j) of the Valuation Rules -
 - (a) **Non-indication of valuation standards adopted** – The valuation report did not contain the valuation standards adopted by the RV. Therefore, violation of rule 8(3)(h) of Valuation Rules.
 - (b) **Issue regarding methodology adopted for the valuation by the RV** – There was no coherence in the methodology indicated by the RV in his valuation report and one actually followed by him while estimating the value. Therefore, violation of rule 8(3)(h) and (j) of Valuation Rules.
 - (c) **Estimation of ‘Liquidation Value’ in respect of Productive Assets** – The valuation report did not provide for the basis of discounting factors taken by the RV. Therefore, violation of rule 8(3)(h) and (j) of Valuation Rules.

- (d) **Estimation of FMV and LV in respect of ‘vehicles’ and ‘office equipment’** – The valuation report does not contain the factors considered while estimating values of vehicles and office equipment. Therefore, violation of rule 8(3)(h) and (j) of Valuation Rules.
- (e) **Purchase price, Installed Capacity and condition of the P&M** – The valuation report does not mention the crucial factors considered while estimating value of plant and machinery. Therefore, violation of rule 8(3)(g) and (j) of Valuation Rules.
- (f) **Valuation of ‘Inventory’ in the Report** – The RV in his valuation report has provided valuation for “inventories” too which has to be done by the valuer registered for the asset class of ‘Securities or Financial Assets’. Therefore, violation of rule 8(3)(h) and (j) of Valuation Rules.

2.2. The IBBI vide its Order dated 19th April 2023 examined the above-said contraventions made in the SCN and the written and oral submissions of Mr. Asim Maity. The Order noted the response of Mr. Asim Maity on the SCN that the valuation was conducted by him in the year 2019 and was performed during the early stages of the Valuation Rules when there was a lack of understanding about the report writing procedure and the necessary elements that should be included in the report. Mr. Maity had also assured the authority that all the points raised in the SCN has been understood by him and will be incorporated, if not already addressed. After examination of the materials available on record, the registration of Mr. Asim Maity was suspended for a period of six months.

3. Appeal by the RV

- 3.1. The RV in his appeal has submitted that the Order contravenes and violates provision of section 220(1) of the Insolvency and Bankruptcy Code, 2016 where it has been mentioned that the disciplinary committee shall consist of “*whole time members*” thereby indicating that more than one member should constitute the disciplinary committee. However, in the instant case, the quorum consisted of only one whole time member.
- 3.2. The RV has further stated that the Order is *void ab-initio* as the same is not a ‘reasoned order’ as required in terms of rule 17(4) of the Valuation Rules. The conclusion of the authorised officer was based on ‘*prima facie*’ views and not on detailed study of the valuation report.
- 3.3. The RV in his written and oral submissions has countered the contraventions on the basis of which the Order against him was passed, in the following manner-
 - a) **Violation of rule 8(3)(g) of the Valuation Rules** – The RV has submitted that paragraph 2.4, 2.5.1, 2.5.2 and 2.5.3 of the valuation report satisfies the compliance with rule 8(3)(g). Further, paragraph 3 of the valuation report has thoroughly elaborated the ‘Valuation Rationale’ adopted by the RV which includes mentioning of various factors including the referred techno-economic factors. Detailed consideration of such factors is a part of the valuation exercise which forms part of the ‘valuation working papers’ and the same conventionally do not form part of the report. There is no such statutory requirement as per the provision of rule 8(3)(g) which mandates the

RV to attach the working papers. Thus, non-enclosure of the detailed valuation working in the valuation report does not substantiate the fact that the valuation exercise has been done arbitrarily and can not be concluded as non-mentioning of the “nature and sources of the information used or relied upon”.

- b) **Violation of rule 8(3)(h) of the Valuation Rules** – The RV has submitted that paragraph 3 of the valuation report thoroughly elaborates the ‘Valuation Rationale’ adopted by the RV which also includes basis of estimation of the economic life of the assets, factors affecting valuation, methodologies adopted, valuation approach and others. Therefore, the valuation report in compliance with the rules mentions the ‘procedures adopted in carrying out the valuation and valuation standards followed.’
- c) **Violation of rule 8(3)(j) of the Valuation Rules** – The RV has submitted that paragraph 2.4 of the valuation report states that the condition of the particular asset and 3.3 of the valuation report states the ‘Factors affecting the value’ which leaves no ambiguity that the compliance of this rule is achieved. Further, there are no set norms relating to valuation of inventories and there is no statutory embargo on RV of Plant and Machinery for not valuing the inventories. It is purely the subject matter of the scope of engagement.

4. Analysis and Findings

- 4.1. The Central Government in exercise of its powers under section 458 of the Companies Act, 2013 has delegated its powers and functions vested in it under section 247 of the Companies Act to the IBBI. Accordingly, the IBBI has been performing the functions of Authority under the Valuation rules. The Order dated 19th April 2023 has been passed by IBBI in exercise of this delegated power and in terms of rule 17 of the Valuation Rules. Therefore, the provisions of IBC do not apply in the disciplinary matters of Registered Valuers registered under the provisions of Valuation Rules.
- 4.2. Further, on perusal of the Order, it is observed that the RV had not countered the allegations mentioned in the SCN issued to him. The reply of the RV reflects that he has admitted the lapse on his part on the ground that the valuation was done in the early stages of the Valuation Rules. The RV had further assured to the Authority that he will be careful in his assignments. The Order elaborately mentions the allegations raised in the SCN and the limited reply provided by the RV. Further, the reasoning behind the directions in the Order can be found in para 4.1 and para 4.2 of the Order. Therefore, it cannot be said that the Order was not a reasoned order.
- 4.3. Mr. Maity has now in his appeal provided the justification behind the assumptions made by him. He has claimed that such justifications form part of the valuation working papers and not in the valuation report itself. In this regard, 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 *inter alia* 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.

4.4. Therefore, this authority agrees with the findings in Order dated 19th 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, the Authority does not find any reason to interfere with the Order of IBBI dated 19th 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