

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/RVO/04/2023

18th January 2023

ORDER

In the matter of Association of Certified Valuers and Analysts, under rule 17 of the Companies (Registered Valuers & Valuation) Rules, 2017

This Order disposes of the Show Cause Notice ('SCN'), dated 20th September 2022 issued to the Chief Executive Officer of the Association of Certified Valuers and Analysts ('ACVA') recognised by the Insolvency and Bankruptcy Board of India ('IBBI') as a registered valuer organization vide recognition number IBBI/RVO/2018/009.

1. Background

1.1 The IBBI while carrying out the functions of Authority under the Companies (Registered Valuers and Valuation) Rules, 2017 ("Valuation Rules") had granted recognition to ACVA as registered valuers organization with recognition number IBBI/RVO/2018/009.

1.2 The IBBI conducted an inspection of the affairs of ACVA and based on the findings of the inspection, the authorised officer was of the *prima facie opinion* that sufficient cause exists to take actions under sub rule (5) of rule 17 of the Valuation Rules and accordingly it issued SCN dated 20th September 2022 to the Chief Executive Officer of the ACVA.

1.3 The response of ACVA on the SCN was received on 04th October 2022. Further, it also availed an opportunity of personal hearing on 28th December 2022. As information was not complete, on the request of the representatives of ACVA, additional time of one week was granted to them for further submissions. The same were received on 05th January 2023.

2. Alleged contraventions and Submissions of ACVA

2.1 Registered Office of ACVA –

2.1.1 As per point 6(2)(g) of clause IV of Part II of the Governance Structure and Model Bye Laws for registered valuers organization provided in Annexure-III of the Valuation Rules, it is the duty of a registered valuer organization to provide information about its activities to the Authority (i.e. IBBI). It is alleged in the SCN that ACVA was using office space of Knowcraft Analytics, a sister concern without any rent agreement. During the inspection, ACVA had submitted that there are no agreements between Knowcraft Analytics and ACVA. It was intimated to the inspecting

authority that the office of RVO has shifted to another place. The same was not intimated to the Authority.

2.1.2 Accordingly, the authorised officer was of the *prima facie* opinion that ACVA had not followed the said clause of Model Bye Laws for registered valuers organization and has not taken due care in intimating change of the office premises to the Board.

Submission of ACVA –

2.1.3 ACVA in its response has submitted that they do have rent agreement with the owner of premises for the office. In its additional submission it has been stated that they have received the inspection report on 10th March 2022 and the reply thereto apart from various compliances has been done on 05th April 2022. Further, leave and license agreement was only executed on 24th February 2022 and hence there was not much time between then and inspection report. The copy of said agreement was sent to IBBI on 24th August 2022.

Findings –

2.1.4 From the material available on records, it is observed that ACVA had entered into agreement for the new premises on 24th February 2022. During the inspection, the address was already changed and the Inspecting Authority was asked to visit the new place for the purpose of inspection. The intimation about change in address was made to IBBI on 24th August 2022. There was a delay of six months in such intimation.

2.1.5 The provision 6(2)(g) of Part-II of the Governance Structure and Model Bye Laws for registered valuers organization shall provide all information about its activities to the authority. It appears that ACVA willfully refrained from sharing the information about the change in address. Even when the inspection notice was served, this vital information was not intimated, however, same was shared only after dates of visit to the premises became known.

2.1.6 It is pertinent to note that the name and address of the entity applying for recognition as registered valuers organization forms an integral part of the Form-D (pertains to Application for Recognition) appended to the Valuation Rules. A registered valuers organization performs critical functions for its member valuers which includes imparting training to valuers, accepting grievances of stakeholders and resolving them, conducting continuing education and monitoring the conduct of its members. A definite registered address of the registered valuers organization necessary pre-condition to indicate its physical presence and is therefore crucial for the entity to instill confidence to its members about their association with a professional organization such as ACVA. Furthermore, all relevant and important documents pertaining to entity as well as its activities are supposed to be kept at the registered office.

2.1.7 Availability of identified premises is not only a regulatory requirement but also serve as basis to believe to its members that entity is not a fly by night organization and any change in it should be intimated to the authority and its members at the earliest. In view of the foregoing, ACVA is found to be in violation of point 6(2)(g) of clause IV of Part II of the Governance Structure and

Model Bye Laws for registered valuers organization provided in Annexure-III of the Valuation Rules.

2.2 Conduct of training

2.2.1 Rule 12(2)(c) of the Valuation Rules mandates conduct of training for the individual members before a certificate of practice is issued to them, as one of the eligibility conditions for an organization to be recognised as registered valuers organization. It is alleged in the SCN that no formal training program was conducted by the ACVA. Although, as decided in the 08th meeting with the CEOs/MDs of all registered valuers organization held on 08th October 2018, the RVOs were directed to provide training at least for a day (six-eight hours) focusing on soft skills, manner, behaviour and conduct of the registered valuers. Accordingly, the authorised officer was of the *prima facie* opinion that ACVA has not satisfied the eligibility conditions provided under rule 12(2)(c) of Valuation Rules.

Submission of ACVA –

2.2.2 In its additional submission, the ACVA has stated that they were not part of the referred meeting with CEOs/MDs as they were granted certificate of recognition only on 03rd December 2018. ACVA has also submitted that they have chalked a training plan in line with the meeting dated 08th October 2018 and shall provide the same to all candidates before issuance of certificate of practice.

Findings –

2.2.3 On perusal of the report submitted by the Inspecting Authority it is observed that ACVA in its reply to the Inspecting Authority have mentioned that since only two members passed the examination, certificate of practice was provided to them on one-on-one basis and no need for a formal training was felt.

2.2.4 Assurance of ACVA has been noted that they have chalked out the training programme which will be carried out in letter and spirit.

2.3 Composition of Disciplinary Committee and Appellate Panel

2.3.1 Point 8(1)(d) of Clause V of Part II of the Governance Structure and Model Bye Laws for registered valuers organization provided in Annexure-III of the Valuation Rules mandates the Governing Board of a registered valuer organization to constitute one or more Disciplinary Committee(s) consisting of at least one member nominated by the Authority. It is alleged in the SCN that ACVA had submitted to the Inspecting Authority that the composition of its disciplinary committee (“DC”) and appellate panel (“AP”) is incomplete as the position of member nominated by IBBI is vacant although IBBI had already nominated members of DC and AP on 18th June 2019 which was at later stage confirmed by ACVA vide email dated 27th August 2021. The authorised

officer was of the *prima facie* opinion that providing false and incorrect information to the Inspecting Authority is in violation of rule 21 of the Valuation Rules.

Submission of ACVA –

2.3.2 ACVA has submitted that the Manager had joined the organization only on 20th September 2021 and the CEO had joined on 27th January 2022. There were various organizational changes and therefore mails were sent to and guidance was sought for from IBBI. There was no intention at any point of time to provide incorrect information leading to violation of Rule 21.

Findings -

2.3.3 On perusal of the materials available on record it is observed that the names of nominees from IBBI for the DC and AP of the ACVA was communicated by IBBI to the ACVA. There has been no denial by ACVA with respect to this communication and therefore the information provided by them to the Inspecting Authority regarding reasons for non-constitution of DC and AP was false and is therefore in violation of rule 21 of the Valuation Rules. However, the reasons provided by the ACVA are noted for further follow-up.

3. Order –

3.1 The valuation profession thrives on the trust of the market and stakeholders. A registered valuer organization being the frontline regulator for valuation profession has crucial responsibility to retain and improve this trust. In order to impart justiciability to its functions, a registered valuer organization must have requisite infrastructure capability and institutional integrity. The organizational process must not be affected by the transience of its functionaries.

3.2 Therefore, the Authority, in exercise of powers conferred under section 458 of the Companies Act, 2013 read with rule 17 of the Companies (Registered Valuers and Valuation) Rules, 2017 hereby warns the ACVA that it should be extremely careful and diligent in its organizational processes and follow the directions of the Authority in letter and spirit.

3.3 Keeping in view the assurances given by ACVA in mind, the functioning of the ACVA shall be reviewed for compliances in next six months of this Order by the RVO Division and any non-compliance by the ACVA should be examined on merits.

3.4 Accordingly, the show cause notice is disposed of.

-sd/-

(Sudhaker Shukla)

Whole Time Member, IBBI

Dated: 18th January 2023

Place: New Delhi