

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./11/2023

18th April 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13012/4/2022-IBBI/290/8849, dated 18th January 2023 issued to Mr. Shyamal Mukherjee under rule 17 read with rule 15 of Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules). The Insolvency and Bankruptcy Board of India (IBBI/Board) has been delegated by the Central Government to perform the functions of the Authority under the Valuation Rules. Mr. Shyamal Mukherjee is registered with IBBI as a valuer of Securities or Financial Assets (SFA), with the registration number IBBI/RV/05/2019/12237 on 23rd August 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. Shyamal Mukherjee in the Corporate Insolvency Resolution Process (CIRP) of Kohinoor Paper and Newsprint Private Limited (Corporate Debtor/CD).
- 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 18th January 2023 for contravention of the rule 8(3)(g),(h) and (j) of the Valuation Rules and sought for his written reply and offered him an opportunity of personal hearing in accordance with the said Rules. Mr. Shyamal Mukherjee responded to the SCN on 25th January 2023 and the matter was referred to the Authority for disposal of the SCN.
- 1.4 Mr. Shyamal Mukherjee availed the opportunity of personal hearing on 3rd April 2023 where on his request, time was granted to submit additional documents. Mr. Shyamal Mukherjee submitted additional documents on same day.

2. Alleged contraventions and submissions of Mr. Shyamal Mukherjee, Registered Valuer (RV)

Contraventions alleged in the SCN and Mr. Shyamal Mukherjee's written and oral submissions are summarised as follows:

2.1 Assumption while calculating the Valuation of Inventory in Valuation Report.

2.1.1 While calculating the valuation of Inventory (Finished Goods), the RV had made following assumptions in the report:

“(a) Fair Value- “the value of finished goods at CIRP date is Rs 159.97 lakhs which is lying at the floor of the godown, are not in saleable condition. Most of the finished goods had already lost their original nature. Finished goods in this company are normally in paper related. Papers are always biodegradable. So they have lost their nature at the time passed away. Finished Goods are lying on Godown which are become scrap, assumed only 20% will be realized in competitive market price.”

“(b) Liquidation Value- “At the time of liquidation, the forced sales shall be made after giving the heavy discount assumed 95%. Probably 5% would fetch from stock as it was only transformed into the garbage Stock.”

2.1.2 Further, while calculating the valuation of Inventory (Raw Material), the RV had made following assumptions in the report:

“(a) Fair Value- “the raw material lying on store are not in good condition for marketability. Chemical goods which consist the major part of raw material have already lost their identity and the value become meagre. However, this type of material are not bring back to use in production. Again the core material for paper industry is pulp and wood which can mainly imported from Indonesia and Canada. The pulp are not useable in old age and it has also biodegradable. We assumed that approximately 15% should be realized from raw material.”

“(b) Liquidation Value- “Normal sales will possible at the time of liquidation. So the company arrange to sale the raw material forcibly. By that reason the company can given the 98% (assumed) discount. Probably 2% would be realized at the time of liquidation.”

2.1.3 It was observed that the RV had not explicitly mentioned the basis of the above assessments in his valuation report. The RV had assumed the fair value of the finished goods would be 20% of the book value without giving due consideration to the other factors such as quality of the product, market demand of the product, alternative uses of the product and market prices of the product.

2.1.4 It was further observed that the RV in his reply has admitted to the IA that:

“This is my first report and again the mistake was taken place, I am not aware that the value which had determined on the basis of assumption by considering the real situation of the assets. I apologies for this to IBBI, in future I will try to apply more realistic approach. Moreover, the details information not available to value the finished goods, by that reason this procedure was selected.”

2.1.5 The Authority was therefore of the *prima facie* view that the RV is in violation of rule 8(3)(g), (h) and (j) of the Rules.

Submissions made by the RV

2.1.6 The RV has submitted that the cost of the inventories may not be recoverable if those inventories are damaged, if they have become wholly or partially obsolete, or if their selling prices have declined. The cost of inventories may also not be recoverable if the estimated costs of completion or the estimated costs to be incurred to make the sale have increased. The practice of writing inventories down below cost to net realisable value is consistent with the view that assets should not be carried in excess of amounts expected to be realised from their sale or use. So, the obsolete inventory should be adjusted and price should be reduced accordingly. Due to lack of information, inventory was valued on the basis of assumption.

3. Findings

3.1 The Authority has perused the allegations made in the SCN, the reply of the RV on the SCN and the additional submissions made by him post his personal hearing on 3rd January 2023. The Authority has not found, either in the valuation report or in the calculation sheet, the basis of the assumption made with respect to the realisable value of the inventories. The Authority finds that valuation exercise, has not been done in a scientific manner and fails to set out all the necessary information behind the valuation estimate provided by the valuer.

4. Order

4.1 Reasoning behind assumption while making applicable a particular discount rates has to be sound and backed by the evidence on ground. Analysis is completely lacking and fails to establish deterioration in value of the stock is in anyway linked to time led actual bio-degradation of the paper stock.

4.2 Keeping in view that the case in point has been first assignment of Mr. Shyamal Mukherjee and furthermore, as he has accepted his mistake, the Authority is inclined to take a lenient view and 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 warns Mr. Shyamal Mukherjee to be

cautious and transparent while conducting valuation under the Insolvency and Bankruptcy Code, 2016 and the Companies (Registered Valuers and Valuation) Rules, 2017.

4.3 In view of para 4.2 above, this Order shall come into force immediately.

4.4 A copy of this order shall be forwarded to ICMAI Registered Valuers Organisation where Mr. Shyamal Mukherjee is enrolled as a member.

4.5 Accordingly, the show cause notice is disposed of.

Dated: 18th April 2023
Place: New Delhi

Sd/-
(Sudhaker Shukla)
Whole Time Member, IBBI