

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

[Authority delegated by the Central Government 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./1/2020

4th September, 2020

ORDER

In the matter of Mr Abhishek Ahuja, Registered Valuer under rule 17 read with rule 15 of the Companies (Registered Valuers & Valuation) Rules, 2017

This Order disposes of the Show Cause Notice (SCN) dated 14th May, 2020 issued to Mr Abhishek Ahuja, who is a member of the IOV Registered Valuers Foundation (IOVRVF) and registered with the Insolvency and Bankruptcy Board of India (IBBI) as a valuer in the asset class of Land and Building with the registration number IBBI/RV/02/2019/11958 and in the asset class of Plant and Machinery with the registration number IBBI/RV/02/2019/12302.

Background

2. 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 (Rules). Mr Abhishek Ahuja, who is a member of the IOVRVF was registered with the IBBI as valuer in the asset class of Land and Building with the registration number IBBI/RV/02/2019/11958 on 12th July, 2019 and in the asset class of Plant and Machinery with the registration number IBBI/RV/02/2019/12302 on 20th September, 2019.
 - 2.1 It has come to the notice of the IBBI that Mr Abhishek Ahuja before being registered as valuer under the Rules took valuation assignment in the Corporate Insolvency Resolution Process (CIRP) of M/s Arjun Ispat India Private Limited. The engagement letter dated 2nd March, 2019 issued by the resolution professional, Mr Rajneesh Singhvi, was accepted by Mr Ahuja and the valuation report dated 5th April, 2019 was also submitted by him prior his to being registered as valuer with IBBI.
 - 2.2 Upon consideration of the material available on record, the Authorised Officer (AO) of IBBI was of the *prima facie* opinion that sufficient cause existed to take actions under the rule 17 of the Rules and accordingly issued a SCN dated 14th May, 2020 to Mr Abhishek Ahuja, seeking his written reply and offering him an opportunity of seeking a personal hearing for disposal of the same in accordance with the said Rules.
 - 2.3 Mr Abhishek Ahuja responded to the SCN vide his reply dated 12th June, 2020 and availed personal hearing which was scheduled on 15th July, 2020.

3. Show Cause Notice

The alleged contraventions in the SCN are as follows:

- a) The IBBI, acting as the Authority under the Rules, has granted Mr Abhishek Ahuja the registration as a valuer under the Rules, in the asset class of Land and Building with the registration number IBBI/RV/02/2019/11958 on 12th July, 2019 and in the asset class of Plant and Machinery with the registration number IBBI/RV/02/2019/12302 on 20th September, 2019.
- b) As per IBBI Circular No. IBBI/RV/019/2018 dated 17th October, 2018 read with rule 11 of the Rules, every valuation required under the Insolvency and Bankruptcy Code, 2016 (Code) or any of the regulations made thereunder is required to be conducted by a registered valuer, that is, a valuer registered with the IBBI under the Rules.
- c) It has come to the notice of IBBI that before being registered as valuer under the Rules, Mr Abhishek Ahuja took valuation assignment in the CIRP of M/s Arjun Ispat India Pvt Ltd. vide engagement letter dated 2nd March 2019. Subsequently, the valuation report dated 5th April, 2019 was submitted.
- d) Therefore, based on materials available on record, it is observed that Mr Abhishek Ahuja accepted and undertook the valuation assignment in the said CIRP while he was not registered as a valuer clearly establishing violation of the above stated circular of IBBI. This act casts serious aspersions on Mr Abhishek Ahuja's integrity as a professional and adversely impacts the reputation of valuers registered under the Rules.
- e) In view of the foregoing, Mr Abhishek Ahuja has contravened the following provisions of the Rules by his act-
 - i. Rule 3(1)(k) of the Rules prescribe that a person shall be eligible to be a registered valuer if he is a fit and proper person. For determining whether an individual is a fit and proper person under the Rules, the authority may take account of any relevant consideration, inter-alia including integrity, reputation and character.
 - ii. Clause 1 of the Model Code of Conduct for Registered Valuers stipulates under Annexure – I of the Valuer Rules that - "*A valuer shall, in the conduct of his/its business, follow high standards of integrity and fairness in all his/its dealings with his/its clients and other valuers.*"
 - iii. Clause 2 of the Model Code of Conduct for Registered Valuers stipulates under Annexure – I of the Valuer Rules that - "*A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.*"
 - iv. Clause 4 of the Model Code of Conduct for Registered Valuers stipulates under Annexure – I of the Rules that - "*A valuer shall refrain from being involved in any action that would bring disrepute to the profession.*"
 - v. Rule 7 (a) of the Rules which prescribes that the registration of the valuer is subject to the condition that the valuer shall at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4.
 - vi. Rule 7 (b) of the Rules prescribe that the registration of the valuer is subject to the condition that the valuer shall at all times comply with the provisions of the

Act, the Rules and the Byelaws or internal regulations, as the case may be, of the respective registered valuers organisation.

- vii. Rule 7 (g) of the Rules prescribe that the registration of the valuer is subject to the condition that the valuer shall comply with the Code of Conduct (as per Annexure-I of the Rules) of the registered valuers organization of which he is a member.

4. Submissions by Mr Abhishek Ahuja

Written submissions made by Mr Abhishek Ahuja in reply dated 12th June, 2020 and oral submissions made on 15th July, 2020 are summarized as follows:

4.1 Mr Ahuja submitted that at the time of undertaking the valuation assignment in the CIRP of M/s Arjun Ispat India Pvt. Ltd., he was under the *bona fide* belief that he could undertake work under the ambit of the Code as he had completed the 50 hour mandatory training with IOVRVF and passed the valuation examination on 4th November, 2018.

4.2 Further, he has stated that when he found out about the error on his part, he immediately set out to correct the procedural irregularity and filed the online application for enrolment with IBBI which was finally confirmed on 12th July, 2019. He also did not undertake any other assignment under the ambit of the Code until his registration was confirmed on 12th July, 2019.

4.3 Furthermore, Mr Ahuja, on receiving the notice vide email dated 21st August, 2019 from the resolution professional, Mr Rajneesh Singhvi, refunded the entire fee of Rs. 15,000/-.

4.4 Mr Ahuja has concluded his written submissions by stating that during the initial days of the new regulations, this procedural irregularity committed by him was a *bona fide* error and not intentional at all. There was no malice intended on his part. He, therefore, requested to consider his case sympathetically and take a lenient view of the matter as it is not a reflection of his professional and ethical behavior.

4.5 During the personal hearing dated 15th July, 2020, Mr Ahuja admitted that he has committed a mistake in not completing his registration process before taking a valuation assignment and that the error was inadvertent and unintended. In view of the same he requested the Authority to take a lenient view. He further submitted that as the valuation profession was still at an emerging stage, his mistake was not intentional and was a made due to a lack of clarity as to the procedural issues.

5. Analysis and Findings

5.1 In all CIRPs, the resolution professional has to appoint a valuer registered with the Authority under the Rules i.e. the IBBI. A valuer to be registered with the IBBI, has to

first enroll himself/herself with a Registered Valuer Organization ('RVO') recognized by the IBBI and complete the 50 Hours mandatory educational programme. Subsequently, the valuer has to clear the valuation examination conducted by the IBBI and thereafter he may register with IBBI.

5.2 The Code envisages conducting valuation in a CIRP to estimate the fair value and liquidation value of the assets of the corporate debtor to enable the Committee of Creditors (CoC) and the prospective resolution applicants to make an informed decision regarding the fate of corporate debtor. It is the objective of the Code to maximize the value of assets of the corporate debtor and the same may be ensured by adopting uniform valuation standards. Based on the information supplied in the valuation report, the CoC takes the crucial decision- whether to continue with the resolution process or resolve to liquidate. Further, it also facilitates the resolution professional to invite prospective resolution plans. Therefore, to establish the credibility of the process and generate confidence among the stakeholders, the Code as well as the Rules require resolution professionals to engage registered valuers for the purpose of the CIRP.

5.3 The Hon'ble Delhi High Court in the matter of Cushman and Wakefield v. UOI W.P.(C) 9883/2018, had held that, *"The endeavor of the Rules is to introduce a class of professionals where the focus is on the professionals 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."*

5.4 The IBBI Circular dated 17th October 2018 on "Valuation under the Insolvency and Bankruptcy Code, 2016" provides that:

"6. In view of the above, every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a 'registered valuer', that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. It is hereby directed that with effect from 1st February, 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder."

5.5 It is found that Mr Abhishek Ahuja undertook the assignment of valuation of Land and Building in the CIRP of M/s Arjun Ispat India Private Limited for the fees of Rs. 15,000/- vide engagement letter dated 2nd March, 2019 issued by the resolution professional, despite the IBBI Circular dated 17th October, 2018 clearly stating that no person other than a registered valuer will be appointed to conduct valuation under the Code which came into effect from 1st February, 2019. A valuation report dated 5th April, 2019 was also submitted by Mr Ahuja. Therefore, SCN no. IBBI/IP/SCN/2020/04 dated 21st May, 2020 was also issued to Mr Rajneesh Singhvi, resolution professional, to engage an unregistered valuer in the instant matter. Mr Singhvi in his reply dated 4th June, 2020, informed the IBBI that

the Valuation Report of Mr Ahuja was also considered by the CoC, which is a serious transgression and may raise question on the integrity of the CIRP itself.

5.6 Further, it has been admitted by Mr Abhishek Ahuja in his written reply as well as his oral submissions that he was under the mistaken impression that his registration with IBBI was complete on finishing the 50 hours mandatory training with IOVRVF and on passing the valuation examination on 4th November, 2018. Subsequently, on becoming aware of the irregularity in undertaking the assignment in the instant case, he got registered with IBBI on 12th July, 2019 for asset class Land and Building with the registration number IBBI/RV/02/2019/11958 and for asset class of Plant and Machinery he was registered on 20th September, 2019 with registration number IBBI/RV/02/2019/12302.

5.7 By virtue of being a professional it is expected of a valuer to be updated with the law governing his profession, particularly, when the candidate has undergone mandatory training programme and qualified the valuers examination. Mr Ahuja has by his conduct shown negligence towards his professional obligations. Mr Ahuja accepted valuation assignment even though he did not have proper credentials with the regulatory authority. His previous actions even while being unregistered does raises the question of integrity, competence and bringing disrepute to valuation profession on his subsequent registration. Therefore, the submissions of Mr Ahuja are not tenable.

5.8 It is further observed that the resolution professional vide letter dated 6th June, 2020 acknowledged the refund of fees of Rs. 15,000/- charged for valuation exercise. However, it is noted that Mr Ahuja knew that he had contravened the provision of the Circular dated 17th October, 2018 and the Rules hence, he admittedly offered the resolution professional to refund the fees charged by him for his services.

5.9 Moreover, merely because the amount has been refunded back, it does not mean that there is no violation of the provisions. An unauthorized person not registered with the regulatory authority and unbound by the Rules and Code of Conduct submitting valuation report could raise serious issues on the credibility of the CIRP, which may be prone to be challenged before the Court of Law.

Order

6. Mr Abhishek Ahuja, despite having mandatory training and qualifying the valuers examination, has displayed his lack of understanding of the provisions of the Rules and standards of valuation profession. He allowed the resolution professional to engage him as the registered valuer in a CIRP even though he was not registered as a valuer and also submitted valuation report. As a valuation professional, it is expected to be aware of the registration process and code of conduct of the profession to inspire confidence of the stakeholders and not to bring disrepute to the profession. The conduct of Mr Abhishek Ahuja is found to be in violation of Rule 3(1)(k), 7 (a), 7 (b) and 7 (g) of the Companies (Registered Valuers and Valuation) Rules, 2017 and Clause 1, 2 and 4 of the Model Code of Conduct for Registered Valuers under Annexure-I of the Rules.

6.1 Mr Abhishek Ahuja undertook valuation assignment under mistaken belief and conducted valuation in the CIRP of M/s Arjun Ispat India Private Limited and even submitted valuation report without being eligible or registered to do so. The fact that he has refunded the amount of fee charged for valuation services and had cleared the valuation examination at the time of his engagement in the CIRP may call for a lenient view.

6.2 In view of the above, the Authority, in exercise of powers conferred under Section 458 of the Companies Act, 2013 read with rule 15 and rule 17 of the Companies (Registered Valuers and Valuation) Rules, 2017, hereby, issues the following directions:

- (i) Mr Abhishek Ahuja is hereby warned not to accept any assignment for valuation until he again undergoes the 50 Hours educational programme with IOV Registered Valuers Foundation where Mr Abhishek Ahuja is enrolled as a member.
- (ii) In accordance with provisions of Rule 17(8) of the Rules, the directions of this order shall come into force on expiry of 30 days from the date of its issue.
- (iii) A copy of this order shall be forwarded to IOV Registered Valuers Foundation where Mr Abhishek Ahuja is enrolled as a member.

7. Accordingly, the show cause notice is disposed of.

-Sd-
(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

Dated: 4th September 2020
Place: New Delhi