

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./01/2022

11th February, 2022

ORDER

In the matter of Mr. Mahesh Chand Agrawal, 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 10th May 2021 issued to Mr. Mahesh Chand Agrawal, 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/02/2019/11995.

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 (Rules). Mr. Mahesh Chand Agrawal, who is a member of the IOVRVF is registered with the IBBI as valuer in the asset class of Land and Building with the registration number IBBI/RV/02/2019/11995 on 17th July, 2019.
- 1.2 It has come to the notice of the IBBI that three First Information Reports (FIRs) have been filed against Mr. Mahesh Chand Agrawal by the Central Bureau of Investigation, ACB, Bhopal, on the basis of complaint made by Punjab National bank, for his role as valuer of the bank and thereby providing inflated valuation for the properties kept as collateral for the loan amounts disbursed by Punjab National Bank. That despite repeated requests by IBBI to provide the details of further action taken against Mr. Agrawal with respect to the above-referred FIRs, no response has been received from him.
- 1.3 Upon consideration of the material available on record, SCN dated 10th May 2021 was issued under rule 17 of the Companies (Registered Valuers & Valuation) Rules, 2017 to Mr. Agrawal for contravention of the provisions of the Rules and the Model Code of Conduct for Registered Valuers and sought for his written reply and offered him an opportunity of personal hearing in accordance with the said Rules. However, Mr. Agrawal did not respond to the SCN and the matter was referred to the Authority for disposal of the SCN. The Authority requested him to submit reply to the SCN but Mr. Agarwal did not submit the reply. However, he requested for availing the opportunity of personal hearing on 5th January 2022.

2. Show Cause Notice

The alleged contraventions in the SCN are summarised as follows:

- 2.1 It has been observed that three FIRs have been filed against Mr. Agarwal by the Central Bureau of Investigation, ACB, Bhopal, on the basis of complaint made by Punjab National bank, for his role as valuer of the bank. It has been alleged that he provided inflated valuation for the properties kept as collateral for the loan amounts disbursed by Punjab National Bank. The FIRs are filed for offences under sections 120B Indian Penal Code, 1860 (IPC) read with 420, 467, 468, 471 and under sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (PC).
- 2.2 The offences under which the FIRs has been registered are serious in nature and therefore, may significantly impinge on Mr. Agarwal's 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 Rules.
- 2.3 It is further noted that Mr. Agarwal was requested to provide the details of further action that may have been initiated against him with respect to the aforesaid FIRs. However, even after repeated email communications by the IBBI dated 18th December 2020, 17th February 2020, 24th March 2021 and 27th April 2021, no response has been received from Mr. Agarwal.
- 2.4 In terms of rule 7(a) of the Rules, the registration granted to Mr. Agarwal is subject to the condition that he shall "*at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4.*" In view of above facts, the compliance of his registration with the above said condition of registration cannot be established.
- 2.5 Further, Mr. Agarwal's non-cooperation with the Authority in providing relevant information, as requested, has led to breach of following clauses of Model Code of Conduct, as provided under Annexure-I of the Valuation Rules –
 - (i) Clause 2- A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.
 - (ii) Clause 3- A valuer shall endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations.
 - (iii) Clause 4- A valuer shall refrain from being involved in any action that would bring disrepute to the profession.
 - (iv) Clause 22- A valuer shall appear, co-operate and be available for inspections and investigations carried out by the authority, any person authorised by the authority, the registered valuers organisation with which he/it is registered or any other statutory regulatory body.
 - (v) Clause 23- A valuer shall provide all information and records as may be required by the authority, the Tribunal, Appellate Tribunal, the registered valuers organisation with which he/it is registered, or any other statutory regulatory body.
- 2.6 In terms of rule 7(g) of the Rules, the registration granted to Mr. Agarwal is subject to the condition that he shall "*comply with the Code of Conduct (as per Annexure-I of these rules) of the registered valuers organisation of which he is a member*". Therefore, through his

conduct he has contravened the said condition of registration.

- 2.7 In view of the foregoing, it is prima facie observed that Mr. Agarwal's certificate of registration is liable to be cancelled in terms of rule 17(5)(c) of the Rules. The conduct of Mr. Agarwal is in violation of Rule 3(1)(k), 7(a) and 7(g) of the Companies (Registered Valuers and Valuation) Rules, 2017 and Clauses 2, 3, 4, 22 and 23 of the Model Code of Conduct for Registered Valuers under Annexure-I of the Rules.
3. Mr. Mahesh Chand Agrawal did not submit reply to SCN nor did he submit any written submissions after the personal hearing. During the personal hearing also no submissions on the issues raised in the SCN was made by Mr. Agrawal but he had admitted that a chargesheet was filed against him. He had requested the Authority for 15 days' time to submit his reply to SCN and Chargesheet and the same was granted by the Authority, however, till date no documents have been received.

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 regarding 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 harm 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 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 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.*"
- 4.2 The rule 3 of the Companies (Registered Valuers and Valuation) Rules, 2017 provides that:
"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 Companies (Registered Valuers and Valuation) Rules, 2017 also provides that:

“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;

...(g) comply with the Code of Conduct (as per Annexure-I of these rules) of the registered valuers organisation of which he is a member;”

4.4 In the instant matter, Mr. Agarwal after qualifying the valuer examination conducted by IBBI, the Authority made an application to the IBBI for the purpose of registration as a valuer on 30.05.2019 and was registered as a registered valuer in the land and building asset class with registration number IBBI/RV/02/2019/11995. From the material available on record, it was noticed that Mr. Agarwal had concealed material information in his application form. He concealed pendency of 3 FIRs nos. RC0082018A0001 dated 16.01.2018, RC0082018A0002 dated 16.01.2018 and RC0082018A0019 dated 16.01.2018. If such information would have been disclosed in the application form he would not have been registered. A prospective valuer is under an obligation to provide correct information in the application form. His responsibility is more in the capacity of a professional. There is a Code of Conduct for the registered valuers.

4.5 The Authority notes that the IOVRVF, Registered Valuer Organisation (RVO) where Mr. Agarwal is enrolled as a member has issued an Order dated 02.09.2021 against him. The Disciplinary Committee of IOVRVF has in its Order stated that Mr. Mahesh Chand Agarwal in his communication dated 22.01.2021 admitted that an FIR no. 0082018A0002/CBI/BPL dated 16.01.2018 was lodged against him by Punjab National Bank but he has been issued a ‘No Objection Certificate’ by Central Bureau of Investigation (CBI) and he further sought time to submit the certificate. The Disciplinary Committee of IOVRVF also notes that the CBI in its letter dated 08.02.2021 has informed that Mr. Agarwal has been chargesheeted in one of the connected matters and his name has been sent to Punjab National Bank for blacklisting.

4.6 The Authority notes that three FIRs have been filed against Mr. Agarwal having FIR nos. RC0082018A0001 dated 16.01.2018, RC0082018A0002 dated 16.01.2018 and RC0082018A0019 dated 16.01.2018 before the Anti-Corruption Branch, CBI, Bhopal by the Punjab National Bank alleging commission of offence under section 120B read with 420, 467, 468 and 471 of IPC and under section 13(2) read with 13(1)(d) of the PC Act, 1988 for providing inflated valuation for the properties kept as collateral for the loan amounts disbursed by Punjab National Bank.

- 4.7 The Authority notes that vide e-mail dated 22.01.2021 to IOVRVF, Mr. Agarwal has admitted that an FIR was filed against him by Punjab National Bank. Further, it is noted that vide Letter no. 0563/misc. court/trial/CBI/BPL/2021 by CBI, ACB, Bhopal to IOVRVF, it has been informed that chargesheet has been filed against Mr. Agarwal and his name has been sent to Punjab National Bank for blacklisting.
- 4.8 In view of the above, the Authority is of the considered opinion that it is the duty of a professional to be responsible, accountable and to maintain integrity, however, the concealment of material facts of chargesheet being filed by CBI against Mr. Agarwal affects his integrity and reflects his inability to adhere to standards of professional ethics. The Authority further notes that, IBBI had sent repeated requests to Mr. Agarwal vide emails dated 18.12.2020, 17.02.2021, 24.03.2021 and 27.04.2021 seeking details of further action that were initiated with respect to the three FIRs however, no response was received from Mr. Agarwal. Further, a request was made by Mr. Agarwal during the personal hearing before the Authority for submission of documents (reply to SCN and the chargesheet filed against him) within 15 days from the date of hearing and the Authority had allowed the request and had advised to strictly adhere to the timeline. However, despite the repeated opportunities still no response was provided by Mr. Agarwal.
- 4.9 Further, the Disciplinary Committee of IOVRVF issued the Order of suspension of Mr. Agarwal stating that he had suppressed the pendency of FIR in Form A and did not disclose the fact in the half yearly report submitted by him and he also failed to submit explanation of his professional misconduct inspite of sufficient opportunity being provided to him. Further, the Disciplinary Committee of IOVRVF referred the matter to the Authority (IBBI) to take further action as maybe deemed fit.
- 4.10 The Authority also observes that the offences alleged in the criminal proceedings are in relation to the professional conduct of a valuer- section 120B of the IPC relating to criminal conspiracy, section 420 of the IPC relating to cheating and dishonestly inducing delivery of property, section 467 of the IPC relating to forgery of valuable security, will, etc., section 468 of the IPC relating to forgery for purpose of cheating and section 471 of the IPC relating to using as genuine a forged document or electronic record which are in the nature of serious crime and are punishable with imprisonment up to seven years. The concealment of information of the criminal proceedings of this nature and further non-cooperation by Mr. Agarwal in providing relevant information to the Authority is gross violation of the Model Code of Conduct. Hence, the Authority finds that this is in violation of Rule 3(1)(k), 7 (a) and 7(g) of the Companies (Registered Valuers and Valuation) Rules, 2017 and Clause 2, 3, 4, 22 and 23 of the Model Code of Conduct for Registered Valuers under Annexure-I of the Rules.

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 cancels the registration of Mr. Mahesh Chand Agrawal as Registered Valuer having Registration No. IBBI/RV/02/2019/11995.
6. In accordance with provisions of Rule 17(8) of the Rules, the directions of this order shall come into force with immediate effect as Mr. Mahesh Chand Agrawal's registration has been cancelled.
7. A copy of this order shall be forwarded to IOV Registered Valuers Foundation where Mr. Mahesh Chand Agrawal is enrolled as a member.
8. Accordingly, the show cause notice is disposed of.

Dated: 11th February, 2022
Place: New Delhi

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