

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./04/2022

6th April, 2022

ORDER

In the matter of Yardi Prabhu Consultants & Valuers Pvt. Ltd., Registered Valuer Entity (RV-E) under Rule 15 and 17 of the Companies (Registered Valuers & Valuation) Rules, 2017.

This Order disposes of the Show Cause Notice ('SCN') dated 04th May 2021 issued to Yardi Prabhu Consultants & Valuers Pvt. Ltd., which is registered with the Insolvency and Bankruptcy Board of India ('IBBI') as a valuer in the asset class of Land and Building, Plant and Machinery and Securities or Financial Assets, with the registration number IBBI/RV-E/04/2020/113, on 21st January 2020.

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 ('Valuers Rules'). Yardi Prabhu Consultants & Valuers Pvt. Ltd., ('RV-E') is registered with the Insolvency and Bankruptcy Board of India ('IBBI') as a valuer in the asset class of Land and Building, Plant and Machinery and Securities or Financial Assets, with the registration number IBBI/RV-E/04/2020/113, on 21st January 2020.
- 1.2 It has come to the notice of the IBBI that a charge-sheet has been filed against one of the directors of the RV-E, Mr. Vishwanath Shridhar Prabhu by the Economic Offences Wing, Mumbai, ('EOW') for his alleged role in misconduct committed by Punjab and Maharashtra Cooperative Bank Limited ('PMC Bank'). The charge-sheet is filed for offences under sections 201, 406, 420, 465, 467, 468, 471, 477A read with section 120B of the Indian Penal Code, 1860 ('IPC') & sections 46(1) and 47A of the Banking Regulation Act, 1949.
- 1.3 Upon consideration of the material available on record, SCN dated 04th May 2021 was issued under rule 17 of the Valuers Rules to Yardi Prabhu Consultants & Valuers Pvt. Ltd., for contravention of the provisions of the Rules and sought for its written reply and offered it an opportunity of personal hearing in accordance with the said Rules. The RV-E responded to the SCN on 3rd June 2021 and the matter was referred to the Authority for disposal of the SCN. Later, the RV-E availed the opportunity of personal hearing through its advocate Mr. Mithilesh Mishra on 4th August 2021.

2. **Show Cause Notice**

The alleged contraventions in the SCN are summarised as follows:

- 2.1 It has been observed that a charge-sheet has been filed against one of the directors of the RV-E, Mr. Vishwanath Shridhar Prabhu by the Economic Offences Wing, Mumbai, ('EOW') for his alleged role in misconduct committed by PMC Bank. The charge-sheet is filed for offences under sections 201, 406, 420, 465, 467, 468, 471, 477A read with section 120B of the IPC & sections 46(1) and 47A of the Banking Regulation Act, 1949.
- 2.2 It was further noted that Mr. Vishwanath Shridhar Prabhu had been held under judicial custody for his alleged conduct. The filing of charge-sheet under such serious offences and subsequent events **may** significantly impinge on integrity and reputation of Mr. Vishwanath Shridhar Prabhu, director of the RV-E and **may** make him not 'fit and proper' for being eligible for registration as valuer, as stipulated under rule 3(1)(k) of the Valuers Rules. Accordingly, the eligibility condition for registration of a company as valuer, as prescribed under rule 3(2)(c) of the Valuation Rules, is contravened, which prescribes that all the directors of the company must be eligible under rule 3(1)(k) of the Valuation Rules.
- 2.3 In terms of rule 7(a) of the Valuer Rules, the registration granted to the entity is subject to the condition that the RV-E shall "*at all times possess the eligibility and qualification and experience criterion as specified under rule 3 and rule 4.*" In view of above facts, the above said condition of registration is contravened. Accordingly, it is *prima facie* observed that the certificate of registration of the RV-E is liable to be cancelled in terms of Rule 17(5)(c) of the Valuers Rules.
- 2.4 The aforesaid conduct of one of the directors of the RV-E, Mr. Vishwanath Shridhar Prabhu is in violation of Rule 3(1)(k) and 7(a) of the Companies (Registered Valuers and Valuation) Rules, 2017.

3. **Submissions by Mr. Yardi Prabhu Consultants & Valuers Pvt. Ltd.**

- 3.1 Mr. Yardi Prabhu Consultants & Valuers Pvt. Ltd *vide* reply dated 2nd June 2021 submitted that it is one of the reputed organizations serving in the field of valuation for more than 2 decades. The RV-E has been empaneled with many Nationalized/ Private and Foreign Bank/ Multi State Co-Operative Banks/ Govt. Organization/ PSUs/ Financial Institutions/ Mumbai DRT-Ministry of Finance/ High Court/ NCL, etc. and that Mr. Vishwanath Sridhar Prabhu is one of the Directors of the Company and he was carrying out valuation of Asset Class (Securities and Financial Assets). Valuation of other assets classes, *i.e.*, "Land and Building" and "Plant and Machinery" was being carried out by other Directors who are Registered Valuers as per IBBI Regulation.
- 3.2 It has been submitted on behalf of the RV-E that a chargesheet had been filed against one of the Directors of the RV-E, Mr. Vishwanath Sridhar Prabhu by the EOW, Mumbai. It was

further stated that a show cause notice was issued by IBBI also to Mr. Vishwanath Sridhar Prabhu on 04th May, 2021 and he has submitted his reply on 28th May, 2021. It has also been stated that Mr. Vishwanath Sridhar Prabhu had averred in his reply to the show cause notice that the entire case put up against him was based on conjectures and surmises in an attempt to tarnish the image and propriety and there was absolutely no material which can be termed as evidence against him. It has been stated that Mr. Vishwanath Sridhar Prabhu had also asserted that filing of a chargesheet by itself does not prove anything and the EOW, Mumbai had been put to strict proof to prove each and every allegation against him. The RV-E in the reply submitted that Mr. Vishwanath Sridhar Prabhu had further maintained that he was fit and proper to discharge his duties as a Director/valuer of Securities and Financial Assets and he at all times possess all the eligibility and qualification and experience criteria as specified under Rule 3 and Rule 4 of the Valuers Rules.

- 3.3 It was further submitted that the matter was sub-judice as the trial proceedings of the case were yet to commence and show cause notice issued to the RV-E was a premature action as the matter of Mr. Vishwanath Sridhar Prabhu and his adherence to “*fit and proper*” status was yet to be decided by the judiciary.
- 3.4 It was submitted that any action on part of IBBI would prejudice the case and would also cause injustice, irreparable damage to the RV-E by adversely affecting its reputation as also of other professional Directors associated with the RV-E. The RV-E stated that its company was professionally managed and valuation was carried out by team of associates who are IBBI Registered Valuers. The RV-E was fully equipped and capable of carrying out the valuation services undisturbed and uninterruptedly to the best of professional standards. During the personal hearing, the submissions made in the reply were reiterated by its advocate Mr. Mithilesh Mishra.

4. **Analysis and Findings**

- 4.1 The Authority after considering the SCN, the reply of the RV-E and the oral submissions made during personal hearing and provisions of the Valuer Rules notes/ finds as follows.
- 4.2 The Authority notes that the Insolvency and Bankruptcy Code, 2016 (Code) empowers under section 25(2) (d) the resolution professional to appoint accountants, legal and other professionals. Further regulation 27 of the CIRP regulations provides that the valuation is to be conducted by two registered valuers for the purposes of corporate insolvency resolution process (CIRP) 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 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 affect the interests of all the stakeholders. Hence, to establish the credibility of the process

of valuation and to inspire confidence among the stakeholders, there is a requirement of registered valuers for the purpose of valuation of assets of the Corporate Debtor. In this regard, the Hon'ble Delhi High Court in the matter of Cushman and Wakefield v. UOI W.P.(C) 9883/2018, had observed as follows:

“The endeavor of the Rules is to introduce a class of professionals where the focus is on the professional 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.”

4.3 The Authority notes that rule 3 of the Companies (Registered Valuers and Valuation) Rules, 2017, provides for eligibility of a registered valuer. The relevant provision is follows:

“3. Eligibility for registered valuers. — (1) A person shall be eligible to be a registered valuer if he-

(a) is a valuer member of a registered valuers organisation;

Explanation.— For the purposes of this clause, “a valuer member” is a member

registered valuers organisation who possesses the requisite educational qualifications

and experience for being registered as a valuer;

(b) is recommended by the registered valuers organisation of which he is a valuer member

for registration as a valuer;

(c) has passed the valuation examination under rule 5 within three years preceding the

date of making an application for registration under rule 6;

(d) possesses the qualifications and experience as specified in rule 4;

(e) is not a minor;

(f) has not been declared to be of unsound mind;

(g) is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) is a person resident in India;

Explanation.— For the purposes of these rules ‘person resident in India’ shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

(i) has not been convicted by any competent court for an offence punishable with

imprisonment for a term exceeding six months or for an offence involving moral

turpitude, and a period of five years has not elapsed from the date of expiry of the

sentence:

Provided that if a person has been convicted of any offence and sentenced in respect

thereof to imprisonment for a period of seven years or more, he shall not be eligible to

be registered;

(j) has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961)

and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

(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.

(2) No partnership entity or company shall be eligible to be a registered valuer if-

*(a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is 4 [***] a subsidiary, joint venture or associate of another company or body corporate;*

(b) it is undergoing an insolvency resolution or is an undischarged bankrupt;

(c) all the partners or directors, as the case may be, are not ineligible under clauses (c),

(d), (e), (f), (g), (h), (i), (j) and (k) of sub-rule (1);

(d) three or all the partners or directors, whichever is lower, of the partnership entity or

company, as the case may be, are not registered valuers; or

(e) none of its partners or directors, as the case may be, is a registered valuer for the asset

class, for the valuation of which it seeks to be a registered valuer.”

4.4 Further, rule 7 of the Valuers Rules, 2017, *inter alia*, provides as follows:

“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;

(b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organization”;

“(l) in case a partnership entity or company is the registered valuer, immediately

inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and”

- 4.5 The Authority notes that as per rule 7(a) of the Valuer Rules, after registration, the valuer is required to maintain at all times the eligibility and qualification and experience as specified in rule 3 and 4 of the Valuer Rules as also at all times comply with the provisions of the Act, these rules and the Bye-laws.
- 4.6 It is pertinent to note that the foundation of valuation services in a market economy lies on mutual trust between the valuer and the stakeholders. Based on the professional opinion of a valuer, for the purposes of Corporate Insolvency Resolution Process, CoC takes prudent commercial decisions. Therefore, it becomes crucial to maintain the reputation and integrity of the valuation profession and the trust of the stakeholders, so that the decision makers in the market have adequate comfort to take any crucial economic decision without any fear or doubt.
- 4.7 In the instant matter, the Authority notes that the limited issue for consideration before it is whether suspension of one of the directors of the RV-E affects the eligibility of the valuer for continuing as RV. In this regard, the Authority notes that as per rule 3(2)(c) of the Valuer Rules, no partnership entity or company shall be eligible to be registered valuer if all the partners or directors, are not ineligible under clauses (c), (d), (e), (f), (g), (h), (i), (j) and (k) of sub-rule (1). The Authority notes that a charge-sheet had been filed against Mr. Vishwanath Sridhar Prabhu by the EOW for his alleged role in misconduct committed by PMC Bank by providing altered property valuation report to enable PMC Bank to extend favourable credit facility to the relative of director or to facilitate mortgage of low value property against comparatively high value withdrawal. The charge-sheet was filed against Mr. Prabhu for offences under sections 201, 406, 420, 465, 467, 468, 471, 477A read with section 120B of the IPC and sections 46(1) and 47A of the Banking Regulation Act, 1949. Mr. Vishwanath Sridhar Prabhu was arrested on 12th March, 2020 for the said offences and had been remanded to judicial custody. Further, the Authority *vide* its order dated 25th February, 2022 suspended the registration of Mr. Vishwanath Shridhar Prabhu as a registered valuer till he is exonerated of the charges.
- 4.8 The Authority also notes that after the order of the Authority dated 25th February, 2022, suspending registration of Mr. Vishwanath Shridhar Prabhu, the RV-E did not take any steps to remove him from its directorship nor adopted any resolution to this effect. Mr. Vishwanath Shridhar Prabhu is still continuing as a director and his name is appearing on the website of Yardi Prabhu Consultants & Valuers Pvt. Ltd. Further, the Authority also notes that in the MCA website, his name is appearing as Director of the RV-E. Thus, the Authority finds that one of the directors of Yardi Prabhu Consultants & Valuers Pvt. Ltd. is not eligible to continue as a registered valuer under the Valuer rules. That being the case, suspension of one of the directors of the RV-E makes that RV-E as ineligible to continue as a registered valuer in terms of the rule 3(2)(c) read with rule 7(a) of the Valuer Rules which requires all the directors to be eligible to continue as a registered valuer. Hence, the Authority finds that there is violation

of rule 7(a), 7 (b) and (l) of the Companies (Registered Valuers and Valuation) Rules, 2017, by RV-E.

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 suspends the registration of the Yardi Prabhu Consultants & Valuers Pvt. Ltd., as a registered valuer till it takes corrective measures to meet the eligibility criteria as envisaged under rule 3(2) (c) of the Valuer Rules for the purposes of rule 7(a) of the Valuer Rules.
6. This Order shall come into force with immediate effect in view of para 5 above.
7. A copy of this order shall be forwarded to IIV India Registered Valuers Foundation where Yardi Prabhu Consultants & Valuers Pvt. Ltd., Registered Valuer Entity (RV-E) is enrolled as a member.
8. Accordingly, the show cause notice is disposed of.

Dated: 6th April, 2022
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

