

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./19/2023

14th August 2023

ORDER

This Order disposes the Show Cause Notice (SCN) No. RV-13011/1/2023-IBBI/344/9163, dated 26th June 2023 issued to Mr. Vinodkumar Bhagvanji Bhogayata under rule 17 read with rule 15 of the 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. Vinodkumar Bhagvanji Bhogayata is registered with IBBI as a valuer of Plant and Machinery Assets (P&M), with the registration number IBBI/RV/04/2019/12573 on 09th December 2019.

1. Issuance of Show Cause Notice (SCN) and hearing before the Authority

- 1.1 Rule 17(1) of the Valuation Rules provides that based on material available on record, 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, it had come to the notice of IBBI that the Disciplinary Committee of the Registered Valuers Organisation (RVO) namely, IIV India Register Valuers Foundation (IIV-RVF), of which Mr. Vinodkumar Bhagvanji Bhogayata (hereinafter referred as RV) is a member, had passed an Order dated 04th May 2023 thereby dismissing the RV from the membership of IIV-RVF. The Disciplinary Committee of IIV-RVF had found that the RV had obtained registration with IBBI in the year 2019 and yet he continued to be employed with Gujarat Industrial and Technical Consultancy Organisation Limited (GITCO).
- 1.3 In terms of rule 3(1)(a) of the Valuation Rules, being a member of a registered valuers organisation is a necessary eligibility condition for an individual to become a Registered valuer. Rule 7(a) of the Valuation Rules further makes it mandatory for a Registered

Valuer to all time possess the necessary eligibility criteria as specified under rule 3. Further, rule 7 (b) of the Valuation Rules prescribes 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 and the Rules. Furthermore, 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 Model Code of Conduct (as per Annexure-I of the Rules) of the registered valuers organisation of which he is a member.

- 1.4 The SCN also notes that the RV was in employment of GITCO since the year 2014. However, while seeking registration with the IBBI, vide his application dated 20th November 2019, he had declared that he is not under any employment. Based on, inter-alia, this declaration from the RV, the IBBI had granted him registration as registered valuer on 9th December 2019. The SCN therefore alleges that the RV has obtained the registration by making false statement, misrepresentation, and untrue statement. The SCN alleges that this conduct of RV has made him not ‘fit and proper’ person under rule 3(1)(k) to be registered as Registered Valuer under the Valuation Rules and has also violated clause 2 and 3 of the Model Code of Conduct.
- 1.5 Based on the above facts and observations, a *prima facie* opinion was formed that the RV cannot remain a Registered Valuer as his conditions of registration is breached. Accordingly, the SCN dated 26th June 2023 was issued to RV seeking explanation as to why his registration be not revoked. The RV responded to the SCN on 10th July 2023. The matter was referred to this Authority for disposal of the SCN where the RV availed the opportunity of personal hearing on 26th July 2023.

2. Submissions of the RV

- 2.1 The RV in his response to SCN has submitted that he was associated with GITCO as a consultant since the year 2014. He further submitted that he had worked with GITCO as a professional and therefore has not knowingly breached clause 26 of the Model Bye Laws of RVO.
- 2.2 The RV further submitted that he had merely continued his association with the GITCO after getting registered as valuer which is not prohibited by clause 26 of the Model Bye Laws of RVO.

2.3 Further, the RV has stated that he has ended his association with GITCO by tendering his resignation on 28th November 2022 which was accepted and he has been relieved from 30th November 2022.

2.4 The RV submits that he has now complied with all the pre-requisites as per existing criteria as registered valuer and has therefore requested to condone the present lapse for one time and prayed for continuation of his registration.

2.5 **Findings of the Authority**

2.5.1 The regulatory regime for the valuation professional under the Valuation Rules framed under section 247 of the Companies Act, 2013 provides for a dual monitoring mechanism on the registered valuers. The Registered Valuers Organisations act as front-line regulators for the registered valuers. They exercise monitoring powers on such registered valuers who are enrolled with it as member. In this furtherance, the RVO can undertake necessary disciplinary actions against its members. This monitoring power exercised by RVO is independent and separate from the monitoring powers exercised by the IBBI under the Valuation Rules.

2.5.2 In this background, it is not desirable to go on the merits of the order passed by the Disciplinary Committee of IIV-RVF. Rather, the outcome of such DC Order matters which in this case is the termination of membership of the RV by IIV-RVF. Rule 7(a) read with rule 3(1)(a) of Valuation Rules requires an RV to all time possess the membership of a Registered Valuers Organisation. In this perspective, once the RV ceases to be member of any RVO, he loses his registration with IBBI also. Therefore, in the instant case too, the registration of RV needs to be revoked in light of the order dated 04th May 2023 of Disciplinary Committee of IIV-RVF.

2.5.3 Further, it is observed from Part C of Form A pertaining to Work Experience of applicant, filled by the RV while applying for registration as valuer, that only work experience disclosed by the RV is that of practice from 1st April 2013 to 25th October 2019. The RV has not disclosed his association with GITCO to IBBI. It is pertinent to note that the consequence of such disclosure would have been denial of registration request of the RV. This clearly indicates the intentional omission on part of the RV while filling form of registration in order to secure registration from IBBI.

2.5.4 Rule 3(1)(k) of the Valuation Rules makes it mandatory that a person being registered as valuer must be 'fit and proper' person. For determining the 'fit and proper' status, the authority may take into account any relevant consideration *inter alia* including integrity, reputation and character. The conduct of RV as mentioned in paras above, impinges on his integrity and character. Therefore, the Authority finds RV in violation of rule 3(1)(k) and also clause 2 and 3 of the Model Code of Conduct which provides as follows-

"2. A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.

3. A valuer shall endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations."

3. Order

3.1 It must be noted that the profession of valuation hinges on the trust of stakeholders on the professionals conducting valuation exercise. The presence of a regulatory regime for professionals increases the trust of the stakeholders on the ecosystem of the regulated profession. In such a scenario, the suppression of material facts with the regulatory authority by the RV, undermines the credibility not only of the RV himself but also the regulatory authority, which needs to be protected.

3.2 For continued membership as Registered Valuer, necessary condition is that he is registered as member of a RVO. Now, IIV-RVF where the RV was registered as member, has itself taking cognizance of misrepresentation of facts by the RV suspended the registration of RV, vide its Order dated 04th May 2023.

3.3 Therefore, in light of the foregoing, after considering the allegations made in the SCN, the reply of the RV and the materials available on record, the Authority in exercise of powers conferred vide notification of Central Government no. GSR 1316(E) dated 18th October 2017, under Section 458 of the Companies Act, 2013 and in pursuance of rule 15 and rule 17 of the Valuation Rules hereby cancels the registration of Mr. Vinodkumar Bhagvanji Bhogayata bearing registration number - IBBI/RV/04/2019/12573. Further, Mr. Vinodkumar Bhagvanji Bhogayata is barred from seeking fresh registration as Registered Valuer with IBBI, under the Valuation Rules for a period of two years from the date of coming into effect of this Order.

- 3.4 In terms of sub-rule (8) of rule 17 of Valuation Rules, this Order shall come into force after 30 days from the date of its issuance.
- 3.5 A copy of this order shall be forwarded to all RVOs for information.
- 3.6 Accordingly, the show cause notice is disposed of.

Dated: 14 August 2023

Place: New Delhi

Sd/-

(Sudhaker Shukla)

Whole Time Member, IBBI