

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./3/2021

09th February, 2021

ORDER

In the matter of Mr. Sagar Dattatray Goge, 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 21st October 2020 issued to Mr Sagar Dattatray Goge, who is a member of the IIV India Registered Valuers Foundation (IIVIRVF) 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/04/2020/12722.

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 Sagar Dattatray Goge, who is a member of the IIVIRVF was registered with the IBBI as valuer in the asset class of Land and Building with the registration number IBBI/RV/04/2020/12722 on 2nd January, 2020.
- 1.2 It has come to the notice of the IBBI that Mr. Sagar Dattatray Goge gave a false declaration in his application dated 18th December 2019 submitted to IBBI that no criminal proceedings were pending against him even though a charge sheet was filed before the Learned Special Judge, CBI Court, Aurangabad on 29th December 2015 which is pending for adjudication.
- 1.3 Upon consideration of the material available on record, a SCN dated 21st October 2020 was issued under rule 17 of the Companies (Registered Valuers & Valuation) Rules, 2017 to Mr. Sagar Dattatray Goge, seeking his written reply and offering him an opportunity of personal hearing for disposal of the same in accordance with the said Rules.
- 1.4 Mr. Sagar Dattatray Goge responded to the SCN vide his reply dated 3rd November 2020 and availed the opportunity of personal hearing on 17th December 2020.

2. Show Cause Notice

The alleged contraventions in the SCN are summarised as follows:

- 2.1 The IBBI, acting as the Authority under the Rules, has granted Mr. Goge registration as a valuer under the Rules, in the asset class of Land and Building with the registration number

IBBI/RV/04/2020/12722.

2.2 It is observed that a charge-sheet is filed against Mr. Goge by CBI ACB, Pune in the year 2015, in reference to the FIR No. RC PUNE 2015 A 0001, in the Hon^{ble} Court of Special Judge for CBI cases at Aurangabad. However, in his application form dated 11th December 2019, seeking registration as valuer, Mr. Goge had made a false declaration that no criminal proceeding is pending against him. This conduct of Mr. Goge is unbecoming of continuing as a registered valuer.

2.3 In view of the foregoing, Mr. Sagar Dattatray Goge 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 2 of the Model Code of Conduct for Registered Valuers stipulates under Annexure – I of the Rules that - *“A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.”*
- (iii) Clause 3 of the Model Code of Conduct for Registered Valuers stipulates under Annexure – I of the Rules that - *“A valuer shall endeavor to ensure that he/it provides true and adequate information and shall not misinterpret any facts or situations.”*
- (iv) 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.
- (v) 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 and the Rules.
- (vi) 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 organization of which he is a member.

3. Submissions by Mr. Sagar Dattatray Goge

Written submissions made by Mr. Sagar Dattatray Goge in reply dated 3rd November 2020 and oral submissions made on 17th December 2020 are summarized as follows:

3.1 Mr. Goge has submitted in his written statement that he had inadvertently mentioned that no criminal proceeding was pending in the application form dated 18th December 2019. He was under impression that framing of charge will amount to start of criminal proceeding and when charge is framed by learned Court, only then can it be said that criminal proceeding is pending. Though charge sheet is filed before Special Judge, Aurangabad but till this date charges are not framed.

- 3.2 Mr Goge submitted that false charge sheet is filed against him and no evidence has been produced and he has high hopes that he will be discharged from the said proceeding. Also, subsequent to filing of application he has informed about the case filed by CBI and its status. He even submitted a copy of charge sheet. Mr. Goge also submits that, till his guilt is proved he should be presumed to be innocent.
- 3.3 He further states that he has put in hard work and study in order to become eligible as a registered valuer of IBBI and that he has not taken advantage of the registration. Mr. Goge informs that he has not been assigned any valuation till date under the registration of IBBI. Mr. Goge also undertakes that until the special court discharges him or acquits him from the criminal proceedings he will not use the Certificate of registered valuer of IBBI.
- 3.4 That in Ghar Consultech Pvt. Ltd vs. State Bank of India, Writ Petition No. 23248(W) of 2019, the Hon^{ble} Calcutta High Court had heard a similar issue and allowed the petition with direction for reappointment of petitioner therein as an empanelled valuer of the Bank. The Hon^{ble} High Court had held that refusing fresh empanelment despite the petitioner therein having not been convicted in any trial was an absolute violation of Article 14 as well as Article 19(1)(f) of Constitution of India.
- 3.5 Mr. Goge also informed that after registration of crime during investigation, the CBI had not arrested him and they gave him notice of filing of charge sheet before learned Special Judge, Aurangabad. Mr. Goge had appeared before the Court and on furnishing surety he was granted bail and at no point of time he was arrested.
- 3.6 Charge sheet was filed against 19 accused persons. Allegations had been made that some borrowers had taken out loans and the Panel Valuers of Bank of Maharashtra had given an inflated value of the mortgaged property. Mr. Goge submits that the valuation given by him was proper and based upon prevailing market rate and he had taken all care and caution following all due procedure before issuing the report. Even in respect of borrowers who had taken loan, they have repaid about 80% of their loan and no offence under section 420 read with 120-B of the Indian Penal Code, 1860 (IPC) and offence under section 31(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (PC Act) could be established. That there is no substance in the charge sheet filed against him. Mr. Goge submits that he is also going to file application for discharge and he has high hopes that he will be discharged,
- 3.7 That, after filing of charge sheet the status of the cases that it is at the stage of framing of charge. One of the accused valuer has filed application for discharge and it is pending for consideration. Mr. Goge therefore humbly prays to recall the show cause notice issued and for this act of kindness he shall remain ever grateful.
- 3.8 During the personal hearing dated 17th December 2020, Mr. Goge admitted that he has committed a mistake in not disclosing in the application that no criminal proceeding was pending and that the error was inadvertent and unintended. In view of the same he requested the Authority to take a lenient view as he is yet to undertake any assignment under the Code. He further requested to be allowed to give an undertaking stating that he would not take up any fresh assignment under the Code, till he is exonerated from the criminal case.

4. Analysis and Findings

- 4.1 The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016 mandates under regulation 27 that valuation is to be conducted for the purpose of corporate insolvency resolution process (CIRP) by two registered valuers to estimate the fair value and liquidation value of the assets of the corporate debtor, so that it would enable the Committee of Creditors (CoC) and the prospective resolution applicants in making an informed decision on the fate of corporate debtor and that of its stakeholders. It is the objective of the Code to have a transparency, credibility and consistency in determination of the value of assets of the corporate debtor and the same may be ensured by adopting uniform valuation standards and best practices. Further, on the basis of the information supplied in the valuation report, the CoC takes an informed decision as to whether to continue with the resolution process or resolve to liquidate. Moreover, it also facilitates the resolution professional to invite prospective resolution plans and inaccuracies in determining the liquidation value could undermine the resolution plan that may be approved on the basis of an incorrect liquidation value. Therefore, to establish the credibility of the process of valuation and 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.

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;

(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 organisation;

(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 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.”

- 4.5 The Authority finds that a charge sheet dated 28.12.2015 was filed by the CBI, ACB Pune before the Learned Special Judge CBI Court, Aurangabad alleging commission of offence under section 120B read with 409, 420 of IPC and under section 13(2) read with 13(1)(d) of the PC Act. It is observed from the status of proceedings submitted by Mr. Goge, that as on 18th December 2019 the case was being heard for argument on exhibits. However, in the application for registration submitted to IBBI on 18th December 2019 a false declaration was made that no criminal proceedings were pending. This is a clear case of misrepresentation and concealing of facts by Mr. Goge which goes to affect the integrity of the professional.
- 4.6 The Authority observed that the criminal case was filed on 29.12.2015 and that Mr. Goge had appeared before the Learned Special Judge and was granted bail on furnishing surety. The submission of Mr. Goge that only charge sheet has been filed against him but he was not arrested and no formal charges have been framed against him by the Learned Special Judge, cannot be accepted as he deliberately concealed and misrepresented the facts especially where such information was expressly required or sought to be disclosed by him in the application. Mr. Goge further submitted that there is no substance in the charge sheet filed against him and he would file application for discharge. Therefore, the Authority is of the considered opinion that Mr. Goge concealed the fact of pendency of criminal proceedings against him to obtain registration as registered valuer with the IBBI.
- 4.7 Further, as per the para 3 of the Affirmation annexed with the application form for registration submitted by him which states that,

“The application and the information furnished by me along with this application is true and complete. If found false or misleading at any stage, my registration shall be summarily cancelled.”

Thus, it is also contravention of Affirmation by him. It is the duty of a professional to be responsible and accountable, however, the concealment of material facts by Mr. Goge in his application affects his integrity and reflects his inability to adhere to standards of professional ethics.

- 4.8 The Authority further notes 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 409 of the IPC relating to criminal breach of trust by public servant, or by banker, merchant or agent and section 420 of the IPC relating to cheating and dishonestly inducing delivery of property are serious in nature and are punishable with imprisonment up to seven years. The concealment of information of the criminal proceedings of this nature by Mr. Goge 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), 7 (b) and 7 (g) of the Companies (Registered Valuers and Valuation) Rules, 2017 and Clause 2 and 3 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. Sagar Dattatray Goge as Registered Valuer having Registration No. IBBI/RV/04/2020/12722.
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. Sagar Dattatray Goge's registration has been cancelled.
7. A copy of this order shall be forwarded to IIV India Registered Valuers Foundation where Mr. Sagar Dattatray Goge is enrolled as a member.
8. Accordingly, the show cause notice is disposed of.

Dated: 09th February, 2021
Place: New Delhi

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(Dr. Mukulita Vijayawargiya)
Whole Time Member, IBBI

