

Order of the Disciplinary Committee of RVO Estate
Managers & Appraisers Foundation on the enquiry into the
complaint against Mr. Puneet Tyagi

Pursuant to the powers delegated to the Disciplinary Committee (hereinafter referred to as DC in short) as per the provisions of Disciplinary Policy of RVO Estate Managers & Appraisers Foundation (hereinafter referred to as the said policy in short), the DC conducted an enquiry into the complaint, forwarded by Mr. Pankaj Kumar, AGM, IBBI, against Mr. Puneet Tyagi, a Registered Valuer Member, being No. IESMARVO/RVM/2018/0007, of this RVO and Registered Valuer of IBBI being No. IBBI/RV/01/2018/10087 (hereinafter referred to as the RVM). The DC held seven sittings at Kolkata including the oral enquiry through video conference with the said RVM on 25.02.2021.

Before the DC proceeds to discuss the evidence on record, the backdrop to the Disciplinary Proceeding, is stated in brief.

2(a) After receiving the Complaint, as stated herein before, the Governing Board of this RVO unanimously decided to conduct a disciplinary proceeding as per the said policy considering the gravity of the complaint and referred the matter to the Chairman of the DA to take up the matter and to proceed with the same.

- b) Thereafter the DC sent the e-mail dated 06.02.2021 to Mr. S. N. Mishra, being the nominee of the IBBI to the DC of this RVO, to participate in the proceedings of the DC through the video conference because of the pandemic situation. But without result since no reply was received from the said nominee. Apart from that the Governing Board of this RVO made several communications on diverse dates to the said nominee to ensure his participation in the disciplinary proceeding but no reply was received from said Mr. S. N. Mishra. Under the aforesaid facts and circumstances, this RVO also made communication on diverse dates to the IBBI intimating the said facts. Since the matter is pending for long, the DC decided to proceed in the matter so that the purpose of holding the disciplinary proceeding may not be frustrated.
- c) Pursuant to the said policy, on 09.02.2021 the DC had issued a show cause notice upon the said RVM on the basis of the said complaint, asking him to reply to the said show cause notice within the stipulated period. The RVM also replied to the said notice in his turn on 10.02.2021.
- d) The clause (e) of the said policy provides inter alia 'while conducting the disciplinary proceedings by the said committee, the Disciplinary Committee will hear all the concerned parties by giving opportunity of being heard as per the principles of natural justice. The Committee shall also allow both the parties to rely upon the relevant documents in support of their cases. In

any event only the concerned parties would be allowed to represent their cases before the said committee'.

e) Considering the aforesaid provision, the DC sent a mail dated 11.02.2021, to the RV division of the IBBI with the special attention to Mr. S. K. Shukla so that the complainant can rely upon the relevant documents in support of his complaint/case alternatively requesting him to provide the name and the e-mail address of the said complainant to do the needful since no name nor his address was forwarded to this RVO while forwarding the said complaint. In reply to that by e-mail dated 17.02.2021, the said RV division informed that they were unable to provide the same because of confidential issue, thus, the DC was requested to proceed with the matter on the basis of material available on record.

f) Under such circumstances, the DC had no other alternative but to proceed with the matter by fixing a date on 25.02.2021 to give the said RVM a personal hearing through the video conference as per the said policy.

3. During the proceedings, the said PVM relied upon two more documents in support of his contentions in addition to his reply to the show cause notice and the copy of the valuation report. The DA keeps the same on record.

4. The complaint levelled against the said RVM, in connection with the CIRP of Neesa Leisure Limited, is stated briefly as under :-

- a) Under valuation or lower valuation deliberately made by the Registered Valuer to benefit people of COC or RP.
- b) The Registered Valuer did not consider so many aspects while valuing the assets of the corporate debtor.
- c) Few assumptive aspects has been considered by the Registered Valuer in collusion with the resolution professional of corporate debtor.
- d) The Registered Valuer has not physically visited any of the property of the corporate debtor, all informations are based on virtual tour of property either by goggle maps or any other medium. Thereby the Registered Valuer can not derive fair value of buildings of the corporate debtor.
- e) Registered Valuer's report is based on factually incorrect figure such as number of rooms are in operational.
- f) The Registered Valuer had not considered in his report one of the prime property situated in Jamdoli near Jaipur, Rajasthan on the alleged ground of cancellation of lease deed by the Government authority.
- g) The Registered Valuer had not taken into consideration of the Neemrana property for the valuation despite of the fact that the lease had been cancelled by the concerned authority.

5. The DC had taken note of the RVM's submission as per his written reply to the show cause by the e-mail dated 10.02.2021 as well as his submission through the video conference when he was given an opportunity of being heard as per the said policy on 25.02.2021.

6. As submitted by the said RVM, all the properties in question of the corporate debtor were hotel premises and all the land parcels under valuation were leasehold in nature and regulated by the competent authorities. Accordingly he had applied all possible and internationally accepted methodologies for valuing the subject assets and the same were sufficiently reflected in his valuation report.

7. It was further submitted by the said RVM that he had valued the properties of the corporate debtor in respect of Thaltej (Ahmedabad), Kukas (Jaipur) and Alwar (Neemrana) by partial visits in view of the fact and admitted position that all hotel premises closed down during the period of his visit as per the Government directives to control the Covid situation across the country. He also submitted during the hearing that it was not possible for him to have physical verification of each and every room of the hotels situated at the said different locations because of the fact that most the rooms were inoperative/closed

because of the said Covid situation although he had physically visited at the said sites.

8. The RVM again submitted that he did not consider the property in Jamdoli near Jaipur Rajasthan since he was satisfied that the lease in respect of the said property had already cancelled by the competent authority more so the said property was not under the possession of the corporate debtor whereas he had taken into consideration the valuation of a property, situated at Neemrana, although a leasehold property, in view of the fact that there was a fair chance of renewal of the lease by the competent authority upon enhancement of a fee of 75% of the current guideline rate and the corporate debtor was in possession of the said property.

However all the above cases sufficient care was taken by him as the Registered Valuer while determining the fair value in accordance with the accepted valuation standards and that was also reflected in his valuation report, as submitted by the said RVM.

9. Having considered the submissions of the said RVM and the records of the proceeding vis a vis the complaint of the complainant, the DC observes that it must once be stated that valuation is a technical and complex problem which can be

appropriately left to the consideration of expert in the field of valuation. But in the present case the complainant had not chosen to in rebuttal by any other expert in the field who could have suggested any other valuation differently save and except mere allegations regarding the valuation assignment, undertaking by the said RVM.

10. The DC further observes that the DC is not the court to sit in appeal over the value judgement whereas the complainant never called for any other expert on the valuation to support of his alleged complaint regarding valuation in respect of the aforesaid properties of the corporate debtors.

In view of the above, the DC has neither expertise nor delve into the valuation report in the absence of sufficient supporting documents of the complainant.

However, a mere look at the report in question shows that various factors underlying the estimation were taken into consideration while suggesting the fair value of the properties, as mentioned herein above, of the corporate debtor and the Registered Valuer is expected to consider all the pros and cons underlying the said valuation assignment.

The allegations of the complainant in regard to collusion between the RV and the RP of the corporate debtor on the point of assumptive aspects and further in regard to grant of benefits to few people, the DC is of the opinion that it needs judicial determination by the competent court of law since there is an ample scope for adducing evidences and counter evidences between the parties. In view of that the DC is not the correct forum for adjudicating such a vexed allegations as alleged or at all since those allegations need sufficient proof and that can only be dealt with by the competent court of law.

In view of the above, these are the only contentions canvassed in respect of the complaint most specifically stated in point nos. (a), (b), (d), (e) and (f) in paragraph 4 herein, for the determination by the DC, which have all been answered.

11. Despite as stated above, the DC is not oblivious to the complaint as summarized in the point no. (c) of the paragraph 4 herein, thus, the DC intends to deal with the same separately since it is the duty of the DC to see that the said RVM does his duty as the Registered Valuer according to the Rules/Regulations etc. and does not over step the limits.

12. It is the specific contention of the complainant that the RVM had not visited any of the properties of the corporate

debtor and all the informations were based on the virtual tour. In reply to the said allegation the said RVM submitted before the DC that he had not visited the three properties namely at Vejalpur (Ahmedabad), Gandhinagar and Udaipur because of the designated Covid centres and no physical inspection was permitted as informed by the representative of the corporate debtor more so he was requested by the concerned Resolution Professional to conduct the virtual inspection (through video call) in respect of the above three properties and to conclude the valuation. It is also recorded that during the personal hearing on 25.02.2021 the said RVM also admitted the said facts further more he wanted to justify his action by sending the e-mail dated 26.02.2021, in addition to his written reply, that was taken on record by the DC. In the said mail, it was stated that he had conducted the site visits of the micro market to understand the market dynamics that gave him a clear idea of the dynamics to assess the fair market value without making physical inspection of the properties in question.

13. It further recorded that the said RVM also forwarded another e-mail dated 2nd July, 2020 which was sent by one Deepak Agarwal who had suggested to perform the site visits over video call in respect of two properties namely at Gandhinagar and Udaipur. The DC had also taken the said document on record.

Without going into the further details, it is abundantly clear before the DC and also admitted by the said RVM that the said RVM did not visit physically in respect of those properties, as stated herein before, and he opted to get it done, while determining the fair value in respect of those properties, by adopting different mode and it may be so at the suggestion of the Resolution Professional.

14. In this connection, the DC refers and relies upon the relevant provision of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the Regulations 2016), i.e. Regulation 35 of the said Regulations, 2016.

As stated in the said Regulations, 2016, a duty casts upon the Registered Valuer to determine the estimate of the fair value in accordance with internationally accepted valuation standards, after physical verification of the inventory of the fixed assets of the corporate debtor.

15. In this connection it is also recorded that the said RVM also admitted during the hearing on 25.02.2021 that generally the physical verification of the property is needed to get 100% estimation of the fair value again the said RVM submitted that

he could not make physical verification because of the constrain that arose due to Covid situation across the country. He further submitted that the Government authorities had relaxed many statutory compliances because of the present Covid situation. But in the instant the said RVM could not produce any document, so issued either by the Ministry of the Corporate Affairs or by the IBBI, showing relaxation and/or permitting a Registered Valuer to avoid physical verification of the inventory of the fixed assets of the corporate debtor while determining and estimate of the fair value of the said assets.

16. In this regard it is also observed by the DC that a Registered Valuer has a key role to play in the total CIRP because of the admitted position that a plan is prepared by the RP on the basis of the valuation of the assets of the corporate debtors, submitted and/or determined by the Registered Valuer apart from other considerations. But in the instant case, the said RVM proceeded to value a few assets of the corporate debtors, as aforesaid, by avoiding the physical verification of the inventory and/or giving a complete go by to the specific provision of the Regulation 35 of the Code, 2016, that the said RVM can not do so according to the considered opinion of the DC,

17. In this connection it is also pertinent to bring on record as it appears from the written reply of the said RVM that he had proceeded to avoid physical verification of the said assets inter alia 'no physical inspection was permitted as informed by the representative of the corporate debtor and he was requested by the RP to conduct the virtual inspection (through video call)'. But the DC deprecates the said reasons behind the avoidance of the physical verification of the said assets of the corporate debtors since the RVM is bound to perform his assignment within the four corners of the Insolvency and Bankruptcy Code as well as the Rules and Regulations, issued by the competent authority and he cannot do so by giving a go by to the specific statutory provision and to adopt a different mode i.e. the virtual inspection (through video call) in place and stead of physical verification.

18. In this connection, the DC takes into consideration the Code of Conduct of the Registered Valuers as stated in the Companies (Registered Valuers and valuation Rules), 2017 wherein it is stated that a valuer should not only be straight forward in all professional relationships but also shall refrain from being involved in any action that would bring disrepute to the profession. That apart the Registered Valuers shall not carry out any instruction of the client in so fare as they are incompatible with requirements of integrity, objectivity and

indulgence. On the contrary the valuer shall act with objectivity in his professional dealings by ensuring that his decisions are made without undue influence of any party whether directly connected to the valuation assignment or not.

After taking into consideration of the aforesaid points, the RVM should not have proceeded in the matter in respect of the said assets of the corporate debtors without physical verification while determining fair value of the said assets and also under the dictate of the representative of the corporate debtor or the resolution profession since he, being the Registered Valuer, has got ample scope for doing a valuation assignment by exercising independent professional judgement, since it is his domain, at the worst case, he could have refused to do the said assignment by stating the bonafide reason whatsoever in his valuation report. The DC comes to such conclusion by applying the test of reasonableness without going into the technical aspect in the matter, that speaks of what a reasonable person can do under the given facts and circumstances of the case. On the contrary, it is the duty of the DC to see that the RVM does his job according to the Rules and Regulations and does not over steps the limits and had considered all the pros and cons underlying the valuation assignments.

In view of the reasons stated above, the DC of this RVO admonishes the RVM as per the said Disciplinary Policy of this RVO since the said RVM avoided to have physical verification with inventory of the said assets of the corporate debtors in due compliance of Regulation 35 of the said Regulations 2016, while estimating the fair value of the said assets of the corporate debtor thereby he had acted beyond the scope of his authority as the Registered Valuer nor he had any sanction from any competent authority to do so. Thereby the said RVM committed breach of the said Regulation.

The DC further is of the opinion that the RVM proceeded in the matter so far as the properties of the corporate debtor situated at namely Vejapur (Ahmedabad), Gandhinagar and Udaipur without physical verification of the inventory as per the Regulation 35 the Code 2016 inter alia on the alleged ground that 'no physical inspection was permitted as informed by the representative of the corporate debtor and further he was requested by the RP to conduct the virtual inspection (through video call) and such action on the part of the Registered Valuer is certainly a grave in nature as well as contrary to the specific provision of the Regulation/guidelines of the competent authority, thus, the said RVM did not comply with the said procedure.

After considering all the aspects as well as all the records, which are available to the DC, the DC is of the considered unanimous opinion that the said RVM deserves an order of suspension at least for a limited period of seven days to give him a chance to amend himself in addition to the admonishment as per the provisions (2) (b) and (c) of the said Disciplinary Policy of this RVO.

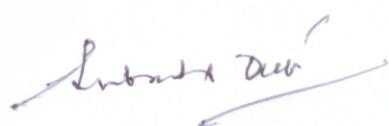
The DC hereby further cautions the said RVM so that he should be more careful henceforth while discharging his valuation assignment as the Registered Valuer.

Hence, it is ordered by the DC, as it deems fit and proper, the said RVM should be placed under suspension for a period of seven days as the Registered Valuer Member as per the provision (2) (b) of the Disciplinary Policy of this RVO with effect from 5th April, 2021.

However, this order is passed by the DC without imposing any cost upon the said RVM for the time being as per the provision (2) (f) of the said Disciplinary Policy.

The Governing Board of this RVO is also directed to communicate this order immediately to the IBBI and the said RVM and the Governing Board is further directed to do the

needful for giving effect to the aforesaid order as per the provisions of the said Disciplinary Policy.



(SUBRATO DUTT)

Chairman
Disciplinary Committee
RVO Estate Managers &
Appraisers Foundation



Susmita De
(SUSMITA DE)

Member
Disciplinary Committee
RVO Estate Managers &
Appraisers Foundation

Dated : 31-03-2021
Place : Kolkata