

# Requirements of Registered Valuer for Valuation

The Insolvency and Bankruptcy Board of India (IBBI) has recently issued a **Circular No. IBBI/RVO/026/2019** on Valuation requirements under provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016.

In this Article, we are consolidating various requirement of valuation under Companies Act, 2013 and Insolvency and Bankruptcy Code.

## Valuation required under Companies Act, 2013

The valuations need to be performed by a Registered Valuer under the Companies Act, 2013 read with the allied Rules are as follows:

### Section 62(1)(c) – Further Issue of Share Capital

Whenever a Company proposes to increase its subscribed capital by further issuance of shares by way of preferential allotment, the price of such shares shall be determined by a Registered Valuer.

### Section 177(4)(vi) - Terms of Reference of Audit Committee

Every Audit Committee (if Company has one) shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include valuation of undertakings or assets of the Company, wherever it is necessary. Such valuation shall be conducted by a Registered Valuer.

### Section 192 – Restriction on Non-Cash Transactions Involving Directors

Section 192 allows a Company to enter into an arrangement under which:

- a. a director of Company or its holding, subsidiary or associate Company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the Company; OR
- b. the Company itself acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

In respect of the aforesaid transaction(s), the value of assets shall be determined by a Registered Valuer and such value shall be disclosed in the notice of the general meeting to be called for seeking approval of the Members by way of an ordinary resolution.

### Section 230(2)(c)(v) – Power to Compromise or Arrangements with Creditors and Members

Where an application for compromise or arrangement is made to the Tribunal by the Company or any creditor or member of such Company, or in the case of a Company which is being wound up, by the liquidator, such application to the Tribunal shall *inter-alia* include a valuation report in respect of the shares and property and all assets, tangible and intangible, movable and immovable, of the Company by a Registered Valuer.

### Section 230(3) – Power to Compromise or Arrangements with Creditors and Members

If a meeting of creditors or a class of creditors or members or a class of members is proposed to be called in pursuance of an order of the Tribunal for the purpose of compromise or arrangement with Creditors and Members, a notice of such meeting shall *inter alia* include a copy of the valuation report (if any) issued by a Registered Valuer.

### Section 232(2)(d) – Merger and Amalgamation of Companies

Where an order has been made by the Tribunal, merging Companies or the Companies in respect of which a division is proposed, the report of the expert with regard to valuation, if any is required to be circulated for meeting of creditors/members. Such valuation shall be conducted by a Registered Valuer.

### Section 232(3)(h)(B) – Merger and Amalgamation of Companies

Where in respect of a scheme of Compromise or Arrangement, the transferor Company is a listed Company and the transferee Company is an unlisted Company and shareholders of the transferor Company decide to opt out of the transferee Company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal. Such valuation shall be conducted by a Registered Valuer.

### Section 236(2) – Purchase of Minority Shareholding

If an acquirer, or a person or group of persons becomes registered holder of 90% or more of the issued equity share capital of a the Company, by virtue of an amalgamation, share exchange, conversion of securities or by any other reason, such registered holder shall notify the Company of their intention to buy the remaining equity shares (minority shareholding) and such registered holder shall offer to the minority shareholders of the Company for buying the remaining equity shares held by such shareholders at a price determined on the basis of valuation done by a Registered Valuer.

### Section 247(1) – Valuation by Registered Valuers

Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a Company or its liabilities under the provision of the Companies Act, 2013, it shall be valued by a Registered Valuer appointed by the audit committee or in its absence by the Board of Directors of that Company.

### Section 281(1)(a) – Submission of Report by Company Liquidator

If Tribunal has made a winding up order or appointed a Company liquidator then such liquidator shall, within sixty days from the order, submit to the Tribunal, a report which should, *inter alia*, include nature and details of assets of the Company including their location and value. Such valuation of assets shall be done by a Registered Valuer.

### **Rule 2(c)(ix) of Companies (Acceptance of Deposit) Rules, 2014 - Exclusions from Deposits**

As per the Rule, the term Deposit does not include any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking *pari passu* with the first charge on any assets referred to in Schedule III of the Companies Act, 2013 excluding intangible assets of the Company or bonds or debentures compulsorily convertible into shares of the Company within 10 years.

However, if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a Registered Valuer.

### **Rule 6(1) of the Companies (Acceptance of Deposit) Rules, 2014 - Creation of Security**

In the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a Registered Valuer.

### **Rule 8(6),(7),(9)&(12) of Companies (Share Capital and Debentures) Rules, 2014 - Issue of Sweat Equity Shares**

The sweat equity shares to be issued shall be valued at a price determined by a Registered Valuer as the fair price giving justification for such valuation. Further, the valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a Registered Valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

In addition, where sweat equity shares are to be issued for a non-cash consideration, the value of such consideration shall be determined by a Registered Valuer.

In case, sweat equity shares are issued pursuant to acquisition of an asset, the value of such asset shall be determined by the valuation report of a Registered Valuer.

### **Rule 16(1)(c) of the Companies (Share Capital and Debentures) Rules, 2014 - Provision of Money by Company for Purchase of its Own Shares by Employees or by Trustees, for the Benefit of Employees**

In case of unlisted companies, such companies shall not make a provision of money for purchase of, or subscription for, shares in the Company or its holding Company, if the purchase of, or the subscription for, the shares by trustees is for the shares to be held by or for the benefit of employees of the Company, unless the valuation at which shares are to be purchased is made by a Registered Valuer.

### **Rule 12(5) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 - Return of Allotment**

In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, the valuation of such consideration shall be done by a Registered Valuer and such valuation report shall be attached to Form PAS-3.

## **Valuation required under Insolvency and Bankruptcy Code (IBC), 2016**

The valuations need to be performed by a Registered Valuer under IBC read with the allied Regulation are as follows:

### **Section 59(3)(b)(ii) of IBC read with Regulation 3(1)(b)(ii) of the IBBI (Voluntary Liquidation Process) Regulations, 2017 - Voluntary Liquidation of Corporate Persons**

In case of voluntarily liquidation of Corporate persons, a declaration from majority of the directors of the Company shall *inter alia* include a report of the valuation of assets of Company issued by Registered Valuer.

### **Section 46(2) of IBC 2016- Relevant Period for Avoidable Transactions**

For the purpose of avoiding a transaction at undervalue, the Adjudicating Authority may require an independent expert (Registered Valuer) to assess evidence relating to the value of the transactions.

### **Regulation 27 read with Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016- Fair Value and Liquidation Value**

The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two Registered Valuers to determine the fair value and the liquidation value of the corporate debtor. Such fair value shall be determined in accordance with the provisions of Regulation 35.

### **Regulation 35 of IBBI (Liquidation Process) Regulations 2016- Valuation of Assets intended to be sold**

Within seventy-five days from the liquidation commencement date, the liquidator shall prepare an asset memorandum in respect of the assets which are intended to be realized by way of sale. The valuation of such assets shall be done by a Registered Valuer.

### **Regulation 26 read with regulation 34 of the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017**

The interim resolution professional shall within seven days of his appointment, appoint one registered valuer to determine the liquidation value of the corporate debtor. Such liquidation value shall be determined in accordance with the provisions of Regulation 34.

### **Regulation 26 read with regulation 34 of the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017**

The interim resolution professional shall within seven days of his appointment, appoint one registered valuer to determine the liquidation value of the corporate debtor. Such liquidation value shall be determined in accordance with the provisions of Regulation 34.

## Who can be Registered Valuer?

Section 247 of Companies Act, 2013 prescribes that

*“where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of this Act, it shall be valued **by a person having such qualifications and experience and registered as a valuer in such manner**, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.”*

Further, as per Rule 3(1) of Companies (Registered Valuers and Valuation) Rules, 2017, a person shall be eligible to be a Registered Valuer if he -

- (a) is a valuer member of a registered valuers organisation;
- (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 as per this rule;
- (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;
- (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:

### REGISTERED VALUERS ENTITY

As per Rule 3(2) of Companies (Registered Valuers and Valuation) Rules, 2017, 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 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), 5 (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.

## QUALIFICATION AND EXPERIENCE

As per Rule 4 of Companies (Registered Valuers and Valuation) Rules, 2017, an individual must possess below mentioned qualification & experience to become Registered Valuer -

- a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
- b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or
- c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership.

Explanation-I.— For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II.— Qualifying education and experience for various asset classes, is given in an indicative manner in table below—

Asset Class	Eligibility	Experience in Specified Discipline
	Qualifications	
Plant and Machinery	(i) Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Graduate in Valuation of Plant and Machinery or equivalent;	(i) Five Years
	(ii) Post Graduate on above courses.	(ii) Three years
Land and Building	(i) Graduate in Civil Engineering, Architecture, or Town Planning or equivalent;	(i) Five years
	(ii) Post Graduate on above courses and also in valuation of land and building or Real Estate Valuation (a two-year full time post-graduation course)	(ii) Three years.
Securities or Financial Asset	(i) Member of Institute of Chartered Accountants of India, Member of Institute of Company Secretaries of India, Member of the Institute of Cost Accountants of India, Master of Business Administration or Post Graduate Diploma in Business Management (specialization in finance).  (ii) Post Graduate in Finance	Three years
Any other asset class along with corresponding qualifications and experience in accordance with rule 4 as may be specified by the Central Government.		

Explanation III – for the purposes of this rule, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree.

### The person having aforesaid qualification and experience require to follow below process to become Registered Valuer

- ◆ Complete their education course as member of Registered Valuer Organization (As defined in Registered Valuer Rules)
- ◆ Clear the valuation examination conducted by IBBI (Refer Rule 5 of Registered Valuer Rules)
- ◆ Apply for certificate of registration with the authority (Refer Rule 6 of Registered Valuer Rules)

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