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Registered Valuer -Securities or Financial Assets

VALUATION

The concept of a "registered valuer" under Indian law was introduced for the first time vide Section 247 of Chapter VXII of the Indian Companies Act for matters requiring valuation under the Companies Act, 2013 ("Companies Act"), the valuation of shares, assets, net worth of companies etc. was conducted by chartered accountants or as prescribed by other laws such as the Foreign Exchange Management Act, 1999 and the regulations made thereunder or the Income Tax Act, 1961. There was no provision in the earlier company law that provided for valuation or specified the persons who could conduct valuation of companies, shares etc. The provisions of Section 247 of the Companies Act, 2013 came into effect from 18th October, 2017.

The Central Government has delegated its powers and functions under Section 247 of the Companies Act, 2013 to the Insolvency and Bankruptcy Board of India (IBBI) and specified the IBBI as the Authority under the Companies (Registered Valuers and Valuation) Rules, 2017. Section 247 of the Companies Act, 2013 read with Companies (Registered Valuers and Valuation) Rules, 2017 mandates valuation under the provisions of the Companies Act, 2013 by a Registered Valuer.

The valuers, who may be individuals or partnership entities or companies, is required to be registered with the authority specified by the IBBI, that is Registered Valuers Organisations (RVOs). RVO are Section 8 companies or professional Institutes registered with IBBI, having primary function of providing internal governance structure which should provide for enforcement of a code of conduct on the registered valuers, training and conduct of educational courses for the valuation of specific asset classes for which the RVO concerned is recognised. Specific asset classes as defined for valuation are:

- **Land and Building**
- **Plant & Machinery**
- **Securities of Financial Asset**

Third amendment to the Companies (Registered Valuers and Valuation) Rules, 2018 (effective from 25th Sep 2019) the transitional arrangement laids down that ─ Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules up to 31st January, 2019:

Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st January, 2019, the valuer shall complete such valuation or such part within three months thereafter

Effectively post 30th April 2019 every valuation report to be only issued by registered valuer.

- **Conduct of Valuation by Registered Valuer-** The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified by the Central Government provided that until then a valuer shall make valuations as per-

  (a) Internationally accepted valuation standards;
  (b) Valuation standards adopted by any registered valuers organisation (RVO).

- **Contents of the Valuation Report-** The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

  The valuer shall, in his report, state the following: -

  (a) background information of the asset being valued;

  (b) purpose of valuation and appointing authority;

  (c) identity of the valuer and any other experts involved in the valuation;

  (d) disclosure of valuer interest or conflict, if any;

  (e) date of appointment, valuation date and date of report;

  (f) inspections and/or investigations undertaken;

  (g) nature and sources of the information used or relied upon;

  (h) procedures adopted in carrying out the valuation and valuation standards followed;

  (i) restrictions on use of the report, if any;

  (j) major factors that were taken into account during the valuation;

(k) conclusion; and

(l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

Provision requiring Valuations under Companies Act, 2013 and other law-

- **Issuance of Sweat Equity Shares [Section 54]:** 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.
- **Preferential Offer [Section 62(1) (c)]:** When a company proposes to issue new shares, the price of such shares should be determined by the valuation report of a Registered Valuer.
- **Non-cash transaction involving Directors [Section (192(2)]:** Where there is a sale or purchase of any asset involving a company and its directors (or its holding, subsidiary or associate company) or a person connected with the director for consideration other than cash, the value of the assets has to be calculated by a Registered Valuer.
- **Compromises, Arrangements and Amalgamations [Section (192(2)]:** In case of compromise or arrangement between members or with creditors or any class of them, a valuation report in respect of shares, property or assets, tangible and intangible, movable and immovable of the company is required by a Registered Valuer.
- **Purchase of Minority Share Holding [Section 262]:** Where an acquirer or person acting in concert with the acquirer acquires 90% or more of the equity capital in a company, then they can offer to the minority shareholder or the minority shareholder can offer to the acquirer, to acquire the minority shareholding at a valuation determined by the Registered Valuer.
- **Winding up of a Company [Section 281 and305]:** In case of winding up, the valuation of assets of the company prepared by the Registered Valuer is required.
- **Conduct of Corporate Insolvency Resolution Process:** Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other regulations under Insolvency and Bankruptcy Code, 2016 there is provision for appointment of two registered valuer.