About The Author –

Ramesh Atluri – IBBI Registered valuer IBBI/RV/02/2019/12515 M.com, B.L, PGDPM & PC, Practicing company secretary, Insolvency professional Registered Valuer

Whether Valuation Report is required from more than one Valuer even for same/single transaction?

Sometimes Valuation Report is required from more than one Valuer for the same transaction. Wherever hitting more than one Legislation for a transaction always leads to get more compliance of such legislations. A Company designs to get the funds from outside foreign sources other than members. At that time, the provisions of Companies Act, Foreign Exchange and Management Act, 1999 (FEMA) and Income Tax, Act, 1961, and other FEMA Regulations. etc. will be attracted. Accordingly, the company needs to engage Registered Valuer (Securities and Financial Assets), Merchant Banker, and Chartered Accountant or other Professionals as Valuers who are registered with IBBI. So, for the same and single transaction, the Merchant Banker as well as Regisgsted Valuer needs to give Valuation Reports. Hence it is true that Valuation Report is required from more than one Valuer even for same and single transaction

<u>Under Income Tax Act, 1961 and FEMA 1999</u>

In order to know Fair Market Value, Section 11 UA of Income Tax Rules specify the procedure in connection with valuing Shares and Securities, apart from Fair market value of the other properties other than Immovable property. It includes Valuation of Jewellery, paintings, drawings, sculptures etc. However, quoted price of securities/shares on a Valuation Date can be arrived through the recognized stock exchange. The methodology also mentioned in respective provisions of Income Tax Act, 1961 vide rule 11 (UA) for determining fair market value of property in connection with Section 56.

In case of unquoted equity shares need to be determined by a Merchant Banker through the method of Discounted Free Cash Flow. Merchant Banker is different from the Registered Valuer who is registered with IBBI. However, in case of quoted shares, any Valuer i.e., Registered Valuer or Merchant Banker Valuation Report based on the transactions appeared in the recognized stock exchange. To conclude more, even two Valuation Reports required, where a company took foreign source in India to satisfy the Companies Act, FEMA, 1999 and FEMA regulations. Apart from, Post compliances are mandatory within due dates under FEMA regulations. In most cases, the companies are filings of Forms with MCA relevant to Companies Act in fulfilment of Allotment procedures. Thereafter clients not interacting in proper line in connection with FEMA regulations about Reporting of foreign source leads to non compliance FEMA thereby attracting huge penalties involving Rs.5,000 per day apart from imposing thrice of the amount involved applicable from the date of receipt of foreign source. So those who receive foreign source of funds especially capital investment ensure to make proper compliance by filing relevant FORMS with RBI within 30 days from the foreign source of Receipt.

Under Insolvency and Bankruptcy Board of India (IBBI)

The IBBI recognised relevant Registered Valuer Organizations as RVO and in turn RVOs enrols the valuers after successful in the Valuation Examination of respective Asset Class such. Thereafter the Valuers will be registered with IBBI after meeting necessary requirements.

Apart from another set of Valuers is Merchant Bankers. As per the SEBI standards, the Merchant Bankers registered with the Securities and Exchange Board of India. And the SEBI is regulatory authority for Merchant Bankers.

Owing to powers envisaged through the Companies (Registered Valuers and Valuation) Rules 2017, being the Authority, the Insolvency and Bankruptcy Board of India (IBBI) announced three assets' classes namely, Plant & Machinery, Land & Building and Securities & Financial Assets. It means three asset classes prescribed to issue Valuation Reports by the Valuers those are registered with IBBI.

In this context it does not mean to get reports from three valuers for generating Valuation Report for one company. Rather, the Valuation Report can be given by even one Valuer taking the Valuations from other experts i.e. Other valuers. For example, a private limited company needs Valuation Report on single item say Building property. At that time, the Company engage Valuer on specific class of asset such Valuer (Land & Buildings) and accorindlgy the Valuer of specific asset class can issue Valuation Report for specified property.

There will be another situation, Company needs to enterprise value, equity share value or goodwill etc. At this juncture, a Valuer (Securities and Financial Assets) to be engaged. Whether other class of assets involved while valuing by engaged Valuer, the existing asset class valuer can take the values from other asset class ex. Plant & Machinery, So Single Valuation Report is necessary even more than one valuer engaged by the company if the inputs recorded in the Valuation Report along with other valuer reference and consent.