VALUATION BY REGISTERED VALUER

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"Price is what you pay, Value is what you get." This quote of Mr. Warren Buffett, sums up the importance of valuation in business. Stakeholders ought to know that where their money is being invested and what is its worth. Moreover, valuation forms a part of good governance practice.

Valuation is the estimation of economic worth of an asset or a company by a professional valuer. The need for valuation arises due to transactional, regulatory or accounting requirements of the business some of which may include:

i. strategic business planning and decision-making,
ii. merger and acquisitions,
iii. determining tax obligations,
iv. resolving shareholder disputes,
v. fund raising.

A few months ago the Ministry of Corporate Affairs **("MCA")** enforced the provisions of Section 247 of the Companies Act, 2013 (**"Act"**) which deals with the valuation by Registered Valuers. Until then the valuation of a company and its assets was being carried out by various professionals and the valuation system was deficient due to several reasons some of which are as follows:

i. absence of a regulatory body or authority to regulate the procedures and methodologies to be followed by the valuers for valuation.
ii. lack of properly formulated valuation standards.
iii. no specific qualifications or experience prescribed for the valuers.
iv. lack of specific code of conduct for valuers.

The Section 247 prescribes for the qualifications, experience, terms and conditions for appointment of a registered valuer. Further, it also provides for the duties of a registered valuer while conducting valuation and his liabilities in the event of any contravention.

Along with the enforcement of Section 247, the MCA also issued the Companies (Registered Valuers and Valuation) Rules, 2017 (**"the rules"**) wherein the eligibility norms and code of conduct for the registered valuer(s) and registered valuers organisation(s) **(RVO)** has been defined which, *inter-alia*, includes:

i. the required qualification and experience of a person (any individual, firm or company) eligible to be termed as a registered valuer for valuing each class of assets such as fixed assets, moveable assets and financial assets.

ii. the formats of application for seeking registration as registered valuer, certificate of registration to be issued by the authority, application seeking recognition as RVO and certificate of recognition to be issued by the authority have been specified.

iii. the eligibility criteria for an organisation to be recognised as RVO and also the governance structure and model bye-laws to be followed by the RVO.

iv. the conditions for registration and manner in which the valuation should be conducted along with the code of conduct to be followed by the registered valuers.

v. the circumstances under which the certificate of registration of the registered valuer and certificate of recognition of RVOs can be cancelled or suspended by the authority by following the prescribed procedures.

vi. the valuation standards required to be adhered to while performing the valuation and reporting.

vii. contents of the valuation report and the permissible caveats and limitations.

The powers of the Central Government under Section 247 has been delegated to Insolvency and Bankruptcy Board of India.

Initially, under the rules a transition period for upto March 31, 2018 was granted to the valuers for getting themselves registered as registered valuers. But the MCA vide its notification dated February 9, 2018, has extended this period for up to September 30, 2018. Therefore, till September 30, 2018 the valuers are allowed to conduct valuation without getting themselves registered as registered valuers with the RVO.

Valuation is still in an evolving phase in India, therefore, while implementing the section, several practical difficulties may crop up some of which are discussed below:-

i. Separate registered valuer may be required to be appointed by a company for valuation of each class of assets as a valuer who has taken registration for one of the class of assets, may not have the requisite qualification and experience to value other class of assets. For instance, a Chartered Engineer competent to value land and building may not be competent to assess the value of financial assets of a company.

ii. The MCA needs to clarify the eligibility of the members of Professional Institute (CA/CS and CMA) who are not Graduates to be registered valuers.

iii. The valuation standards have not been framed yet, until then, the valuation is to be done as per internationally accepted valuation standards and the existing regulatory provisions prescribed by other regulators including Income Tax, RBI , SEBI etc.

iv. Different authorities, such as RBI, SEBI, Income tax authority etc. have different valuation principles and follow different methodologies, therefore, the valuation principles of the other statutes would need to be aligned with the registered valuer provisions also.

Though it is a good move made by the MCA to codify the valuation system for companies, however, it would be essential for the professionals registered as valuers to evaluate the data with diligence, carefully assess the available information, disclose the value with transparency providing the caveats and limitations, wherever applicable.

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