

**ICAI Registered Valuers Organisation
(Disciplinary Committee)**

SCN NO. ICAIRVO/06/RV-P00031/2018-2019/59-2023-24/1

Dated: 11 September 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. ICAIRVO/06/RV-P00031/2018-2019/59-2023-24/1, dated 07.03.2024 issued to Mr. Yash Shah under section 247 of the Companies Act, 2013 read with clause (g) of sub-rule (2) of Rule 12 of the Companies (Registered Valuers and Valuation) Rule, 2017 read with Clause 23 of ICAI Registered Valuers Organisation Byelaws with sub-clause 3 of Clause 6 of the Disciplinary Policy of ICAI Registered Valuers Organisation and failure to comply with Rule 7(a) and 7(b) of the Companies (Registered Valuers and Valuation) Rules, 2017. The ICAI Registered Valuers Organisation ("ICAI RVO") is a section 8 company recognised by the Insolvency and Bankruptcy Board of India (IBBI) as a Registered Valuer Organisation ("RVO") to act as a Front-Line Regulator of the Registered Valuers enrolled with it as its members. Mr. Yash Shah is registered with ICAI RVO as a valuer under the Securities or Financial Assets (SFA) asset class, with registration number ICAIRVO/06/RV-P00031/2018-2019 on 05.10.2018.

1. Issuance of Show Cause Notice (SCN) and hearing before the Disciplinary Committee of ICAI RVO

- 1.1 Section 247 of the Companies Act, 2013 read with clause (g) of sub-rule (2) of Rule 12 of the Companies (Registered Valuers and Valuation) Rules, 2017 ("Valuation Rules/Rules/Rules 2017") read with Clause 23 of ICAI RVO Bye-Laws with sub-clause 3 of Clause 6 of the Disciplinary Policy of ICAI RVO, empowers ICAI Registered Valuers Organisation (ICAI RVO) to issue a show cause notice (SCN) to RV when there is *prima facie* evidence of a violation.
- 1.2 Based on the reference made by the Grievance Redressal Committee and the supporting documents provided, the Disciplinary Committee of ICAI RVO formed a *prima facie* opinion that sufficient cause exists to consider actions under the Disciplinary Policy of ICAI RVO, including expulsion or removal of membership under Clause 30 of the ICAI RVO byelaws.
- 1.3 Accordingly, in the exercise of powers conferred by the Disciplinary Policy of ICAI RVO, the Disciplinary Committee of ICAI RVO issued an SCN dated 07.03.2024 for failure to comply with Rule 7(a) and 7(b) of the Companies (Registered Valuers and Valuation) Rules, 2017 and sought his written reply offering him an opportunity of personal hearing in accordance with the said Rules.
- 1.4 Mr. Yash Shah responded to the SCN on 23.03.2024 and the matter was placed before the Disciplinary Committee of ICAI RVO for disposal of the SCN.

2. Contraventions Alleged in the SCN issued to Mr. Yash Shah

- 2.1 ICAI RVO received a complaint against Mr. Yash Shah, a Registered Valuer, alleging that he was employed as a director at SJA Industrial Consultants Pvt. Ltd., with a salary, and held directorships at SJA Technical Consultants Pvt. Ltd. and Udyami Real Estate Pvt. Ltd.
- 2.2 Upon reviewing the facts and Mr. Yash Shah's submissions, it was observed that his directorship in these three companies, while registered as a Valuer with IBBI, contravened the relevant provisions of the Act, Rules, Bye-laws, and internal regulations:
- i. SJA Industrial Consultants Pvt Ltd (SJAI)
 - ii. SJA Technical Consultants Pvt Ltd (SJAT)
 - iii. Udyami Real Estate Pvt Ltd
- 2.3 As per Rule 7(b) of the Valuation Rules and Clause 26(1) of the ICAI RVO Bye-laws, an RV registered with IBBI cannot take up employment without applying for the temporary surrender of membership with a 30-day notice.
- 2.4 Further, according to IBBI FAQs, a person in employment, including a Whole-Time or Executive Director in a family-owned business, is ineligible to register as a Valuer.
- 2.5 Therefore, it was prima facie observed that by holding directorships in the aforementioned companies while registered as a Valuer, Mr. Yash Shah contravened the Valuation Rules, as well as ICAI RVO Bye-laws.
- 2.6 Accordingly, an SCN was issued to Mr. Yash Shah, proposing disciplinary action, including potential expulsion or removal of membership under Clause 30 of the ICAI RVO Bye-laws.

3. Submissions by Mr. Yash Shah, Registered Valuer (RV) by way of written response through email dated 22.03.2024

- 3.1 **Clarification on Date of Appointment as Director:** Mr. Yash Shah clarified that his appointment in the companies in question predated the relevant regulatory frameworks. He provided the relevant appointment details from the MCA website to support his claim.
- 3.2 **Nature of Activities and belief of ownership:** Mr. Yash Shah submitted that SJAI and SJAT were engaged in professional services, including valuation, and did not constitute a "business" as traditionally defined. He provided supporting documents, including the Memorandum of Association and financial records, to demonstrate that UREPL had no operational activities or revenue. He also stated that he had a bona fide belief in his proprietary control over all three companies since his appointment as Director, with no direction from other shareholders or directors, supported by affidavits from them.
- 3.3 **Immediate Suo Motu Correction of Records and Clarification on Remuneration:** Mr. Yash Shah submitted that, upon being notified, he promptly **changed his directorship status to "Non-Executive Director"** and filed the necessary DIR-12 forms with the MCA even before any disciplinary action was initiated.

He further clarified that the remuneration he received from SJAI was for professional services, not a typical salary, and was determined solely by his discretion. Mr. Shah emphasized that his remuneration decisions were made independently, with no influence from the company, its directors, or shareholders. Additionally, he ceased drawing any salary-like remuneration once he became aware of the issue and provided his income tax returns for the relevant years to show no salary income.

3.4 All Acts Undertaken in Good Faith and Bona Fide Manner: Mr. Yash Shah emphasized that all his actions were undertaken in good faith and with a sincere commitment to compliance. He highlighted his strong academic background, including top ranks in professional exams like CA and CS and various accolades throughout his education. Mr. Shah also emphasised on his unblemished professional record, stating that no disciplinary proceedings have ever been initiated against him.

3.5 To surmise, Mr. Shah presented himself as a dedicated and sincere professional with a strong academic record and a history of compliance with regulations. In his concluding remarks, he pleaded that he acted with a bona fide belief that he was not in employment and promptly addressed non-compliance issues once notified. He denied any intention of willful default and emphasized his full cooperation and timely responses to queries.

4. Findings

4.1 During the discussion on the pertinent issue in hand, it is noted, while considering the facts of the case and the submissions made, that the Registered Valuer, Mr. Yash Shah did hold a position of the directorship at the time of getting enrolled with ICAI RVO as a Registered Valuer in the year 2018.

4.2 The Committee further notes that the FAQs issued by IBBI on 1st October 2020, which clarified that individuals in employment, including those serving as Whole Time Directors or Executive Directors in family-owned businesses, are ineligible to be RVs, were published two years after Mr. Shah's registration with ICAI RVO on 5th October 2018.

4.3 The Committee also takes cognizance of the RV's submission regarding the change of nature of directorship to "Non-Executive" supported by the MCA fillings and deliberated upon the legal question as to whether the position of Non-Executive Director is considered to be in full-time employment under the broader ambit of the Companies Act, 2013 and therefore will attract the restriction imposed by the Companies (Registered Valuers and Valuation) Rules, 2017.

4.4 The central question for adjudication by the Disciplinary Committee is *whether Mr. Yash Shah's role as a Non-Executive Director in companies other than Registered Valuer Entities (RVEs) constitutes employment under the Companies (Registered Valuers and Valuation) Rules, 2017, and the Companies Act, 2013, thereby violating the requirements for an RV and warranting disciplinary action.*

4.5 After reviewing the role of a Non-Executive Director under the Companies Act, 2013, the Committee determined that this position does not constitute employment. A Non-Executive Director is not involved in the day-to-day management of the company and

does not hold a full-time role but acts as an independent advisor, focusing on policymaking and oversight. Based on these considerations, the Committee concluded that a Non-Executive Director is not considered an employee of the company.

- 4.6 After reviewing the discussions, facts of the case, and submissions made by the Registered Valuer (RV), the Committee noted several important aspects. Firstly, the Committee recognizes that while there may have initially been a violation of the Valuation Rules 2017 and the ICAI RVO Bye-laws, which prohibit an RV from taking up employment, this issue was promptly rectified by Mr. Shah once it was brought to his attention.
- 4.7 The Committee further notes that upon being informed of the matter, Mr. Yash Shah clarified his Directorship as "Non-Executive" in all the alleged companies. *The Committee further notes that within the legal position of a non-executive director, such a role does not fall within the ambit of employment under the Companies Act, 2013. This clarification aligns with Mr. Yash Shah's submission that his role did not constitute employment, and thus, he did not violate the relevant provisions, post change of his nature of directorship in the three alleged companies by way of filing of clarification with MCA on 16.11.2018.*
- 4.8 Additionally, the Committee acknowledges that the IBBI FAQs clarifying the position of Directorship in relation to employment were published after Mr. Shah's registration as an RV. The absence of this guidance at the time of his registration may have led Mr. Shah to reasonably believe that holding a directorship did not constitute employment.
- 4.9 The Committee further observes that Mr. Yash Shah has a history of academic and professional achievements and no prior disciplinary record. His active participation in the proceedings and efforts to correct the records, including updating his Directorship status to "Non-Executive" in the MCA records, are also noted. This correction, as determined by the Committee, does not constitute employment.

5. Order

- 5.1 Upon thorough deliberations and consideration of the facts and legal principles presented, the Committee decides as follows:
- 5.2 In light of the aforementioned facts and legal precepts, the Committee, in exercise of powers conferred under section 247 of the Companies Act, 2013 read the Companies (Registered Valuers and Valuation) Rule, 2017 read with ICAI RVO Byelaws and in pursuance of the Disciplinary Policy of ICAI RVO resolves to dispose of the case with a strict warning to Mr. Yash Shah, a Valuer registered under Securities or Financial Asset Class through ICAI RVO, to be more cautious and aware of the laws governing Registered Valuers in the future.
- 5.3 The Committee emphasizes the necessity for Mr. Shah to exercise greater care and caution in the future, ensuring strict adherence to the legal provisions governing his registration and conduct as a Registered Valuer (RV). It is imperative that Mr. Yash Shah comply with the legal precepts stipulated in the ICAI RVO's Byelaws and the various directions issued by the IBBI from time to time and that he be cautious of any further infringement or contravention thereof in the future.

5.4 This order shall come into force from the date of its issue.

5.5 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

Date: 11-09-2024

Place: Noida

CERTIFIED TRUE COPY

Sd/-

Dr. Rakesh Sehgal

Managing Director,

ICAI Registered Valuers Organisation

Copy to:

1. Insolvency and Bankruptcy Board of India