

**DIARY NO. 35028 of 2023**

**DECLARATION**

All defects have been duly cured. Whatever has been added/ deleted/Modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.

Signature \_\_\_\_\_



V ELANCHEZHIAN

Advocate-on-Record/  
Petitioner(s) in-person

Date: 06.09.2023

Contact No. 7053967103

IN THE SUPREME COURT OF INDIA  
[UNDER ORDER XXI RULE 3(1)(A)]  
CIVIL APPELLATE JURISDICTION  
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)  
**SPECIAL LEAVE PETITION (C) NO.                      OF 2023**  
(Arising out of the impugned Final Judgment dated 18.08.2020 passed by the  
Hon'ble High Court of Judicature at Bombay in OS-WPLD-VC-NO. 188 of  
2020)

**IN THE MATTER OF:**

Practicing Valuers Association (India)                      .....PETITIONER

VERSUS

State Bank of India & Ors.                      .....RESPONDENTS

WITH

I.A. NO. \_\_\_\_\_ OF 2023

An application for Exemption from filing the certified copy of the impugned  
Order/Judgment.

WITH

I.A. NO. \_\_\_\_\_ OF 2023

An application for Condonation of Delay in filing the above mentioned  
Special Leave Petition.

WITH

[PAPER BOOK]

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ADVOCATE FOR THE PETITIONER: **V. ELANCHEZHIAN**

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A

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2023**

(Arising out of the impugned Final Judgment dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WPLD-VC-NO. 188 of 2020)

**OFFICE REPORT ON LIMITATION**

1. The petition is within time.
2. The petitioner is barred by time and there is delay of **453** days infiling the same against the final order/judgment dated 18.08.2020 and the application for condonation of delay has been filed.
3. There is delay of ..... days in refiling the petition and the petition for condonation of ..... day's delay in filling has been filed.

**BRANCH OFFICER**

New Delhi.

Dated: 24.08.2023

## PROFORMA FOR FIRST LISTING

### SECTION - IVB

The case pertains to (please tick/check the correct box):

Central Act (Title) : The Wealth Tax Act.

Section/s : 34AB.

Central Rule (Title) : NA

Rule No(s) : NA

State Act (Title) : NA

Section : NA

State Rule (Title) : NA

Impugned Interim Order(Date) : NA

Impugned Final Order/Decree (Date) : 18.08.2020

High Court ( Name) : High Court of Judicature at Bombay.

Name of Judges : Hon'ble Mr. Justice S.J. Kanthawala  
Hon'ble Mr. Justice R.I. Chagla.

Tribunal/Authority (Name) : N.A.

1. Nature of matter : Civil (  ) Criminal ( )
2. (a) Petitioner / Appellant : Practicing Valuers Association (India)  
(b). e-mail ID : pvaiorg@gmail.com  
(c). Mobile phone number : 8087282603
- 3.(a). Respondent : State Bank of India.  
(b). E-mail ID :  
(c). Mobile/ Phone No. :
4. (a). Main category classification: 1800 Ordinary Civil matter.  
(b). Sub-classification : 1807 others
5. Not to be listed before : N.A.
6. (a). Similar disposed of matter with citation, of any  
& case details : No, Similar disposed of matter.

(b). Similar pending matter with case details :

**: Special Leave to Appeal (Civil) No. 799 of 2021**

7. Criminal Matters: NO
  - (a). Whether accused/convict has surrendered :  yes  No.
  - (b). FIR No. : NA
  - (c). Police Station : NA.
  - (d). Sentence Awarded : N.A.
  - (e). Period of sentence undergone including period of detention /custody undergone : NA
8. Land Acquisition Matter:
  - (a). Date of Section 4 Notification : N.A.
  - (b). Date of Section 6 Notification : N.A.
  - (c). Date of Section 17 Notification : N.A.
9. Tax Matter : State the tax effect : N.A.
10. Special category (First Petitioner/Appellant only):  
 Senior Citizen > 65 Years  SC/ST  Woman/Child  
 Disabled  Legal aid case  In custody.
11. Vehicle No. ( In case of Motor Accident Claim Tribunal) : N.A.

Dated : 24. 08.2023



Name : **V Elanchezhian**  
AOR For Petitioner(s)/Appellant  
Registration No.: **CC2292**



# B

## **SYNOPSIS AND LIST OF DATES**

That the present Special Leave Petition is filed against the final judgement dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WPLD-VC-NO. 188 of 2020 titled as Practicing Valuers Association (India) & Ors. Vs. State Bank of India & Anr. thereby dismissing the Writ Petition filed by the petitioner challenging the Policy dated 03.07.2019 titled as "Policy on Valuation and Empanelment of Valuers".

Vide the impugned Judgment dated 18.08.2020 the Hon'ble High Court dismissed the Writ Petition of the petitioner in the most arbitrary and casual manner and without considering the fact that the Policy dated 03.07.2019 issued by the Respondent No.1 is not only discriminatory amongst the different professionals but also violating the fundamental rights of the members of the petitioner guaranteed under Article 14 of the Constitution of India. The respondent No. 1 arbitrarily prescribed in the said policy that the maximum age limit for the empanelment of a valuer shall be 70 years without assigning any justifiable reason for fixing the said cap on the age of professionals. The second condition of the policy which was challenged before the Hon'ble High Court by the Petitioner of prescribing of the Indemnity Bond to be furnished by the members of the petitioner at time of their empanelment as Valuer with the respondent No.1 as a precondition for seeking empanelment or for continuation as a Valuer with the respondent

## C

No.1. The said condition of compelling the qualified professionals to furnish a blanket indemnity bond thereby furnishing harsh and unreasonable undertaking to indemnify the respondent No.1, its successors and assigns at all time from all loss, damage and actions suits, proceedings, expenses, costs charges and demands arising out of any act, lapses, defaults, negligence, errors, mistakes committed by him in performance of his professional obligations.

The petitioner duly brought into the knowledge of the Hon'ble High Court that several writ petitions were filed by the various Association of the Valuers or individual valuers before different High Courts of the country thereby challenging the aforesaid two unreasonable and arbitrary conditions prescribed in the said policy of the Respondent No.1 and all the Hon'ble High Courts were pleased to stay the enforcement of those conditions of the policy. The Hon'ble High Court failed to appreciate the fact that all those Writ Petition were still pending for final adjudication and passed the impugned order by relying on the judgments of this Hon'ble Court passed on the issue of contract between two parties and power of the State instrumentality to frame rules. It is pertinent to mention that while passing the impugned judgment the Hon'ble High Court completely lost its sight from the fact that the issue involved in the subject policy of the respondent No.1 was with respect to the empanelment of the highly qualified professional like Valuers,

## D

who are either qualified architect or engineer or both, and their empanelment with the respondent No.1 cannot be considered merely a general between two parties. Further, the Hon'ble High Court could not be able to appreciate that the impugned conditions were discriminatory against the members of the petitioner and the similarly placed other professionals like advocates, chartered accountants, medical practitioners, etc. as the respondent No.1 has no such policy of age limits or seeking indemnity bond from them. Further, the respondent No.1 failed to assign any plausible reasoning or rationale in fixing the upper limit of 70 years for the members of the petitioner for continuation on its panel as valuers. The Hon'ble High Court failed to appreciate that the aforesaid conditions for empanelment of the members of the petitioner are denying their right to parity with other professionals like advocates and chartered account and wrongly held that the process of valuation requires more physical works than the other professionals.

The Hon'ble High Court has miserably failed to appreciate that the aforesaid impugned conditions in the policy dated 03.07.2019 are arbitrary, discriminatory, unreasonable and per se illegal and the same deserved to be declared as null and void. The Hon'ble High Court has not appreciated that the purpose of valuation and appointment of valuers assigned by the respondent No.1 in its subject policy dated 03.07.2019 itself makes it clear that the age of the valuer could not come on the way of the discharge of their

## E

professional duties to the bank and in contrary their experience must play the vital and supreme role in proper discharge of their assigned duty. The purpose of valuation and appointment of valuers as given in the Policy Guideline are as below;

Valuers are engaged for:

- The purpose of ascertaining the value of the property / assets etc. offered as security.
- The purpose of periodically ascertaining the value of the property that has been mortgaged, whether it is increasing or decreasing over the mortgage period.
- For the purpose of realizing the value of non-performing assets (NPAs) and
- The purpose of resumption of properties in cases of default.

Further, the restriction regarding the age for a professional, whose years of experience always be counted, is completely disproportionate, excessive, unwarranted, unethical and violative of fundamental rights of the members of the petitioner society. The valuers are entrusted with the work of determination of the value or economic worth of the moveable and immovable properties proposed to be mortgaged, charged, hypothecated, etc with the bank by following certain rules, standard and parameter to conduct the valuation of such assets and there is no process evolved in the world till date

## F

which can be error free and therefore, the mandate for compelling the valuers to furnish indemnity bond to the Respondent No.1 is not only arbitrary and unreasonable but also unethical and illegal. Whereas, no such rule was ever formulated or introduced by the Respondent No.1 for empaneling the other professional like advocate, chartered accountants, medical practitioner, insurance agents, financial advisors, etc.. Further, the respondent No.1 Bank recognizes only those valuers, for empanelment with it, who are registered with the Competent Authority as prescribed under Section 34 AB of the Wealth Tax Act, 1947 as well as with the independent valuer association like the petitioner herein. It is apt to mention herein that number of valuers fulfilling the aforesaid criteria of the respondent No.1 are only around four thousand in numbers in the country and if the aforesaid condition of the upper age limit is allowed to be applied to them, there would a great shortage of such professional to work for the financial institution in which public money are involved.

The Hon'ble High Court has miserably failed to appreciate that the language of the Indemnity Bond sought is itself tantamount to an insult and humiliation to the highly qualified professionals, who have been discharging their service with full integrity resulting in their eligibility to be empaneled with respondent No.1 and it violates their rights to human dignity and status as the qualified professional. By seeking such unreasonable undertaking from

## G

the members of the petitioner, the respondent No. 1 has imposed such a harsh conditions on them that would create unnecessary fear and restrain them from practicing their profession in a free and fair manner. It is apt to mention herein that a valuer submits his valuation report by adopting the standard approaches or methods of valuation consisting of cost, income and market approach and the bank is not bound to accept the same without verifying the same from its internal sources. The authorized/competent person of the bank verifies the valuation report of the valuer by following the guidelines of the Reserve Bank of India and sends the said report for internal approval and only after getting all verification, compliances and approval, the bank acts upon the said valuation report. The valuation report is based on different values like fair market, realizable value, distress, etc. and only the bank knows that it has taken which value as the base value to approve for the disbursal of the loan. The Further, in case of failure by the borrower to repay the loan, the bank has several options and methods to recover the loan from the borrower and if the bank has been compliant to all the guidelines of the Reserve Bank of India and standard rules, it would not incur loss in the transaction. Thus, the condition of indemnity by the Valuer in the impugned Policy is not only arbitrary, unreasonable and irrational but also illegal and coercive and therefore, the should be stricken off from the policy of the respondent No.1, which is the largest public sector bank.

# H

## LIST OF DATES AND EVENTS

- 12.09.1957            The Wealth Tax Act, 1957 was notified in India in which Section 34AB & 34AC prescribes for the Registration, Qualification and Restriction for the Valuers.
- 17.09.1998            The petitioner was registered under the provisions of the Society Registration Act, 1860 at Mumbai, Maharashtra. A true translated copy of the Certificate of Registration is annexed hereto as **Annexure P-1 (Page No. 59)**..
- 06.01.1999            The petitioner was registered under the Bombay Public Trust Act, 1950 at Greater Bombay Region, Maharashtra. A true translated copy of the Certificate of Registration is annexed hereto as **Annexure P-2 (Page No. 60)**..
- 26.10.2007            A notification S.O. 1837 (E) was published in the Gazette of India from the Ministry of Finance (Department of Financial Service) notifying the amendment to Security (Enforcement) Rules 2002 under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Vide the said notification Rule 2 of Clause (d) of the Security (Enforcement) Rules, 2002, the following was substituted;

‘(d) “approved valuer” means a person registered as a valuer under Section 34AB of the Wealth Tax Act, 1957 and approved by the Board of Directors or Board of Trustees of the Secured Creditors, as the case may be;

A true copy of the notification S.O. 1837 (E) published in the Gazette of India from the Ministry of Finance is annexed hereto as **Annexure P-3 (Page No. 61-62 )**.

30.09.2008

The respondent No.1 vide e-circular No. CCO/CPD-SARFAESI/50/2008-09 dated 30<sup>th</sup> September, 2008 issued on 03.10.2008 mentioned that “The definition of approved valuer has since amended by the Ministry of Finance vide Gazette Notification issued on 26<sup>th</sup> October, 2007 by way of an amendment to Security (Enforcement) Rules, 2002 under the SARFAESI Act, 2002. The respondent No.1 bank instructed all the Chief General Manager of LHO/SME/CAG/MCG of the State Bank of India that ECCB has approved deletion of all those valuers who are not registered under Wealth Tax Act, 1957. A true copy of the said e-circular No. CCO/CPD-SARFAESI/50/2008-09 is annexed hereto as **Annexure P-4 (Page No. 63-65 )**..



## J

- 03.07.2019 E-circular No. CCO/CPPD-ADV/492019-20 was issued by the Respondent No.1 titled as “Policy on Valuation & Empanelment of Valuers” wherein it prescribed upper age limit of 70 years and furnishing of indemnity as a condition for applying for empanelment as Valuers with its bank. A true copy of the E-circular No. CCO/CPPD-ADV/492019-20 issued by the Respondent No.1 is annexed hereto as **Annexure P-5 (Page No. 66-147 )**.
- 31.01.2020 The Hon’ble High Court of Patna in Civil Writ Jurisdiction Case No. 2092 of 2020 was pleased to direct the Respondent No.1 not to insist upon furnishing of indemnity bond as a precondition for empanelment. A true copy of the Order dated 31.01.2020 passed by the Learned Single Judge of Patna High Court is annexed hereto as **Annexure P-6 (Page No. 148-151 )**.
- 12.03.2020 The High Court of Madhya Pradesh in WP-5850-2020 passed an interim order thereby directing the respondent No.1 Bank not to insist on giving letter of indemnity from the petitioner being appointed as approved valuers for the bank. A true copy of the Order dated 12.03.2020 passed by the Hon’ble Madhya Pradesh High Court in WP-5850-

# K

2020 is annexed hereto as Annexure **P-7 (Page No. 152 )**.

23.03.2020

The High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Civil Writ Petition No. 3169/2020 titled as Rajasthan Council of Income Tax, Wealth Tax Valuers Society was pleased to issue notice to the respondent No. 1 after restraining the respondent No. 1 from insisting to submit indemnity bond from the valuers upon being empaneled. A true copy of the aforesaid Order dated 23.03.2020 passed by the High Court of Rajasthan in S.B. Civil Writ Petition No. 3169/2020 is annexed hereto as **Annexure P-8 (Page No. 153-154 )**.

08.06.2020

The petitioner wrote a letter to the Respondent No.1 thereby requesting for waiver of the condition of furnishing Indemnity Bond in the light of the E-circular No. CCO/CPD-ADV/492019-20 as being arbitrary and unreasonable. The petitioner also referred the Order dated 12.03.2020 passed by the Hon'ble High Court of Madhya Pradesh wherein an interim stay was granted on the operation of the condition for furnishing indemnity bond by the valuers but the respondent No.1 failed to take note

## L

of the same. A true copy of the said letter dated 08.06.2020 is annexed hereto as **Annexure P -9 (Page No. 155-158 )**.

16.06.2020 The High Court of State of Telangana at Hyderabad in W.P. No. 25120 of 2019 was pleased to stay the operation of the condition of requiring the Valuers to furnish indemnity bond as prerequisite to be empaneled with the Respondent No.1 bank. A true copy of the aforesaid Order dated 16.06.2020 passed by the High Court of Telangana in W.P. No. 25120 of 2019 is annexed hereto as **Annexure P-10 (Page No. 159-161 )**.

25.06.2020 The High Court of Kerala in W.P. (C) No. 12679 was pleased to stay the operation of the condition of the policy of the respondent No.1 for insisting for furnishing indemnity bond as pre-condition for empanelment as a approved valuer. A true copy of the aforesaid Order dated 25.06.2020 passed by the High Court of Kerala in W.P. (C) No. 12679 is annexed hereto as **Annexure P-11 (Page No. 162-163 )**.

26.06.2020 The Hon'ble High Court of Orissa in W.P. (C) No. 14580 of 2020 was pleased to stay the operation of the impugned

## M

policy of the Respondent No.1 by categorically directing that if any Valuer above 70 years of age is already working/engagement, his working shall not be affected until the further orders. A true copy of the aforesaid Order dated 26.06.2020 passed by the High Court of Orissa is annexed hereto as **Annexure P-12 (Page No. 164 )**.

29.06.2020 Vide order dated 29.06.2020 the Hon'ble High Court of Delhi in W.P. (C) No. 3795 Of 2020 titled as Institution of Valuers was pleased to restrain the Respondent No.1 from insisting on furnishing letter of indemnity as a pre-condition for empanelment of approved valuers. A true copy of the aforesaid Order dated 29.06.2020 passed by the High Court of Delhi is annexed hereto as **Annexure P-13 (Page No. 165-170 )**.

10.07.2020 The petitioner herein challenged the policy of the Respondent No.1 of dated 03.07.2019 titled as "Policy on Valuation & Empanelment of Valuers" before the Hon'ble High Court at Judicature at Bombay by way of the Writ Petition OS-WPLD-VC-NO. 188 of 2020 titled as Practicing Valuers Association (India) & Ors. Vs. State Bank of India & Anr.. The petitioner assailed the two

## N

conditions of the aforesaid policy relating the upper age limit of 70 years and for furnishing indemnity bond by the Valuers at the time of their empanelment with the respondent No.1 bank. A True copy of the said Writ Petition No. OS-WPLD-VC-NO. 188 of 2020 titled as Practicing Valuers Association (India) & Ors. Vs. State Bank of India & Anr. is annexed hereto as **Annexure P – 14 (Page No. 171-194 )**.

28.07.2020

The Hon'ble Gujrat High Court in R/Special Civil Application No. 8311 of 2020 was pleased to issue notice to the Respondent No. 1 and restrain it from insisting upon furnishing of a letter of indemnity from the valuers in terms of the impugned policy. A true copy of the said Order dated 28.07.2020 passed by the High Court of Gujrat at Ahmedabad in R/Special Civil Application No. 8311 of 2020 is annexed hereto as **Annexure P-15 (Page No.195-196 )**.

30.07.2020

The respondent No.1 filed its preliminary affidavit in reply to the Writ Petition of the petitioner before the Hon'ble High Court. The respondent gave some examples of erroneous valuation given by its empaneled valuers which

# O

caused it substantial loss in order to justify its act of putting impugned conditions in its policy for empaneling valuers. True copy of the preliminary affidavit in reply dated 30.07.2023 is annexed hereto as **Annexure P -16 (Page No. 197-208 )**.

10.08.2020 The Hon'ble Bombay High Court appointed Mr. Sharan H. Jagtiani, Senior Advocate as an amicus curiae in the Writ Petition filed by the petitioner and Ld. Amicus filed a Written Submission before the Hon'ble High Court on 10.08.2017. True Copy of the Written Submission dated 10.08.2020 is annexed hereto as **Annexure P -17 (Page No. 209-249 )**.

18.08.2020 The Hon'ble High Court of Judicature at Bombay dismissed the Writ Petition bearing OS-WP-LD-VC- NO. 188 of 2020 vide Order dated 18.08.2020 and upheld the two arbitrary conditions of the subject policy of the Respondent No.1 pertaining to the upper age limit and requiring the indemnity bond from the approved valuers. The Hon'ble High Court miserably failed to appreciate the fact that all the nine different High Courts of the country had already granted stay on the impugned conditions of

# P

the policy framed by the Respondent No.1 and erroneously compared the members of the petitioner association with the employee of the respondent No.1 by opining that they are retired at the age of 60 years but failed to appreciate that there was difference between regular service and empanelment for a specific purpose. The professional could not be compared with the respondent No. 1's regular employees, who draw salary and perks during their employment and pension after their retirement.

13.10.2020 The Hon'ble High Court of Jharkhand in W.P. (C) No. 2282 of 2020 was pleased to direct the Respondent No.1 not to insist upon the condition of furnishing of indemnity bond from the registered valuer. A true copy of the said Order dated 13.10. 2020 of the Jharkhand High Court in W.P. (C) No. 2282 of 2020 is annexed hereto as **Annexure P -18 (Page No. 250--251 )**.

24.08.2023 Hence, the present Special Leave Petition.

1  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

OS-WP-LD-VC-NO.188 OF 2020

1. Practicing Valuers Association (India), )  
A Society registered under Societies )  
Registration Act, 1860 and also registered )  
under Bombay Public Trust Act, 1950, )  
Having its registered office C/o )  
Best Mulayankan Consultants Ltd., )  
1<sup>st</sup> Floor, Aditya Building, Opp. Flyover )  
Apartment, Junction of N.S.Phadke Marg, )  
Andheri (E), Mumbai – 400 069 )
  
2. Ashok Vishnu Kelkar, )  
President of the Petitioner No.1, )  
Adult, Age 78 years, Occu – Chartered )  
Engineer and Practicing Valuer, )  
Residing at 207-C, Bhakti Residency, )  
Dr. Ambedkar Road, Matunga, )  
Mumbai – 400 019. )
  
3. Sujit Shrikant Joglekar )  
Honorary Secretary of the Petitioner No.1, )  
Adult, Age 43 years, Occu – Engineer, )  
and Practicing Valuer, Residing at )  
1<sup>st</sup> Floor, Aditya Building, N.S.Phadke )



Marg, Andheri (E), Mumbai – 400 069 ) ... Petitioners

versus

1. State Bank of India, )  
 Banking Corporation established under )  
 State Bank of India Act, 1955, )  
 having its Regional Head Office at )  
 Corporate Centre, Madam Cama Road, )  
 Nariman Point, Mumbai – 400 021. )
  
2. Shri Rajnish Kumar, Chairman SBI, )  
 Adult, Age not known. )  
 Occu – Service, Chairman of SBI of )  
 Respondent No.1, Having his office at )  
 Corporate Office, Nariman Point, Cama )  
 Road, Mumbai – 400 021. ) ... Respondents

Mr. Amit Tungare, Advocate for the Petitioners.

Mrs. Rathina Maravarman, Advocate for the Respondents

Mr. Sharan H. Jagtiani, Senior Advocate, Amicus Curiae a/w Mrs. Shweta Sangtani  
 and Mr. Priyank Kapadia

**CORAM: S.J. KATHAWALLA &  
 R.I.CHAGLA, JJ.**

**RESERVED ON : AUGUST 10, 2020**

**PRONOUNCED ON : AUGUST 18, 2020**

**3**  
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**JUDGMENT (PER S.J. KATHAWALLA, J.) :**

1. The present Writ Petition has been filed by Petitioner No. 1, a society of practicing valuation professionals of which Petitioner Nos. 2 and 3 are President and Honorary Secretary respectively. According to the Petitioner No. 1, its members

practice as valuers for the purpose of giving estimated valuation of movable and immovable properties to their clients which include banks, corporate offices, charitable trusts, schools, colleges, clubs, builders and individuals.

2. Respondent No. 1 is the State Bank of India (“**SBI**”).
3. The Petitioners have in the above Writ Petition challenged two aspects of SBI’s policy relating to empanelment of valuers (“**Impugned Conditions**”), viz.:
  - i. The upper limit of 70 years of age for an empanelled valuer; and
  - ii. The communication / direction / policy of SBI to the extent that it requires prospective valuers seeking empanelment with SBI to execute an indemnity in favour of SBI as per a prescribed format.
4. The upper age limit of 70 years and the requirement of providing an indemnity are two of several conditions contained in SBI’s policy for empanelment of valuers. The present challenge to SBI’s policy is limited to these two aspects.
5. The main ground of challenge, is that the Impugned Conditions are discriminatory and arbitrary, and therefore violative of Article 14 of the Constitution of India.

## **I. BACKGROUND TO THE POLICY ISSUED BY SBI**

6. Section 35A of the Banking Regulation Act, 1949, empowers the Reserve Bank of India (“**RBI**”) to issue directions, *inter alia*, in the interest of banking policy.

Section 35A reads as follows :

***35A. Power of the Reserve Bank to give directions***

*(1) Where the Reserve Bank is satisfied that-*

*(a) in the public interest; or*

*(aa) in the interest of banking policy; or*

*(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or*

*(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.*

*(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under subsection (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.*

7. Noting that different banks follow different policies for valuation of properties and appointment of valuers, RBI, vide Circular No. 2006-2007/224 DBOD.BP.BC No. 50 / 21.04.018/ 2006-07 dated 4<sup>th</sup> January 2007 (“**Circular**”) issued guidelines to be followed by commercial banks while formulating a policy in this regard. The said

Circular reads as follows:

*“RBI No.2006-2007/224*

*DBOD.BP.BC No. 50 / 21.04.018/ 2006-07*

*January 4, 2007*

*The Chairmen/Chief Executives*

*All Commercial Banks (excluding RRBs)*

*Dear Sir,*

***Valuation of Properties - Empanelment of Valuers***

*It has been observed that different banks follow different policies for valuation of properties and appointment of valuers for the purpose. The issue of correct and realistic valuation of fixed assets owned by banks and that accepted by them as collateral for a sizable portion of their advances portfolio assumes significance in view of its implications for correct measurement of capital adequacy position of banks. In this context, there is a need for putting in place a system/procedure for realistic valuation of fixed assets and also empanelment of valuers for the purpose.*

*2. Banks may be guided by the following aspects while formulating a policy on valuation of properties and appointment of valuers:*

***(a) Policy for valuation of properties***

*i) Banks should have a Board approved policy in place for valuation of properties including collaterals accepted for their exposures.*

*ii) The valuation should be done by professionally qualified*

*independent valuers i.e. the valuer should not have a direct or indirect interest.*

*iii) The banks should obtain minimum two Independent Valuation Reports for properties valued at Rs.50 crore or above.*

***(b) Revaluation of bank's own properties***

*In addition to the above, the banks may keep the following aspects in view while formulating policy for revaluation of their own properties.*

*i) The extant guidelines on Capital Adequacy permit banks to include revaluation reserves at a discount of 55% as a part of Tier II Capital. In view of this, it is necessary that revaluation reserves represent true appreciation in the market value of the properties and banks have in place a comprehensive policy for revaluation of fixed assets owned by them. Such a policy should interalia cover procedure for identification of assets for revaluation, maintenance of separate set of records for such assets, the frequency of revaluation, depreciation policy for such assets, policy for sale of such revalued assets etc. The policy should also cover the disclosure required to be made in the 'Notes on Account' regarding the details of revaluation such as the original cost of the fixed assets subject to revaluation and accounting treatment for appreciation / depreciation etc.*

*ii) As the revaluation should reflect the change in the fair value of the fixed asset, the frequency of revaluation should be determined based on the observed volatility in the prices of the assets in the past. Further, any change in the method of depreciation should reflect the change in the expected pattern of*

*consumption of the future economic benefits of the assets. The banks should adhere to these principles meticulously while changing the frequency of revaluation/method of depreciation for a particular class of asset and should make proper disclosures in this regard.*

**(c) Policy for Empanelment of Independent valuers**

*i) Banks should have a procedure for empanelment of professional valuers and maintain a register of 'approved list of valuers'.*

*ii) Banks may prescribe a minimum qualification for empanelment of valuers. Different qualifications may be prescribed for different classes of assets (e.g. land and building, plant and machinery, agricultural land, etc.). While prescribing the qualification, banks may take into consideration the qualifications prescribed under Section 34AB (Rule 8A) of the Wealth Tax Act, 1957.*

*3. Banks may also be guided by the relevant Accounting Standard issued by the Institute of Chartered Accountants of India.*

*Yours faithfully,*

*(Prashant Saran)*

*Chief General Manager-in-Charge”*

*(Emphasis Supplied)*

## **II. THE POLICY ISSUED BY SBI**

8. As per the Circular issued by RBI, the Stressed Assets Resolution Group of SBI

has formulated a policy dated 3<sup>rd</sup> July, 2019 titled “*Policy on Valuation and Empanelment of Valuers*”. The said 2019 policy of SBI, prepared by the stressed Asset Resolution Group, contains the impugned conditions, viz (i) the condition prescribing the upper limit of 70 years of age for an empanelled valuer; and (ii) the condition requiring the valuer seeking empanelment with the SBI to execute an indemnity in favour of SBI as per a prescribed format.

9. The Impugned Condition prescribing a maximum age limit of 70 years reads as follows:

***“2.5 Minimum / Maximum Age requirement***

*Age is an important criteria while empanelling valuers. The minimum age for empanelment with us shall be 25 years and maximum age limit for a valuer to remain on the panel shall be 70 years.”*

10. The Impugned Condition which requires prospective valuers seeking empanelment to submit an indemnity in favour of SBI reads as follows:

“ (Annex IX)

**TERMS AND CONDITIONS TO BE ANNEXED TO  
THE APPOINTMENT LETTER FOR VALUERS**

.....

*xiii. The Valuer shall indemnify and keep fully and effectively indemnified the Bank against all costs, claims, damages, demands, expenses and liabilities of whatsoever nature which may be caused to or suffered by or made or taken against Bank*



*(including, without limitation, any claims or proceedings by any customers against Bank) directly or indirectly arising out of any improper, incorrect or negligent performance, work, service, act or omission by the Valuer or by any of Valuer's Personnel or fraud or other wrongful act by the Valuer or by any of Valuer's Personnel or for any act of the Valuer which results in Bank obtaining incorrect or incomplete information from the Valuer or any of Valuer's Personnel. In this connection, a Letter of Indemnity as per Annexure-XV is to be executed by him.*

*xiii. The Valuer agrees to indemnify and keep indemnified the Bank against any loss or damage to any of Bank's information, documents, property, records, or other items while in the Valuer's use or possession.*

*.....”*

11. The Letter of Indemnity as per Annexure-XV to Respondent No. 1's Policy for Empanelment of Practicing Valuers reads as follows:

*“Dear Sir(s),*

*In consideration of State Bank of India (herein after called the "Bank" which expression shall include its successors and assignees) empanelling me / us on their panel of approved Engineers and Valuers for the purpose of assessing the market value of the properties proposed to be taken as securities for the credit limits granted or to be granted by the Bank to its various borrowers, I / We jointly and severally extend this letter of indemnity.*

*Whereas by the letter of empanelment dated \_\_\_\_\_ the bank has empanelled me / us on their panel of approved Engineers & Valuers for the purpose of assessing the market value of the properties proposed to be taken as securities for the credit granted / to be granted by the Bank. I/ We jointly and severally agree as follows.-*

*I / We shall duly and faithfully perform and discharge all the duties in the works entrusted by the Bank and in relation to the purposes of empanelment, fairly without any favour and discrimination and I / we hereby undertake and agree to indemnify you, your successors and assigns at all times and from time to time from and against all loss, damage and all actions suits, proceedings, expenses, costs, charges and demands arising out of any act, lapses defaults, negligence, errors, mistakes committed by me / us in performance of my / our professional obligations and I / we also hereby undertake and agree to pay to you on demand sums of money, costs, charges and expenses incurred in respect thereof and also to pay you interest on all such moneys at your ruling rate.*

*I / We further specifically agree that this indemnity shall continue to remain in force and I / We shall continue to be liable there under for all losses, damages, costs, charges and expenses arising out of any act, lapses, defaults, negligence, errors, mistakes committed by me / us in performance of my / our professional obligations and shall be binding on me / us and our legal and personal representatives, successors and assigns”.*

### III. RELIEFS SOUGHT BY THE PETITIONERS

12. The main reliefs sought by the Petitioners read as follows:

*“a) This Hon'ble Court may be pleased to issue a suitable writ or order or direction under the special jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India ordering that the communication / direction / policy of the respondents at exhibit “C” hereto to the extent of demanding from and ordering to the Petitioner no.1 and its members to execute an indemnity in terms of the format at exhibit "D" and the policy of the respondents to fix the upper age limit of 70 years for continuing on the panel of the respondents as valuers is illegal, ultra virus the Constitution and is null and void*

*b) That this Hon'ble court may be pleased to issue a suitable writ, order or direction prohibiting the Respondents from insisting upon the Petitioners and the members of the Petitioner No.1 to execute an Indemnity Bond in terms of draft at Ex. ‘D’ and discontinuing them to act as valuers on the panel of the respondents on completion of 70 years of age, as being illegal ultra vires, unconstitutional and violative of the Petitioners’ right, guaranteed under Article 14, 19(l)(g) of Constitution of India;*

*.....”*

### IV. PETITIONERS SUBMISSIONS

13. As regards the maximum age limit of 70 years the Advocate for the Petitioners has submitted as follows:

(i) That the maximum age limit prescribed by SBI for empanelment of valuers is arbitrary. Seniority in professional services is desirable and a professional over the age of 70 years would bring in a wealth of experience to the valuation exercise.

(ii) That no data is placed on record by SBI to justify a maximum age limit of 70 years. The Indian Banks Association, for instance, does not recommend an upper age limit for practicing as a valuer. A maximum age limit prescribed without considering relevant data or material is arbitrary and violative of Article 14 of the Constitution.

(iii) That empaneled valuers, lawyers and accountants are a class of professionals who render services to SBI. No similar age limit is prescribed by SBI for empaneled advocates and accountants who render similar services to SBI. The age limit for valuers is therefore discriminatory as it results in the disparate treatment of similarly placed persons.

(iv) That empanelment does not guarantee assignment of a mandate to conduct a valuation exercise. If in a given case, SBI is of the view that a particular empaneled valuer is unable to satisfactorily render services on account of his or her age / health, SBI is not obligated to assign any mandate to the concerned valuer. However, a blanket disqualification based on age is manifestly arbitrary for valuers above the age of 70 years who are functionally capable of rendering services to SBI.

14. As regards the requirement of submitting an indemnity for valuers seeking empanelment, the Advocate for the Petitioners has submitted as follows :

(i) That empaneled valuers, lawyers and accountants are a class of professionals who render services to SBI. SBI is advised by such professionals and based on the opinion / advice given by such professionals, SBI takes an informed decision as to whether or not to advance a loan, and the terms on which such loan is to be advanced. An error, mistake or professional misconduct by any of these professionals may result in a loss to SBI. Bank employees who eventually take the decision to sanction loans may similarly commit errors, mistakes or acts of professional misconduct which result in a loss to SBI. However, SBI has only sought an indemnity from valuers and not from empaneled advocates or accountants whose advice equally informs the SBI's decision to advance a loan on varied terms and conditions. There is no intelligible differentia between valuers on the one hand and lawyers, accountants or bank employees on the other hand.

(ii) That the prescribed indemnity letter does not specify as to what would be considered to be a mistake, error, lapse, default or negligence etc. on the part of the valuers. Such an open ended indemnity is unreasonable. Reliance is placed on the decision in the case of *Shakti Kumar Prabhakar & Ors. vs. Union of India & Ors.*<sup>1</sup>, where State Bank of India was respondent nos. 6, 7 and 8 and a similar indemnity was under challenge. The High Court of Judicature at Patna took a strong *prima facie* view that such an open ended indemnity was unreasonable and the argument that valuers

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1 Order dated 31<sup>st</sup> January, 2020 passed by the Patana High Court in Civil Writ Jurisdiction Case No.2092 of 2020

may choose not to get empaneled under such a policy is not available to a state instrumentality.

(iii) That the valuation reports submitted by empaneled valuers does not contain the usual disclaimer at the foot of the report. Therefore, SBI is free to take action if there is any fraud on the part of the valuer and there is no need for an indemnity to be submitted. By giving an indemnity, empaneled valuers will have to incur substantial costs to defend proceedings to establish that the valuation conducted at the time of loan disbursal was bona fide and accurate.

(iv) That no specific data has been submitted which shows that SBI has suffered losses due to mistaken or deliberately inflated valuations. The policy is influenced by irrelevant or extraneous considerations without taking into account relevant considerations such as the versatile process of valuation.

## **V. SUBMISSIONS BY SBI**

15. The learned Advocate for SBI reiterated some of the submissions made in the Affidavit in Reply filed by the SBI. As regards the maximum age limit of 70 years the Advocate for SBI has submitted as follows :

(i) That the age limit of 70 years is not arbitrary or unreasonable as SBI 's policy specifically requires physical verification of assets / taking measurements etc. If valuers are unable to perform this function on account of their advanced age, they will depend on other persons to undertake physical verification of assets, which will affect

the reliability of the valuation report. Similarly, the scope of services of a valuer may require the resumption of properties offered as collateral in cases of default. Considering the nature of a valuer's responsibilities, a maximum age limit of 70 years is reasonable.

(ii) That the decision to impose a maximum age limit for empaneled valuers is a matter of discretion and policy and an age limit of 70 years is neither arbitrary or unreasonable which would warrant any interference by a Writ Court exercising jurisdiction under Article 226 of the Constitution.

(iii) That the role and function of empaneled valuers in giving valuation reports that are important for sanctioning loans and facilities against collateral securities and the same cannot be compared to the role of other professionals like lawyers and accountants. Hence, any challenge to the age limit based on Article 14 of the Constitution is misconceived.

16. As regards the requirement of submitting an indemnity for valuers seeking empanelment, the Advocate for SBI has submitted as follows :

(i) That SBI avails the services of valuers for determining the value of assets offered as collateral. The determination of the loan amount depends on this valuation of assets. Any inflation of this value, either due to a mistake, error or act of misconduct or fraud, directly results in a loss to SBI.

(ii) That in several matters where an account is designated as a non-performing

asset and SBI has taken recourse to securities offered as collateral, it is found that the value thereof is significantly inflated and SBI is barely able to recover a fraction of the outstanding loan amount.

(iii) The submission of an indemnity is intended to deter inflated or fraudulent valuations and result in more accurate and responsible valuations.

## **VI. SUBMISSIONS BY THE AMICUS CURIAE**

17. Mr. Sharan Jagtiani, Senior Advocate, who by our Order dated 24<sup>th</sup> July 2020 was appointed as Amicus Curiae to assist the Court, has circulated detailed Written Submissions. In addition to the factual and legal submissions set out therein, Mr. Jagtiani submitted as follows :

### **VALUERS AS A DISTINCT CLASS OF PROFESSIONALS ENGAGED BY BANKS**

(i) That the direction by the RBI to banks to frame a policy in respect of valuations to be done by banks is in recognition that the exercise of valuation is very important to the functioning of a bank and should not be done in a casual manner. The exercise of valuation has a very proximate and direct connection to the functioning of a bank in evaluating the value of security offered against a loan or other banking facility. Given the criticality of this function, which is entirely distinct from the services that a bank may avail of from other professionals such as lawyers and accountants, valuers can be rightly treated as a class unto themselves.



(ii) That policy measures that form the basis for contractual stipulations and terms of empanelment, insofar as they are applicable to valuers, cannot be impugned only because similar measures are not made applicable to the SBI's contracts or dealings with other professionals like lawyers and accountants. It may well be that over a period of time SBI will put into place a policy for its dealings and contracts to avail services from other classes of professionals as well but the fact that it does not exist today cannot be a ground to assail, as discriminatory, the policy and the conditions of empanelment or contractual stipulations that the Respondent seeks to apply to valuers as a class.

(iii) That the Respondent does not have any in-house valuers, unlike an in-house legal department or accounting division. This is perhaps one more reason to have more detailed provisions to govern its dealings with valuers who seek empanelment.

### **MAXIMUM AGE LIMIT**

(i) That given the nature of functions that a valuer has to carry out, including site visits and sometimes to remote places, it cannot be said that the stipulation of an age limit beyond which valuers cannot be empaneled is manifestly arbitrary or unreasonable. Such a decision may well have been based on many years of experience in dealing with valuers.

(ii) That if there is an age of retirement for person employed with the SBI, which is premised on the theory that after a certain age the performance of persons is not as

efficient, the same can form the basis for an age based stipulation even in relation to empanelment of valuers.

(iii) That if prescribing an upper age limit is not per se arbitrary, then the next aspect to consider is whether the maximum age limit of 70 years is objectionable as being manifestly arbitrary or unfair. The Supreme Court has held that the power to determine the maximum or minimum age for a post or service is not, *per se*, arbitrary. This is a matter of discretion and cannot be done with mathematical precision. It can only be challenged, as the Supreme Court has indicated, if it is completely off the mark and without any basis.

(iv) That in fact, some decisions of the Supreme Court have gone to the extent of saying that the choice of an age limit or cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the state's affidavit in reply, unless it is shown to be totally capricious or whimsical;

(v) That the scope for judicial interference in the exercise of this discretion is narrow, and Courts must exercise judicial restraint in matters relating to the exercise of legislative or executive discretion.

(vi) That the above submissions are supported by the judgments of the Hon'ble Supreme Court in the case of *Ami Lal Bhat (Dr) v. State of Rajasthan*<sup>2</sup> and in the case of *Govt. of A.P. v. N. Subbarayudu*<sup>3</sup>.

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2 (1997) 6 SCC 614.

3 (2008) 14 SCC 702 at Paragraph 5.

(vii) That the maximum age limit of 70 years is considerably higher than the age of retirement of SBI's employees which is about 60 years. Were it lower, different considerations may have applied, but that is not the case. Similarly, services under the Central Government or state governments, as also judicial services, have a compulsory retirement age of between 60 - 65 years. Viewed as such, the maximum age limit of 70 years cannot be stated to be patently or manifestly arbitrary.

(viii) That the maximum age limit is not a complete prohibition on practicing as a valuer generally, but only prevents persons above the age of 70 years from seeking empanelment with the SBI.

(ix) That therefore, the maximum age limit is not an unreasonable or an arbitrary condition which warrants interference.

## **INDEMNITY**

(i) That the challenge to the Impugned Condition relating to furnishing a letter of indemnity must be viewed from the perspective of a challenge to a condition that the SBI wants to include in its contractual dealing with persons it wants to engage as valuers through the process of empanelment. Absent a policy or process of empanelment, the Respondent would for each assignment engage a valuer and would be able to insist, as part of the negotiated contract of service, that such an indemnity be given. Instead of an ad-hoc approach, the policy formulated by SBI is a comprehensive policy that provides for the conditions of eligibility for valuers seeking

empanelment with the SBI. These conditions for empanelment then, to the extent applicable, become the pre-determined terms of the contract by which valuers are assigned certain work of valuation by the Respondent.

(ii) That the policy provides for a graded system of evaluation of the merit of a valuer, based inter alia on his or her educational qualifications and registration as a valuer under extant laws such as the Wealth Tax Act, 1957 and the Companies Act, 2013. A valuer is eligible for empanelment and further eligible for certain types of assignments and mandates based on their evaluated score i.e. a valuer with a higher score will be given assignments pertaining to valuation of collateral security offered in high value transactions etc.

(iii) That therefore, SBI is acting within the sphere of contract in asserting the terms that it wants as part of that contract such as the requirement of submitting an indemnity.

(iv) That the question which therefore arises in this Petition, as regards the indemnity sought by SBI, is:

*Whether the inclusion of such an indemnity clause as a term of contract to engage the services of a valuer, the starting point of which is the empanelment itself, is so arbitrary that the term itself violates Article 14 of the Constitution ?*

(v) That it is now well settled that the protection of Article 14 of the Constitution applies to State action even in matters where the State acts within the realm of

contract—both as to its formation and its implementation. Some of the judgments that have applied principles of Article 14 to the realm of contract, are as follows :

- a) *Dwarkadas Marfatia & Sons vs. Board Of Trustees Of The Port Of Bombay*;<sup>4</sup>
- b) *Shrilekha Vidyarthi (Kumari) v. State of U.P.*;<sup>5</sup>
- c) *Vijay Kumar Gupta vs. State of Maharashtra*.<sup>6</sup>
- d) *KSL & Industries Ltd. vs. National Textiles Corporation Ltd.*<sup>7</sup>

(vi) That it has also been laid down that the scope for judicial review in matters of contracts to which the State is a party is limited. The Courts have clearly recognized the need for flexibility and play in the joints. There is undoubtedly a margin of deference especially when formulating the terms of a contract that may themselves have their *roots* in a policy based need of the State underlying that specific aspect of the State's business. Some of the judgments that reinforce this principle are:

- a) *Directorate of Education & Ors. vs. Educomp Datamatics Ltd.*;<sup>8</sup>
- b) *Michigan Rubber (India) Limited vs. State of Karnataka & Ors.*<sup>9</sup>

(vii) That notwithstanding the fact that the indemnity is widely worded, it still may not make it so unreasonable or manifestly arbitrary an exercise of SBI's power in matters of contract especially in light of SBI's submission in its Affidavit in Reply that

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4 (1990) 3 SCC 752.

5 (1991) 1 SCC 212.

6 2008 (4) MhLJ 370.

7 2012 SCC OnLine Del 4189.

8 (2004) 4 SCC 19.

9 (2012) 8 SCC 216.

such a measure is necessitated by its long years of collective experience in suffering on account of erroneous or deliberately inflated valuation reports.

(viii) That the standard that might generally govern a civil action against a professional has been discussed by the Hon'ble Supreme Court in the case of *Central Bank of India vs. K. Narayana Rao*<sup>10</sup>. The intent of the indemnity, therefore, appears to be to entitle SBI to rely on an express contractual provision for holding valuers accountable.

(ix) That SBI, as a party intending to avail a service from a valuer, has the prerogative to define the scope of liability of that service provider by way of a contract, which is what the indemnity intends to do.

(x) That given the vitality of valuation as a process to the business of banking and lending, SBI consciously wants to hold valuers uniformly and without exception to a higher and more exacting standard of care. Since SBI accepts deposits from the general public, such a policy may be warranted in public interest.

(xi) That it is not as if SBI is seeking a bank guarantee from valuers which may be encashed on a unilateral assessment of loss made by SBI which would have an immediate financial impact on a valuer. SBI cannot make any instant recovery based on an indemnity clause of this nature. SBI would, by relying on the indemnity, have to prove its case in a civil court to make any recovery including by having to prove in

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<sup>10</sup> (2012) 9 SCC 512.

accordance with law breach of the indemnity and the quantum of loss suffered. The only advantage it may have by such a clause is that it defines and widens the liability of the valuer.

(xii) That any valuer has a choice not to be empaneled with SBI if it does not agree to be bound by the indemnity in question. There is no fundamental right to do business with the State as has been held by the Supreme Court in *Michigan Rubber (India) Limited* (supra).

## **VII. SUBMISSIONS OF THE PETITIONER IN REJOINDER**

18. In Rejoinder, the learned Advocate for the Petitioner sought to distinguish the judgments relied upon by the Amicus Curiae by stating that those pertained to tender matters and this is not a tender matter and therefore the principles laid down in those judgments do not apply to the challenge to the indemnity provision. He reiterated that the indemnity is very widely worded and is therefore unreasonable and that even the Supreme Court judgment that the Amicus Curiae relied upon in the case of Central Bank of India (supra) does not say that professionals can be liable for any mistake. Lastly, it was submitted that the policy of SBI has not even been framed by experts and that there is no material to indicate the basis on which the policy was framed.

## **VIII. FINDINGS AND REASONS**

19. The Petitioners' submission that the Impugned Conditions are discriminatory

is premised on the ground that dissimilar treatment is meted out to valuers on the one hand and lawyers and accountants of SBI on the other. We find no merit in this comparison and are of the view that the nature of services provided by a valuer are distinct and unique. The process of valuation requires physical investigation and adherence to a process which is not an exact science, but is based on scientific enquiry. This requires taking searches with local registrars, inspecting plant and machinery, making inquiries as regards *de facto* possession etc. The exercise of valuation of an asset that is offered as collateral has a more direct connection to the decision of grant of loan and banking facility than any other professional service rendered to a bank. It is a function that is entirely outsourced, unlike legal and accounting services, where a bank would most likely have in-house employees that can guide it in these matters as well as take assistance of outside professionals. The very fact that the RBI directed banks to frame policies in respect of valuation is in itself an indication that the relationship between banks and the valuers it engages is important to the commercial functioning of a bank and that valuers as a class of persons providing services to banks and financial institutions cannot claim parity with other professionals that banks may need to engage like lawyers and accountants.

20. As correctly submitted by the learned Amicus Curiae, it may well be that in future the SBI or other banks feel the need to lay down more well-defined policies in relation to their dealings with other professionals also. The determination of policies



that form the basis as to how the SBI wants to contract with persons / professionals it engages for availing their services need not come into existence all at the same time.

21. For the above reasons, we are of the view that there is an intelligible differentia between valuers on the one hand and the other classes of professionals such as lawyers and accountants, on the other hand. We therefore find that there is no discrimination simply because the Impugned Conditions apply only to the SBI's dealings with valuers and not to advocates and accountants who are engaged by SBI.

### **AGE LIMIT**

22. SBI has, in its Affidavit in Reply, given some basis or rationale for fixing an upper age limit for persons who want to be empaneled or for continuing in empanelment with SBI as valuers. The reasons for doing so are even otherwise apparent when one appreciates the nature of the task/function that a valuer is expected to carry out, which would include physical inspection of the property in question and sometimes of plant machinery and inventory, which may be located in some remote place. We are therefore, of the view that it is within SBI's decision making authority as a bank to arrive at a conclusion after taking into consideration all the relevant factors, that the function of a valuer may be affected with an increase in age. Even employees of SBI retire from service or employment at a particular age. Thus, we find nothing arbitrary in fixing an upper age limit for empanelment or remaining empaneled with SBI as a valuer.

23. The fixation of such an upper age limit again does not become bad in law or arbitrary only because one of the several banks have provided for it. These decisions are to be taken by banks as part of the discretion they exercise in such matters of policy making, provided there is some basis or reason for it and the decision is not one which is manifestly arbitrary or capricious or whimsical. The mere fact that there is no uniformity amongst banks qua fixing an upper age limit for empanelment of valuers does not mean that SBI's decision to fix the upper limit of 70 years in this regard is in violation of Article 14 of the Constitution. As noted above, there is a reason or a basis for fixing of such upper age limit in relation to valuers.

24. The next question which arises with regard to this challenge is whether the determination of 70 years of age as the upper age limit is an arbitrary decision of SBI? We are of the view that there is nothing arbitrary in fixing the upper age limit as 70 years. Our view is fortified by the decisions of the Hon'ble Supreme Court, which are referred to herein below.

25. In the case of *Ami Lal Bhat (Dr)* (supra) the Hon'ble Supreme Court considered a challenge to a cut-off date fixed by the rule making authority for determining the maximum age of a candidate who is to be considered for direct recruitment to a service under the state. The Supreme Court noted the position in law as follows :

*“5..... the fixing of a cut-off date for determining the*

*maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in Union of India v. Parameswaran Match Works [(1975) 1 SCC 305 : AIR 1974 SC 2349] and has been reiterated in subsequent cases.....”*

26. In the case of *Govt. of A.P. v. N. Subbarayudu* (supra), the Hon’ble Supreme Court set aside the judgment of the Division Bench of the High Court of Andhra Pradesh which held that a particular cut-off date, from which the petitioners before the High Court were entitled to payment of pension, was arbitrary. Noting the change of law with respect to the scope of judicial review of cut-off dates, the Hon’ble Supreme Court held as follows :

*“5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view*

*the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal [(2005) 6 SCC 754 : 2005 SCC (L&S) 910].)*

*6. No doubt in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal [(2005) 6 SCC 754 : 2005 SCC (L&S) 910].*

*7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.*

*8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the*

*counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Bihar v. Ramjee Prasad [(1990) 3 SCC 368 : 1991 SCC (L&S) 51], Union of India v. Sudhir Kumar Jaiswal [(1994) 4 SCC 212 : 1994 SCC (L&S) 925 : (1994) 27 ATC 561] (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. [(2004) 2 SCC 76 : 2004 SCC (L&S) 337] (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary [(1996) 10 SCC 536 : 1996 SCC (L&S) 1431], etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.*

*9. As has been held by this Court in Aravali Golf Club v. Chander Hass [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289 : JT (2008) 3 SC 221] and in Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720 : (2008) 2 JT 639 : (2008) 3 Scale 45] the court must maintain judicial restraint in matters relating to the legislative or executive domain.”*

27. A perusal of the aforesaid judgments indicates that in order to challenge a minimum or maximum age limit, the Petitioner must show that the decision is totally capricious or whimsical. It must be, on the face of it, blatantly discriminatory and

arbitrary.

28. In our view, there is nothing patently arbitrary about a maximum age limit of 70 years. Most services under the central or state governments prescribe a retirement age between 60 - 65 years. It is not the Petitioners' case that the maximum age limit for valuers is less than the retirement age of SBI's employees. Infact, even if it were so, that would not ipso facto make the age limit unreasonable. The Hon'ble Supreme Court has held specifically in the context of age limits that there can be no mathematical precision in such decisions. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the limit and some persons who will fall on the wrong side of the limit. However, the Impugned Condition with respect to age is not one which is so wide off the mark that makes it unreasonable or arbitrary. We therefore find no merit in the challenge to the Impugned Condition fixing an upper age limit of 70 years for empanelment or continuing in empanelment as a valuer with SBI.

### **INDEMNITY**

29. As has been submitted, the question that arises for consideration in respect of this part of the challenge may be stated as follows :

*“Whether the inclusion of such an indemnity clause as a term of contract to engage the services of a valuer, the starting point of which is the empanelment itself, is so arbitrary that the term itself violates Article 14 of the Constitution?”*

30. In our view, in determining the criteria for empanelment of valuers and in stipulating the contractual terms and conditions that will govern the relationship between SBI and the empaneled valuers to whom an assignment or mandate is given, SBI is acting within the realm of a contract to carry out its commercial and business activities.

31. In considering the challenge under Article 14 to the indemnity clause and indemnity letter, it must be reiterated that it is nothing but a contractual term between SBI and a service provider that it wants to empanel viz. a valuation professional. Instead of negotiating this stipulation on a case to case basis, SBI is prescribing this condition in its policy of empanelment. In order to determine whether such a contractual stipulation is liable to be struck down, this Court must arrive at a finding that the inclusion of such an indemnity clause as a term of contract to engage the services of a valuer, is so arbitrary that the term itself violates Article 14 of the Constitution.

32. It is well settled that even in contractual matters, an instrumentality of the State or an entity such as SBI cannot act arbitrarily or capriciously, unfettered by the requirements of Article 14. It cannot claim to be governed purely by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. In contractual matters, an instrumentality of the State does not enjoy the same freedom to contract as a private person. These

principles are clearly stated in the Judgments of the Hon'ble Supreme Court in the cases of *Dwarkanadas Marfatia & Sons (supra)*; *Shrilekha Vidyarthi (Kumari) (supra)*; *Vijay Kumar Gupta (supra)*; and *KSL & Industries Ltd. (supra)*.

33. However, it is equally well settled that in commercial matters, there is a certain amount of deference or play in the joints to be given to executive discretion in negotiating a commercial contract or when acting in the sphere of contracts.

34. To appreciate the scope of judicial review in such matters it would be relevant to refer to the decision of the Hon'ble Supreme Court in *Directorate of Education & Ors. (supra)*. In that case the Directorate of Education, Government of National Capital Territory of Delhi, took a decision to establish computer labs in the National Capital Territory area in all government schools by the year 2003 in collaboration with the private sector. Initially, for 2000-2001, tenders were issued which specified that interested firms must have a turnover of Rs. 2 Crores. Since the lowest tenderer was not in a position to carry out the project in 115 schools, the contract was divided amongst four parties. In the year 2001-02 the turnover clause was amended, instead of Rs. 2 crores a turnover of Rs. 5 crores was prescribed. Because of the several representations filed, the tender was cancelled, and fresh tenders were invited from the firms having a turnover of Rs. 2 crores or above. The lowest tenderer was again not in a position to take up the entire project. Thus, the contract had to be distributed amongst eight parties. For the final phase of 2002-03 the tenders were called for all the



748 schools. The cost of project was approximately Rs. 100 crores. Because of the difficulty faced in the earlier years that the lowest tenderers were not able to implement the entire project, the Government took a policy decision to deal with one company having financial capacity to take up such a project instead of dealing with a number of small companies which were unable to take up the entire project individually. Accordingly, the Government took a decision to invite tenders from firms having a turnover of Rs. 20 crores or more. This condition was challenged. A Division Bench of the Delhi High Court allowed the Petition.

35. The Supreme Court set aside the judgment of the Delhi High Court and held as follows :

*“9. It is well settled now that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in Tata Cellular v. Union of India [(1994) 6 SCC 651] . After examining the entire case-law the following principles have been deduced: (SCC pp. 687-88, para 94)*

*“94. The principles deducible from the above are:*

*(1) The modern trend points to judicial restraint in*

*administrative action.*

*(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

*(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

*(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

*(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

*(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*

10. *In Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617] this Court observed: (SCC p. 623, para 7)

*“The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness.”*

36. In *Michigan Rubber (India) Limited* (supra), Karnataka State Road Transport Corporation (KSRTC) floated a tender for supply of tyres, tubes and flaps specifying

certain pre-qualification criteria which was challenged by the petitioner (appellant before the Hon'ble Supreme Court). The impugned pre-qualification criteria provided that only the tyre manufacturers who have supplied a minimum average of 5000 sets of tyres, tubes and flaps set per annum, in the preceding three years to any one of the OE chassis manufacturer i.e. Ashok Leyland, Tata Motors, Eicher, Swaraj Mazda and Volvo are eligible to participate, for supply of respective size/type of tyres, tubes and flaps set. Additionally, the firm should have minimum average annual turnover of Rs 500 crores in the preceding three years from the sale of tyres, tubes and flaps.

37. The Karnataka High Court dismissed the petition. The Supreme Court confirmed the decision of the Karnataka High Court and held as follows :

*“21. In Jagdish Mandal v. State of Orissa [(2007) 14 SCC 517] the following conclusion is relevant: (SCC pp. 531-32, para 22)*

*“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made ‘lawfully’ and not to check whether choice or decision is ‘sound’. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is*

*bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*

*(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; OR*

*Whether the process adopted or decision made is so arbitrary and irrational that the court can say: ‘the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached’;*

*(ii) Whether public interest is affected.*

*If the answers are in the negative, there should be no interference under Article 226.....”*

*23. From the above decisions, the following principles emerge:*

- (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*
- (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*
- (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;*
- (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*
- (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”*

38. Keeping these principles in mind, we have to consider the challenge to the Impugned Condition relating to the indemnity clause. SBI states that the rationale for seeking an indemnity is its experience of suffering because of incorrect and deliberately inflated valuation reports. SBI has given some examples in its Affidavit in Reply of instances where it claims to have suffered loss and prejudice because of certain valuations of property that ultimately proved to be grossly inaccurate. We are making it clear that we should not be understood as expressing any opinion on the specific grievance that SBI may have with the valuers named in the Affidavit in Reply. These are stated as examples to justify the inclusion of the Impugned Condition relating to the indemnity clause.

39. In view of the importance of valuation qua the business of banking and lending, we are of the opinion that it cannot be said that the objective of including an indemnity clause in its terms of empanelment is arbitrary or unreasonable and without any purpose whatsoever. Looking to the nature and purpose of this contractual stipulation, it would be within the discretion of SBI in matters of contract to insist on its inclusion as it wants to uniformly hold valuers to a higher and more exacting standard. SBI is entitled to seek inclusion of the indemnity clause in its terms of empanelment and terms of contract with valuers. We also find that SBI is entitled to add such terms to its Agreements with valuers in the larger public interest given the nature of decisions that SBI will make based on such valuations given by the valuers.

40. It is also important to note that SBI is not seeking a bond or bank guarantee which can immediately and unilaterally be encashed against its empaneled valuers. Even if SBI seeks to rely upon and invoke the indemnity against a valuer, it will have to initiate appropriate legal proceedings before a Court and SBI would have to establish breach of the indemnity and consequent loss by following due process of law. At the same time, the indemnity clause does hold the valuer to a higher standard of care and secure SBI's interest by way of express contract rather than SBI having to base any action only on a tortious or civil action of professional negligence or fraud. As we have observed above, this exercise of discretion in important commercial or contractual matters cannot at all be termed an arbitrary exercise of power by SBI.

41. Every valuer has a choice not to be empaneled with SBI if it does not agree to be bound by the indemnity clause in question. SBI does not have a monopoly in issuing valuation mandates even though it's business may account for a significant share of valuations carried out by valuation professionals.

42. As regards the submissions made in Rejoinder as noted above, we find that merely because the judgments of the Supreme Court noted above were in relation to tender matters, it can be no ground to disregard them or to ignore the principles laid down in those judgments. Although the empanelment of valuers is not strictly speaking a tender process, it is nevertheless a process by which valuers make application for empanelment to then be eligible to render services when appointed



from the list of empaneled valuers. Their eligibility for empanelment is considered and based on their scores they are eligible for certain types of assignments. This process is the basis of a contract between SBI and the valuer and thus the principles laid down in the context of tender matters, that also result in a contract once a particular tenderer is selected, would certainly be relevant to the present situation. In any view of the matter, the principles laid down in those judgment also pertain to the scope of judicial review under Article 14 of the Constitution to administrative actions in the sphere of contractual matters and those principles would clearly apply to the present case. Thus, there is no merit in the attempt to distinguish the judgments noted above.

43. We also find that there is no merit in the submission that the policy, containing the impugned conditions, is not framed by experts and therefore liable to be quashed. The policy of SBI indicates that it is framed by the Stressed Assets Resolution Group. This group of persons may not be outside experts but by the very nature of the function that they discharge are experienced in the business operations of the bank in relation to grant of loans and putting policies in place in relation to Non Performing Assets and matters related thereto such as valuation of securities to facilitate recoveries in the event that a loan or facility becomes a Non Performing Assets. Further, even if a policy is not prepared by “experts”, that by itself can not be a ground to challenge the policy in question. Thus we find no merit in this submission either.

44. We have also noted that the SBI has, in its Affidavit in Reply at Paragraph 12, candidly stated that the indemnity will be invoked rarely and is intended for cases where it suffers huge losses on account of an erroneous or fraudulent valuation report. We expect SBI to abide by its own understanding of when it will seek to invoke the indemnity condition against valuers as it has explained in Paragraph 12 of the Affidavit in Reply. If the invocation of the indemnity in a given case is unreasonable or arbitrary, it is that action that may separately be assailed by the affected valuer, which is entirely distinct from assailing the Impugned Condition of indemnity as generally provided for. It is well settled that the possibility of abuse does not by itself render state action, or in this case the stipulation, as unconstitutional.

45. For the reasons stated above, the present Petition is dismissed. There shall, however, be no order as to costs.

46. Before parting with this judgment, we would like to record our appreciation for the able assistance rendered by Mr. Sharan Jagtiani, Senior Advocate, as Amicus Curiae in the matter, along with his colleagues Ms. Shweta Sangtani and Mr. Priyank Kapadia.

**( R.I. CHAGLA, J. )**

**( S.J. KATHAWALLA, J. )**

IN THE SUPREME COURT OF INDIA  
 [UNDER ORDER XXI RULE 3(1)(A)]  
 CIVIL APPELLATE JURISDICTION  
 SPECIAL LEAVE PETITION  
 (Under Article 136 OF THE CONSTITUTION OF INDIA)  
 SPECIAL LEAVE PETITION (C) No.            OF 2023  
**(WITH THE PRAYER FOR INTERIM RELIEF)**

**BETWEEN**

**Before High Court    Before this Hon'ble Court**

**IN THE MATTER OF:**

Practicing Valuers Association (India)            Petitioner            Petitioner  
 (Through its Secretary)

A Society registered under the Societies  
 Registration Act, 1860 and also registered  
 under Bombay Public Trust Act, 1950  
 Having its registered Office : C/o  
 Best Mulayankan Consultants Ltd.,  
 1<sup>st</sup> Floor, Aditya Building, OPP. Flyover  
 Apartment, Junction of N.S. Phadke Marg,  
 Andheri (E ), Mumbai – 400 069

**VERSUS**

- |  |                          |   |
|--|--------------------------|---|
| <p><b>1. State Bank of India.</b><br/>         Banking Corporation established under<br/>         State Bank of India Act, 1955<br/>         Having its Regional Head Office at:<br/>         Corporate Centre, Madam Cama Road,<br/>         Nariman Point Mumbai – 400 021</p> | <p>Respondent No. 1.</p> | <p>Respondent No.1<br/> <b>CONTESTING</b></p> |
| <p><b>2. Shri Rajnish Kumar,</b><br/>         Chairman of State Bank of India.<br/>         Having its Corporate Office at<br/>         Nariman Point, Cama Road,<br/>         Mumbai 400 021</p>  | <p>Respondent No.2.</p>  | <p>Respondent No.2<br/> <b>CONTESTING</b></p> |

- |  |                         |                                      |
|--|-------------------------|--------------------------------------|
| <p>3. Ashok Vishnu Kelkar<br/>(Ex-president of the Petitioner)<br/>Occupation – Chartered Accountant<br/>and Practicing Valuers<br/>Residing at 207C, Bhakti Residency<br/>Dr. Ambedkar Road, Matunga<br/>Mumbai – 400019</p>                | <p>Petitioner No. 2</p> | <p>Respondent No. 3<br/>PROFORMA</p> |
| <p>4. Sujit Shrikant Joglekar<br/>(Ex-Honorary Secretary of the Petitioner)<br/>Occupation – Engineer and Practicing Valuer<br/>Residing at 1<sup>st</sup> Floor, Aditya Building<br/>N.S. Phdke Marg, Andheri East<br/>Mumbai – 400 069</p> | <p>Petitioner No. 3</p> | <p>Respondent No. 4<br/>PROFORMA</p> |

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE NAMED;

**MOST RESPECTFULLY SHEWETH:**

1. That the present Special Leave Petition under Article 136 of the Constitution of India is against the impugned final Judgment/Order dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WP-LD-VC-NO. 188 OF 2020 titled as Practicing Valuers Association (India) & Ors. Vs. State Bank of India & Anr. thereby dismissing the Writ Petition of the Petitioner. The Hon'ble High Court has rejected the Writ Petition of the petitioner by upholding the constitutional validity of the impugned two conditions of E-Circular No. CCO/CPD-ADV/492019-20 of dated 03.07.2019 in the most casual and arbitrary manner and without considering the fact that several Writ Petitions were filed before the various High Court of the country on the

same issue and orders of stay on the operation of impugned Circular were passed by the various High Courts.

- 1A. That the respondent No. 3 and 4 are the Ex-President and Ex-Honorary Secretary of the petitioner society and they have been made proforma party in the present Special Leave Petition as they were the Petitioner No.2 and Petitioner No.3 in the subject Writ Petition before the Hon'ble High Court. Further, the petitioner had made Shri Rajnish Kumar, then Chairman of the Respondent No. 1, as the Respondent No.2 but now he is retired from the post and therefore, he was not made party in the present petition.

**2. Questions of law:**

The following substantial questions of law of general public importance have been raised in the present special leave petition, namely;

- a) Whether the Hon'ble High Court is correct in passing the impugned judgement thereby upholding the "Policy on Valuation & Empanelment of Valuers" issued by the Respondent No. 1 vide e-circular No. CCO/CPD-ADV/492019-20 of dated 03.07.2019 which is arbitrary, discriminatory and in violation of fundamental right of the members of the petitioner guaranteed under Article 14 of the Constitution of India?
- b) Whether the impugned Judgment of the Hon'ble High Court is not tantamount to denial of the fundamental rights of equality of the members of the petitioner amongst the similarly placed other professionals?
- c) Whether the impugned judgement of the Hon'ble High Court is not bad in the eyes of law for upholding the policy of the respondent No. 1 which is usurping the right of livelihood of the members of petitioners merely based

on their age and denying their rights enshrined in Article 21 of the Constitution of India?

- d) Whether the Hon'ble High Court is correct in passing the impugned order and dismissing the Writ Petition of the petitioner without assigning any rationale on the issue whether the fixing the upper age limit of the members of the petitioner amounts to depriving them of seeking employment with the country's largest government bank when they are at their good health at the age of 70?
- e) Whether the Hon'ble High Court has not committed an error in not appreciating that the right to livelihood is an integral facet of the right to life and by formulating the impugned policy the respondent No.1 has deprived the members of the petitioner of their fundamental right to seek employment at any age guaranteed to them by Article 21 of the Constitution of India?
- f) Whether the Hon'ble High has not committed an error in passing the impugned order by comparing the highly qualified professionals, who are either a qualified engineer or architect or both, with not similarly placed persons particularly the employees of the bank?
- g) Whether the Hon'ble High Court has not committed an error in passing the impugned judgment by losing sight from the basic principal of law that prescribes equality amongst equals and not amongst unequal?
- h) Whether the impugned order passed by the Hon'ble High Court will not have an adverse impact on the cases pending before the various jurisdictional High Court?

- i) Whether the imposition of condition requiring the members of the petitioner, who are the registered valuers, to furnish an indemnity bond is not contrary to the provisions of Section 23 of the Contract Act, 1872 for being unethical, unreasonable, and contrary to the public policy?
- j) Whether the conditions of barring the professional like registered valuers from discharging their duty at the age of 70 years and compelling them to furnish an indemnity bond with blanket conditions to indemnify the losses of the bank at any point of time are not arbitrary and illegal and framed in complete derogation of the settled constitutional mandate?
- k) Whether the condition of barring the members of the petitioner from practicing as a valuer with the respondent No.1, which is the largest public sector bank and financial service statutory body, after the age of 70 years by completing keeping aside their experience, qualification and period of service in banking sector is not illegal and arbitrary?
- l) Whether the Hon'ble High Court has not committed an error in not appreciating the legal position that the condition of furnishing indemnity bond in the letter of offer for empanelment is in violation of Section 34AB of the Wealth Tax Act, 1957, Rule 8A of Wealth Tax Act, 1957, Section 247 of the Companies Act, 2013 and Rule 3 of the Companies (Registered Valuers and Valuation) Rules 2017 which do not contain any such condition?
- m) Whether the Hon'ble High Court has not committed an error in not appreciating that the condition of furnishing indemnity bond in the letter of

offer for empanelment by the valuers is not in violation of Article 14, 19(1)(g) and 21 of the Constitution of India?

- n) Whether the Hon'ble High Court has not failed to appreciate that the imposition of the condition of requiring the member of the petitioner to furnish indemnity bond to the Respondent No.1 as a prerequisite condition for being empaneled with it amounted to create unnecessary hardship and pressure to them which may adversely affect their quality to value the property/asset offered as a security to the bank in a free and fair manner?
- o) Whether the above mentioned two impugned conditions prescribed in the "Policy on Valuation & Empanelment of Valuers" is not unethical, arbitrary, and unlawful which deserve to be set aside or quashed by the Hon'ble High Court?
- p) Whether the Hon'ble High Court has not erred in appreciating that the empanelment of a valuer with the bank does not give guarantee to him of getting assignment from it and the bank is always having choice to assign different work to different valuers depending upon the required physical and mental ability to complete the work of valuation?
- q) Whether the Hon'ble High Court has not erred in not appreciating that all the other nationalized and private bank has not prescribed these two unreasonable criteria for empanelment of valuers in their bank and only the respondent no.1 has introduced such conditions without assigning any justification?



3. **Declaration in terms of Rule 3(2):-**

The Petitioner states that no other petition seeking leave to appeal has been filed by it against the impugned Final Judgment/Order dated 18.08.2020 passed by the Hon'ble High Court of Judicature of Bombay in OS-WP-LD-VC-NO. 188 OF 2020 titled as Practicing Valuers Association (India) & Ors. Vs. State Bank of India & Anr.

4. **Declaration in terms of Rule 5:**

That the **Annexure P-1 to P-16** produced along with the Special Leave petition are the true copies of their originals which formed part of the records of the case in the Court below against whose order, the leave to appeal is sought for in this petition.

5. **GROUND:**

That the petitioner being aggrieved and dissatisfied by the impugned Judgement/Order dated 18.08.2020 in OS-WP-LD-VC-NO. 188 OF 2020 passed by the Hon'ble High Court of Judicature at Bombay has preferred the instant Special Leave Petition on following amongst the several grounds;

- i. Because the Hon'ble High Court has miserably failed to appreciate while passing the impugned judgement thereby upholding the impugned conditions of the "Policy on Valuation & Empanelment of Valuers" issued by the Respondent No. 1 vide e-circular No. CCO/CPD-ADV/492019-20 of dated 03.07.2019 that those conditions are arbitrary, discriminatory and framed in violation to fundamental rights guaranteed under Article 14 of the Constitution of India.
- ii. Because the impugned Judgment of the Hon'ble High Court amounts to denial of the fundamental rights of equality of the members of the petitioner and cause discrimination amongst similarly placed professionals.

- iii. Because the impugned judgement of the Hon'ble High Court is bad in the eyes of law for upholding the policy of the respondent No. 1 which is usurping the right of livelihood of the members of petitioner merely on the basis of their age and denying their rights enshrined in Article 21 of the Constitution of India.
- iv. Because the Hon'ble High Court has committed a grave error in passing the impugned order and dismissing the Writ Petition of the petitioner without assigning any rationale on the issue that the fixing the upper age limit of the members of the petitioner amounts to depriving them to seek employment when they are in their good health even at the age of 70 and willing to work for their dignity and as per their ability.
- v. Because the Hon'ble High Court has committed an error in not appreciating that the right to livelihood is an integral facet of the right to life and by formulating the impugned policy the respondent No.1 has deprived the members of the petitioner of their fundamental right to seek employment at any age to lead a dignified life guaranteed to them by Article 21 of the Constitution of India.
- vi. Because the Hon'ble High has committed a grave error in passing the impugned order by comparing the highly qualified professionals, who are either a qualified engineers or architects or both, with not similarly placed persons particularly the employees of the bank.
- vii. Because the Hon'ble High Court has committed an error in passing the impugned judgment by completely losing its sight from the basic

principle of law that prescribes equality amongst equals and not amongst unequal.

- viii. Because the impugned order passed by the Hon'ble High Court has failed to appreciate that the impugned order shall have an adverse impact on the cases pending before the various jurisdictional High Courts of the Country.
- ix. Because the imposition of condition requiring the members of the petitioner, who are the registered valuers, to furnish an indemnity bond is contrary to the provisions of Section 23 of the Contract Act, 1872 for being unethical, unreasonable, and contrary to the public policy.
- x. Because the conditions of barring the professional like registered valuers from discharging their duty at the age of 70 years and compelling them to furnish an indemnity bond with blanket conditions to indemnify the losses of the bank at any point of time are arbitrary and illegal and framed by the respondent No.1 in complete derogation of the settled constitutional mandate.
- xi. Because the condition of barring the members of the petitioner from practicing as a valuer with the respondent No.1, which is a largest public sector bank and financial services statutory body, after the age of 70 years ignoring their experience, eligibility and period of service in banking sector is illegal, unethical and arbitrary.
- xii. Because the Hon'ble High Court has committed an error in not appreciating the legal position that the condition of furnishing indemnity

bond in the letter of offer for empanelment is in violation of Section 34AB of the Wealth Tax Act, 1957, Rule 8A of Wealth Tax Act, 1957, Section 247 of the Companies Act, 2013 and Rule 3 of the Companies (Registered Valuers and Valuation) Rules 2017 which do not contain any such condition.

- xiii. Because the Hon'ble High Court has committed a serious error in not appreciating that the imposing condition of furnishing indemnity bond in the letter of offer for empanelment by the valuers is the complete violation of the Article 14, 19(1)(g) and 21 of the Constitution of India.
- xiv. Because the Hon'ble High Court has miserably failed to appreciate that the imposition of the condition of requiring the members of the petitioner to furnish indemnity bond to the Respondent No.1 as a prerequisite condition for being empaneled with it amounts to create an unnecessary hardship and pressure to them which may adversely affect their quality to value the property/asset offered as a security to the bank in a free and fair manner.
- xv. Because the two impugned conditions prescribed in the "Policy on Valuation & Empanelment of Valuers" of the respondent No.1 are unethical, arbitrary and unlawful which deserved to be set aside or quashed by the Hon'ble High Court.
- xvi. Because the Hon'ble High Court has erred in appreciating that the empanelment of a valuer with the bank does not give guarantee to him of getting assignment from it and the bank is always having its choice to

assign different work to different valuers depending upon the required physical and mental ability to complete the work in hand.

xvii. Because the Hon'ble High Court has erred in not appreciating that all the other nationalized and private bank has not prescribed these two unreasonable criteria for empanelment of valuers in their bank and only the respondent no.1 has introduced such conditions without assigning any justification for the same.

**6. Grounds for interim relief:**

- (a) Because the Petitioner has a prima facie good case in its favour as disclosed in the foregoing paragraphs and the Petitioner would suffer irreparable loss and injury if the operation of the impugned final judgment and order dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WP-LD-VC-NO. 188 OF 2020 is not stayed.
- (b) That the impugned Circular dated 03.07.2019 titled as "Policy and Valuation and Empanelment of Valuers" are against the settled principal of law and the same is discriminatory amongst the professionals, arbitrary and unreasonable and causing adverse impact to all the practicing valuers of the State of Maharashtra.
- (c) Because the balance of convenience is in favour of the petitioner, and it has a prima facie case in favour of its members. Further, there are stay on the operation of the impugned Circular dated 03.07.2019 in almost all the other states of the Country vide orders of their respective High Courts and therefore, the petitioner should not be treated differently on account of the impugned Order/Judgement dated 18.08.2020.

**7. Main Prayer:**

It is, therefore, most respectfully prayed that this Hon'ble Court may be graciously pleased to:

- (a) Grant the Special Leave to Appeal against the impugned Judgment and Order dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WP-LD-VC-NO. 188 OF 2020.
- (b) pass such other or further order or orders in favour of the petitioner as this Hon'ble Court may deem fit and proper in facts and circumstance of the present case.

8. **Prayer for interim relief:**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) Grant ad interim ex-parte stay on the operation of the E-Circular No. CCO/CPD-ADV/4922019-20 of dated 03.07.2020 issued by the Respondent No. 1 titled as "Policy on Valuation and Empanelment of Valuers".
- (b) Pass such further order or orders in favour of the petitioner as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER HEREIN SHALL DUTY BOUND EVER PRAY.

DRAWN BY

Ravi Ranjan

Advocate

Filed on: 24.08.2023

FILED BY



(V. ELANCHEZHIAN)

Advocate for Petitioner

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2023  
**IN THE MATTER OF:**

Practicing Valuers Association (India) .....PETITIONER

VERSUS

State Bank of India & Ors. ....RESPONDENTS

**CERTIFICATE**

Certified that the Special Leave Petition is confined only to the pleadings before the court/ Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instructions given by the petitioner/person authorized by the petitioners whose Affidavit is filed in support of the S.L.P.

FILED BY



(V ELANCHEZHIAN)

Advocate for the Petitioner

Place: New Delhi

Filed on: 24.08.2023

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2023

IN THE MATTER OF;

Practising Valuers Association (India) ..... Petitioner

VERSUS

State Bank of India & Ors. .... Respondents

AFFIDAVIT

I, Mahesh Mistry, S/o Purshottamdas S. Mistry, R/o - 03, Mansi Vihar Co-operative Society, Next to Akshay Restaurant, ST Depot Road, Nallasopara West, Tal- Vasal, Dist. – Palghar, India presently at new Delhi aged about 59 years do hereby solemnly affirm and state as below;

1. That I am the Secretary of the Petitioner Society and being duly authorized by the Society and conversant with the facts and circumstances of the present case I am competent to swear the present affidavit.
2. That the accompanying Special Leave Petition (Civil) has been drafted by my counsel under my instructions and the contents of the list of dates, (Page B-P) SLP Page (44-58) and accompanying application/s have been read over to me in vernacular and as such the same are true and correct to my knowledge and nothing material has been concealed therefrom.
3. That the Annexures are true copies of its respective originals.



PRACTISING VALUERS ASSOCIATION (INDIA) DEPONENT

  
Authorised Signatory



VERIFICATION

25 AUG 2023

I, the abovenamed deponent, do hereby verify at New Delhi on this \_\_\_ day of July, 2023 that the contents of the above affidavit are true and correct to the best of my knowledge and believed to be true and nothing material has been concealed there from.

DEPONENT


IDENTIFIED

PRACTISING VALUERS ASSOCIATION (INDIA)

  
Authorised Signatory



ATTESTED

  
NOTARY PUBLIC, DELHI  
GOVT. OF INDIA

25 AUG 2023

**ANNEXURE P-1**

**ENGLISH TRANSLATION**

Special A.A/M.S.W./50 M  
No.

**CERTIFICATE OF REGISTRATION  
SOCIETY REGISTRATION ACT, 1860  
(SECTION 21 OF ACT OF 1860)**

Registration No.                      State of Maharashtra,  
Mumbai 1115 of 1998 BBB & A

This is to certify that Praticing Valuers Association (India) has been registered under Society Registration Act, 1860 (Section 21 of Act of 1860).

Signed and delivered by me on this 17<sup>th</sup> September, 1998.

Sd/-

17/9/98  
Assistant Registrar Societies.

Mumbai Region

Seal

**ANNEXURE P-2****ENGLISH TRANSLATION**

SPL/ D.A./M.S.W./2M.

**CERTIFICATE OF REGISTRATION**

This is to certify that the below described Public Trust has been properly registered today under Bombay Public Trust Act, 1950 (Section 29 of Bombay Public Trust Act, 1950) in the registration office of Public Trust, Greater Mumbai Region, Mumbai.

The Name of Public Trust Practicing Valuers Association (India).

The number in Registration Book of Public Trust Office F-20766 (Mumbai)

Certificate issued to Shri. Shrikant V. Joglekar.

Signed and delivered by me on this 6-1-1999.

Sd/-

Seal

6/1/99

Charity Commissioner,  
Greater Mumbai Region  
Maharashtra State

**Assistant Charity Commissioner**  
**Mumbai Region**  
**Mumbai**

**MINISTRY OF FINANCE**  
**(Department of Financial Services)**

**NOTIFICATION**

New Delhi, the 26th October, 2007

**S.O. 1837(E).** In exercise of the powers conferred by Sub-section (1) and clause (b) of Sub-section (2) of Section 38 read with Sub-sections (4) and (12) of Section 13 of the Sethritisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby makes the following amend-ments further to amend the Security Interest (Enforcement) Rules, 2002. namely :—

1. (1) These rules may be called the Security Interest (Enforcement) Amendment Rules, 2007.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Security Interest (Enforcement) Rules, 2002.
  - (i) in rule 2, for clause (d), the following clause shall be substituted, namely :--  
'(d) "approved valuer" means a person registered as a valuer under Section 34 AB of Wealth Tax Act, 1957 and approved by the Board of Directors or Board of Trustees of the secured creditor, as the case may be';
  - (ii) in rule 8, in sub-rule (2) for the words, brackets and figure "The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers", the words, brackets and figure "The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers", shall be substituted;

- (iii) in rule 9, in sub-rule (7), the following proviso shall be inserted, namely : -  
"Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalization of the sale.";
- (iv) in rule 9, in sub-rule (8) for the word "may" the word "shall" shall be substituted;
- (v) in rule 10, in sub-rule(1), the following proviso shall be inserted, namely:-  
"Provided that the Manager so appointed shall not be a person who is, or has been adjudicated insolvent or has suspended payment or has compounded with his creditors, or who is, or has been convicted by a criminal court of an offence involving moral turpitude."

[F. No. 16/7/2003-B.O.I.]  
AMITABH VERMA, Jt. Secy.

**//TRUE COPY//**

**ANNEXURE P-4**

State Bank of India  
Corporate Centre - Mumbai

*e-Circular*

CREDIT POLICY AND  
PROCEDURES DEPARTMENT.

Sl. No : 383/2008 - 09

Circular No. : CCO/PPD-  
SARFAES/50/2008-09

**Friday, October 03, 2008.**

The Chief General Manager

State Bank of India

All LHOs/SME/CAG/MCG

CPP/DMR/CIR/50

September 30, 2008

Dear Sir

**Securitization & Reconstruction of Financial Assets and  
Enforcement of Security Interest Act-2002 (Sarfaesi Act-  
2002). Review of Panel of Valuers**

Please refer to our Circular No. CPP/DMR/CIR/99 February 8, 2008, enclosing a list of empanelled valuers approved by the ECCB on the 1st February 2008, for valuation of immovable and industrial assets below Rs.5.00 Crores in a manner prescribed by the RBI in terms of their Circular No. DBOD.BP.BC.No. 50/21.04.018/2006-07 dated January 4, 2007.

The definition of approved valuer has since been amended by the Ministry of Finance vide Gazette Notification issued on the 26<sup>th</sup> of October 2007 by way of an amendment to Security

(Enforcement) Rules 2002 under the SARFAESI Act, 2002 as under:

"Approved Valuer" means a person registered as a valuer under Section 34AB of Wealth Tax Act, 1957 and approved by the Board of Directors or Board of Trustees of the Secured Creditor as the case may be"

The amendment in the Act results in preventing any corporate body from being recognized as a registered valuer. A partnership firm can be recognized as registered valuer only if all the partners are registered under the Wealth Tax Act. The Wealth Tax Act also lays down detailed domain qualification for valuers for different classes of assets. Operationally, it may render the task of empanelling valuers for various classes of assets difficult for want of objective qualitative data to prefer one valuer over the others.

In view of the above, ECCB has approved the deletion of all those valuers who are not registered under the Wealth Tax Act, 1957 from the list of valuers circulated vide our circular referred to in Para-1 above. Only those valuers registered under the Wealth tax act 1957 will be allowed to be continued in the list of empanelled valuers. ECCB has further approved that the valuers registered under the Wealth Tax Act 1957, be permitted to value properties irrespective of their value. The existing restriction of

valuation of immovable and industrial assets with a cap of Rs. 5.00 Crores stand abolished.

4. Please take a note of the above and arrange to advise the Operating Offices/ Branches under your control.

Yours faithfully

Sd/-

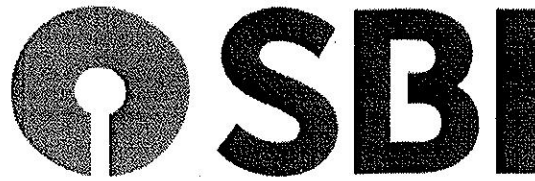
for Managing Director  
and Chief Credit & Risk Officer

Encl.

Ar/Empanelment of valuers only if registered under wealth tax act.

**//TRUE COPY//**





(For Internal Use only)

**POLICY ON  
VALUATION  
&  
EMPANELMENT OF  
VALUERS**

Stressed Assets Resolution Group  
Corporate Centre  
Mumbai – 400021

Issue Date: 03.07.2019

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**POLICY GUIDELINES****(Part-I)****1. Purpose of Valuation and Appointment of Valuers**

Valuers are engaged for:

- the purpose of ascertaining the value of the property / assets etc. offered as security
- the purpose of periodically ascertaining the value of the property that has been mortgaged, whether it is increasing or decreasing over the mortgage period
- for the purpose of realizing the value of non-performing assets (NPAs) and
- the purpose of resumption of properties in cases of default.

**2. Empanelment of valuers**

Following are the guidelines and process for empanelment of valuers

**2.1 Criteria for Empanelment of Valuers**

In order to ascertain the value of properties for any of the above purposes, Bank shall appoint external independent valuers for undertaking valuations. The empanelled valuers shall carry out valuation of different types of assets as under:

- i. Land and Building
- ii. Plant & Machinery
- iii. Securities or Financial Assets/ Stocks in Trade
- iv. Agricultural Land

## 2.2 Eligibility Criteria for valuers

### (a) A person shall be eligible to be empanelled as a Valuer if he-

	Criteria
i.	is a member in good standing of any one of the Valuer Associations viz. Institute of Valuers (IOV), Institution of Estate Managers & Appraisers (IESMA), Practicing Valuers Association (India) (PVAI), The Institute of Company Secretaries of India (ICSI), The Indian Institute of Valuers (IIV), The Institute of Cost Accountants of India (ICMAI), The Institute of Chartered Accountants of India (ICAI), Association of Certified Valuers and Analysts (ACVA), Centre For Valuation Studies, Research and Training Association (CVSRTA), Council of Engineers and Valuers, Divya Jyoti Foundation or any other association registered as RVO with IBBI
ii.	possesses the qualifications and experience as detailed in Annexure-I
iii.	is not a minor
iv.	has not been declared to be of unsound mind
v.	is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt
vi.	is a person resident in India in case of individual
vii.	has not been convicted by any competent court for an offence punishable with imprisonment or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence: <i>Provided</i> 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
viii.	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
ix.	is a fit and proper person: <i>Explanation—</i> For determining whether an individual is a fit and proper person the empanelment authorities may take account of any relevant consideration, including but not limited to the following criteria- a) integrity, reputation and character b) absence of convictions and restraint orders, and c) competence and financial solvency
x.	has a score provided by Credit Information Companies (CICs) viz. CIBIL, Experian, Equifax, CRIF, etc., acceptable to the Bank, as per Bank's guidelines and adverse reports, if any, to be clarified by the applicant valuers to the satisfaction of the Bank

**(b) No Partnership entity or Company shall be eligible to be empanelled as valuer if-**

(i)	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
(ii)	it is undergoing an insolvency resolution or is an undischarged bankrupt
(iii)	all the partners or directors, as the case may be are not ineligible under sub-clauses (ii) to (x) of clause 2.2 (a) above
(iv)	Lead valuers in case of companies and all the partners in case of partnership firms undertaking valuations do not fulfil the criteria of qualification and experience
(v)	none of its partners or directors, as the case may be, fulfills the criteria of qualification and experience in the asset class for the valuation

**(c) Other criteria**

**i) Registration with Insolvency and Bankruptcy Board of India (IBBI):**

for valuation of properties/ assets pertaining to Companies, in terms of Companies (Registered Valuers and Valuation) Rules, 2017, issued as per the MCA notification dated 18.10.2017, a valuer registered as a valuer member with IBBI for relevant class of assets shall be eligible for conducting the valuation. Such valuers shall also be eligible for valuation of properties/ assets pertaining to other than Companies. As regards, all the valuation work related to the Company Assets would be undertaken only by the valuers registered with IBBI w.e.f. 1<sup>st</sup> February, 2019 as notified by the Ministry of Corporate Affairs. If a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31<sup>st</sup> January, 2019, the valuer shall complete such valuation or such part within three months thereafter. Further, to undertake the valuation of Properties/ Assets pertaining to Companies under SARFAESI Act, 2002, the valuer must be registered under Section 34AB of Wealth Tax Act, 1957.

**ii) Valuer under SARFAESI Act, 2002:**

for valuation of properties under SARFAESI Act, 2002 applicant has to be registered under Sec. 34AB of Wealth Tax Act, 1957.

iii) Valuers with educational qualifications of Graduation and above, who are neither registered with IBBI nor registered under section 34AB of Wealth Tax Act, 1957, shall undertake the valuation of properties/ assets for the loans up-to Rs.2.00 Cr. only.

iv) Valuers with Educational Qualifications of Diploma and other than Graduation or Post Graduation in respective fields, shall be eligible for empanelment to

undertake valuation of Properties/Assets for the loans up-to Rs.1.00 Crore only. However, such valuers may conduct valuation of properties/assets under Housing Loans up-to Rs.2.00 Cr.

- v) Completed at least 5 (five) assignments successfully as valuer during immediately preceding 12 months.
- vi) Possess thorough knowledge of extant RBI guidelines as also instructions/ circulars issued by RBI/IBBI/IIBF/IBA or any other statutory authority from time to time in addition to the instructions/ circulars issued by SBI in this regard.

➤ **In view of the above, a valuer shall be eligible to conduct the valuation as hereunder:**

<b>Educational Qualifications of a valuer as per Annexure-I</b>	<b>Type of valuer</b>	<b>Eligibility to conduct valuation of property/asset</b>
Graduation & above	Valuers registered with IBBI	As per category of the valuer
Graduation & above	Valuers registered under section 34AB of Wealth Tax Act, 1957	As per category of the valuer
Graduation and above	who are neither registered with IBBI nor registered under section 34AB of Wealth Tax Act, 1957	Loan amount up-to Rs.2.00 Cr.
Diploma and other than Graduation or Post Graduation	who are neither registered with IBBI nor registered under section 34AB of Wealth Tax Act, 1957	Loan amount up-to Rs.1.00 Cr. However, such valuers may conduct valuation of properties/assets under Housing Loans up-to Rs.2.00 Cr.

### **2.3 Qualifications and Experience**

It is necessary that a valuer possesses proper educational qualifications which make him competent to carry out the task of valuation of securities. In addition, relevant work experience is also important. Educational Qualifications and Work Experience required for persons eligible for empanelment as valuers is detailed in **Annexure –I**.

### **2.4 Membership of Valuers Association**

Valuer shall be a member in good standing of any one of the Valuers Associations viz. Institute of Valuers (IOV), Institution of Estate Managers & Appraisers (IESMA), Practicing Valuers Association (India) (PVAI), The Institute of Company Secretaries of India (ICSI), The Indian Institute of Valuers (IIV), The Institute of

Cost Accountants of India (ICMAI), The Institute of Chartered Accountants of India (ICAI), Association of Certified Valuers and Analysts (ACVA), Centre For Valuation Studies, Research And Training Association (CVSRTA), Council of Engineers and Valuers, Divya Jyoti Foundation or any other association registered as RVO with IBBI and submit a certificate to this effect in the format prescribed in **Annexure-VIII**.

### **2.5 Minimum/ Maximum Age requirement**

Age is an important criteria while empanelling valuers. The minimum age for empanelment with us shall be 25 years and maximum age limit for a valuer to remain on the panel shall be 70 years.

### **2.6 Evaluation Matrix**

Valuers shall be evaluated as per the rating matrix in **Annexure-X** and categorisation of valuers shall be as per the score obtained.

### **2.7 References**

Carrying out a reference check is extremely important in order to verify the competence of a valuer. Valuers need to submit at least 3 reference letters in prescribed format (**Annexure- XI**) and the committees constituted for appointment of valuers need to verify the quality of services provided by the valuer in the previous instances before empanelling the valuers on Bank's panel. The referees shall be either (i) bank managers where previously the valuer had done valuations or (ii) companies for whom the valuer had previously done valuations, other than Wilful defaulters or declared fraud companies. The reference letter shall be on the letter head of the bank/ financial company/ any other company where valuations have been done and shall be duly signed by a senior level manager/ officer.

### **3. Categories of Valuers**

The objective of categorization of valuers is to ensure that whilst lesser value assignments are handled by relatively junior valuers, the senior valuers can handle higher order valuations. Preference should be given to valuers registered with IBBI and valuers under SARFAESI Act, 2002 (valuers registered u/s 34AB of Wealth Tax Act, 1957).



The empanelment of valuers therefore shall be in the following categories:

**i) Valuers under SARFAESI Act, 2002**

Work Experience in Undertaking Valuation	Category of Valuers	Score as per Scoring Matrix	Fair Market Value of Asset/ Security for assignment of Valuation Work
10 years and above	A	=>62	No limit
	B	55-61	Up-to Rs.50.00 Cr.
	C	35-54	Up-to Rs.5.00 Cr.

**ii) Valuers other than under SARFAESI Act, 2002, (including valuers registered with IBBI)**

Work Experience in Undertaking Valuation	Category of Valuers	Score as per Scoring Matrix	Fair Market Value of Asset/ Security for assignment of Valuation Work
10 years and above	A	=>62	No limit
5 years to less than 10 years	B	55-61	Up-to Rs.50.00 Cr.
below 5 years	C	35-54	Up-to Rs.5.00 Cr.

Valuers need to furnish any one of the following as proof of experience.

1. Registration Certificate under Wealth Tax Act, 1957, if applicable
2. Letter of empanelment by any Bank / FI
3. Letter of empanelment by any Court of India
4. Letter of appointment as valuation consultant by Government of India/ any State Government/ any Municipality/ any Municipal Corporation
5. Letter of appointment as valuer employee by Government of India/ any State Government/ any Municipality/ any Municipal Corporation
6. Letter of appointment as a valuer employee by any Limited Company (Public or Private Ltd. Co. engaged in the business of valuation for the last 5 years
7. Letter of appointment as a valuer employee by any LLP/ private limited Company engaged in the business of valuation for the last five years

The Experience of the Valuer shall be calculated from the date of his first empanelment with any Bank / Financial Institution / High Court or registration under Wealth Tax Act, 1957.

#### 4. Valuation of properties under Home Loans

The properties under Home Loans would be valued by following categories of valuers:

Sl. No.	Type of valuer	Value of the Property / Asset	Timeline for submission of valuation report by valuers
1	Valuers registered with IBBI	No limit	Within 2 days from handing over of all necessary documents by operating units
2	Valuers under SARFAESI Act, 2002 (valuers registered u/s 34AB of Wealth Tax Act, 1957)	No limit	
3	Other than valuers above in Sl. No.1 & 2	Loan up-to Rs.2.00 Cr.	

#### 5. Other Conditions

In addition to the above, the other conditions to be fulfilled by the valuers for empanelment are as under:

- The valuer has not been removed/ dismissed from valuation related service (previous employment) earlier.
- The valuer has not been found guilty of misconduct in professional capacity.
- The valuer is not an undischarged insolvent.
- The valuer has not been convicted of an offence connected with any proceeding under the Income Tax Act 1961, Wealth Tax Act 1957 or Gift Tax Act 1958.
- The valuer possesses a PAN Card number/ GST number as applicable
- The valuer has not been convicted of any offence and sentenced to a term of imprisonment.
- CIBIL Score and credit worthiness as per Bank's guidelines and adverse reports, if any, to be clarified by the applicant valuers to the satisfaction of the Bank. At the time of empanelment, the valuer shall give a declaration-cum-undertaking to this effect as prescribed in **Annexure-IV**.

#### 6. Empanelment Procedure

- i) A detailed public notice, would be hosted on Bank's Website, seeking applications from interested applicants for empanelment as Valuers. It shall also be published in two National Newspapers once a year by LHOs. Intending valuers seeking empanelment can submit application round the year to the Bank.
- ii) All such applications should be received in the prescribed format in **Annexure-II** and documents to be obtained as prescribed in **Annexure-III**. The documents list is illustrative and not exhaustive. The Bank may call for such other evidence as

may be considered necessary for verifying the eligibility or competence of the Valuer.

iii) The application format will be made available on the Bank's website.

### **6.1 Scrutiny & Due Diligence**

- i) The Valuers shall submit the application form along with relevant enclosures/ documents etc. to the nearest business units/ branches, etc.
- ii) These business units/ Branches on receipt of the application form from the Valuers, after preliminary scrutiny and due-diligence, shall forward the same with the recommendations, through controlling authority, to committees at respective LHOs falling under that geographical area within 15 days from the date of receipt.
- iii) In addition to the process of evaluation of the applicant for empanelment as Valuers based on the Certificates, Documents, Reference Letters etc., provided by Valuers, the business units/ Branches shall also undertake the following process:
  - o Visit to be made to the office of the Valuers either by the team processing the application or by the branch nearest to the office of the Valuers, as a part of due diligence process. Visit Report duly signed by of branch/ Centre Head to be kept on record.
  - o The quality of services provided by the Valuers in the previous instances needs to be verified.
  - o Processing team should invariably seek opinion letter from the Banks/FIs/NBFCs issuing Experience Certificate/ Reference Letter by sending Registered Letter to the same, requesting for the information within 10 days. Conduct/ performance of Valuers as given in the opinion letter should be at least "Satisfactory". Copy of the Letter issued and the Opinion letter should be kept on record. Business units/ Branches may contact the issuing authority, in case of non-receipt of confirmation in writing within 10 days, record the deliberations and decide appropriately.
  - o Genuineness of PAN Card/Aadhaar card/GSTIN Number should be independently verified from the sites of Government of India. Post verification, all KYC documents need to be signed by Branch Head/Centre Head/Officers of the rank of AGM and above.
  - o In case of R &DB, the scrutiny of the application of the valuer shall be done at the RBO/B&O and if the valuer is found to meet the eligibility criteria for empanelment, the application be forwarded to the respective Local Head Office along with the recommendations of the concerned RBO/B&O for consideration.

- In case of CCG, CAG & SARG, the scrutiny of the application of the valuer shall be done at the branch level and if found suitable, applications should be forwarded to committees at respective LHOs falling under that geographical area through their controllers.
- On receipt of the application at the committees, the applications of the valuers shall undergo a final scrutiny and if found suitable it may be empanelled or recommended to ECCB for approval through SARG. On approval, RBO/B&O, CCG, CAG & SARG branches are to be advised accordingly.

## **6.2 Authority for Empanelment, Review and De-panelment**

In each Circle, a Committee as mentioned below would be constituted that would be authorised to empanel, de-panel and review the performance of the valuers. All the business units/ branches falling in their geographical area viz. Circle, CAG, CCG, SARG, etc. would forward their recommendations to the committee at respective LHO through their controllers. Out of the total applications received by the committees at respective LHOs, those applicants who are

- i) also eligible for empanelment as a Valuers under SARFAESI Act, 2002, or
- ii) falls under 'A' category of valuers with experience of more than 10 years or
- iii) both as above, shall be recommended to ECCB, through SARG, Corporate Centre, for approval in the prescribed format (**annexure- VII**). At SARG, Corporate Centre, a Committee shall be formed consisting members as following:

### **a) Constitution of Committee at SARG, Corporate Centre**

<b>Chairman of committee</b>	<b>Members</b>	<b>Alternate members</b>
GM (Ops-I or GM (Ops-II)	1. DGM (ARC)	1. DGM (OTS, AUCA & Policy)
	2. DGM (Operations)	2. DGM (NCLT)
	3. DGM (SAMB Mumbai-I)	3. DGM (SAMB Mumbai-II)

Quorum: Chairman, any 2 out of 3 members from sl. No.1 to 3, Secretary-AGM/CM (S&R)

The committee shall do the final scrutiny of the proposals and recommend for approval to ECCB.

## b) Constitution of the committee at LHOs

Chairman of the committee	Members		Secretary
	Regular	Alternate	
GM (Network-Any)	1. DGM (CCO)* 2. DGM (SME)* 3. DGM (SAMB) 4. Engineer Posted at Premises & Estate deptt. of respective LHOs	1. DGM (PBU)* 2. DGM (CCG/CAG) 3. DGM (ABU)* 4. Engineers posted at SBI Infrastructure Management Solutions Pvt. Ltd. at respective Circles.	AGM (CPM)

\*Posted at respective LHOs

**Quorum:** Chairman, members- any 2 out of 3 members from sl. No.1 to 3, member from sl. No.4 and Secretary (AGM-CPM)

- i) DGM & CCO would be responsible for updation of List of empanelled valuers at the portal. The portal shall be updated as and when there would be addition or deletion in the list of the valuers, due to empanelment, de-panelment and periodic review of the valuers.
- ii) Once a decision to empanel or otherwise is taken, a letter of empanelment in duplicate or rejection letter shall be sent to the applicant.
- iii) The process of empanelment shall be complete when the respective LHOs receive the following
  - a) Duplicate letter of empanelment (Annexure- XII) along with Terms & Conditions (Annexure-IX) duly accepted and signed by the Valuer(s)
  - b) Declaration-cum- undertaking signed by Valuer(s) (Annexure-IV)
  - c) Model Code of Conduct for Valuers duly signed by valuer(s) (Annexure-V)
  - d) Execution of Agreement between Bank and Valuer (Yet to be specified)
- iv) A centralized list of approved Valuers shall be updated in VMS and hosted on Bank Website and updated periodically.

### 6.3 Duration of Empanelment

- The duration of empanelment shall be for a period of three (3) years (January-December) including the year of empanelment. (e.g. if a valuer is empanelled in the month of June, 2019 his empanelment shall be valid up-to December, 2022).

- However, the performance of the Valuer shall be reviewed annually by the bank. If the performance is found to be not satisfactory, the valuer can be de-panelled at the discretion of the bank.
- In respect of Valuer who has completed 3 years of empanelment and wish to continue, the entity has to approach the bank at least three months before expiry of the term of empanelment.
- For Renewal of Empanelment of the entity, Bank and the empanelled Entity shall follow the same process as applicable to the fresh empanelment.
- If any empanelled Valuer wants to discontinue as a valuer in Bank's panel, it may do so by giving one month's notice.

#### **7. Annual Review of Performance of Valuer**

- The performance of the Valuers engaged during each financial year for valuation of assets charged to the bank viz. for regular assessment of value of such securities, for resolution of NPAs, etc. shall be reviewed by respective committees at LHOs or submit their recommendation to ECCB through SARG, as applicable, annually in the 3rd quarter of the following financial year (**Annexure-VI**).
- In case, wide variation is noticed in valuation of the security as at the time of sanction and during recovery process, and the reasons provided by the valuer involved are not acceptable, then such instances shall be recorded and appropriate action taken.

#### **8. Vendor Management System (VMS)**

The details of the valuer empanelled by the Bank, shall be uploaded in Vendor Management System (VMS) application of the Bank as per the laid down instructions vide e-circular No. CCO/PPD-ADV/87/2016 – 17 dated 14<sup>th</sup> October, 2016. The instructions in said circular should be meticulously followed for engagement, allotment of work, payment of fees, delisting/ de-panelment and review of performance of valuer, etc.

#### **9. General Guidelines for process of engagement of valuer**

- In order to ascertain the value of different types of properties, Bank shall engage the services of valuers who are empanelled with the Bank.
- In case asset(s) to be valued is outside the Centre where credit facility is being availed or had been availed, in such a scenario, services of a valuer on Bank's panel at the Centre where asset is situated is to be utilised for valuation of asset(s). (e-circular No.CCO/PPD-ADV/126/2017-18 dated 9<sup>th</sup> March, 2018).

- While engaging the services of an empanelled valuer care to be taken to verify that the valuer does not figure in the de-panelled or caution list of our Bank, IBBI and IBA.

**Exceptions:** However,

- (i) in remote locations or where suitable valuers capable of undertaking Valuation of the class of assets are not empanelled by the Bank or other specific reasons, services of any other valuer empanelled with a PSU Bank within their vicinity may be utilized after necessary due diligence and approval from one level higher than respective authority as per Delegation of power.
- (ii) In case(s) where value of the property/asset is Rs.50.00 Crore and above but "A" category of valuer(s) are not available at these centres, then "A" category of valuers from nearest centres may be engaged after due approval from appropriate authority.

**9.1 Engagement of Valuer:** Branches/operating units may engage the services of empanelled valuer. Valuers connected with the borrowers/ guarantors of the account should not be engaged for rendering services in that account to avoid conflict of interest. Accordingly, a declaration to this effect shall be obtained prior to engagement of respective entity.

- **Obtaining Quotation:** In case of loan/advances above Rs.50.00 crore to other than "P segment" and where value of asset(s) is above Rs.50.00 Crore before entrusting any assignment to the agency, competitive quotation shall be called from at least three empanelled valuers in the related asset class.
  - (i) Valuer should submit the quote clearly indicating the fees on an 'all inclusive' basis
  - (ii) Care should be taken that the entire exercise is kept transparent.
- **Letter of Engagement:** While entrusting assignment to the Entity, a Letter of engagement (Work Order) (**Annexure-XIII**) shall be generated from the system, i.e. LLMS/LOS only and handed over to the valuers to undertake the valuation work. No valuers shall undertake the valuation work without the letter of engagement generated from system i.e. LLMS/LOS.
- The valuation report should be as per the Bank's format prescribed in Annexure-XIV.

**10. General guidelines on valuation:**

- i) The valuation should always be conducted by an empanelled independent valuer i.e., the valuer should not have a direct or indirect interest in the asset being valued.
- ii) All the necessary / relevant papers / documents should flow directly from the branch to the valuer & vice versa without routing the same through the borrower/ guarantor concerned.
- iii) The Valuation Report to be submitted by the valuers stand invariably contains the Fair Market Value, Book Value, Realizable Value and the Distress Sale Value of the property being valued. However, for the purpose of determining the present value of the property mortgaged/ to be mortgaged, the Realizable value should be taken into consideration. Also in the case of Plant & Machinery, Realizable Value to be accepted for valuation purposes.
- iv) For loans above Rs.1.00 Crore wherein primary/collateral offered as security is valued above Rs.50.00 lacs, valuation reports (not older than 3 months for new connection) from 2 empanelled valuers are to be obtained and in case value of the property is below Rs.50.00 lacs, single valuation is to be obtained. However, in case of Housing loans above Rs.1.00 Crore valuation reports (not older than 3 months for new connection) from 2 empanelled valuers are to be obtained irrespective of the value of the property. The fair market value and realizable value, whichever is lower, is to be considered for arriving at the value of the property. Both the valuation to be conducted simultaneously and time gap between these two valuation reports shall not be more than a month.
- v) Valuation report for Asset(s)/ property(ies) to be obtained once in 3 years.
- vi) If the difference between fair market value and realizable value quoted by the two valuers is more than 5%, and reckoning of lower of the two valuations is not acceptable to the borrower, then valuation from third valuer is to be obtained. The lowest of the valuation to be reckoned in such cases.
- vii) Where the number of properties offered as security exceeds 10 (ten) and are located at diverse/ various locations, a notional discount @5% is to be applied on the Realisable value of the properties and the discounted value should be considered while arriving at the security coverage.
- viii) In case of variation of 20% or more between the fair market and realizable values as per the valuation and the guideline value provided in the State Government notification or Income Tax Gazette, justification on variation has to be furnished by the Valuer.



- ix) Wherever the value of the Asset/property is more than Rs.50.00 Crore, two valuers of Category 'A' may be appointed in order to get the valuation done. In case the difference in the valuation arrived at by both the valuers is not more than 15 percent lower of the value to be considered, but when the difference in value by both the valuer is more than 15 percent and reckoning of the lower value is not acceptable to the borrower, then a third valuer, who shall be also be a senior valuer in the 'A' category, may be appointed and valuation obtained. In such a case, the average of the lower two valuation out of three valuations made will be taken as the notional market value of the properties valued.
- x) Property values reported in leading newspapers as well as property portals such as magicbricks.com, 99acres.com, housing.com etc., wherever available are to be referred to and quoted.
- xi) Details of last two transactions in the locality are to be furnished in the valuation report, wherever available.
- xii) The values quoted by the valuers should be cross-checked by the branch official concerned by making independent enquiries, property inspection, comparison with recent sales of similar properties in the neighbourhood and enquiries from parties having good knowledge of the local property value, for ensuring that only realistic realizable values are accepted.
- xiii) The operating units should also ensure that properties offered as security for credit facilities sanctioned are not purchased from the loan amount disbursed.
- xiv) Valuation of properties purchased on a recent date, viz. for a period up-to one year from the date of registration of the property, the lower of Registration Value or Realisable Value shall be reckoned for arriving at the value of the property.
- xv) The operating units should generally insist on property/ies, which are purchased before our disbursement. In other cases, operating units should ensure that the properties offered as security are not purchased out of our loans by verifying end use of funds.
- xvi) Further, following modalities should also be adhered to
- As soon as the valuation reports are obtained, it should be verified and ensured that they contain all the details. Blanks and cursory reports should not be accepted. Further, all the columns in the format of valuation reports should be duly filled in with remarks and finding of the valuer and if column is not applicable then a notation to that effect should be made. A valuation report containing blanks should not be accepted.

- As a measure of strengthening the Due Diligence of the applicable primary/ collateral securities which are Land & Building/ Land in nature/ Plant & Machinery/ Other tangible assets, valuers to include photograph of owner with the property in the background, in the report submitted to Branches.
  - For easy identification of the applicable primary/collateral securities which are Land & Building/Land in nature/Plant & Machinery/Other fixed tangible assets, valuers to mention longitude/latitude and co-ordinates of the properties in the valuation report. Screen shot (in hard copy) of Global Positioning System (GPS)/ Various Applications (Apps)/ Internet sites (eg. Google earth)/ etc. is to be included in the valuation report.
  - Valuation Report must contain specific views/ comments on the impending threat, if any, of Road Widening, Take-over of property for public service purposes, Sub-merging, Attracting provisos of Coastal Regulatory Zone (CRZ) etc.
  - In case of consortium/ Multiple Banking Arrangement (MBA) the valuation report format prescribed by the Bank/ IBA is to be utilized. For valuation of properties valued Rs.50.00 Crore and above, two valuations to be obtained i.e. one from valuer(s) empaneled with lead bank and 2<sup>nd</sup> valuation from the valuer(s) empaneled with the bank having the 2<sup>nd</sup> highest exposure in the consortium.
- xvii) Branches/ Offices to ensure that residual age of the immovable property should be at least 5 years more than the tenure of the loan.
- xviii) For valuation of assets/ properties pertaining to stressed assets account, Bank's guidelines issued on Resolution of Stressed Assets is to be followed.

## (Part-II)

**1. Compliance of Standards and Procedures/Methodologies**

i) All valuers empanelled with the Bank shall comply and abide by the standards and procedures laid down in the Policy. Valuers shall undertake compliance of the Code of Conduct at the time of empanelment.

ii) While conducting a valuation, valuers have to comply with **Internationally Accepted Valuation Standards (IVS)** as applicable to the respective class of asset and respective method of valuation as required. The brief background of IVS is as follows:

The International Valuation Standards (IVS) are standards for undertaking valuation assignments using generally recognised concepts and principles that promote transparency and consistency in valuation practice. The International Valuation Standards Council (IVSC) is an independent, not-for-profit organization committed to advancing quality in the valuation profession and formation of IVS. Their primary objective is to build confidence and public trust in valuation by producing standards and securing their universal adoption and implementation for the valuation of assets across the world. Valuations are widely used and relied upon in financial and other markets, whether for inclusion in financial statements, for regulatory compliance or to support secured lending and transactional activity. The IVSC also promotes leading practice approaches for the conduct and competency of professional valuers.

iii) The IVSC Standards Board is the body responsible for setting the IVS. The Board has autonomy in the development of its agenda and approval of its publications. In developing the IVS, the Board:

- a. follows established due process in the development of any new standard, including consultation with stakeholders (valuers, users of valuation services, regulators, valuation professional organisations, etc.) and public exposure of all new standards or material alterations to existing standards,
- b. liaises with other bodies that have a standard-setting function in the financial markets,
- c. conducts outreach activities including round-table discussions with invited constituents and targeted discussions with specific users or user groups. The objective of the IVS is to increase the confidence and trust of users of valuation services by establishing transparent and consistent valuation practices. A standard will do one or more of the following:
- d. identify or develop globally accepted principles and definitions,

- e. identify and promulgate considerations for the undertaking of valuation assignments and the reporting of valuations,
  - f. identify specific matters that require consideration and methods commonly used for valuing different types of assets or liabilities.
- v) The IVS consist of mandatory requirements that must be followed in order to state that a valuation was performed in compliance with the IVS. Certain aspects of the standards do not direct or mandate any particular course of action, but provide fundamental principles and concepts that must be considered in undertaking a valuation. The IVS are arranged as follows:
- a. The IVS Framework -This serves as a preamble to the IVS. The IVS Framework consists of general principles for valuers following the IVS regarding objectivity, judgement, competence and acceptable departures from the IVS.
  - b. IVS General Standards - These set forth requirements for the conduct of all valuation assignments including establishing the terms of a valuation engagement, bases of value, valuation approaches and methods, and reporting. They are designed to be applicable to valuations of all types of assets and for any valuation purpose.
  - c. IVS Asset Standards - The Asset Standards include requirements related to specific types of assets. These requirements must be followed in conjunction with the General Standards when performing a valuation of a specific asset type. The Asset Standards include certain background information on the characteristics of each asset type that influence value and additional asset-specific requirements on common valuation approaches and methods used.
- vi) The comprehensive document on international valuation standard is available on the IVSC website at [www.ivsc.org](http://www.ivsc.org).
  - vii) It is expected that every empanelled valuer are made aware of the IVS guidelines and adherence to the same is done by valuer in valuation process. A declaration to the same has been incorporated in **Annexure IV**.
  - viii) Valuer associations viz. Institution of Estate Managers & Appraisers (IESMA), The Indian institute of Valuers (IIV), etc., who are not members of International Valuation Standards Council (IVSC) at present shall be advised to become the member of IVSC and status in this regard to be invariably commented upon in the annual review of the valuers.

## 2. VALUATION APPROACHES AND METHODS

- The three approaches described and defined below are the main approaches used in valuation as per IVS. They are all based on the economic principles of price equilibrium, anticipation of benefits or substitution. Consideration must be given to the relevant and most appropriate valuation approaches. The principal valuation approaches are:

### 1. Market Approach,

### 2. Income Approach, and

### 3. Cost Approach

- Each of these valuation approaches includes different, detailed methods of application.
- The goal in selecting valuation approaches and methods for an asset is to find the most appropriate method under the particular circumstances. No one method is suitable in every possible situation. The selection process should consider, at a minimum:
  - a) the appropriate basis(es) of value and premise(s) of value, determined by the terms and purpose of the valuation assignment,
  - b) the respective strengths and weaknesses of the possible valuation approaches and methods,
  - c) the appropriateness of each method in view of the nature of the asset, and the approaches or methods used by participants in the relevant market, and
  - d) Reliable information.
- Valuers should consider the use of multiple approaches and method and more than one valuation approach or method should be considered and may be used to arrive at an indication of value, particularly when there are insufficient factual or observable inputs for a single method to produce a reliable conclusion. Where more than one approach and method is used, or even multiple methods within a single approach, the conclusion of value based on those multiple approaches and/or methods should be reasonable and process of analysing and reconciling the differing values into a single conclusion, without averaging, should be described by the valuer in the report.

## 2.1 Market Approach

- This approach provides an indication of value by comparing the asset with identical or comparable (that is similar) assets for which price information is available.
- The market approach should be applied and afforded significant weight under the following circumstances:
  - a) the subject asset has recently been sold in a transaction appropriate for consideration under the basis of value,
  - b) the subject asset or substantially similar assets are actively publicly traded, and/or
  - c) there are frequent and/or recent observable transactions in substantially similar assets.
- The additional circumstances where the market approach may be applied and afforded significant weight:
  - a) Transactions involving the subject asset or substantially similar assets are not recent enough considering the levels of volatility and activity in the market.
  - b) The asset or substantially similar assets are publicly traded, but not actively.
  - c) Information on market transactions is available, but the comparable assets have significant differences to the subject asset, potentially requiring subjective adjustments.
  - d) Information on recent transactions is not reliable (hearsay, missing information, synergistic purchaser, not arm's-length, distressed sale, etc).
  - e) The critical element affecting the value of the asset is the price it would achieve in the market rather than the cost of reproduction or its income producing ability.
- Even in circumstances where the market approach is not used, the use of market based inputs should be maximized in the application of other approaches (such as, market-based valuation metrics such as effective yields and rates of return).
- When comparable market information does not relate to the exact or substantially the same asset, the valuer must perform a comparative analysis of qualitative similarities and differences between the comparable assets and subject asset. It will often be necessary to make adjustments based on this comparative analysis. Those adjustment must be reasonable and valuers must document the reasons for the adjustments and how they were quantified.

- This approach uses market multiples derived from a set of comparable, each with different multiples. The selection of the appropriate multiple within the range requires judgement, considering qualitative and quantitative factors.

### **2.1.1 Market Approach Methods**

- The method used under this approach is Comparable Transactions Method. This method is also known as the guideline transactions method. It utilizes information on transactions involving assets that are the same or similar to the subject asset to arrive at an indication of value.
- The comparable transaction method can use a variety of different comparable evidence, also known as units of comparison, which form the basis of the comparison. For example, a few of the many common units of comparison used for real property interests include price per square foot (or per square metre), rent per square foot (or per square metre) and capitalization rates. A few of the many common units of comparison used in business valuation include EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation) multiples, earnings multiples, revenue multiples and book value multiples. A few of the many common units of comparison used in financial instrument valuation include metrics such as yields and interest rate spreads.
- The units of comparison used by participants can differ between asset classes and across industries and geographies.
- The key steps in the comparable transactions method are:
  - a) Identify the units of comparison that are used by participants in the relevant market,
  - b) Identify the relevant comparable transactions and calculate the key valuation metrics for those transactions,
  - c) Perform a consistent comparative analysis of qualitative and quantitative similarities and differences between the comparable assets and the subject asset,
  - d) Make necessary adjustments, if any, to the valuation metrics to reflect differences between the subject asset and the comparable assets,
  - e) Apply the adjusted valuation metrics to the subject asset, and
  - f) If multiple valuation metrics were used, reconcile the indications of value.

- A valuer should choose comparable transactions within the following context:
  - a) Evidence of several transactions is generally preferable to a single transaction or event,
  - b) Evidence from transactions of very similar assets (ideally identical) provides a better indication of value than assets where the transaction prices require significant adjustments,
  - c) Transactions that happen closer to the valuation date are more representative of the market at that date than older/dated transactions, particularly in volatile markets,
  - d) For most bases of value, the transactions should be “arm’s length” between unrelated parties,
  - e) Sufficient information on the transaction should be available to allow the valuer to develop a reasonable understanding of the comparable asset and assess the valuation metrics/comparable evidence,
  - f) Information on the comparable transactions should be from a reliable and trusted source, and
  - g) Actual transactions provide better valuation evidence than intended transactions.
- A valuer should analyze and make adjustments for any material differences between the comparable transactions and the subject asset. Examples of common differences that could warrant adjustments may include, but are not limited to:
  - a) Material characteristics (age, size, specifications, etc.),
  - b) Relevant restrictions on either the subject asset or the comparable assets,
  - c) Geographical location (location of the asset and/or location of where the asset is likely to be transacted/used) and the related economic and regulatory environments,
  - d) Profitability or profit-making capability of the assets,
  - e) Historical and expected growth,
  - f) Yields/coupon rates,
  - g) Types of collateral,
  - h) Unusual terms in the comparable transactions,
  - i) Differences related to marketability and control characteristics of the comparable and the subject asset, and
  - j) Ownership characteristics (such as legal form of ownership, amount percentage held).



- This method utilises information on publicly-traded comparable that is the same or similar to the subject asset to arrive at an indication of value.
- Difference between Comparable transaction method and guideline publicly-traded comparable method:
  - a) The valuation metrics/comparable evidence are available as of the valuation date,
  - b) Detailed information on the comparables are readily available in public filings, and
  - c) The information contained in public filings is prepared under well understood accounting standards.
- The method should be used only when the subject asset is sufficiently similar to the publicly-traded comparables to allow for meaningful comparison.
- The key steps in the guideline publicly-traded comparable method are to:
  - a) Identify the valuation metrics/comparable evidence that are used by participants in the relevant market,
  - b) Identify the relevant guideline publicly-traded comparable and calculate the key valuation metrics for those transactions,
  - c) Perform a consistent comparative analysis of qualitative and quantitative similarities and differences between the publicly-traded comparable and the subject asset,
  - d) Make necessary adjustments, if any, to the valuation metrics to reflect differences between the subject asset and the publicly-traded comparable,
  - e) Apply the adjusted valuation metrics to the subject asset, and
  - f) If multiple valuation metrics were used, weight the indications of value.
- A valuer should choose publicly-traded comparables within the following context:
  - a) Consideration of multiple publicly-traded comparables is preferred to the use of a single comparable,
  - b) evidence from similar publicly-traded comparables (for example, with similar market segment, geographic area, size in revenue and/or assets, growth rates, profit margins, leverage, liquidity and diversification) provides a better indication of value than comparables that require significant adjustments, and
  - c) Securities that are actively traded provide more meaningful evidence than thinly traded securities.
- A valuer should analyze and make adjustments for any material differences between the guideline publicly-traded comparables and the subject asset.

Examples of common differences that could warrant adjustments may include, but are not limited to:

- a) Material characteristics (age, size, specifications, etc.),
- b) Relevant discounts and premiums,
- c) Relevant restrictions on either the subject asset or the comparable assets,
- d) Geographical location of the underlying company and the related economic and regulatory environments,
- e) Profitability or profit-making capability of the assets,
- f) Historical and expected growth,
- g) Differences related to marketability and control characteristics of the comparable and the subject asset, and
- h) Type of ownership.

### **2.1.2 Other Market Approach Considerations**

The following are the non-exhaustive list of certain special considerations that may form part of a market approach valuation:

- i) Anecdotal or "rule-of-thumb" valuation benchmarks are sometimes considered to be a market approach.
- ii) Adjust for differences between the subject asset and the guideline transactions or publicly-traded securities.
- iii) Some of the most common adjustments made in the market approach are known as discounts and premiums.

## **2.2 Income Approach**

- Under the income approach, the value of an asset is determined by reference to the value of income, cash flow or cost savings generated by the asset.
- The income approach should be applied and afforded significant weight under the following circumstances:
  - a. The income-producing ability of the asset is the critical element affecting value
  - b. Value from a participant perspective, and/or reasonable projections of the amount and timing of future income are available for the subject asset, but there are few, if any, relevant market comparables.
- Additional circumstances where the income approach may be applied and afforded significant weight:
  - a) The income-producing ability of the subject asset is only one of several factors affecting value from a participant perspective,

- b) There is significant uncertainty regarding the amount and timing of future income-related to the subject asset,
- c) There is a lack of access to information related to the subject asset (for example, a minority owner may have access to historical financial statements but not forecasts/budgets), and/or
- d) The subject asset has not yet begun generating income, but is projected to do so.

### **2.2.1 Income Approach Methods**

- Methods under the income approach are effectively based on the discounting future amounts of cash flow to present value.

#### **2.2.1.1 Discounted Cash Flow (DCF) Method**

Under the DCF method, the forecasted cash flow is discounted back to the valuation date, resulting in a present value of the asset.

i. The key steps in the DCF method are:

- a) Choose the most appropriate type of cash flow for the nature of the subject asset and the assignment (i.e., pre-tax or post-tax, total cash flows or cash flows to equity, real or nominal, etc.),
- b) Determine the most appropriate explicit period, if any, over which the cash flow will be forecast,
- c) Prepare cash flow forecasts for that period,
- d) Determine whether a terminal value is appropriate for the subject asset at the end of the explicit forecast period (if any) and then determine the appropriate terminal value for the nature of the asset,
- e) Determine the appropriate discount rate, and
- f) Apply the discount rate to the forecasted future cash flow, including the terminal value, if any.

ii. Type of Cash Flow:

- a) Cash flow to whole asset or partial interest
- b) The cash flow can be pre-tax or post-tax
- c) Nominal versus real
- d) Currency

iii. Explicit Forecast Period: Valuers should consider the following factors when selecting the explicit forecast period:

- a) The life of the asset,
- b) A reasonable period for which reliable data is available on which to base the projections,

- c) The minimum explicit forecast period which should be sufficient for an asset to achieve a stabilised level of growth and profits, after which a terminal value can be used,
  - d) In the valuation of cyclical assets, the explicit forecast period should generally include an entire cycle, when possible, and
  - e) For finite-lived assets such as most financial instruments, the cash flows will typically be forecast over the full life of the asset.
- iv. Cash Flow Forecasts: the projected cash flow will reflect one of the following:
- a) Contractual or promised cash flow,
  - b) The single most likely set of cash flow,
  - c) The probability-weighted expected cash flow, or
  - d) Multiple scenarios of possible future cash flow.
- v. Terminal Value: The terminal value should consider:
- a) Whether the asset is deteriorating/finite-lived in nature or indefinite-lived, as this will influence the method used to calculate a terminal value,
  - b) Whether there is future growth potential for the asset beyond the explicit forecast period,
  - c) Whether there is a pre-determined fixed capital amount expected to be received at the end of the explicit forecast period,
  - d) The expected risk level of the asset at the time the terminal value is calculated,
  - e) For cyclical assets, the terminal value should consider the cyclical nature of the asset and should not be performed in a way that assumes "peak" or "trough" levels of cash flows in perpetuity, and
  - f) The tax attributes inherent in the asset at the end of the explicit forecast period (if any) and whether those tax attributes would be expected to continue into perpetuity.
- vi. Valuers may apply any reasonable method for calculating a terminal value. The three most commonly used methods for calculating a terminal value are:
- a) Gordon growth model/constant growth model (appropriate only for indefinite-lived assets),
  - b) Market approach/exit value (appropriate for both deteriorating/finite-lived assets and indefinite-lived assets), and
  - c) Salvage value/disposal cost (appropriate only for deteriorating/finite-lived assets).

## vii. Discount Rate:

- a) The capital asset pricing model (CAPM),
- b) The weighted average cost of capital (WACC),
- c) The observed or inferred rates/yields,
- d) The internal rate of return (IRR),
- e) The weighted average return on assets (WARA), and
- f) The build-up method (generally used only in the absence of market inputs).

## viii. In developing a discount rate, a valuer should consider:

- a) The risk associated with the projections made in the cash flow used,
- b) The type of asset being valued. For example, discount rates used in valuing debt would be different to those used when valuing real property or a business,
- c) The rates implicit in transactions in the market,
- d) The geographic location of the asset and/or the location of the markets in which it would trade,
- e) The life/term of the asset and the consistency of inputs. For example, the risk-free rate considered would differ for an asset with a three-year life versus a 30-year life,
- f) The type of cash flow being used, and
- g) The bases of value being applied. For most bases of value, the discount rate should be developed from the perspective of a participant.

**3.1 Cost Approach**

The cost approach provides an indication of value using the economic principle that a buyer will pay no more for an asset than the cost to obtain an asset of equal utility, whether by purchase or by construction, unless undue time, inconvenience, risk or other factors are involved. The approach provides an indication of value by calculating the current replacement or reproduction cost of an asset and making deductions for physical deterioration and all other relevant forms of obsolescence.

- a) The cost approach should be applied and afforded significant weight under the following circumstances:
  - Participants would be able to recreate an asset with substantially the same utility as the subject asset, without regulatory or legal restrictions, and the asset could be recreated quickly enough that a participant would not be willing to pay a significant premium for the ability to use the subject asset immediately,
  - The asset is not directly income-generating and the unique nature of the asset makes using an income approach or market approach unfeasible, and/or
  - The basis of value being used is fundamentally based on replacement cost, such as replacement value.

b) Additional circumstances where the cost approach may be applied and afforded significant weight:

- Participants might consider recreating an asset of similar utility, but there are potential legal or regulatory hurdles or significant time involved in recreating the asset,
- When the cost approach is being used as a reasonableness check to other approaches (for example, using the cost approach to confirm whether a business valued as a going-concern might be more valuable on a liquidation basis), and/or
- The asset was recently created, such that there is a high degree of reliability in the assumptions used in the cost approach.

### **3.1.1 Cost Approach Methods**

There are three cost approach methods:

- i) **Replacement cost method:** a method that indicates value by calculating the cost of a similar /asset offering equivalent utility,
- ii) **Reproduction cost method:** a method under the cost that indicates value by calculating the cost to recreating a replica of an asset, and
- iii) **Summation method:** a method that calculates the value of an asset by the addition of the separate values of its component parts.

### **COST CONSIDERATIONS**

- The cost approach should capture all the costs that would be incurred by a typical participant. The costs are majorly divided into direct and indirect.
- An asset acquired from a third party would presumably reflect their costs associated with creating the asset as well as some form of profit margin to provide a return on their investment.
- The actual costs incurred in creating the subject asset (or a comparable reference asset) may be available and provide a relevant indicator of the cost of the asset. But a few adjustments must be made so that the cost fluctuations between the date on which the cost was incurred and the valuation date and any exceptional costs or savings that are reflected in the cost data, but would not arise again, can be reflected.

### **DEPRECIATION / OBSOLESCENCE**

Depreciation adjustments are normally considered for Physical, Functional and Economic Obsolescence. It should consider physical and economic life of the asset.

PHYSICAL OBSOLESCENCE can be measured in two ways:

1. Curable: Cost to cure/fix the obsolescence.
2. Incurable: Adjustment for physical obsolescence is equivalent to the proportion of the expected total life consumed.

**FUNCTIONAL OBSOLESCENCE**

- Excess capital costs: caused by changes in design, material, technology, resulting in the availability of modern equivalent assets with lower capital costs than the subject asset,
- Excess operating costs: caused by improvements in design or excess capacity resulting in availability of modern equivalent assets with lower capital costs than the subject asset.

**ECONOMIC OBSOLESCENCE**

Economic obsolescence arises when external factors affect an individual asset or all the assets employed in the business and should be deducted after physical deterioration and functional obsolescence.

## (Part-III)

**1. Commission / Professional fees payable - Valuer**

- The professional fees payable to the valuer shall be fixed by the Bank prior to the issuance of Letter of Assignment on case to case basis, depending upon the work/services involved.
- For valuation of cases admitted in NCLT under Insolvency and Bankruptcy Code (IBC), valuation fee shall be applicable as decided by Committee of Creditors (CoC).
- For valuation under Consortium Advances valuation fee shall be according to decision of Consortium members and to be shared accordingly.
- A standardized fees structure is prescribed in **Annexure- A** and branches/operating units shall be guided by the same while engaging the services of the valuers.
- Fee structure shall be reviewed periodically to align with current market rates.
- Cases where quotations have not been called from the empaneled valuers for the valuation as above, dealing branches/operating units should negotiate with the valuers and reduce the fees to the extent possible on a case to case basis and specifically arrive at the fees, at the time of entrustment itself, depending on the nature/value/availability of security.

**1.1** In exceptional cases, branches/operating units may exceed the Bank's prescribed fees with specific approval of Appropriate Authorities as detailed in **Annexure-A**

**1.2 Fees - Payment process:**

- Payment to be made only after satisfactory completion of the assignment and receipt of reports.
- In case the valuation report submitted by the valuer is not in order, the Bank shall bring the same to the notice of the valuer within 15 days of submission for rectification and resubmission. In case no such communication is sent, it shall be presumed that the valuation report has been accepted.
- In case asset(s) to be valued is outside the Centre, where credit facility is being obtained, in such a scenario, services of a valuer on the Bank's panel at the Centre where asset is situated is to be utilised for valuation of asset(s).
- No out of pocket expenses shall be paid in addition to fee quoted, as above. However, In exceptional cases, outstation traveling and diem for valuation of assets outside the Centre, actual tickets up to AC- II tier/Car or bus charges (for places where train facility is not available, maximum of tickets of AC-II tier shall



be reimbursed) and Rs.300.00 per day respectively may be considered for reimbursement, where specific approval has been obtained from appropriate authority for valuation of Asset(s) by the valuers from outside the centre.

- GST - the necessary process as per extant guidelines shall be complied with by the branch
- Payment to be made within 45 days from the date of receipt of final valuation report or receipt of final bill for payment whichever is later.
- The Entity shall accept the fee and reimbursement of expenses, if any, as per Bank guidelines issued from time to time. No fee/ reimbursement will be payable by the Bank for any job/task undertaken by the Entity without written approval/consent of the Bank, to obviate the possibility of any claim/counter-claim.
- After receipt of report from the valuers on the prescribed format, the operating units have to rate his/her performance in the VMS before the payment is made through VPS.

## Annexure-A

Valuation fee

(Amount in Rs.)

Value of the Asset/ security (Fair Market Value)	Fee applicable	Minimum fee	Maximum fee
Value up to Rs. 5 crore	0.02% of the value (fair market value) of the asset	3000	10000
Value above Rs. 5 crore up to Rs. 50 crore	0.01% of the value (fair market value) of the asset	10000	30000
Value above Rs. 50 crore	0.005% of the value (fair market value) of the asset	30000	100000
Loan/advances above Rs. 50 crore to other than "P Segment" and where value of security is above Rs. 50 crore	Minimum fee of Rs.30000 or lowest quotation received whichever is higher		
Fee shall be negotiated by operating units and reduce to the extent possible on a case to case basis. Payment of fee shall be according to the complexity of the case, nature of the asset, experience, rating, category of the valuer and reasonable hourly fee as per estimated work hours (Annexure-B and C). Such fee shall be in tune with the prevailing rates at the Centre/area			

- Rates quoted above are excluding GST
- Factors for arriving at reasonable fees for valuers and estimation of work hours required by a valuer to complete the valuation is detailed in **Annexure-B and C**.
- In case of loan/ advances above Rs.50.00 crore to other than "P segment" and where value of asset(s)/securities is above Rs.50.00 Crore, before entrusting any assignment to the agency, competitive quotation shall be called from at least three empanelled valuers in relative asset class.
  - (i) Valuer should submit the quote clearly indicating the fees on an 'all inclusive' basis
  - (ii) Care should be taken that the entire process is kept transparent.
- In exceptional cases taking into account the nature of the asset(s)/quantum of work involved, higher authority may permit payment of fees to valuers beyond the above ceilings subject to a maximum of 10% of the maximum ceiling.
- The above fee structure is subject to negotiation at the time of giving each assignment as the same is to be recovered from the borrowers. Special care needs to be taken while negotiating fees for revaluation of the assets already mortgaged to the Bank.

**FACTORS FOR ARRIVING AT REASONABLE FEES FOR VALUERS**

<b>Activity</b>	<b>New Connection/ Existing connection</b>
<b>Complexity of the case</b>	Technology intensive sectors Software, Pharma and other sectors such as EPC/construction, Real Estate, Education Institution, Hotels, Hospitals etc.
	Traditional sectors such as Metals, Power, food processing, textile, Paper, Sugar, cement, etc.
<b>Nature of asset</b>	Land & Building/ Plant and Machinery/ Business valuation/Financial Assets/Intangible assets etc.
<b>Status of unit</b>	Running unit/ Going Concern or defunct/ closed unit
<b>Total Banking Exposure</b>	Up-to Rs.50 Crores
	50 – 100 crores
	100 – 500 crores
	>500 crores
<b>Time and labour estimate</b>	No. of hours of professional work involved (an indicative table of various tasks involved during a valuation process is attached as Annexure-C). The branches/ operating units may work out the quantum of work hour that may be required to conduct the valuation and also reasonable hourly fees that may be payable to the valuer depending on his ability, experience, reputation and nature of asset being valued.
<b>Methodology of valuation</b>	List out on the assumptions made and the factors considered for the purpose of valuation of relevant class of asset(s) under following valuation approaches and methods a) Market approach b) Income approach c) Cost approach
<b>Category of valuer</b>	'A" category of valuers registered with IBBI (for valuation under Companies Act and Insolvency and Bankruptcy Code (IBC) and Wealth Tax Act, 1957.
<b>Level of regulatory compliances</b>	In listed companies, the level of compliance with various SEBI / Stock exchange requirements goes up. Similarly, in some industries, there is high level of regulatory compliance.
<b>No. of locations of assets</b>	Assets at multiple locations.
<b>No. of class of assets</b>	Valuation of multiple classes of assets.

## ANNEXURE- C

## Estimation of work hours required by a valuer to complete the valuation

Particulars of functions performed by the valuer (not intended to be exhaustive)	Estimated work hours
<b>As valuer for valuation of Land and Building</b>	
Visit to the asset to be valued, in person	
Comparison of the current value of the similar assets in the area e.g. through brokers, from the office of the registrar of properties of the locality	
Comparison with last valuation reports, if any, and reason for any major differences in the values as per the report and current valuation	
Inclusion of values pertaining to certain machineries which are integral part of the building e.g. heating/cooling equipments, elevators etc.	
Costs and benefits of assets e.g. farm land, to be derived for valuation	
List out on the assumptions made and the factors considered in the valuation of land and building under following valuation approaches and methods a) Market approach b) Income approach c) Cost approach	
Total estimated work hours for valuation	
<b>As valuer for valuation of Plant &amp; Machinery</b>	
Physical Asset check by valuer	
Evaluation of Physical condition of assets and determination of current value of assets by comparing same or similar machinery available in the market	
In case of large factories and specific use of plant & machineries, consideration of cost of purchase, cost of installing and erecting of plant, etc.	
Determination of wear and tear in asset, type of maintenance carried out and estimated remaining useful life consideration for valuation	
Determination of scrap value	
Determination of value of subsidiary machine which is vital for functioning of main machine by calculating its value and remaining useful life	
Note on valuation of machineries on standalone basis which are fixed to the building such as lift or ventilating equipments	
List out on the assumptions made and the factors considered in the valuation of plant and machinery under the following valuation approaches and methods a) Market approach b) Income approach c) Cost approach	
Total estimated work hours for valuation	

<b>As valuer for valuation of Business/ Enterprise</b>	
Study of financials of the business at least for the last three years	
Collection of all the information for all the business assets and liabilities and verify the assets register and physical assets	
Valuation of each asset individually or in groups	
Consideration of Asset's remaining useful life cost of dismantling and disposing, scrap value, replacement cost, repairs and maintenance and depreciation charged till the day of valuation	
Valuation of liabilities of the business	
Budget plans of the business and actual performance	
Verification of financial liability which may arise in form of any taxes or penalties	
Market position of goods or services dealt in by the business	
consideration of research and development happening in the product line and its impact on the future of business and business plans to counter such challenge	
Insight in to the possible changes in the government policies regarding licenses and taxes in the business	
Consideration of off balance sheet assets or liabilities (pending lawsuits, compliance agreements and warrantees etc.)	
Study of market in which business operates	
Availability of required manpower and retention	
List out on the assumptions made and the factors considered for the purpose of business valuation under the following valuation approaches and methods a) Market approach b) Income approach c) Cost approach	
Total estimated work hours for valuation	
<b>As valuer for valuation of Financial Assets</b>	
Considering the multiple categorisation and different usages of a financial instrument valuation, detailed consideration of purpose of valuation and the nuances of the instrument being valued	
understanding of the relevant regulations governing the functioning of the instrument	
due consideration to the complexity of the instrument being valued and the available information while selecting a valuation approach and method	
In selection of the approach and method, due consideration to the control environment under which the entity and the instrument operates. The control environment consist the entity's internal governance and control objectives, procedures and their operating effectiveness with the objective of enhancing the reliance on the valuation process and outcome thereof.	

Independent opinion on the valuation control environment and factor outcome on the valuation method, approach, outcome and reporting thereof	
Documentation of inherent nature of the complexity in detail to enable the user to understand the assumptions that impact the value of the instrument	
List out on the assumptions made and the factors considered for the purpose of valuation of financial assets under following valuation approaches and methods d) Market approach e) Income approach f) Cost approach	
Total estimated work hours for valuation	
<b>As valuer for valuation of Intangible Assets</b>	
Intangible assets can generally be classified under the following broad categories (indicative): (a) Customer-based intangible assets; (b) Marketing-based intangible assets; (c) Contract-based intangible assets; (d) Technology-based intangible assets; or (e) Artistic-based intangible assets.	
List out on the assumptions made and the factors considered for the purpose of valuation of Intangible assets under following valuation approaches and methods a) Market approach b) Income approach c) Cost approach	
Total estimated work hours for valuation	

**(Part-IV) (Miscellaneous)****1. Distribution of work amongst Empanelled Valuers**

The branches/operating units shall assign the task to the empanelled Valuers on rotation basis, to enable equal distribution of work to the empanelled service providers and thereby avoid concentration / monopolistic situation arising out of engaging a few valuers.

**2. Complaint Redressal Mechanism by the Borrower /Guarantor**

All issues of grievance/ complaint by Borrower / Guarantor alleging unlawful/ unfair actions by Valuers shall be examined and appropriately addressed by the branch in consultation with Controllers.

Branch/Operating units shall not allot matters to Valuers against whom a grievance/ complaint is received, till such grievance/ complaint is finally disposed off to the satisfaction of the Borrower/Complainant.

However, where Branch /Operating units is convinced, with appropriate proof, that the allegations / complaints are frivolous / vexatious, it may continue with the process through the Valuer and put on record with justification the reasons of disagreement with the complaints of the borrower and its decision of continuance of the services of Valuer.

As Bank, as principal, is responsible for the actions of the Valuer, branches/operating units should ensure that Valuer should be made aware and strictly adhere to the extant guidelines and instructions on valuation norms.

**3. Criteria for Depanelment and Procedure for Depanelment/De-listing**

- a) The competent authority may de-list / de-panel a valuer on account of misconduct, for the instances mentioned below;
- i) Under/ Over valuation of assets
  - ii) Not complying to the Banks' instructions or contrary to specific instructions;
  - iii) Giving any false or misleading information to the bank at the time of empanelment or obtaining empanelment by fraudulent means;
  - iv) Action to the detriment of the interest of the Bank;
  - v) Compiling the valuation report with malafide intentions;
  - vi) Committing an act amounting to professional misconduct;
  - vii) Indulging in fraudulent activities including raising of fake bills;
  - viii) Delay in submission of reports beyond the time agreed upon;
  - ix) Convicted of an offence connected with any proceedings under the Income Tax Act, 1961, Wealth Tax Act, 1957 or Gift Tax Act, 1958.
  - x) Threatening, intimidating or abusing any of the employees, officers/ or Representatives/ constituents of the Bank;
  - xi) Deficiency in Service;

- xii) Blacklisted by any Bank or any complaint has been filed against the valuer/ firm before CBI/ Serious Fraud Investigation Office (SFIO)/ or any other Courts. The above instances are only illustrative and not exhaustive and the competent authority may amend / modify any of the above conditions or may add one or more such instance that may be considered as a reason for de-panelment of the valuer.
- xiii) The entire process of de-panelment should be completed in 3 (three) months.

**b) Procedure for Depanelment**

On noticing of any trigger based on the above criteria as also irregularity in discharge of its duty or performance being found unsatisfactory on review, the name of the entity shall be reported by the branches/ operating units to the Controllers/ Respective Committees at LHOs immediately.

- i) The Branches/ operating units shall issue a show cause notice to the entity.
- ii) The response received from the entity shall be scrutinized by respective Branches/ operating units and if found satisfactory, the same may be put up to the concerned Controlling Authorities and on approval, the process of de-panelment may be dropped.
- iii) In case the explanation/representation submitted by the entity is not acceptable to the Bank, an opportunity may also be given, for a hearing "in person" or through audio/video conference available at the nearest Branch/Office (in case the entity is not in a position to present himself) before the Controlling office/ Respective Committees at LHOs.
- iv) If not found satisfactory, the proposal for de-panelment of entity may be submitted to Respective Committees at LHOs or SARG (as applicable) along with the recommendations of the RBO/ B&O/ Respective Committees at LHOs and for final de-panelment of entity, the delegated authority shall be Respective Committees at LHOs/ SARG (as applicable).
- v) Pending final decision on de-panelment, name of such entity shall be hosted in the "Caution List" on VMS, so that no new assignments are given to agencies under "Caution List".
- vi) After obtaining approval of the delegated authority, name of the entity shall be delisted and subsequently deleted from the list of empanelled entity available on Bank's Site and added to the separate list of de-panelled agencies.
- vii) The concerned Committees at LHOs or SARG, as applicable, has to delete the name from the empanelled list.
- viii) A letter to this effect shall be issued to the entity and all the other existing assignments, if any, would stand cancelled / terminated.
- ix) The matter of de-panelment shall be intimated to the IBBI, IBA and such other authority/body as may be considered necessary/appropriate.



**c) Procedure for Depanelment where the entity is involved in fraud/gross negligence:**

In addition to the above guidelines for reporting the names of Professionals/ Third Party Entities (TPEs) involved in frauds to Indian Banks Association (IBA) have to be followed as per circular No.CPP/SKM/Cir/133 dated the 19<sup>th</sup> Dec, 2015 and circular No.CPP/SKM/Cir/11 dated the 3<sup>rd</sup> May, 2014. In case of such valuers who are also registered with IBBI the details of such valuer should be reported by Credit Policy and Procedures Department (CPPD) to IBBI for an appropriate action including cancellation or suspension of Certificate of Registration of valuer. The list of blacklisted valuers should also be shared with the institutions with which the valuers have been registered or which have provided certification to them.

**d) Entity on Caution list of IBA**

- i) IBA provides names of the agencies in the caution list based on communications received from member banks. On receipt of intimation from IBA, the addition to the caution list of such agencies are immediately hosted on the Banks site for reference to all the branches/ operating units.
- ii) The above mentioned procedure for de- empanelment should also be followed for such agencies. The depanelment process has to be initiated by Branches /operating units.
- iii) If the services of such agencies are found to be satisfactory and not to be depanelled i.e branches/ operating units desires to continue to engage their services in spite of them being included in IBA caution list, the same may be continued only with specific approval of Delegated Authority.

**4. Cancellation or Suspension of Certificate of Registration of valuers or Recognition of Registered Valuers Organisation by IBBI and Temporary Surrender of Registration Certificate**

- IBBI may cancel or suspend the registration of a valuer or recognition of Registered Valuers Organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, rules or any condition of registration or recognition, as the case may be in the manner specified by the IBBI.
- A complaint may be filed against a valuer registered with IBBI or against Registered Valuer Organisation (RVO) before IBBI in person or by post or courier alongwith a non-refundable fees of Rupees one thousand in favour of the IBBI and the IBBI shall examine the complaint and take such necessary action as it deems fit. Provided that in case of a complaint against a valuer registered with IBBI, who is a partner of a Partnership entity or director of the Company, IBBI may refer the complaint to the relevant RVO and the RVO shall handle the complaint in accordance with its bye laws.

- List of Valuer(s) and registered valuers organisation(s) under the above categories with IBBI may be obtained from IBBI site. The branches/ operating units shall route their complaint against any empanelled valuers to CPPD through their Controllers/LHOs.

#### **5. Procedure for Re-empanelment**

Valuers once removed from the panel of the bank (i.e De-panelled) may be re-empanelled. The Re-empanelment is to be on very selective basis and after a minimum cooling period of two (2) years from the date of De-panelment. The same process as that of empanelment is to be followed for Re-empanelment of valuers with specific justification for such Re-empanelment. If approved by delegated authority for empanelment, names of such valuers removed from De-empaneled list (post re-empanelment) may be reported to the IBBI/ IBA, requesting IBBI/ IBA to arrange for the names to be deleted from its caution list.

#### **6. Compliance of Standards and Procedures**

All valuers empanelled by the Bank shall comply and abide by the standards and procedures laid down in this document and code of conduct specified in this document (**Annexure-V**).

#### **7. Independence and Objectivity**

All valuers empanelled by Bank shall act with independence, integrity and objectivity. They shall undertake all valuation works with an independent mind and shall not come under any influence of anybody. The empanelled valuer shall also not be related to any of the personnel in the bank /FI in the department/division dealing with valuation work directly.

#### **8. Obligations of the Bank**

This document casts the following obligations on the part of the Bank.

- All appointments/ empanelment of valuers shall be done in accordance with the provisions of this document and its amendments from time to time.
- All instructions to the valuer are to be given by the Bank in writing. Supportive documents, wherever possible, shall be provided to the valuer before the valuation work begins. Any other document will have to be procured by the valuer and sufficient time for the same will be provided and cost of procurement of such documents shall be reimbursed by the Bank.
- A maximum of 10 days' time shall normally be given to the valuer to carry out the valuation. Maximum time for valuation will be mutually decided by the Valuer and Bank depending upon the nature of the valuation job and circumstances on a case to case basis. In case of outstation properties or in case of large property valuations, more time shall be given, depending on the

circumstances, on a case to case basis.

- No security deposits or any other indemnity money should be taken from the valuers as security for the professional services that they provide.
- Professional fees / payments to the valuers shall be paid within 45 days of the submission of the valuation
- In case the valuation report submitted by the valuer is not in order, Branch Manager/ Relationship Manager may bring the same to the notice of the valuer within 15 days of submission for rectification and resubmission. In case no such communication is received, it shall be presumed that the valuation report has been accepted.
- All procedures as outlined in this document have to be meticulously followed by operating functionaries.
- In case of valuations under SARFAESI Act, provisions under the Act have to be followed.

#### **9. Continuing Education**

All valuers shall constantly update their knowledge base by actively participating in various continuing education programmes including seminars, conferences, workshops, training programmes, capacity building programmes, etc.

#### **10. Review of Policy**

The Policy shall be reviewed annually or as and when considered necessary.

## Annexure-I

**I. Valuation of Land & Building / Real Estate**

The educational qualifications for empanelment as valuers of Land & Building / Real Estate shall be as under:

Sl. No.	Graduate level	Post Graduate level	Experience in specific discipline
1	Graduate in Civil Engineering, Architecture or town planning of a recognised University established under State or Central Act or equivalent whether in India or Abroad	---	<p>5 years work experience in the field of valuation of land &amp; building/ real estate after completion of the degree or equivalent.</p> <p>The Applicants with these qualifications should preferably possess an additional qualification</p> <p>(i) in the form of a certification examination on or before 31.12.2019 of duration of one semester or above in the subjects which are vital for valuation of real estate and not covered in course curriculum of civil engineering, architecture and town planning and which is conducted by recognized university/ Institution conducting the examination in valuation of Real Estate which are recognized by Govt. of India.</p> <p>In case of non-completion of course by 31.12.2019, empanelment shall stand cancelled automatically.</p> <p>Or</p> <p>(ii) valuer is registered with IBBI</p> <p>Or</p> <p><b><u>(iii) valuer is registered under section 34AB of Wealth Tax Act, 1957</u></b></p> <p><b>Note: The applicants empanelled on the basis of criteria laid down under Sr.no.1 shall be eligible for empanelment even after 01.01.2020.</b></p>

2	Diploma in Civil Engineering/ Architecture.	--	8 years' work experience in the field of valuation of real estate after completion of the diploma  They should preferably complete the certification course in valuation of real estate as prescribed under Sr.no. 1 above.  <b>Note: The applicants empanelled on the basis of criteria laid down under Sr.no.2 shall be eligible for empanelment even after 01.01.2020</b>
3	Pass in examination in Indian Banks' Association valuation of real estate recognized by the Govt. of India for recruitment to superior services or posts conducted by any institution	--	2 years' work experience in the field of valuation of real estate after completing the examination
4	Graduate in Civil Engineering, Architecture or town planning of a recognised University established under State or Central Act or equivalent whether in India or Abroad	Post Graduate in Civil Engineering, Architecture or town planning of a recognised University established under State or Central Act or equivalent whether in India or Abroad	Three years of experience in the discipline after completing Post Graduation
5	Graduate from a recognized university established under State or Central Act or equivalent whether in India or Abroad in a discipline specified by IBA or IBBI and amended from time to time	Post Graduate in valuation of Land and building or Real Estate from a recognized university established under State or Central Act or equivalent whether in India or Abroad	Five years of experience in the discipline after completing Post Graduation

6	Chartered/ Professional membership of the Royal Institution of Chartered Surveyors (RICS)/American Society of Appraisers (ASA)/Appraisal Institute (AI),USA/ other Internationally reputed institutional players who fulfill the criteria -obtained by passing an examination equivalent to examinations mentioned under sr.no. (3) & (5) above.		Since the process of procurement of membership with these organizations includes training as an integral component, no further experience requirement is being prescribed
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\* The eligibility qualification means qualification obtained from a recognised Indian University established under State or Central Act or equivalent whether in India or Abroad

\*\* "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

- Valuers with educational qualifications of Graduation and above, who are neither registered with IBBI nor registered under section 34AB of Wealth Tax Act, 1957, shall undertake the valuation of properties/ assets for loans up-to Rs.2.00 Crore only.
- Diploma holders in Civil Engineering/Architecture will be eligible for empanelment to undertake valuation of Properties/ Assets for loans up-to Rs.1.00 Crore only. However, such valuers may conduct valuation of properties/assets under Housing for Loans up-to Rs.2.00 Crore.

However, from 01.01.2020 for fresh empanelment, preferably, only academically qualified valuers with Post Graduate degree in valuation of land & building/ real estate from a recognised university (as established under State or Central Acts) with 3 years' experience in valuation of real estate shall be considered.

### Valuation of Plant and Machinery

The educational qualifications for empanelment as valuers of plant & machinery shall be as under:

Sl. No.	Graduate level	Post Graduate level	Experience in specific discipline
1	Graduate in Mechanical, Electrical, Chemical, Production, Computer, Industrial Engineering and any other stream of Engineering as required by the Bank for conduct of valuation of Plant and Machinery and other equipment of a recognized university established under State or Central Act or equivalent whether in India or Abroad	---	<p>Five years of experience in the field of valuation of plant &amp; machinery after completing Graduation or equivalent</p> <p><i>The Applicants with these qualifications should preferably possess an additional qualification in the form of</i></p> <p>(i) a certification examination on or before 31.12.2019 of duration of one semester or above in the subjects which are vital for valuation of plant &amp; machinery and not covered in course curriculum of Mechanical, Electrical, Chemical, Production, Computer, Industrial Engineering and any other stream of Engineering as required by the Bank for conduct of valuation of Plant and Machinery and other equipment from recognized university/ Institution conducting the examination which are recognized by Govt. of India.</p> <p>In case of non-completion of course by 31.12.2019, empanelment shall stand cancelled automatically.</p> <p>Or</p> <p>(ii) valuer is registered with IBBI</p> <p>Or</p> <p><b><u>(iii) valuer is registered under section 34AB of Wealth Tax Act, 1957</u></b></p> <p><b>Note: The applicants empanelled on the basis of criteria laid down under Sr.no.1 shall be eligible for empanelment even after 01.01.2020</b></p>
2	Diploma in mechanical, electrical, production, chemical, electronics, computer, industrial engineering and any other stream of Engineering as required by the Banks awarded by a recognized institute by State/central government for conduct of valuation of Plant and Machinery and other equipments		<p>8 years work experience in the field of valuation of plant and machinery after completion of the diploma</p> <p>They should preferably complete certification course in valuation of plant and machinery prescribed under Sr.no.1 above.</p> <p><b>The applicants empanelled on the basis of criteria laid down under Sr.no.2 shall be eligible for empanelment even after 01.01.2020</b></p>

3	Graduate in Mechanical, Electrical, Chemical, Production, Computer, Industrial Engineering and any other stream of Engineering as required by the Bank for conduct of valuation of Plant and Machinery and other equipment of a recognized university established under State or Central Act or equivalent whether in India or Abroad	Post Graduate in Mechanical, Electrical, Chemical, Production, Computer, Industrial Engineering and any other stream of Engineering as required by the Bank for conduct of valuation of Plant and Machinery and other equipment of a recognized university or equivalent whether in India or Abroad	Three years of experience in the discipline after completing Post Graduation
4	Graduate in valuation of Plant & machinery from a recognised university established under State or Central Act or equivalent whether in India or Abroad	Post Graduate in valuation of plant & machinery from a recognised university established under State or Central Act or equivalent whether in India or Abroad	Three years of experience in the discipline after completing Post Graduation

\* The eligibility qualification means qualification obtained from a recognised Indian University established under State or Central Act or equivalent whether in India or Abroad

\*\* "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

- *Valuers with educational qualifications of Graduation and above, who are neither registered with IBBI nor registered under section 34AB of Wealth Tax Act, 1957, shall undertake the valuation of properties/ assets for loans up-to Rs.2.00 Cr. only.*
- *Diploma holders in mechanical, electrical, production, chemical, electronics, computer, industrial engineering and any other stream of Engineering will be eligible for empanelment to undertake valuation of Properties/ Assets for loans up-to Rs.1.00 Crore only. However, such valuers may conduct valuation of properties/assets under Housing Loans for loans up-to Rs.2.00 Crore.*

However, from 01.01.2020 for fresh empanelment, preferably, only academically qualified valuers with Post Graduate degree in valuation of plant & machinery from a recognised university with 3 years' experience in valuation of real estate is required



### III. (a) Securities or Financial Assets/ Stocks in Trade

The educational qualifications for empanelment as valuers of Securities or Financial Assets shall be as under:

Sl. No.	Graduate level	Post Graduate level	Experience in specific discipline
1	Graduate in any stream from a recognised university established under State or Central Act or equivalent whether in India or Abroad	(1) Member of the Institute of Chartered Accountants or The Institute of Cost Accountants of India or the Institute of Company Secretaries of India; (2) MBA / PGDBM specialisation in finance or; (3) Post Graduate Degree in Finance	Three years of experience in the discipline after completing graduation.

\* The eligibility qualification means qualification obtained from a recognised Indian University established under State or Central Act or equivalent whether in India or Abroad

\*\* "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

- Valuers with educational qualifications of Graduation and above, who are neither registered with IBBI nor registered under section 34AB of Wealth Tax Act, 1957, shall undertake the valuation of properties/ assets for loans up-to Rs.2.00 Crore only.

### (b) Valuers of Stock (inventory), Shares (Under SARFAESI Act, 2002)

In the case of these assets criteria laid down under the Wealth Tax Rule 8A (7) may be adopted.

**Rule 8A (7)** a Valuer of stocks, shares, debentures, securities, shares in partnership firms and of business assets, including goodwill but excluding those referred to in sub-rules (2) to (6) and (8) to (11), shall have the following qualifications, namely,

- He must be a member of the Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India [or the Institute of Company Secretary of India]; and
- He must have been in practice as chartered accountant or a cost and works accountants or a company secretary for a period of not less than ten years and his gross receipts from such practice should not be less than fifty thousand rupees in any three of the five preceding years.
- Evidence of previous experience needs to be provided to the Bank. In case of companies / partnership firms undertaking valuations, the qualification and experience shall apply to the lead valuers of the company / all partners of the partnership firm.

**IV. (a) Valuers of Agricultural land (other than Plantations)**

Valuer of agricultural land ought to have knowledge of following principles of valuation:

1. Cost, price, value and worth
2. Various types of value
3. Value elements – ingredients – characteristics
4. Annuities – capitalization – rate of capitalization – redemption of capital
5. Three approaches to value viz. Income, Market and cost
6. Laws applicable to agricultural land

(i) He must be a graduate in agricultural science of a recognised university and must have worked as a farm valuer for a period of not less than five years; and, or

(ii) He must be a person formerly employed in a post under Government as Collector, Deputy Collector, Settlement Officer, Land Valuation Officer, Superintendent of Land Records, Agricultural Officer, Registrar under the Registration Act, 1908, or any other officer of equivalent rank performing similar functions and must have retired or resigned from such employment after having rendered service in any one or more of the posts aforesaid for an aggregate period of not less than five years.

**(b) Valuers of Agricultural Land (Plantations)**

A valuer of coffee plantation, tea plantation, rubber plantation, cardamom plantation or as the case may be, shall have the following qualifications, namely:-

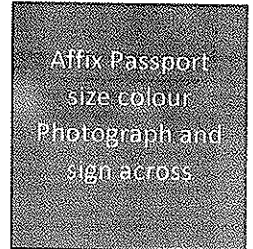
1. He must have, for a period of not less than five years, owned, or acted as manager of a coffee, tea, rubber or, as the case may be, cardamom plantation having an area under plantation of not less than four hectares in the case of a cardamom plantation or forty hectares in the case of any other plantation; or

2. He must be a person formerly employed in a post under Government as a Collector, Deputy Collector, Settlement Officer, Land Valuation Officer, Superintendent of Land Records, Agricultural Officer, Registrar under the Registration Act, 1908, or any other officer of equivalent rank performing similar functions and must have retired or resigned from such employment after having rendered service in any one or more of the posts aforesaid for an aggregate period of not less than five years, out of which not less than three years must have been in areas, wherein coffee, tea, rubber or, as the case may be, cardamom is extensively grown.

**Application for Empanelment as a Valuer**

To

.....  
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.....



**Subject: Application for empanelment as a valuer**

**IBBI Registration No.(if applicable):**

**Registered under Sec 34AB of Wealth Tax Act 1957, if yes, Wealth Tax Registration No:**

**Sir/ Madam,**

I, being an individual/ proprietor/ partner/ director (strike off whichever is not applicable), hereby apply for empanelment as a valuer for the following class(es) of assets :-

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_

The details are as under:

**A. DETAILS OF THE FIRM/ PARTNERSHIP ENTITY/ COMPANY (if applicable)**

- 1. Name:
- 2. Registration Number/ LLP Number/CIN Number:
- 3. PAN No.:
- 4. GST No.
- 5. Address for Correspondence or registered office:
- 6. Permanent Address:
- 7. E-Mail Address
- 8. Telephone No.:

Others:

**B. PERSONAL DETAILS OF INDIVIDUAL/ PROPRIETOR/ EACH PARTNER / DIRECTOR**

Title (Mr/Mrs/Ms):

1. Name:
2. Father's Name:
3. Mother's Name:
4. Date of Birth:
5. Registration with CBDT under Wealth Tax Act, 1957 – YES / No.  
If yes, (Registration No. & Date, of Individual/ all the Partners (in case of Partnership Firm))
6. PAN No.:
7. AADHAAR No.:
8. Passport No.:
9. GST No.
10. Address for Correspondence:
11. Permanent Address:
12. E-Mail Address:
13. Mobile No.
14. Others

**C. EDUCATIONAL, PROFESSIONAL AND VALUATION EXAMINATION QUALIFICATION****1. Educational Qualifications**

[Please provide educational qualifications from Bachelor's degree onwards for Individual/ proprietor/ each partner/director]

Educational Qualification	Year of Passing	Marks (percent.)	Grade/ Class	University / College	Remarks, if any

**2. Professional Qualifications for Individual/ proprietor/ each partner/director**

Professional Qualification	Institute/ Professional Body/ registered valuers organisation	Membership No.	Date of enrolment	Remarks, if any

**3 (a) Details of valuation examination passed (for Individual/ proprietor/ all partners/directors who are registered valuers with RVO )**

Date of examination	Asset class, if any	Marks secured	Percentage

**3 (b) Valuation Qualifications (for Individual/ proprietor/ all partners/directors who are registered valuers with RVO)**

Valuation specific qualification/ course	Recognised Registered Valuers Organisation		Asset class	Membership No. in Registered Valuers Organisation	Remarks, if any.
	Name	Recognition No			

**D. WORK EXPERIENCE (if applicable)**

- Are you presently in practice / employment? (Yes or No)
- Number of years in practice or of work experience in the relevant profession or in valuation (attach evidence in the form of reference letters/copies of valuation reports/any other evidence):
- If in practice, address for professional correspondence:
- Number of years in employment (in years and months):
- Experience Details

Sl. No.	From Date	To Date	Employment / Practice	If employed, Name of Employer and Designation	If in practice, experience in the relevant profession/ valuation	Area of work

**D. REGISTERED VALUERS ORGANISATION/ MEMBERSHIP OF PROFESSIONAL BODIES**

- Please give details of the registered valuers organisation/ Professional bodies of which you are a member. Please state your membership number.

**E. ADDITIONAL INFORMATION**

1. Have you ever /or any of your partners/directors ever been convicted for an offence? (Yes or No). If yes, please give details.
2. Are any criminal proceedings pending against you /or your partners/directors? (Yes or No) If yes, please give details.
3. Are you or any of your/ your partners/directors undischarged bankrupt, or have applied to be adjudged as a bankrupt? (Yes or No)  
If yes, please give details.
4. Please provide any additional information that may be relevant for your application.

**F. ATTACHMENTS**

1. Copy of Certificate of Registration with IBBI
2. Copy of Certificate of Registration under Sec 34AB of Wealth Tax Act, 1957 (if applicable)
3. Copy of proof of membership with a registered valuers organization.
4. Copy of membership with Professional bodies
5. Reference Letter(s) as prescribed in Annexure-XI
6. KYC documents for Individual/ Firm/ Partnership Firm/ Company and its proprietor/ partners/directors.
7. Copies of documents in support of educational qualifications, professional qualifications and valuation qualifications of Individual/ proprietor/ partners/directors.
8. Copies of documents demonstrating practice or work experience for relevant period, if applicable
9. Copies of certificate of employment by the relevant employer(s), specifying the period of such employment, if applicable.
10. Financial statements/ Income Tax Returns for the last three years.
11. Passport-size photograph(s) of Individual/ proprietor/ partners/directors.

**G. AFFIRMATIONS**

1. Copies of documents, as listed in section G of this application form have been attached/ uploaded. The documents attached/ uploaded are \_\_\_\_\_
2. I undertake to furnish any additional information as and when called for.
3. I am not disqualified from being registered as a valuer under the Companies (Registered Valuers and Valuation) Rules, 2017, (Please strike off if not applicable).
4. This application and the information furnished by me along with this application is true and complete. If found false, misleading or incorrect I will be fully responsible for the consequences.

Place :  
Date:

Signature & Name of applicant

**List of documents to be obtained**

Sl. No.	Name of documents
1	Copy of Certificate of Registration with IBBI (if applicable)
2	Copy of Certificate of Registration under Sec 34AB of Wealth Tax Act, 1957 (if applicable)
3	Copy of proof of membership with a registered valuers organization. (if applicable)
4	Copy of membership with Professional bodies
5	Reference Letter(s) as prescribed in Annexure-XI
6	KYC documents for Individual/ Firm/ Partnership Firm/ Company and its proprietor/ partners/directors.
7	Copies of documents in support of educational qualifications, professional qualifications and valuation qualifications of Individual/ proprietor/ partners/directors.
8	Copies of documents demonstrating practice or work experience for relevant period, if applicable
9	Copies of certificate of employment by the relevant employer(s), specifying the period of such employment, if applicable.
10	Financial statements/ Income Tax Returns for the last three years.
11	Passport-size photograph(s) of Individual/ proprietor/ partners/directors.

The above list is illustrative and not exhaustive. The Bank may call for such other evidence as may be considered necessary for verifying the eligibility or competence of the Valuer.



(Annexure-IV)

**Format of undertaking to be submitted by Individuals/ proprietor/ partners/  
directors**

**DECLARATION- CUM- UNDERTAKING**

I, \_\_\_\_\_ son/ daughter of \_\_\_\_\_ do hereby solemnly affirm and state that:

- a. I am a citizen of India
- b. I will not undertake valuation of any assets in which I have a direct or indirect interest or become so interested at any time during a period of three years prior to my appointment as valuer or three years after the valuation of assets was conducted by me
- c. The information furnished in my valuation report dated DD-MM-YYYY is true and correct to the best of my knowledge and belief and I have made an impartial and true valuation of the property.
- d. I have personally inspected the property on DD-MM-YYYY The work is not sub-contracted to any other valuer and carried out by myself.
- e. Valuation report is submitted in the format as prescribed by the Bank.
- f. I have not been depanelled/ delisted by any other bank and in case any such depanelment by other banks during my empanelment with you, I will inform you within 3 days of such depanelment.
- f. I have not been removed/dismissed from service/employment earlier
- g. I have not been convicted of any offence and sentenced to a term of imprisonment
- h. I have not been found guilty of misconduct in professional capacity
- i. I have not been declared to be unsound mind
- j. I am not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
- k. I am not an undischarged insolvent
- l. I have 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
- m. I have not been convicted of an offence connected with any proceeding under the Income Tax Act 1961, Wealth Tax Act 1957 or Gift Tax Act 1958 and
- n. My PAN Card number/Service Tax number as applicable is .....
- o. I undertake to keep you informed of any events or happenings which would make me ineligible for empanelment as a valuer

- p. I have not concealed or suppressed any material information, facts and records and I have made a complete and full disclosure
- q. I have read the Handbook on Policy, Standards and procedure for Real Estate Valuation, 2011 of the IBA and this report is in conformity to the "Standards" enshrined for valuation in the Part-B of the above handbook to the best of my ability
- r. I have read the International Valuation Standards (IVS) and the report submitted to the Bank for the respective asset class is in conformity to the "Standards" as enshrined for valuation in the IVS in "General Standards" and "Asset Standards" as applicable
- s. I abide by the Model Code of Conduct for empanelment of valuer in the Bank. (Annexure V- A signed copy of same to be taken and kept along with this declaration)
- t. I am registered under Section 34 AB of the Wealth Tax Act, 1957. (Strike off, if not applicable)
- u. I am valuer registered with Insolvency & Bankruptcy Board of India (IBBI) (Strike off, if not applicable)
- v. My CIBIL Score and credit worthiness is as per Bank's guidelines.
- w. I am the proprietor / partner / authorized official of the firm / company, who is competent to sign this valuation report.
- x. I will undertake the valuation work on receipt of Letter of Engagement generated from the system (i.e. LLMS/LOS) only.
- y. Further, I hereby provide the following information.

Sl. No.	Particulars	Valuer comment
1	background information of the asset being valued;	
2	purpose of valuation and appointing authority	
3	identity of the valuer and any other experts involved in the valuation;	
4	disclosure of valuer interest or conflict, if any;	
5	date of appointment, valuation date and date of report;	
6	inspections and/or investigations undertaken;	
7	nature and sources of the information used or relied upon;	
8	procedures adopted in carrying out the valuation and valuation standards followed;	
9	restrictions on use of the report, if any;	

10	major factors that were taken into account during the valuation;	
11	major factors that were not taken into account during the valuation;	
12	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.	

**Date:**

**Place:**

**Signature**

**(Name of the Approved Valuer and Seal of the Firm / Company)**

**MODEL CODE OF CONDUCT FOR  
VALUERS****Integrity and Fairness**

1. A valuer shall, in the conduct of his/its business, follow high standards of integrity and fairness in all his/its dealings with his/its clients and other valuers.
2. A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.
3. A valuer shall endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations.
4. A valuer shall refrain from being involved in any action that would bring disrepute to the profession.
5. A valuer shall keep public interest foremost while delivering his services.

**Professional Competence and Due Care**

6. A valuer shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.
7. A valuer shall carry out professional services in accordance with the relevant technical and professional standards that may be specified from time to time
8. A valuer shall continuously maintain professional knowledge and skill to provide competent professional service based on up-to-date developments in practice, prevailing regulations/guidelines and techniques.
9. In the preparation of a valuation report, the valuer shall not disclaim liability for his/its expertise or deny his/its duty of care, except to the extent that the assumptions are based on statements of fact provided by the company or its auditors or consultants or information available in public domain and not generated by the valuer.
10. A valuer shall not carry out any instruction of the client insofar as they are incompatible with the requirements of integrity, objectivity and independence.
11. A valuer shall clearly state to his client the services that he would be competent to provide and the services for which he would be relying on other valuers or professionals or for which the client can have a separate arrangement with other valuers.

**Independence and Disclosure of Interest**

12. A valuer shall act with objectivity in his/its professional dealings by ensuring that his/its decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation assignment or not.

13. A valuer shall not take up an assignment if he/it or any of his/its relatives or associates is not independent in terms of association to the company.
14. A valuer shall maintain complete independence in his/its professional relationships and shall conduct the valuation independent of external influences.
15. A valuer shall wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased services.
16. A valuer shall not deal in securities of any subject company after any time when he/it first becomes aware of the possibility of his/its association with the valuation, and in accordance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or till the time the valuation report becomes public, whichever is earlier.
17. A valuer shall not indulge in "mandate snatching" or offering "convenience valuations" in order to cater to a company or client's needs.
18. As an independent valuer, the valuer shall not charge success fee.
19. In any fairness opinion or independent expert opinion submitted by a valuer, if there has been a prior engagement in an unconnected transaction, the valuer shall declare the association with the company during the last five years.

#### **Confidentiality**

20. A valuer shall not use or divulge to other clients or any other party any confidential information about the subject company, which has come to his/its knowledge without proper and specific authority or unless there is a legal or professional right or duty to disclose.

#### **Information Management**

21. A valuer shall ensure that he/ it maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his/its decisions and actions.
22. A valuer shall appear, co-operate and be available for inspections and investigations carried out by the authority, any person authorised by the authority, the registered valuers organisation with which he/it is registered or any other statutory regulatory body.
23. A valuer shall provide all information and records as may be required by the authority, the Tribunal, Appellate Tribunal, the registered valuers organisation with which he/it is registered, or any other statutory regulatory body.
24. A valuer while respecting the confidentiality of information acquired during the course of performing professional services, shall maintain proper working papers for a period of three years or such longer period as required in its contract for a specific valuation, for production before a regulatory authority or for a peer review. In the event of a pending case before the Tribunal or Appellate Tribunal, the record shall be maintained till the disposal of the case.

**Gifts and hospitality.**

25. A valuer or his/its relative shall not accept gifts or hospitality which undermines or affects his independence as a valuer.

Explanation: For the purposes of this code the term 'relative' shall have the same meaning as defined in clause (77) of Section 2 of the Companies Act, 2013 (18 of 2013).

26. A valuer shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person with a view to obtain or retain work for himself/ itself, or to obtain or retain an advantage in the conduct of profession for himself/ itself.

**Remuneration and Costs.**

27. A valuer shall provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable rules.

28. A valuer shall not accept any fees or charges other than those which are disclosed in a written contract with the person to whom he would be rendering service.

**Occupation, employability and restrictions.**

29. A valuer shall refrain from accepting too many assignments, if he/it is unlikely to be able to devote adequate time to each of his/ its assignments.

30. A valuer shall not conduct business which in the opinion of the authority or the registered valuer organisation discredits the profession.

**Miscellaneous**

31. A valuer shall refrain from undertaking to review the work of another valuer of the same client except under written orders from the bank or housing finance institutions and with knowledge of the concerned valuer.

32. A valuer shall follow this code as amended or revised from time to time

Signature of the valuer : \_\_\_\_\_

Name of the Valuer : \_\_\_\_\_

Address of the valuer : \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**Annual Review of Valuers Empaneled in the Bank****1. DETAILS OF THE FIRM/ PARTNERSHIP ENTITY/ COMPANY (IF APPLICABLE)**

- a. Name:
- b. Registration Number/ LLP Number/CIN Number:
- c. PAN No.:
- d. GST No.
- e. Address for Correspondence or registered office:
- f. Permanent Address:
- g. E-Mail Address
- h. Telephone No.:
- i. Others:

**2. PERSONAL DETAILS OF INDIVIDUAL/ PROPRIETOR/ EACH PARTNER/DIRECTOR**

- (i) Title (Mr/Mrs/Ms):
- (ii) Name:
- (iii) Father's Name:
- (iv) Mother's Name:
- (v) Date of Birth:
- (vi) Registration with CBDT under Wealth Tax Act, 1957 – YES / No.  
If yes, (Registration No. & Date, of Individual/ all the Partners (in case of Partnership Firm)
- (vii) PAN No.:
- (viii) AADHAAR No.:
- (ix) Passport No.:
- (x) GST No.
- (xi) Address for Correspondence:
- (xii) Permanent Address:
- (xiii) E-mail address
- (xiv) Mobile No.
- (xv) Others

### 3. EDUCATIONAL, PROFESSIONAL AND VALUATION EXAMINATION QUALIFICATIONS

[Please provide educational qualifications from Bachelor's degree onwards for Individual/ proprietor/ each partner/director]

Educational Qualification	Year of Passing	Marks (percent.)	Grade/ Class	University /College	Remarks, if any

### 4. Professional Qualifications for Individual/ proprietor/ each partner/director

Professional Qualification	Institute/ Professional Body/ registered valuers organisation	Membership No.	Date of enrolment	Remarks, if any

### 5. (a) Details of valuation examination passed (for Individual/ proprietor/ all partners/directors who are registered valuers with RVO )

Date of examination	Asset class, if any	Marks secured	Percentage

### 6. Valuation Qualifications (for Individual/ proprietor/ all partners/directors who are registered valuers with RVO)

Valuation specific qualification/course	Recognised Registered Valuers Organisation		Asset class	Membership No. in Registered Valuers Organisation	Remarks, if any.
	Name	Recognition No			

7. Registration No. with IBBI:

8. Membership with Professional Bodies and Membership No.

9. Work Experience:

10. Upgradation of knowledge by undertaking professional courses since last review or empanelment:



11. Registration with Govt. agencies:
12. Date of empaneled in the Bank:
13. Registration of valuer under VMS (Y/N):
14. Whether valuer was delisted from any Bank's Panel on earlier occasion, If so furnish details:
15. Major assignment handled so far (Furnish Nature of Assignment, Nature of Assets, & Amount):
16. Experience with Bank so far and remarks, if any:

(Chairman of the Committee)

(Committee Member-1)

(Committee Member-2)

(Committee Member-3)

Date:

Place:

**(I) RECOMMENDATIONS FOR EMPANELMENT OF VALUERS UNDER SARFAESI ACT, 2002**

(Annexure-VII)

Sr. No.	Name of the Valuer	Constitution of the valuer (please mention name of the Individual/Proprietor/Directors/Partners etc.)	Address & Contact no. And e-mail	PAN of valuer *	Location	Asset Class (Please mention Land & Building, Plant & Machinery, Securities or Financial Assets, etc. as per registration under Wealth Tax Act, 1957)	Educational Qualifications	Registration No. under section 34AB of Wealth Tax Act, 1957	Registration with IBBI, if yes, Registration No.	Experience in Valuation (Please mention experience in years)	Score under evaluation Matrix (Annexure-X)	Category of valuer & eligibility to conduct valuation (please choose and fill amount as applicable)							
												A	B			C			
												Eligible Valuation amount	Eligible Valuation amount			Eligible Valuation amount			
Fair market value of asset / security	Fair market value of asset/security	Loan amount upto 2.00 Crore if graduate and above but neither registered with IBBI nor registered under Wealth Tax Act 1957	Loan amount upto 1.00 Crore if Diploma and other than graduation and post graduation and above but neither registered with IBBI nor registered under Wealth Tax Act 1957	Fair market value of asset / security	Loan amount upto 2.00 Crore if graduate and above but neither registered with IBBI nor registered under Wealth Tax Act 1957	Loan amount upto 1.00 Crore if Diploma and other than graduation and post graduation and above but neither registered with IBBI nor registered under Wealth Tax Act 1957													

## Recommendations:

The above mentioned Valuer(s) is/are recommended to be empanelled in the Bank in the respective asset class(es) and all the related documents submitted with this regard have been verified and due diligence has been completed as per the circular No. \_\_\_\_\_ dated \_\_\_\_\_ on Valuation Policy and Empanelment of valuers.

Member-1

Member-2

Member-3

Secretary of  
the Committee

Chairman of the Committee

Place:

Date:

\*In case of Partnership Firms Registration No. as allotted under wealth Tax Act, 1957 and PAN of each Partners are to be furnished  
\*Complete details of the valuers to be provided along with recommendations in excel format

**(II) RECOMMENDATIONS FOR EMPANELMENT OF VALUERS UNDER 'A' CATEGORY OF VALUERS WITH EXPERIENCE OF MORE THAN 10 YEARS**

Sr. No.	Name of the Valuer	Constitution of valuers (please mention name of the Individual/ Proprietor /Directors/ Partners etc.)	Address & Contact no. And e-mail	PAN of valuer *	Location	Asset Class (Please mention Land & Building, Plant & Machinery, Securities or Financial Assets, etc. as per registration under Wealth Tax Act, 1957)	Educational Qualifications	*Registration No. under section 34AB of Wealth Tax Act, 1957	Registration with I.B.B.I., if yes, Registration No.	Experience in Valuation (Please mention experience in years)	Score under evaluation Matrix (Annexure-X)	Category of valuer & eligibility to conduct valuation (please choose and fill amount as applicable)								
												Category A	Category B (applicable for Circles)			Category C (applicable for Circles)				
													Eligible Valuation amount			Eligible Valuation amount				
													Fair market value of asset / security	Fair market value of asset / security	Loan amount upto 2.00 Crore if graduate and above but neither registered with I.B.B.I nor registered under Wealth Tax Act 1957	Loan amount upto 1.00 Crore if Diploma and other than graduation and post graduation and above but neither registered with I.B.B.I nor registered under Wealth Tax Act 1957	Fair market value of asset / security	Loan amount upto 2.00 Crore if graduate and above but neither registered with I.B.B.I nor registered under Wealth Tax Act 1957	Loan amount upto 1.00 Crore if Diploma and other than graduation and post graduation and above but neither registered with I.B.B.I nor registered under Wealth Tax Act 1957	

**Recommendations:**

The above mentioned Valuer(s) is/are recommended to be empanelled in the Bank in the respective asset class(es) and all the related documents submitted with this regard have been verified and due diligence has been completed as per the circular No. \_\_\_\_\_ dated \_\_\_\_\_ on Valuation Policy and Empanelment of valuers.

Member-1

Member-2

Member-3

Secretary of  
the Committee

Chairman of the Committee

Place:

Date:

\* In case of Partnership Firms Registration No. as allotted under wealth Tax Act, 1957 and PAN of each Partners are to be furnished

\* Complete details of the valuers to be provided along with recommendations in excel format

**Certificate of Membership**

This is to certify that Mr./Ms. \_\_\_\_\_  
Proprietor/ Partner/ Director of M/s. \_\_\_\_\_  
Registered Office at \_\_\_\_\_ is registered valuer  
member with this Association. His/ her Membership No. is  
\_\_\_\_\_

2. It is also certified that he/ She holds a good standing/reputation in the Association and there are no complaints, disciplinary actions pending or in progress against the above valuer member.

Authorised Signatory

Date:

Place:

\*Certificate to be issued on a letter head

**TERMS AND CONDITIONS TO BE ANNEXED TO THE APPOINTMENT LETTER**  
**FOR VALUERS**

- i. Bank, in its sole discretion, may require the Valuer to determine the fair market value of one or more properties. Bank shall have the sole discretion to allot any one or more number of property or properties to the Valuer for the purpose of valuation. The Valuer shall not insist on allotment of any specific property or increase in the number of properties to be allotted to such Valuer and shall not initiate or attempt any negotiations in this regard with Bank.
- ii. The Valuer shall determine the fair market value of property allotted for valuation, as on the date of the valuation, and submit the valuation report in this regard to Bank. The valuation report shall certify the documentary and physical existence of the property and shall include all matters germane to the valuation and must provide a full explanation of the Valuer's reasoning and his analyses of the value, so that Bank will be able to follow the Valuer's analyses and understand how he reached his valuation.
- iii. Valuers shall comply with International Valuation Standards (IVS) and valuation report submitted to the Bank for the respective asset class is in conformity to the "Standards" as enshrined for valuation in the IVS in "General Standards" and "Asset Standards" as applicable.
- iv. Valuer shall ensure that the valuation report invariably includes:
  - (a) Fair Market Value, Realizable Value, Book Value and Distress Sale Value of the property as on the date of the valuation and difference in the values should be explained
  - (b) the manner in which the Valuer has arrived at and determined the Valuation
  - (c) all factors which the Valuer has taken into account as having the effect of increasing or decreasing the value of the property
  - (d) any factors which may prejudicially affect the market price or easy marketability of the property
  - (e) any factors which may in future prejudicially affect the market price or easy marketability of the property (if such factors can be reasonably perceived as of the date of the valuation)
  - (f) a rough sketch of the property with nearby landmarks useful for identifying the property, in case of immovable properties and the photographs identifying boundaries of the property and its surroundings.
  - (g) Such other matters concerning valuation as Bank may require.

- iv. The Valuer shall provide full details of the basis of valuation in the report and is required to clearly specify whether the property is in actual possession of the applicant / borrower and whether anyone else has any interest in the property.
- v. The Valuer shall personally visit the property and a certificate to that effect shall be included in the valuation report.
- vi. Valuation must be based on prevailing market rates and any departure from the same should be mentioned with reasons in the valuation report.
- vii. The Valuer will carry out all such investigations, and gather all such information, as is necessary and / or appropriate for the purposes of the valuation report.
- viii. Valuation report of property in the same area by different valuers should compare and not widely differ.
- ix. The Valuer shall modify or furnish supplements to any valuation report furnished , without additional cost to the Bank in event of any material omissions, inaccuracies, or defects in the valuation report being discovered after delivery and acceptance of the valuation report by the Bank or the Valuer receiving or becoming aware of relevant additional information that were in existence prior to the date of such report or any other change in circumstances including change in applicable principles of law requiring the modification or supplementing of such report.
- x. The Valuer and Valuer's employees, agents, or representatives shall not use, directly or indirectly, any Confidential Information provided by the Bank for the benefit of any person other than the Bank, or disclose such Confidential Information, in whole or in part, to any person. The Valuer shall be responsible for the safe keeping of all such information, documents, records and items provided to Valuer which may come into the Valuer's power or possession and shall ensure that they are not misplaced, stolen, misappropriated, modified, deleted, tampered with or destroyed.
- xi. The Valuer shall ensure that such information, documents, records, items and copies and abstracts thereof do not come into the possession of any person except Bank and such of the Valuer's Personnel as may be necessary for the purpose of valuation. The Valuer shall be liable and responsible for any and all unauthorized use and/or copying of the same after it is delivered to or while in the power or possession of the Valuer or Valuer's Personnel. Promptly upon the expiration or termination of period of empanelment, or upon the request of the Bank, the Valuer shall return to the Bank all such documents, records, tangible items, valuation reports and specific materials.
- xii. The Valuer shall indemnify and keep fully and effectively indemnified the Bank against all costs, claims, damages, demands, expenses and liabilities of whatsoever nature which may be caused to or suffered by or made or taken against Bank (including, without limitation, any claims or proceedings by any



customers against Bank) directly or indirectly arising out of any improper, incorrect or negligent performance, work, service, act or omission by the Valuer or any of Valuer's Personnel or fraud or other wrongful act by the Valuer or by any of Valuer's Personnel or for any act of the Valuer which results in Bank obtaining incorrect or incomplete information from the Valuer or any of Valuer's Personnel. In this connection, a Letter of Indemnity as per **Annexure-XV** is to be executed by him.

- xiii. The Valuer agrees to indemnify and keep indemnified the Bank against any loss or damage to any of Bank's information, documents, property, records, or other items while in the Valuer's use or possession.
- xiv. Valuation methodology used for the valuation of the respective asset class shall be in conformity to the "Standards" as enshrined for valuation in the International Valuation Standards (IVS) in "General Standards" and "Asset Standards" as applicable.
- xv. Format for the Valuation Report shall be as per Bank's format for valuation prescribed in Annexure- XIV.
- xvi. The Bank may, at its sole discretion, depanel/delist/blacklist a valuer:-
  - (a) if the Valuer fails to deliver any or all the obligations within the time period specified for valuation, or any extension thereof granted by the Bank or
  - (b) if the Valuer fails to perform any other material obligation(s) under the terms of empanelment and does not rectify, if capable of rectification, the same within 10 days of receipt of notice of default from the Bank or
  - (c) if Bank is of the opinion that the services rendered by the Valuer are not up-to the standard, quality and level as desired by Bank or
  - (d) for any reasons which the Bank, at its sole discretion consider a fit and proper ground for termination of the empanelment.
  - (e) if the Valuer becoming bankrupt, or insolvent or passing any resolution for winding up or becoming incompetent to contract, or any other such or similar reason whatsoever
  - (f) if any acts of commission or omission on the part of Valuer or Valuer's Personnel, in the reasonable opinion of the Bank, tantamount to fraud.
- xvii. Bank shall have the right to adopt any or all of the following course/s of action unless the said happening, in the reasonable opinion of the Bank, is not attributable to any act, omission or commission of the Valuer or Valuer's Personnel:
  - (a) depanel and/or remove the name of the Valuer from the list of Valuers on the panel of the Bank
  - (b) blacklist the Valuer and display the name of the Valuer in the list of blacklisted Valuers
  - (c) share the information of such depanelment or removal or blacklisting with Indian Banks Association or Insolvency and Bankruptcy Board of India (IBBI) or both

- (d) bring such depanelment or removal or blacklisting to the notice of Institute of Chartered Engineers or any other similar professional body or association in which such valuer is a member

xviii. In the event of the depanelment/ delisting, Valuer shall:

- (a) be liable and responsible to return to the Bank all records, documents, data and information including Confidential Information pertaining to or relating to the Bank or services in its possession and
- (b) refrain from holding itself in any way as the Valuer of Bank and
- (c) provide a final account of fees and other payment, if any, due to the Valuer

Signature of the valuer : \_\_\_\_\_

Name of the Valuer : \_\_\_\_\_

Address of the valuer : \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Place: \_\_\_\_\_

(Annexure-X)

**Evaluation Matrix for Empanelment of Valuers**

Sl. No	Criteria	Score Matrix		Weightage	Max Score	Score obtained
		Particulars	Score			
1	Experience in valuation of relevant class(s) of Asset(s) as per Annexure-I	More than 10 years	15	100%	15	
		More than 5 years but up-to 10 years	10			
		More than 3 years but up-to 5 years	5			
		Below 3 years	0			
2	Educational Qualifications as specified in Annexure-I	Master's Degree and above in relevant field of valuation	15	100%	15	
		Bachelor's degree in relevant field of valuation	10			
		Diploma or any other qualification in relevant field of valuation	5			
		Qualifications other than above	0			
3	Registration with Insolvency and Bankruptcy Board of India (IBBI) or Membership with Registered Valuer Organisation (RVO)	Registered valuer with IBBI	10	200%	20	
		Membership with Registered Valuer Organisation (RVO)	5			
		Not registered with IBBI Nor registered with RVO	0			
4	Registered under Section 34AB of Wealth Tax Act, 2002	Registered under the Wealth Tax Act	10	150%	15	
		Not registered under the wealth Tax Act	0			
5	Present Empanelment/ Appointment with PSBs/ Govt.	Present Empanelment/ appointment with 5 and above PSBs/ Govt. Organisations excluding Companies	10	100%	10	

	Organisations/ Companies (Ltd. Co. engaged in business of valuation/LLP/ Pvt. Ltd. Co. engaged in business of valuation for last 5 years)	Present Empanelment/ Appointment with 1 to 4 PSBs/ Govt. Organisations/ including Companies	5			
		Presently No Empanelment/ Appointment with PSBs/ Govt. Organisations/ Companies	0			
6	Reference Letter from PSBs/ Govt. Organisations/ Companies where previously valuer had done valuations	5 and above reference letters from PSBs/ Govt. Organisations excluding Companies	5	100%	5	
		8 and above reference letters from PSBs/ Govt. Organisations/ including Companies	2.5			
		Up-to 2 reference letters from PSBs/ Govt. Organisations/ including Companies	0			
7	Number of relevant Valuation assignments undertaken and successfully completed in last 24 months	40 assignments and above with minimum 18 Non-Retail assignments	10	100%	10	
		20-39 assignments with minimum 12 Non-Retail assignments	5			
		10-19 assignments with minimum 6 Non-Retail assignments	2.5			
		Below 10 assignments	0			
8	Amount of valuation executed during last 12 months	12 or more number of cases with Market Value above Rs.100 crore each	10	100%	10	
		12 or more number of cases with Market Value above Rs.50.00 lacs each	5			
		Any no. of assignment of Market Value below Rs.50.00 lacs	0			
		<b>Total</b>			<b>100</b>	

\*Relevant Asset class = Land & Building/ Real Estate, Plant & Machinery, Securities or Financial Assets/ Stocks and Trade, Agriculture Land

\*\*Non-Retail = Corporate

➤ Categorisation of valuer on the basis of score in Evaluation Matrix

**Category- A** Score 62 and above

**Category- B** Score 55 to 61

**Category- C** Score 35 to 54

• **Categories of valuers**

The empanelment of valuers shall be in the following categories:

iii) Valuers under SARFAESI Act, 2002

Work Experience in Undertaking Valuation	Category of Valuers	Score as per Scoring Matrix	Fair Market Value of Asset/ Security for assignment of Valuation Work
10 years and above	A	=>62	No limit
	B	55-61	Up-to Rs.50.00 Cr.
	C	35-54	Up-to Rs.5.00 Cr.

iv) Valuers other than under SARFAESI Act, 2002, (including valuers registered with IBBI)

Work Experience in Undertaking Valuation	Category of Valuers	Score as per Scoring Matrix	Fair Market Value of Asset/ Security for assignment of Valuation Work
10 years and above	A	=>62	No limit
5 years to less than 10 years	B	55-61	Up-to Rs.50.00 Cr.
below 5 years	C	35-54	Up-to Rs.5.00 Cr.

(Annexure-XI)

(To be issued on a letter Head)

**TO WHOMSOEVER IT MAY CONCERN**

This reference letter is issued to certify that Mr./Ms. \_\_\_\_\_ is an Individual / Proprietor / Partner / Director of M/s. \_\_\_\_\_ valuer/ Proprietorship Firm / Partnership Firm / Company, its registered office at \_\_\_\_\_ is empanelled/ was empanelled with this office as a valuer for a period from \_\_\_\_\_ to \_\_\_\_\_ for conducting the valuation in the following Asset Class(es):

(please choose applicable field by ticking it)

1. Land & Building
2. Plant & Machinery
3. Securities or Financial Assets/ Stocks and Trade
4. Agriculture Land

2. The above valuer entity had approximately conducted following number of valuations with us during the period of empanelment:

Period of valuation conducted	Approximate nos. of Valuation conducted		Approximate amount of valuation		
	Overall nos. of valuations (A)	Nos. of Non-retail valuations Out of (A)	Overall amount of valuation	Amount of individual Non-retail valuation	
				Nos. of valuation with Market Value Above Rs.100 crore	Nos. of valuation with Market Value of Rs.50 lacs to below Rs.100 crore
From the date of empanelment or since last 24 months whichever is earlier					
Since last 12 months					

\*Non-retail = Corporate Loans

3. The valuation entity is capable, honest and professional and has completed its assignments successfully and satisfactorily during the period of empanelment.

Authorised Signatory

Date: \_\_\_\_\_

Place: \_\_\_\_\_

(To be issued on a Letter Head)

**LETTER OF EMPANELMENT AS A VALUER**

Mr./ Ms./ M/s \_\_\_\_\_ (Empanelled Valuer)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sir(s) / Madam,

**LETTER OF EMPANELMENT AS A VALUER**

With reference to your application dated \_\_\_\_\_ for empanelment as a valuer with this organisation, in asset class(es) \_\_\_\_\_, (Please specify: Land & Building/Plant and Machinery/Securities or Financial Assets/Stocks and Trade/ Agricultural Assets), we are pleased to inform that the appropriate authority has accepted your application and empanelled you as a **Valuer** in the assets class as following:

\_\_\_\_\_  
(Please specify either Land & Building/ Plant and Machinery/ Securities or Financial Assets/ Stocks and Trade/ Agricultural Assets)

2. In this context, please return duplicate copy of this letter along-with enclosed documents duly signed by you in all the pages as token of your acceptance.

(i) **Letter of Indemnity by Engineers/ Valuers (Annexure-XV)**

(ii) **Terms and Conditions (Annexure-IX)**

3. Please execute the Agreement with the Bank within \_\_\_\_\_ days, so that your services can be availed by our branches / operating units.

Yours faithfully,

Authorised Signatory

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**LETTER OF ENGAGEMENT TO VALUER**

(To be generated from system i.e. LLMS/LOS)

Mr/Ms/M/s \_\_\_\_\_ (Empanelled Valuer)

\_\_\_\_\_  
\_\_\_\_\_

Dear Sir(s) / Madam,

**LETTER OF ENGAGEMENT**

With reference to your empanelment with this organisation, as a valuer in asset class(es) \_\_\_\_\_ (Land & Building / Plant and Machinery / Securities or Financial Assets / Stocks and Trade / Agricultural Assets), the undersigned on behalf of State Bank of India, \_\_\_\_\_ Branch/Office, do hereby, engage your service as valuer to assess the value of the property / plant & machinery / security, the particular of which are given below, for the purpose of \_\_\_\_\_. All the relevant supportive documents, in relation to ownership and identification of the assets, will be / are being provided by the Bank on acceptance of / along with this letter. Other documents, if any, required to undertake the assignment, have to be procured by you.

2. The professional fees \_\_\_\_\_ (as agreed / negotiated within the Bank's prescribed fee structure) shall be paid by the **Bank / Borrower** within 45 days of the submission of the valuation report and its acceptance by the Bank.

3. Please submit a copy of the empanelment letter issued to you by the Bank along with the Copy of Agreement with the Bank and accepted Terms and Conditions.



## 4. Particulars of the assets to be valued:

Sl. No.	Name of the Owner &/ or Leasehold by	Details of the Assets to be valued			Details of Title deeds or ownership documents (Please specify Sale Deed No. etc.)																		
		Plant & Machinery				Land & Building	Other assets (please specify)																
		<table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Items</th> <th>Make</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>			Sr. No.	Items	Make							Survey No: Extent: Location details: Boundaries: <table border="1"> <tr> <td>North</td> <td></td> </tr> <tr> <td>South</td> <td></td> </tr> <tr> <td>East</td> <td></td> </tr> <tr> <td>West</td> <td></td> </tr> </table>	North		South		East		West		Sale Deed No:  Registered at / Place of registration:  Date of Registration:
Sr. No.	Items	Make																					
North																							
South																							
East																							
West																							

5. You will indemnify and keep the Bank fully and effectively indemnified against all costs, claims, damages, demands, expenses and liabilities of whatsoever nature which may be caused to or suffered by or made or taken against Bank (including, without limitation, any claims or proceedings by any customer against Bank) directly or indirectly arising out of any improper, incorrect or negligent performance, work, service, act or omission by you or any of your Personnel or fraud or other wrongful act by you or by any of your Personnel or for any act of the yours which results in Bank being provided with incorrect or incomplete information from you or any of your Personnel.

6. You will also indemnify and keep the Bank indemnified against any loss or damage to any of Bank's information, documents, property, records, or other items while in your use or possession.

7. In addition to the above the Bank reserves the right to adopt any or all of the following course/s of action unless the loss / claim, is not attributable to any act, omission or commission of the Valuer or Valuer's Personnel:

- (a) de-panel and/or remove the name of the Valuer from the list of Valuers on the panel of the Bank
- (b) blacklist the Valuer and display the name of the Valuer in the list of blacklisted Valuers
- (c) share the information of such depanelment or removal or blacklisting with Indian Banks Association or Insolvency and Bankruptcy Board of India (IBBI) or both

- (d) bring such depanelment or removal or blacklisting to the notice of Institute of Chartered Engineers or any other similar professional body or association in which such valuer is a member.
- (e) Any other measure for recovery of the amount of actual loss caused, which the Bank deems fit.
- (f) Any actions others than the aforesaid, which the Bank deems fit.

8. Please ensure that valuation methodology used by you for the valuation of respective asset class, is in conformity to the "Standards" as enshrined for valuation in the International Valuation Standards (IVS) in "General Standards" and "Asset Standards" as applicable.

9. Please ensure that the format for valuation report is as per Bank's prescribed formats (Copy enclosed).

10. You are required to submit the report in the format prescribed by the Bank within \_\_\_\_\_ days from acceptance of this letter and ensure that the Valuation Report is submitted to branch only in a "Sealed Cover Envelope".

Yours faithfully,

**Acknowledged**

**For & on behalf of State Bank of India**

[Signature with seal]

Place: \_\_\_\_\_

Date: \_\_\_\_\_

[Signature of Valuer]

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Copy to: \_\_\_\_\_ (owner of the assets with request to co-operate with the valuer appointed by the Bank).

**For & on behalf of State Bank of India**

[Signature with seal]

Place: \_\_\_\_\_

Date: \_\_\_\_\_

**ANNEXURE P-6**

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2092 of 2020

=====

Shakti Kumar Prabhakar &amp; Ors.

... .. Petitioner/s

Versus

Union of India &amp; Ors.

... .. Respondent/s

## =====

**Appearance :**

For the Petitioner/s	:	Mr. Siddhartha Prasad, Adv. Mr. Sumit Kumar, Adv. Mr. Om Prakash Kumar, Adv.
For the UOI	:	Mr. Rajesh Kumar Verma, ASG
For the SBI	:	Mr. Binod Bihar Sinha, Adv.
For the UCO	:	Mr. Shivendra Kumar Roy, Adv.
For the PNB	:	Mr. Suresh Prasad Singh-No. 1, Adv. Ms. Kumari Rashmi, Adv.

=====

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR****ORAL ORDER**

2      31-01-2020                      Learned counsel for the petitioners is permitted to implead Indian Bank Association as respondent No. 12 during the course of the day.

2. The petitioners, who are desirous of being empanelled as valuers with the respondents/Banks, are aggrieved by a condition put forth by the Banks whereby such valuers are required to provide an indemnity certificate

that they shall indemnify the Banks against all losses and damages and that all actions, suits, proceedings, expenses, costs, charges and demands arising out of any act, lapses, defaults, negligence, errors and mistakes committed by such valuer in performance of his professional obligation, he shall undertake and agree to pay the Bank, on demand, such sum of money which would be fixed at the prevalent rate.

3. Learned counsel for the petitioners submits that demanding such an indemnity certificate is out and out a decision to put any such valuer in an extremely difficult situation. The reason for the petitioners to say so is that it does not specify as to what would be considered to be lapse, default or negligence on the part of the valuers and how would the loss or damage attributed to such acts of default or negligence be quantified. Such open-ended indemnity certificate required from any valuer is not only unreasonable but defies any legal principle.

4. The argument that a valuer has an option not to get empanelled cannot be accepted for the reason that the respondents/Banks are scheduled/nationalized Banks and

any decision taken by them has a public element in it. A valuer desiring to be empanelled is, under such circumstance, rendered without an option, *i.e.*, either to accept the condition of giving such indemnity certificate or not to get empanelled at all. This, it has been urged on behalf of the petitioners, is not the manner in which the State ought to function. What has really been objected to is the open-ended indemnity certificate, which is being demanded from such desirous valuers.

5. *Prima facie*, the arguments raised by Mr. Siddhartha Prasad, learned Advocate appears to have serious force.

6. Mr. Binod Bihari Sinha, Mr. Shivendra Kumar Roy, and Mr. Suresh Prasad Singh, learned Advocates, appear and accept notices on behalf of the State Bank of India (respondent Nos. 6, 7 and 8), United Commercial Bank (respondent Nos. 9, 10 and 11) and Punjab National Bank (respondent Nos. 3, 4 and 5) respectively.

7. Let counter affidavits on behalf of the respondents/Banks in the matter be filed within a period of

four weeks from today.

8. The Union of India (respondent Nos. 1 and 2) is represented by Mr. Rajesh Kumar Verma, learned Assistant Solicitor General, who shall also file his response by the next date.

9. Re-notify on 28<sup>th</sup> of February, 2020.

10. In the meantime, if at all any decision for empanelment is taken, the petitioners shall not be insisted upon for giving such indemnity certificate. However, this order will be subject to the outcome of the writ petition.

(Ashutosh Kumar, J)

Praveen-II/-

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## The High Court Of Madhya Pradesh

WP-5850-2020

(RAJEEV BUMB AND OTHERS Vs UCO BANK AND OTHERS)

Indore, Dated : 12-03-2020

Shri Vivek Dalal, learned counsel for the Petitioner.

Heard on the question of admission as well as interim relief.

Issue notice to the respondents on payment of process fee within 3 days, returnable within four weeks.

Learned counsel for the petitioners submits that the petitioners are approved valuers of the respondents/banks and working since last so many years, however, for the first time the banks are insisting for submitting the letter of indemnity (Annexure P/2) to indemnify against all loss, damage and all actions, suits, proceedings, expenses, costs etc. so as to remain on the panel of approved valuers. He submits that such condition is unreasonable and the petitioners cannot be compelled to submit such type of indemnity. The report given by the valuers are only an opinion and the said report is not binding on the bank as they may accept or reject it. He further submits that the condition of submission of indemnity bond has been stayed by the High Court of Judicature at Patna in Civil Writ Jurisdiction Case No.2092/2020 dated 31.01.2020.

The petitioners have made out a prima facie case for grant of interim relief.

Till the next date of hearing, it is directed that if the respondents/banks empanel the petitioners as approved valuers for the next term, they shall not insist for giving the letter of indemnity (Form-F-Annexure P/2).

C.c as per rules.

(VIVEK RUSIA)  
JUDGE

hk/

HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3169/2020

Rajasthan Council Of Income Tax, Wealth Tax Valuers Society  
-----Petitioner

Versus

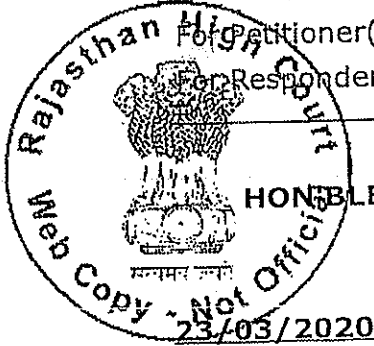
The General Manager  
-----Respondent

For Petitioner(s) : None present

For Respondent(s) :

HONBLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order



Written submissions have been filed wherein it has been stated that directions for demanding idemnify bond from the valuers is unjustified. Reliance has been placed on the order passed by Patna High Court in Civil Writ Jurisdiction Case No.2092 of 2020: Shakti Kumar Prabhakar & Ors. Versus Union of India & Ors., dated 31.1.2020. It is submitted that the petitioners' association is of those registered valuers under the Wealth Tax Act and they have been asked to idemnify the Banks against all losses and damages and that all actions, suits, proceedings, expenses, costs, charges and demands arising out of any act, lapses, defaults, negligence, errors and mistake committed by such valuer in performance of his professional obligation and that the valuers who undertake and agree to pay the Bank, on demand, such sum of money which would be fixed at the prevalent rate.

Issue notice on writ petition as well as stay application, returnable within eight weeks.





In the meanwhile, members of the petitioner-Society shall not be insisted by respondents to submit indemnity bond upon being empanelled.

List this case again on 26.5.2020.

(SANJEEV PRAKASH SHARMA),J





## Practising Valuers Association (India)

- Registered Under Society Registration Act 1860 Vide Reg. No. M.S. Mumbai -1115/1998 on 17/9/1998.
- Bombay Public Trust Act 1950 Vide Reg. No. F-20766 (Mumbai) on 6/1/1999

Regd. Address : C/o Best Mulyankan Consultants Ltd., 1st Floor, Aditya Building, Opp. Flyover Apartment, Junction of N. S. Phadke Marg, Andheri (East), Mumbai - 400 069. Ph. (022) 26841836 / 39, Email- pvalorg@gmail.com Visit us at :- www.pvai.org www.facebook.com/pvaindia

Correspondence Address : Unit No. 1, Ground Floor, Gangal Building, Near Shubhamkaroti Hall, Behind New English School, off Ram Maruti Road, Maharshi Karve Road, Naupada, Thane West, Maharashtra - 400602, Visit us at - www.pvai.org Email- pvalorg@gmail.com, info@pvai.org  
Office - 8657644977, 8291914727 ( 10 AM to 5 PM)  
Date: 8 th June 2020

• President •

Mr. Ashok V. Kelkar

9822224706

• Vice President •

Mr. Sunil D. Bhor

9822877366

• Vice President •

Mr. Milind Joshi

9422084162

• Hon. Secretary •

Mr. Sujit S. Joglekar

9821648496

• Treasurer •

Mr. Mahesh P. Mistry

8087282603

• Hon. Jt. Secretary

Mr. Digant Shah

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Mr. Kantibhai Vikamsey

Mr. Jagdish Gadkari

Mr. Milind Joshi

Mr. Milind Sangwlikar

Mr. Mohan Kulkarni

Mr. Sanjay Mulhe

Mr. Sujit Joglekar

Mr. Kunal Vikamsey

To

Shri Rajnish Kumar  
Chairman, State Bank of India,  
Corporate Centre, Madame Cama Road,  
Mumbai, Maharashtra 400021

Dear Sir,

Sub : Waiver for the recent Indemnity Bond requested from your panel Valuers.

We, the Registered Valuers (registered under the Wealth Tax Act 1957, Section 34 AB to conduct different types of asset valuations) would like to bring to your notice that recently you have published a list of Valuers who have been empanelled with State bank of India. Along with this you have also informed Valuers to give a letter of Indemnity signed by them to confirm their empanelment.

We have gone through this indemnity, which says as under.

"I/ We shall duly and faithfully perform and discharge all the duties in the works entrusted by the Bank and in relation to the purposes of empanelment, fairly without any favor and discrimination and I/ We hereby undertake and agree to indemnify you, your successors and assigns at all times and from time to time from and against all loss, damage and all actions, suits, proceedings, expenses, costs, charges and demands arising out of any act, lapses, defaults, negligence, errors, mistakes committed by me/ us in performance of my/ our professional obligations and I/ We also hereby undertake and agree to pay to you on demand sums of money, costs, charges and expenses incurred in respect thereof and also to pay you interest on all such moneys at your ruling rate.

I/ We further specifically agree that this indemnity shall continue to remain in force and I/ We shall continue to be liable there under for all losses, damages, cost, charges and expenses arising out of any act, lapses, defaults, negligence, errors, mistakes committed by me/us in performance of my/ our professional obligations and shall be binding on me /us and our legal and personal representatives, successors and assigns."

It is true that by empanelling Valuers to carry out assignment of giving Valuation Report , to enable you to decide the amount of loan to

**Practising Valuers Association (India)**

2



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- **President**

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9822224706

- **Vice President**

Mr. Sunil D. Bhor  
9822377366

- **Vice President**

Mr. Milind Joshi  
9422064462

- **Hon. Secretary**

Mr. Sujit S. Joglekar  
9821648496

- **Treasurer**

Mr. Mahesh P. Mistry  
8087282603

- **Hon. Jt. Secretary**

Mr. Digant Shali  
9824069688

- **Jt. Treasurer**

Dr. M. V. Mohanakrishnan  
9843128257

- **CC Members**

Mr. Rajan Kapile  
Mr. Kedar Chikodi  
Dr. Venkateshwara Rao MV  
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Mr. Sharad Chalikwar  
Mr. Biren Dalal

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Mr. Jagdish Gadkari  
Mr. Milind Joshi  
Mr. Milind Sangwkar  
Mr. Mohan Kulkarni  
Mr. Sanjay Muthe  
Mr. Sujit Joglekar  
Mr. Kunal Vikamsey

be granted to your clients. The Valuers are expected to give their report as on the date on inspection of the property for current Market Value of the property Mortgaged to you. There is no statement from your end about how you expect a Valuer to give his report by indication method of Valuation. Whether it is by the method of Comparable sales for which there are Registered Documents available. When you are asking for Market Value to be submitted there are no authorized documents or data available anywhere to justify the market Value by a Valuer. The Value submitted to you is on the basis of various parameters and surveys available with the Valuer from various sources on which he gives you his opinion on the market Value of the Property. You are well aware that this Value is more than the comparable sale instances registered with Government at that place where the property exists.

You are accepting this value and advancing loan to your client. Once the loan is advanced by you, the responsibility of the Valuer is over and complete. He is not responsible for any change in the Market Value at any later date as there is every possibility that the value may increase or decrease depending on the market conditions and many other factors. If your loan becomes NPA at any later date it will not be proper to hold a Valuer responsible for the same. Thus there is no question of indemnifying a valuer against all loss, damage and all actions, suits, proceedings, expenses, costs, charges and demands arising out of any act, lapses, defaults, negligence, errors, mistakes committed by me/ us in performance of my/ our professional obligations at any later date after acceptance of the Valuers report and sanction of loan. Thus there is no need of stating that and I/ We also hereby undertake and agree to pay to you on demand sums of money, costs, charges and expenses incurred in respect thereof and also to pay you interest on all such moneys at your ruling rate.

Further we would like to state that these conditions are not existing in the information given below and as such we would request you to refrain from asking for such Indemnity.

1. Special Significance has been given on registration of Valuers under the provisions of Wealth Tax Act, 1957, Section 34 AB of Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes under which the Valuers have been empanelled. However, no such condition of signing of an indemnity bond for empanelment as Valuer was stated in the Act.
2. Further, condition of signing of an indemnity bond to be on Valuer's panel of bank was waived/removed as per the "Hand BOOK on Policy, Standards and Procedures for Real Estate Valuation By Banks & HFIs in India" issued by Indian Banking Association in

2



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**February, 2011**, and supported by NHB, Page No. 31 PART A – POLICY Point No. 1.9 – Obligations of the Banks / HFIs which reads - "No security deposit or any other indemnity money i.e. indemnity bond should be taken from the Valuers as security for the professional services that they provide" This is in line with the practice with other professionals like Advocate, Doctors, Engineers, Chartered Accountant, etc from whom no such indemnity or Security is demanded.

You have also confirmed this from the conditions for empanelment that the Valuer also undertake that he/ she/ it is/ are fully aware of the latest Handbook on Policy, Standards and Procedure for Real Estate Valuation of the IBA and the reports to be furnished to the SBI shall be fully in conformity with the standards enshrined for valuation in the same.

3. According to the "Report of the Group constituted by the Department Of Financial Services, Ministry Of Finance, and Government of India to Standardize Procedures for Valuation of Assets". – Page No. 31 hand written on top right/ Page No. 19 of the report Pt. 3.2.7 –Obligations of the banks which reads out - "No security deposits or any other indemnity money i.e. Indemnity Bond shall be taken from the Valuers as security deposit professional services they provide." It has been emphasized on no Security Deposits or any other Indemnity Money (i.e. indemnity bond) should be taken from the Valuers as Security for the Professional Services relating to valuation rendered by them.
4. Also as per Company's Act, 2013, Chapter No. XVII- Registered Valuers, nothing has been mentioned about signing an Indemnity Bond for getting registered with Ministry of Corporate Affairs.
5. The Patna High Court Order dated 31 st January 2020 states that no **Indemnity be asked from the Valuers** . In the meantime, if at all any decision for empanelment is taken, the petitioners shall not be insisted upon for giving such indemnity certificate. However, this order will be subject to the outcome of the writ petition.
6. Further you have stated that while conducting the valuation, valuers have to comply with the International Valuation Standards (IVS) as applicable to the respective class of asset and respective method of valuation. These standards may not be applicable for the reasons explained in paras above.

### • President •

Mr. Ashok V. Kelkar  
9822224705

### • Vice President •

Mr. Sunil D. Bhor.  
9822377366

### • Vice President •

Mr. Milind Joshi  
9422064162

### • Hon. Secretary •

Mr. Sujit S. Joglekar.  
9821648495

### • Treasurer •

Mr. Mahesh R. Mistry  
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7. High Court of Madhya Pradesh has also given Interim relief on 12 th March 2020 stating that Till the next date of hearing, it is directed that if the respondents/banks empanel the petitioners as approved valuers for the next term, they shall not insist for giving the letter of indemnity (Form-F-Annexure P/2).

Therefore, we hereby kindly request you to waive the condition of signing an indemnity bond for empanelment as Valuers with Mumbai Zonal office and your other offices all over India with supportive facts enumerated above which states that imposing any security deposit or indemnity bond may be equivalent to violation of the Govt. of India's Orders.

In case required we will be able to see you and discuss the matter with you or at Mumbai office with the authorised person deputed by you for this purpose.

Hoping for favorable action in this regard.

With regards and thanking you.

Yours sincerely



Ashok Kelkar  
President  
Practising Valuers Association, India.  
Mob : 91 93222 24705



• President •

Mr. Ashok V. Kelkar  
9322224705

• Vice President •

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9822377366

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Mr. Milind Joshi  
Mr. Milind Sangwkar  
Mr. Mohan Kulkarni  
Mr. Sanjay Muthe  
Mr. Sujit Joglekar  
Mr. Kunal Vikamsey

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD  
TUESDAY, THE SIXTEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY

: PRESENT:

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

IA No. 1 OF 2019

IN

WP NO: 25120 OF 2019

Between:

1. Bheemrao Jaligama, S/o. Ramakishan Rao J
2. P. Kanaka Rao, S/o. Late P. Dhana Raju

...Petitioners  
(Petitioners in WP 25120 OF 2019  
on the file of High Court)

AND

State Bank of India, Rep. by its General Manager Local Head Office Bank Street, Koti  
Hyderabad

...Respondent  
(Respondent in-do-)

Counsel for the Petitioners:

VARDHINENI KRISHNAMOHAN

Counsel for the Respondent:

M/S. PEARL LAW ASSOCIATES

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to stay the operation of respondents e-Circular bearing No. CCO/CPD/ADV/49/2019-20 dated 3.7.2019 insofar as its draconian clauses are concerned, viz., signing of indemnity bond, upper age limit of 70 years and fees structure for the valuers, pending disposal of WP No. 25120 of 2019, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

**"The matter underwent several adjournments for appearance of the learned Standing Counsel for the respondent and to enable the respondent to file its counter.**

**On 08.05.2020 also while adjourning the matter to 16.06.2020 i.e. today, this Court made it clear that if no counter is filed by the respondent by the next date, necessary orders will be passed.**

**In spite of above specific direction of this Court, there is neither any representation by the counsel for the respondent even today nor any counter is filed. Hence, this Court is constrained to pass interim orders in I.A.No.1 of 2019.**

**This application is filed seeking to grant stay of the operation of e-circular bearing No.CCO/CPD/ADV/49/2019-20, dated 03.07.2019 issued by the respondent insofar as its draconian clauses are concerned.**

**When this Court has asked the learned counsel for the petitioner to specify the particular clauses which are draconian, in**

all fairness, he submitted that it would suffice for the present if clause 5 of 'Letter of Engagement to Valuer' (Annexure-XIII) is suspended by this Court.

Learned counsel for the petitioner has also drawn the attention of this Court to the decisions rendered by (1) High Court of Judicature at Patna in Civil Writ Jurisdiction Case No.2092 of 2020, dated 31.01.2020; (2) High Court of Madhya Pradesh in WP-5850-2020, dated 12.03.2020; and (3) High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Civil Writ Petition No.3169/2020, dated 23.03.2020, in support of his case.

Clause 5 of 'Letter of Engagement to Valuer' (Annexure-XIII) reads as under:

5. *You will indemnify and keep the Bank fully and effectively indemnified against all costs, claims, damages, demands, expenses and liabilities of whatsoever nature which may be caused to or suffered by or made or taken against Bank (including, without limitation, any claims or proceedings by any customer against Bank) directly or indirectly arising out of any improper, incorrect or negligent performance, work, service, act or omission by you or any of your Personnel or fraud or other wrongful act by you or by any of your Personnel or for any act of the yours which results in Bank being provided with incorrect or incomplete information from you or any of your Personnel.*

A reading of the above clause makes it abundantly clear that the empanelled valuers were made to give an indemnity certificate to the banks indemnifying them against all the losses and damages, etc. etc. for the lapses, defaults, negligence, errors, mistakes, etc. committed by the said valuer in performance of his professional obligation and that he shall undertake to pay the Bank, the sum which would be fixed at the prevalent rate.

Such an open ended indemnity certificate cannot be forced on the valuers for getting themselves empanelled. The role of the valuer is very limited and merely because the Bank sustains any loss on the basis of the certificate issued by the valuer, no liability can be festered on them. The valuation of any property given as collateral security, which is subject of valuation, keeps changing with the market dynamics and will not be constant. A collateral

security which is of value today may become more valuable, worthless or diminish in value with efflux of time and the valuer cannot be made liable for the said fluctuation.

In view of the above discussion and considering the fact that the other High Courts have already suspended the similar clause, there shall be an interim direction suspending clause (5) of 'Letter of Engagement to Valuer' (Annexure-XIII) by this Court.

//TRUE COPY//

SD/- CH. VENKATESWAR  
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The General Manager, State Bank of India, Local Head Office Bank Street, Koti  
Hyderabad( By RPAD)
  2. One CC to Sri Vardhini Krishna Mohan Advocate [OPUC]
  3. One CC to M/s. Pearl Law Associates, Advocate [OPUC]
  4. One spare copy
- Csk



**ANU SIVARAMAN, J.**  
**W.P. (C) No. 12679 of 2020**  
**Dated this the 25<sup>th</sup> day of June 2020**

**ORDER**

Admit. Learned ASG1 takes notice for the 1<sup>st</sup> respondent. Adv. Amal George, the learned Standing Counsel takes notice for respondents 2, 3 and 4. Issue notice to the 5<sup>th</sup> respondent by speed post.

Post on 27.7.2020

The learned Standing Counsel objects to the issuance of an interim order. However, in view of the fact that similar writ petitions are pending in several High Courts across the country with interim orders on board, I am of the opinion that an interim order is liable to be granted. There will be an interim direction to the respondents to empanel the petitioners without insisting on executing Ext. P 8 letter of indemnity as required in Ext. P7.

Sd/- ANU SIVARAMAN, JUDGE

25.6.2020

**WP(C) No. 12679/2020 (H)**

**EXHIBIT P7 – TRUE COPY OF THE COVERING LETTER ISSUED BY THE 4TH RESPONDENT DATED 20-6-2020.**

**EXHIBIT P8 – TRUE COPY OF THE LETTER OF INDEMNITY ACCOMPANIED WITH LETTER OF EMPANELMENT GIVEN TO ALL PETITIONERS.**

**EXHIBIT P9 – TRUE COPY OF THE SPECIMEN OF THE AGREEMENT WHICH IS TO BE WRITTEN IN A STAMP PAPER WORTH OF RS. 200/- BY ALL THE VALUERS FOR EMPANELMENT.**

## ANNEXURE P-12

2      26.6.2020                      This matter is taken up through Video Conferencing.

Heard learned counsel for the petitioners.

Issue notice on the question of admission.

One copy of the brief be served on the learned Assistant Solicitor General of India appearing for O.P.2.

Requisites for issuance of notice to O.Ps.1 & 3 to 6 by Speed Post with A.D./registered Post with A.D., whichever is available, be filed by 2.7.2020.

.....  
**Biswanath Rath, J.**

**I.A.NO.6829 OF 2020**

3      26.6.2020                      Issue notice as above. Accept one set of process fee.

As an interim measure, it is directed that in the event any valuer above 70 years of age is already in working/engagement, the working of such valuer shall not be affected until further orders.

.....  
**Biswanath Rath, J.**

**ANNEXURE P-13**

§-2

via Video-conferencing\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3795/2020 &amp; C.M. Nos. 13600-01/2020

INSTITUTION OF VALUERS

.....Petitioner

Through : Mr. K.C. Mittal, Ms. Ruchika  
Mittal, Mr. Yugansh Mittal and  
Mr. Pradyuman Singh,  
Advocates.

versus

UNION OF INDIA &amp; Ors.

..... Respondents

Through : Mr. Vikrant N. Goyal, Senior  
Panel Counsel for R1.  
Mr. Rajiv Kapur and Mr. Akshit  
Kapur, Advocates for R2/SBI.**CORAM:****HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI****ORDER**

%

**29.06.2020****C.M. No. 13601/2020 (for exemption)**

Exemption allowed, subject to just exceptions.

Application stands disposed of.

**W.P.(C) 3795/2020 & C.M. No. 13600/2020 (for stay)**

The petitioner, the 'Institution of Valuers', is stated to be a society registered under Societies Registration Act, 1860 *inter alia* representing the interests of professional valuers who are engaged

principally in valuing movable/immovable assets, plant, machinery etc., for various banking institutions.

2. The grievance raised by way of the present petition is regarding the unilateral imposition of a condition for empanelment by respondent No. 2/State Bank of India (SBI) whereby SBI now requires that upon acceptance for empanelment as an approved valuer for that bank, the applicant must furnish an indemnity bond in terms of a standard-form draft prepared by SBI.

3. Mr. KC Mittal, learned counsel appearing for the petitioner contends that apart from the fact that empanelled valuers are professionals who function as per the rules and regulations governing them under various statutes and work as professionals on a best-effort basis, they cannot be held bound by an indemnity bond, muchless by a bond in terms of the standard-form document as required by SBI.

4. Mr. Mittal states that the condition of furnishing indemnity bond in the letter of offer for empanelment is also in violation of section 34AB of the Wealth Tax Act 1957, Rule 8A of the Wealth Tax Rules 1957, section 247 of the Companies Act 2013 and Rule 3 of the Companies (Registered Valuers and Valuation) Rules 2017, which do not contain any such condition, apart from being violative of Articles 14, 19(1)g and 21 of the Constitution of India.

5. Counsel further points-out that the impugned condition has already been challenged before four different High Courts and the High Courts of Patna, Rajasthan and Madhya Pradesh have stayed the requirement of such condition while the High Court of Punjab & Haryana has issued notice on a petition challenging the same.

6. Mr. Mittal further points-out that the following covenant contained in the letter of indemnity to be furnished by empaneled valuers is particularly objectionable by reason of the sheer breadth of its requirement :

*"I / We shall duly and faithfully perform and discharge all the duties in the works entrusted by the Bank and in relation to the purposes of empanelment, fairly without any favour and discrimination and I/we hereby undertake and agree to indemnify you, your successors and assigns at all times and from time to time from and against all loss, damage and all actions, suits, proceedings, expenses, costs, charges and demands arising out of any act, lapses, defaults, negligence, errors, mistakes committed by me/us in performance of my/ our professional obligations and I/we also hereby undertake and agree to pay to you on demand sums of money, costs, charges and expenses incurred in respect thereof and also to pay you interest on all such moneys at your ruling rate.*

*I/We further specifically agree that this indemnity shall continue to remain in force and I/We shall continue to be liable there under for all losses, damages, costs, charges and expenses arising out of any act, lapses, defaults, negligence, errors, mistakes committed by me/us in performance of my/ our professional obligations and shall be binding on me/us and our legal and personal representatives, successors and assigns."*

7. Issue notice.

8. Mr. Vikrant N. Goyal, learned Senior Panel Counsel appears on behalf of respondent No. 1/Ministry of Corporate Affairs on advance copy ; and points-out that the Ministry concerned with the present

matter would be the Ministry of Finance and not the Ministry of Corporate Affairs.

9. In view of the above submission and upon oral request of Mr. Mittal, the Ministry of Finance of the Union of India is impleaded as party-respondent No. 1 in the matter and the Ministry of Corporate Affairs is deleted as party-respondent.

10. Mr. Goyal accordingly accepts notice on behalf of Ministry of Finance ; and seeks time to file counter-affidavit.

11. Mr. Rajiv Kapur, learned counsel enters appearance on behalf of respondent No. 2/SBI on advance copy; accepts notice ; and seeks time to file counter-affidavit.

12. Mr. Kapur points-out that the petition filed by the 'Institution of Valuers' as the sole petitioner is not maintainable inasmuch as the institution cannot be an aggrieved party.

13. In response, Mr. Mittal makes an oral request that Mr. Ramanjeet Singh s/o Surinder Singh r/o 1747 (G.F.), G.T.B. Nagar, Outram Lines, Delhi- 110009 with mobile No. 981038621 and IOV Membership No. F-23683, being one of the valuers/applicants be impleaded as co-petitioner in the matter. Accordingly, Mr. Ramanjeet Singh is added as petitioner No. 2.

14. Let amended memo of parties reflecting the change in petitioners and respondent No. 1 be filed before the next date.

15. Upon petitioner taking steps, let notice be sent to respondent No. 3/RBI returnable for the next date.

16. Mr. Mittal has drawn attention to order dated 31.01.2020 made by a learned Single Judge of the High Court of Judicature at Patna in Civil Writ Jurisdiction Case No. 2092/2020 ; order dated 12.03.2020 made by learned Single Judge of the High Court of Madhya Pradesh at Indore in WP 5850/2020 ; and order dated 23.03.2020 made by a learned Single Judge of the High Court of Judicature of Rajasthan (Jaipur Bench) in S.B. Civil Writ Petition No. 3169/2020, in each of which cases, while issuing notice in the matter, the High Courts have directed that the SBI shall not insist upon furnishing of indemnity bonds as a pre-condition for empanelment.

17. Mr. Mittal has also drawn attention to order dated 30.07.2019 made in Writ Petition CWP No. 20901/2019 whereby a Division Bench of the Punjab & Haryana High Court has issued notice on the writ petition as well as on the application for interim relief.

18. It is pointed-out however that despite the interim orders granted by the aforesaid three High Courts, the Delhi Circle of the SBI is still insisting on furnishing of indemnity bonds, as evidenced by letter dated 11.06.2020 issued to one of the applicants for empanelment as an approved valuer.

19. Let counter-affidavit(s) be filed within 04 weeks; rejoinder(s) thereto, if any, be filed within 02 weeks thereafter.

20. Other things apart, in a matter such as this, and considering that the SBI is perhaps the largest public sector bank in India with pan-India operations ; and that three High Courts have already stayed the impugned requirement of furnishing indemnity, this court sees no reason why the position should be any different in Delhi. Accordingly,



in the meantime, it is directed that respondent No. 2/SBI shall not insist on furnishing of a letter of indemnity as a pre-condition for empanelment of approved valuers.

21. List on 05.08.2020.

**ANUP JAIRAM BHAMBHANI, J.**

**JUNE 29, 2020**

j

**ANNEXURE P-14**

IN THE HIGH COURT OF JUDICATURE

OF BOMBAY

IN ITS ORDINARY CIVIL JURISDICTION

AND

IN ITS SPECIAL JURISDICTION

UNDER ARTICLE 226

OF CONSTITUTION OF INDIA

WRIT PETITION NO.OS-WPLD-VC-NO. 188 of 2020

In matter of Article 14  
And Article 19(1)(g) of  
the Constitution of India

And

In the matter of Article  
226 of Constitution of  
India

And

In the matter of policy  
decisions of the  
Respondent served upon  
the petitioners on 17<sup>th</sup>  
March,2020 to the  
Petitioners.

- 1) Practicing Valuers Association(India),  
A society registered under Societies  
Registration Act, 1860 and  
also registered Under Bombay



President

*[Handwritten signature]*

Public Trust Act, 1950,  
Having its registered office C/0  
Best Mulyankan Consultants Ltd.,  
1<sup>st</sup> Floor, Aditya Building,  
Opposite Flyover Apartment,  
Junction of N.S. Phadke Marg,  
Andheri (East),  
Mumbai- 400 069

- 2) Ashok Vishnu Kelkar,  
President of the Petitioner No.1  
Adult, age 78 years,  
Occu. Chartered Engineer and  
Practicing Valuer, residing at  
207-C, Bhakti Residency,  
Dr. Ambedkar Road,  
Matunga, Mumbai 400019
- 3) Sujit Shrikant Joglekar,  
Honorary Secretary of the Petitioner No.1,  
Adult, age 43 years,  
Occu. Engineer and  
Practicing Valuer, residing at  
1<sup>st</sup> floor, Aditya Building,  
N.S Phdke Marg,  
Andheri East, Mumbai 400069.

...Petitioners

Vs

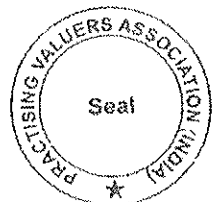
- 1) State Bank of India,  
Banking Corporation,  
Established under



President



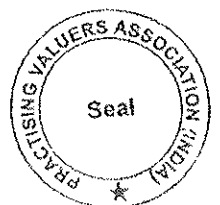
- 2) The Petitioner No.1 is promoted by the qualified Valuers who practice as valuers of properties moveable and immoveable for the purpose of giving estimated valuation of the properties to their clients who include Banking Companies, Corporate Offices, Charitable Trusts, Schools, Colleges, Clubs, Promoters Builders and the Individuals, who are required to seek the valuation of their properties for various purposes and objects including for the statutory purposes under Wealth Tax Act, Income Tax Act, Companies Act etc. The Petitioner No. 2 is a citizen of India practicing as Engineer and Valuer and acting as the President of Petitioner No.1. The Petitioner No. 3 is a citizen of India, practicing as Engineer and Valuer and acting as the Hon. Secretary of Petitioner No.1. That all the members of the Petitioner No. 1 are either qualified Architects or qualified Engineers or both. All the members of the Petitioner No.1 are thus qualified Professionals, who follow high moral ethics while practicing their profession and are regulated by the Code of conduct of their professional bodies/councils.
- 3) That the Respondent No.1 is a Banking Company established under the State Bank Of India Act 1955. The Respondent No.2 is the Chairman of the Respondent No.1. The Respondents are the "States" within the meaning of Article 12 of the Constitution of India and are amenable to the writs of this Hon'ble Court.



President

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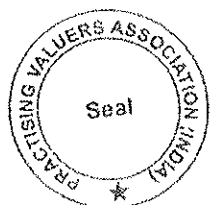
- 4) The Respondents had invited applications from the members of the Petitioner No. 1 for being enrolled on its panel for getting the valuation of the assets and properties done from them in course of its regular course of banking business. That the members of the Petitioner No. 1 accordingly, applied for the empanelment on the panel of Respondent No.1 as Valuers for carrying out valuation of the properties and assets of the clients and customers of the Respondent No.1 in course of its banking business. That the applications of the members of the Petitioner No.1 came to be duly scrutinized by the Respondents with reference to the educational qualification, experience and other relevant considerations deemed fit by the Respondents. That after due scrutiny of the applications, the Respondents appointed many members of the Petitioner No.1 on its panel for assigning them the job of valuing the properties and assets of its customers in course of its banking business. That after such empanelment, the members of the Petitioner No.1 have been diligently discharging their professional duties to the Respondents and in consideration thereof, the Respondents have been paying them their professional fees as agreed while empanelling them on its panel.
- 5) That to the utter shock and dismay of the Petitioner No.1 and its members, the Respondents issued a letter/circular/communication to the members of the Petitioner No. 1 informing the Petitioners that the respondents have formed a new policy for  
President



appointment/continuation of the property valuers on its panel and asking the members to execute an Indemnity in the format annexed to the communication. Hereto annexed and marked as Exhibit "C" is the copy of the new policy for empanelment of valuers on the panel of the Respondent no.1 served upon the petitioners on or about 17<sup>th</sup> March,2020 . Hereto annexed and marked as *Exhibit "D"* is the format of the indemnity required by the respondent to be executed by the members of the petitioners, if they intended to seek appointment/continuation on the panel of respondents as valuers.

- 6) The empanelment policy and the draft of the indemnity at exhibit "C" and "D" respectively served by the Respondents to the members of Petitioner No.1 came to be thoroughly perused and deliberated upon by the Governing Council of the Petitioner No. 1. The Petitioner No.1 and its members have found the Empanelment Policy and the draft of Indemnity being violative of the fundamental rights of the members of the Petitioner No.1 guaranteed under Article 14 and Article 19(1)(g) of the Constitution approach this Hon'ble Court. The demand of unilateral Indemnity and fixing the upper age limit of 70 years for empanelment is an arbitrary exercise of the power. That no where it is explained as to for what reason, the Respondents entertained necessity for asking such unilateral Indemnity from the members of the Petitioner No.1 and fixing the criteria of upper age limit of 70 years for

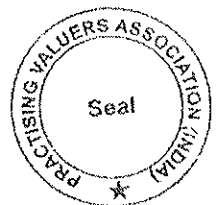
President



continuation of the empanelled members of the Petitioner no.1. The Respondents have acted wholly without jurisdiction or authority under any law while asking for such sweeping Indemnity from the members of the Petitioner No.1.

- 7) The Petitioners states that seeking such indemnity from the members of the Petitioner No. 1, is not only illegal, but it is a gross discrimination. The Petitioners state that the Respondents engage services of many other professionals by appointing them on their panel, such as Advocates, Chartered Accountants, Medical Professionals, Insurance Agents, Commission Agents. The Petitioners state that to the best of their knowledge and information, no such indemnity has been sought from any other service providers/professionals appointed by the Respondents. The Respondents have discriminated the Petitioner No.1 and its members by calling upon them to execute the indemnity in terms of Ex. 'D' if they wish to continue on the panel of the Respondents. The Petitioners state that no such indemnity has been sought from its own employees, who are also involved in disbursement of loan to the customers of the Respondents, on the basis of their creditworthiness to repay the loan amount. The Petitioners state that the denial of the equality to the Petitioners by the Respondents is not based on any rational relation to the perceived object of the Respondents and therefore the discrimination is unlawful and violative of Article 14 of the Constitution.

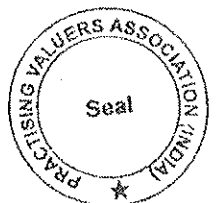
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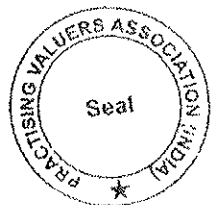
- 8) The Petitioners state that the condition put by the Respondents for continuing on their panel as Valuers viz. to execute an Indemnity in terms of Draft at Ex. 'D' is unfair, unjust and perverse and has been issued by the Respondents, who are influenced by irrelevant or extraneous considerations and matters. The Petitioners state that the direction to execute the Indemnity Bond is not supported by any speaking order. The Petitioners state that neither the Petitioners nor the empanelled members of the Petitioner No.1 were ever given the opportunity of hearing before passing such direction.
- 9) The Petitioners state that the direction to execute such Indemnity and fixing upper age limit of 70 years is not supported by any principle or policy for guiding the exercise of discretion by the Respondents in the matter of selecting only the members of the Petitioner No.1 for executing such Indemnity Bond and fixing upper age limit for practice, when the other professionals similarly situated have not been imposed any such restriction and therefore the aforesaid executive direction is liable to be struck down.
- 10) The Petitioners state and submit that the aforesaid classification of the members of the Petitioner No. 1 is arbitrary and has no basis on an intelligible differentia to distinguish the members of the Petitioner No. 1 from other professionals rendering professional services to the Respondents. The Petitioners state that the classification made by the  
President



Dr. 1

Respondents has no rational relation to the objects sought to be achieved by the impugned direction.

- 11) The Petitioners state that the executive direction issued by the Respondents is not supported by any legislative Authority, although it would operate to the prejudice of the whole class of valuers, who are the members of Petitioner No.1. The impugned direction is therefore colourable exercise of arbitrary power. The Petitioners state that the impugned direction is issued without any principle or without any rule and is therefore arbitrary. The impugned direction expressively invades the fundamental rights of the members of the Petitioner No. 1 inter alia including petitioners nos.2 to 4, guaranteed under Article 19(1)(g) i.e. the right to livelihood.
- 12) The Petitioners state that seeking an indemnity from the members of the Petitioner No.1 incorporating therein that they shall be liable for the losses, damages, costs, charges and expenses arising out of any lapses, errors or mistakes committed by them in performance of their professional obligation shall be binding on them and their representatives successors and assigns is oppressive, illegal and there is likelihood of bias in the conduct of the professional work of the members of the Petitioner No. 1. The members of the Petitioner No. 1 have the reasonable apprehension in their mind that on the basis of such sweeping indemnity, the Respondents might hold the members of the Petitioner No.1
- President



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responsible to cover up the lapses, defaults and negligence of their own employees. The Petitioners state that they have reasonable apprehension that on the basis of such indemnity, the Respondents would have free hand to hold, the members of the Petitioner No.1 liable for any error or mistake of judgment, which they may not have foreseen. The Petitioners state that the impugned direction is not only arbitrary but it could be misused by the Respondents to hire and fire the members of the Petitioner No.1.

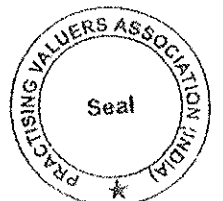
- 13) The Petitioners state that for the last over thirty years, the members of the Petitioner No.1 have been diligently giving their professional services to the Respondent on the terms and conditions agreed between the Respondents and the members of the Petitioner No.1 at the time of their empanelment. The Members of the Petitioner No.1 have legitimate expectation of being treated fairly and continue to give their professional services to the Respondents on the agreed terms and conditions. The Petitioners submit that the impugned direction and the terms of the Indemnity would defeat the legitimate expectation without there being any justifiable reason to do so and that too without any opportunity to the Petitioners to make representations before the Respondents. The Petitioners state and submit that the impugned direction is therefore unfair, unreasonable, arbitrary and violative of principles of natural justice. The Petitioners submit that this Hon'ble Court may be pleased to examine the impugned

President



circular at Ex. C and the draft of Indemnity at Ex. D on touchstone of Article 14 and Article 19(1)(g) of the Constitution of India and hold the same violative of fundamental rights guaranteed under the aforesaid Article.

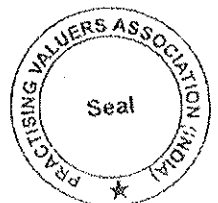
- 14) The Petitioners state that it was beyond the competence of the Respondents to issue the impugned circular containing fresh policy and therefore the communication at Ex. 'C' is ultra virus and requires to be quashed.
- 15) The Petitioners state that vide their Letter dated 8<sup>th</sup> June, 2020, the Petitioner No.1 requested the Respondent No. 2 to withdraw the aforesaid circular issued to its members to execute Indemnity Bond and agree to practice till the age of 70 years and pointed out to the Respondent No. 2 that the standard policy published by the Indian Banking Association ordains all the Banks not to seek security deposit, or indemnity money from the members of the Petitioner No.1. Vide their aforesaid Letter, the Petitioners also pointed out to the Respondent No. 2 the report of department of Financial Services, Ministry of Finance, Government of India in the matter of Standardization of the procedure for valuation of assets in which the Ministry of Finance has given similar directions to the all bankers. Hereto annexed and marked as Exhibit "E" is the copy of the Letter dated 8<sup>th</sup> June, 2020 from Petitioner No.1 to the Respondent No. 2.



President

*[Handwritten signature]*

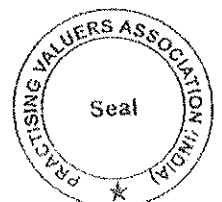
- 16) The Petitioners submit that there is no logic or rationale behind asking for such indemnity from the Members of the Petitioner No.1 by the Respondents and fixing the upper age limit for continuing on panel at 70 years. The Petitioners state that the members of the Petitioner No.1 are professionals and are qualified Architects or Engineers, which degree is achieved by them after hard work. The Petitioners state that before the empanelment of the members of Petitioner No.1, the Respondents had interviewed them and tested their knowledge, experience and integrity. The Petitioners state that no professional would act in a manner which would be detrimental to his reputation. The Petitioners state that the members of Petitioner No.1 follow all the standard practices and take all requisite steps prescribed in standard code to arrive at the value of the property or assets, they are asked to report. The Petitioners state that the valuation is often supported by the available data in the public record regarding similar transactions in the proximity of time and location. The Petitioners state that the entire exercise of arriving at a valuation of the property is a scientific exercise guided by the established code and guidelines and there is hardly any scope for vagueness or arbitrariness. The Petitioners state that however the market value of immovable property or machineries may go up or come down due to market/economic conditions and therefore sometimes the value of the property arrived at by the members of the Petitioner No.1 may not be the same at the time when the property is required to



be dealt with by the Respondents, due to default on the part of their customers in repaying the loan amount. The Petitioners state that the members of the Petitioner No.1 cannot be held liable for volatile market conditions. The Petitioners state that the Respondents might try to find fault with the valuation Report of the members of the Petitioner No. 1 in such eventualities and with the aid of the indemnity bond sought to be obtained from the members of the Petitioner No.1, the Respondents might seek to recover the losses if any caused to them in the transaction with its customers, from the members of the Petitioner No.1 for which they would be no way responsible.

- 17) The Petitioners state that the impugned directions and the language of the Indemnity sought by the Members of the Petitioner No. 1 is in the nature of insult and humiliation to them and it impeaches upon their right to human dignity and status as the qualified professionals. The Petitioners state that by seeking such unreasonable undertaking from the members of the Petitioner No.1, the Respondents have imposed unconstitutional conditions on the members of the Petitioner No.1, who would be under fear to practice their profession in a free and fair manner. The Petitioners state that they and the members of Petitioner No.1 are entitled to fair and equal treatment with others and their legitimate expectation that they would be continued on the panel of the Respondents as Valuers till the time they discharge their professional duties diligently

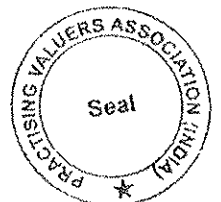
President



and efficiently cannot be denied without fair procedure and such restriction would be offending Article 14. Without prejudice to the submission that compulsory bond can only be by way of legislation and not by an executive order, the Petitioners state and submit that even in contractual relation, the public Authority like the Respondents, must have constitutional conscience, so that the condition imposed would be such as would avoid arbitrary action and would meet the requirement of Article 14 of the Constitution.

- 18) The Petitioners state that if any of its members would be found guilty of any criminal negligence, professional misconduct and/or unethical practice or any act or omission involving moral turpitude, the Respondents would be within their rights to complain about the same with the Statutory authority/body which investigate into the professional misconduct of the members of the Petitioner No. 1 and if the act or omission would be a criminal offence, the Respondents would be within their right to take recourse to the General law of the land, but however under the pretext of misconceived anticipation of any such eventuality, the Respondents cannot require the members of the Petitioner No.1 to execute an Indemnity Bond worded in oppressive language , which would discourage and/or inhibit the members of the Petitioner No.1 to practice their profession, to earn the livelihood. The Petitioners submit that there is no justification whatsoever from the Respondents

President



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to seek such oppressive Bond from the Petitioners and the members of the Petitioner No.1.

- 19) The Petitioners state that another condition of fixing the upper age limit of 70 years to practice as valuers on the panel of the respondents is again arbitrary and irrational. The petitioner states that due to advanced medical science, the life expectancy in India is considered as 70 years. The Petitioners state that many Professionals render their services efficiently till many years thereafter. The Petitioner states that the respondents are having advocates and chartered accountants on its panel and for their appointment/continuation on panel no such condition is imposed. In fact such senior professionals are paid higher professional fees for their seniority and experience in profession. The petitioners state that the respondent has singled out the valuer class for fixing the upper age limit for no valid reason. The petitioners state that even otherwise the empanelment of the petitioner is for three years at a time and at the end of every three years, the appointment of the members of the petitioner is renewed at the option of both parties. The Petitioners state that if the Respondents would find any of its members inefficient or incompetent in discharging their professional duties as panel members, the Respondents have every right to discontinue such members at the end of the tenure of three years. The Petitioners state that however there is no logic or rationale in fixing the upper

President



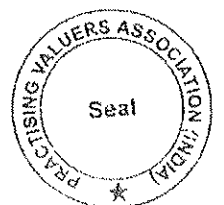
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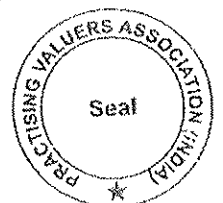
Court at Jaipur, Rajasthan admitted the Petition and granted stay to the enforcement of communication similar to one at Ex. C. Hereto annexed and marked as Exhibit "H" is the copy of the Order dated 23rd March 2020 of the Hon'ble High Court at Jaipur, Rajasthan Writ Petition No. SB Civil WP no. 3169 of 2020. The Association of Valuers in the state of Kerala challenged similar communication before the Hon'ble High Court at Kerala by way of Writ Petition No. 12679 of 2020. The Hon'ble High Court at Kerala considered similar Writ Petitions pending in several High Courts across the country and thus granted Interim direction to the respondent to empanel the petition without insisting on executing letter of Indemnity. Hereto annexed and marked as Exhibit "I" is the copy of the Order dated 25<sup>th</sup> June 2020 of the Hon'ble High Court of Kerala in Writ Petition No. 12679 of 2020. The Association of Valuers in the state of Orissa challenged similar communication before the Hon'ble High Court at Orissa by way of Writ Petition No. 14580 of 2020. After hearing the submission the Hon'ble High Court directed that in the event any valuer above 70 years of age working or engagement the working of such valuer shall not be affected. Hereto annexed and marked as Exhibit "J" is the copy of the Order dated 26<sup>th</sup> June 2020 of the Hon'ble High Court Orissa Civil Writ Jurisdiction Case 14580 of 2020. The Association of Valuers in the union territory of Delhi challenged similar communication before the Hon'ble High Court at Delhi by way of Writ Petition No. 3795 of 2020.

President



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The Hon'ble High Court at Delhi stated that three High Courts have already stayed the impugned requirement of furnishing indemnity, therefore the Delhi High Court too stayed the direction of respondent no.1 to insist on the indemnity form at exhibit "D" from the Petitioners. Hereto annexed and marked as Exhibit "K" is the copy of the Order dated 29<sup>th</sup> June 2020 of the Hon'ble High Court Delhi Civil Writ Jurisdiction Case 3795 of 2020. The Association of Valuers in the state of Patna challenged similar communication before the Hon'ble High Court at Patna by way of Civil Writ Jurisdiction Case No.2092 of 2020. After hearing the submission the Hon'ble High Court directed that the Petitioner shall not be insisted for giving indemnity certificate. Hereto annexed and marked as Exhibit "L" is the copy of the Order dated 31st January 2020 of the Hon'ble High Court Of Judicature at Patna Civil Writ Jurisdiction Case No.2092 of 2020. The Association of Valuers in the state of Punjab & Haryana challenged similar communication before the Hon'ble High Court at Punjab & Haryana by way of Writ Petition No. 8378 of 2020. After hearing the submission the Hon'ble High Court directed that the Respondent shall not insist petitioner upon giving any indemnity bond. Hereto annexed and marked as Exhibit "M" is the copy of the Order dated 19<sup>th</sup> June 2020 of the Hon'ble High Court at Punjab & Haryana Writ Petition No. 8378 of 2020.



President

- 21) The Petitioners state and submit that the Respondents are trying to coerce the members of Petitioner No.1 to execute the Indemnity in such sweeping language without there being any consideration whatsoever. The Petitioners state that the conditions imposed by the Respondents to continue the contract is unreasonable, unfair and irrational. The Respondents are taking advantage of its bargaining power and are trying to compel the members of the Petitioner No.1 either to accept the unreasonable, unfair and irrational condition imposed on them or forgo the services forever. The language in which the Indemnity Bond is worded would amount to an unconscionable contract. Vide their letter dated 8<sup>th</sup> June, 2020 at Ex. 'E' the Petitioners requested the Respondents to withdraw the aforesaid oppressive conditions and to do justice to the Petitioners and their fellow Professional brothers. The Respondents have refused to reconsider their oppressive policy. The Petitioners demanded justice from the Respondent but the same has been denied to them.
- 22) The Petitioners state and submit, that they do not have any other equally efficacious alternate remedy available to them and reliefs prayed herein alone be complete and effective remedy.
- 23) The Petitioners are having their offices in Mumbai. The Respondents are having their offices in Mumbai. The impugned directions are served upon the Petitioners by the Respondents from their regional office at Mumbai. The whole Cause of

President



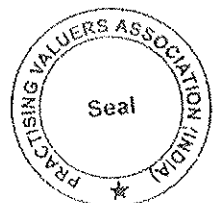
Action has arisen within Greater Mumbai. This Hon'ble Court therefore has jurisdiction to entertain and try the Petition.

- 24) The Petitioners have not filed any other Petition or Suit or any other legal proceedings relating to the subject matter of the present Petition, either in this Hon'ble Court or in the Hon'ble Supreme Court.
- 25) The Petitioners shall rely upon the documents, the lists whereof is annexed hereto.
- 26) The Petitioners have paid the fixed Court fees of Rs. 500 /- on this Petition.

The Petitioners therefore pray that :-

- a) This Hon'ble Court may be pleased to issue a suitable writ or order or direction under the special jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India ordering that the communication /direction/policy of the respondents at exhibit "C" hereto to the extent of demanding from and ordering to the Petitioner no.1 and its members to execute an indemnity in terms of the format at exhibit "D" and the policy of the respondents to fix the upper age limit of 70 years for continuing on the panel of the respondents as valuers is illegal, ultra virus the Constitution and is null and void
- b) That this Hon'ble court may be pleased to issue a suitable writ, order or direction prohibiting the Respondents from insisting upon the Petitioners and the members of the Petitioner No.1 to execute

President




*Dr*

an Indemnity Bond in terms of draft at Ex.'D' and discontinuing them to act as valuers on the panel of the respondents on completion of 70 years of age, as being illegal ultra virus, unconstitutional and violative of the Petitioners' right, guaranteed under Article 14, 19(1)(g) of Constitution of India;

- c) pending the hearing and final disposal of this Petition, the Respondents be prohibited from implementing and/or enforcing the impugned communication at Ex. 'C' hereto by insisting upon and/or demanding the Indemnity Bond at Ex. 'D' from the Petitioners and/or the members of the Petitioner No.1 and from discontinuing the members of petitioner no.1 after attaining the age of 70 years ;
- d) For the cost of this Petition ;
- e) For such further and other reliefs as the nature and circumstances of the case may require ;

  
Adv. Atul S. Tungare

  
Adv. Anil A. Tungare  
Advocates for Petitioners



For Petitioner No. 1

Practicing Valuers Association(India)



President

x Ashok

(Petitioner No. 2)

Ashok Vishnu Kelkar

(PRESIDENT)

x S. S. Joglekar

(Petitioner No. 3)

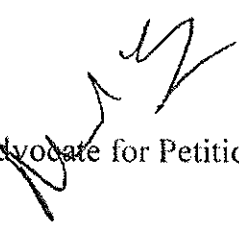
Sujit Shrikant Joglekar

VERIFICATION

I, Ashok Vishnu Kelkar, the president of the Petitioner No.1 above named, adult, age 78 years, occupation Chartered Engineer and Practicing Valuer, residing at 207-C, Bhakti Residency, Dr. Ambedkar Road, Matunga, Mumbai 400019 do hereby solemnly declare that whatever stated in foregoing paras No. 1 to 19 is true to my own knowledge and the statements and averments made in Paragraphs No. 20 to 25 are made on the basis of the information received and I believe the same to be true.

Solemnly declared at Mumbai  
this 10<sup>th</sup> day of July, 2020

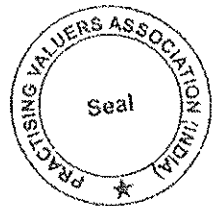
Identified by me.

  
Advocate for Petitioners.

President

  
Practising Valuers Association (India)

Before me,





IN THE HIGH COURT OF  
JUDICATURE OF BOMBAY  
IN ITS ORDINARY CIVIL  
JURISDICTION  
AND  
IN ITS SPECIAL JURISDICTION  
UNDER ARTICLE 226 OF  
CONSTITUTION OF INDIA  
WRIT PETITION NO. OF 2020

Practicing Valuers Association (India)  
& Ors. ...Petitioners

V/s

State Bank of India & Anr.  
...Respondents

WRIT PETITION

DTD. THIS ~~10~~ DAY OF JULY, 2020  
10

Mr. Atul S. Tungare,  
O.S. Regn. No. 1989  
Mr. Amit A. Tungare,  
O.S. Regn. No. 12956  
Advocates for Petitioners,  
2A/04, Ashirwad, Asha Nagar,  
Kandivali(E), Mumbai- 400 101  
Mobile : 9820056725  
9619792277  
Email ID [atultungare@gmail.com](mailto:atultungare@gmail.com)  
[adv.amittungare@gmail.com](mailto:adv.amittungare@gmail.com)

Adv. ID 6048

1787

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8311 of 2020

=====

GUJARAT INSTITUTE OF CIVIL ENGINEERS AND ARCHITECTS

Versus

STATE BANK OF INDIA

=====

Appearance:

MR AMAR N BHATT(160) for the Petitioner(s) No. 1  
for the Respondent(s) No. 1,2,3,4,5

=====

**CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**

Date : 28/07/2020

ORAL ORDER

Draft amendment is allowed. To be carried out forthwith by replacing the page Nos.104A to 104D. The petitioner is permitted to add Mr. Bakul Narendra Desai, Vice President of the petitioner-association as party petitioner No.2.

Learned advocate appearing for the petitioner essentially challenges the requirement of i Indemnity Bond which is required to be submitted as a condition for empanelment on the panel of public sector banks as valuers. Learned advocate draws attention of this court to several petitions filed before various High Courts all over India and submits that in each of such petitions, respective High Courts have granted interim relief so as to direct the respondent-banks not to insist for furnishing of Indemnity Bond. It is also submitted that the recitals in the Indemnity Bond (page 13) are of such nature which would discourage the valuers from participating in the

process for empanelment.

Hence, issue notice returnable on 08.09.2020. In view of the aforesaid, by way of interim relief, it is directed that till the disposal of this petition, the respondents may not insist for the letter of indemnity by the valuers.

Direct service is permitted. The petitioner is permitted to serve through E-mail.

CAROLINE/Siddhath

(A.Y. KOGJE, J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WRIT PETITION NO. OS-WP-LD-VC NO. 188 OF 2020

Practicing Valuers Association (India) & Ors. ...Petitioner

Versus

State Bank of India & Anr. ...Respondents

I N D E X

Sr. No	Exhibit No.	Particulars	Page No.
1		Preliminary Affidavit in Reply Filed by Respondent No. 1 (State Bank of India)	151-162
2		<i>List of Documents</i>	
3	Exhibit A	Related pages from the Committee Report dated 02.04.2020 collectively filed	163-195

*Rathina*

Mrs. Rathina Maravarman  
(Advocate for Respondent Nos. 1 and 2)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
(ORDINARY ORIGINAL CIVIL JURISDICTION)

WRIT PETITION NO. OS-WP-LD-VC NO. 188 OF 2020

Practicing Valuers Association (India) & Ors. ...Petitioner

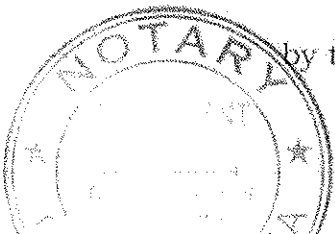
Versus

State Bank of India & Anr. ...Respondents

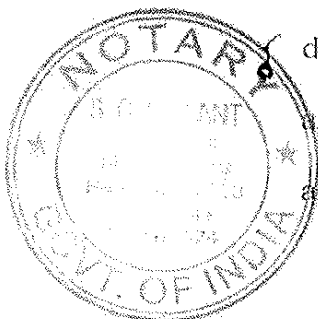
PRELIMINARY AFFIDAVIT IN REPLY FILED BY RESPONDENT NO. 1  
(STATE BANK OF INDIA) :-

I, **Shri Vidya Raman Jha**, being the **Deputy General Manager** of the Respondent No. 1 Bank being State Bank of India, Stressed Assets Resolution Group, "The Arcade", 2<sup>nd</sup> Floor, World Trade Centre, Cuffe Parade, Colaba, Mumbai - 400 005, do hereby solemnly affirm and state as follows:

1. I say and submit that the Respondent No.1 is State Bank of India, a body Corporate constituted under the provisions of State Bank of India Act, 1955 having its Corporate Centre at State Bank Bhawan, Madame Cama Road, Mumbai 400 021 & Respondent No. 2 is the Chairman of the Respondent No. 1 Bank.
2. I say and submit that the Petitioner being Practicing Valuers Association (India) & Ors. filed the above said Writ Petition challenging the Policy on Valuation and Empanelment of Valuers issued by the Respondent Bank in 2019. The grievance was raised by the Petitioners on the following two grounds:

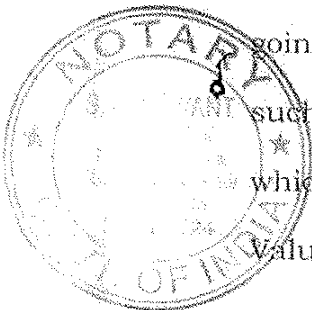


- a) That the demand of the Respondent Bank for the Indemnity letter to be executed for empanelment of valuers is illegal and ultra vires to the Constitution and is to be declared as null and void.
- b) That the policy of the Respondent bank to fix the upper age limit of 70 years for continuing in the Panel of Respondent Bank as Valuers is illegal and ultra vires to the Constitution.
3. I say and submit that the Respondent Bank is the largest Public Sector Bank catering to the needs of the general public in the banking sector. The basic functions of any Public Sector Bank is to mobilize the Resources and Capital garnered through various deposits and schemes for varied period and lend the same at higher rate of interest to its borrowers for profit. The pivotal role played by Public Sector Bank in any economy is Generation of Income for the Country, Capital formation, Employment, Infrastructure, Strong Industrial base, Export promotion and Import substitution and Contribution to Central exchequer.
4. I say and submit that in carrying over the said duties to cater to the need of financing the Borrower, Bank avails the services of the Valuers. Banks need value of an asset for purpose such as determination of amount of loan that can be sanctioned inter alia as against security of an asset to the Borrowers. Bank needs a value for reference or comparison to enable them to take an informed decision. The purpose itself gets defeated if the value is not authentic and genuine. A Banker may not have adequate protection and will be put into grave loss in the event if the loan is lent against



*[Handwritten Signature]*

the security of an asset whose value is inflated or overestimated. Some of the NPA's (for huge values) in the Banking system is attributed directly to such inappropriate valuations. In market economies the property value forms the main basis of majority of financial exposure for a wide range of stake holders inter alia the public. Inappropriate values cause unfair gain or huge loss to the concerned parties further distorting the markets and misallocating the resources. Several financial crises around the world are directly attributable to the consequences of poor valuation (recently it has created bubbles in the developed nations ensuing collapse in real estate market crashes). Hence many governments endeavored to create a mechanism for uniform Appraisal standards and Licensing of Valuers. Integrity of the valuation process is directly related to the protection of public interest. It becomes the utmost responsibility of valuation professionals to ensure that they are adopting consistent and transparent standards and acclaimed yardsticks in their quality of valuation. A Valuer is required to perform his duties with a high level of professionalism, diligence, independence and efficiency as major commercial, administrative and adjudicatory decisions are taken directly on the basis of the services of the Valuer without a second thought on the assumption that adequate security cover exists for the loan. If a valuation was made on fundamentally erroneous basis or that patent mistake has been committed or the valuer adopts a wrong approach and committed fundamental error going to the root of the matter the entities like Banks which engage such Valuers are put into huge loss (ultimately it is the public which are put into loss due to the direct action attributable to the Valuers). It is relevant here to point out that the Banks are not

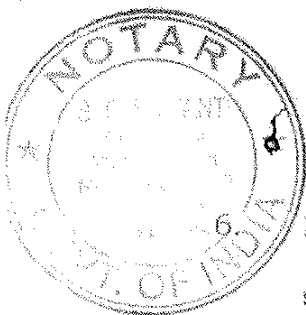


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having any other independent mode to evaluate the veracity of the valuation reports. They fully rely upon the said reports of the valuers and lend huge sums of money to the borrowers assuming that they have adequate security ratio to cover the debts. If the Valuers so not render their services diligently the Banks will suffer huge monetary loss. Hence the valuers themselves are forming part of a different entity / group whose misdeeds or errors (patent or latent) committed in the valuation process will make the other party to suffer financially.

5. I say and submit that in recent years Banks have consistently observed that the Valuers have been consciously or unconsciously inflating the security value and as when the borrowers account slip into NPA Banks are put into acute problems as it is ultimately found that the actual value of the securities will not even be enough to fetch 25% of the outstanding debt. In certain accounts it was also found that there is huge difference (of 50% even at times going up to 75%) in the valuation that have been initially done at the time of sanctioning of loan and as and when the loan was declared as N.P.A. (Of course there may be a difference due to distress but it cannot be beyond 10-15%.) In certain accounts it is found that the valuation has been inflated to that extent that it will not even fetch half the value when the property was sold later. Hence the Banks as per the suggestion of Indian Banks Association (IBA) has included an Indemnity letter to be executed by the Valuers proposed to be empanelled as one of the requirements.

I say and submit that the Respondent Bank to substantiate their stand is citing an instance where the Valuers have submitted



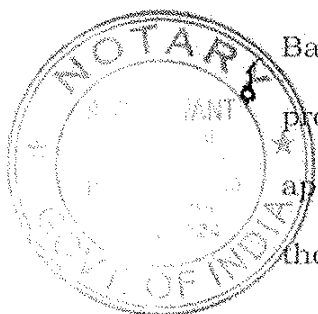
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erroneous Valuation reports due to which Bank is put into huge loss.

Account name	Limit Sanctioned	Inflated value given by the valuer	Actual Value	
Vindhyavashini Group	723.84	800 Crs	457.96	Account declared as fraud
Vindhyavashini Group of Accounts	723.84	600 Crs	39.46	Account declared as fraud
Vindhyavashini Group	723.84	865 Crs	457.96	Account declared as fraud

7. I say and submit that particularly in big loans if a Valuer has furnished erroneous and inflated valuation, Bank is put into irreparable and huge loss in monetary terms due to which the Government is facing lot of problems (as public money is put into loss). To avoid the same to a certain extent (at least morally the Valuers will be put into awareness that if they submit any inflated / incorrect valuations they will be held responsible in future for the same). A conscious decision was taken by Banks to let the Valuers execute an Indemnity letter to make good the loss suffered by Bank which it directly attributes to the negligent action of the Valuers. Banks are not insisting upon Indemnity from service providers of other professions such as Advocates. The reason being that Valuers erroneous valuation report directly cause monetary loss to the Banks. This procedure of executing an Indemnity Letter will at least prompt the valuers to carry out their duties diligently following appropriate procedures adapting to international standards or to the local practices if any in vogue in valuing the properties.

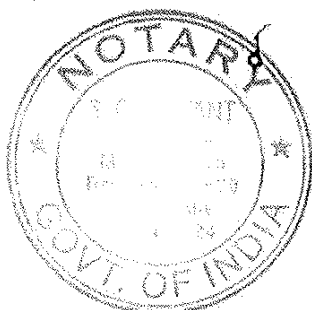


*Vraman*

8. I say and submit that the present Writ Petition is not maintainable under law. The Petitioner has no locus standi to question the policy of the Bank. The Bank has not violated Articles 14, 19 and 21 of the Constitution of India as alleged by the Petitioners. It is the prerogative of the Bank to formulate a criterion while empanelling the valuers. The Bank is not providing any employment to the Petitioners. It is not wrong or illegal to fix certain eligibility criteria to empanel the valuers. Those who are interested to provide services to the Bank as per the terms and conditions of the Bank can only submit applications for empanelment. The question of violation of Article 14 of the Constitution does not arise. All Government / Public sector undertakings have their own policy of recruitment / empanelment. They are permitted to frame their own policy for recruitment / empanelment by fixing eligibility criteria. That does not mean that the Banks have violated Article 14 of the Constitution. Every organization has its own policy of recruitment / empanelment. They are competent to fix minimum qualification and the selection procedure; they will investigate the qualifications / experience before selecting a candidate for empanelment. Further, the Reserve Bank of India issued Circular RBI No. 2006-2007/224 DBOD.BP.BC No. 50/21.04.018/2006-07, dated 04.01.2007 for all the Commercial Banks (including the Respondent Bank) providing thereby the following aspects that may be considered by the said Commercial Banks while formulating a policy on valuation of properties and appointment of valuers:

*(a) "Policy for Empanelment of Independent Valuers"*

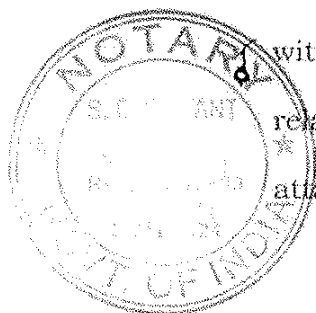
- i. Banks should have a procedure for empanelment of professional valuers and maintain a register of 'approved list of valuers'.
- ii. Banks may prescribe a minimum qualification for empanelment of valuers. Different qualifications may be prescribed for different classes of assets (e.g. land and building, plant and machinery, agricultural land, etc.).



*[Handwritten Signature]*

*While prescribing the qualification, banks may take into consideration the qualifications prescribed under Section 34 AB (Rule 8A) of the Wealth Tax Act, 1957."*

As per Clause (a) ii above, Reserves Bank of India conferred discretionary powers upon all the Commercial Banks to formulate a procedure for empanelment of professional valuers while prescribing minimum qualifications thereto and while doing so, the Banks were left free to apply/consider qualifications prescribed for valuers vide Section 34 AB (Rule 8A) of the Wealth Tax Act, 1957. Furthermore, it is submitted that empanelment of a Valuer is purely a contract and no vested right is conferred on the Valuer by empanelling him in the list. No employer and employee relation exists between the Bank and the empanelled Valuer. Once an application is submitted for empanelment they cannot challenge the terms and conditions or the process of selection claiming the same was biased, unfair or discriminatory. As laid down by Hon'ble Supreme Court in "*D. Saroja Kumara v/s R. Helen Thilakom & Ors.*" and "*State of Bombay V/s F. N. Balasara 1951 S.C.R. 682*" and many other cases, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons often require separate treatment. The State or the Legislature which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity have the power of making special laws to attain particular objects and for that purpose it must have large

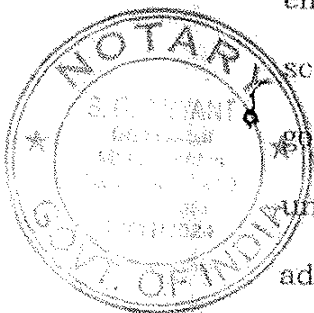


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power of selection or classification of persons and things upon which such laws are to operate. Further conditions can also be stipulated by Banks in order to make good themselves for the loss suffered due to the direct act of the Valuers. Further it is well within the powers of the Respondent to fix maximum age of 70 years as the nature of the job of Valuer / engineers requires physical verification of different assets and taking measurements etc. If they are too old they will depend upon some other persons to do their job which will also affect the reliability of the valuation reports prepared. Therefore fixing maximum age of 70 years cannot be treated as arbitrary by taking into account the nature of job. Further age as a factor stipulated as one of the terms and conditions cannot be challenged by the Petitioners.

9. I further say and submit that the Petitioners have wrongfully invoked the extraordinary writ jurisdiction off this Hon'ble Court under Article 226 in the in the policy matters of the bank and have challenged the policy on the ground of arbitrariness without any substance. The policy dated 03.07.2019 does not violate any provisions of the Registered Valuers and Valuation Rules, 2017 and hence cannot be termed to be arbitrary and unconstitutional.

10. I say and submit that there is a need to improve the competence and quality of Valuers Credible valuation of assets is critical to the efficient working of the Banks and for an economy. Independent, scientific and professional valuation is essential for better corporate governance. Sometimes the valuation report prepared is so unreliable that the Courts are questioning the Banks why without adequate security huge loans are disbursed to borrowers. Thus

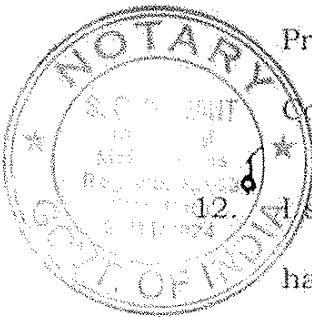


*(Handwritten Signature)*

Banks are put in a delicate position to answer those reasonable queries.

11. I say and submit that a Committee of Experts to submit a report on "Institutional framework for regulation and development of Valuation Professionals" was constituted under the Chairmanship of Shri M. S. Sahoo and eleven others. The said Committee submitted their report dated 02.04.2020 to Smt. Nirmala Sitharaman (Minister of Finance and Corporate Affairs). The Report has also recorded that the framework to be formulated should provide for adequate transparency and accountability for the Institute of Valuation Professional Organization (VPO) and also conduct of Valuers. Further it has suggested that there cannot be any disclaimer by a Valuer which has potential to dilute the responsibility of the Valuer. The valuation reports should be capable of being tested through legal evidence in judicial proceedings. The determination of the value and delivery of the valuation report is to be made by a valuer on the basis of framework such as RICS (Royal Institute of Chartered Surveyors) or IVS. A Valuer is expected to estimate value which is more authentic than price. He must possess the capability and integrity of the job involving three key elements inter alia standards to be adopted for valuation. The Report also stated that it may be necessary for the Valuer to cover his liability through Professional Indemnity Insurance. The related pages in the Committee report are filed hereto as Exhibit "A".

I say and submit that as stated herein above the Respondent Bank has not violated any of the Constitutional provisions nor they have infringed into any rights of the Petitioners. On the contrary the



*(Handwritten Signature)*



In the said circumstances, it is hereby prayed that the Writ Petition filed by the Petitioner be not admitted and further be dismissed with costs and thus, justice be rendered.

Solemnly affirmed at Mumbai )

Dated this 30<sup>th</sup> day of July, 2020 )

*[Handwritten Signature]*  
Deponent

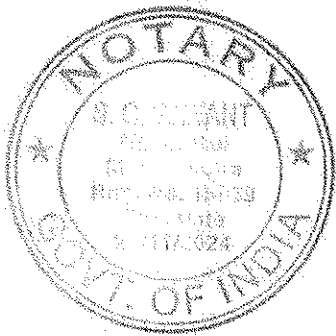


Identified by me,

*[Handwritten Signature]*

(Mrs. Rathina Maravarman)  
Advocate for Respondent Nos. 1 and 2

Before me

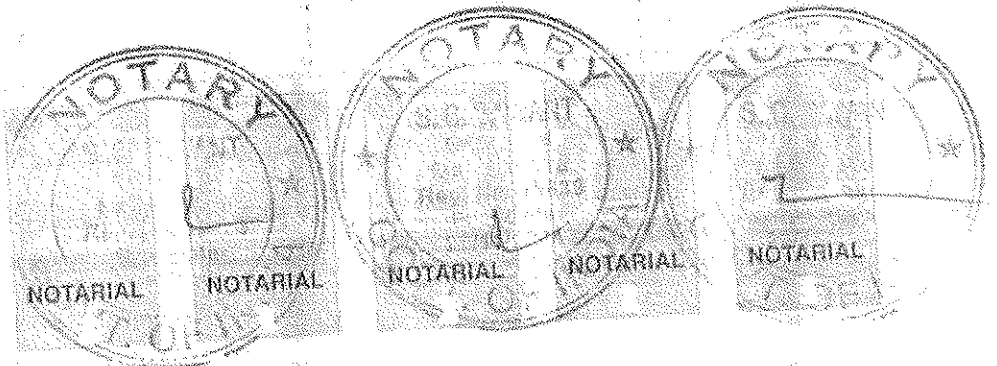


ORIG. PANCARD / AADHAR CARD /  
DRIVING LICENCE, VOTERS ID  
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BEFORE ME  
*[Handwritten Signature]*

S. C. SAWANT  
B.Com., L.L.B.  
NOTARY GOVT. OF INDIA  
Regd. No. 15539  
101, Viceria Chambers, 1st Floor,  
74, Jeevabhoomi, Fort, Mumbai-1.

Noted & Registered  
Reg. No. 84/611  
Page No. 30/7/2020  
Date: 30/7/2020



**ANNEXURE P-17**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
OS-WP-LD-VC-188 OF 2020**

1. Practicing Valuers Association (India)
  2. Ashok Vishnu Kelkar (President of P1 | Age: 78 years)
  3. Sujit Shrikant Joglekar (Hon. Secy. of P1 | Age: 43 years) ... Petitioners
- Versus
1. State Bank of India
  2. Shri Rajnish Kumar, Chairman of R1 ... Respondent

---

**WRITTEN SUBMISSIONS ON BEHALF OF THE AMICUS CURIAE**

---

SHARAN H. JAGTIANI, SENIOR ADVOCATE  
GROUND FLOOR, BRITISH HOTEL LANE,  
OFF NAGINDAS MASTER ROAD, FORT  
MUMBAI 400001  
EMAIL: [SHARANJ@HMJAGTIANI.COM](mailto:SHARANJ@HMJAGTIANI.COM)  
MOBILE: 9821113502



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## I. INTRODUCTION TO AND SCOPE OF THE WRIT PETITION FILED BEFORE THE BOMBAY HIGH COURT

1. This note is submitted by the Amicus Curiae appointed by the Hon'ble Bombay High Court vide Order dated 24<sup>th</sup> July 2020 (Coram: S.J. Kathawalla J. and R.I. Chagla J.) passed in, *inter alia*, OS-WP-LD-VC-188 OF 2020.
2. The Petitioners in OS-WP-LD-VC-188 OF 2020 (*Practicing Valuers Association (India) & Ors. vs. State Bank of India & Anr.*) challenge two aspects of State Bank of India's ("SBI") policy relating to empanelment of valuers dated 3<sup>rd</sup> July 2019:
  - i. The upper limit of 70 years of age for an empanelled valuer; and
  - ii. The communication / direction / policy of SBI<sup>1</sup> to the extent it requires prospective valuers seeking empanelment to execute an indemnity in favour of SBI as per a prescribed format<sup>2</sup>.
3. The Impugned Conditions of Respondent No. 1's policy is set out in detail later in this Note.

## II. MAIN RELIEFS

4. The main reliefs sought by the Petitioners read as follows:<sup>3</sup>

*"a) This Hon'ble Court may be pleased to issue a suitable writ or order or direction under the special jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India ordering that the communication / direction / policy of the respondents at exhibit "C" hereto to the extent of demanding from and ordering to the Petitioner no.1 and its members to execute an indemnity in terms of the format at exhibit "D" and the policy of the respondents to fix the upper age limit of 70 years for continuing on the panel of the respondents as valuers is illegal, ultra virus the Constitution and is null and void*

*b) That this Hon'ble court may be pleased to issue a suitable writ, order or direction prohibiting the Respondents from insisting upon the Petitioners and the*

<sup>1</sup> Exhibit "C" Page 36 of the Petition.

<sup>2</sup> Exhibit "D" Page 117 of the Petition.

<sup>3</sup> Para 26, Page 23 of Petition.

*members of the Petitioner No.1 to execute an Indemnity Bond in terms of draft at Ex. 'D' and discontinuing them to act as valuers on the panel of the respondents on completion of 70 years of age, as being illegal ultra virus, unconstitutional and violative of the Petitioners' right, guaranteed under Article 14, 19(1)(g) of Constitution of India;*

[...]

### III. STATE BANK OF INDIA AS 'STATE' UNDER ARTICLE 12

5. It may be relevant to briefly refer to the history and statutory framework within which SBI was established.
6. SBI is a scheduled commercial bank.<sup>4</sup> SBI is India's largest commercial bank in terms of assets, deposits, branches, number of customers and employees.<sup>5</sup>
7. In 1951, when the First Five Year Plan was launched, the development of rural India was prioritized. Commercial banks in India at the time, including the Imperial Bank of India confined their operations to the urban sector and were not suitably equipped to respond to the emergent needs of post-independence rural India.<sup>6</sup>
8. The All India Rural Credit Survey Committee recommended the creation of a state-partnered and state-sponsored bank by taking over the Imperial Bank of India, and integrating with it, the former state-owned or state-associate banks.<sup>7</sup>
9. An Act of Parliament was passed in May 1955 and SBI was constituted on 1<sup>st</sup> July 1955 under the State Bank of India Act, 1955 ("SBI Act"). A copy of the SBI Act is annexed as **Annexure 2** to the accompanying Compilation of Documents.
10. A Division Bench of this Hon'ble Court has observed, in *State Bank of India vs. Kalpaka Transport Company Private Ltd.*<sup>8</sup>, that several High Courts in this country

<sup>4</sup> See Item No. 191 of the Second Schedule to the Reserve Bank of India Act, 1934 annexed to the accompanying Compilation of Documents at **Annexure 1**.

<sup>5</sup> Source: Website of State Bank of India at <https://www.sbi.co.in/web/about-us>.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> 1978 SCC OnLine Bom 200 at Paragraph 24.

have declared from time to time that nationalised banks as well as SBI are “**other authorities**” within the meaning of Article 12 of the Constitution of India. A copy of the Division Bench judgment in *State Bank of India vs. Kalpaka Transport Company Private Ltd.* is annexed as **Annexure 3** to the accompanying Compilation of Documents.

#### IV. RESPONDENT’S POLICY FOR EMPANELMENT OF VALUERS

11. The Banking Regulation Act, 1949 empowers the Reserve Bank of India (“RBI”) to issue directions, *inter alia*, in the interest of banking policy.

##### **35A. Power of the Reserve Bank to give directions**

*(1) Where the Reserve Bank is satisfied that-*

*(a) in the public interest; or*

*(aa) in the interest of banking policy; or*

*(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or*

*(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.*

*(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.*

A copy of the Banking Regulation Act, 1949 is annexed as **Annexure 4** to the accompanying Compilation of Documents.

12. RBI, vide Circular No. 2006-2007/224 DBOD.BP.BC No. 50 / 21.04.018/ 2006-07 dated 4<sup>th</sup> January 2007 (“**Circular**”) issued guidelines to be followed by commercial

banks while formulating a policy for valuation of properties and appointment of valuers. The said Circular reads as follows:

*"RBI No.2006-2007/224*

*DBOD.BP.BC No. 50 / 21.04.018/ 2006-07*

*January 4, 2007*

*The Chairmen/Chief Executives*

*All Commercial Banks (excluding RRBs)*

*Dear Sir,*

***Valuation of Properties - Empanelment of Valuers***

*It has been observed that different banks follow different policies for valuation of properties and appointment of valuers for the purpose. The issue of correct and realistic valuation of fixed assets owned by banks and that accepted by them as collateral for a sizable portion of their advances portfolio assumes significance in view of its implications for correct measurement of capital adequacy position of banks. In this context, there is a need for putting in place a system/procedure for realistic valuation of fixed assets and also for empanelment of valuers for the purpose.*

*2. Banks may be guided by the following aspects while formulating a policy on valuation of properties and appointment of valuers:*

***(a) Policy for valuation of properties***

- i) Banks should have a Board approved policy in place for valuation of properties including collaterals accepted for their exposures.*
- ii) The valuation should be done by professionally qualified independent valuers i.e. the valuer should not have a direct or indirect interest.*
- iii) The banks should obtain minimum two Independent Valuation Reports for properties valued at Rs.50 crore or above.*

***(b) Revaluation of bank's own properties***

*In addition to the above, the banks may keep the following aspects in view while formulating policy for revaluation of their own properties.*

- i) The extant guidelines on Capital Adequacy permit banks to include revaluation reserves at a discount of 55% as a part of Tier II Capital. In view of this, it is*

*necessary that revaluation reserves represent true appreciation in the market value of the properties and banks have in place a comprehensive policy for revaluation of fixed assets owned by them. Such a policy should inter alia cover procedure for identification of assets for revaluation, maintenance of separate set of records for such assets, the frequency of revaluation, depreciation policy for such assets, policy for sale of such revalued assets etc. The policy should also cover the disclosure required to be made in the 'Notes on Account' regarding the details of revaluation such as the original cost of the fixed assets subject to revaluation and accounting treatment for appreciation / depreciation etc.*

- ii) As the revaluation should reflect the change in the fair value of the fixed asset, the frequency of revaluation should be determined based on the observed volatility in the prices of the assets in the past. Further, any change in the method of depreciation should reflect the change in the expected pattern of consumption of the future economic benefits of the assets. The banks should adhere to these principles meticulously while changing the frequency of revaluation/method of depreciation for a particular class of asset and should make proper disclosures in this regard.*

**(c) Policy for Empanelment of Independent valuers**

- i) Banks should have a procedure for empanelment of professional valuers and maintain a register of 'approved list of valuers'.*
- ii) Banks may prescribe a minimum qualification for empanelment of valuers. Different qualifications may be prescribed for different classes of assets (e.g. land and building, plant and machinery, agricultural land, etc.). While prescribing the qualification, banks may take into consideration the qualifications prescribed under Section 34AB (Rule 8A) of the Wealth Tax Act, 1957.*

*3. Banks may also be guided by the relevant Accounting Standard issued by the Institute of Chartered Accountants of India.*

*Yours faithfully,*

*(Prashant Saran)*

*Chief General Manager-in-Charge*

A copy of the Circular No. 2006-2007/224 DBOD.BP.BC No. 50 / 21.04.018/ 2006-07 dated 4<sup>th</sup> January 2007 is annexed as **Annexure 5** to the accompanying Compilation of Documents.

13. The Circular acknowledges that different banks follow different policies for valuation of properties and appointment of valuers. It also provides that banks may prescribe different qualifications for valuers dealing with different classes of assets and may take into consideration the qualifications prescribed under Section 34AB (Rule 8A) of the Wealth Tax Act, 1957.
14. As per the Circular issued by RBI, Respondent No. 1 has formulated a policy dated 3<sup>rd</sup> July 2019 for empanelment of valuers.

**V. THE IMPUGNED CONDITIONS OF RESPONDENT NO. 1'S POLICY FOR EMPANELMENT OF VALUERS**

15. The relevant parts of Respondent No. 1's policy which are challenged by the Petitioners is set out below:

**AGE LIMIT**

16. The Impugned Condition prescribing a maximum age limit of 70 years reads as follows:<sup>9</sup>

***"2.5 Minimum / Maximum Age requirement***

*Age is an important criteria while empanelling valuers. The minimum age for empanelment with us shall be 25 years and maximum age limit for a valuer to remain on the panel shall be 70 years."*

**INDEMNITY**

17. The Petition also challenges the Respondent's requirement of obtaining an indemnity from prospective valuers seeking empanelment:<sup>10</sup>

“

*(Annex IX)*

**TERMS AND CONDITIONS TO BE ANNEXED TO THE APPOINTMENT LETTER FOR VALUERS**

<sup>9</sup> Page 43 of Petition.

<sup>10</sup> Page 106 - 107 of Petition.

[...]

xii. *The Valuer shall indemnify and keep fully and effectively indemnified the Bank against all costs, claims, damages, demands, expenses and liabilities of whatsoever nature which may be caused to or suffered by or made or taken against Bank (including, without limitation, any claims or proceedings by any customers against Bank) directly or indirectly arising out of any improper, incorrect or negligent performance, work, service, act or omission by the Valuer or by any of Valuer's Personnel or fraud or other wrongful act by the Valuer or by any of Valuer's Personnel or for any act of the Valuer which results in Bank obtaining incorrect or incomplete information from the Valuer or any of Valuer's Personnel. In this connection, a Letter of Indemnity as per Annexure-XV is to be executed by him.*

xiii. *The Valuer agrees to indemnify and keep indemnified the Bank against any loss or damage to any of Bank's information, documents, property, records, or other items while in the Valuer's use or possession.*

[...]

18. The Letter of Indemnity as per Annexure-XV to Respondent's Policy for Empanelment of Practicing Valuers reads as follows:<sup>11</sup>

*Dear Sir(s),*

*In consideration of State Bank of India (herein after called the "Bank" which expression shall include its successors and assignees) empanelling me / us on their panel of approved Engineers and Valuers for the purpose of assessing the market value of the properties proposed to be taken as securities for the credit limits granted or to be granted by the Bank to its various borrowers, I / We jointly and severally extend this letter of indemnity.*

*Whereas by the letter of empanelment dated \_\_\_\_\_ the bank has empanelled me / us on their panel of approved Engineers & Valuers for the purpose of assessing the market value of the properties proposed to be taken as securities for the credit granted / to be granted by the Bank. I / We jointly and severally agree as follows.-*

*I / We shall duly and faithfully perform and discharge all the duties in the works entrusted by the Bank and in relation to the purposes of empanelment, fairly without any favour and discrimination and I / we hereby undertake and agree to indemnify you, your successors and assigns at all times and from time to time from and against all loss, damage and all actions suits, proceedings, expenses,*

<sup>11</sup> Exhibit "D" Page 117



costs, charges and demands arising out of any act, lapses defaults, negligence, errors, mistakes committed by me / us in performance of my / our professional obligations and I / we also hereby undertake and agree to pay to you on demand sums of money, costs, charges and expenses incurred in respect thereof and also to pay you interest on all such moneys at your ruling rate.

I / We further specifically agree that this indemnity shall continue to remain in force and I / We shall continue to be liable there under for all losses, damages, costs, charges and expenses arising out of any act, lapses, defaults, negligence, errors, mistakes committed by me / us in performance of my / our professional obligations and shall be binding on me / us and our legal and personal representatives, successors and assigns.

## VI. GROUNDS OF CHALLENGE

19. A summary of the Petitioners' grounds of challenge are set out below:
20. Respondent No. 1 has issued the impugned conditions pertaining to the indemnity and the upper limit of 70 years for empanelment without justification and without any jurisdiction or authority in law.<sup>12</sup> The Impugned Conditions are issued without any legislative authority.<sup>13</sup> Respondent No. 1 lacks the competence to issue the policy containing the Impugned Conditions.<sup>14</sup> The requirement of submitting an indemnity bond can only be by way of legislation and not by an executive order.<sup>15</sup>
21. No such indemnity has been sought from its own employees or other panellists such as advocates, engineers, chartered accountants, medical professionals and hence, such a requirement for empaneled valuers amounts to discrimination.<sup>16</sup>
22. The condition put by the Respondents for empanelment i.e. execution of an indemnity in favour of Respondent No. 1 is unfair, unjust and perverse and has been issued influenced by irrelevant or extraneous considerations. The direction to execute an

<sup>12</sup> Para 6 Page 9 of Petition.

<sup>13</sup> Para 11 Page 12 of Petition.

<sup>14</sup> Para 14 Page 14 of Petition.

<sup>15</sup> Para 17 Page 17 of Petition.

<sup>16</sup> Para 7 Page 10 of Petition and Para 19 Page 18 of Petition.

Indemnity Bond is not supported by any speaking order. No opportunity was given to the Petitioners before passing of the Impugned Condition to submit an indemnity.<sup>17</sup>

23. No similar direction to submit an Indemnity Bond and no age based restriction is prescribed for other similarly situated professionals and the conditions are not supported by any principle or policy.<sup>18</sup>
24. There is no intelligible differentia between valuers and other professionals rendering services to Respondent No. 1 and therefore the Impugned Conditions is discriminatory. The classification has no nexus with the object sought to be achieved by the Impugned Conditions and violates Article 14 of the Constitution.<sup>19</sup>
25. The requirement of submitting an indemnity is oppressive and there is a likelihood of bias and the Petitioners apprehend that on the basis of such indemnity, Respondent No. 1 would have a free hand to hold the members of Petitioner No. 1 liable for errors or mistake of judgment which they may not have foreseen.<sup>20</sup> There is a possibility of misuse of the indemnity.
26. Members of Petitioner No. 1, having provided services for the last 30 years have a legitimate expectation of being treated fairly and to continue providing services to Respondent No. 1 on agreed terms and conditions. The Impugned Conditions defeat this legitimate expectation.<sup>21</sup>
27. The Hand Book on Policy, Standards and Procedures for Real Estate Valuation by Banks and HFIs in India issued by the Indian Banks Association in February 2011 waives the requirement of submitting an indemnity by empaneled valuers.<sup>22</sup> A similar direction has been given by the Department of Financial Services, Ministry of

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<sup>17</sup> Para 8 Page 11 of Petition.

<sup>18</sup> Para 9 Page 11 of Petition.

<sup>19</sup> Para 10 Page 11 of Petition.

<sup>20</sup> Para 12 Page 13 of Petition.

<sup>21</sup> Para 13 Page 13-14 of Petition.

<sup>22</sup> Para 15 Page 14 of Petition.

Finance, Government of India in the matter of standardization of the procedure for valuation of assets.

28. The requirement of submitting an indemnity is an insult to the members of Petitioner No. 1 impedes upon their right to practice with dignity and their status as qualified professionals. This results in members of the Petitioner No. 1 working under conditions of fear.<sup>23</sup>
29. In case Respondent No. 1 believes that a valuer has committed an act of misconduct etc., it is entitled to take recourse to the law of the land.<sup>24</sup>
30. The age limit of 70 years is arbitrary. Seniority in professional services is desired. In the event Respondent No. 1 feels a particular member is not performing his services in a satisfactory manner, it may choose to discontinue their empanelment at the end of the valuer's three year tenure.<sup>25</sup>
31. The Impugned Policy affects the Petitioners' right under Article 19(1)(g) of the Constitution of India.<sup>26</sup>

#### **VII. REPLY FILED BY RESPONDENT NO. 1**

32. Respondent No. 1 has filed a preliminary Affidavit in Reply opposing admission of the Petition.
33. The Respondent states that Respondent Bank is the largest public sector bank catering to the needs of the general public in the banking sector. The basic functions of the Respondent No. 1 is to mobilize resources and capital garnered through various deposits and schemes and lend the same at higher rates of interest to its borrowers for profit.<sup>27</sup>

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<sup>23</sup> Para 17 Page 16 of Petition.

<sup>24</sup> Para 18 Page 17 of Petition.

<sup>25</sup> Para 19 Page 18 of Petition.

<sup>26</sup> Para 11 Page 12 of Petition.

<sup>27</sup> Para 3 Page 152 of Reply.

34. Respondent No. 1 avails the services of valuers for the purpose of lending. The determination of the loan sanction amount depends on the valuation of assets offered by the borrower as collateral.<sup>28</sup>
35. An accurate valuation is essential for Respondent No. 1 to make an informed decision regarding the amount to be sanctioned as a loan.<sup>29</sup>
36. Several non-performing assets in the banking system are attributable directly to inflated, overestimated and inappropriate valuations. Irresponsible valuation has resulted in the creation of a bubble in the real estate market in developed countries which led to the 2008 global financial crisis.<sup>30</sup>
37. Banks, who deal with public funds, are put to loss if a valuer adopts a wrong approach or commits a fundamental error going to the root of the matter.<sup>31</sup>
38. Banks are entirely dependent on such valuation reports and do not have any other means to independently verify the same.<sup>32</sup>
39. Valuers form a distinct class of persons whose misdeeds or errors (patent or latent) committed in the valuation process result in significant financial losses for the bank.<sup>33</sup>
40. It has been observed that valuers have consciously or unconsciously inflated the value of assets offered as collateral and the difference is only observed when the account is declared as a non-performing asset and the security interest is sought to be enforced.<sup>34</sup> One specific instance is quoted by Respondent No. 1.

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<sup>28</sup> Para 4 Page 152 of Reply.

<sup>29</sup> Para 4 Page 153 of Reply.

<sup>30</sup> Para 4 Page 153 of Reply.

<sup>31</sup> Para 4 Page 153 of Reply.

<sup>32</sup> Para 4 Page 154 of Reply.

<sup>33</sup> Para 4 Page 154 of Reply.

<sup>34</sup> Para 5 Page 154 of Reply.

41. Respondent No. 1 has, as per the suggestion of the Indian Banks Association, sought an indemnity from empaneled valuers.<sup>35</sup>
42. The indemnity operates as a measure of accountability. The lack of accountability permits certain valuers to function with impunity. Valuers will therefore be cautious and the indemnity operates as a deterrent to submitting false or inflated valuations.<sup>36</sup> An indemnity ensures checks and balances.<sup>37</sup>
43. An empaneled valuer is not an employee of the bank. A condition for empanelment is not violative of Articles 14, 19 and 21 of the Constitution of India.<sup>38</sup> Respondent No. 1 is well within its rights to frame a policy which provides for eligibility requirements of valuers. Every government / public sector undertaking has its own policy of empanelment and differences in empanelment policy are not, *ipso facto*, violative of Article 14 of the Constitution. RBI's Circular permits banks to provide for minimum eligibility requirements to be met for empanelment.<sup>39</sup>
44. The age limit of 70 years is not arbitrary or unreasonable as the nature of the job of a valuer / engineer requires physical verification of assets and taking measurements etc. If they are too old, they will depend on other persons to undertake physical verification of assets, which will affect the reliability of the valuation report.<sup>40</sup>
45. The policy does not violate the Companies (Registered Valuers and Valuation) Rules, 2017 and cannot be held to be unconstitutional.
46. Courts have often questioned officials of banks who have sanctioned loans to accounts which are subsequently declared to be non-performing assets and bank

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<sup>35</sup> Para 5 Page 154 of Reply.

<sup>36</sup> Para 7 Page 155 of Reply.

<sup>37</sup> Para 12 Page 160 of Reply.

<sup>38</sup> Para 8 Page 156 of Reply.

<sup>39</sup> Para 8 Page 156 - 157 of Reply.

<sup>40</sup> Para 8 Page 158 of Reply.

officials are put in a delicate position where they are not able to adequately address the Court's queries on adequacy of collateral security.<sup>41</sup>

47. An April 2020 "*Report of the Committee of Experts to Examine the Need for an Institutional Framework for Regulation and Development of Valuation Professionals*" submitted by the committee under the Chairmanship of Dr. M.S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India to the Ministry of Finance and Corporate Affairs recommends that a valuation report should not carry a disclaimer, which has potential to dilute the responsibility of the valuer or make the valuation unsuitable for the purpose for which the valuation was conducted. It further recommends that the valuation reports should be capable of being tested through the crucible of legal evidence in judicial proceedings.<sup>42</sup>
48. The Report of the Committee of Experts also contemplates a valuer obtaining professional indemnity insurance and the fees payable to such valuer to account for the cost of obtaining insurance. The insurance may be necessary since a valuer may not be able to compensate a bank for any actionable claim against the valuer and the cost of defending legal proceedings may be prohibitively high.<sup>43</sup>
49. The indemnity will only be invoked in rare and exceptional circumstances wherein the bank will be subjected to huge financial loss due to inflated valuation reports submitted by valuers.<sup>44</sup>

#### **VIII. A COMMENT ON THE RELEVANT LEGISLATIVE PROVISIONS AND REPORTS WHICH DEAL WITH THE ELIGIBILITY REQUIREMENTS OF VALUERS AND THEIR AGE LIMITS**

50. The management and the administration of SBI is governed by the SBI Act. As per Section 17 of the SBI Act, the general superintendence and the business of SBI shall

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<sup>41</sup> Para 10 Page 158 - 159 of Reply.

<sup>42</sup> See Paragraph 4.48 of the Report at Internal Page 78 thereof.

<sup>43</sup> See Paragraph 4.73 of the Report at Internal Page 84 thereof.

<sup>44</sup> Para 12 Page 160 of Reply.

be undertaken by the Central Board of SBI to be constituted by the Central Government in conjunction with RBI. The SBI Act also contemplates setting up of Local Boards which shall have the powers as vested by the Central Board under Section 21B. Section 17 and 18 of the SBI Act have been reproduced hereunder;

**“17. Management.** - (1) *The general superintendence and direction of the affairs and business of the State Bank shall be entrusted to the Central Board which may exercise all powers and do all such acts and things as may be exercised or done by the State Bank and are not by this Act expressly directed or required to be done by the State Bank in general meeting.*

(2) *The Central Board in discharging its functions shall act on business principles, regard being had to public interest.*

**18. Central Board to be guided by directions of Central Government.** - (1) *In the discharge of its functions [including those relating to a subsidiary bank], the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Governor of the Reserve Bank and the chairman of the State Bank, give to it.*

(2) *All directions shall be given by the Central Government and, if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.*”

51. RBI by way of Circular No. RBI No.2006-2007/224 dated 4<sup>th</sup> January 2007<sup>45</sup> issued guidelines to all commercial banks with regards to the empanelment of Valuers.
52. The Circular, reproduced above, does not prescribe the eligibility requirements of valuers, but recommends that the qualifications under Section 34 AB of the Wealth Tax Act, 1957<sup>46</sup> be kept in mind.

**“Registration of valuers.**

**34AB.** (1) *The [Chief Commissioner or Director General] shall maintain a register to be called the Register of Valuers in which shall be entered the names and addresses of persons registered under sub-section (2) as valuers.*

<sup>45</sup> <https://www.rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=3231>

<sup>46</sup> <https://www.incometaxindia.gov.in/pages/acts/wealth-tax-act.aspx>

*(2) Any person who possesses the qualifications prescribed in this behalf may apply to the [Chief Commissioner or Director General] in the prescribed form for being registered as a valuer under this section:*

*Provided that different qualifications may be prescribed for valuers of different classes of assets.*

*(3) Every application under sub-section (2) shall be verified in the prescribed manner, shall be accompanied by such fees as may be prescribed and shall contain a declaration to the effect that the applicant will—*

*(i) make an impartial and true valuation of any asset which he may be required to value;*

*(ii) furnish a report of such valuation in the prescribed form;*

*(iii) charge fees at a rate not exceeding the rate or rates prescribed in this behalf;*

*(iv) not undertake valuation of any asset in which he has a direct or indirect interest.*

*(4) The report of valuation of any asset by a registered valuer shall be in the prescribed form and be verified in the prescribed manner.”*

**“Restrictions on practice as registered valuer.**

*34AC. (1) No person, either alone, or in partnership with any other person, shall practise, describe himself or hold himself out as a registered valuer for the purposes of this Act or permit himself to be so described or held out unless he is registered as a valuer or, as the case may be, unless he and all his partners are so registered under this Chapter.*

*(2) No company or other body corporate shall practise, describe itself or hold itself out as registered valuers for the purposes of this Act or permit itself to be so described or held out.”*

53. Rule 8 of the Wealth Tax Rules, 1957<sup>47</sup> details the qualifications required in order to be a valuer for different classes of assets. These valuers can undertake valuation of properties under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
54. It is submitted that neither Section 34 AB of the Wealth Tax Act, nor the Wealth Tax Rules prescribe any age limit for valuers. There is correspondingly no rule which

<sup>47</sup> <https://www.incometaxindia.gov.in/pages/rules/wealth-tax-rules.aspx>



requires valuers to submit an indemnity, either as a condition of service or as a condition for empanelment.

55. In addition to this, Section 247 of the Companies Act, 2013 which came into force on 18<sup>th</sup> October 2017, states that valuation of assets of a company shall be carried out by valuers registered with the Insolvency and Bankruptcy Board of India under the Companies (Registered Valuers and Valuation) Rules 2017<sup>48</sup>. Rule 3 to 5 of the said Rules state the eligibility, qualification and registration of such valuers.
56. It is submitted that neither Section 247 of the Companies Act nor the Companies (Registered Valuers and Valuation) Rules 2017 prescribe any age limit for valuers. There is correspondingly no rule which requires valuers to submit an indemnity, either as a condition of service or as a condition for empanelment.
57. RBI, vide letter No. DNBS(PD)CC.No.802/SCRC/26.03.00112014-15 dated 8<sup>th</sup> August 2014 to the Indian Banks' Association (IBA) expressed a need for improving the valuation process followed by banks to improve the credit administration.
58. While the said RBI letter dated 8<sup>th</sup> August 2014 is not publicly available, an IBA Report issued pursuant to this letter states that IBA was requested to standardize the process for empanelment of valuers by the banks. The reference by RBI was considered by the Managing Committee of IBA at its meeting held on 26<sup>th</sup> September 2014 and a 2015 Report in this regard was made, a copy whereof is annexed as **Annexure 6** to the accompanying Compilation of Documents.
59. The said 2015 Report by IBA makes reference to two reports on valuation of securities prepared by IBA:
- (i) Hand Book on Policy, Standards and Procedures for Real Estate Valuation by Banks and HFIs in India-2011; and

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<sup>48</sup> <https://ibbi.gov.in/uploads/rules.pdf>

- (ii) Report of the Group constituted by the Department of Financial Services, Ministry of Finance, Govt. of India to Standardize Procedures for Valuation of Assets – 2012.

60. The said 2015 Report considered, *inter alia*, minimum age requirements of valuers, and the possibility of valuers being required to submit a security deposit or indemnity for professional services to be rendered. The relevant portions of the IBA Report read as follows:

***“V. B) Minimum Age Requirement***

*Age is an important criteria while empanelling valuers. The minimum age for empanelment with banks and Financial institutions shall be 25 years and there is no maximum age limit for a valuer to remain on the panel.”*

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***“9. Obligations of Banks/FIs***

*This document casts the following obligations on the appointing agencies viz. the Banks / Financial institutions as follows:*

...

*No security deposits or any other indemnity money should be taken from the valuers as security for the professional services that they provide.”*

61. The 2015 IBA Report issued pursuant to RBI’s letter dated 8<sup>th</sup> August 2014 therefore recommends that there should be no maximum age limit for a valuer and that no security deposit or indemnity should be sought as security for the professional services that valuers provide.
62. As is apparent, these are only suggestions albeit of some importance as they have been formulated by the IBA obviously reflecting years of experience and as they have been submitted to RBI pursuant to a reference made in this regard. It is to be noted, and in fact IBA itself makes a mention of this fact on its website, that IBA is not a governmental entity or a regulatory authority. The note published by IBA in this regard is annexed as **Annexure 7** to the accompanying Compilation of Documents.

63. Government of India, vide its order dated 30<sup>th</sup> August 2019, constituted a Committee of Experts (CoE) on valuation profession under the Chairmanship of Dr. M. S. Sahoo, Chairperson, IBBI. The terms of reference of the CoE include:
- (a) Institutional framework for regulation and development of valuation profession and its scope;
  - (b) Regulatory architecture, including the extent of self-regulation and statutory regulation;
  - (c) Governance of regulatory institutions;
  - (d) Monitoring of the conduct and performance of valuers and disciplinary mechanism; and
  - (e) Transitional arrangement for registered valuers and RVOs.
64. The said Report was accompanied by a draft Bill. A copy of the Report of the Committee of Experts is annexed as **Annexure 8** to the accompanying Compilation of Documents.
65. Some of the pertinent provisions in the said Report pertaining to the age limit and indemnity are reproduced hereunder:

***“1.23 Regulation of Profession***

*[...]*

*(c) Age Limit: There should not be any lower or upper age limit for entry into the profession. Nor should there be an upper age when a Valuer should cease practice.”*

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***“2.30 Regulation of Profession***

*(a) There should be no minimum or maximum age limit for entry to the profession. Nor should there be a maximum age limit for practicing valuation profession. Some, however, favoured an upper age limit for admission to valuation courses to attract talent.”*

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***"2.31 Market for Valuation Services***

*[...]*

*(f) There were two views as regards indemnity. Some suggested that the valuers should be required to have insurance to protect against professional liabilities for actions taken in good faith. The majority preferred that it should be left to market practice."*

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***"Age Limits***

*4.25 The Committee felt that an enduring and enviable profession requires induction of right talent. The talent makes a career choice usually on completion of higher secondary education. A student should have option to consider valuation profession while making a career choice. If he makes a choice in favour of valuation profession and completes the national valuation programme, he should be eligible for registration as a valuer irrespective of his age. Therefore, there should be no minimum age requirement to be a valuer. Similarly, there should be no upper age limit for joining the profession. Some people make a career choice after having a first degree or a professional qualification. Some such persons may choose valuation profession and complete graduate valuation programme. They may bring a different perspective and valuable experience. They may be allowed registration irrespective of age. Further, profession being a terminal occupation (Goode, 1960), and valuation being an intellectual exercise, the valuation profession should not have any age for retirement, particularly when the average age of valuers registered under the Valuation Rules as on date is 48. The CoE, therefore, felt that the age for entry to the profession is best left to the market."*

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*"4.73 The actual price of an asset may not necessarily match the value estimated by a valuer for a variety of reasons, most of which are not on account of improper conduct of valuation on the part of the valuer. This may raise an actionable claim against the valuer. The legal cost of defending such claims may often be prohibitive. A professional may be exposed to abuse of the system and needs to be protected. At the same time, a service user may have incurred loss on account of wrong valuations and also needs to be compensated. Such compensations are often beyond the financial means of the valuer. Therefore, it may be necessary for him to cover his liability through a professional indemnity insurance. The professional indemnity insurance will*

*have a cost on the valuer. It may not be the appropriate to mandate such costs on a valuer in the infancy of valuation profession. It may not be prudent for the regulator to mandate such requirement through Regulations. It is best left to the judgment of the valuer whether he wants to cover himself with professional indemnity insurance. Possibly, as the profession develops and the market form professional indemnity matures in India, it should be affordable for a valuer to take the cost of insurance. In light of the above, the CoE recommends that since a valuer renders service under a contractual arrangement with a client, the need for a professional indemnity or insurance should depend on negotiation between the parties and hence is not a matter to be addressed in the proposed framework."*

66. It is submitted that presently, there is no comprehensive policy or legislation which provides uniform eligibility requirements or conditions for service by valuers. As independent professionals (and not employees) their conditions for service are prescribed by individual policies and negotiated contracts.
67. Whilst the draft report of the Committee of Experts does comment on the two aspects that are under consideration in this Petition—viz. age limit and indemnity—the context in which they are discussed is rather different. The Committee of Experts have submitted a report in relation to the draft Bill that if enacted will be a legislation to regulate the profession of valuers. In that context there are observations that the profession as a whole should not be subjected to an upper age limit or the need to obtain insurance for liability. That would not directly bear on the question of whether SBI can insist on these stipulations as part of its terms of empanelment.

#### **IX. CRITERIA FOR EMPANELMENT BY VARIOUS NATIONALISED BANKS**

68. In light of the guidelines issued by the RBI and in consonance with other laws, the Respondent No.1 and other nationalized banks issue policies for empanelment of valuers.

<b>Sr. No.</b>	<b>Bank</b>	<b>Necessary Registration</b>	<b>Age Limit &amp; Indemnity</b>
1.	Respondent	Registration with a Valuer	Compulsory

	No. 1	Association; with IBBI and u/s 34 AB of WT Act	retirement at 70 years and indemnity required
2.	United Bank of India <sup>49</sup>	Registration with a Valuer Association; u/s 34 AB of WT Act	Min: 25 years; Compulsory retirement at 75 years; No indemnity to be taken from Valuers
3.	UCO Bank <sup>50</sup>	Registration with a Valuer Association, with IBBI and u/s 34 AB of WT Act	Min: 25 years; No upper age limit; No indemnity to be taken from Valuers
4.	Indian Bank <sup>51</sup>	Registration with Institute of Engineer and Institute of Valuers; u/s 34 AB of WT Act	Compulsory retirement at 70 years
5.	Union Bank <sup>52</sup>	Registration with Institute of Valuers; u/s 34 AB of WT Act	Indemnity letter to be obtained if Valuers do not object
6.	Bank of India <sup>53</sup>	Registration a Valuer Association; u/s S.34AA to 34AE of WT Act	Minimum age to be 25 years. No maximum age prescribed. No indemnity.
7.	Punjab National	Registration with Institute of Valuers; u/s 34 AB of WT Act	Minimum age to be 25 years. No maximum

<sup>49</sup> <https://www.unitedbankofindia.com/uploads/valuers.pdf>

<sup>50</sup> [https://www.ucobank.com/pdf/Eligibility\\_CodeofConduct\\_Valuers.pdf](https://www.ucobank.com/pdf/Eligibility_CodeofConduct_Valuers.pdf)

<sup>51</sup> <https://www.indianbank.in/wp-content/uploads/2018/03/BankPolicyGuidelinesonEmpanelmentofValuers.pdf>

<sup>52</sup> <https://www.unionbankofindia.co.in/pdf/VALUATIONOFPROPMEPNALLEFOVALUPOLICY09089.PDF>

<sup>53</sup> <https://www.bankofindia.co.in/pdf/VALUERSGUIDELINESFOREMPANELMENT.pdf>

	Bank <sup>54</sup>		age prescribed. No indemnity.
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**X. COMPETENCE TO PRESCRIBE THE POLICY CONTAINING THE IMPUGNED CONDITIONS**

69. The Petitioners challenge the Impugned Conditions contained in the policy on the grounds of legislative and executive competence. However, the Petitioners are unable to clearly identify which authority has the exclusive competence to prescribe eligibility requirements for empaneled valuers of Respondent No. 1.
70. Section 35A of the Banking Regulation Act, 1949 empowers RBI to issue directions, *inter alia*, in the interest of banking policy. RBI, vide its Circular dated 4<sup>th</sup> January 2007 states that banks should formulate a '*Board approved policy*' for '*valuation of properties including collaterals accepted for their exposures*'.
71. The Affidavit in Reply filed by Respondent No. 1 does not expressly demonstrate the approval granted by the board of directors of Respondent No. 1 to the policy containing the Impugned Conditions and therefore, Respondent No. 1 may be directed to clarify this point by way of a further affidavit. In the event Respondent No. 1 demonstrates that its board of directors have duly approved the said policy, the Petitioners challenge to the Impugned Condition on the ground of legislative competence or authority must fail.

**XI. REASONABLE CLASSIFICATION**

72. The purpose for engagement of valuers is mentioned at **Exhibit C Page 39** of the Petition as part of the said policy containing the Impugned Conditions. The same reads as follows:

*"Valuers are engaged for*

<sup>54</sup> <https://www.pnbindia.in/downloadprocess.aspx?fid=fmFcbSluozkDbIBxPEp3kg>

- *The purpose of ascertaining the value of the property / assets etc. offered as security*
  - *The purpose of periodically ascertaining the value of the property that has been mortgaged, whether it is increasing or decreasing over the mortgage period.*
  - *For the purpose of realizing the value of non-performing assets (NPAs) and*
  - *The purpose of resumption of properties in cases of default. ”*
73. This indicates that a valuer provides a wide spectrum of services i.e. from an initial investigative role for ascertaining the value of assets offered as collateral to subsequently, performing such other duties with respect to enforcement of Respondent No. 1's security interest for non-performing assets as the circumstances warrant.
74. Unlike accountants or legal professionals, the responsibilities of a valuer may, and in many cases will require him to physically remain present where the assets are situated to either conduct the initial investigation as regards valuation or subsequent action for enforcement. A valuer applies his special knowledge to a given set of circumstances and arrives, by a process that is both objective and subjective, to an estimate of valuation of assets. Such a valuation is not an exact science, but is based on scientific enquiry which often requires taking searches with local registrars, inspecting plant and machinery, making inquiries as regards de facto possession etc.
75. The nature of services performed by a valuer contrasted with the nature of services performed by an advocate or an accountant are dissimilar and therefore it is submitted that they cannot be clubbed under one class of like professionals. The exercise of valuation of an asset that is offered as collateral has arguably a more direct and proximate connection to the decision of grant of loan and banking facility than any other professional service rendered to a bank. It is a function that is entirely outsourced, unlike legal and accounting services, where a bank would most likely have in-house employees that can guide it in these matters as well as take assistance of outside professionals.



76. The educational qualifications of the valuers in order to be registered are primarily governed by two Acts; i.e. The Wealth Tax Rules, 1957 formulated under the Wealth Tax Act, 1957 for valuation of assets under SARFAESI and the Companies (Registered Valuers And Valuation) Rules, 2017 under the Companies Act, 2013 for valuation of assets belonging to a company.
77. In *Air India vs. Nargeesh Meerza*<sup>55</sup> while summarizing the position regarding reasonable classification, the Hon'ble Supreme Court was pleased to reiterate;

*"39. The following propositions emerge from an analysis and examination of cases decided by this Court:*

*(1) In considering the fundamental right or equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay service terms, leave, etc. are introduced in different or dissimilar posts.*

*Thus where the class or categories of services are essentially different in purport and spirit, Art. 14 cannot be attracted.*

*(2) Art. 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, having a close nexus with the objects sought to be achieved Art. 14 will be a completely out of the way.*

*(3) Art. 14 certainly applies where equals are treated differently without any reasonable basis.*

*(4) Where equals and unequals are treated differently Art. 14 would have no application.*

*(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.*

*(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:-*

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<sup>55</sup> (1981)4 SCC 335

*(a) the nature, the mode and the manner of recruitment of a particular category from the very start.*

*(b) the classifications of the particular category.*

*(c) the terms and conditions of service of the members of the category;*

*(d) the nature and character of the posts and promotional avenues;*

*(e) the special attributes that the particular category possess which are not to be found in other classes, and the like."*

78. In *Kathi Raning Rawat v. State of Saurashtra*<sup>56</sup>, Sastri, C.J. observed thus: (SCR pp. 442-43)

*"Though the differing procedures might involve disparity in the treatment of the persons tried under them, such disparity is not by itself sufficient, in my opinion, to outweigh the presumption and establish discrimination unless the degree of disparity goes beyond what the reason for its existence demands us, for instance, when it amounts to a denial of a fair and impartial trial."*

79. Fazl Ali, J., as he then was, observed as follows: (SCR p. 448)

*"I think that a distinction should be drawn between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances."*

80. Similar observations were made by Mukherjea, J. who remarked thus: (SCR p. 458)

*"The legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no rational relation to the objectives of the legislation, that necessity of judicial interference arises."*

81. In *All India Station Masters' & Assistant Station Masters' Association vs. General Manager, Central Railways*<sup>57</sup> Das Gupta, J., speaking for the Court, held as follows:

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<sup>56</sup> 1952 SCR 435.

*“So multifarious are the activities of the State that employment of men for the purpose of these activities has by the very nature of things to be in different departments of the State and inside each department, in many different classes. For each such class there are separate rules fixing the number of personnel of each class, posts to which the men in that class will be appointed, questions of seniority, pay of different posts, the manner in which promotion will be effected from the lower grades of pay to the higher grades, e.g., whether on the result of periodical examination or by seniority, or by selection or on some other basis — and other cognate matters. Each such class can be reasonably considered to be a separate and in many matters independent entity with its own rules of recruitment, pay and prospects and other conditions of service which may vary considerably between one class and another.*

\* \* \*

*It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative.”*

## **XII. AGE LIMIT OF 70 YEARS**

82. The RBI circular states that the *“Banks may prescribe a minimum qualification for empanelment of valuers. Different qualifications may be prescribed for different classes of assets (e.g. land and building, plant and machinery, agricultural land, etc.). While prescribing the qualification, banks may take into consideration the qualifications prescribed under Section 34AB (Rule 8A) of the Wealth Tax Act, 1957.”* However, neither the W.T. Act nor the Rules under the Companies Act, 2017 make a mention of an upper limit where age is concerned.
83. The Hon’ble High Court, in *Air India vs. Nargeesh Meera* (supra), struck down the provision pertaining to compulsory retirement on the principle that the power vested in the authority to annually extend the term of service beyond the stipulated age of retirement was an uncanalised and unguided power, hence arbitrary. In this context, which is different from the situation that arises in the present case that does not attract any principle of unguided discretion, the Court observed:

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<sup>57</sup> (1960) 2 SCR 311, 384.

*“119. Regulation 46(i)(c) provides that an AH would retire on attaining the age of 35 years or on marriage if it takes place within four years of service. The last limb of this provision relating to first pregnancy in the case of AHs has already been struck down by us and the remaining sub-clause (c) has to be read with Regulation 47 which provides that the services of any employee may, at the option of the Managing Director, on the employee being found medically fit, be extended by one year beyond the age of retirement, the aggregate period not exceeding two years. This provision applies to employees who retire at the age of 58. So far as the AHs are concerned, under the Regulation the discretion is to be exercised by the Managing Director to extend the period up to ten years. In other words, the spirit of the Regulation is that an AH, if medically fit, is likely to continue up to the age of 45 by yearly extensions given by the Managing Director. Unfortunately, however, the real intention of the makers of the Regulation has not been carried out because the Managing Director has been given an uncontrolled, unguided and absolute discretion to extend or not to extend the period of retirement in the case of AHs after 35 years. The words, at the option, are wide enough to allow the Managing Director to exercise his discretion in favour of one AH and not in favour of the other which may result in discrimination. The Regulation does not provide any guidelines, rules, or principles which may govern the exercise of the discretion by the Managing Director. Similarly, there is also no provision in the Regulation requiring the authorities to give reason for refusing to extend the period of retirement of AHs. The provision does not even give any right of appeal to higher authorities against the order passed by the Managing Director. Under the provision, as it stands, the extension of the retirement of an AH is entirely at the mercy and sweet will of the Managing Director. The conferment of such a wide and uncontrolled power on the Managing Director is clearly violative of Article 14, as the provision suffers from the vice of excessive delegation of powers.”*

84. The Supreme Court in *Ami Lal Bhat (Dr) v. State of Rajasthan*<sup>58</sup> considered a challenge to a cut-off date fixed by the rule making authority for determining the maximum age of a candidate who is to be considered for direct recruitment to a service under the state. The Supreme Court noted the position in law as follows:

5. [...] *the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for*

<sup>58</sup> (1997) 6 SCC 614.

*determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in Union of India v. Parameswaran Match Works [(1975) 1 SCC 305 : AIR 1974 SC 2349] and has been reiterated in subsequent cases. [...]*

(emphasis supplied in this note)

85. The Supreme Court in *Govt. of A.P. v. N. Subbarayudu*<sup>59</sup>, considered an appeal from a judgment of the Division Bench of the High Court of Andhra Pradesh which held that a particular cut-off date, from which the petitioners before the High Court were entitled to payment of pension, was arbitrary. Noting the change of law with respect to the scope of judicial review of cut-off dates, the Supreme Court held as follows:

*5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal [(2005) 6 SCC 754 : 2005 SCC (L&S) 910] .)*

*6. No doubt in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal [(2005) 6 SCC 754 : 2005 SCC (L&S) 910] .*

*7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The*

<sup>59</sup> (2008) 14 SCC 702 at Paragraph 5.

*Government must be left with some leeway and free play at the joints in this connection.*

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Bihar v. Ramjee Prasad [(1990) 3 SCC 368 : 1991 SCC (L&S) 51], Union of India v. Sudhir Kumar Jaiswal [(1994) 4 SCC 212 : 1994 SCC (L&S) 925 : (1994) 27 ATC 561] (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. [(2004) 2 SCC 76 : 2004 SCC (L&S) 337] (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary [(1996) 10 SCC 536 : 1996 SCC (L&S) 1431], etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in *Aravali Golf Club v. Chander Hass* [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289 : JT (2008) 3 SC 221] and in *Govt. of A.P. v. P. Laxmi Devi* [(2008) 4 SCC 720 : (2008) 2 JT 639 : (2008) 3 Scale 45] the court must maintain judicial restraint in matters relating to the legislative or executive domain.

(emphasis supplied in this note)

### **XIII. CLAUSE OF INDEMNITY AND DEMAND OF LETTER OF INDEMNITY FROM THE VALUERS**

86. In defense of the demand of the letter of indemnity, the Respondent No.1 has relied upon the Report at Exh.A to its Affidavit in Reply. However, apart from the fact that the said report is not binding in nature, the said Report merely states that the valuers ought to get coverage under Professional Indemnity Insurance. The Report is silent on whether the banks ought to demand indemnity from the valuers.
87. It may be pointed out from the table set out above that most of the banks do not require a letter of indemnity from their valuers.
88. The indemnity clause in the policy for empanelment of valuers and the proforma of the letter of indemnity, essentially stipulate that the valuer will be held accountable for any loss caused to SBI by the valuation report. On the face of it, it is a widely

worded indemnity that applies to improper valuations, negligence, defaults, fraud, mistake and errors. It may well be argued that the indemnity does expand the scope of liability of the valuer. Without the indemnity of such a nature, any action against the valuer for damages for loss suffered would have to be founded either on an implied contractual term to act in good faith and with reasonable diligence or based on a tort of negligence. The standard that might generally govern a civil action against a professional has been discussed by the Supreme Court, in *Central Bank of India vs. K. Narayana Rao*<sup>60</sup>.

89. In *Central Bank of India* (supra), the Supreme Court considered an appeal directed against the final judgment and order passed by the High Court of Judicature, Andhra Pradesh whereby the High Court allowed the petition filed by the respondent (K. Narayana Rao) – a panel advocate for Vijaya Bank, under Section 482 of the Code of Criminal Procedure, 1973 and quashed the criminal proceedings pending against him on the file of the Special Judge for CBI Cases, Hyderabad. The Supreme Court dismissed the appeal, however, considered the law with respect to liability of professionals (such as Advocates) under Indian law for negligence.
90. The allegation against the respondent - who was empaneled as an advocate with Vijaya Bank – was that he gave a false legal opinion with respect to ten housing loans. It was alleged that the empaneled advocate along with the valuer failed to point out the actual ownership of the properties / ownership details and names of the apartments in their reports as also the falsity in the permissions for construction issued by the municipal authorities. The specific allegations against the respondent – empaneled advocate read as follows:

*“20. Investigation revealed that legal opinions in respect of all these 10 loans have been given by Panel Advocate Shri K. Narayana Rao (A-6) and valuation reports were given by approved valuer Shri V.C. Ramdas (A-7). Both, the advocate and the valuer, have failed to point out the actual ownership of the property and failed to bring out the ownership details and names of the apartments in their reports. They*

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<sup>60</sup> (2012) 9 SCC 512.

*have also failed to point out the falsehood in the construction permission issued by the municipal authorities.*

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*28. Investigation revealed that the municipal permissions submitted to the Bank were also fake.*

*29. Expert of the Finger Print Bureau confirmed that the thumb impressions available on the questioned 22 title deeds pertain to A-3, A-4 and A-5.*

*30. The above facts disclose that Shri P. Radha Gopal Reddy (A-1) and Shri M. Udaya Sankar (A-2) entered into criminal conspiracy with A-3 and abused their official position as public servants by violating the Bank norms and in the process caused wrongful gain to A-3 to the extent of Rs 1,00,68,050 and corresponding wrongful loss to the Bank in sanctioning 22 housing loans. Shri P.Y. Kondal Rao (A-3) registered false sale deeds in favour of borrowers using impostors as site owners, produced false municipal permissions and cheated the Bank in getting the housing loans. He is liable for conspiracy, cheating, forgery for the purpose of cheating and for using forged documents as genuine. Shri B. Ramanaji Rao (A-4) and Shri R. Sai Sita Rama Rao (A-5) impersonated as site owners and executed the false sale deeds. They are liable for impersonation, conspiracy, cheating, forging a valuable security and forgery for the purpose of cheating. Shri K. Narayana Rao (A-6) submitted false legal opinions and Shri K.C. Ramdas (A-7) submitted false valuation reports about the genuineness of the properties in collusion with A-3 for sanction of the loans by Vijaya Bank, Narayanaguda Branch, Hyderabad and abetted the crime. Shri A.V. Subba Rao (A-8) managed verification of salary slips of the borrowers of 12 housing loans in collusion with A-3 and abetted the crime.*

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*33. In view of the above, Accused A-1, A-2, A-3, A-4, A-5, A-6, A-7 and A-8 are liable for offences punishable under Section 120-B read with Sections 419, 420, 467, 468, 471 and 109 read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and substantive offences thereof."*

91. Although the Supreme Court upheld the order of the High Court of Andhra Pradesh quashing criminal proceedings against the empaneled advocate of Vijaya Bank, it considered the role of professionals in providing banks with opinions which aid the bank in taking an informed decision with respect to their lending business. Paragraph 27 is relevant in this regard and reads as follows:

*"27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of*



negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. **Judged by this standard, a professional may be held liable for negligence on one of the two findings viz. either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.**

28. In *Jacob Mathew v. State of Punjab* [(2005) 6 SCC 1 : 2005 SCC (Cri) 1369] this Court laid down the standard to be applied for judging. To determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

29. In *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra* [(1984) 2 SCC 556 : 1984 SCC (Cri) 335] this Court held that: (SCC p. 562, para 8)

“8. There is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.”

30. **Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank.** In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

31. However, it is beyond doubt that a lawyer owes an “unremitting loyalty” to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. **At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them.** It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein.

*32. In the light of the above discussion and after analysing all the materials, we are satisfied that there is no prima facie case for proceeding in respect of the charges alleged insofar as respondent herein is concerned. We agree with the conclusion of the High Court in quashing the criminal proceedings and reject the stand taken by CBI.*

[...]"

92. Whilst the above is helpful by way of background, the core question that arises in this Petition is:

*Whether the inclusion of such an indemnity clause as a term of contract to engage the services of a valuer, the starting point of which is the empanelment itself, is so arbitrary that the term itself violates Article 14 of the Constitution?*

93. Absent a policy for empanelment of valuers, for each assignment of valuation, SBI would essentially enter in a contract to retain or engage a valuer. Instead, and for good reason, there is a policy for empaneling valuers on certain stipulated terms and their selection based defined criteria. For specific assignments, SBI will appoint a valuer from that empaneled list. Rather than negotiate a contract for each case, the terms that govern such engagement are predetermined at that time of empanelment. So viewed, there can be little doubt that in stipulating clauses such as the indemnity, SBI is acting within the sphere of contract in asserting the terms that it wants as part of that contract.
94. If SBI were not governed by Article 12 of the Constitution of India, the inclusion of a widely worded indemnity would be a matter of party autonomy between two contracting parties. However, it is now well settled that the protection of Article 14 of the Constitution applies to State action even in matters where the State acts within the realm of contract—both as to its formation and its implementation. Some of the judgments that have put this application of Article 14 to the realm of contract beyond debate, are as follows:

- i. *Dwarkadas Marfatia & Sons vs. Board Of Trustees Of The Port Of Bombay*;<sup>61</sup>
- ii. *Shrilekha Vidyarthi (Kumari) v. State of U.P.*;<sup>62</sup>
- iii. *Vijay Kumar Gupta vs. State of Maharashtra*.<sup>63</sup>
- iv. *KSL & Industries Ltd. vs. National Textiles Corporation Ltd.*<sup>64</sup>

95. That said, it has also been laid down that the scope for judicial review in matters of contracts to which the State is a party is limited. The Courts have clearly recognized the need for flexibility and play in the joints. There is undoubtedly a margin of deference especially when formulating the terms of a contract that may themselves have their roots in a policy based need of the State underlying that specific aspect of the States business. Some of the judgments that reinforce this principle are as follows:

- i. *Directorate of Education & Ors. vs. Educomp Datamatics Ltd.*;<sup>65</sup>
- ii. *Michigan Rubber (India) Limited vs. State of Karnataka & Ors.*;<sup>66</sup>

96. In *Directorate of Education & Ors.* (supra), the Directorate of Education, Government of National Capital Territory of Delhi, took a decision to establish computer labs in the National Capital Territory area in all government schools by the year 2003 in collaboration with the private sector.

97. Initially, for 2000-2001, tenders were issued which specified that interested firms must have a turnover of Rs. 2 Crores. Since the lowest tenderer was not in a position to carry out the project in 115 schools, the contract was divided amongst four parties.

98. In the year 2001-02 the turnover clause was amended, instead of Rs. 2 crores a turnover of Rs. 5 crores was prescribed. Because of the several representations filed,

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<sup>61</sup> (1990) 3 SCC 752.

<sup>62</sup> (1991) 1 SCC 212.

<sup>63</sup> 2008 (4) MhLJ 370.

<sup>64</sup> 2012 SCC OnLine Del 4189.

<sup>65</sup> (2004) 4 SCC 19.

<sup>66</sup> (2012) 8 SCC 216.

the tender was cancelled and fresh tenders were invited from the firms having a turnover of Rs. 2 crores or above. The lowest tenderer was again not in a position to take up the entire project. Thus the contract had to be distributed amongst eight parties.

99. For the final phase of 2002-03 the tenders were called for all the 748 schools. The cost of project was approximately Rs. 100 crores. Because of the difficulty faced in the earlier years that the lowest tenderers were not able to implement the entire project, the Government took a policy decision to deal with one company having financial capacity to take up such a project instead of dealing with a number of small companies which were unable to take up the entire project individually. Accordingly, the Government took a decision to invite tenders from firms having a turnover of Rs. 20 crores or more. This condition was challenged. A Division Bench of the Delhi High Court allowed the Petition.
100. The Supreme Court set aside the judgment of the Delhi High Court and held as follows:

*“9. It is well settled now that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. **However, there are inherent limitations in the exercise of the power of judicial review in such matters.** The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651]. After examining the entire case-law the following principles have been deduced: (SCC pp. 687-88, para 94)*

*“94. The principles deducible from the above are:*

- (1) The modern trend points to judicial restraint in administrative action.*
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

10. In *Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617] this Court observed: (SCC p. 623, para 7)

“The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness.”

(emphasis supplied in this note)

101. In *Michigan Rubber (India) Limited* (supra), Karnataka State Road Transport Corporation (KSRTC) floated a tender for supply of tyres, tubes and flaps specifying certain pre-qualification criteria which was challenged by the petitioner (appellant before the Supreme Court).
102. The impugned pre-qualification criteria provided that only the tyre manufacturers who have supplied a minimum average of 5000 sets of tyres, tubes and flaps set per

annum, in the preceding three years to any one of the OE chassis manufacturer i.e. Ashok Leyland, Tata Motors, Eicher, Swaraj Mazda and Volvo are eligible to participate, for supply of respective size/type of tyres, tubes and flaps set. Additionally, the firm should have minimum average annual turnover of Rs 500 crores in the preceding three years from the sale of tyres, tubes and flaps.

103. The Karnataka High Court dismissed the petition. The Supreme Court confirmed the decision of the Karnataka High Court and held as follows:

*"21. In Jagdish Mandal v. State of Orissa [(2007) 14 SCC 517] the following conclusion is relevant: (SCC pp. 531-32, para 22)*

*"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*

*(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*

*OR*

*Whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached';*

(ii) *Whether public interest is affected.*

*If the answers are in the negative, there should be no interference under Article 226. [...]"*

23. *From the above decisions, the following principles emerge:*

(a) *The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*

(b) *Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*

(c) *In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;*

(d) *Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*

(e) *If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government."*

(emphasis supplied in this note)

104. When these principles are applied to the indemnity clause that is impugned herein, notwithstanding the fact that it is perhaps widely worded, it still may not make it so unreasonable or manifestly arbitrary an exercise of SBI's power in matters of contract. SBI justifies this saying that it is necessitated by its long years of collective experience in suffering because of unsatisfactory valuation reports. Given the vitality of valuation as a process to the business of banking and lending, it consciously wants to hold valuers uniformly and without exception to a higher and more exacting

standard. Since SBI accepts deposits from the general public, such a policy is said to be warranted in public interest.

105. Importantly, it is not as if SBI can make any instant recovery based on an indemnity clause of this nature. It is not as if the valuers are furnishing a performance bank guarantee that is liable to be invoked based on SBI's unilateral judgment of unsatisfactory performance in relation to valuation reports.
106. SBI would by relying on the indemnity have to prove its case in a civil court to make any recovery including by having to prove in accordance with law breach of the indemnity and the quantum of loss suffered. The only advantage it may have by such a clause is, as mentioned, that it widens the liability of the valuer.
107. Any valuer has a choice not to be empaneled with SBI if it does not agree to be bound by the indemnity in question. There is no fundamental right to do business with the State.<sup>67</sup>
108. Moreover, SBI has in its Affidavit in Reply explained that this clause is intended for cases where it suffers huge losses on account of a valuation report.<sup>68</sup> If in a given case SBI were to act unreasonably and unfairly by imputing liability on the strength of this clause, apart from defending itself, the valuer may challenge SBI's action as a State under Article 14. However, it is well settled that an arbitrary action under a provision does not render the provision itself unconstitutional.
109. On balance, it may be considered that the indemnity clause in the terms of empanelment and therefore in the terms of the contract applicable to each assignment given to an empaneled valuer, are not of such a manifestly arbitrary or unfair nature so as to warrant interference by this Court on the touchstone of Article 14 of the Constitution.

**Dated: 10<sup>th</sup> August 2020**

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<sup>67</sup> Paragraph 23 of *Michigan Rubber (India) Limited* (supra).

<sup>68</sup> Para 12 Page 160 of Reply.



Arvind Kumar &amp; Ors.

...Petitioners

-Versus-

Union of India, through the Secretary, Ministry of Corporate Affairs,  
Government of India, New Delhi & Ors.

...Respondents

**CORAM: - HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Petitioners :- Mr. V.P.Singh, Sr.Advocate  
For the Res. nos. 1 & 2 :- Ms. Shresha Sinha, AC to ASGI  
For the Res.nos. 5 to 8, 11 & 12:- Mr. P.A.S. Pati, Advocate  
For the Respondent nos. 9 & 10:- Mr. Gyanendra Kumar, Advocate  
For the Respondent nos. 13 & 14:-Mr. Pratyush Kumar, Advocate

05/13.10.2020

The present case is taken up through video conferencing.

The present writ petition has been filed for issuance of direction upon the respondent-Banks for empanelment/re-empanelment of the petitioners as "empanelled valuer" without insisting upon them for furnishing or executing indemnity bond as contained in the proforma annexed as Annexure-3 series to the present writ petition and to allow them to continue as "emapnelled valuer". Further prayer has been made for quashing/cancelling/rescinding the proforma of indemnity bond and/or at least the clauses of indemnity bond mentioned in the said proforma of the respondent-Banks (Annexure-3 series to the present writ petition) which has been asked to the petitioners to submit the same for their empanelment or for re-empanelment as registered valuers/empanelled valuers.

Learned Senior Counsel for the petitioners submits that the petitioners, who are the registered valuers of the respondent-Banks and are fulfilling statutory qualifications provided under Rule-8A of the Wealth-Tax Rules, 1957 and are duly registered under the provisions of Section 34AB of the Wealth-Tax Act, 1957 by the Central Board of Direct Taxes (CBDT), cannot be directed to furnish or execute the indemnity bond as contained in the proforma annexed as Annexure-3 series to the present writ petition. The conditions for indemnifying the demand as stipulated in the proforma of the indemnity bond, are arbitrary and illegal.

Issue notice.

Ms. Shresha Sinha, A.C. to learned A.S.G.I. appears and waives notice on behalf of the respondent nos. 1 and 2.

Mr. P.A.S. Pati, Advocate, appears and waives notice on behalf of the respondent nos. 5 to 8 as well as the respondent nos. 11 and 12.

Mr. Gyanendra Kumar, Advocate, appears and waives notice on behalf of the respondent nos. 9 and 10.

Mr. Pratyush Kumar, Advocate, appears and waives notice on behalf of the respondent nos. 13 and 14.

Issue notice to the respondent nos. 3 and 4 through registered cover with A/D for which requisites etc. must be filed by 19.10.2020.

Notice is made returnable after six weeks.

In the meantime, if any decision is taken by the respondent-Banks with regard to the empanelment of the petitioners as registered valuers, the conditions of executing the indemnity bond as contained in Annexure-3 series, shall not be insisted upon, which shall be subject to the outcome of the present writ petition.

**(Rajesh Shankar, J.)**



impugned order may be taken on record, the certified copy of the impugned order would be placed on record as and when the same is made available to the petitioner.

**PRAYER**

It is therefore, most respectfully, prayed that this Hon'ble Court may be pleased to:

- (a) Exempt the petitioner from filing certified copy of the final impugned Order dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WP-LD-VC-NO. 188 OF 2020.
- (b) Pass such order or further order(s) and grant any other appropriate relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

 Filed by

**(V ELANCHEZHIAN)**  
Advocate for the Petitioner

Place: New Delhi

Dated: 24.08.2023

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
I.A. NO. OF 2023

IN  
SPECIAL LEAVE PETITION (C) NO. OF 2023

**IN THE MATTER OF:**

Practicing Valuers Association (India) .....PETITIONER  
VERSUS

State Bank of India & Ors. ....RESPONDENTS

**APPLICATION FOR CONDONATION OF DELAY IN FILING THE  
SLP**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
THE APPLICANT ABOVENAMED:-

**MOST RESPECTFULLY SHEWETH:**

1. That the applicant has filed the accompanying Special Leave Petition against the impugned final judgment/order dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WP-LD-VC-NO. 188 OF 2020 whereby the Hon'ble High Court was pleased to dismiss the Writ Petition of the applicant. The contents of the said petition may be read as part and parcel of the present application and the same are not repeated herein for the sake of brevity.
2. That the applicant had filed the Writ Petition challenging the policy dated 03.07.2019 through its then President and Secretary Mr. Ashok Vishnu Kelkar and Mr. Sujit Shrikant Joglekar respectively and they retired from the office after passing of the impugned judgement dated 18.08.2020.

Thereafter, the petitioner's association conducted an election and elected new office bearers of its Governing Council including the president and secretary. After formal appointment of the office bearers of the Governing Council, they sought consensus of all the members of the petitioner's association for assailing the impugned order of the Hon'ble High Court and in the same process it took a considerable time. It is duly brought to the knowledge of this Hon'ble Court that the members of the petitioner are around 10000 in numbers and scattered all over the Maharashtra and therefore, it was very difficult to approach each and every member of the petitioner to seek their consent to file the accompanying Special Leave Petition.

3. That it is pertinent to mention herein that the impugned judgement of the Hon'ble High Court was passed on 18.08.2020 when the pandemic Covid 19 was at its peak and badly effecting the entire state of Maharashtra. The petitioner was required to gather the general consensus of its members for challenging the impugned judgment of the Hon'ble High Court as the Governing Council of the petitioner could not take such decision without the consent and approval of majority of its members and the same took a lot of time. Hence, the petitioner could not be able to file the present Special Leave Petition within the prescribed period of limitation despite its best efforts and there is a delay of 453 days in filing the SLP.
4. That it is respectfully submitted that this Hon'ble Court has excluded the period from 15.03.2020 till 28.02.2022 in computing the period of limitation prescribed under laws in Suo Motu Writ Petition (C ) No.3 of 2020 and therefore, there is delay

of 453 days in filling the accompanying Special Leave Petition. The said delay is neither intentional nor deliberate but only due the aforesaid reasons and therefore, the applicant prays to this Hon'ble Court to kindly be pleased to condone the delay in the interest of justice.

5. That the present application is bona fide and made in the interest of justice

### **PRAYER**

In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Condone the delay of 453 days in filing SLP against the final judgment/order dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Bombay in OS-WP-LD-VC-NO. 188 OF 2020.;
- b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed by



(V ELANCHEZHIAN)

Advocate for the Petitioner

Place: New Delhi

Dated: 24.08.2023

SECTION-II B

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

**IN THE MATTER OF:**

Practicing Valuers Association (India) .....PETITIONER

VERSUS

State Bank of India & Ors. ....RESPONDENTS

<b><u>SR. NO.</u></b>	<b><u>INDEX PARTICULARS</u></b>	<b><u>COPIES</u></b>	<b><u>C/FEE</u></b>
1.	Listing Performa	1 + 3	
2.	List of dates	1 + 3	
3.	High Court judgment	1 + 3	
4.	SLP with affidavit	1 + 3	
5.	Annexures	1 + 3	
6.	Application for exemption from filing C/c	1 + 3	
7.	Application for Delay in Filing		
8.	Vakalatnama with M/A	1	

FILED BY



(V. ELANCHEZHIAN)

Advocate for the petitioner  
205, Hans Bhawan, I.T.O,  
Near Supreme Court of India,  
New Delhi-110002  
Mobile No.7053967103  
**Code No.2292**

Place: New Delhi  
Filed on: 24.08.2023



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VAKALATNAMA

(S.C.R. 1966 Order IV Rule 6)

IN THE SUPREME COURT OF INDIA

Civil Original/ Appellate/ Jurisdiction

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2023

IN THE MATTER OF;

Practicing Valuers Association (India) ..... Petitioner

VERSUS

State Bank of India & Ors. .... Respondents

VAKALATNAMA

I, Mahesh Mistry, Secretary of the Petitioner Society in the above Transfer  
Petition do hereby appoint and  
retain..... V. ELANCHEZHIAN .....

Advocate of the Supreme Court to act and appear for me/us in the above  
Transfer Petition on my behalf to conduct and prosecute (or defend) the same  
and all proceedings that order passed therein, including proceedings in  
taxation and applications/ or Review, to file and obtain return of documents,  
and to deposit and receive money on my/our behalf in the said Suit/ Appeal/  
Petition/ Reference and in application of Review, and to represent me/us and  
to taken all necessary step/s on my/our behalf in the above matter. I/We  
agree to ratify all acts done by the aforesaid Advocate in pursuance of this  
authority.

Dated this the 31 day of July, 2023

*V. Elanchezhian*  
Accepted & Identified  
and certified  
(V. ELANCHEZHIAN)

Advocate for the petitioner

PRACTISING VALUERS ASSOCIATION (INDIA)

*Mahesh Mistry*  
Signed  
Authorised Signatory  
(Mahesh Mistry)

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Petitioner/Appellant(s)

**MEMO OF APPEARANCE**

To  
The Registrar,  
Supreme Court of India,  
New Delhi

Sir,

Please enter my appearance on behalf of the Petitioner(s)/  
Appellant(s)/ Respondent(s)/ Opposite Parties/ Intervenor in the matter above  
mentioned.

New Delhi

Dated this 31 day of July, 2023.



Filed:- 25.08.2023

**(V. ELANCHEZHIAN)**

Yours faithfully,  
Advocate for the petitioner

Advocate for petitioner/ Appellant/ Respondent