

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 31st January, 2019

+ W.P.(C) 9883/2018, CM No. 38508/2018

CUSHMAN AND WAKEFIELD INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Vikas Singh, Sr. Adv. with
Mr. Karan Malhotra, Mr. Vikram
Bajaj, Mr. Rahul Raj, Mr. Chandra
Thampi and Mr. Kapil Seth, Advs.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Madhavi Divan, ASG with
Mr. Akshay Makhija, CGSC with
Ms. Nidhi Khanna and
Ms. Aditya Goyal, Advs. for UOI

AND

+ W.P.(C) 9889/2018, CM No. 38522/2018

KNIGHT FRANK (INDIA) PRIVATE LIMITED

..... Petitioner

Through: Mr. Vikas Singh, Sr. Adv. with
Mr. Karan Malhotra, Mr. Vikram
Bajaj, Mr. Rahul Raj, Mr. Chandra
Thampi and Mr. Kapil Seth, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Ms. Madhavi Divan, ASG with
Mr. Akshay Makhija, CGSC with
Ms. Nidhi Khanna and
Ms. Aditya Goyal, Advs. for UOI

AND

+ W.P.(C) 9890/2018, CM No. 38524/2018

CBRE SOUTH ASIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Vikas Singh, Sr. Adv. with
Mr. Karan Malhotra, Mr. Vikram
Bajaj, Mr. Rahul Raj, Mr. Chandra
Thampi and Mr. Kapil Seth, Advs.

versus

UNION OF INDIA AND ANR. Respondents

Through: Ms. Madhavi Divan, ASG with
Mr. Akshay Makhija, CGSC with
Ms. Nidhi Khanna and
Ms. Aditya Goyal, Advs. for UOI

AND

+ W.P.(C) 9927/2018, CM No. 38673/2018

JONES LANG LASALLE PROPERTY CONSULTANTS (INDIA)
PRIVATE LIMITED Petitioner

Through: Mr. Vikas Singh, Sr. Adv. with
Mr. Karan Malhotra, Mr. Vikram
Bajaj, Mr. Rahul Raj, Mr. Chandra
Thampi and Mr. Kapil Seth, Advs.

versus

UNION OF INDIA AND ANR. Respondents

Through: Ms. Madhavi Divan, ASG with
Mr. Akshay Makhija, CGSC with
Ms. Nidhi Khanna and
Ms. Aditya Goyal, Advs. for UOI
Mr. Sanjeev Sabharwal, Sr. Govt.
Counsel for UOI with Mr. Hem
Kumar, Adv. for UOI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. As these four writ petitions involve a common issue with common facts, the same are being decided by this common order and for the purpose of the facts, as counter affidavit has been filed

in W.P. (C) 9890/2018, the facts are being culled out from that petition.

2. The present petition has been filed with the following prayers:

“In view of the facts and grounds stated herein above the petitioners herein prays that this Hon’ble Court may be pleased to:

- a. Issue appropriate writ, order or direction declaring Rule 3(2) of the Companies (Registered Valuers and Valuation) Rules, 2017 as unconstitutional for violating Article 14, Article 19(1)(g) and Article 301 of the Constitution of India.*
- b. Pass any other order and / or direction, as this Hon’ble Court may deem fit proper under the facts and circumstances of the present case and in the interest of justice.”*

3. In substance, the challenge in these petitions is to declare Rule 3(2) of the Companies (Registered Valuers and Valuation) Rules, 2017 as unconstitutional for violating Article 14, Article 19(1)(g) and Article 301 of the Constitution of India. The Rule 3(2) is reproduced as under:

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(2) No partnership entity or company shall be eligible to be a registered valuer if-

(a) 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 or another company or body corporate.”

4. It is the case of the petitioners and submitted by Mr. Vikas Singh, learned Senior Counsel appearing for the petitioners that the petitioners are engaged in the business of real estate consultancy services including provision of real estate valuation services. The petitioner being a subsidiary of a reputed body corporate, is universally recognized as a lauded leader in providing valuation service and enjoys a reputation beyond reproach both in India and abroad. The petitioner has over the years been instrumental in setting benchmark for high standards, transparency and fairness with respect to valuation services in India. Further the petitioner had invested time, money and experience in creating a pool of resources to carry out quality valuation services in India.

5. According to him, with the advent of Companies Act, 2013, the concept of ‘Registered Valuer’ was introduced for the first time. As per Section 247 of the Companies Act, where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of

a company or its liabilities under the provision of the Companies Act, it must be valued by a Registered Valuer.

6. On October 18, 2017, Section 247 of the Companies Act was notified along with the Companies (Registered Valuers and Valuation) Rules, 2017. According to him, Rule 3(2) of the RV Rules and in particular Rule 3(2)(a) explicitly provides that a company shall not be eligible to be a Registered Valuer, if it is a subsidiary, joint venture or associate of another company or body corporate, and this has impaired the right of the petitioners to carry on trade and business, which is guaranteed by the Constitution of India, as it ousts the petitioner from being a Registered Valuer merely on the ground of it being a subsidiary of a body corporate, which is patently discriminatory and arbitrary.

7. In other words, according to him, it imposes unreasonable restriction on the petitioner's right to carry on trade and business. He also submits that the petitioner is not only discriminated against individuals and partnership entities but also such companies which are not subsidiaries, joint ventures or associates of other companies / body corporates. There is no intelligible differentia to support such classification. It is his endeavor to state that to pass the test of

permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. Regrettably, according to him, the impugned Rule fails on both the counts.

8. It is his submission that the subsidiaries or joint ventures or associates of globally recognized entities which have a rich and varied experience in the field of valuation are better equipped as opposed to individual valuers to carry out valuation pertaining to large corporations and in such a case it becomes necessary to engage companies such as the petitioner to carry out valuation. These subsidiaries or joint ventures or associates of foreign and Indian companies will continue to impart more professionalism, quality, high standards and transparency in valuation industry.

9. In fact, it is his endeavor to submit that the impugned Rule shall perniciously affect investment / acquisition of assets in India as both Indian and foreign investors rely on globally recognized valuation service providers, such as the petitioner. In support of his

submissions he would rely upon the judgment of the Supreme Court in the case of *Cellular Operators Association of India and Others vs. Telecom Regulatory Authority of India and Others (2016) 7 SCC 703*.

10. On the other hand, Ms. Madhavi Divan, learned ASG appearing for the respondents would justify the impugned Rule. According to her, the Rules are self-contained code intended to apply for the purposes of valuation in respect of any properties / stocks, shares, debentures, securities or goodwill or any other assets on net worth of a company or its liabilities under the provisions of the Companies Act, 2013 or the RV Rules. She states that the explanation to Rule 1(3) clearly stipulates that the conduct of valuation under any other law other than the Companies Act, 2013 shall not be affected by the coming into the effect of the Rules in question.

11. It is also her endeavor to rely on Section 247 of the Act which introduced for the very first time the concept of valuation by a registered valuer having qualifications, and requisite experience so that an impartial, true and fair valuation may be made. Such a provision did not exist under the old Companies Act, 1956. She

submits that credible valuation of assets is critical to the efficient working of the financial market. Till the commencement of the Act and the Rules, there had not been any generally accepted and uniform standards in asset valuation system in India. Valuers had been adopting divergent methodologies resulting in vast differences in their conclusions. Due to divergent valuation outcomes and criteria, asset valuation in India was not considered credibly. Lack of authentic valuation reports of assets pointed fingers at the method of asset valuation and even the credibility of valuers. It is in order to regulate valuation profession under a regulatory regime and to guide and develop the same, the Parliament decided to bring in uniformly acceptable norms and generally accepted global valuation practices in India by incorporating a separate Chapter in the Act to set regulatory norms for various classes of asset valuation for the purposes of Companies Act, 2013.

12. She stated that there are now myriad situations / statutory provisions under the Act and the Insolvency and Bankruptcy Code, 2016 under which valuation is required to be carried out. A perusal of the counter affidavit gives the following position:

<i>Companies Act, 2013</i>	<i>Insolvency & Bankruptcy Code,</i>
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	2016
<i>Section 62(1)(c)-Issue of new shares</i>	<i>Section 59(3)(b)(ii)- In an application for voluntary liquidation of a corporate person, company should submit a report of the valuation of assets of the company, if any, prepared by a registered valuer.</i>
<i>Section 192(2)- Non-cash transactions with directors</i>	<i>IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016- Regulation 27- determination of fair value and liquidation value of corporate debtor.</i>
<i>Section 230(2) and (3) and Section 232-Compromises, Arrangements and Amalgamations</i>	
<i>Section 236- Purchase of minority shareholding</i>	
<i>Section 281(1)(a) submission of report by Company Liquidator.</i>	

13. It is the stand of the respondents and also contended by Ms. Madhavi Divan that in the light of the myriad uses of valuation under the Act and the IBC, the integrity, impartiality and truthfulness of the valuation process is absolutely essential to the proper working of these laws and to incoming FDI in India which is based on such valuation. The Rules have been made with the objective to instill independence and professionalism in the field of valuation of assets.

14. She submits that given the importance of valuation in fairness of business transactions, every effort has been made by the respondents to avoid situation of conflict of interest with an entity conducting the valuation. It is the respondents' endeavor to develop valuation as a 'profession' and not as a 'business' formed with the sole purpose of profit maximization. The endeavor of the Rules is to introduce a class of professionals where the focus is on the professionals skills of the individuals rather than a business venture. Professionalism is introduced into the profession of valuation, which involves sophisticated skills and a high degree of integrity, impartiality and ethics for the purposes of the Companies Act and IBC, through Valuation Rules which can regulate this area and make valuers more accountable and professionally trained.

15. It is provided under Rule 3(2)(d) that three or all the partners or directors, whichever is lower, of the partnership entity or company must be Registered Valuers and under sub-clause (e), it is provided that at least one of the partners or the directors must be a registered valuer for the asset class defined in clause 2(1)(c) which is a distinct specialization. Further, Rule 7(h) of the Rules provides that even with respect to a valuation report prepared by a

partnership or a company, the same has to be signed by a partner or director who is a Registered Valuer for the asset class that is being valued.

16. She has also stated that a Registered Valuer is required to sit for an examination for which syllabus; format and frequency of the valuation examinations have been prescribed. She also stated that as on January 23, 2019, 772 individuals and 2 partnerships / companies have applied for registration under the Rules. Out of the same, 679 individuals have already been registered as Registered Valuers under the Rules. Applications of 93 individuals and 2 partnerships / companies have been kept pending for processing and further information.

17. Insofar as the embargo on subsidiaries of joint ventures or associations of other companies or body corporations is concerned, it is her submission that there is a rational nexus to the object of disqualifying all entities with interest in other professions or business / enterprises so that the integrity of the profession be maintained and there is no conflict of interest. Hence, the Rules do not suffer from the vices of excessive delegation as contended by Mr. Singh.

18. In other words, she submits that the subsidiary company is controlled by the parent company; in joint venture parties have joint control and management; and associate company is one in which other company has significant influence. Hence, subsidiaries, joint ventures and associates cannot be said to be completely independent of the parent company. If a Registered Valuer company is a subsidiary, joint venture or associate of another company, the said entity may not be able to stand out as an independent professional body. Hence, if valuation is allowed to be undertaken as a business by such entities, independence and credibility cannot be ensured. Professionalism as a registered valuer can be achieved only if the body is professionally independent and is set up exclusively for professional valuation services. She submits that valuation is a professional service and unless adequate standards are prescribed, it cannot sustain as a competent profession that is globally competitive.

19. She would rely upon the judgment of the Supreme Court in the case of *Dr. Haniraj L. Chulani vs. Bar Council of Maharashtra & Goa (1996) 3 SCC 342* in support of her contention that carving subsidiary companies, associate companies and joint

venture companies for the purpose of registration is a reasonable classification. She also refers to the latest judgment of the Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.* in *Writ Petition (Civil) No.99/2018*, wherein the Supreme Court has upheld the provisions of the IBC and also which is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. For such purposes the legislation / rules of this nature are required.

20. Having heard the learned counsel for the parties, the issue which falls for consideration is in a very narrow compass, whether a company, other than a subsidiary company, joint venture or associate of other company forms a separate class for the purpose of eligibility for registration as a valuer under the subject Rules, and as such whether the said classification is reasonable. In other words, whether exclusion of a subsidiary company, joint venture or associate of other company, for purpose of eligibility for registration as valuer is reasonable. The answer to the same has to be in the affirmative, more so in view of the justification given by the respondents and as contended by Ms. Madhavi Divan.

21. She is justified in relying upon the judgment of the Supreme Court in the case of *Dr. Haniraj L. Chulani (supra)* wherein the issue which fell for consideration before the Supreme Court was whether the State Bar Council of Maharashtra and Goa was justified in refusing enrolment of the appellant before the Supreme Court as an Advocate under the Advocates Act, 1961 as he was also a medical practitioner, who did not want to give up his medical practice but wanted to simultaneously practice law. The Supreme Court, in Paras 16, 20 and 22 held as under:

“16. xxx xxx xxx
The obligation to maintain the dignity and purity of the profession and to punish erring members carries with it the power to regulate entry into the profession with a view to ensuring that only profession-oriented and service-oriented people join the Bar and those not so oriented are kept out. The role of an advocate is essentially different from the role of any other profession. An advocate is said to belong to a noble profession. The Act itself envisages the State Bar Councils who are the elected peers of advocates themselves to lay down the standards for the professional conduct and etiquette. That would naturally bring in its wake the power to regulate entry to such a noble profession. It is said that law is a jealous mistress that calls for undivided loyalty and unflinching attention from her devotees. Dry drudgery of desks' dead wood is the essential requirement of an advocate aspiring to win laurels in the profession.

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20. *It is no doubt true that under Article 19, sub-article (1)(g) all citizens have a right to practise any*

profession, or to carry on any occupation, trade or business and any profession may include even plurality of professions. However, this is not an absolute right. It is subject to sub-article (6) of Article 19 which lays down that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It cannot be gainsaid that litigants are also members of general public and if in their interest any rule imposes a restriction on the entry to the legal profession and if such restriction is found to be reasonable Article 19(1)(g) would not get stultified. It is true that the appellant as a citizen of India having obtained the qualification required for being enrolled as an advocate can legitimately aspire to be enrolled as an advocate but his aforesaid right is fettered by the impugned rule framed by the State Bar Council. We have to consider whether the said restriction imposed by the rule is in any way unreasonable. We have to keep in view the fact that the impugned rule restricts entry of a person who is otherwise qualified for being enrolled as an advocate if he is already carrying on any other profession. Question is whether such a person carrying on other profession can be validly told off the gates by the State Bar Council by resorting to the impugned rule. In our view looking to the nature of the legal profession to which we have made detailed reference earlier the State Bar Council would be justified in framing such a rule prohibiting the entry of a professional who insists on carrying on other profession simultaneously with the legal profession. As we have seen earlier legal profession requires full-time attention and would not countenance an advocate riding two horses or more at a time. He has to be a full-time advocate or not at all. Learned Senior Counsel for the appellant submitted that even though the appellant is a practising surgeon he undertakes, if given entry to the legal profession, not to practise medicine during the court hours. This is

neither here nor there. It is obvious that even though medical profession also may be a dignified profession a person cannot insist that he will be a practising doctor as well as a practising advocate simultaneously.

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22. *So far as the challenge to the impugned rule on the touchstone of Article 14 is concerned it cannot be said that the rule is unreasonable, arbitrary or capricious from any angle. On the same ground on which the rule is found not to have fallen foul on the anvil of Article 19(1)(g) as the impugned rule has to be treated as imposing a reasonable restriction on the said fundamental right it also, therefore, has to be held not to be arbitrary or unreasonable from any viewpoint. The rule carves out a well-defined class of professionals carrying on other professions and denies to members of this well-defined class entry to the legal profession so long as they insist on carrying on any other profession simultaneously with the legal profession. The said classification has a reasonable nexus to the object sought to be achieved, namely, the efficiency of advocates belonging to the legal profession and the better administration of justice for which the legal profession is a partner with the judiciary. The challenge mounted on the rule in the light of Article 14, therefore, has to fail.”*

22. The objective and intention behind laying down the impugned Rule is clearly to introduce higher standards of professionalism in valuation industry, specifically in relation to valuations undertaken for the purpose of Companies Act and IBC, 2016. The impugned Rule obviates the possibility of conflict of interest on account of diverging interests of constituent / associate

entities which resultantly shall undermine the very process of valuation, being one of the most essential elements of the proceedings before NCLT.

23. Insofar as the judgment relied upon by Mr. Vikas Singh in the case of *Cellular Operators Association of India and Others (supra)* is concerned, in view of our conclusion above and in the facts of this case, the same has no applicability. In any case, there is no dispute as regards the proposition of law propounded therein. Moreover, from our conclusion above, it is clear that the criteria laid down therein, as regards the test of permissible classification, is fully satisfied in the impugned Rules.

24. Keeping in view the position of law and the reasoning given by the respondents and making eligible only companies other than subsidiary companies, associate companies and joint ventures for the purpose of registration as valuer, a separate class has been carved out based on classification which is founded on intelligible differentia and as such the Rule cannot be faulted.

25. We do not see any merit in the only ground urged by the petitioners. The petitions are dismissed. No costs.

CM No. 38508/2018 in W.P.(C) 9883/2018

CM No. 38522/2018 in W.P.(C) 9889/2018

CM No. 38524/2018 in W.P.(C) 9890/2018

CM No. 38673/2018 in W.P.(C) 9927/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

JANUARY 31, 2019/aky

