

## Practising Valuers Association (India)

**PVAI office:-** Ground Floor, Gangal Building, Near Shubhamkaroti Hall, Behind New English School, Ram Maruti Road, 4th Cross Lane, Ghantali, Thane (W), Maharashtra 400602 (Google link :- <https://goo.gl/maps/W4ZuAinLAu82> ),

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## PVAI, Newsletter for the month of JULY-AUGUST 2020

The Covid-19 Pandemic due to Corona is still on which started from March 2020 and Lock Down commenced from 24 th March 2020 and is still continuing now in many parts of India. Our office was closed in July with opening up in August with all staff on duty. We were all busy in finalizing the draft of writ petition to be filed in Mumbai High Court through our Lawyer.

1. The August governing council meeting was held on 8 th August 2020 online on Zoom, Following decisions were taken in the meeting. A special meeting was again held on 4 th August to discuss about the affidavit filed by SBI. Here is the review about the entire case proceedings in the High Court.

2. The petition was filed by our Advocate on 20 th July 2020. On this petition SBI had given power of attorney to one of their D.G.M. Shri Vidya Raman Jha of Stressed Assets Resolution Group along with their Lawyer Mrs, Rathina Maravarman, presented a Preliminary Affidavit dated 30 th July in reply to our petition filed on 24 th July when the hearing commenced 31 st July 2020. The Judges orders for a report by Amicus Curiae advocate Shri Sharan Jagtiani.

3, This Affidavit was accompanied by the report of Committee of expert's report which was attached with the Draft Valuers bill 2020 on which any objections were asked for by IBBI on behalf of Ministry of Corporate Affairs. There was no time to argue on this Affidavit on that day. We studied the entire draft Affidavit and were discussed with many experts like Dr. Ashok Nain, and were taken up for discussions in Pan India federation of Valuers in one of the meetings held by them with us. A detailed reply was prepared point by point on the Affidavit. Another reply was also made on the basis on reply prepared by President PVAI and discussed in a special Governing Council meeting on 4 th August 2020. All this was sent to our advocate for arguing on the same in the court in the next hearing on 10 th August 2020.

4. On 10 th August our advocate was heard; However the Amicus Curiae submitted their report also in the same day. There was no time to study this report and argue again on the same day. The next hearing date was fixed as 18 th August 2020. The time remaining very short, we decided in consultation of our Lawyer to present an application for argument by our Senior Counsel and in advance this application was submitted, We had a meeting with our Lawyer, senior counsel and with us we decided the course of action to be followed on 18 th August 2020. In the meantime AIEVA and one association from Mumbai known as Institute of Agricultural Valuers and appraisers filed an intervening applications in our filed writ.

5. On 18 th we were ready argue through our Senior counsel on the report by Amicus Curiae, the Judges saw these two Intervening applications and thought that they have been invited by

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us. Their Intervention was not allowed and even our application was also not allowed and judges stated that the final judgment will be given now. We were very much surprised by these two interventions which gave us a setback further on that day not getting a chance to argue through our Senior Counsel.

6. The copy of Judgment was received by us on 28 th August 2020 and we were disappointed by the entire proceedings with result that came out. Though It was in favour of SBI as it looked like . However many of the paras including no 44 in the Judgment had some relief as we thought , but it was also not very clear. We have sought explanation from our Advocates and Senior Counsel. The same is as under.

### 7. IN THE HIGH COURT OF JUDICATURE AT BOMBAY

#### ORDINARY ORIGINAL CIVIL JURISDICTION OS-WP-LD-VC-188 OF 2020

Practicing Valuers Association (India) and Ors.

Versus

State Bank of India and Anr.

#### SHORT NOTE

- I. Relevant portions of the submissions of the Amicus Curiae on the indemnity not being a bank guarantee and the necessity of initiating legal proceedings:  
Paragraphs 105 and 106, Pg. 41:

*“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.”*

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**II. Reference to the above submissionsof the Amicus Curiae in the Judgement and Order dated 18<sup>th</sup> August 2020 passed by the Hon'ble Bombay High Court : Paragraph 23:**

*"23. (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 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."*

**III. Relevant findings in the Judgement and Order dated 18<sup>th</sup> August 2020 passed by the Hon'ble Bombay High Courton the indemnity not being a bank guarantee/ bond and the necessity of initiating legal proceedings:**

Paragraph 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 empanelled 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."*

**IV. Relevant portions of the SBI Affidavit that the indemnity will be invoked in rare cases and in case of blatant variation in valuation:**

Paragraph 12

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*“12....The Indemnity Letter will be invoked by respondent Bank only in **rare and exceptional** circumstances wherein Bank will be subjected to **huge loss** due to inflated valuation report submitted by the valuer at the time of sanctioning of loan . If any valuation is submitted, the Valuers therein are expected to submit both the market and distress value and after the borrower's account slips into NPA there cannot be huge variation in the valuation previously carried out and the present valuation. If there is no Indemnity letter there cannot be any checks and balances which could curtail the negligent conduct of valuers in carrying out their duties. **The invocation of Indemnity itself will happen only if there is any blatant variation in the valuation arrived at otherwise there is no necessity for Bank to invoke the indemnity.** Hence in the said circumstances, if any measures are taken to protect the larger public interest, the same cannot be questioned by the Petitioners that it is violating their rights under the constitutional law.”*

- V. Relevant findings on the aforesaid submissions by SBI by the Hon'ble Bombay High Court in the Judgement and Order dated 18<sup>th</sup> August 2020:  
Paragraph 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.”*

- VI. Other relevant portions of the submissions of the Amicus Curiae discussed during the call:

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Paragraph 88:

*“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.”*

8. **Ram Mohan. A freelance reporter from Hyderabad** had a chat with the president some days back and we were waiting to get this published in one of the English/Hindi channels and some newspapers at Hyderabad. Now the news has been published. This was about the Draft Valuers Bill 2020 which has been sent to you all.

9. I have been forwarding Saturday Brain Storming thought shared by **Shri Avinash Kulkarni from Ahmednagar** who has been regular in sending the same for last many weeks. Hope you are getting some information from these thoughts on every Saturday. My special thanks to him

10. We have now filed a writ petition in Bombay High Court for removal of Indemnity Bond and remove age limit of 70 years. This was a good opportunity to show our efforts and prove that PVAI is fighting for this cause. We had made appeal to our members to contribute Rs. 1000/- for this legal battle against Indemnity Bond and response from our members has been encouraging. I thank all those members for answering to my appeal

President had organized special meetings with PVAI Valuers at Pune & Nagar, Delhi, Surat, Nasik to be in touch with our members there and tell them present position about Draft Bill, Indemnity Bond and to request them to contribute to the Legal fund to fight for all these. One more meeting was organized with members at Coimbatore in this period.

11. We had a special Governing Council meeting on 28 th August to discuss about the decision of Mumbai High Court . We discussed all and we have decided that before taking any further action, let us wait for the Judgments from other high Courts before we plan any further action from our side.

Hope you will provide me your continuous support further.

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