

CNR No.DLSW01-007503-2021
Reg. No. CC/932/2021
IBBI Vs. Chandan Kumar & Anr.

20.05.2022

Present : Ms. Saahila Lamba, ld. counsel for the complainant/IBBI.

Written submissions have been filed by learned counsel for complainant on the point of taking cognizance and summoning of accused persons. Oral submissions also heard.

I have also gone through the record.

The present complaint case has been filed by Insolvency & Bankruptcy Board of India (hereinafter referred as "IBBI") on the averments that it is a statutory body established under the Ministry of Corporate affairs, Government of India, created under Insolvency & Bankruptcy Code, 2016. It is alleged that accused no.1 and 2 are ex-Directors of Flexi Infotech Pvt. Ltd. (hereinafter referred as "Corporate Debtor"), as per relevant master data maintained on the official website of Ministry of Corporate Affairs. It is claimed that despite direction of NCLT, both the accused persons failed to provide requisite assistance and cooperation to the Resolution Professional, to manage the affairs of the Corporate Debtor in Corporate Insolvency Resolution Process (CIRP) initiated u/s 9 of the Code r/w Rule 6 of the Insolvency & Bankruptcy Board of India (Application to Adjudicating Authorities) Rules 2016 filed by Corporate Debtor. It is alleged that Sh. Vikas Garg was appointed as Interim

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Resolution Professional (IRP) vide order dated 16.03.2020. It is also alleged that the IRP in an effort to seek cooperation from the ex-Directors i.e. accused persons sent letters dated 19.03.2020 and 17.06.20220 as well as emails dated 19.03.2020, 04.05.2020 and 11.05.2020 informing them about the initiation of CIRP and requesting them to provide all necessary information/documents, however, accused persons could not be contacted and communication sent to them were returned back. Thereafter the IRP visited the registered address of the Corporate Debtor but the same was found to be residential house and the whereabouts of the ex-Directors could not be confirmed. It is further alleged that on not being able to trace the accused persons, the IRP had filed an application dated 04.08.2020 under Section 19(2) of the Code before Hon'ble NCLT for seeking cooperation from the ex-Directors in taking over the custody and books of Accounts of Coporate Debtor. It is also alleged that on searching the portal of the Registrar of Companies and the master data, it was found that the ex-Directors have not filed Audited Financial Statement and Annual Returns of the Corporate Debtor for Financial Year 2017-2018 and 2018-2019. The last Audited Financial Statement filed was of 03.03.2017 which shows that there are substantial liabilities and assets of the Corporate Debtor and ex-Directors are avoiding to provide accounts so that the transaction during the

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relevant period be not subjected to scrutiny. It is alleged that the Hon'ble NCLT vide its order dated 15.01.2021 gave the following directions:-

"Despite service of notice to the non-applicants No.1, 2 and 5 for their personal appearance and participation for the virtual Hearing today, the non-applicants No.1, 2 and 5 are neither appearing before the CoC nor before this Tribunal. The IRP being the officer of the Court is hereby directed to take up the matter with the IBBI and inform the progress after one week.

With regard to Respondent No.3 and 4 as they have filed their replies in the matter they replies may also be forwarded to IBBI to have a total perception of the matter and to take necessary steps as per law."

In support of the complaint, the complainant has filed the copy of master data maintained on the official website of Ministry of Corporate Affairs, showing that accused persons were Directors Flexi Infotech Pvt. Ltd. during the relevant period, as also the attested copies of other relevant documents, alongwith requisite certificate u/s 65B of Indian Evidence Act.

Based on aforesaid averments/allegations, it is claimed that the accused persons have violated the provisions contained in Section 70(1)(a), 70(1)(b), 70(1)(c) and Section 19 (1) r/w/s 235A of the Code and are liable to be punished accordingly.

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The present complaint has been instituted through General Manager namely Sh.Rajesh Kumar, in whose favour Authorization Letter has been executed on behalf of IBBI, which empowers him to act and perform various functions including institution of present complaint case on their behalf.

As per provision contained in Section 236(2) of the Insolvency & Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law into motion through its authorized officer. In view of Section 236(1) thereof, the offences punishable under the said Code, are triable by the Special Court so constituted under Chapter XXVIII of the Companies Act, 2013. The complainant has placed on record notification number S.O.2554(E) dated 27.07.2016, whereby this Court has been conferred with the jurisdiction to try the offences in the capacity of Special Court so constituted in terms of Section 435(1)(a) of the Companies Act, 2013.

After considering the documentary evidence placed on record, this Court is satisfied that prima facie the aforesaid offences under the Insolvency & Bankruptcy Code, 2016 have been committed by the accused persons. Thus, *cognizance of said offences is taken.*

Since the present complaint has been made by a public servant in his official capacity, the pre-summoning

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evidence is required to be dispensed with in view of proviso of Section 200 CrPC. Accordingly, both the accused persons be summoned for facing prosecution for violation of the provisions contained in Section 70(1)(a), 70(1)(b), 70(1)(c) and Section 19 (1) r/w/s 235A of the Code. They be summoned on filing of PF/RC/courier, returnable for **12.10.2022**. Steps be taken within seven days.

(Dr. Jagminder Singh)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/20.05.2022