

Present: Ms. Saahila Lamba, Advocate Public Prosecutor
for the complainant Board.

Criminal complaint has been presented today seeking setting of criminal law in motion against the accused in terms of section 190 (1) (a) of the Code of Criminal Procedure, 1973. It be checked and registered.

2. Authorisation letter dated 16.12.2020 has been filed on behalf of the complainant Board in favour of Shri Sunil Kumar, Deputy General Manager of the complainant Board to file the present complaint on behalf of the Insolvency and Bankruptcy Board of India.

3. Since the present complaint has been instituted by Shri Sunil Kumar in the capacity of a public servant, therefore, there is no requirement of recording preliminary evidence as per the provisions of section 200 of the Code of Criminal Procedure, 1973. Since Ms. Saahila Lamba, Advocate is also authorised as a Public Prosecutor to continue the proceedings of this complaint by the Complainant Board, the personal appearance of Shri Sunil Kumar is not warranted in terms of the provisions of section 236 (4) of the Insolvency and Bankruptcy Code, 2016.

4. Heard on the issue of taking cognizance. The complainant Insolvency and Bankruptcy Board of India (hereinafter referred to as “IBBI” *for short*) sought prosecution of the respondents No.1 to 5, who are Ex-Directors of M/s Mahabir Techno Limited (hereinafter referred to as “**Corporate Debtor**”) *inter alia* alleging that the respondents-accused were key managerial personnel of the Corporate Debtor, who did not disclose to

the Resolution Professional all details of property of the Corporate Debtor and details of transactions thereof or any such other information as the Resolution Professional required and also did not disclose to the Resolution Professional all books and papers in their control or custody belonging to the Corporate Debtor and which they were required to deliver.

5. Admittedly, as per the provisions of Section 236(2) of the Insolvency and Bankruptcy Code, 2016, the complainant Insolvency and Bankruptcy Board of India has powers to set the criminal law in motion through its authorised officer and as per the provisions of Section 236(1) any offence punishable under the provisions of the Insolvency and Bankruptcy Code, 2016, shall be tried by the Special Court so constituted under Chapter XXVIII of the Companies Act, 2013 and it is a fact that as per the Notification No. S.O.2843(E) dated 01.09.2016, this Court has the jurisdiction to try the offence in the capacity of a Special Court under the Companies Act, 2013 in terms of the provisions of Section 435(1)(a) of the Companies Act, 2013.

6. Accordingly, after going through the documents on record, it comes out that pursuant to the orders of the Hon'ble National Company Law Tribunal Bench at Chandigarh (hereinafter referred to as "Hon'ble NCLT" for short), the corporate insolvency resolution process of the Corporate Debtor, was initiated as per the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016, before the "Hon'ble NCLT" and vide order dated 30.10.2018, the Hon'ble NCLT, Chandigarh, appointed an Interim Resolution Professional of the Corporate Debtor to carry out and perform

such acts and deeds as required under the provisions of the Insolvency and Bankruptcy Code, 2016.

7. It is alleged that the interim Resolution Professional had expected the management of the Corporate Debtor to extend and provide cooperation and assistance and in providing details and information of all the assets and books in order to enable interim Resolution Professional in the process of ascertaining value of the assets of the Corporate Debtor to have fair estimate of its worth and he repeatedly asked them to supply the information but the former Management of the Corporate Debtor did not provide the requisite information which was vital for ensuring and ascertaining value maximisations of the assets. In this manner, it is alleged that the respondents-accused have committed violation of sections 68 (i) (a) (b) and (c) and 70 (i) (a) and (c) of the Insolvency and Bankruptcy Code, 2016.

8. Reference is also made to orders dated 04.10.2019, 20.12.2019, 03.2.2020 and 20.3.2020 passed by the Hon'ble NCLT, Chandigarh, wherein it has been held that *prima facie* respondents-accused have not delivered to the interim Resolution Professional all books and papers in their control or custody belonging to the Corporate Debtor and which they were required to delivered and are thus, liable for legal action prescribed under section 70 of the Insolvency and Bankruptcy Code, 2016. Reference is also made to order dated 23.9.2020 passed by Hon'ble, National Company Law Appellate Tribunal, New Delhi, whereby appeal filed by the accused persons

against order dated 23.3.2020 passed by Hon'ble NCLT, Chandigarh, was dismissed.

9. In view of the above said facts and circumstances, it comes out that there is sufficient *prima facie* evidence on record, which shows that the respondents-accused as named in the title of the complaint, have intentionally and willfully violated sections 68 (i) (a) (b) and (c) and 70 (i) (a) and (c) of Insolvency and Bankruptcy Code, 2016 as has been observed by the Hon'ble NCLT also and thus, are liable to be prosecuted for commission of offences punishable under sections 68 (i) (a) (b) and (c) and 70 (i) (a) and (c) of the Insolvency and Bankruptcy Code, 2016. Resultantly, it is ordered that all the five accused namely Mr. Om Prakash Khurana, Mr. Rakesh Khurana, Ms. Rama Khurana, Mr. Sailesh Chawla and Mr. Ranjan Sharma be summoned to face prosecution for commission of offences punishable under sections 68 (i) (a) (b) and (c) 70 (i) (a) and (c) of the Insolvency and Bankruptcy Code, 2016, for 13.01.2021. For service of the process of this Court, Assistant Commissioner of Police exercising supervisory jurisdiction over Police Station, Shivaji Nagar, Gurugram shall be responsible. A copy of this order be sent to him.

Date of Order : 24.12.2020

Ashok Kumar

(M.M. Dhonchak)
Sessions Judge-cum-Special Judge
(under Chapter XXVIII of the Companies Act, 2013)
Gurugram. (UID No.HR0043)