

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

Criminal complaint has been presented today. It be checked and registered.

2. Two authorisation letters have been filed on behalf of the complainant Board. One letter is there in favour of Ms. Saahila Lamba, Advocate authorizing her to act as Public Prosecutor for the prosecution of the present complaint and second letter is there in favour of Shri Umesh Kumar Sharma, Chief 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 Umesh Kumar Sharma in the capacity of a public servant, therefore, there is no requirement of recording any preliminary evidence as per the provisions of section 200 of the Code of Criminal Procedure, 1973. Since Ms. Saahila Lamba is also authorised as a Public Prosecutor to continue the proceedings of this complaint by the Complainant Board, the personal appearance of Shri Umesh Kumar Sharma stands exempted till further order 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 the prosecution of the respondents No.1 to 4, who are Ex-Directors of M/s Educomp Infrastructure and School Management Limited (hereinafter referred to as "**Corporate Debtor**") *inter alia* alleging that the respondents-accused were key managerial personnel of Corporate Debtor,

who did not disclose to the Resolution Professional all the 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 authorized 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 as "Hon'ble NCLT" for short), the corporate insolvency resolution process of the Corporate Debtor, was initiated as per the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016, before the "Hon'ble NCLT" and vide order dated 15.6.2018, the Hon'ble NCLT, Chandigarh, appointed an Interim Resolution

Professional of the Corporate Debtor as Resolution Professional 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 Resolution Professional had expected the management of the Corporate Debtor to extend and provide details of all the assets and to co-operate in the process of ascertaining the value of the assets of the Corporate Debtor to have fair estimate of its worth and he repeatedly asked them the information but the former Management of Corporate Debtor did not provide the requisite information which was vital for ensuring and ascertaining the value maximization of the assets. It is further alleged that the Resolution Profession sought access to software where the books and accounts of Corporate Debtor, however, the same was not granted and financial position was changed in the software without any instruction given by the Resolution Professional. In this manner, it is alleged that the respondents-accused have committed violation of section 70 (i) (a) and (c) of the Insolvency and Bankruptcy Code, 2016.

8. Reference is also drawn to orders dated 14.6.2019, 22.8.2019 and 3.9.2019 passed by the Hon'ble NCLT, Chandigarh, wherein it has been held that respondents-accused are liable for legal action prescribed under section 70 of the Insolvency and Bankruptcy Code, 2016.

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 section 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 the commission of offences punishable under section 70 (i) (a) and (c) of the Insolvency and Bankruptcy Code, 2016. Resultantly, it is ordered that all the four accused namely Mr. Vinod Kumar Dandona, Mr. Vijay Kumar Choudhary, Mr. Krishna Pratap Babunandan and Mr. Shantanu Prakash be summoned to face prosecution for the commission of an offence punishable under section 70 (i) (a) and (c) of the Insolvency and Bankruptcy Code, 2016, for 07.12.2019. 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.

Dt. 01.11.2019.

Satish Kumar

(M.M. Dhonchak)

Sessions Judge-cum-Special Judge

(under Chapter XXVIII of the Companies Act, 2013)

Gurugram. (UID No.HR0043)

SATISH  
KUMAR

I attest to the accuracy  
and authenticity of this  
document.  
Digitally signed by  
SATISH KUMAR  
Date: 2019.11.02  
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