

07.10.2021

Present: Sh.Abhishek Kumar, Id. Counsel for complainant/IBBI.

Arguments on the point of cognizance and summoning of accused persons heard.

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 has been alleged that the accused persons are Ex Directors and Key Managerial Personnel of Kelvin Recruiters Private Limited (hereinafter referred as “Corporate Debtor”), as per relevant master data available with ROC.

It has been alleged that Corporate Insolvency Resolution Process (CIRP) was initiated u/s 7 of the Code r/w Rule 4 of the Insolvency & Bankruptcy Board of India Rules 2016 by Financial Creditor and Mr. Kamal Agarwal was appointed as the IRP vide order dated Order dated 17.09.2019 by the Hon’ble National Company Law Tribunal, New Delhi.

It has been further alleged that the certified copy of the order dated 17.09.2019 was received on 23.09.2019 and on the same day the IRP approached the office of the Corporate Debtor at its registered office as shown in the MCA site and found that the office was locked and upon enquiring from various persons available in the building, it transpired that the corporate debtor was no longer functioning from the above mentioned address.

It has been further alleged that on 23.09.2019, the IRP e-mailed the corporate debtor at its registered e-mail ID **‘visheshg9@gmail.com’** as shown in the master data of the corporate debtor informing about the commencement of the CIRP of the corporate debtor and requested the accused to reply to the mail and also contact the IRP at the given number and address. However, no reply was ever received and thereafter a reminder mail was sent on 11.10.2019 seeking information pertaining to the corporate debtor but the same was not replied as well.

It is further alleged that the IRP conducted enquiries and found an additional address of the corporate debtor and residential address of accused no. 1 Vishesh Goyal and sent by way of speed post a letter whereby the IRP demanded co-operation and information from the accused persons along with copy of order dated 17.09.2019 and copy of public announcement at their addresses.

It is also alleged that the Corporate Debtor have changed their address but had failed to update the same with the Registrar of Companies for change of address and despite several request for cooperation by the IRP *vide* email dated 23.9.2019 and 11.10.2019, the accused persons did not extend any cooperation or handover the records and books of accounts of Corporate Debtor to the IRP. It is also alleged that 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 for information and the former

Management of Corporate Debtor did not cooperate.

It is further alleged that as no response was received from the accused persons, the IRP was unable to gain access of the books and accounts of Corporate Debtor, therefore, he filed an application under Section 19(2) of the Code before the Ld. NCLT. It is also alleged that in the said application, the IRP had reported to the Ld. NCLT on 30.10.2019 that the accused persons have not furnished information which they are legally bound to furnish and the Ld. NCLT on 01.11.2019 was pleased to issue notice. It is also alleged that the IRP was also confirmed as the Resolution Professional (hereinafter referred to as the '**RP**') of the Corporate Debtor *vide* order dated 01.11.2019.

Further, it is alleged that the RP managed to locate the residential address of accused no 1 and the mother of accused no. 1 said that her son was not residing with the family and it was requested to the family members to accept a copy of IA no.1451/2019 and order dated 01.11.2019. It is further alleged that family members called Mr. Vikash Goyal, the brother of accused no.1 and then RP explained everything to Mr. Vikash Goyal and requested him to co-operate and inform about the whereabouts of accused no.1 and the Audi Q3 Car as his father – Mr. Vinod Kumar was also a co-applicant in the loan application. It is further alleged that Mr. Vikash Goyal did not allow any of the family members to tell any information about accused no.1 and threatened the RP with dire consequences if he continued with the enquiry about accused no.1 and this fact was brought to the notice of the Ld. NCLT on 27.11.2019. It is also alleged that on account of the non-presence of the non-applicants and violent attitude of Mr Vikash Goyal, bailable warrant(s) were issued

against accused no. 1 and his father and brother through S.H.O. Charkhi Dadri *vide* order dated 06.12.2019 and the RP visited the Police Station again on 11.01.2020 and got that the warrant(s) served upon the non-applicants. Further, an affidavit of service of the bailable warrant(s) was also filed with the Ld. Bench by way of additional documents on 15.01.2021 *vide* diary no 0710102142202019/2.

It has been alleged that counsel on behalf of accused no. 1 appeared before the Ld. NCLT along with the father of accused no. 1 and stated that accused no. 1 was in judicial custody and his father Sh. Vinod Kumar submitted that he was unaware about any documents being signed with his son and that he had expelled his son and further, directions were issued to the RP to trace accused no. 2 and effect service upon him.

It has been further alleged that affidavits were filed on behalf of the brother of accused no. 1 and his father who were arrayed as non-applicants no. 2 & 3 respectively and both appeared before the Ld. Bench on 10.02.2020 along with their counsel. It is further alleged that it was submitted on behalf of the father and brother of accused no.1 that they had severed all ties with accused no.1 and were unaware of his whereabouts. They further submitted that accused no.1 was in judicial custody. It is also alleged that the counsel Sh. Shashi Kaushik was directed by the Ld. Bench to give information about the counsel appearing on behalf of accused no. 1 in the criminal case, but no such information has been made available so far and the non-applicants no. 2 & 3 stood discharged for the time being.

It has been further alleged that the RP managed to trace the residential address of accused no. 2 Vishwajeet Rana at

House no. 10, Near Chaupal Mungeshpur, North West Delhi-110039 and went there personally to serve the copy of IANo.1451/2019 along with order(s) of Ld. NCLT. It is also alleged that the RP dispatched the copy of IA No. 1451/2019 along with order(s) by way of speed post receipt no ED409456059IN dated 28.02.2020 which was returned back with the remark '*refused to accept*' and the RP then filed an application before the Ld. Bench to take on record the fresh residential address of the accused no.2.

It has been further alleged that the committee of creditors in its second meeting held on 14.03.2020 resolved to liquidate the corporate debtor and requested the RP to act as the Liquidator and intimate its decision to the Ld. NCLT. The RP filed application under section 33(2) of the Code which was listed on 13.07.2020 vide IA 2222/2020 and was posted on 15.07.2020 to be listed along with IA1451/2019 and on 15.07.2020, Ld. NCLT issued non-bailable warrant against the accused no. 2 to be send through the concerned DCP having jurisdiction over the place of residence of the accused no 2.

It is further alleged that the non-bailable warrant against accused no. 2 was personally served by the RP to the office of the DCP Outer North Delhi on 28.07.2020 and an affidavit of service of bailable warrant was filed with Ld. NCLT on 07.08.2020.

It is further alleged that on 26.08.2020 counsel appearing for accused No.2 submitted that his client was in judicial custody since 22.08.2020 and the Ld. NCLT directed the counsel appearing for accused no. 2, that Audi Q3 Car be handed over to the RP. It is also alleged that on 31.08.2020, the Ld.

NCLT again directed the counsel for accused no. 2 to hand over the possession of the Car along with documents by 11.09.2020 and on 28.10.2020, liquidation application IA no. 2222/2020 was heard and reserved for order and production warrant was issued for appearance of accused no. 2 through VC on 02.11.2020.

It has been further alleged that on 02.11.2020, the Ld. NCLT passed an order of liquidation of the corporate debtor and appointed the RP as the liquidator of the corporate debtor and a bail application was filed on behalf of the accused no. 2 along with objections to IA No. 1451 of 2019 for which a rejoinder was filed by the RP. Further, on 13.01.2021, provisional bail was granted to the accused no. 2 with a direction to assist the liquidator in tracing the Audi Q3 Car.

It is further alleged that the liquidator also filed a complaint with the local police station with a request to trace and take into custody the Audi Q3 DL1CV6185 and finally, on 05.02.2021 the Ld. NCLT disposed of the IA no. 1451/2019 with a direction to the RP to take necessary steps under section 68 and section 70 of the Code and file a status report within a period of two weeks.

It has been further alleged that the Liquidator has also filed an online FIR u/s 154 of Code of Criminal Procedure, 1973 *vide* FIR no. 005433 on 21.02.2021 under section 379 of Indian Penal Code, 1860 for theft of Audi Q3 car.

Based on aforesaid averments/allegations, it is claimed that accused persons have violated the provisions contained in Section 68(i) 70(1)(a), 70(1)(b), 70 (1)(c), 70(1)(e) and 235A r/w/s 190, 193 and 200 of the Code.

Heard. Record perused.

In support of the complaint, the complainant has filed the relevant documents including the details of the Board of Directors of Corporate Debtor, showing that these accused were its Ex. Directors during the relevant period.

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 evidence is required to be dispensed with in view of proviso of Section 200 CrPC. Accordingly, both the accused be summoned

for facing prosecution for violation of the provisions contained in Section 68(i) 70(1)(a), 70(1)(b), 70 (1)(c), 70(1)(e) and 235A r/w/s 190, 193 and 200 of the Code. They be summoned on filing of PF/RC/courier within 7 days, for next date.

Put up for further proceedings on **12.01.2022.**

(MOHINDER VIRAT)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/Delhi/07.10.2021