

Reg. No.CC/1659/2019
Insolvency & Bankruptcy Board
of India Vs. Karan A Channa & Ors.

20.01.2020

Present: Sh.Abhishek Kumar, Advocate for complainant.

Counsel for complainant has filed fresh authorization letter in favour of Sh.Umesh Kumar Sharma, Chief General Manager and attested copy of relevant internal note sheet, whereby decision has been taken for filing criminal complaint against the proposed accused persons.

Arguments heard on the point of cognizance and summoning. Record perused.

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 the accused persons are Ex-Directors and Key Managerial Personnel of M/s Amira Pure Foods Pvt. Ltd. (hereinafter referred as "Corporate Debtor"), as per relevant master data available with ROC. It is claimed that despite direction of NCLT, all these accused persons failed to provide requisite assistance and corporation 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.Akash Singhal was appointed as Interim Resolution Professional vide order dated 11.12.2018, whose appointment was confirmed as Resolution Professional in minutes of the meeting dated 17.01.2019 by first Committee of Creditors. It is alleged that despite being called upon vide emails dated 26.12.2018, 31.12.2018, 05.01.2019 and 04.03.2019 (Annexure D colly.), no response was received from all these accused persons, due to which Resolution Professional was unable to gain access of the books and accounts of Corporate Debtor and in view of application u/s 19 (2) and 19(3) r/w/s 17/18/25 of the Code moved before NCLT, order dated 18.02.2019 (Annexure E) was passed, whereby Resolution Professional was allowed to enter into premises of Corporate Debtor with police aid and vide subsequent order dated 28.02.2019 (Annexure F), bailable warrants were directed to be issued against three of these accused persons. Thereafter, NCLT vide order dated 08.05.2019 (Annexure H) referred the matter to IBBI to examine and to take necessary action against the Directors of the Corporate Debtor. Based on aforesaid averments/allegations, it is claimed that all these accused persons have violated the provisions contained in Section 70 (1)(a)(b)(c) and (e) and Section 19 (1) r/w/s 235A of the Code and are liable to be punished accordingly.

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 accused no.1, 3 and 4 alone were its

Directors during the relevant period, as proposed accused no.2 seized to be its Director on 01.03.2018, whereas the violation/non-compliance of directions of NCLT/Resolution Professional, is alleged to be of subsequent period.

The present complaint has been instituted through Chief General Manager namely Sh.Umesh Kumar Sharma, 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 SO2554(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 no.1, 3 and 4. 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, accused no.1, 3 and 4 be summoned for facing prosecution for violation of the provisions contained in Section 70 (1) (a)(b)(c) and (e) and Section 19 (1) r/w/s 235A of the Code. However, request for summoning accused no.2 namely Aparna Suri is declined for the reasons already noted hereinabove. They be summoned on filing of PF/RC/courier within 7 days, for next date.

Put up for further proceedings on **03.03.2020**.

(VIDYA PRAKASH)

ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/Delhi/20.01.2020