

Reg. No.CC/370/2020
IBBI Vs. Vijaypal Garg & Ors.

20.02.2021

Present: Ms.Saahila Lamba, Id. Counsel for complainant/IBBI.

Counsel for complainant has filed Company Master Data as Annexure A. Same is taken on record.

Arguments on the point of cognizance and summoning already 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 Home Affairs, Government of India, created under Insolvency & Bankruptcy Code, 2016. It is alleged that accused persons are Ex-Directors and Key Managerial Personnel of M/s GEE Ispat Private Limited (hereinafter referred as “Corporate Debtor”), as per relevant master data available with ROC. It is claimed that despite direction of National Company Law Tribunal (hereinafter referred as “NCLT”), all these 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) 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 Operational Creditor. It is alleged that upon an application made by Operational Creditor, Sh. Shankar Chaudhary was appointed as Interim Resolution Professional (IRP) and subsequently Ms.Pooja Bahry was confirmed as the Resolution Professional by NCLT

vide order dated 24.10.2017 (Annexure-C). It is alleged that subsequent to her appointment, Resolution Professional came across several documents/evidences which demonstrated various illegal omissions and commissions on part of the erstwhile management while conducting the affairs of the Corporate Debtor which constrained the Resolution Professional to file an application before NCLT seeking various reliefs including passing of orders against the accused and granting Resolution Professional leave to approach IBBI for taking appropriate action against the accused. Vide order dated 19.07.2019 NCLT directed the Central Government to order an investigation into the affairs of the Corporate Debtor under Section 210(2) of the Companies Act, 2013 (Annexure-F). This was challenged before National Company Law Appellate Tribunal (hereinafter referred as “NCLAT”) which disposed off the same vide order dated 04.02.2020 after referring the matter to the Ministry of Corporate Affairs to conduct investigation into the affairs of the Corporate Debtor as per Section 213 of the Companies Act, 2013 (Annexure-G).

It is alleged that accused persons have not disclosed to the Resolution Professional all the details regarding the Corporate Debtor including details of transactions and behaved in a lackadaisical manner during the CIRP and not cooperated with the Resolution Professional.

It is further alleged that prior to insolvency commencement date, accused persons made false representations to the creditors and have committed fraud which is evident from the fact that the accused have shown non-existent debtor in their accounts (Annexures H, I, J, K) and conducted unauthorized rice trading, which is neither permitted in the MoA of the

Corporate Debtor nor is known to any lender of the Corporate Debtor (Annexures L, M, N, O and P).

Based on the aforesaid averments/allegations, it is claimed that all the accused persons have violated the provisions contained in Section 70, 73 and Section 19(1) r/w Section 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 and other necessary record.

The present complaint has been instituted through Chief General Manager namely, Sh.Umesh Kumar Sharma, in whose favor 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 the provision contained in Section 236(2) of the Insolvency & Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law in 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 offence 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, all these three accused persons namely Vijaypal Garg (A1), Krishan Basia (A2) and Ankit Kumar (A3) be summoned for facing prosecution for violation of the provisions contained in Sections 70, 73 and Section 19(1) r/w Section 235A of the Code. They be summoned on filing of PF/RC/Courier within 7 days, for next date.

Put up for further proceedings on **20.05.2021**.

(MOHINDER VIRAT)

ASJ-3 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/20.02.2021