

Reg. No.CC/1/2020
Insolvency & Bankruptcy Board of India
Vs.
Intenderpal Singh & Anr.

25.01.2020

Present: Ms.Saahila Lamba, Advocate for complainant.

Counsel for complainant has filed Authorization Letter dated 18.12.2019 in favour of Sh.Umesh Kumar Sharma, Chief General Manager and requisite certificate u/s 65B of Indian Evidence Act in respect of the relevant documents filed alongwith present complaint case.

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 Nibula Print and Pack Pvt. Ltd. (hereinafter referred as "Corporate Debtor"), as per relevant master data available with ROC. It is claimed that despite direction of NCLT, both 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) initiated u/s 9 of the Code r/w Rule 6 of the Insolvency & Bankruptcy Board of India (Application to

Adjudicating Authorities) Rules 2016 by Operational Creditor. It is alleged that Sh.Ashok Kriplani was appointed as Interim Resolution Professional vide order dated 11.12.2018 (Annexure 2), whose appointment was confirmed as Resolution Professional in minutes of the meeting dated 15.01.2019 by first Committee of Creditors. It is alleged that despite repeated requests of the Resolution Professional, the former management of Corporate Debtor failed to provide requisite documents meant for ensuring and ascertaining the value maximization of the assets, on which the Resolution Professional moved an application u/s 19(2) r/w/s 17/18/25 of the Code before NCLT. Despite service of Key Managerial Personnel, they failed to appear before NCLT, as a result of which Ms.Kiran Dharam, Advocate was appointed as Local Commissioner vide order dated 23.01.2019 (Annexure 3) passed by NCLT and LC was directed to visit the factory site of the Corporate Debtor and to take possession of all the assets and books of accounts with the Resolution Professional and to submit the report and also to prepare an inventory of the seized items. Requisite report dated 04.02.2019 was submitted before NCLT and in view of submission made by Resolution Professional that both these accused were not cooperating in providing the details of the assets of Corporate Debtor to him, NCLT issued bailable warrants against them vide order dated 04.02.2019 (Annexure 5). In the meantime, one of the financial creditors who had accompanied Resolution Professional to the factory site of Corporate Debtor,

reported that some of the machines which were financed by them, were missing from factory site, which prima facie show that Ex-Directors i.e. both the accused herein, misappropriated the machines worth crores of rupees. Thereafter, NCLT vide order dated 15.03.2019 (Annexure 6) referred the matter to IBBI to examine and to take necessary action against the Ex-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 68(i)(b)/ 70(1)(c)/ 74(1) 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 both these accused were its Ex-Directors during the relevant 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 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 both these accused. 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 these accused be summoned for facing prosecution for violation of the provisions contained in Section 68(i)(b)/ 70(1)(c)/ 74(1) and Section 19 (1) r/w/s 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 **27.03.2020**.

(VIDYA PRAKASH)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/Delhi/25.01.2020