

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 is stated
that the accused persons are Ex-Directors and Key Managerial
Personnel of Overnite Express Limited (hereinafter referred as
“Corporate Debtor”), as per relevant master data available with
ROC.

It has been alleged that despite repeated requests of
the Interim Resolution Professional (IRP) to furnish details of
assets of the Corporate Debtor and deliver books of account; the
ex-Directors of the Corporate Debtor failed to extend necessary
assistance and cooperation to the IRP to enable him to manage
the affairs of the Corporate Debtor in Corporate Insolvency
Resolution Process (CIRP) initiated u/s 7 of the Code r/w Rule 4
of the Insolvency & Bankruptcy Board of India Rules 2016 by
Financial Creditor. Mr. Anil Tayal was appointed as the IRP vide
order dated 02.03.2020 of the Hon’ble National Company Law
Tribunal, New Delhi.

It has been further alleged that the IRP sent a letter
dated 06.03.2020 and also an email dated 11.03.2020 to the ex-
directors informing them about the initiation of CIRP and

requesting them to provide all necessary information/ documents. The accused No. 1 vide letter dated 06.03.2020 and email dated 14.03.2020 provided incomplete information to the IRP and undertook to extend all assistance and cooperation to the IRP as required.

It has been further alleged that accused no.1 vide email dated 18.05.2020 only provided the Bank details of the Corporate Debtor and not the complete information as sought by the IRP vide letter dated 06.03.2020. Accordingly, another email dated 22.05.2020 was sent by IRP to accused No. 1 requesting further information/ documents pertaining to the Corporate Debtor however, no information was received. It is also alleged that accused No. 1, vide email dated 22.05.2020, stated that the cheque books of Corporate Debtor were already provided to IRP and requested the IRP to prepare an inventory of the same after verifying with all the bank accounts.

It is also alleged that the IRP vide email dated 15.07.2020 and 17.07.2020 forwarded a letter dated 13.07.2020 again requesting the accused persons herein to provide information pertaining to financial statements of the Corporate Debtor for the year 2017-18 and requested them to handover accounting records including books of accounts as per the balance sheet provided for financial year 2017-18 and also furnish other details to him in furtherance of the CIRP of the Corporate Debtor.

It is also alleged that the IRP, vide email dated 22.09.2020, requested accused No. 1 herein to disclose details of the vehicles in the name of Corporate Debtor and also requested him to provide the current location and photograph of the

vehicles including the details of persons who are in possession of such vehicles or are interested to buy such vehicles.

It is further alleged that the accused No.1 vide email dated 23.09.2020 provided incomplete details of vehicles by sharing a list of vehicles of 2017-18 with no vehicle number and location details. It is further alleged that all the vehicles were very old and the accused has no record of the same and further informed the IRP that the normal practice followed by the Corporate Debtor while relieving staff was to allow him to retain the vehicle. It is further alleged that as per incomplete list provided by the accused No. 1, the Corporate Debtor owns 46 vehicles and has leased 7 vehicles from Lease Plan India Private Limited.

It is further alleged that the IRP vide email dated 24.09.2020 again requested the accused No. 1 to provide details/information of all vehicles/assets (if any) owned by the Corporate Debtor and the vehicles used in personal capacity including the location of the same as referred in the list of vehicles sheet provided by the accused No. 1 vide email dated 23.09.2020.

It is further alleged that the IRP, *vide* another email dated 24.09.2020, informed accused No. 1 and accused No. 3 that the IRP had received an email from 'Lease Plan India Private Limited' demanding handover of vehicles leased to the Corporate Debtor in light of the agreement dated 28.07.2016. It is further alleged that the IRP further requested them to handover the possession of the vehicles which were leased to the Corporate Debtor to the IRP in accordance with the provisions of the Code and for smooth conduct of the resolution process. It is further

alleged that despite repeated reminders, the accused have failed to handover the possession of the leased vehicles to the IRP.

It is also alleged that the accused No. 1 vide email dated 25.09.2020 stated that the vehicles were not in use and are now ready to be lifted and despite such response, the accused no. 1 have failed to handover the possession of the vehicles owned or leased to the Corporate Debtor to the IRP in terms of the provisions of the Code.

It is further alleged that upon such failure on part of the accused in not providing the possession of the assets of the Corporate Debtor to the IRP, the IRP filed an application dated 28.09.2020 under Section 19(2) read with section 60(5), 18(1)(f) and 14(1)(d) of the Code before the Hon'ble NCLT.

It is further alleged that IRP received another email dated 24.10.2020 from Lease Plan India Private Limited stating that the out of seven vehicles leased to the Corporate Debtor, possession of three vehicles have been taken, one is under process of possession and remaining three are still pending because of non-availability of location details.

It is also alleged that the accused who were in the management of the Corporate Debtor were under a legal obligation to provide information/ details pertaining to the Corporate Debtor such as up to date financial information, asset information etc. to the IRP. It is also alleged that despite repeated requests of the IRP, the former management of Corporate Debtor (Accused) failed to cooperate with the IRP and provide him necessary information/ documents and to handover the custody and control of all the assets/ information/ documents to the IRP for smooth conduct of the CIRP of the Corporate Debtor. Further,

it is alleged that since no information was provided and no appearance was made by the accused, the Hon'ble NCLT issued bailable warrants of arrest against the accused *vide* order dated 04.01.2021.

Based on aforesaid averments/allegations, it is claimed that accused persons have violated the provisions contained in Section 70(1)(a), (b), (c), 74(1) 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 ExDirectors 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, all the accused be summoned for facing prosecution for violation of the provisions contained in Section 70(1)(a), (b), (c), 74(1) 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