

Reg. No.CC/1628/2019
Insolvency & Bankruptcy Board of India
Vs.
Sandeep Singh Madhok & Ors.

25.01.2020

Present: Ms.Saahila Lamba, Advocate for complainant.

Counsel for complainant has filed 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 M/s Jay Polychem India 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 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 filed by Corporate Debtor. It is alleged that initially, Sh.Rajiv was appointed as Interim Resolution Professional (IRP) vide

order dated 13.04.2018 (Annexure 3) but in view of his ill health, he was replaced by Sh.Sudhir Kumar Agrawal vide order dated 16.05.2018. It is further alleged that Sh.Ram Rattan, Kanoongo was appointed as Resolution Professional in minutes of the meeting dated 18.07.2018 by second Committee of Creditors, which was approved by NCLT vide order dated 25.07.2018 (Annexure 5). It is further alleged that liquidation of Corporate Debtor was ordered by NCLT vide order dated 25.04.2019. It is also alleged that despite repeated requests of the Resolution Professional, the former management of Corporate Debtor failed to provide details of all the assets and the requisite cooperation meant for ensuring and ascertaining fair estimate of its worth. The complainant has filed copies of relevant orders dated 01.08.2018, 31.08.2018, 16.10.2018, 27.11.2018, 10.12.2018 and 20.12.2018 as Annexure 6 to Annexure 11, in support the averment that NCLT repeatedly observed the factum of non-cooperation by these accused persons in said orders. It is alleged that on 16.10.2018, NCLT directed accused no.1 to hand over damaged books of accounts to the Resolution Professional but as per submission of Resolution Professional, office of Corporate Debtor was locked and no access was provided to him. Thereafter, NCLT vide order dated 21.12.2018 (Annexure 12), called upon the Ex-Directors to be present alongwith assistance, if any required, to explain the data mentioned in the financial statements of the Corporate Debtor. It is claimed that on 31.12.2019, Resolution Professional moved an application u/s 66 of

the Code before NCLT and mentioned therein that the business of Corporate Debtor was carried out by all these accused persons in such a manner as to defraud the creditors. 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)(a)/ 70(1)(c) 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 and 2 were its Directors during the relevant period. However, the complainant has also filed copy of extracts of Board Resolution dated 05.05.2014 in respect of Corporate Debtor, whereby decision to obtain the requisite loans/credit facility, was taken and wherein the name of accused no.3 namely Satinder Singh Madhok is mentioned as one of its Directors. Counsel for complainant also submitted that Resolution Professional came across the said document (Annexure 2) during the proceedings carried out by him and despite repeated requests, none of these accused or any other officer of Corporate Debtor provided any kind of information or document showing that Satinder Singh Madhok seized to be its Director during the relevant period when the aforesaid violations were allegedly done. She therefore urged that accused no.3 is also liable to be summoned for the above said offences under the law.

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 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 these three accused persons be summoned for facing prosecution for violation of the provisions contained in Section 68(i)

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(b)/ 70(1)(a)/ 70(1)(c) 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

