

**Present: Ms. Saahila Lampa, Advocate being Public Prosecutor for the complainant Board.**

1. Authorization letters filed on behalf of the complainant, one in favour of Ms. Saahila Lampa, Advocate authorizing her to act as Public Prosecutor for the prosecution of the present complaint and secondly in favour of Shri Umesh Kumar Sharma, Chief General Manager to file the present complaint on behalf of the Insolvency and Bankruptcy Board of India.

2. Since the present complaint is filed by Shri Umesh Kumar Sharma in the capacity of a public servant there is no need of recording any preliminary evidence as per the provisions of section 200 Cr.P.C and since Ms. Saahila Lampa is also authorized as a Public Prosecutor to continue the proceedings of this complaint by the complainant Board, the personal appearance of Shri Umesh Kumar Sharma stands exempted till further orders as per the provisions of section 236(4) of the I&B code.

3. Heard on the issue of taking cognizance. The complainant Insolvency and Bankruptcy Board of India (hereinafter referred as “IBBI” *for short*) sought the prosecution of the respondent company and its authorized persons, 1 to 4 inter-alia alleging that the respondents-accused are key managerial personnel of the respondent-accused company, Liberty House Group Pvt. Ltd. being its Chairman and

Executive Director so far as accused No.1 and 2 are concerned, and the respondents No. 3 and 4 being the Chief Executive Officer and Chief Financial Officer and all the accused being responsible for the day-to-day business of the respondent-accused company namely Liberty House Group Pvt. Ltd. (hereinafter referred as “**Liberty House**” *for short*). But all of them as such, knowingly and willfully contravening the terms of the Approved Resolution Plan.

4. Admittedly, as per the provisions of Section 236(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**I&B Code**” *for short*), the complainant IBBI has powers to launch prosecution through its authorized officer and as per the provisions of Section 236(1) any offence punishable under the provisions of I&B Code shall be tried by the Special Court so constituted under the Companies Act and it is a fact that as per the notification No. S.O.2843(E) dated 01.09.2016 the undersigned has been designated as Special Judge of the Special Court under the Companies Act as per the provisions of Section 435(1)(a) of the Companies Act.

5. Accordingly after going through the documents on record, it comes out that pursuant to the orders of Hon’ble National Company Law Tribunal Bench at Chandigarh (hereinafter referred as “**Hon’ble NCLT**” *for short*), the corporate insolvency resolution process of the corporate

to declare that Resolution Applicants, M/s Liberty House and its promoters as named No. 1 to 4, have knowing and willfully contravened the terms and conditions of the Resolution Plan and after hearing all concerned including the respondent-accused, Liberty House, in the detailed order dated 15.02.2019, recommended prosecution of the liberty house, rejecting its application filed under section 60(5) of the I &B Code to vitiate the resolution plan and the Hon'ble NCLT in Para No.29 of the order held as under:-

“29. There being a clear default in implementing the Plan within the time stipulated in the Resolution Plan, the instant application deserves to be allowed with liberty to any Member of the Committee of Creditors or the Resolution Professional file a complaint before the Insolvency and Bankruptcy Board of India or the Central Government with a prayer to file the criminal complaint on the ground of corporate debtor having intentionally and wilfully contravened the terms of the Resolution Plan, for which we are restraining ourselves from making any observation either way. However, for LHG to say that the Tribunal was not properly assisted at the time of hearing on the application for approval of the Resolution Plan, would be a misplaced allegation. The order dated 25.07.2018 by which the Resolution Plan was approved shows that DVI had raised the issue of eligibility of LHG, which was opposed by LHG tooth and nail.”

7. Needless to say, the provisions of section 31 of the I&B Code provides for a definite time line for strict implementation of the Resolution Plan and if the time line as provided and duly approved by the Tribunal is not adhered to and there were other violations of the terms and conditions made knowing and willfully, the only prima-facie conclusion

debtor, Amtek Auto Limited, was initiated as per the provisions of Section 7 of the I&B Code before the “Hon’ble NCLT” and vide order dated 24.07.2017, the Hon’ble NCLT, Chandigarh appointed an Interim Resolution Professional of the Corporate Debtor as Resolution Professional to carry out and perform such acts and deeds which are required under the provisions of the I&B Code. And upon invitation, respondent-accused, Liberty House submitted a resolution plan, which was approved by Hon’blw NCLT vide order dated 25.07.17 and later on confirmed in the meeting held on 22.08.2017 by the Committee of Creditors. Accordingly a Resolution Plan was approved containing different terms & conditions and evaluation criteria with the modifications as referred in that order, making in binding on the stakeholders including the respondent-accused, Liberty House, which is part of the record. Ultimately the Plan was provided to the Monitoring Committee for implementation,

6. However, it is alleged that during monitoring, it was found that the respondent company failed to execute the Resolution Plan as per the terms & conditions and in time and thus committed different defaults and this matter was again taken up by the Hon’ble NCLT, Chandigarh Bench on the basis of application filed on behalf of all the financial creditors of the corporate debtors, through Corporation bank with prayer

would be that there has been an intentional default in implementing the plan by the respondent company for which the company can be prosecuted as per the provisions of Section 74(3) of the I&B Code, which provides that where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and willfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both. Similarly, Section 31 of the I&B Code provide the procedure of approval of the Resolution Plan.

8. In view of the above said facts and circumstances, it comes out that there is sufficient prima facie evidence on record, which shows that the respondent company namely "Liberty House Group Pvt. Ltd." through accused No. 1 to 4 namely Mr. Sanjeev Gupta, Mr. Rajiv Bajaj, Mr. Douglas Dawson, Mr. Derek O' Reilly as named in the title of the complaint have intentionally and willfully contravened the terms and conditions of the Approved Resolution Plan as has been observed by the Hon'ble NCLT also and thus prima-facie liable to be prosecuted for commission of offences as punishable under Section 74(3) of the I&B



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Code to be tried by this Court as a Special Court constituted under the Companies Act as per the provisions of Section 435(1) as the offence alleged is punishable with a punishment more than two years. Resultantly, it is ordered that let all the four accused namely accused No.1 to 4 Mr. Sanjeev Gupta, Mr. Rajiv Bajaj, Mr. Douglas Dawson, Mr. Derek O' Reilly be summoned to face prosecution for commission of offence as punishable under section 74(3) of the I&B Code, through bailable warrants in the sum of ₹10,000/- each with one surety in the like amount, for 11.07.2019, to be executed by the SHO, Police Station Shivaji Nagar, Gurugram as per the procedure established by law.

Dt. 25.04.2019.  
(Satish Kumar)

(Ravi Kumar Sondhi),  
Sessions Judge, Gurugram.  
(UID No.HR0026)

SATISH  
KUMAR

I attest to the accuracy  
and authenticity of this  
document.  
Digitally signed by  
SATISH KUMAR  
Date: 2019.04.29  
17:38:44 +0530

(Ravi Kumar Sondhi)  
(UID No.HR-0026)  
SJ, GGM, 25.04.2019  
Satish Kumar