

CIS No. COMA/30/2020

CNR No.HRGR01-008484-2020

Insolvency and Bankruptcy Board of India Vs. Sweety Aggarwal and another

Present: Ms. Saahila Lamba, Advocate Public Prosecutor
for the complainant Board.

Criminal complaint has been presented today seeking setting of criminal law in motion against the accused in terms of section 190 (1) (a) of the Code of Criminal Procedure, 1973. It be checked and registered.

2. Authorisation letter dated 21.9.2020 has been filed on behalf of the complainant Board in favour of Shri Sunil Kumar, Deputy General Manager of the complainant Board to file the present complaint on behalf of the Insolvency and Bankruptcy Board of India.

3. Since the present complaint has been instituted by Shri Sunil Kumar in the capacity of a public servant, therefore, there is no requirement of recording preliminary evidence as per provisions of section 200 of the Code of Criminal Procedure, 1973. Since Ms. Saahila Lamba, Advocate is also authorised as a Public Prosecutor to continue the proceedings of this complaint by the Complainant Board, personal appearance of Shri Sunil Kumar is not warranted in terms of the provisions of section 236 (4) of the Insolvency and Bankruptcy Code, 2016.

4. Heard on the issue of taking cognizance. The complainant Insolvency and Bankruptcy Board of India (hereinafter referred to as "IBBI" *for short*) sought prosecution of respondents No.1 and 2, who are Ex-Directors of M/s Maruti Kesari Nandan Agrofoods Private Limited (hereinafter referred to as "**Corporate Debtor**") *inter alia* alleging that the respondents-accused were key managerial personnel of the Corporate Debtor, who did not disclose to the Resolution Professional all details of property of the Corporate Debtor and details of transactions thereof or any

CIS No. COMA/30/2020

CNR No.HRGR01-008484-2020

Insolvency and Bankruptcy Board of India Vs. Sweety Aggarwal and another

such other information as the Resolution Professional required and also did not hand over the records to the Resolution Professional in their control or custody belonging to the Corporate Debtor, which they were required to deliver.

5. Admittedly, as per the provisions of Section 236(2) of the Insolvency and Bankruptcy Code, 2016, the complainant Insolvency and Bankruptcy Board of India has powers to set the criminal law in motion through its authorised officer and as per provisions of Section 236(1) any offence punishable under the provisions of the Insolvency and Bankruptcy Code, 2016, shall be tried by the Special Court so constituted under Chapter XXVIII of the Companies Act, 2013 and it is a fact that as per the Notification No. S.O.2843(E) dated 01.09.2016, this Court has the jurisdiction to try the offence in the capacity of a Special Court under the Companies Act, 2013 in terms of the provisions of Section 435(1)(a) of the Companies Act, 2013.

6. Accordingly, after going through the documents on record, it comes out that pursuant to the orders of the Hon'ble National Company Law Tribunal Bench at Chandigarh (hereinafter referred to as "Hon'ble NCLT" for short), the corporate insolvency resolution process of the Corporate Debtor, was initiated as per the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016, before the "Hon'ble NCLT" and vide order dated 06.02.2020, the Hon'ble NCLT, Chandigarh, appointed an Interim Resolution Professional of the Corporate Debtor to carry out and perform such acts and deeds as required under the provisions of the Insolvency and Bankruptcy Code, 2016.

CIS No. COMA/30/2020

CNR No.HRGR01-008484-2020

Insolvency and Bankruptcy Board of India Vs. Sweety Aggarwal and another

7. It is alleged that the interim Resolution Professional had expected the management of the Corporate Debtor to extend and provide cooperation and assistance and in providing details and information of all the assets and books in order to enable interim Resolution Professional in the process of ascertaining value of the assets of the Corporate Debtor to have fair estimate of its worth and he repeatedly asked them to supply the information but the former management of the Corporate Debtor did not provide the requisite information which was vital for ensuring and ascertaining value maximisations of the assets. In this manner, it is alleged that the respondents-accused have committed violation of sections 70 (1) (a) (b) (c) and (e) of the Insolvency and Bankruptcy Code, 2016.

8. Reference is also made to e-mails dated 8.2.2020, 12.2.2020, 14.2.2020, 24.2.2020 and 3.4.2020 sent by Resolution Professional to the respondents requesting them to provide access to documents and records of the Corporate Debtor but the respondents neither responded to any of the e-mails nor extended any cooperation or handed over the record and financial information of the Corporate Debtor to the Resolution Professional.

9. 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 respondents-accused as named in the title of the complaint, have intentionally and willfully violated section 70 (1) (a) (b) (c) and (e) of Insolvency and Bankruptcy Code, 2016, and thus, are liable to be prosecuted for commission of offences punishable under section 70 (1) (a) (b) (c) and (e) of the Insolvency and Bankruptcy Code, 2016. Resultantly, it is ordered that both accused namely Sweety Aggarwal and Sishan Kumar

CIS No. COMA/30/2020

CNR No.HRGR01-008484-2020

Insolvency and Bankruptcy Board of India Vs. Sweety Aggarwal and another

Aggarwal be summoned to face prosecution for commission of offences punishable under section 70 (1) (a) (b) (c) and (e) of the Insolvency and Bankruptcy Code, 2016, for 29.4.2021. For service of the process of this Court, Assistant Commissioner of Police exercising supervisory jurisdiction over Police Station, Shivaji Nagar, Gurugram shall be responsible. A copy of this order be sent to him.

Date of Order : 17.02.2021

Ashok Kumar

(M.M. Dhonchak)

Sessions Judge-cum-Special Judge

(under Chapter XXVIII of the Companies Act, 2013),

Gurugram (UID No.HR0043)