

CNR No.DLSW01-008398-2021
Reg. No.CC/1092-2021
IBBI Vs. Ambika Prasad & Anr.

30.10.2021

Present: Sh. Abhishek Kumar, Id. counsel for the complainant/IBBI.

Written submissions on the point of taking cognizance and summoning of accused have been filed in the form of soft copy on behalf of complainant. Same are taken on record.

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 stated that the accused persons are Ex Directors and Key Managerial Personnel of M/s Horizon Buildcon Pvt. Ltd.(hereinafter referred as “Corporate Debtor”), as per relevant master data available with ROC.

It is claimed that Corporate Insolvency Resolution Process (CIRP) was initiated u/s 7 of the Code r/w Rule 4 of the Insolvency & Bankruptcy Board of India (Application to Adjudicating Authorities) Rules 2016 by Financial Creditor. Mr. Sanjay Gupta was appointed as the IRP vide order dated Order dated 08.11.2019 (Exhibit 2) by the Hon’ble National Company

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Law Tribunal, New Delhi. The Interim Resolution Professional made a public announcement in Form A in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process For Corporate Persons) Resolutions 2016 (hereinafter referred to as ‘CIRP Regulations’) *inter alia* inviting claims from creditors/ financial creditors. The last date for submission of proof of claims was specified as 22.11.2019. The CoC in its 2nd meeting held on 04.01.2020 took note of the non-cooperation of the Directors and contemplated filing an application for non-cooperation under section 19(2) of the Code as the Directors did not handover all the documents asked by the interim resolution professional. Mr. Sanjay Gupta was replaced as resolution professional in the 4th CoC meeting held on 20.02.2020 with Mr. Praveen Kumar Agarwal. The appointment of Mr. Praveen Kumar Aggarwal as resolution professional was confirmed by the Hon’ble NCLT *vide* order dated 15.07.2020. In the 7th meeting of the CoC held on 01.10.2020, the resolution professional Mr. Praveen Kumar Agrawal held the meeting and again it was noted that the Directors of the Corporate Debtor are not co-operating. It has been recorded in minutes of the meeting that the resolution professional held follow up meetings with Directors and persuaded them to cooperate in the insolvency resolution process and to arrange handing over of possession of Noida, Amritsar sites, registered office, moveable assets, books of accounts etc. In the same meeting, resolution to appoint Mr. Anil Tayal as the

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resolution professional in place of Mr. Praveen Kumar Agrawal in accordance with section 27(2) of the Code was approved by the CoC. An application was also filed before the Hon'ble NCLT in accordance with law.

The erstwhile interim resolution professional had filed an application under section 19(2) of the Code before the Hon'ble NCLT seeking direction against the ex-management of the CD for providing documents and information of the CD. On 15.02.2021, the counsel for the Directors submitted that documents were submitted to the erstwhile IRP, though admittedly no information was provided in response to the application filed by the present RP. The Hon'ble NCLT found that no information/ document had been furnished by the suspended board of Directors and directed initiation of appropriate actions against the suspended Directors of CD in accordance with provisions of sections 68 and 70 of the Code.

The accused persons by not delivering to the resolution professional all or part of the property of the corporate debtor in their control or custody, which they are required to deliver, have violated section 70(1)(b) of the Code. Further, the accused persons by not delivering to the resolution professional all books and papers in their control or custody belonging to the corporate debtor, which they are required to deliver, have violated section 70(1)(c) of the Code.

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Based on aforesaid averments/allegations, it is claimed that both the accused persons have violated the provisions contained in Sections 70(1)(b) and 70(1)(c) read with Section 19(1) and 34 (3) and 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 these accused were its Ex.Directors 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

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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 Sections 70(1)(b) and 70(1)(c) read with Section 19(1) and 34 (3) and 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 **07.02.2022**.

(MOHINDER VIRAT)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/30.10.2021