

CNR No.DLSW01-000562-2023
Reg. No. CC/67/2023
IBBI Vs. Mukesh Kumar Nigam & Anr.

23.02.2023

Present: Sh.Sahil Monga, ld. counsel for complainant/IBBI
(through VC).

Arguments on the point taking cognizance and summoning of accused persons heard. I have also gone through the record including the complaint and relevant documents.

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 Insolvency & Bankruptcy Code, 2016. It is alleged that accused no.1 and 2 are Directors of Terrence Alloys Pvt. Ltd. (hereinafter referred as “Corporate Debtor”) and shall be construed as ‘officers in default’ under Section 2(60) of the Companies Act 2013.

It is stated in the complaint that a petition was filed before Hon’ble National Company Law Tribunal, New Delhi by Venessa Metals and Alloys Pvt. Ltd. (operational creditor) under Section 9 of Code seeking initiation of corporate insolvency resolution process (CIRP) against the corporate debtor alleging default in clearing debt of Rs.6.32 crores by the Corporate Debtor. The said petition was admitted by Hon’ble NCLT vide order dated 03.02.2020 and Mr. Nitesh Kumar Sinha was appointed as an Interim Resolution Professional (IRP) and later on, IRP was replaced and Mr. Brahm Datt Verma was appointed

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as Resolution Professional (RP) by Hon'ble NCLT vide order dated 11.11.2020. It is further stated in the complaint that despite sincere efforts made by IRP and RP, the accused persons neither joined the CIRP nor provided the required documents/records/information except for the initial information that was provided vide email dated 02.01.2021. Consequently, the RP was constrained to file an application before Hon'ble NCLT under Section 19(2) of Code seeking necessary directions against the accused persons to comply with the instructions of the RP and to cooperate with him in collection of information and management of the corporate debtor. It is further stated in the complaint that despite order of Hon'ble NCLT, the accused persons chose neither to enter appearance nor to cooperate with the IRP/RP. Thereafter, Hon'ble NCLT, vide order dated 19.02.2021, also gave a stern warning to the accused persons but all the attempts of IRP/RP and Hon'ble NCLT to seek cooperation from the accused persons were to no avail. Thereafter, the Hon'ble NCLT, vide order dated 02.06.2021, directed the RP to take up the matter of the accused persons with the complainant for taking necessary action against them. It is alleged that the accused persons are deliberately and wilfully evading the process of law for ulterior dishonest motives, namely, to conceal any property/debt of the corporate debtor, to remove any part of the property of the corporate debtor, to wilfully conceal, destroy, mutilate or falsify any book or paper

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affecting or relating to the property of the corporate debtor or its affairs, to fraudulently part with, alter or make any omission in any document affecting or relating to the property of the corporate debtor or its affairs and to wilfully create any security interest over, transfer or dispose of any property of the corporate debtor. It is further alleged that the accused persons chose not to respond to any of the communications/emails sent by IRP/RP seeking documents/records/information regarding property and affairs of the corporate debtor and continued to evade the proceedings before Hon'ble NCLT. The accused persons neither extended any assistance to the IRP nor did they report to the IRP or provided access to such documents and records of the corporate debtor as were required by the IRP.

In support of the complaint, the complainant has filed the copy of master data maintained on the official website of Ministry of Corporate Affairs, showing that accused persons are/were Directors of Terrence Alloys Pvt. Ltd. during the relevant period, as also the attested copies of other relevant documents and orders etc., alongwith requisite certificate u/s 65B of Indian Evidence Act.

Based on aforesaid averments/allegations, it is claimed that the accused persons have violated the provisions contained in Sections 68, 70, 17(1)(c) and 19 r/w Section 235A of the Code.

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.

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Accordingly, both the accused persons be summoned for facing prosecution Sections 68, 70, 17(1)(c) and 19 r/w Section 235A of the Code. They be summoned on filing of PF/RC/courier, returnable for **06.05.2023**. Steps be taken within three weeks.

(Dr. Jagminder Singh)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/23.02.2023