

CNR No.DLSW01-009655-2021
Reg. No.CC/1249-2021
IBBI Vs. Priyanka Chahal & 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 Chahal Parivahan Private Limited (hereinafter referred as “Corporate Debtor”), as per relevant master data available with ROC.

It is claimed that despite repeated requests of the Interim Resolution Professional (IRP) to furnish details of assets of the Corporate Debtor and deliver books of account; the ex-Directors of the Corporate Debtor failed to extend necessary assistance and cooperation to the IRP to enable him to manage the affairs of the Corporate Debtor in Corporate Insolvency

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Resolution Process (CIRP) 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. Nitin Jain was appointed as IRP vide order dated 18.03.2020.

Pursuant to the appointment of IRP, the IRP sent a letter dated 23.03.2020 and also an email dated 23.03.2020 to the accused herein informing them about the initiation of CIRP and requesting them to provide all necessary information/ documents. The IRP again sent email on 26.03.2020 to the accused reminding them to provide documents as per earlier communication but to no avail. Further email was sent to accused on 30.03.2020 and 06.04.2020 asking them to share scan copies of RC and MoUs of all the vehicles with the IRP but no response was received. Thereafter, when email was sent to the accused persons on 13.04.2020 informing that accused persons are required to provide all the documents in scan format for successful completion of CIRP, the accused persons expressed difficulty to provide such documents due to lockdown and sought time. After rigorous follow up by the IRP, the Corporate Debtor provided 32 MoUs on 12.11.2020 & 21 MoUs on 06.12.2020. The Accused persons were asked to provide documents and clarification with respect to application for GST Registration by email dated 16.04.2020, Again no response was received. Even when urgency to apply for GST Registration was reminded on 20.04.2020, the accused persons did not bother to revert. By

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email dated 07.05.2020, IRP brought to the notice of the accused that financial statements for year 2017-18 have not been audited and for subsequent year 2018-19, they were not even prepared. Even when accused persons were informed about non-compliances of finalising financial statements and submitting the same to MCA and non-filing of GST Returns, accused persons did not accede to the request for providing important documents and information as intimated in the beginning. It can be garnered from the conduct of the accused persons that they kept evading the attempt to provide information and documents on one pretext or the other. When IRP asked the accused persons to handover possession of assets which are vehicles of the Corporate Debtor, it was informed that they are parked at various locations across Delhi, NCR but their location has not been disclosed till date. The IRP was again assured by the accused persons that the vehicles will be provided and in the 6th COC Meeting on 07.11.2020, the IRP presented quotation for parking lots for the vehicles. Moreover, the IRP via email dated 11.11.2020 again requested the accused to handover the possession of 19 vehicles registered in the name of Corporate Debtor. When accused persons informed about their difficulty to get the possession of the vehicles, the IRP explained the procedure to transfer the vehicles for which MOU is executed and provided the relevant documents. However, no one appeared on behalf on the accused persons to get hold of vehicle. Further, the accused persons

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informed via email dated 14.11.2020 that MCD parking services denied to handover the possession stating that the payment is due to them. The IRP then prepared letters for parking owners and forwarded to the parking owners mentioning that the parking owners can file their claim with the IRP in FORM B as the Operational Creditor of the Corporate Debtor. No further update was provided to the IRP by the accused person even after rigorous follow up. Thus, the possession of 19 vehicles have not been transferred till date.

The IRP was in receipt of a claim in Form C from Shriram Transport Finance Company Limited on 06.02.2021 for an amount of Rs. 89,49,073/-. Further, the IRP had received an email dated 15.02.2021 from M/s Shriram Transport Finance Company Limited wherein a list of 18 vehicles registered in the name of the Corporate Debtor hypothecated with M/s Shriram Transport Finance Limited was provided. It was further intimated through the said mail that 6 vehicles have already been sold by M/s Shriram Transport Finance Company Limited, out of which 4 vehicles were sold during the CIRP period when moratorium was in force. The representative of M/s Shriram Transport Finance Company Limited further clarified that they were not aware about the initiation of CIRP and hence 4 vehicles were sold during the moratorium period. Furthermore, Shriram Transport Finance Company remitted an amount of Rs. 6,03,805/- from Shriram Transport Finance Corporation Limited

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on 08.03.2021 on account of the sale of the mentioned 4 vehicles (assets) by them during the CIRP period. The accused did not provide any such information to the IRP.

Such failure on part of the accused herein in not providing the possession of the assets of the Corporate Debtor to the IRP is not only in complete violation of the provisions of the Code and the directions issued by Hon'ble NCLT but the same also jeopardizes the CIRP and creates hurdles in management of the operations of the Corporate Debtor as a going concern. Therefore, the IRP filed an application under Section 19(2) before the Hon'ble NCLT.

The IRP had sent email dated 14.09.2020 to accused persons annexing list of documents and information required for the conduct of CIRP but the accused did not give any reply to it despite directions of Hon'ble NCLT.

The Hon'ble NCLT vide order dated 02.11.2020 directed the accused to hand over all the vehicles which are in the name of Corporate Debtor to the IRP and regarding rest of the vehicles where there is a Memorandum of Understanding (MoU), such copies of MoUs may be provided to the IRP before 18.11.2020. On 14.12.2020, Hon'ble NCLT noted that no such cooperation was lent to the IRP.

The accused persons who were in the management of the Corporate Debtor are under a legal obligation to provide information/ details pertaining to the Corporate Debtor such as

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up to date financial information, asset information etc. to the IRP. However, despite repeated requests of the IRP, the former management of Corporate Debtor (accused herein) failed to cooperate with the IRP and provide him necessary information/ documents and to handover the custody and control of all the assets/ information/ documents to the IRP for smooth conduct of the CIRP. It is pertinent to mention that the company was incorporated on 06.01.2017 and no audited financial statements have been filed and no financial statements has been prepared for Financial Year 2018-19, 2019-20, and as on CIRP date. Further, the IRP had appointed an accountant and auditor for auditing the books of accounts for the FY 2017-FY 2020 in the 6th COC Meeting convened on 07.11.2020. A detailed list of details required for the purpose of completion of books of accounts and its audit was sent to the accused however limited data was received from their end. In addition to this, valuers of two class of assets i.e. Securities and Financial Assets, and Plant & Machinery, were appointed by the IRP in the 2nd COC Meeting convened on 07.08.2020 however valuation could not be conducted as the possession of the assets of the Corporate Debtor are not handed over to the IRP till date. The information memorandum has been prepared on the basis of draft financial statements for Financial Year 2017-18 which are unaudited and also no financials are available for later period. Form G was published on 12.08.2020 and 03.01.2021 but no expression of

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interest was received. Due to non-cooperation, Corporate Debtor went towards liquidation for which application has been filed under section 33(1)(a) of the Code by IRP.

The Hon'ble NCLT vide order dated 19.01.2021 directed the IRP to take up the matter with the Complainant regarding non-cooperation by the Directors of the CD and take necessary action as per law against those Directors.

Based on aforesaid averments/allegations, it is claimed that both these accused persons have violated the provisions contained in Section 68, 70 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

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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 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 Section 68, 70 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