

CNR No.DLSW01-010741-2021
Reg. No. CC/1380/2021
IBBI Vs. Piyush Tiwari & Ors.

09.03.2022

Present: Ms. Saahila Lamba, ld. counsel for the complainant/IBBI.

Arguments on the point of taking cognizance and summoning of accused persons have been heard.

The present case has been filed by Insolvency & Bankruptcy Board of India (hereinafter referred to as the “IBBI”) on the averments that it is a statutory body established under the Ministry of Corporate Affairs, Government of India. It is alleged that the accused Nos.1 to 4 are the Directors and accused No.5 is the majority shareholder as also the authorized signatory for operation of bank accounts of Kindle Developers Private Limited (hereinafter referred to as the “Corporate Debtor”) and thus “officer who is in default” of Corporate Debtor, as per relevant master data available with ROC. It is claimed that accused persons wilfully did not cooperate with Resolution Professional (hereinafter referred to as the “RP”) and failed to provide critically important information such as books of accounts of the Corporate Debtor, financial statements including cash flow statements, tally data backup/ERP accounting data, details of the related party transactions etc. to the RP despite repeated requests made by RP and directions issued by Hon’ble National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as the “NCLT”) in said regard. It is further alleged that the accused persons had willfully concealed many material facts and

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property/assets from IRP/RP including tally data backup as also defrauded the creditors of the Corporate Debtor and concealed material facts and documents from Resolution Professional.

It is also alleged that Corporate Insolvency Resolution Process was initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code”) in respect of the Corporate Debtor by an order dated 09.03.2018 passed by NCLT and Mr.Anurag Nirbhaya was appointed as an Interim Resolution Professional (IRP) and subsequently Mr.Kashi Vishwanathan Sivaraman was appointed as the Resolution Professional. It is alleged that subsequent to his appointment, Interim/Resolution Professional contacted the accused persons and requested them to provide the requisite financial data and essential information with regard to the Corporate Debtor. However, despite consistent efforts made by RP to procure information, the accused persons failed to provide all the requisite information to the RP.

It is further alleged that action of accused persons of rendering complete non-cooperation to the Resolution Professional was taken note of by NCLT in several orders passed by it and numerous directions were given to the accused persons to provide relevant information/documents to the Resolution Professional but the accused person failed to comply with the directions given by NCLT. It is also alleged that the accused persons failed to cooperate and provide any assistance even to

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the statutory and forensic auditors of the Corporate Debtor during Corporate Insolvency Resolution Process.

It is further alleged that RP took under his control and custody the land at Plot No.SC-01/D1, Sports City, Sector-79, Noida (hereinafter referred to as the “Property”) on which the Directors of the Corporate Debtor were developing a project. The said property is a lease hold land which was leased from Noida Authority by the Corporate Debtor for 99 years. During Corporate Insolvency Resolution Process, the RP came to know that the allotment/lease of the said property was cancelled by the Noida Authority on 13.08.2015 due to non-payment of amount due towards instalments (lease rent) in respect of the property. It is alleged that despite the cancellation of lease deed by the Noida Authority, the accused persons neither bothered to pay lease rent to the Noida Authority to renew the same nor informed innocent homebuyers about the cancellation of the lease deed and in fact continued collecting money from the homebuyers by representing false status of the undergoing project on said property. The factum of defrauding the creditors of the Corporate Debtor by the accused persons is also recorded by the NCLT in its order dated 20.02.2020.

Based on aforesaid averments/allegations, it is claimed that the accused persons have violated the provisions contained in Sections 70, 73 (b) and 19(1) r/w Section 235A of the Code and are liable to be punished accordingly.

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The present complaint has been instituted through General Manager of IBBI viz. 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 on its behalf.

As per the provision contained in Section 236(2) of the Insolvency & Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law in motion through its authorized officer. In view of Section 236(1) thereof, the offences punishable under the said Code, are triable by the Special Courts 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 person. 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 to Section 200 CrPC.

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Accordingly, all the five accused persons namely (i) Piyush Tiwari; (ii) Shikha Tiwari; (iii) Astha Gupta; (iv) Harshdeep Gandhi and (v) Paramjit Gandhi, be summoned for facing prosecution for violation of the provisions contained in Sections 70, 73 (b) and 19(1) r/w Section 235A of the Code. They be summoned on filing of PF/RC/Courier within 15 days, for the next date.

List on **07.07.2022**.

(SUMIT DASS)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/09.03.2022