

CNR No.DLSW01-009525-2021
Reg. No. CC/1245/2021
IBBI Vs. Mukesh Modi & Ors.

Hearing conducted through Video Conferencing -
CISCO WebEx Meetings

31.01.2022

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

Written submissions on the point of taking cognizance and summoning of accused persons has been filed by learned counsel through email.

Oral submissions also 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 person are Directors and “officers in default” of Kaliber Associates Private Limited (hereinafter referred to as the “Corporate Debtor”), as per relevant master data available with ROC. It is claimed that accused persons fraudulently diverted the assets of Corporate Debtor and willfully concealed information on transaction of diversion of assets as also failed to provide relevant information/documents and financial statements regarding Corporate Debtor to the Resolution Professional (hereinafter referred to as the “RP”) despite repeated requests made by RP and directions issued by Hon’ble National Company

contd....2/-

Reg. No. CC/1245/2021
IBBI Vs. Mukesh Modi & Ors.

Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as the “NCLT”) in said regard.

It is alleged that Corporate Insolvency Resolution Process was initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 in respect of the Corporate Debtor by an order dated 18.01.2019 passed by NCLT and Mr. Vinay Talwar was appointed as an Interim Resolution Professional (IRP). Subsequently Ms. Rita Rastogi was confirmed as the Resolution Professional who was further replaced by Mr. Mohan Jain. It is further alleged that subsequent to their appointment, Interim/Resolution Professional contacted the accused persons and requested them to provide all relevant documents of the Corporate Debtor including balance sheets, books of accounts, inventory, assets etc. as also to cooperate in the process of ascertaining the value of the assets of the Corporate Debtor to have fair estimate of its worth. However, accused persons did not cooperate with the Resolution Professional and failed to provide the information/documents pertaining to the business, assets and affairs of the Corporate Debtor.

It is also alleged that action of accused person 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

contd....3/-

Reg. No. CC/1245/2021
IBBI Vs. Mukesh Modi & Ors.

Resolution Professional but the accused persons failed to comply with the directions given by NCLT which constrained NCLT to pass order dated 22.11.2019 issuing show cause notice to accused persons as to why investigation should not be directed against them in terms of Section 213 of the Companies Act. After considering the reply filed by the accused persons, Hon'ble NCLT vide its order dated 27.02.2020 referred the matter to Ministry of Corporate Affairs holding that the matter needs investigation.

It is further alleged that on the basis of finding of transaction and forensic auditor report, Resolution Professional came across certain fraudulent and illegal transactions undertaken by the erstwhile management of the Corporate Debtors/accused persons while conducting affairs of Corporate Debtors including misrepresenting and inexplicably hiding certain transactions.

On the basis of aforesaid averments, it is claimed that the accused persons have violated the provisions contained in Sections 68(i)(d), 69, 70(1)(c), 71 and 19(1) r/w Section 235A of the Code and are liable to be punished accordingly.

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

contd....4/-

Reg. No. CC/1245/2021
IBBI Vs. Mukesh Modi & Ors.

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. Accordingly, accused persons namely Mukesh Modi and Lalit Modi be summoned for facing prosecution for violation of the provisions contained in Sections

contd....5/-

Reg. No. CC/1245/2021
IBBI Vs. Mukesh Modi & Ors.

68(i)(d), 69, 70(1)(c), 71 and 19(1) r/w Section 235A of the Code
They be summoned on filing of PF/RC/Courier within one
month, for the next date.

List on **13.05.2022.**

(SUMIT DASS)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/31.01.2022