

CNR No.DLSW01-004872-2023
Reg. No. CC/410/2023
IBBI vs. Hardik Jhanb & Anr.

15.07.2023

Present: Sh. Kamalkant Jha, Advocate (through VC) and Sh. Deep Narayan Jha, Advocate for complainant/IBBI.

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 M/s. Irrisnet Communication 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 an application under Section 9 of the Code was filed by M/s. Swift Mail Communication Ltd. before Hon’ble National Company Law Tribunal, New Delhi which was admitted on 24.04.2022 and Ms. Hemi Gupta was appointed as an Interim Resolution Professional (IRP) of Corporate Debtor and Corporate Insolvency Resolution Process (CIRP) was ordered against the corporate debtor. Thereafter, on 25.02.2022 the IRP sent an email to the accused persons regarding the order dated 24.02.2022 and also about

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initiation of CIRP against the corporate debtor requesting them to contact her but no response thereto was given by the accused persons. It is further stated in the complaint that despite sincere efforts made by IRP, the accused persons neither joined the CIRP nor provided the required documents/records/information, as detailed in complaint. The IRP also visited the premises of the corporate debtor but could not find the corporate debtor at the given addresses and with great efforts, she could not contact accused No.1 on through conference call with one Pushpender, who was found at the given address, but accused No.1 denied to hand over the assets/record of the Corporate Debtor. Consequently, the IRP 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 IRP and to cooperate with her 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. Thereafter, the Hon'ble NCLT, vide order dated 09.05.2022, directed the IRP to file a criminal case against the accused persons under Section 70 of the Code.

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 M/s. Iriisnet Communication Pvt. Ltd.

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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 Section 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

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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.

Accordingly, both the accused persons be summoned for facing prosecution under Section 70 r/w Section 235A of the Code. They be summoned on filing of PF/RC/courier, returnable for **08.09.2023**. Steps be taken within three weeks.

(Dr. Jagminder Singh)

ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/15.07.2023