

CNR No.DLSW01-007550-2021
Reg. No.CC/963-2021
IBBI Vs. Krish Steel & Trading Pvt. Ltd. & Ors.

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 key managerial personnel of Krish Steel and Trading Private Limited formerly known as Kridhan Infrastructure Private Limited (**'Resolution Applicant'**) as per the data maintained on the official website of the Ministry of Corporate Affairs.

It is further stated that the Resolution Applicant had submitted a Resolution Plan in the CIRP of Tecpro Systems Limited (Corporate Debtor) which was binding on them as per Section 31(1) of the Code however, the Resolution Applicant knowingly and willingly chose to contravene the terms of the

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said plan. It is further stated that the Resolution Applicant (Accused Persons) had submitted a Resolution Plan in the CIRP of Tecpro Systems Limited (Corporate Debtor), however, the Resolution Applicant knowingly and willingly chose to contravene the terms of the said plan. A CIRP under Section 7 of the Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was initiated against the Corporate Debtor, Tecpro Systems Limited. The petition was admitted by the Hon'ble National Company Law Tribunal, New Delhi Principal Bench ('NCLT') by an Order dated 07.08.2017. The Hon'ble NCLT also appointed Mr. Venkatesan Sankarnarayanan as Interim Resolution Professional vide the said Order and was subsequently appointed as the Resolution Professional in the 1st Committee of Creditors Meeting held on 13.09.2017 on as per section 22 of the Code.

The Resolution Professional had prepared the information memorandum and invited resolution plans from prospective resolution applicants for the Corporate Debtor as per Form-G on 19.04.2018 and the Resolution Applicant (Accused) had accordingly submitted its resolution plan. Thereafter, in the e-voting for the 15th Committee of Creditors ('CoC') meeting conducted on 10.03.2019 to 12.03.2021, the modified Resolution Plan submitted by Resolution Applicant (Accused) on 07.03.2019

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was put to vote before the CoC, which was approved with 89.92% votes and consequently the Hon'ble NCLT passed an Order dated 15.05.2019 approving the Resolution Plan making it binding on the Corporate Debtor, Resolution Applicant (Accused), creditors, guarantors and other stakeholders involved in the Resolution Plan.

The Resolution Applicant (Accused) was bound by the terms of the resolution plan, failed to implement the resolution plan as per the stipulated timelines. That despite various orders of the Hon'ble NCLT, National Company Law Appellate Tribunal ('NCLAT') and the Hon'ble Supreme Court upholding the validity of the resolution plan, the Resolution Applicant (Accused) failed to implement the same. The Resolution Applicant (Accused) in the resolution plan had proposed a business plan for the revival of the Corporate Debtor and continuing it as a going concern. The Resolution Applicant (Accused) had promised to make payment to the tune of Rs. 473 Crores as against liquidation value of Rs. 347.28 Crores. The Hon'ble NCLT vide Order dated 15.05.2019 approved the resolution plan as per the provisions under section 31(1) of the Code and made it binding on the Corporate Debtor, its employees, members, creditors and other stakeholders involved

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in the Resolution Plan and also directed the Resolution Applicant (Accused) to provide a performance security of an amount of Rs 5 Crores as was stipulated by the CoC in the 14th CoC meeting held on 28.02.2019 in pursuant to the regulation 36B of the IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within 30 days of the Order.

The Resolution Applicant (Accused) had submitted a performance security of an amount of Rs. 5 Crores in the Corporate Debtor's Escrow Account on 13.06.2019 as per the direction of the Hon'ble NCLT. However, the Resolution Applicant (Accused) failed to infuse Rs. 15 crores of upfront equity within a week and a payment of Rs. 50 crores within three months thereafter as per the terms of the resolution plan and they had also not taken over the control of management even after passage of 8 months from the date of approval of the resolution plan. That despite numerous extensions to infuse capital were given and the last one was given on 19.10.2019, when a 5th extension seeking time till 15.11.2019 was sought by the Resolution Applicant (Accused) and further the Resolution Applicant (Accused) or its Representative did not attend the 'Monitoring Committee's meeting' after 04.10.2019. The CoC in its 5th Meeting held on 11.11.2019 resolved to liquidate the

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Corporate Debtor with 99.28% voting share as the Resolution Applicant (Accused) failed to comply with the terms of Resolution Plan despite several extensions. The Hon'ble NCLT in its Order dated 16.01.2020 also observed the failure of the Resolution Applicant to implement the resolution plan and directed to forfeit the performance security of Rs. 5 Crores submitted by the Resolution Applicant (Accused).

The Hon'ble NCLT ordered the liquidation of the Corporate Debtor vide its order dated 16.01.2020 due to the failure of the Resolution Applicant (Accused) to comply with the terms of the Resolution Plan and proposed Mr. Ramachandran Subramanian as the Liquidator.

The Resolution Applicant (Accused) filed an appeal against the Order dated 16.01.2020 of the Hon'ble NCLT before the Hon'ble NCLAT and vide Order dated 03.02.2020 of the Hon'ble NCLAT allowed the Resolution Applicant (Accused) opportunity to give timeframe for compliance of the Resolution Plan despite the liquidation order. The Hon'ble NCLAT vide its order dated 24.07.2020 allowed the Resolution Applicant (Accused) to submit Rs. 15 Crores in the Escrow Account of the Corporate Debtor by 28.07.2020 to show its willingness to implement the Resolution Plan and vide its order dated

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29.07.2020 further allowed 10 days' time to the Resolution Applicant (Accused) to deposit Rs. 15 Crores in the Escrow Account of the Corporate Debtor which was not be appropriated without the prior approval of the Appellate Tribunal. The Hon'ble NCLAT in its order dated 13.08.2020 confirmed that the Resolution Applicant (Accused) has deposited the Rs. 15 Crores in the Escrow Account and then reiterated its earlier direction to not appropriate the amount from the Escrow Account without the prior approval of the Appellate Tribunal. The Hon'ble NCLAT in its judgement dated 08.09.2020 upheld the Liquidation order passed by the Hon'ble NCLT and dismissed the appeal.

The Resolution Applicant (Accused) had filed an appeal against the Order dated 08.09.2020 of the Hon'ble NCLAT before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 09.10.2020 also provided an opportunity to Resolution Applicant (Accused) to implement the resolution plan and further vide its order dated 25.11.2020, allowed additional one months' time to the Resolution Applicant (Accused) to comply with its direction to deposit Rs 50 crores until 25.02.2021.

The Hon'ble Supreme Court in its Order dated 01.03.2021 finally concluded that the Resolution Applicant (Accused) has intentionally evaded to fulfil the following

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financial commitments made in the Resolution Plan and despite several orders of the Hon'ble NCLT and Hon'ble NCLAT granting sufficient time, the Resolution Applicant (Accused) has not been able to comply with the terms of the Resolution Plan. The Resolution Applicant (Accused), after the approval of the Resolution Plan submitted by them failed to implement it and none of the claims of the creditors and stakeholders have been settled as per the terms stipulated in the Resolution Plan. Hence, the Resolution Applicant (Accused) has committed the offences as provided for in Part II of Chapter VII of the Code:

Based on aforesaid averments/allegations, it is claimed that all these accused persons have violated the provisions contained in Section 31(1), 74(3) 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 Directors of Resolution Applicant, showing that these accused persons were its key managerial personnel 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 &

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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 all these 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, all these accused persons be summoned for facing prosecution for violation of the provisions contained in Section 31(1), 74(3) 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 **15.02.2022**.

(MOHINDER VIRAT)
ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/30.10.2021