

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins.) No. 587 of 2022**

**In the matter of:**

**Mr. Rohit Jasoria,** **....Appellant**  
**Prop. RJ Brothers & Partner RJ Logistics Service LLP**  
**Vs.**

**Aargus Global Logistics Pvt. Ltd. Through its** **...Respondents**  
**Authorized Representative & Ors.**

**For Appellant:** Mr. Dhiraj Kumar, Mr. Avinash Lakhanpal, Mr. Piyush Lakhanpal, Advocates.

**For Respondents:** Mr. Sowmya Saikumar, Advocate for R1.  
Mr. Abhishek Anand, Mr. Karan Kohli, Advocates for the Liquidator.  
Mr. Sahil Bhatia, Liquidator.

**Comp. App. (AT) (Ins.) No. 588 of 2022**

**In the matter of:**

**Mr. Rahul Jasoria,** **....Appellant**  
**Proprietor Y.K. Logistics, Y.K. International**  
**Vs.**

**Aargus Global Logistics Pvt. Ltd. Through its** **...Respondents**  
**Authorized Representative & Ors.**

**For Appellant:** Mr. Dhiraj Kumar, Mr. Avinash Lakhanpal, Mr. Piyush Lakhanpal, Advocates.

**For Respondents:** Mr. Sowmya Saikumar, Advocate for R1.  
Mr. Abhishek Anand, Mr. Karan Kohli, Advocates for the Liquidator.  
Mr. Sahil Bhatia, Liquidator.

**ORDER**

**(Through Virtual Mode)**

**27.07.2022:** Heard Learned Counsel for the Appellant.

2. Learned Counsel for the Appellant submits that amended memo has already been filed where Respondent No.1- 'Aargus Global Logistics Pvt. Ltd.' has been deleted from the array of the parties. Let the Respondent No.1 be deleted from the array of the parties.

3. These two Appeals have been filed against the order dated 21.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No.V) on an Application filed under Section 66 of the IBC by the Resolution Professional seeking directions to the Respondents to provide for and make good to the Corporate Debtor for the losses caused due to the Respondent's indulgence in fraudulent transactions. The Adjudicating Authority by the said impugned order has allowed the Application and issued directions. Appellant before us has also been directed to make contribution.

4. Learned Counsel for the Respondents submits that the same order dated 21.01.2022 has already been challenged by the other Respondents to the Application in Company Appeal (AT) (Ins.) No. 454 of 2022 which Appeal has already been dismissed by this Tribunal vide its judgment and order dated 04.05.2022. It is submitted that this Appeal also deserves to be dismissed in view of the judgment of this Tribunal dated 04.05.2022.

5. Learned Counsel for the Appellant submits that in that Appeal filed by the Appellant, there are several other issues which are different from those Appellant who had filed the Company Appeal (AT) (Ins.) No. 454 of 2022. He submits that the Appellant's case was that in the ledger which was maintained

by the Appellant certain dues were due by the Corporate Debtor payable to the Appellant themselves.

6. We have considered the submissions and perused the record.

7. This Appellate Tribunal while dismissing the Company Appeal (AT) (Ins.) No. 454 of 2022 filed by the Ex-Promoter and Ex-Directors of the Corporate Debtor has already returned finding that amounts written off as back dates during the Financial Year comes within the fraudulent transactions under Section 66. The amounts with regard to the Appellant were also written off by the Director. Hence, the findings of this Tribunal in judgment dated 04.05.2022 also covers the case of the Appellant. The Adjudicating Authority by the order impugned has directed to make good the said amount which was shown as a debt of the Corporate Debtor. The submission that in the ledger of the Appellant, certain amount was due to the Corporate Debtor does not in any manner have any bearing on the findings of fraudulent transactions recorded by the Adjudicating Authority and confirmed by this Tribunal. Thus, we do not find any error in the impugned judgment.

8. Learned Counsel for the Appellant lastly contended that the direction issued in paragraph 29 of the judgment to institute a prosecution under Section 69 against the Appellant also along with the Directors of the Corporate Debtor were uncalled for. He submits that under Section 69 punishment for transaction defrauding creditors can be awarded only on the officer of the Corporate Debtor or Corporate Debtor. Section 69 of the Code provides as follows:-

**“69. Punishment for transactions defrauding creditors. - [If] an officer of the corporate debtor or the corporate debtor-**

*(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;*

*(b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor, such officer of the corporate debtor or the corporate debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:*

*Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.”*

9. The above submission of the Counsel for the Appellant has substance. The Respondent Nos. 9 and 10 were not the officers of the Corporate Debtor so as to any punishment can be awarded on them under Section 69. We, thus, are of the view that direction in paragraph 29 insofar as Respondent Nos. 9 and 10 (Appellants before us) for prosecution under Section 69 is deserves to be set aside and is hereby set aside.

10. In the result, both the Appeals are partly allowed insofar as direction in paragraph 29 for instituting prosecution under Section 69 against the Appellants is concerned. Rest of the order is affirmed. Both the Appeals are disposed of accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Justice M. Satyanarayana Murthy]  
Member (Judicial)**

**[Barun Mitra]  
Member (Technical)**

***Anjali/nn***