IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. V)
IA No. 2153/2020
IN
COMPANY PETITION NO. 2414/ND/2021

UNDER
SECTION 66(1) OF THE COMPANIES ACT, 2013
AND RULE 2(1) NCLT RULES 2016

IN THE MATTER OF:

Aargus Global Logistics Pvt. Ltd.
Through its Authorized Representative
Having its registered office at:
Aargus Chambers,
150, Kapashera Village,
New Delhi-110037

...PETITIONER COMPANY

Versus

1. **Mr. Nitin Bharal**
   Ex Director/Promoter
   A-406, Road No. 4, Street No. 8,
   MahipalpurExtn.,
   New Delhi-110037
   Email-ID: nitin@committedcargo.com
   Mobile No.: 9810700004

   ...Corporate Debtor No. 1

2. **Mr. Narendra Bisht**
   Ex Director/Promoter
   A-406, Road No. 4, Street No. 8,
   MahipalpurExtn.,
   New Delhi-110037
   Email-ID: narendra@committedcargo.com

   ...Corporate Debtor No. 2

3. **Mr. Yashpal Arora**
   Ex Director/Promoter
   A-406, Road No. 4, Street No. 8,

MahipalpurExtn.,
New Delhi-110037
Email-ID: yashpal@committedcargo.com
Mobile No.: 9899113453

...Corporate Debtor No. 3

4. **Mr. Rajeev Sharma**
Ex Director/Promoter
A-406, Road No. 4, Street No. 8,
MahipalpurExtn.,
New Delhi-110037
Email-ID: rsharma@gmail.com

...Corporate Debtor No. 4

5. **Mr. Shiv Kumar Chaturvedi**
Ex Director
2201, Gali No. 10,
Kailash Nagar, Gandhi Nagar,
Delhi-110031
Email-ID: shiv@stockflowexpress.com
Mobile No.: 9650060511
9891880300
9990057599

...Corporate Debtor No. 5

6. **Mr. Manish Kumar Gupta**
Advisor to Ex Directors
404, 4th floor, Laxmideep Building,
Laxmi Nagar, District Centre,
Vikas Marg,
New Delhi -110092
Email-id: manishvivek@yahoo.com
Mobile no.: 9810771477

...Corporate Debtor No. 6

7. **Ms. Eva Srivastava**
Company Secretary
404, 4th floor, Laxmideep Building,
Laxmi Nagar, District Centre,
Vikas Marg,
New Delhi -110092
Email id: csevasrivastava@gmail.com

Mobile no.: 8447951203

...Corporate Debtor No. 7

8. **Ms. Simmi Chopra, DHL Express(India) Pvt. Ltd.**
Manager
Email id: simmi.chopra@dhl.com
Mobile no.: 9899119125

...Corporate Debtor No. 8

9. **Mr. Rahul Jasoria, Y K Logistics, Y K International**
Proprietor, (Debtor to Corporate Debtor)
Shop no. 19,20, Block No. 02, Cloth Market,
Sanjay Place, Agra,
Uttar Pradesh-282002
Email id: r.jasoria1971@gmail.com
Mobile no.: 9837105999

...Corporate Debtor No. 9

10. **Mr. RohitJasoria, R J Logistics Service LLP, R J Brothers**
Designated Partner, (Debtor to Corporate Debtor)
24, Gwalior Road Agra Cantt.,
ShahzadiMandi, Agra,
Uttar Pradesh -282001
Email id: jasoriarohit@gmail.com
Mobile No.: 9837783434

...Corporate Debtor No. 10

Order Delivered on:. 21/01/2022

CORAM:

SHRI ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SHRI AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant: Abhishek Anand, Adv. &Tanveer Oberoi, Adv. For Liquidator

For the Respondent: PiyushLakhanpal, Adv. &Anirban Bhattacharya, Adv.

ORDER

AS PER AVINASH K. SRIVASTAVA (MEMBER TECHNICAL)

1. The present Petition has been filed by the applicant under section 66 of the Insolvency and Bankruptcy code, 2016 for seeking directions be issued 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 and refer to the matter to IBBI in view of the provisions under section 236 of the Insolvency and Bankruptcy code, 2016.

2. Brief facts of the case are as follows:

i. The applicant was appointed as as Interim Resolution Professional on 26.11.2019 in (IB)-2414/ND/2019 dated, and which was communicated to him on 28.11.2019.

ii. The Corporate Debtor is in the courier business and was earlier known as Committed Worldwide Express Pvt Ltd. The corporate debtor changed their name of Stockflow Express Pvt Ltd on 26-07-2019.

iii. Prior to Dec 2018, there were five directors in the company viz,

1. Mr Nitin Bharal
2. Mr Narendra Bisht
3. Mr Rajeev Sharma
4. Mr Yashpal Arora
5. Mr Sujeet Kumar Chaudhary

iv. That the persons mentioned at Sl no 1 to 4 were also the promoters and collectively 100% share-holders in Stockflow Express Pvt Ltd. On 27-12-2018, Mr Shiv Kumar Chaturvedi was appointed as a director in company. On 31.12.2018, persons at sl no. 1 to 4 above resigned as directors. In the month of August 2019, Mr. Sujeet Chaudhary passed away thus leaving only one director Mr. Shiv Kumar Chaturvedi in the company.

v. The Corporate Debtor doesn't have any financial creditor, who is not a related party. The COC thus has been constituted under Regulation 16 of the IBBI(CIRP) Regulations 2016.

vi. In the first COC meeting held on 26-12-2019, the COC did not ratify the appointment of the IRP as RP in the matter. However, the COC did not propose any replacement of RP and he continued to work as IRP and take all necessary steps as prescribed under the IBC 2016 and CIRP Regulations 2016.

vii. The Second COC meeting was held on 07-02-2020 and business was conducted to inform the COC members on the steps being taken by the IRP in the process and for ratification of expenses and fees of the professionals appointed by the IRP. The IRP also presented agenda for voting on fixing the criteria for identifying the prospective Resolution Applicant. The COC after deliberation decided for liquidation of the corporate debtor. The members voted for liquidation of the corporate debtor with 100% voting share. Accordingly, an application being CA — 1423/ C-V/ ND/ 2020 is filed and same is pending for consideration.

viii. The third COC meeting was held on 18-03-2020, where agenda matters as listed in the notice to the meeting were discussed and voted upon by the members.

ix. The ex-directors/ promoters/ director of the corporate debtor have not been co-operating with the IRP in the matter. They have not been sharing important documents and information. This is adversely affecting the work of the IRP. An application has been filed by the IRP under Section 19(2) against the ex-directors/ promoters/ director and their associates being CA-1734/C-V/ ND/ 2020 and same is pending for consideration.

x. That this current report is being filed by the IRP under Regulation 35 A (3) of the IBBI (CIRP) Regulations 2016. The IRP has appointed a transaction auditor in the matter to audit

various preferential and other irregular transactions by the corporate debtor. However, the ex-directors/ director have not been providing co-operation to complete the transaction audit. The transaction auditor has not been able to submit his report due to non-sharing of documents and information by the ex-directors/ promoters. Therefore, no supporting report from the transaction auditor has been annexed. This report has been prepared on the basis of the IRP's own analysis of the data and information available. Due to non-co-operation from the ex-directors/ director, the IRP has been able to list only a limited number of transactions under specific sections of the IBC 2016.

xi. That after the commencement of the CIRP, the applicant met Mr Nitin Bharal (ex-director/ promoter) to understand about the corporate debtor. Mr Shiv Chaturvedi, though a director, claims to not have much information of business with him. Sometime later IRP met Mr Narendra Bisht (ex-director/ promoter) to seek help for appointment of second director as certain MCA compliance were pending, which needed to be completed. Mr Bisht informed that the promoters have sold their shareholding and they are no more the shareholders, but this fact was not disclosed by Mr Nitin Bharal earlier. Mr Bisht also informed about Mr Manish Kumar Gupta, who helped complete the share sale deal but Mr Manish Gupta, refused to share any information asking to get the information from Mr Bisht only. The company Secretary Ms Eva Srivastava too has not been sharing information.

xii. That Mr Nitin Bharal after much follow-up shared two names and addresses to whom he claimed to have sold his shares. On checking at those addresses, the same were found to be incorrect. The applicant again asked Mr Bharat, who gave a third name and address but this too proved to be wrong. Subsequently Mr Bharal has been claiming that the share

sale deal was facilitated by Late Mr Sujeet Kumar Chaudhary and the sellers (ex-directors) do not have any information. The applicant asked him to share the bank transaction details vide which the proceeds were collected so that the details of the new shareholders could be found from the bank branches. However, even this information has not been shared after many follow-up.

xiii. That the IRP is of the opinion that the ex-directors assisted by Mr Manish Kumar Gupta and Ms Eva Srivastava sold their shareholding to defraud the creditors. The share sale details and the correct address of the new share- holders are not being shared with the IRP since the respondents are anxious to hide the details. The IRP is of the opinion that the share sale deal was not above board and was done with objectives to defraud the creditors. This is also supported by the fact that all the four promoters/ ex directors resigned en-masse on 31-12-2018 and had appointed Mr Shiv Kumar Chaturvedi as a director only three days ago that is on 28-12-2018. The IRP has been interacting with Shiv Kumar Chaturvedi and has been told by Mr Chaturvedi that he was appointed as a director for the name sake only and has not been participating in any board meeting, has not been signing any documents and has not been making any bank transactions even after the demise of Mr Sujit Kumar Chaudhary, when Mr Chaturvedi was the only director on the board. On speaking with Mr Nitin Bharal as to why the second director was not appointed when Mr Sujit Chaudhary had passed away. The vacancy has also resulted into non-compliances as to filing of financials with the ROC. Mr Nitin Bharal replied that he and other promoters were no more directors or shareholders and hence it was not their responsibility to appoint the replacement director. However, when the IRP asked him with what authority, the four ex-directors were still signing bank

cheques till the commencement of the CIRP, and why they were not giving information about the share sale transactions, there has not been any response from the four ex-directors.

xiv. There has been another share sales transaction where the four promoters sold their 100% share-holding to a related concern Committed Cargo Care Ltd on 20-10-2017. The four promoters are also the promoter / directors of Committed Care Cargo Ltd.

xv. That on 31-03-2018, about five months later, Committed Cargo Care Ltd sold a part of its share-holding in the corporate debtor, Stockflow Express Pvt Ltd, back to these four promoter directors. That on query, the four promoters/ ex directors of the corporate debtor failed to explain the objective of making these round-about share sale transaction between companies where they are common promoters/ directors, which shows that the share-sale transactions has been carried on to defraud the creditors. Also, the ex-directors were in a hurry to get rid of their responsibilities (while still keen on enjoying status as signing authority in the banks) as directors and made inefficient arrangements by appointing another director with far lesser capabilities to replace the four ex-directors. Moreover, the ex-directors did not surrender their authorization as signing authority in banking transactions even after selling off their share-holding and kept operating the bank accounts of the corporate debtor as if they were still the directors/ authorized signatories. While the ex-directors were enjoying the full authority of directorship in the corporate debtor even after they had resigned and sold their share-holding, they were not concerned about necessary compliances as to filing statutory returns, appointment of director to fill vacancy and even responding to the notices from the applicant in this CIRP case resulting into the case being decided ex-parte against the corporate debtor.

xvi. The balance sheet of the corporate debtor as at 31-03-2017 says that the receivables which were more than 6 months old total of **Rs. 2,53,62,176/-. The bad debts write-off during the year 2017-18 was of Rs. 6,36,143/-. However, as at 31-03-2018, the receivables which were more than 6 months old was at zero levels. However, the bad debts written off were at Rs. 1,25,37,262/-.** The summary is as under:

Date/ receivable category	31.03.2019	31.03.2018	31.03.2017	31.03.2016
Less than 6 months		47749407	12816088	
More than 6 months			25632177	
Total receivables	24470625	47749407	38448265	3457837
Bad debts write-off	12537262	636143	194857	

The corporate debtor was in a hurry to write-off receivables which are not yet into a difficult category of more than 6 months ageing. This indicates that the corporate debtor has written-off these debts to defraud the creditors. **The respondents Mr. Nitin Bharal, Mr. Narendra Bisht, Mr. Rajeev Sharma and Mr. Yashpal Arora were promoter/directors at the time these amounts were written off.**

xvii. The Corporate Debtor Stockflow Express Pvt Lt (earlier called Committed Worldwide Express Pvt Ltd) was in the courier business. The Corporate debtor has a related concern by the name Committed Cargo Care Pvt Ltd, which is into cargo

business. Before the commencement of CIRP, both these entities operated in separate business lines which did not overlap. However, after the CIRP commencement, Committed Cargo Care Pvt Ltd has started operating in the courier business as well. Both these companies have common promoters. The COC members advised the IRP that since the COC members are operating in the same market, they have come to know that the promoters have started doing the courier business in the related entity and this would impact the receivable prospects of the corporate debtor. On query on this issue, one of the ex-director/promoter, Mr Nitin Bharal informed that it is the right of related entity to pursue any business mentioned in the articles of the company. The CoC members informed the IRP that DHL could be one common customer and they could provide information if the related entity has commenced courier business. The IRP had written to the concerned person at DHL, Ms Simi Chopra. However, Ms Chopra only replied on a telephonic call that she has sent the enquiry to DHL's legal department. However, she has not replied back since then.

xviii. The IRP is of the view that the respondent ex-directors/ promoters of the corporate debtor have started this courier business through the related entity Committed Cargo Care Pvt Ltd to influence the debtors of the corporate debtor and misuse the amount receivables for the benefit of the related entity. This would severally affect the interests of the creditors of the corporate debtor. The quantum of this impact could not be assessed. However, this action could impact the entire debt receivables of the corporate debtor **which stand at Rs 3,80,22,551.68/- including the debts written off.**

xix. The IRP has been following up with the debtors of the corporate debtor for recovery of dues to ensure maximization of assets. However, a number of debtors are claiming to have

paid in cash, or dues not been there. The respondents appear to have colluded with these debtors to cause loss to the corporate debtor.

xx. There are debtors Y K Logistics and Y K International who owe Rs. 20,12,383/- and Rs, 22,20,651/- as per the books of the corporate debtor. The IRP approached this debtors for recovery of the due amounts. The debtors are a proprietary firm with Mr Rahul Jasoria as the proprietor. Mr Jasoria has submitted a reply to the IRP with copy of a No Objection Certificate (NOC), which says that the corporate debtor has received Rs. 3 lakhs as cash as full and final payment. Mr Jasoria claims that the signatures on the NOC are by Mr Sujeet Kumar Chaudhary. The IRP checked with Mr Shiv Kumar Chaturvedi, current director. He claims that the signatures are forged. Mr Jasoria also claims that the respondent ex-directors/promoters are well aware of this fact that a full and final settlement was done.

xxi. There is another debtor by the name R J Logistics Services LLP with Mr Rohit Jasoria as the designated partner. This debtor owes Rs 10,71,250/- to the corporate debtor. However, the debt was written off by the corporate debtor as mentioned above. Another debtor by the name R J Brothers with Mr RohitJasoria owes Rs. 13,06,702/- to the corporate debtor.

xxii. That the IRP is of the view that the ex-directors/ promoters have received cash from the debtors, issued large amounts of credit notes, written off debts to cause harm to the interests of the creditors. The attached ledger statement for R J Logistics show 8 credit notes worth Rs 70,000/- each issued together. This could be a cash transaction as the credit notes are not usually issued on account for a round off figure.

xxiii. It is submitted that the above report has been compiled by the IRP with his best efforts in terms of forming an opinion and determining if the corporate debtor has been subjected to any

transactions **covered under Sections 43,45,50 or 66 of the IBC 2016.** The ex-directors/ promoters are not co-operating with the IRP to provide required information and documents.

3. The IRP in his affidavit dated 21.10.2020 submitted that:

i. The Hon'ble Bench V, NCLT New Delhi had, vide its order dated 12-10-2020, directed the IRP to file a supplementary affidavit to submit supporting documents for banking transactions mentioned on page numbers 52 and 53 of the IA/2153/2020.

ii. That on 12-10-2020, the IRP wrote to the three Banks (Yes Bank, ICICI Bank and Axis Bank) with the respective list of specific bank transactions from the list given on page 52 and 53 of the IA/2153/2020. These transactions included cheques as well as online transfer debit transactions. The banks were asked to provide the names of the cheque signatories, authorised signatories during the period these transactions happened.

iii. Two of these Banks, Yes Bank and ICICI Bank have replied to the IRP with details. The number of transactions pertaining to these two banks is 78 out of a total of 80 transactions. The Axis Bank had to reply for two number transactions. However, the Axis bank has not replied to the IRP's queries.

iv. The Respondents No 1 to No 4 in their reply dated 29-09-2020 have mentioned that after their resignation as directors of the Corporate Debtor on 31-12-2018, the entire management and control of the Corporate Debtor was under the control of Mr.Sujeet Kumar Chaudhary (now deceased) and Mr. Shiv Kumar Chaturvedi. The Respondents No 1 to No 4 have also denied issuing any cheques (except post-dated cheques) after the management and control was given up by them with effect from 31-12-2019 as mentioned by them.

v. The Yes Bank has shared copies of **Cheques which were issued between 08-01-2019 and 29-06-2019, much later than the date of 31-12-2018,** when the Respondents claim they did not have any control of the corporate debtor and vehemently denying that they issued any cheque after 31-12-2018. All these cheques have been signed by RI — Mr Nitin Bharal, R2 — Mr Narendra Bisht, R4 — Mr Rajeev Sharma. Each of these cheques have been signed by two of the above respondents. These cheques have all been debited from the accounts of the Corporate Debtor. **To confirm the signatures of the respondents R1 to R4, the IRP has matched these with the letters of resignation of the respondents R1-R4 which have been sourced from the Ministry of Corporate Affairs site.**

vi. The IRP has asked the Yes Bank to share details of the online transactions during this period. This information is awaited.

vii. The IRP sought information from ICICI bank as well. The Bank has in their reply dated 19-10-2020, informed that during this time (02-04-2019 till 19-10-2019) which pertain to the period of identified cheque transactions, **the authorised signatories were Mr Nitin Bharal (R1), Mr Narendra Singh Bisht(R2) and Mr Rajeev Sharma (R4).**

viii. Moreover, Mr Nitin Bharal(R1) was added as an authorised signatory on 23-01-2019 in the ICICI Bank account. This is later than 31-12-2018 when the Respondents 1-4 are claiming to have given up all control of the Corporate Debtor. The Respondent getting himself added as an authorised signatory at a later date does not support their reply to have given up control of the Corporate Debtor on 31-12-2018.

ix. The ICICI Bank has further advised that for the online debit transactions during this period, the authorisation was provided to Mr **Narendra Bisht (R2), Mr Yashpal Arora (R3) and Mr Rajeev Sharma (R4).**

x. The directors named by the respondents R1-R4, in their reply, Mr Sujeet Kumar Chaudhary (now deceased on 12-08-2019) and Mr Shiv Kumar Chaturvedi, who are advised by the respondents R1-R4 to be holding control of the corporate debtor at that time, **neither signed any of these cheques nor have been named by the bank as the cheque signing authorities or the online transactions authorising persons.**

xi. The respondents RI to R4 have denied that they were operating the bank accounts of the Corporate Debtor after resigning as directors on 31-12-2018. The above information received from the Banks supports the IRP's observations in the application IA/2153/2020, that the Respondents 1-4 were indeed operating the bank accounts of the Corporate Debtor.

4. The Respondents No. 1 to 4 in their reply dated 29.09.2020 denied the contentions made in the application and contended that:

i. The respondent referred the judgment of the Hon'ble Supreme Court in the matter of "*BishundeoNarain and another vs. Seogeni Rai and Jagernath*" 1951 SCR 548: AIR 1951 SC 280.

ii. That none of the transactions in question as in the application under reply fall within the category of fraudulent transaction.

iii. That the sale of shareholding does not fall within the scope of section 66 of IBC as it does not relate to any business of the corporate debtor which has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose.

iv. That the answering respondents are admittedly the ex-directors of the corporate debtor, who have resigned from the company on 31.12.2018. After 31.12.2018, the entire management and control of the Corporate Debtor was under the control of (1) Mr. Sujeet Kumar Chaudhary (now

deceased) and (2) Mr. Shiv Chaturvedi. It is also relevant to mention here that at the relevant time, as the answering respondents was not able to devote much time in the business of Corporate Debtor because of other commitments, accordingly, in the month of Dec, 2018, the answering respondents no. 1 to 4 decided to close down the business of the corporate debtor and also decided to close the corporate debtor. But Mr. Sujeet Kumar Chaudhary (the fifth director at relevant time) was of the opinion that he wanted to run the business of the corporate debtor and accordingly, it was decided between answering respondent no. 1 to 4 and Mr. Sujeet Kumar Chaudhary would take over the company/ corporate debtor and answering respondents no. 1 to 4 would resign and transfer the company to Mr. Sujeet Kumar Chaudhary and his nominees/ partners/ associates. Thus on 27.12.2018, on advice of Mr. Sujeet Kumar Chaudhary, Mr. Shiv Chaturvedi (respondent no. 5) was appointed as director of the company/ corporate debtor. Thereafter, on 31.03.2019, the answering respondents have sold their shareholding to the associates/nominees/representatives/person brought in by Mr. Sujeet Kumar Chaudhary i.e. Mr. Ripu Sadan Tiwari and Mr. Abhay Kumar Mishra.

v. That the IRP has not brought on record any document to substantiate its contention that the answering respondents have been issuing cheques of the Corporate Debtor, after the company was taken over by Mr. Sujeet Kumar Chaudhary and his associates /nominees.

vi. That the another transaction of transfer of the shareholding, as presented by the IRP in its application is irrelevant for the purpose of the CIRP, as the same was between the transferors and transferees, in relation to their individual asset not the asset of the CD.

vii. That the bad debts amounts to debt which bad in law or cannot be collected in future. The IRP have not placed on record any documents to substantiate its contention regarding write-off of bad debts.

viii. That there is no restriction over the answering respondent from doing any business. Starting of identical business does not come under any fraudulent transaction u/s 66 of the IBC.

ix. That the answering respondents had surrendered their authorization as signing authority in banking transactions even after selling their shareholding and not kept operating the bank accounts of the CD.

x. That the answering respondents are not aware or privity of transaction of Rs.3 Lac cash payment by Mr. Jasoria, as the same was after taken over of Management from them, accordingly, cannot comment on the same.

xi. That there is no evidence to the fact that the Respondents No. 1-4 while being employed as the directors of the Corporate Debtor did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

5. The Respondent No. 5 in his reply dated 29.09.2020 denied the contentions made in the application and contended that:

i. That the answering respondent joined the company as nominee/employee of Mr. Sujeet Kumar Chaudhary on 27.12.2018 and Mr. Sujeet Kumar Chaudhary was the person in charge of the management and control of the company. Further, the answering respondent is not the shareholder of the company and was only an employee Director of the company. Further, the entire documents and record of the company was also was with Mr. Surjeet Chaudhary and no document or the record is kept with the answering respondent. Unfortunately, Mr. Sujeet Kumar Chaudhary died in the Month of August 2019, and

answering donot have any access of the documents / record of the company/ corporate debtor.

ii. Respondent no. 5 has no say in the transfer of the shareholding.

iii. The write off was done by the company for the debts, which were become bad and there was no chance of recovery. Further, the write off of bad debts would benefit the company as the same could be considered as expenses, accordingly, IT Refund can be claimed on the same. Further, there is no examination of the transaction by the IRP and the IRP is making vague allegations against the respondent no. 5.

6. The Respondent No. 8 in his reply dated 14.07.2020 denied the contentions made in the application and contended that:

i. The document annexed @page 48 of the application under reply do not reflect the complete picture since DHL, though not legally bound to respond to any query without jurisdiction, responded vide email dated 17.05.2020.

ii. A bare reading of the email dated 14.02.2020 issued by the IRP reveals that the said email was issued for collecting information for the purpose of analysing certain 'transactions' and that this was required under Regulation 4(t) of the 1881 Regulations. 2016.

iii. Vide email dated 14.02.2020, the IRP sought information regarding Committed Cargo Cale Ltd., an associate company of the Corporate Debtor since no transaction existed between DHL and the Corporate Debtor.

iv. The answering respondent also referred the definition of "transaction" Section 3(33) of IBC and Regulation 4(f) of IBBI Regulations, 2016.

v. On a combined reading of Section 3(33) of IBC and Regulation 4(f) of IBBI Regulations, 2016, the IRP can look into the transactions qua the Corporate debtor alone and not

its associated company and much less seek information regarding the same and therefore the IRP's query to the answering Respondent and/or DHL was completely without jurisdiction.

vi. Further, the reliefs as sought in the application under reply is no maintainable as against the answering Respondent, since she is neither a partner nor a director of the Corporate Debtor especially when admittedly, there exists no transaction between DHL and the Corporate Debtor.

7. The Respondent No. 9 in his reply dated 09.10.2020 denied the contentions made in the application and contended that:

i. the answering respondent is proprietorship firm running the courier services at Agra, UP. The answering respondent firm had an oral and mutual understanding with the firm namely "Committed Worldwide Express Pvt. Ltd." wherein the international couriers received by the answering Respondents used to be sent to the "Committed Worldwide Express Pvt. Ltd.," situated at New Delhi and the profit arising out of the same used to be shared by both the companies as per agreed terms and conditions.

ii. the answering Respondents were in commercial business transaction with the "Committed Worldwide Express Pvt. Ltd. The answering Respondents and the "Committed Worldwide Express Pvt. Ltd.," from time to time used to issue credit note and debit note to each other and the difference of amount used to be cleared by both the companies by making the payment in account Transfer or in cash.

iii. the copies of the aforesaid debit notes have already been sent to the "Committed Worldwide Express Pvt. Ltd.," through emails as mentioned above, however the Directors/ Personnel of "Committed Worldwide Express Pvt. Ltd.,"

intentionally and willingly did not issue credit notes in favour of the answering Respondents.

iv. the answering Respondents after raising several bill, debit notes, oral and written reminders, settled its accounts with the "Committed Worldwide Express Pvt. Ltd.,", wherein the proprietor Mr. Rahul Jasoria paid a sum of Rs.3 lakhs for Y.K. International and Rs.3 lakhs for Y.K. Logistics as full and final settlement with Mr. Sujeet Kumar Chaudhary, Director of "Committed Worldwide Express Pvt. Ltd.,".

v. It is submitted that Mr. Sujeet Kumar Chaudhary, being Director of "Committed Worldwide Express Pvt. Ltd.," issued signed and stamped "No Objection Certificate" dated 12.4.2019 in favour of answering Respondent on the letter head of M/s. Committed Worldwide Express Pvt. Ltd. It is further submitted that after issuance of the No objection certificate as full and final settlement, nothing remained due and payable to the "Committed Worldwide Express Pvt. Ltd." and entire account got settled between the parties.

vi. after full and final settlement of account as mentioned above, the answering respondent have never entered into any commercial business transaction with the "Committed Worldwide Express Pvt. Ltd.", or "M/s. Stockflow Express Pvt. Ltd." Even the answering Respondent has never done any business transaction with M/s. Stockflow Express Pvt. Ltd., and it appears that the Directors of M/s. "Committed Worldwide Express Pvt. Ltd.," after change of Management, changed its name and started refuting the agreements and documents issued by the then Directors, which is totally illegal and untenable in the eyes of law.

vii. the answering Respondent has never done or entered into any business or commercial transaction with M/s. Stockflow Express Pvt. Ltd., at any point of time after its constitution and particularly after 12.4.2019, much prior to the initiation

of present proceedings by M/s. Argus Global Logistic Pvt. Ltd. against M/s. Stockflow Express Pvt.Ltd.

viii. arraying the answering respondent as party respondent on the basis of alleged statement of current director of M/s. Stockflow Express Pvt. Ltd., to the effect that the No Objection Certifiacte dated 12.04.2019 is forged one and is totally illegal and untenable.

ix. the answering respondent also referred the definition of "transaction" Section 3(33) of IBC and Regulation 4(f) of IBBI Regulations, 2016. On a combined reading of Section 3(33) of IBC and Regulation 4(f) of IBBI Regulations, 2016, the IRP can look into the transactions qua the Corporate debtor alone and not its associated company and much less seek information regarding the same and therefore the IRP's query to the answering Respondent and/or DHL was completely without jurisdiction.

x. The application is not maintainable in view of bar of pecuniary jurisdiction of this Hon'ble Tribunal being a sum of Rs. 1 crore.

8. The Respondent No. 10 in his reply dated 10.12.2020 denied the contentions made in the application and contended that:

i. the answering Respondent was the Proprietor of the firm namely "R.J. Brothers", however the said firm has been abolished in the year 2017 and a new partnership firm has been constituted in the name and style of "R.J. Logistics Services LLP", wherein the answering Respondent Mr. Rohit Jasoria is a partner.

ii. the answering Respondent firms had an oral and mutual understanding with the firm namely "Committed Worldwide Express Pvt. Ltd." wherein the international couriers received by the answering Respondents used to be sent to the "Committed Worldwide Express Pvt. Ltd.," situated at New

Delhi and similarly "Committed Worldwide Express Pvt. Ltd. used to give business to the answering Respondent and the profit arising out of the same used to be shared by both the companies as per agreed terms and conditions.

iii. The answering Respondents were in commercial business transaction with the "Committed Worldwide Express Pvt. Ltd. The answering Respondents and the "Committed Worldwide Express Pvt. Ltd." from time to time used to issue raise bills to each other and the difference of amount used to be cleared by both the companies by making the payment in account Transfer or in cash.

iv. the last transaction amongst M/s. Committed Worldwide Express Pvt. Ltd. and the answering Respondent was taken place in December, 2018 and thereafter no transaction was taken place between them. The answering Respondent on 23.01.2019 has sent an email to the personnel of M/s. Committed Worldwide Express Pvt. Ltd. while enclosing the account summary and from mere perusal of the account summary it would be clear that nothing was, due and payable by the answering Respondent to M/s. Committed Worldwide Express Pvt. Ltd., rather M/s. Committed Worldwide Express Pvt. Ltd. was liable to pay a sum ofRs.6,59,800.24/- to the answering Respondent. After receipt of the aforesaid account summary, no response has been made from M/s. Committed Worldwide Express Pvt. Ltd.

v. the answering Respondents have never done any business transaction with M/s. Stockflow Express Pvt. Ltd., and it appears that the Directors of M/s. Committed Worldwide Express Pvt. Ltd., after change of Management, changed its name and started making baseless allegations for avoiding their liability and has not even update their ledgers, which is totally illegal and untenable in the eyes of law.

vi. the answering Respondent herein has sent an email dated 21.3.2020 to Mr. Randhir Singh, representative of M/s. Committed Worldwide Express Pvt. Ltd. and demanded the outstanding amount of Rs.6,59,800.24/- which was due and payable by them to the answering Respondent as its ledger.

vii. the answering Respondent has received email dated 27.3.2020 from the Applicant IRP showing the alleged debt against the answering Respondent. The answering Respondent herein has replied the said email by sending an email on the same day and on 28.3.2020 whereby it has been made clear that nothing was/is due and payable by the answering Respondent to M/s. Committed Worldwide Express Pvt. Ltd. And the account details have already been sent to M/s. Committed Worldwide Express Pvt. Ltd.

viii. the answering Respondents have never done or entered into any business or commercial transaction with M/s. Stockflow Express Pvt. Ltd., at any point of time, after its constitution and particularly after December, 2019, much prior to the initiation of present proceedings by M/s. Argus Global Logistic Pvt. Ltd. against M/s. Stockflow Express Pvt.

ix. the answering respondent also referred to the definition of "transaction" Section 3(33) of IBC and Regulation 4(f) of IBBI Regulations, 2016, which is also discussed earlier.

9. The Applicant in its written submissions dated 24.10.2020 submitted that:

i. <u>In respect of Respondents R1-R4</u>

In their replies dated 29-09-2020, the respondents have mentioned that the transactions highlighted by the IRP have not been substantiated to establish fraud and fraudulent transactions. The following written submissions by the IRP are being made in the matter.

Sale of Shareholding by the Respondents R1 to R4 - The respondents have been hiding the information from the IRP as to whom they have sold the shareholding. In their reply to the main application, the respondents have tried to portray as if the IRP is questioning the sale of shareholding and that selling their shareholding is a right of the respondents and they are free to sell their shareholding to anyone whom they want to. The fact is that the IRP has only been seeking information about the shareholding and from the respondents to meet the new shareholders to seek their help in ensuring statutory compliances by filling the vacancy of the director, who died in August 2019, about three months before the commencement of CIRP. It may be noted that due to unknown reasons, the respondents have been misleading the IRP with the names of the shareholders and their addresses. It is unbelievable that, the respondents have received the share sale proceeds in their banks and still do not know the identity of these buyers. The IRP is of a firm belief that there is some important information which the respondents are consciously trying to hide. In their attempt to hide information, they have been providing wrong addresses of the purchasers to the IRP and to the extent that at one point, they informed that there were two purchasers and then some time later added one more purchaser to the list. (please refer to Page 23-26, 28,32 of the application)

Further, in their reply dated 29-09-2020, the respondents claim to have filed supporting showing transfer of money from the two purchasers of shares. The supporting details submitted by the respondents are summarized as under:

S. No.	Name of Respondent	Name of Purchaser	Paid up capital share as on 31.03.2018 as per information available with IRP (Rs.)	Cheque details	Cheque Amount (Rs.)	Credit details
1.	Nitin Bharal	Ripu Sadan Tiwari	250000	No. 000009 dated 15.03.2019, IDFC Bank	50000	Deposit slip dated 03.05.2019
2.	Narendra Singh Bisht	Abhay Kumar Mishra	250000	No. 000035 dated 15.03.2019	50000	Bank statement credited on 31.05.2019
3.	Rajeev Sharma	RipuSadan Tiwari	250000	No. 000008 dated 15.03.2019	50000	Deposit slip dated 31.05.2019, Bank statement credited on 01.06.2019
4.	Yashpal Arora	Abhay Kumar Mishra	250000	No. 000034 dated 30.03.2019	50000	No information shared

Still the details of shareholding transfer have not been disclosed fully in terms of number of share transferred. The correct contact details of the new shareholders have still not been shared.

It is pertinent to mention that the paid-up capital of the Corporate Debtor is Rs 10,00,000/-. As informed by the respondents, the total shareholding has been sold for Rs 200000/ at a steep discount.

The sale of the share ownership at a substantially low amount of Rs 200000/, as informed by the respondents now, only raises further questions on these share sale transactions. The respondents R 1- R4 may cite their rights

to sell their shareholding as they please, however the context is suspicious. Their resigning en-masse as directors when the company needed them the most, as at that time, one of the directors was terminally ill and another was not capable as director as claimed by himself (Respondent No 5), shows complete lack of due diligence for the benefit of the corporate debtor on part of Respondents R 1 to R4 resulting into insolvency of the corporate debtor and loss to the creditors. Further, the actions of the respondents in hiding information from the IRP and even furnishing wrong details to mislead indicates towards actions to cover-up wrong doings.

ii. **Bad debt write-offs** - The understanding of bad debts and its treatment in context of a business scenario has been interpreted by the respondents as it conveniences them. It is submitted that the level of bad debts written off was during year 2017-18 was Rs. 6.36 lacs corresponding to closing receivables of Rs. 3.84 crores. However, in the next year, which is a few months prior to CIRP commencement, the bad debts write-off jumped up 1800% to Rs 1.25 crores when the receivables had increased by 24% only.

The above high jump in the bad debts write-off has been done closer to the time period when CIRP commenced and no reasons are given. At the same time, the respondents have not been co-operating with the IRP for providing information and documents. They have been putting all onus on the deceased director and the current director (Respondent R5) who by his own admission was working in the capacity of a mere employee (Please refer to the reply filed by R5).

The write-off of debts has been done with an intent to defraud creditors of the corporate debtor as defined in Section 66(1) of the IBC 2016.

iii. **Starting of identical business by Committed Cargo Care Pvt Ltd** - This is an associated concern of the Corporate Debtor and the respondents are directors/ promoters in this concern. The IRP has mentioned in his application that the respondents have started identical line of business with Respondent No 8 here. The Respondents R1 to R4 in their replies have mentioned that there is no restriction upon them to do an identical line of business and that indulging in such activities does not come under Fraudulent activities under IBC 2016.

It may be noted that there is no denial on part of the respondents that they are indulging in an identical line of business. The IRP has mentioned in his application that this could have been done with ulterior motives and would cause irreparable damage to the corporate debtor. There is a possibility that the respondents would influence the debtors of the corporate debtor and the debt recovery would get severely impacted thus causing damage to the prospects of the creditors of the corporate debtor and to the corporate insolvency resolution process/liquidation in toto.

This activity of starting an identical business line and that too with the same service partners (respondent No 8) of the corporate debtor, along-with inordinate bad debt write-offs has resulted into severe damage to the recovery prospects of the creditors of the corporate debtor and has been carried out consciously by the respondents to benefit themselves at the expense of the creditors of the corporate debtor. This falls under the provisions of the Section 66(1) of the IBC 2016.

iv. **Cash Transactions and receiving cash from debtors** - The IRP has been informed verbally by Respondent No 9, who was a debtor to the corporate debtor. When IRP has followed

up with the debtors, several them have mentioned verbally that cash payments were done to the respondents.

The IRP estimates that due to the above actions of the respondents, the interests of the creditors have been affected severely.

v. **Respondent No 5** - The respondent No 5 mentions that, he was made to join the corporate debtor as nominee employee of the deceased director Mr. Sujeet Kumar Chaudhary and that the deceased director was the person in charge. The Respondent 5 has put all onus on the deceased director, like as done by Respondent No 1 to Respondent No 4. However, it may be noted that while Respondent 5 claims all innocence and ignorance, he is finding it suitable to justify the write-off of debts and sale of share-holding by Respondent 1 to Respondent 4 as non-fraudulent in nature.

The Respondent No 5 had joined as a director of the corporate debtor. He cannot claim ignorance from expected due diligence and duties of a director. The Respondent No 5 is as responsible to the loss of creditors of corporate debtor as the other respondents are in this case.

vi. **Respondent No 6** - The respondent number 6 has not filed any reply in the matter. The Applicant IRP has mentioned in his application that the Respondent No 6 had facilitated the sale of shareholding of the Respondent No 1 to Respondent no 4. The involvement of the respondent no 6 was advised by Respondent no 2 himself when the IRP met him to seek details of the transactions. The IRP has written a few emails to the respondent no 6 and also spoke to him. However, the respondent no 6 has refused to share any information and asked to get this information from respondent no 1 to respondent no 4 only.

vii. **Respondent No.7**-The Respondent was a company secretary with the corporate debtor. The IRP sought

necessary information from her as well and wrote to her a few times. However, she was not co-operating. Only after the application under Section 66 was filed and a copy served on her, she replied to the IRP mentioning that she did not have the information and that she was introduced to the corporate debtor by Respondent No.6 and that Respondent No.6 had advised her that the information sought by the IRP would be provided by the corporate debtor and its directors and that it would be taken care of. It may be noted that the address of both the Respondent No.6 and Respondent No.7 are same.

viii. **Respondent No 8**- The Respondent number 8 is a large corporation and was a service supplier to the corporate debtor. In the memo of parties, the IRP has mentioned Ms. Simi Chopra as representing the organization DHL Express (India) Pvt Ltd. The IRP has mentioned in his application that Respondent No 8 has started an identical line of business with the associated concern of the corporate debtor. Before filing the application, the IRP called the concerned officer of the respondent DHL Express (India) Pvt Ltd, Ms. Simi Chopra to share information on this aspect of identical business with associate concern of the corporate debtor. Ms. Chopra mentioned that she has asked her legal department. There was no response to further reminders. After this application was filed by the IRP before Hon'ble NCLT and a copy was served to Ms. Chopra, she replied. She has replied that DHL 'recovered' entire outstanding from the corporate debtor and that business has been under a new name 'Committed Cargo Care Ltd with effect from 04-02-2020. She further advised the IRP to speak with Mr Prashant D Pai, Manager Sales Channel Business based at Mumbai. When the IRP called Mr Pai and asked his queries, Mr Pai informed that DHL had 'forfeited' bank guarantees of

the corporate debtor to recover their outstanding. Mr Pai also informed that there was a request from the respondent number 1 to respondent no 4 (ex-directors of corporate debtor) to restart business with their other entity. The copies of these communications with Ms. Simi Chopra and Mr Prashant Pai are attached in their own reply.

It is further submitted that the Respondent no 1 to 4 and Respondent no 8 have connived to ensure all dues of the Respondent no 8 were recovered from the corporate debtor since the Respondent 1 to 4 were in control of the business of the corporate debtor even after resigning as directors. They allowed forfeiture of bank guarantees of the corporate debtor by Respondent No. 8 while other creditors were still waiting for their due's clearance. Subsequently, respondent 1 to 4 approached respondent 8 for restarting the business with another entity of theirs. This clearly indicates towards fraudulent activities with the connivance of R 1 to R4 with R8.

It is further submitted that the respondent R8 in their reply have tried to confuse by citing definition of word 'transactions'. The Respondent No. 8 being a contractual party of the corporate debtor, the IRP has an authority under regulation 4(1) of the IBBI (CIRP) Regulations 2016 to seek access to the books of Respondent 8 vis a vis the corporate debtor business. Further, the IRP had informed Ms. Simi Chopra in his very first email seeking information that the corporate debtor Stock-flow Express Pvt Ltd was earlier known as Committed Worldwide Express Pvt Ltd. Therefore, there was no confusion created by the IRP as alleged by the Respondent 8 in their reply.

The Respondent No. 8 is a multinational organization and claims to work in ethical ways. However, in this case, it has connived with the Respondents no 1 to Respondent no 4 to

fraudulently recover their outstanding in return of future favors being granted to the associated concern of the corporate debtor.

ix. It is submitted on behalf of the Applicant that the bad debts shown at page 14 of the application were written off, which were not in a difficult category and which were less than 6 months old. The receivable to the tune of Rs.1,25,37, 262/- were written off during the F.Y 2018-19, when the company was already facing financial distress. The contention of the Respondents, more specifically R1 to R4 is the write offs were done in order to utilize tax benefits, however, the said respondents may be put to strict proof as to how they have utilized tax benefits. The Respondents i.e. RI to R4 failed to provide any reasoning against such write off upon the query being raised by the Applicant.

x. It is submitted on behalf of the Applicant that despite resigning from the post of director, the ex-directors have signed cheque on behalf of the corporate debtor. The indulgence of this Hon'ble Tribunal is sought towards Affidavit in support of the bank transactions undertaken on behalf of the ex-directors after the date of resignation i.e. 31.12.2018.

xi. It is further stated that against large outstanding amounts from the debtors, there are irregular write offs being made on behalf of the corporate debtor. As per the book of the corporate debtor referred to at page NO 54 of the application, the corporate debtor had around **Rs.20, 12, 383/- (Rupees Twenty Lakh Twelve Thousand Three Hundred and Eighty Three Only) and Rs.22,20,657/- to be recovered from Y.K.Logistics& Y.K International respectively. These are proprietary firms of Mr. Rahul Jasoria.** It is further submitted that the proprietor had submitted an NOC wherein against a total amount of

Rs.42,33,040/-, the corporate debtor has adjusted for just Rs, 5,00,000/-through an NOC dated 12.04.2019. In an even more strange set of events, the sole remaining director has denied the existence of any such NOC.

10. Respondent No. 8 in its written submissions dated 15.10.2020 has stated almost same statement as stated in its reply save and except as follows :

i. The aforesaid averments coupled with the document annexed @ pages 48 of the Application do not reflect the complete picture since DHL, though not legally bound to respond to any query of the IRP without jurisdiction, responded vide email dated 17.05.2020.

ii. Further, from a bare reading of the email dated 14.02.2020 issued by the IRP, it is made clear that the said email was issued for collecting information for the purpose of analysing certain 'transactions' and that this was purportedly required under Regulation 4(f) of the IBBI Regulations, 2016.

iii. Vide email dated 14.02.2020, the IRP sought information regarding Committed Cargo Care Ltd., an associate company of the Corporate Debtor, since no transaction existed between DHL and the Corporate Debtor.

iv. Admittedly, there was no transaction between the Corporate Debtor and Respondent No.8 and for DHL.

v. Admittedly, DHL is not a party to the Application under S.66 of IBC.

vi. There is no allegation and/or evidence against DHL and it cannot be since admittedly, there exists no transaction between the Corporate Debtor and DHL.

vii. The Respondent No. 8 is neither a partner nor a director of the Corporate Debtor nor any person, who is knowingly a party to any fraudulent trading especially when admittedly,

there exists no transaction between DHL and the Corporate Debtor.

11. Respondent No. 9 in its written submissions has stated almost same statement as stated in its reply save and except as follows:

i. The No Objection Certificate was issued on 12.4.2019 by the then Director Mr. Sujeet Kumar Chaudhary, after arriving at a full and final settlement of account, much prior to commencement of the proceedings before this Tribunal. Mere perusal of allegations made in the application against the Respondent No.9, it would be clear that the said allegations does not fall within the scope and ambit of Section 66 of the Code in a manner whatsoever.

ii. It is an admitted position that no transaction ever existed between the Corporate Debtor and the Respondent no.9 and there is no examination and determination of the allegations in terms of section 66 of the Code, 2016. It is submitted that the application filed by the Applicant does not even fulfill the basic ingredient of section 66 of the Code and thus deserves to be dismissed at threshold.

iii. The issuance of No Objection Certificate as full and final settlement cannot be said to be fraudulent in any manner whatsoever, particularly when it has been issued by the duly authorized the then Director of the Company. It is respectfully submitted that the IRP in the entire application has failed to point out that as to how the issuance of NOC dated 12.4.2019 are fraud over the creditors and fraudulent in nature. It is well settled law that one has to establish fraud and referred to judgement of the Hon'ble Supreme Court in "*BishundeoNarain and another vs. Seogeni Rai and Jagernath*" 1951 SCR 548: AIR 1951 SC 280.

iv. That vide email dated 6.01.2020, the IRP illegally sought the information regarding Committed Cargo Care Ltd., since no

transaction existed between the Respondent No.9 and the Corporate Debtor.

12. We have heard the Ld. Counsel appearing for the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the respective parties.

13. Ld. Counsel for the applicant raised all the facts stated in the application and written submissions and further submitted that the respondent Nos. 1 to 4 though tendered their resignation on 31.12.2018 after appointing Mr. Shiv Kumar Chturvedi, the respondent No. 5 as a Director on 28.12.2018 but still they had been operating the bank accounts of the Corporate Debtor. He further submitted that the respondent No. 5 by filing the reply claimed that he was not managing the affairs of the Company rather he was paid employee of the Company. He further submitted that documents shows that the respondent Nos. 1 to 4 have sold their shares to Committed Care Kargo Limited on 20.10.2017 and these four respondents are also the Promoters/Directors of the said Committed Care Kargo Limited. He further submitted that on 31.03.2018, the Committed Care Kargo Limited sold a part of its shareholding to the Corporate Debtor Stockflow Express Private Limited back to these four Corporate Debtors. He further submitted that on query no satisfactory reply was given by the Promoters/Directors, which shows that these transactions were made with intent to fraud the creditors. He further submitted that the bad debt written off at Rs. 1,25,37,262/-, during the year 2017-18, which also shows that the Corporate Debtor has written off these debts to de-fraud the creditors. He further contended that with intent to fraud the creditors even after the resignation these respondents no. 1 to 4 were operating the bank accounts of the Corporate Debtor. It is further contended that there are two debtors Vyke Logistics and Vyke International of Rs. 20,12,383/- and Rs. 22,20,651/- as per the books of Corporate Debtor but no objection was issued as informed by the Corporate Debtor after receiving Rs. 3 lakhs as a cash for full and final settlement. He further contended that similarly another debtor by the name of RJ Logistic Services LLP with Mr. Rohit

Jasoria also owes Rs. 10,71,250/- to the Corporate Debtor but the said debt was also written off.

14. On the other hand, Ld. Counsel for the respondent Nos. 1 to 4 raised all the facts mentioned in their reply and submitted that the applicant has failed to establish that there was any fraudulent transaction. He further contended that transfer of the share is immovable property and transfer of share do not come within the purview of Section 66 of the IBC, 2016. He further submitted that the respondent Nos. 1 to 4 are ex-directors of the Company and they had handed over the management to one Mr. Sujit Kumar Chaudhary and on his advice; on 27.12.2018, Mr. Shiv Chaturvedi respondent No. 5 was appointed as a director. He further contended that after rendering their resignation they had never issued any cheque. He further contended that there is a possibility that an advance or post dated cheques were issued by these respondents, which might have been encashed after their resignation from the Company.

15. The other respondents have filed their reply and also submitted that they are not liable for any fraudulent transaction.

16. Now, before considering their submissions, we would like to refer to Section 66 of the IBC, 2016 and the same is reproduced below:-

Section 66: Fraudulent trading or wrongful trading.

66. *(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.*

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority

may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

(a) before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]

Explanation.—For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

17. Now in terms of provision, we consider the averments made in the application, reply and written submission filed by the respective parties. It is admitted fact that the respondent Nos. 1 to 4 had tendered the resignation on 31.12.2018 and respondent No. 5 alongwith Mr. Sujit Kumar Chaudhary were appointed as directors on 27.12.2018.

18. On perusal of Annexure-A at page 23 of the application, we notice that as on 31.03.2018, the respondent Nos. 1 to 4 were the directors of Committed Care Kargo Limited and there is also shareholder as on 31.03.2019. The scanned copy of the Annexure A is reproduced below:-

Annexure A-1 (23)

COMMITTED CARGO CARE LIMITED

List of Shareholder as on 31/03/2019

LF.No.	Name and Occupation of shareholders	Father's/Husband's Name	Type of Shares	No. of Shares	Amount per Share	Address
1.	Mr. Yash Pal Arora Business	Lt. Shri Tat Arora	Equity	1,651,800	10	RZT Block B-34, Uttam Nagar, New Delhi-110059
2.	Mr. Narendra Singh Bisht Business	Lt. Shri T.S. Bisht	Equity	1,578,600	10	A-1/46, MIG Flats, Sec-3, Rohini, New Delhi-110085
3.	Mr. Rajeev Sharma Business	Shri Devi Prasad Sharma	Equity	1,789,680	10	116-B, AD Block, Pitampura, New Delhi-110034
5.	Mrs. Sonia Bharal Business	Shri Nitin Bharal	Equity	1,854,600	10	85, Manohar Kunj, Gautam Nagar, New Delhi-110049
6.	Mrs. Neeru Bisht Business	Shri Narendra Singh Bisht	Equity	276,000	10	A-1/46, MIG Flats, Sec-3, Rohini, New Delhi-110085
7.	Mrs. Sapna Arora Business	Shri Yashpal Arora	Equity	202,800	10	59/5, 1st Floor, Ashok Nagar, New Delhi-110018
8.	Mrs. Manju Sharma Business	Shri Rajeev Sharma	Equity	64,920	10	116-B, AD Block, Pitampura, New Delhi-110034
10	Mrs. Sunita Bhatia Business	Shri Hari Om Bhatia	Equity	151,200	10	C-11/2 Model Town-III Delhi-110009
			Total	**75,69,600**		

For Committed Cargo Care Limited

Rajeev Sharma
(Managing Director)
DIN-00936817
Address:116-B, AD Block Pitampura Delhi 110034

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COMMITTED WORLDWIDE EXPRESS
PRIVATE LIMITED

List of Shareholder as on 31/03/2018

S. F. No.	Name and Occupation of shareholders	Father's Name	Type of Shares	No. of Shares	Amount per Share	Address
1.	Mr. Narendra Singh Bisht (Business)	Late Shri T.S. Bisht	Equity	15000	10	A-1/46, MIG Flats, Sec-3, Rohini, New Delhi-110085
2.	Mr. Rajeev Sharma (Business)	Shri Devi Prasad Sharma	Equity	15000	10	116-B, AD Block, Pitampura, New Delhi-110034
3	Mr. Nitin Bharal (Business)	Late Shri Dharam Dev Bharal	Equity	15000	10	85, Manohar Kunj, Gautam Nagar, New Delhi-110049
5	Mr. Yash Pal Arora (Business)	Late Shri Y.R Arora	Equity	15000	10	5/5, First Floor, Ashok Nagar, Tilak Nagar, New Delhi 110018
6.	Committed Care Cargo Limited (Business)	NA	Equity	40,000	10	Kh. No. 406, GF, A Block, Gali no.-8 Mahipalpur Extn. New Delhi South West Delhi DL 110037
			Total	1,00,000		

For Committed Worldwide Express Private Limited

Nitin Bharal
(Director)
DIN- 00342195
Address: 85, Manohar Kunj, Gautam Nagar New Delhi-110049

DATE: 01/04/2018
PLACE: New Delhi

ALOK KAUSHIK
IBBI/IPA-002/
IP-N00253
2017-18/10767

19. And this fact has also not been denied by the respondent Nos. 1 to 4 that they are the directors in the Committed Care Kargo Limited. It is also not denied by the respondent Nos. 1 to 4 that they have sold their shares to Committed Care Kargo Limited and again the Committed Care Kargo Limited

sold the shares to the respondent Nos. 1 to 4. In other words, transfer or shareholding between the respondent Nos. 1 to 4 and Committed Care Kargo Limited, was originally managed by these four respondents.

20. The contention of the respondent Nos. 1 to 4 is that these shareholding transfer never come within the purview of Section 66 of the IBC, 2016. As we referred to the provision of Section 66 IBC and in terms of Section 66, there are two ingredients, which constitute the fraudulent trading or wrongful trading; first one is the business of the Corporate Debtor has been carried on, we intent to de-fraud creditors of the Corporate Debtor or second one for any fraudulent purpose. When we consider the averments and the reply of respondent Nos. 1 to 4 in terms of Section 66, then we find, the respondent Nos. 1 to 4 have not explained any reason to sell their shares to a Company, which is own and managed by them and they have also not explained the reason, why the said Committed Care Kargo Limited again resold the shares to these respondents. In our considered view, if the respondent Nos. 1 to 4 claims that these transactions do not come within the purview of Section 66 of the IBC, 2016 then onus is upon them to establish that said transaction was not with intent to de-fraud the creditors. But the respondent Nos. 1 to 4 have failed to establish this, therefore, we are of the considered view that these shareholding transactions were made with intent to defraud the creditors of the corporate debtor comes under the purview of Section 66 of the IBC, 2016.

21. Now, coming to the next contention of the applicant that Corporate Debtor had also written off the debts of Rs. 1,25,37,262/-. At this juncture, we would like to refer to the tabular chart given at Page 19 of the application is respect to the bad debts write off. The scanned copy of the same is reproduced below:-

(19)

2. **Bad Debts write-off**

Respondents - Mr Nitin Bharal, Mr Narendra Bisht, Mr Rajeev Sharma, Mr Yashpal Arora, Mr Shiv Kumar Chaturvedi.

The balance sheet of the corporate debtor as at 31-03-2017 says that the receivables which were more than 6 months old totaled Rs 25362176/. The bad debts write-off during the year 2017-18 was Rs 636143. However, as at 31-03-2018, the receivables which were more than 6 months old was at zero levels. However, the bad debts written off were at Rs 12537262/. The summary is as under :

Date/ receivable category	31-03-2019	31-03-2018	31-03-2017	31-03-2016
less than 6 months		47749407	12816088	
more than 6 months			25632177	
Total receivables	24470625	47749407	38448265	34757837
bad debts write-off	12537262	636143	194857	

Figures in INR

The corporate debtor was in a hurry to write-off receivables which are not yet into a difficult category of more than 6 months ageing. This indicates that the corporate debtor has written-off these debts to defraud the creditors. The respondents Mr Nitin Bharal, Mr Narendra Bisht, Mr Rajeev Sharma and Mr Yashpal Arora were promoter/ directors at the time these amounts were written off. A list of receivables totaling to Rs 12537262/ written off during the year 2018-19 is attached as **Annexure A-2**.

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22. On perusal of this table, we notice that as on 31.03.2017, Rs. 1,94,857/-, as on 31.03.2018, Rs. 6,36,143/- and as on 31.03.2019 of Rs. 1,25,37,262/- debts were written off and So far the debt written off till

31.12.2018 are concerned, respondent Nos. 1 to 4 were the directors of the Company. And so far the debt written off as on 31.03.2019 is concerned though the respondent Nos. 1 to 4 had tendered their resignation on 31.12.2018 but at this juncture, we would like to refer Annexure-A4 at Page 52 and 53 of the application. The scanned copy of the Annexure-A4 is reproduced below:-

Annexure A-4 (52)

Bank transactions done by Ex Directors/ Promoters after resigining as directors

S No	Bank	Bank Account No	Date	Amount (Rs)	Narration (Paid to)
1	ICICI Bank	164405000048	04-01-2019	10000	Munna Lal
2	ICICI Bank	164405000048	01-02-2019	12485	Abhsishek Shrivastava
3	ICICI Bank	164405000048	01-02-2019	25050	Sanju kumar
4	ICICI Bank	164405000048	01-02-2019	10329	Mritunjay
5	ICICI Bank	164405000048	01-02-2019	12985	Ashu Kumar Jha
6	ICICI Bank	164405000048	04-02-2019	12907	Prakash Kumar
7	ICICI Bank	164405000048	11-02-2019	14888	Tarun Kumar Rai
8	ICICI Bank	164405000048	11-02-2019	27722	Rohit Kumar Mishra
9	ICICI Bank	164405000048	11-02-2019	21403	Gurucharan Biswal
10	ICICI Bank	164405000048	11-02-2019	12927	Om Prakash
11	ICICI Bank	164405000048	15-02-2019	130000	Committed Cargo Care Pvt Ltd
12	ICICI Bank	164405000048	04-03-2019	5430	Sonal Infosoft
13	ICICI Bank	164405000048	20-03-2019	25752	Raju Kumar
14	ICICI Bank	164405000048	20-03-2019	10161	Manju Bhatt
15	ICICI Bank	164405000048	20-03-2019	13064	Sanjeev Kumar
16	ICICI Bank	164405000048	26-03-2019	15000	Prakash Kumar
17	ICICI Bank	164405000048	27-03-2019	5322	Abhishek Srivastava
18	ICICI Bank	164405000048	30-03-2019	5724	Tarun Kumar Rai
19	ICICI Bank	164405000048	30-03-2019	14153	Rohit Kumar Mishra
20	ICICI Bank	164405000048	03-04-2019	6774	Maneesh Kumar Singh
21	ICICI Bank	164405000048	23-04-2019	15000	Self
22	ICICI Bank	164405000048	29-05-2019	3930	EPFO
23	ICICI Bank	164405000048	29-05-2019	3930	EPFO
24	ICICI Bank	164405000048	29-05-2019	3930	EPFO
25	ICICI Bank	164405000048	10-06-2019	10656	Royal Stationers
26	ICICI Bank	164405000048	13-06-2019	10851	Prakash Kumar
27	ICICI Bank	164405000048	25-06-2019	2411	Yes Bank Credit Card
28	ICICI Bank	164405000048	24-07-2019	4589	Yes Bank Credit Card
29	ICICI Bank	164405000048	19-10-2019	6480	J P Sharma & Co
30	AXIS Bank	278010200003216	04-01-2019	90000	Transfer
31	AXIS Bank	278010200003216	29-04-2019	40000	Transfer
32	YES Bank	6684000000685	04-01-2019	200000	Netbanking
33	YES Bank	6684000000685	08-01-2019	12960	VCISLive Technologies
34	YES Bank	6684000000685	09-01-2019	3980.41	Vodafone Mobile Services
35	YES Bank	6684000000685	09-01-2019	12960	VCISLive Technologies
36	YES Bank	6684000000685	11-01-2019	100000	Bhikaji Cama
37	YES Bank	6684000000685	19-01-209	6480	J P Sharma & Co
38	YES Bank	6684000000685	30-01-2019	16979	Sandeep Rai
39	YES Bank	6684000000685	30-01-2019	25050	Sanjeev Kumar
40	YES Bank	6684000000685	30-01-2019	11935	Maneesh Kumar Singh
41	YES Bank	6684000000685	30-01-2019	22721	Manju Bhatt
42	YES Bank	6684000000685	08-02-2019	60000	Funds Transfer
43	YES Bank	6684000000685	08-02-2019	100380	Funds Transfer
44	YES Bank	6684000000685	18-02-2019	3720.27	Vodafone Mobile Services
45	YES Bank	6684000000685	20-02-2019	19527	Funds Transfer
46	YES Bank	6684000000685	02-03-2019	3356	Surender Kumar
47	YES Bank	6684000000685	07-03-2019	8588	Devender Kumar
48	YES Bank	6684000000685	15-03-2019	15000	Prakash Kumar
49	YES Bank	6684000000685	29-03-2019	12247	Divesh Kataria

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50	YES Bank	6684000000685	03-04-2019	75000	Funds Transfer
51	YES Bank	6684000000685	09-04-2019	42480	VCIS Technologies
52	YES Bank	6684000000685	09-04-2019	116820	Logixgrid Technologies
53	YES Bank	6684000000685	10-04-2019	6689	Om Prakash
54	YES Bank	6684000000685	11-04-2019	6290	Ashu Kumar Jha
55	YES Bank	6684000000685	16-04-2019	3871	Mritunjay
56	YES Bank	6684000000685	20-04-2019	10530	Gurucharan Biswal
57	YES Bank	6684000000685	20-04-2019	50970	Munna Lal
58	YES Bank	6684000000685	22-04-2019	647.82	Vodafone Mobile Services
59	YES Bank	6684000000685	22-04-2019	5909.46	Vodafone Mobile Services
60	YES Bank	6684000000685	22-04-2019	8284	Sandeep Rai
61	YES Bank	6684000000685	22-04-2019	12907	Prakash Kumar
62	YES Bank	6684000000685	24-04-2019	5478	Funds Transfer
63	YES Bank	6684000000685	25-04-2019	6480	J P Sharma & Co
64	YES Bank	6684000000685	29-04-2019	13064	Sanju kumar
65	YES Bank	6684000000685	01-05-2019	10620	Dev Enterprises
66	YES Bank	6684000000685	14-05-2019	25000	Cheque Paid
67	YES Bank	6684000000685	15-05-2019	12787	Prakash Kumar
68	YES Bank	6684000000685	16-05-2019	2400	Gautam Kumar
69	YES Bank	6684000000685	28-05-2019	56000	Raj Kumari
70	YES Bank	6684000000685	29-05-2019	56000	Shweta Sehrawat
71	YES Bank	6684000000685	01-06-2019	12500	Aman Impex
72	YES Bank	6684000000685	13-06-2019	56000	Shweta
73	YES Bank	6684000000685	13-06-2019	56000	Raj Kumari
74	YES Bank	6684000000685	17-06-2019	10620	Pest Control
75	YES Bank	6684000000685	24-06-2019	12960	VCIS Live Technologies
76	YES Bank	6684000000685	28-06-2019	2459	Nextra Teleservices
77	YES Bank	6684000000685	02-07-2019	3793	MTNL
78	YES Bank	6684000000685	03-07-2019	2806	Global Motors
79	YES Bank	6684000000685	26-07-2019	18500	Eva Shrivastava
80	YES Bank	6684000000685	26-07-2019	75000	HOB & Associates
Total				1998502	

23. These bank transactions shows that even after the resignation, the ex-directors/promoters were operating the bank transactions. The last bank transaction appears on 26.07.2019 and the total transaction after 31.12.2018 were of Rs. 19,98,602/- which shows that even after resignation, respondent Nos. 1 to 4 the ex-directors of the Corporate Debtor having the control over the financial operation of the Corporate Debtor.

24. At this juncture, we would like to refer to the arguments advanced on behalf of the respondent Nos. 1 to 4 that they have not operated the bank account after their resignation but further submitted that there is a possibility, if any post dated cheques were issued by them then they might had been encashed.

25. At the cost of repetition, we would like to refer to the contention of the applicant, who in course of argument referred to the copies of Cheques, which were issued between 08-01-2019 and 29-06-2019, much later than the date of 31-12-2018, shared by the concerned Bank, duly signed by RI — **Mr Nitin Bharal, R2 — Mr Narendra Bisht, R4 — Mr Rajeev Sharma.** Each of these cheques have been signed by two of the above respondents. All these cheques have been debited from the accounts of the Corporate Debtor. when the Respondents claim they did not have any control of the corporate debtor and vehemently denying that they issued any cheque after 31-12-2018. To confirm the signatures of the respondents R1 to R4, the IRP has matched these with the letters of resignation of the respondents R1-R4 which have been sourced from the Ministry of Corporate Affairs site.

> "It is also pertinent to mention this facts that as per the reply sent by the ICICI bank to the applicant, during this time (02-04-2019 till 19-10-2019) **the authorised signatories were Mr Nitin Bharal (R1), Mr Narendra Singh Bisht(R2) and Mr Rajeev Sharma (R4).** Moreover **Mr Nitin Bharal(R1) was added as an authorised signatory on 23-01-2019 in the ICICI Bank account.** This is later than 31-12-2018, when the Respondents 1-4 are claiming to have given up all control of the Corporate Debtor. The Respondent getting himself added as an authorised signatory at a later date does not support their reply to have given up control of the Corporate Debtor on 31-12-2018."

26. In view of the facts and reply of the concerned bank and documents shared by the concerned bank, we are unable to accept this contention of the respondent Nos. 1 to 4 that they were not operating the bank account of the corporate debtor. It is also because of this facts, as per the prevalent banking business procedure, the moment, the directors or signatory of the bank account have/had tendered their resignation, the Company is required to send the name of director and the signature of the present directors to the concerned bank for the purpose of operating the bank account, which is in the name of a Company and even if any post dated cheque was issued by

the previous director after the change of management that cannot be encashed because the signatory of the account have already been changed. But here in the case Respondent no 1 Nitin Bharal, was added as a signatory in ICICI bank account of the corporate debtor after their resignation, therefore, we are unable to accept this contention of the respondent Nos. 1 to 4 that the post dated cheques were encashed after their resignation, even after 7 months of their resignation. On the basis of this bank statement, we are of the considered view, the respondent Nos. 1 to 4 had although tendered their resignation but still they were having their control over the management and finance of the Corporate Debtor and the resignation was tendered only with intent to de-fraud with the creditors or for the fraudulent purposes. And that is the reason, the bad debts were written off at the instance of Respondent no. 1 to 4 even after their resignation.

27. Now coming to the third point, the cash transactions receiving cash from debtors admittedly Vyke Logistics and Vyke International, the respondent No. 9 owes the debts and they have debtors of the Corporate Debtor, as per the books of Corporate Debtor, total amount is of Rs. 20,12,383/- and Rs. 22,20,651/- and the claim of these respondents are they have settled the amount on full and final payment after making payment of Rs. 3 lakhs as cash. A total debt of Rs. 42,33,034/- was settled only after making payment of Rs. 3 lakhs that has not been disclosed either by the respondent Nos. 1 to 4 and respondent No. 9. We further notice that there is another Creditor as per the averments made in the application that is respondent no. 10 RJ Logistics Services LLP with Mr. Rohit Jasoria as the designated partner and RJ brother with Mr. Rohit Jasoria owes the debt of Rs. 10,71,250/- and Rs. 13,06,702/- respectively and their debts are also written off. The respondent Nos. 9 and 10 by filing their reply claimed that they never owe any debt and they are not the debtor of the Corporate Debtor. The respondent No. 9 further claimed that the amount had already been settled after making the payment of Rs. 3 lakhs. We failed to understand how the Rs. 42,33,304/- will be settled only on the payment of

Rs. 3 lakhs. Therefore, we are of the considered view these transactions also comes under the category of the fraudulent transactions.

28. In view of the discussion made above, we are of the considered view that the cash transactions and the written off debt made with respondent Nos. 9 and 10 comes under the category of fraudulent transaction and same was done during the tenure of Respondent no.1 to 4 and even after their resignation, they were having financial control in the affairs of the corporate debtor, therefore they are liable for these transactions. So far respondent No. 5 is concerned, since he is paid director and appointed on 27.12.2018, therefore, he is not responsible for any act or omission made by or on behalf of the Corporate Debtor. Similarly, respondent Nos. 6, 7 and 8 are also not held liable under Section 66 of the IBC.

29. Therefore, we find and hold the respondent Nos. 1 to 4, the Suspended Board of Directors/Promoters of the Corporate Debtor have been carried on business with intent to de-fraud the creditors of the Corporate Debtor or with fraudulent purpose and in this way, they have written off the debt of respondent No. 9 & 10 and also settled the amount on the payment of Rs. 3 lakhs against the total debt of Rs. 42,33,304/-. Hence, they are liable to make contributions the amount which was misuse or misappropriated by the Suspended Board of Directors/Promoters with intent to de-fraud the Creditors. Accordingly, the respondent Nos. 1 to 4 are directed to make the contribution of Rs. 13368262/- (12537262+636143+194857), the amount which were written off during the financial year 2016-2017, 2017-2018 and 2018-2019, the respondent no. 9 is directed to contribute Rs. 4233040/- (2012383+2220651) and respondent no. 10 is directed to contribute Rs. 2377952/- (1071250+1306702) and if the amount shown in the order is not paid by the respondent Nos. 9 and 10, in that case same shall be recovered from the respondent Nos. 1 to 4 jointly or severally. The Respondent No. 1 to 4, 9 and 10 are directed to contribute the aforesaid amount in the account of Corporate Debtor through the Liquidator within 3 months from the date of order, failing which same shall be realised through the process of Court. Apart from that the applicant is also directed to institute a prosecution under Section 69 of the IBC, 2016 in

accordance with the provision of law against respondent Nos. 1 to 4, 9 and 10.

30. Accordingly, the present application is **hereby allowed**.

-Sd-
21/1/22

Avinash K. Srivastava
Member (T)

-Sd-
2022

Abni Ranjan Kumar Sinha
Member (J)