



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 103

IA-816/2022

In

IB-276(ND)/2019

IN THE MATTER OF:

Mrs. Naseem Vohra

Vs.

M/s. IIHT Systems Limited

.....OPERATIONAL CREDITOR

.....CORPORATE DEBTOR

SECTION

U/s 9 of IBC, 2016

Order Pronounced on 14.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-816/2022
is **allowed** and **disposed of**.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-816/2022

In

(IB) – 276(ND)/2019

Order under Section 66(1) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

Mr. NASEEM VOHRA

..... Operational Creditor

VERSUS

M/s. IIHT SYSTEMS LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. Atul Mittal

Resolution Professional of M/s. IIHT Systems Limited

..... Applicant

VERSUS

Mr. Shiv Prakash Mishra & Ors.

1. Mr. Shiv Prakash Mishra

Ex-Director cum Major Shareholder of M/s. IIHT Systems Limited

..... Respondent No. 1

2. Ms. Sindhuja Mishra

Ex-Director cum Major Shareholder of M/s. IIHT Systems Limited

..... Respondent No. 2

3. Mr. Ashok Shrivastav

Suspended Director of M/s. IIHT Systems Limited

..... Respondent No. 3

4. Mr. Lilawati Senani

Suspended Director of M/s. IIHT Systems Limited

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..... Respondent No. 4

5. Ms. Madhyajot Kaur

Suspended Director of M/s. IIHT Systems Limited

..... Respondent No. 5

6. Mr. Narendra Pal Singh

Suspended Director of M/s. IIHT Systems Limited

..... Respondent No. 6

Order Pronounced On: 14.07.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the OC : Mr. Arun Kathpalia (Sr. Adv.), Mr. Nitish Kumar
Sharma, Ms. Diksha Gupta, Mr. Manpreet Vohra
(Advvs.)

For the RP : Mr. Udayan Khandelwal a/w RP in person

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This is an Application filed before this Adjudicating Authority under Section 66(1) of the Insolvency and Bankruptcy Code, 2016, for seeking the following reliefs:

“a. Allow the present application.

b. Direct the Respondents to make good the losses caused to the Creditors of the Corporate Debtor as concluded in the present application and as envisaged under Section 67(2) of the Code which are detailed out as follows:

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i. Direct the Respondents to make good the losses caused to the creditors of the Corporate Debtor as enunciated in Transaction-A of the present application.

ii. Direct the Respondents to make good the losses caused to the creditors of the Corporate Debtor as enunciated in Transaction-B of the present application.

iii. Direct the Respondents to handover the possession of property located at B-77 & 78, Sector 6, Noida to the Applicant.

iv. Direct the Respondents to handover the possession of property located at 453, Sector 15A, Noida to the Applicant.

v. Allow the Applicant to renegotiate the rent for the property occupied by the tenants at B-77 & 78, Sector 6, Noida at the current market rates and to get the same vacated, if rent is not paid.

c. Report the said transactions to the Insolvency & Bankruptcy Board of India for making a Complaint to the Special Court under Section 236 of the Code.

d. Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice.”

2. Submissions of the Applicant:

i. This Adjudicating Authority, admitted the Company Petition bearing CP(IB)/276/ND/2019 filed under section 9 of the IBC, 2016 vide order dated 07/12/2021 and appointed Mr. Parveen Kumar Jain as an Interim Resolution Professional.

ii. It is significant to submit that Mr. Shiv Prakash Mishra, the Respondent No. 1 is the Ex-Chairman cum Managing Director and substantial shareholder of the Company and has resigned from the company on 19.10.2018, Ms. Sindhuja Mishra, the Respondent No. 2 is also an ex-Director and substantial shareholder of the company and has resigned from the company on 19.10.2018. Mr. Ashok Shrivastav, the Respondent No. 3, Mr. Lilawati Senani, the Respondent No.4, Ms. Madhyajot Kaur, the

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Respondent No. 5 and Mr. Narendra Pal Singh, the Respondent No. 6 are the Directors (power suspended) of M/s. IIHT Systems Limited ("Corporate Debtor"). All the above Respondents are and were responsible for the day-to-day functions and running of the Corporate Debtor.

- iii.** It is submitted that the Resolution Professional has gone through the documents, papers and records of the Corporate Debtor as available with him and on review of the same, it is apparent from the same that certain fraudulent transactions have been undertaken by the Respondents, in the business of the Corporate Debtor, with an intention to defraud the creditors of the Corporate Debtor.
- iv.** The instant application is being filed specifically to bring fraudulent transactions to the notice of this Tribunal so that appropriate orders may be passed for the avoidance of such transactions and the said transactions may be reported to the Insolvency and Bankruptcy Board of India ("IBBI") so that a complaint may be filed in the Special Court for taking cognizance and proceed with criminal action. The Applicant submits that the object of the Code inter alia is to maximize the assets of the Corporate Debtor, which has wrongfully dissipated on account of the avoidable transactions being elucidated hereinafter.
- v.** It is submitted that as per Section 66 (1) of the Code, any business of a Corporate Debtor which has been carried out with the intent to defraud the creditors of the Corporate Debtor, persons who were knowingly parties to the carrying on of such business shall be liable to make such contributions to the assets of the Corporate Debtor. It is further submitted that under Section 66(2) of the Code, a Director of the Corporate Debtor shall be liable for contribution to the assets of the Corporate Debtor if:
 - a.** before the insolvency commencement date, such Director knew or ought to have known that 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 such due diligence in minimizing the potential loss to the creditors of the Corporate Debtor.
- vi.** For ease of reference of this Tribunal, the Applicant herein has divided the present Application in different parts mentioned below in tabular form:

TRANSACTION	TYPE OF TRANSACTION	AMOUNT SIPHONED OFF (IN RS.)
Transaction A	Questionable Transaction Involving Siphoning of Lease rentals on the Immovable properties of the CD from Financial Year 2017-18 till date	1,45,09,290
Transaction B	Illegal possession and use of the premises of Corporate Debtor by the Ex-Directors, being the Substantial Shareholders (Respondent No 1 and Respondent No 2) and accruing the liability on the Corporate Debtor	1,77,89,521

vii. TRANSACTION A:

As per the available records B-77&78, Sector 6 Noida is owned by Corporate Debtor and charged to Punjab National Bank (Financial Creditor).

The said property is a multi-storey commercial building in the hub of Noida commercial area. Of this the first floor is occupied by Mr. Shiv Parkash Mishra (Ex-Chairman and Substantial shareholder) for his legal personal practice and other floors have been rented out. Mr. Shiv Parkash Mishra (Ex-Chairman and Substantial shareholder) has not paid any rent to the Corporate Debtor since April 2017 till date.

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- viii.** Notice was issued on 30.12.2021 to the present directors (power suspended) and Mr. Shiv Parkash Mishra (Ex-Chairman and Substantial shareholder) to handover the possession of the property on January 03, 2022, which has not been complied with till date. On enquiry and in response to the written communication sent to other occupants of the said property of the Corporate Debtor, it has come to the notice of the Applicant that the occupants have entered into Lease agreement with the third party and not with the corporate debtor.
- ix.** The Applicant has formed an opinion that the Lease rentals for the period from April 1, 2017, till date have been misappropriated by the Respondents with the intent to defraud the creditors. The amount of fraud is estimated to be in the range of Rs. 1,45,09,290/- assuming the rentals at FY 2016-17 levels. It may be pertinent to mention that the amount could be substantially higher considering the inflation and the current rentals for similar properties in that area, which the Applicant is in the process of determining.
- x.** The Respondent No. 1 is occupying part of the premises for which no rentals have been received by the Corporate Debtor. The possession of the premises is for his own use as Lawyer and needs to be vacated immediately. While going through the Rent Agreement provided by two (02) tenants namely, M/s. Silicon Comnet Private Limited and M/s. Renovision Automation Services Private Limited, it has come to the notice of the Applicant that the Lessor to both the tenants is a partnership firm in the name of M/s. IIHT Systems and the name of the partner is Ms. Pranjali Mishra. It is apparent from the record that the said firm is related to the Ex-Chairman and Substantial Shareholder of the Corporate Debtor listed at Respondent No. 1. The intent of entering into such an agreement is to defraud the Creditors and siphon away the funds of the Corporate Debtor and in the lease



agreements it has been stated that the said property is owned by the said firm which is not true.

xi. The amounts misappropriated by the Respondents need to be contributed back by the Respondents, as the same rightfully belongs to the Creditors. Also, the Respondents are required to be directed to handover the possession of the property to the Resolution Professional immediately and the Resolution Professional be allowed to renegotiate the terms of the lease with the tenants and receive the lease rentals in the Account of the Corporate Debtor being maintained for the purpose.

xii. TRANSACTION B:

The Applicant would like to submit that the Corporate Debtor has taken on lease property situated at Plot No. 453 Sector 15A, Noida on 01.11.2008 at a monthly rent of Rs. 77,000/- (with increment of 10% in rent every 11 months) for the period 01.11.2008 to 31.07.2011 from Mrs. Naseem Vohra R/o B-3, PART 1 GUJRANWALA TOWN, DELHI.

The above lease agreement has been extended three (03) times by addendum for the period of 01.08.2011 to 30.04.2014 at a monthly rent of Rs 1,06,000/ (increment of 10% in rent every 11 months), 01.05.2014 to 30.01.2017 at a monthly rent of Rs 1,41,086/- (increment of 10% in rent every 11 months) and 01.02.2017 to 31.10.2019 at a monthly rent of Rs. 1,60,000/- (increment of 10% in rent every 11 months).

xiii. The said property is in the possession of Mr. SP Mishra Ex-Chairman and Substantial Shareholder of the CD (Respondent No. 1) and all the other Respondents are accomplices to the said transaction. The Respondent No. 1 and Respondent No. 2, who controls 99.98% of the voting shares of the Corporate Debtor, resigned from the Directorship of the Corporate Debtor on 19.10.2018, as per the record of the MCA on its website. That these Directors did not handover the possession of the Leased property at Plot no 453 Sector 15A, Noida to the Corporate Debtor



and continued to enjoy the benefit of the same to the exclusion of the rights of the Creditors of the Corporate Debtor, with the intent to defraud the Creditors.

- xiv.** The IRP vide his letter dated 30.12.2021 and 03.01.2022 had requested the Respondents to hand over the possession of the property, for which they refused. The Applicant has further sent communication dated 24.01.2022 to all the Respondents individually to furnish information on the current rent payable on the said property and proof, if any, that the said property has been handed over to the Corporate Debtor or to the Lessor. The Respondents have not bothered to respond to any of the communications or to submit any documentary proof regarding their stand on the same.
- xv.** The Applicant has further received an email from Lessor, Mr. Naseem Vohra, on 21.01.2022 demanding lease rent for the CIRP period and to include the same as part of the CIRP costs, since the possession of the said property continues with the Corporate Debtor. The Applicant has further received an email from the Lessor on 02.02.2022 demanding possession of the property since there is continuing default in the payment of the Lease rentals, in terms of Sec. 14(1) of the IBC, 2016.
- xvi.** The said property is accruing Lease rental of Rs. 2,57,682/- per month and that the Resolution Professional does not require the property during the CIRP period. The COC at their second meeting of COC, have opined that the lease rentals should not become part of the CIRP cost and the Resolution Professional to take necessary action for handing over the possession of the said property to the Lessor.
- xvii.** the continued possession of the property with the Respondent No. 1 along with Respondent Nos. 2 to 6 is a continuing act defrauding the creditors of their rightful dues. Necessary directions be passed to the Respondents to handover the possession of the property to the Applicant. It is imperative to



submit that the Respondents are liable to return the wrongful and illegal gains made by them which caused great losses to the creditors of the Corporate Debtor. It is further submitted that allowing of the present application will not prejudice any party in any manner and it is necessary to allow the present application, to uphold the Code in its letter and spirit.

3. Despite Repeated Service to all the Respondents by the Applicant, the Respondents choose not to contest the instant application. So, we hereby proceeds ex-parte against all the Respondents.

4. **Analysis and Findings**

- i. We have heard the Ld. Counsel appearing for the Applicant and also perused the documents on record.
- ii. We have considered that once the CIRP sets in, the management of the Corporate Debtor passes into the hands of the Resolution Professional (RP) and Committee of Creditors (CoC) and the suspended management has no role to play in the management of the Corporate Debtor. It is worth noting that no time limit for look back period has been given for consideration by Adjudicating Authority of transaction termed as fraudulent under the provisions of Section 66(1) of the IBC, 2016. It is true that as per Section 18(a)(1) of the IBC, 2016, the IRP/RP has to collect information relating to the assets, finances and the operation of the Corporate Debtor for the determination of the Financial position of the Corporate Debtor for the period of previous 2 years.
- iii. We observe that it is a fact that the management of the Company has taken certain decisions/steps which have not worked out as intended by the management and eventually the ex-Directors and suspended Directors remained silent.
- iv. After perusing the records and considering the facts and circumstances of the present case, we are of the opinion that the ex-Directors and suspended Directors of the Corporate Debtor



have entered into certain transactions that were not in the interest of the business of the Corporate Debtor. Hence the said act of the ex-Directors and suspended Directors of the Corporate Debtor will squarely attract the criteria of fraudulent transaction under Section 66(1) of the IBC, 2016 and the consequence has to follow.

- v. Hence, the conduct of the Applicant by filing the present application is well within the ambit and the spirit of the Code. The Bench has no doubt in its mind that the ex-Directors and suspended Directors were fully aware of the said properties in dispute.
- vi. In the interest of Justice, we direct all the Respondents to hand over the possession of property located at B-77 & 78, Sector 6, Noida and the property located at 453, Sector 15A, Noida to the Applicant and take all necessary steps in furtherance of the same as required under law to ensure the lawful and peaceful possession of the said properties to the Applicant.
- vii. We further direct the Respondents to make good the losses caused to the creditors of the Corporate Debtor as enunciated in Transaction-A and in Transaction-B of the instant application.
- viii. We further direct the Respondents to submit the status report after the pronouncement of this Order, giving the details of the necessary steps taken in providing lawful and peaceful possession and steps taken to make good the losses caused to the creditors of the Corporate Debtor in favour of the Applicant.
Thereafter, we also advise the Respondents as well as the Applicant to make their best endeavors to work in consonance with each other so as to expedite or complete the CIRP within the prescribed time under the IBC, 2016.
- ix. In the said circumstances, we are satisfied that the impugned transaction will attract the provisions of Section 66 (1) of the IBC, 2016. As a result, the relief as prayed for in the present application stands **allowed**.



5. **Order**

- i.** In light of the above facts and circumstances, the Application bearing **IA-816/2022** filed under Section 66(1) of the Insolvency and Bankruptcy Code, 2016 **stands allowed and disposed of.**
- ii.** The Registry is directed to accept the status report.
- iii.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for necessary compliance as per the provision of IBC, 2016 for the consequence of Section 66(1) of IBC, 2016.
- iv.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**