

NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-V

(IB) 2728(ND)/2019  
IA-3875/2020  
IA-3981/2020

IA/3875/2020:-

In the matter of:

OM LOGISTICS LIMITED .....OPERATIONAL CREDITOR  
VERSUS  
SERVEL INDIA PRIVATE LIMITED .....CORPORATE DEBTOR

In the matter of:

Reetesh Kumar Agarwal  
Resolution Professional  
Serval India Private Limited  
Unit No. 531, Fifth Floor, Plot No. 8,  
S.G. Shopping Mail, Community Center,  
D.C. Chowk, Sector 9, Rohini, New Delhi, 110085  
.....APPLICANT RESOLUTION PROFESSIONAL

VERSUS

Nandini Chaudhry  
DIN: 07173186  
Director Power Suspended  
Serval India Private Limited  
Address: C-34, Friends Colony  
East Srinivaspuri East of Kailash, Phase-I  
New Delhi 110065 .....RESPONDENT NO. 1

AND

Chitra Chaudhry  
DIN: 01130393  
Director Power Suspended  
Serval India Private Limited  
Address: C-34, Friends Colony  
East Srinivaspuri East of Kailash, Phase-I  
New Delhi 110065 .....RESPONDENT NO. 2

AND

X

CA B.L. Khandelwal  
Partner  
B.L. Khandelwal & Co.  
Chartered Accountants  
1, Doctor Lane, Gole Market  
New Delhi – 110001

.....RESPONDENT NO.3

IA/3981/2020: -

In the matter of:

OM LOGISTICS LIMITED .....OPERATIONAL CREDITOR  
VERSUS  
SERVEL INDIA PRIVATE LIMITED .....CORPORATE DEBTOR

In the matter of:

Reetesh Kumar Agarwal  
Resolution Professional  
Serval India Private Limited  
Unit No. 531, Fifth Floor, Plot No. 8,  
S.G. Shopping Mail, Community Center,  
D.C. Chowk, Sector 9, Rohini, New Delhi, 110085  
.....APPLICANT RESOLUTION PROFESSIONAL

VERSUS

Nandini Chaudhry  
DIN: 07173186  
Director Power Suspended  
Serval India Private Limited  
Address: C-34, Friends Colony  
East Srinivaspuri East of Kailash, Phase-I  
New Delhi 110065 .....RESPONDENT NO. 1

AND

Parth Corporation  
Plot No. 62A, Block YP, Landmark  
Tuesday Market Road, Pitampura  
New Delhi-110034

.....RESPONDENT NO. 2

AND

**Irclass Systems and Solutions Private Limited**  
**CIN: U74120MH2014PTC254091**  
**52A, Adi Shankaracharya Marg,**  
**Opp Powai Lake, Powai**  
**Mumbai 400072**

.....**RESPONDENT NO. 3**

**SECTION: U/S 9 of IBC, 2016**

**Order delivered on: 18.02.2021**

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**  
**MR. K.K. VOHRA, MEMBER (TECHNICAL)**

**For the Applicant:** Mr. Prabhakar Kumar, Mr. Suraj Sharma & Mr. Reetesh Kumar for RP

**For the Respondent:** Mr. Sahil Gupta & Mr. BL Khandelwal, CA for R-3

**ORDER**

**PER MR. ABNI RANJAN KUMAR SINHA (MEMBER JUDICIAL)**

**IA/3875/2020**

1. Since these two IAs are related with each other, therefore, we would like to dispose off both the IAs together with this common order:
2. The present interlocutory application is filed by Resolution Professional Mr. Reetesh Kumar Agarwal under section 19(2) and 19(3), 60(5) and any other relevant provisions of the of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") read with Rule 11 of the National Company Law Tribunal, Rules 2016 for issuance of necessary directions to the Board of Directors (Directors Power Suspended) and Statutory Auditors of the Corporate Debtor to comply with instructions of the Resolution Professional Applicant and to provide the requisite information to the Resolution Professional Applicant in discharging his duties as Resolution Professional under the Code.



3. The brief facts mentioned in the application are as under:
- i. That this Adjudicating Authority vide its order dated 08<sup>th</sup> June, 2020 in Company Petition No. (IB) 2728(ND)/2019 admitted application filed by Om Logistics Limited an Operational Creditor under Section 9 of the IBC Code, 2016 of Servel India Private Limited, Corporate Debtor, wherein Mr. Reetesh Kumar Agarwal, Insolvency Professional, appointed as Interim Resolution Professional ("IRP").
  - ii. That, IRP made public announcement in Business Standard (Hindi and English) on 11.06.2020.
  - iii. That, on 10<sup>th</sup> June, the IRP intimated to Respondent No. 1 and Respondent No. 2 (Directors Power Suspended) of Corporate Debtor, Servel India Private Limited and called for submission of all the details pertaining to the accounts and assets held in the name of the Corporate Debtor but the Directors (Director Power Suspended) deferred the same quoting their officers to furnish the details, who were not available to produce the documents and details.
  - iv. That on 14<sup>th</sup> June, 2020 IRP intimated to the Statutory Auditor with respect to initiation of CIRP Process of Corporate Debtor and requested to provide information, books of accounts, records and other relevant documents of Corporate Debtor.
  - v. That, prima facie, records of the Corporate Debtor seems to be incomplete in accordance with the Companies Act. No minutes books or members resolution or board resolutions, or registers were present at the registered office or shared with the IRP, thus they are being concealed at some other location then registered office.
  - vi. That, during the visit to registered office, the RP recovered the details of other bank accounts operated by the Corporate Debtor which was concealed and not informed by the Directors (Powers



Suspended) and not informed to RP and intentionally hidden by the Directors (Powers Suspended).

- vii. That, further RP made request to **Directors (Powers Suspended)** to submit the details of suits, proceedings, scrutiny, appeal, case filed or initiated by and/or against the Corporate Debtor under any Statute, Act, Rules, Regulation on 20<sup>th</sup> August, 2020.
  - viii. That RP again sent letter through e-Mail on 20<sup>th</sup> August 2020 advising her to furnish the details of the BMW Car kept by the Director (Powers Suspended) with request to deliver the car to the Corporate Debtor.
  - ix. In response to the mail, the Director (Power Suspended) wrote to RP, claiming that she purchased the BMW Car from the Corporate Debtor but Director (Powers Suspended) not placed or submitted any proof of purchase to RP.
  - x. That on 22<sup>nd</sup> August 2020, the RP demanded the documentary proof in support of purchase of BMW car of the Corporate Debtor from the Respondent No. 1, as claimed by her, which is still awaited to be received.
  - xi. That, due to non co-operation of the Directors (Powers Suspended) and officers of the Corporate Debtor, the RP is unable to get the accounts prepared and updated upto the commencement of the CIRP which required for verification of claims as well valuation of assets of the Corporate Debtor.
4. The Respondent No. 1 & 2 has filed its reply and asserted the following contentions: -
- i. That the Respondent upon receipt of the intimation from the IRP submitted the information available with them. With respect to the details of books of accounts the IRP was informed that the same are lying in the premises of the office at S-15, Okhla Phase 1, New Delhi including the server of the Company which was physically taken into possession by the Union Bank of India on



- 16.01.2020. That the Union Bank of India had not given any opportunity to the answering Respondents to remove or relocate the office Property/ Documents Correspondence.
- ii. That when the office premises was opened on 13.07.2020, the Respondent was shocked to find that the same has been vandalized and valuables including the personal items of the Ex Directors been removed from the office premises.
  - iii. That the Respondent has supplied all the documents to the IRP that were available with them. It is denied that the Answering Respondent is in any manner responsible for providing incomplete information as alleged.
  - iv. That the Respondent is committed to the revival of the Company in terms or the law as mandated under the Code.
  - v. That the Respondent has provided the detailed circumstances under which the alleged payments were made and has been cooperating with RP in recovery of the said amount.
  - vi. That the Respondent has rendered complete documentation to the RP with respect to the Car bearing Registration No. HP12G9753. The said car is in the personal name of Shri Rahul Chaudhary. The above said transaction had taken place in March 2020 which is much prior to the appointment of IRP. Therefore, it is unjustified on behalf of the RP to claim access to the car upon which Corporate Debtor has no claim whatsoever.
  - vii. That the Respondent in meetings held with RP has informed the RP when the order for supply of cables was received and the work for completing the said supply has been done with full knowledge and approval of the RP. It is further denied that any sale or purchase has been done without the knowledge of RP.
  - viii. That the Respondent has extended all the help and support and provided every document, information, communications verbally as well as digitally which has been in the knowledge and possession of the Respondent. The Respondent has also extended help and cooperation in continuing to run the



Corporate Debtor business which is vital for an effective resolution plan development.

5. The Respondent No. 3 has filed its reply and asserted the following contentions: -

- i. That Shri Ritesh Kumar Agarwal, IRP Vide email dated 14.06.2020, requested the Respondent to provide information, books of account, record and other relevant documents of corporate debtor.
- ii. That the RP evidently has not bothered to read Respondent's Auditor's Report for Financial Year: 2018-19, wherein it is reported that they are unable to express any opinion on the accounts as required information and explanation have not been provided to them.

iii. Attention is invited to the following content of the Independent Auditors Report for the financial year 2018-19

*As required by Section 143(3) of the Company Act 2013, we report that: -*

*a) "We have not able to obtain required information and explanations which to the best of our knowledge and belief were necessary for the purpose of our audit including disposal of inventory and the closing stock valuation".*

*b) "In our opinion proper books of account as required by law have not been kept by the Company, so far as appears from our examination of those books".*

*c) "In our opinion, the aforesaid financial statements do not comply with the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014".*

*a. Because of the significance of the matter described in the basis for disclaimer of Opinion section of our report, we have not*

*been able to obtain sufficient evidence to provide a basis for an audit opinion on these standalone financial statements.*

***b.** We were unable to confirm or verify by alternative means accounts receivable and amount payable included in the Balance Sheet at a total amount of Rs. 19.52 Crore and Rs.26.55 Crore respectively as at March 31, 2019. As a result of these matters, we were unable to determine whether any adjustments might have been found necessary in respect of recorded or unrecorded accounts receivable, and the elements making up the statement of Profit and Loss.*

***c.** We were unable to satisfy ourselves by alternative means concerning the inventory being sold as scrap and quantities held at March 31, 2019 which are stated in the Balance Sheets at Rs. 21,47,68,741.00. We were unable to satisfy about the sale of inventory as scrap in the absence of technical report and other corroborative evidence.*

***d.** These conditions along with other matters indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern. Further no provision has been made for impairment of assets.*

***e.** After reading the Audit Report, it becomes unequivocally clear that the information and explanation required) have not been provided to us.*

- iv. As the Respondent is not in management of the company and is not required to maintain books of account and records of the company, and IRP has been asking for the same, as such this Respondent has not been able to provide books of accounts and records of the company. However, the Respondent has fully Co-operated and provided all the information that he could, as much was available with him.
- v. IRP vide his email dated: 27.08.2020 and reminder dated 31.08.2020 asked this Respondent to submit accounting details. As the applicant has sought this Adjudicating Authority





to issue necessary direction to the Answering Respondent to furnish all the books of account with detailed information of the Corporate Debtor, it is hereby submitted, that it is not possible for the Auditor to provide what he did not receive and does not have.

- vi. Applicant in his application under section 19(2) has mentioned that M/s. B. L. Khandelwal & Co., Chartered Accountants are the Statutory Auditors of the Corporate Debtor, which is not correct after financial year 2018-19. The Respondent's firm was Statutory Auditor of the company for the Financial Year: 2018-19 and the Auditors term of 5 years has expired with 2018-19. Respondent is not appointed as Statutory auditor for the Financial Year: 2019-20 & onwards. A New Firm of Auditors has been appointed for financial year 2019-20.
- vii. That request by RP against Respondent No.3 is ill-founded and oblivious of Statutory Audit Report. Also, due to suddenly imposed lockdown for nearly 4 months and totally closing down of the office, many of the files and records have been destroyed and damaged due to termites & rats including those pertaining to the Statutory Audit of the Corporate Debtor.
- viii. That the Respondents' were the statutory auditor only upto the Financial Year 2018-19 and the date of commencement of the CIRP is 08.06.2020, the details sought should be for financial year 2019-20 ending on 31 March, 2020.

6. The Applicant has filed its rejoinder to the reply filed by Respondent No. 1 & 2 and has asserted the following contentions:
  - i. That this Tribunal vide its order dated 30th September, 2020 pleased to issue directions to the Respondent No. 1(R1) and Respondent No. 2(R2) to furnish necessary all the information to the Applicant/ Resolution Professional.
  - ii. That after necessary directions given by this Tribunal, Directors (Powers Suspended) have furnished the information (except the



documents related with the BMW Car HP12G9753 of the Corporate Debtor), as demanded by the RP.

- iii. That, contents of the Para 12 of the reply filed by the R2 is false, baseless and frivolous, as one side R2 is replying in Para 12 that Corporate Debtor have sold the Car to Mr. Rahul Chaudhary in March, 2020 and another side as per the annexure 1 of the reply, the date of Board Resolution is 10<sup>th</sup> July, 2018 proposing the Board of Directors for sale of car but not accorded/ giving consent for sale of car. It clearly shows that R1 is using the car of the Corporate Debtor for her personal and family use. As replied by the R2 in Para 15 the registered office of the Corporate Debtor was closed and under possession of Union Bank of India from 16.01.2020, the Corporate Debtor and the Board of Directors (Power Suspended) have no access to the documents and records of the assets then selling of the car in March, 2020 seems to be frivolous.
- iv. That ICICI Bank sanctioned the Car Loan amounting to Rs. 55,00,000 for tenure of 48 equal monthly installments (from 01st January, 2018 to 01st December, 2021) of Rs. 1,40,819 to the Corporate Debtor vide its Loan Disbursal Letter dated December 02, 2017 in Loan Account Number (LAN): LUDELD0036772078.
- v. That as per the Loan Account Statement of the ICICI Bank, Corporate Debtor was regularly paying the Car EMI instalment of Rs. 1,40,819 since Loan Disbursal, but ICICI Bank has foreclosed the Loan Account by adjusting Rs. 26,53,187.91 from the Current Account maintained by the Corporate Debtor bearing account no. 000705019501 to Loan Account No. LUDEL00036772078 on 29th June 2020 during the moratorium under CIRP, which clearly shows that Car is in the name of the Corporate Debtor not Mr. Rahul Chaudhary as Corporate Debtor was regularly paying the EMI installment.



- vi. That the name of the Corporate Debtor was also showing as registered owner of the Car at [www.vahan.nic.in](http://www.vahan.nic.in) a portal managed by Ministry of Road Transport and Highways, Government of India, and the same has been taken on record by this Adjudicating Authority in its order dated 1<sup>st</sup> October, 2020.
- vii. That Directors (Powers Suspended) have failed to comply the provisions of Section 43 of the I.B Code and moratorium order passed by Tribunal and by way of getting the car registered in the name of Mr. Rahul Chaudhary showing the car transferred by the Corporate Debtor after first hearing of this Interlocutory Application, which is clearly in violation of the order passed by this Tribunal doing transaction during the moratorium period.
- viii. That as per the Audited Financial Statements for the Financial Year 2018-19, the Corporate Debtor is having the Car as its Fixed Assets in the Financial Statement. Since, the said BMW Car is an integral part of fixed assets having substantial value, the valuer appointed by the RP needs the car as well as document for valuation of plant and machinery to find out the value of asset as required for issue of Information Memorandum. The valuation by the Registered Valuer is on hold for want of the said car to be available for physical verification.
- ix. That after direction given by this Tribunal, R1 and R2 have furnished and provided documents except the Car, which is utmost required by the Registered Valuer to evaluate the value for the entire plant and machinery including the car.

7. The Applicant has filed its rejoinder to the reply filed by Respondent No. 3 and has asserted the following contentions:

- i. That after commencement of CIRP and appointment of Mr. Reetesh Kumar Agarwal as IRP of the Corporate Debtor, IRP came to know that Respondent No. 3 M/s B. L. Khandelwal & Co. are the statutory auditors of the Corporate Debtor, therefore



IRP intimated and requested to CA B.L. Khandewal to provide all information, books of accounts, records and other relevant documents of Corporate Debtor through e-Mail dated 14<sup>th</sup> June, 2020.

- ii. In response to the above said mail dated 14<sup>th</sup> June, 2020 Respondent No. 3 replied on 15<sup>th</sup> June, 2020 as under:-

*“Sir, Please note that our office is closed from last 2 month and still our support staff is not reporting due to corona epidemic. In this situation I will let know the details when office resume operation normally.”*

- iii. That, on receiving an unsigned word letter through e-Mail on 17<sup>th</sup> June, 2020, RP came to know that the Respondent No. 3 did not have any books of accounts and whereas the firm was the statutory auditors of the Corporate Debtor upto Financial Year 2018-19 and must have the working note prepared and obtained from the Corporate Debtor during the course of audit. It is the duty of the statutory auditor to obtain confirmation of sundry debtors and sundry creditors and compile list of trade payable and trade receivables before signing the Audited Financial Statements and issuing Auditor’s Report, mere saying that the Auditors have no documents and books of accounts seems to be non-cooperation by the statutory auditor to RP in performing his duty by way of denial to furnish the required documents and information the RP.

- iv. That, further on 18<sup>th</sup> August, 2020 RP requested to Respondent No. 3 to provide the details of sundry debtors, sundry creditors and details of the other current liabilities. Further, RP has issued a reminder mail to the Respondent No. 3 on 19<sup>th</sup> August, 2020 to provide the annexures of the audited balance sheet and in response to the reminder mail the Respondent No. 3 replied as under: -

*“Sir, Soft reply*



*Due to challenging time due to COVID i am getting challenge in getting the services of support staff. I will try to provide the required details within earliest possible time."*

- v. Further Respondent No. 3 has provided the certain documents through e-Mail on 20<sup>th</sup> August, 2020.
- vi. That on 21<sup>st</sup> August, 2020 the Committee of Creditors ("CoC") of the Corporate Debtor have appointed M/s V.P. Aditya & Company, Chartered Accountants as Statutory Auditors of the Corporate Debtor for Financial Year 2019-20 considering the non-cooperation of the Respondent No. 3 to the RP in performing his duty as well preparation of financial statements as on 31<sup>st</sup> March, 2020.
- vii. That further, RP had advised Respondent No. 3 through email on 27<sup>th</sup> August, 2020 to provide detail list as per schedules appended to the balance sheet for the year ended as on 31.3.2019. In response to the reminder mail the Respondent No. 3 have not replied and furnished the information as required to be submitted to RP.
- viii. That after receiving the reply from Respondent No. 3 through email on 08<sup>th</sup> September, 2020, RP was informed that all the records and files of the Corporate Debtor have been damaged by the termite and rats. It is submitted that being a statutory auditor, it is the duty of the Respondent No. 3 to keep and preserve financial statements and annexures therewith in electronic form and as per the professional requirements, the auditor has to keep the records prepared while conducting statutory audit in safe custody for long period. So, the auditors can retrieve the documents and information from electronic data computing machine and furnished the same to the RP helping him to perform his duties.
- ix. That the RP has advised the Respondent No. 3 to furnish all the documents and information through email, which is required to prepare the financial statements as on the date of CIRP order as



well to submit before the Transaction Auditor for conducting transaction audit in pursuant and find out any transaction, which falls under Sections 43, 45, 49, 50 or 66 of the Code.

- x. That as per the Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") the IRP may access the books of accounts or other relevant document Information of the Corporate Debtor to the extent relevant for discharging his duties under the Code.
- xi. Further, it is submitted that in the case of ***"M/s Educomp Infrastructure & School Management Limited (Petitioner-Corporate Debtor) and in the matter of Mr. Ashwini Mehra, Resolution Professional Versus Mr. Vinod Kumar Dandona, Suspended Director & Ors. in CA No. 335/2018 in CP (IB) No.10/Chd/Hry/2018*** NCLT Chandigarh Bench held that the Statutory Auditor in possession of the financial statements of the Corporate Debtor is under a statutory obligation to furnish the copies of the audited accounts along with schedules and annexures for the specified period to the RP.

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8. The present interlocutory application is filed by Resolution Professional Mr. Reetesh Kumar Agarwal under section 43(1) and any other relevant provisions of the of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") read with Rule 11 of the National Company Law Tribunal, Rules 2016 for order to Respondents for reversal of Preferential Transactions done during the Moratorium Period under the Code.
9. From the perusal of averments made in this application we notice that facts mentioned in this application are almost similar to

the facts of the application therefore we would like to mention only those facts which are not common in these two applications: -

i. That during inspection of the books, records and Bank Statements of the Corporate Debtor, RP found that payments of Rs. 79,01,908/- released by the Directors (Powers Suspended) during the moratorium period without any intimation or instruction or approval of the RP, to creditors of the Corporate Debtor from ICICI Bank Account (Account No.000705019501) as under: -

Sr. No.	Name	Date	Mode of Payment	Amount
1.	Parth Corporation	20.06.2020	RTGS:ICICR520 200620007660 07/ IDIB000A128/ PARTH CORP	38,75,500
2.	Parth Corporation	20.06.2020	RTGS:ICICR520 200620007671 75/ IDIB000A128/ PARTH CORP	40,00,000
Total payment made to Parth Corporation				78,75,500
3.	Irclass and Solutions Private Limited	23.06.2020	NEFT:0000890 62231/HDFC00 00239/ IRCLASS SYSTEMS AND	26,408
Total payment made to Creditors				79,01,908

ii. That the Directors (Power Suspended) of the Corporate Debtor intentionally did the preferential transaction under the IBC Code, 2016 during the moratorium period as mentioned above for siphoning and diversion of funds of the Corporate Debtor.

10. The Respondent No. 3 has filed its reply and asserted the following contentions: -

i) That Respondent No. 3 has rendered the inspection service (of electrical cables on 04/01/2019 & 05/01/2019) to the Corporate Debtor. Pursuant to the said Inspection Service availed by the Corporate Debtor, the Respondent No.3 raised the following invoice on the Corporate Debtor.

SR. No.	INVOICE NO.	DATE	AMOUNT (in Rs.)
1.	DLI1819ICSI0552	15/01/2019	26,408/-
Total Outstanding Amount:			26,408/-

ii) That on 23/06/2020 the Respondent No.3 has received a payment of Rs.26,408.00/- through NEFT No. 085267 from the Respondent no. 3.

iii) That Respondent No. 3 has received notice along with the scanned copy of Interlocutory Application through e-mail dated 17/09/2020, which was send by the Applicant / Resolution Professional. Further, on 25/09/2020, the Respondent No. 3 has received notice through e-mail from Court Officer, Court V, NCLT, New Delhi.

iv) That on receipt of the aforesaid notices, the Respondent No.3 came to know and acknowledged the same that Insolvency Proceeding has been initiated by NCLT and the said matter is sub judice.

v) Further.the Respondent no. 3 is ready and willing to repay the amount of Rs.26,403.00/- to the Corporate Debtor / Applicant.



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11. We have heard the Ld. Counsel appearing for the applicant/resolution professional as well as contesting respondents and perused the averments made in the application, reply, rejoinder and the written submissions filed by the parties.

12. Ld. Counsel for the applicant in course of his arguments submitted that although in the main application, the applicant has made following prayers:

**(a) Issue necessary directions to the Directors (Powers Suspended) of the Corporate Debtor (Serval India Private Limited) to extend assistance and co-operation to the Resolution Professional Applicant which is imperative for the Resolution Professional Applicant to manage the affairs of the Corporate Debtor and to carry out his duties and responsibilities as Resolution Professional as mandated under the law;**

**(b) Issue necessary directions to the Directors (Powers Suspended) of the Corporate Debtor (Serval India Private Limited) to handover the vehicles as per balance sheets for the year ended as on 31.03.2019 to the Resolution Professional/Applicant which is required for carry on the business as well the valuation of the assets of the corporate debtor;**

**(c) Issue necessary directions to the Statutory Auditor of the Corporate Debtor (Serval India Private Limited) to furnish all the books of accounts with detail schedule and annexure, being**



the part and parcel of financial statements for the year ended 31.03.2018 & 31.03.2019 to ascertain the transaction as well assets and liabilities especially the creditors and debtors, in details and to extend assistance and co-operation to the Resolution Professional/Applicant which is imperative for the Resolution Professional/Applicant prepare the books of accounts from 01.04.2019 to the date of commencement of CIRP of the Corporate Debtor and to carry out his duties and responsibilities as Resolution Professional as mandated under the law

(d) Issue such direction to make reversal of transaction made by the Directors (Powers Suspended) of the Corporate Debtor within the moratorium period without the authority and in absence of any instruction issued by the RP.

(e) Issue such direction to the Directors (Powers Suspended), its officers and the Statutory Auditors to furnish the documents and detailed explanations and information as required for preparation of financial statements upto the date of commencement of the CIRP.

(f) Pass such other order/directions as this Hon'ble Adjudicating Authority may deem fit.

13. But in course of hearing of this matter, in pursuance of the directions given by this Bench on 30.09.2020, the respondents no. 1 & 2 of this IA had provided all the documents except the document related with the BMW Car having registration no. HP 12 G 9753 of the CD and so by filing the rejoinder, the applicant has limited his prayer in respect of following:



**a. Issue such direction to handover the BMW Car HP12G9753 to the Corporate Debtor**

**b. Direct to the Transport Department New Delhi to cancel the transfer registered in the of Mr. Rahul Chaudhary making it in the name of Serval India Private Limited**

**c. Pass such other order/ directions as this Hon'ble Adjudicating Authority may deem fit**

14. He further submitted that the applicant has enclosed the documents at page no. 87 of the paper book to show that the said vehicle is in the name of the Corporate Debtor i.e. M/s Serval India Pvt. Ltd. and this was obtained by the applicant from the website of the registration authority on 09.10.2020. He further submitted that on the basis of this it is crystal clear that even after the filing of this application and during the pendency of this application, the vehicle is in the name of the Corporate Debtor. He further submitted that the balance sheet for the year 2018-2019 also shows that the vehicle is shown as the fixed asset of the Corporate Debtor and it was also registered in the name of the Corporate Debtor. This has also been corroborated by the mail sent by the respondent no. 1, Ms. Nandini Chaudhary to the RP for updating the balance sheet in respect of the ownership of Mr. Rahul Chaudhary on 20.08.2020. He further submitted that the amount of the car loan was repaid after the moratorium without obtaining any permission from the RP so the car may be directed to be handed over to the applicant.

15. On the other hand, Ld. Counsel appearing for the respondents no. 1 & 2 submitted that the vehicle was sold to Mr. Rahul Chaudhary by the company in the month March, 2018 and a payment of Rs. 20 Lakhs was also made by Mr. Rahul Chaudhary. She further submitted that in July, 2018, the company passed board resolution in support of the sale of the said vehicle and in support of that, she placed reliance on board resolution dated 10.07.2018. She further submitted that Mr. Rahul



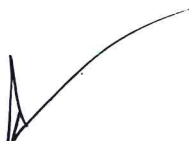
Chaudhary requested for sale documents and confirmed total payment of Rs. 20 Lakhs towards the purchase of the said vehicle vide letter dated 01.04.2019. She further submitted that the moratorium has come into effect on 08.06.2020 and the process of the sale of the vehicle was conclude prior to that, therefore, the consequential action thereafter will not bring the sale of vehicle within the scope of Section 14 of IBC. She further submitted that the date of commencement of CIRP is the date of admission and therefore, the said transaction is not hit by any of the provision of law.

16. In reply, Ld. Counsel for the applicant submitted that the applicant has filed another IA bearing no. IA-3981/2020 in which a bank statement is enclosed which shows that the car loan's final payment was made on 29.06.2020, which was of Rs. 27,90,430.19/- and it is also submitted by the applicant in course of argument that the said car was purchased in the name of the Corporate Debtor and the loan was liquidated after the moratorium and in support of that he referred to page 35 of the receipts and payments made by the CD after the initiation of the CIRP on 08.06.2020.

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17. In support of this IA, Ld. Counsel for the applicant submitted that the documents enclosed at page 35 of this IA also shows that after the 08.06.2020, Rs. 78,75,500/- were paid to Parth Corporation on 20.06.2020 and Rs. 26,408/- on 23.06.2020 to the **High Class System Pvt. Ltd.**

18. In reply to that Ld. Counsel for the applicant ld. Counsel for Respondents / Suspended Board of Director submitted that the reply which he has filed in IA-3875/2020 may be taken into consideration. She further submitted that all these transactions are made within the knowledge of the RP. The respondent no.3 of this IA by filing a reply submitted that he is ready to repay the amount of Rs. 26,408/-. None



appeared on behalf of R-2 i.e. Parth Corporation Pvt. Ltd. then the proceeding against this corporation was fixed for ex-parte.

19. Now, in the light of the submissions made on behalf of the parties, firstly we would like to consider IA-3875/2020. On the basis of averments made in the aforesaid para and submissions made on behalf of the parties, we notice that although in the application, the applicant has prayed for a direction to direct the respondent to furnish the documents mentioned in the application but during the course of hearing, documents were handed over to the RP. Therefore, we shall confine the finding only in respect of the subsequent prayer made by the applicant in the rejoinder i.e. regarding the handing over the vehicle.

20. As we have already referred the documents regarding the registration of the vehicle which is in the name of the Corporate Debtor and the document is at page no. 87 of the paper book of IA-3875/2020, and on the basis of that, it can be safely said that the vehicle was registered in the name of the Corporate Debtor and the documents which is available and enclosed in IA 3981/2020 also shows that the loan was liquidated against the purchase of this car by the Corporate Debtor after the initiation of CIRP on 08.06.2020.

21. At this juncture, we would like to refer the contention of the Ld. Counsel for the respondent, who in course of her arguments submitted that the said vehicle was sold to Mr. Rahul Chaudhary in the month of March, 2018 i.e. two years preceding to the initiation of CIRP but no such document has been produced by the respondent to show that the transaction was made two years preceding to the initiation of CIRP rather the respondent herself referred that both the directors approved the proposal in the month of July, 2018 which reveals the fact that the proposal of sale of the vehicle was placed before the Corporate Debtor within two years preceding to the initiation of CIRP which comes under the purview of the preferential transaction as per section 43 (2) of the IBC, therefore, we are not able to accept the contention of the applicant



that the vehicle was sold two years preceding to the initiation of the CIRP. Hence, we have no option but to hold that this transaction is bad in law and since the vehicle is in the name of M/s Serval India Pvt. Ltd, therefore, we have no option but to set aside this transaction and direct the respondent to hand over the vehicle to RP and if during the pendency of this application, the registration of the vehicle is changed in the name of Mr. Rahul Chaudhary, then that transaction is declared null and void and the concerned authority is directed to restore the name of the vehicle in the name of the Corporate Debtor. With this order the IA-3875/2020 **stands disposed off.**

**IA/3981/2020**

22. The documents enclosed at page 35 of the paper book of IA-3981/2020 shows that on 20.06.2020 by two RTGS transactions an amount of Rs. 38,75,500/- and Rs. 40 Lakhs and on 30.06.2020 an amount of Rs. 26,408/- through NEFT was paid to the respondents no. 2 & 3 respectively. It is admitted fact that the CIRP was initiated on 08.06.2020 and on the same day moratorium was granted and these transactions were made during the moratorium and Section 43 dealt with the provision of preferential transaction and the relevant time, the relevant portion of Section 43 (4) defines the preferential provision of Section 43 and the same is quoted below:

**(4) A preference shall be deemed to be given at a relevant time, if—**

**(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date;**  
**or**

**(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.**



23. Section 43 sub Section 4 of the IBC defines the relevant time for the said transaction, since if it is in respect to the related party then every transaction during the period of two years preceding to the Insolvency commencement date is deemed to be the preferential transaction and in relation to the person other than the related party during the period of one year preceding the Insolvency commencement date is deemed to be preferential transaction.

24. Here in the case in hand, there is no dispute that the transaction has been made after the moratorium and after the initiation of CIRP, therefore, that transaction is invalid in law and liable to be set aside. **Accordingly, the same is hereby set aside.** The respondents no. 2 & 3 are directed to repay/refund the amount to the account of CD and if that amount has not been paid by the respondents no. 2 & 3 within one month from the date of this order then the same shall be realized from the respondent no. 1. With this order the present application i.e. IA-3981/2020 stands **disposed off.**

Sd/-

**K. K. VOHRA**

**Member (T)**

Sd/-

**ABNI RANJAN KUMAR SINHA**

**Member (J)**