



## CHAMBERS OF JOSHI & SINGH

**Naman Joshi**

Founding Partner

BY SPEED-POST | EMAIL

28.6.2022

SMT. MADHABI PURI,  
CHAIRPERSON,  
SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI),  
SEBI BHAVAN,  
PLOT NO. C4-A, 'G' BLOCK,  
BANDRA-KURLA COMPLEX, BANDRA (EAST),  
MUMBAI - 400 051,  
MAHARASHTRA  
+91-22-26449000  
[SEBI@SEBI.GOV.IN](mailto:SEBI@SEBI.GOV.IN)

ALSO AT:

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI),  
NBCC COMPLEX,  
OFFICE TOWER-1, 8TH FLOOR,  
PLATE B, EAST KIDWAI NAGAR,  
NEW DELHI - 110023  
+91-011-69012998  
[SEBINRO@SEBI.GOV.IN](mailto:SEBINRO@SEBI.GOV.IN)

*Subject: Inox Green Energy Services Limited's deliberate failure to disclose ongoing disputes/litigation with Delhivery Limited in its Draft Red-Herring Prospectus ("DRHP") dated 17.06.2022 submitted to the Securities Exchange Board of India*

Dear Ma'am,

I am writing to you on behalf of Delhivery Ltd. (formerly Delhivery Private Limited) [hereinafter "Client"]. Under instruction from my Client, I state as under:

1. As per information available in the public domain, my Client has learnt that Inox Green Energy Services Limited (formerly, Inox Wind Infrastructure Services Limited) ("IGESL")



## CHAMBERS OF JOSHI & SINGH

**Naman Joshi**

*Founding Partner*

has submitted a Draft Red-Herring Prospectus ("DRHP") to the Securities Exchange Board of India ("SEBI").

2. Through this representation, my Client seeks to bring to your notice the brazenly illegal acts committed by IGESL and its parent company, Inox Wind Limited ("IWL"), working in-tandem, to systematically do the following:
  - (i) Enter into an agreement for provision of logistics services with my Client;
  - (ii) Getting my Client to perform its part of providing the logistics services;
  - (iii) Failing to make payments on time;
  - (iv) Inducing my Client into entering a settlement agreement dated 16.4.2021 [hereinafter "Settlement Agreement"] with IGESL and IWL;
  - (v) Making part payment of Rs. 2,00,00,000/- (Rupees Two Crores Only) against an admitted liability of Rs. 4,40,25,599/- (Rupees Four Crores Forty Lacs Twenty-Five Thousand Five Hundred and Ninety-Nine Only) and IGESL issuing two postdated cheques for the balance Rs. 2,40,25,599/- (Rupees Two Crores Forty Lacs Twenty-Five Thousand Five Hundred and Ninety-Nine Only);
  - (vi) Stopping payment of the two cheques by IGESL towards discharge of balance liability as per Settlement Agreement of Rs. 2,40,25,599/- (Rupees Two Crores Forty Lacs Twenty-Five Thousand Five Hundred and Ninety-Nine Only);
  - (vii) Agreeing to register a charge against IWL's asset being a substation having capacity of 70 MW of 66/33 KW at Sawarkundla, Gujarat and failing to register the same within 30 days as stipulated in the Companies Act, 2013;





## CHAMBERS OF JOSHI & SINGH

**Naman Joshi**

*Founding Partner*

- (viii) Becoming wholly unresponsive, not taking any steps to comply with their obligations despite services of notices under Section 8 of the Insolvency and Bankruptcy Code, 2016 and Section 78 of the Companies Act, 2013;
- (ix) Contrary to all communications/agreements and signing of cheques, IGESL has now reneged and taken frivolous pleas before the Hon'ble National Company Law Tribunal, Ahmedabad in *CP(IB) 203/2021* titled as *Delhivery Freight Services Private Limited vs Inox Wind Infrastructure Services Limited* to wriggle out of their admitted debt towards my Client;
- (x) Defrauding the SEBI, ROC as well as the public at large by suppressing the factum of ongoing litigation with my Client in *CP(IB) 203/2021* before the Hon'ble National Company Law Tribunal, Ahmedabad in its DRHP.

### FACTUAL BACKGROUND

3. The factual background leading up to filing of *CP(IB) 203/2021* by my Client is detailed hereinbelow:
  - a. In and around March, 2020, representatives of Inox Wind Limited ("IWL") approached my Client for provision of logistics services in furtherance of which a Letter of Intent ("LOI") for transportation of parts of wind operated electricity generator dated 1.7.2020 was ultimately executed between IWL and my Client. In terms of Clause 5.0 (d), IWL undertook to make payments within 90 days of receipt of the invoices.
  - b. Pursuant to the LOI, my Client started provision of logistics services and invoices came to be raised periodically from 06.07.2020. Despite routine raising of invoices,



## CHAMBERS OF JOSHI & SINGH

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IWL did not clear the payments. Accordingly, on 01.12.2020, an email was addressed to representatives of IWL, including the authorized representative of IGESL/IWL, i.e., Mr. Vineet Valentine Davis, seeking payment of the outstanding amounts. Since no response was received, follow up emails were sent on 3.12.2020, 4.12.2020, 7.12.2020, 8.12.2020, 11.12.2020, 18.12.2020, 19.12.2021, 21.12.2021, 22.12.2021, 23.12.2021, 24.12.2021, 28.12.2021 and 29.12.2021. This entire time, IWL stonewalled without any response and kept making excuses on phone on the pretext that the senior management of IWL had asked payments to be on hold as it was going through financial difficulties. Having availed the services, IWL had suddenly turned quiet about payment. In the above vein, further emails were sent seeking outstanding payment on 23.12.2020, 24.12.2020, 26.12.2020 and 28.12.2020. Ultimately in a call on 29.12.2020, Mr. Vineet Valentine Davis stated that only Rs. 50,00,000/- (Rupees Fifty Lacs Only) would be paid and made an excuse qua fund crisis in IWL despite there being an outstanding as of that date of over Rs. 5 Crores. The payment was sought to be made to gain the trust of my Client again and induce it into performing further services without receiving due payments.

- c. Thereafter, various emails were exchanged in January, 2021 and February, 2021 all of which had the same theme – my Client seeking clearance of amount of Rs. 2,40,25,599/- (“**Outstanding Amount**”), owed by IGESL to my Client in relation to the availed goods and services and IWL making excuses and proposing unviable payment plans to convince my Client to deliver the pending shipments. Representatives of IGESL/IWL continued to request for the release of the shipments by making false assurances and giving evasive replies qua signing of a memorandum of understanding. After much deliberation and tackling IWL’s dilatory tactics, my Client signed a memorandum of understanding dated 27.1.2021 [hereinafter “**MOU**”] for settling an outstanding amount of Rs. 4.95 Cores (approx.). To further gain my Client’s trust and show their ostensible compliance with the terms of the





## CHAMBERS OF JOSHI & SINGH

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*Founding Partner*

MOU, IWL made a payment of Rs. 65,00,000/- (Rupees Sixty-Five Lacs Only) on 27.01.2021 subsequent to which my Client resumed transportation and started the delivery of products. In the meantime, further transportation requests were made, and various products were transported without monies being paid.

- d. It is pertinent to mention that the authorized signatory of Corporate Debtor, i.e., Vineet Valentine Davis admittedly signed the MOU dated 27.01.2021 on behalf of IWL. Thereafter, he was also the signatory on behalf of IGESL in the Settlement Agreement signed subsequently on 16.04.2021.
- e. IWL continued to routinely default on payments in direct contravention of the MOU and returned to making false promises and evasive replies. Thereafter, representatives of IWL again started changing the (i) payment plans; (ii) outstanding amounts; (iii) terms of payment; and started insisting on a fresh settlement agreement with a further reduced amount. The transportation of products was going on as per the LOI because IWL insisted that they would only be able to clear the dues if my Client transports the goods to the agreed locations. However, this was only a deceitful *modus-operandi* adopted by IWL to dishonestly induce delivery of goods by my Client without having any intention to clear the outstanding payments.
- f. Subsequently, Mr. Vineet Valentine Davis approached my Client on behalf of IWL as well as the Corporate Debtor and induced it to enter into the Settlement Agreement with false promises of payments being made in terms thereof. Notably, the Settlement Agreement was executed between IWL, its subsidiary Inox Wind Infrastructure Services Limited (now, Inox Green Energy Services Limited), and Delhivery Private Limited (now, Delhivery Limited), i.e., my Client.



## CHAMBERS OF JOSHI & SINGH

**Naman Joshi**

*Founding Partner*

Pertinently, IGESL became a party to the Settlement Agreement by acknowledging its liability to clear the dues of my Client which arose in relation to an operational debt. The liability of IGESL to clear the operational debt is further evident from the fact that the IGESL issued Cheque Nos. 564613 and 564612 drawn in favour of my Client for Rs. 1,00,00,000/- (Rupees One Crore Only) and Rs. 1,40,25,599/- (Rupees One Crore Forty Lacs Twenty-Five Thousand Five Hundred and Ninety-Nine Only) respectively to clear the outstanding operational debt, which were ultimately dishonoured.

4. In the above conspectus, my Client was constrained to:

- (i) Issue a notice to IGESL dated 9.08.2021 under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment in respect of the operational debt of Rs. 2,40,25,599/-.
- (ii) Issue a notice to IWL dated 9.08.2021 under Section 78 of the Companies Act, 2013 for failing to register a Charge on substation having capacity of 70 MW of 66/33 KW at Sawarkundla, Gujarat in favour of my Client in terms of Clause 5 r/w Annexure - 1 of the Settlement Agreement.
- (iii) File a criminal complaint dated 10.09.2021 ("Complaint") against IWL, IGESL, their directors and key managerial personnel with the Station House Office, Indira Gandhi International Airport Police Station for commission of offences under Sections 405, 406, 415, 420, 34, and 120B and other relevant provisions of the Indian Penal Code, 1860.
- (iv) File an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Process ("CIRP") against IGESL on 17.09.2021





## CHAMBERS OF JOSHI & SINGH

**Naman Joshi**

*Founding Partner*

before the Hon'ble National Company Law Tribunal, Ahmedabad Bench in *CP(IB) 203/2021* where the Hon'ble Bench was pleased to issue notice vide order dated 3.11.2021. The matter is next listed on 30.08.2022 for arguments.

**DELIBERATE SUPPRESSION OF LITIGATION BY IGESL IN ITS DRHP TO EVADE ITS ADMITTED LIABILITY TOWARDS A LISTED ENTITY CONTRARY TO EXTANT LEGAL PROVISIONS INCLUDING THE ICDR REGULATIONS**

5. To my Client's utter shock, IGESL, in its reply dated 14.02.2022 to my Client's Petition in *CP(IB) 203/2021* stated, *inter-alia*, that the initiation of CIRP has been done deliberately by my Client to allegedly extort monies from IGESL despite my Client "being aware of the fact that the Corporate Debtor (IGESL) is in the process of huge business expansion by issuing a public offering...". Although, the said allegations are vehemently denied by my Client, it is pertinent to note that despite making submissions qua its impending IPO before the Hon'ble NCLT, IGESL deliberately suppressed the factum of the said proceedings in gross violation of, *inter-alia*, Part A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations").
6. The submission that the suppression of *CP(IB) 203/2021* by IGESL in its DRHP is deliberate and is but one facet of IGESL and IWL's nefarious design to defraud prospective investors, financial institutions and the SEBI is further borne out by the following:
  - (i) In Section VII at page 381 of the DRHP, all disputes ranging from Rs. 68 lakhs to Rs. 36 crores have been disclosed in the DRHP including several petitions before the Hon'ble NCLT, Ahmedabad initiated by various operational creditors. However, *CP(IB) 203/2021* which has been filed by my Client for claiming an amount of Rs. 2,40,25,599/- is conspicuously missing. Furthermore, in view of



## CHAMBERS OF JOSHI & SINGH

**Naman Joshi**

*Founding Partner*

the submissions made herein, IGESL cannot resort to the so-called materiality qualifier to justify the omission of *CP(IB) 203/2021* in the DRHP.

- (ii) The Complaint dated 10.09.2021 filed by my Client has only been vaguely mentioned in paragraph no. 4 at page 382 of the DRHP for “non-payment of invoices” without providing any details of the Complainant or nature of allegations thereof.
  - (iii) The earlier DRHP dated 7.02.2022 issued by IGESL (revoked vide letter dated 29.04.2022 issued by IGESL) also did not disclose *CP(IB) 203/2021*.
7. Therefore, it is clear as day that IGESL’s disputes/litigation with my Client have been omitted from the DRHP with a clear intent to conceal in view of the fraud being perpetrated by IGESL, IWL and their directors. It is humbly submitted that the fraudulent *modus-operandi* of IGESL (including but not limited to omission of its litigation with my Client in its DRHP), as elucidated herein, does not merely amount to brazen violations of the ICDR Regulations but the same deserves to be scrutinised/inquired by the SEBI especially in view of the fact that subsequent to the IPO, hard-earned money of citizens, financial institutions and potentially, the government shall be invested in IGESL.
8. In view of the above, your goodself is humbly requested to take cognizance of the matter and (i) direct IGESL to disclose the factum of ongoing litigation between IGESL and my Client; (ii) conduct a detailed inquiry into the books of IGESL and ascertain whether the Outstanding Amount claimed by my Client in *CP(IB) 203/2021* has been provisioned in its books of accounts; (iii) summon the representatives of IGESL in relation to the fraud perpetrated by IGESL in collusion with IWL through its directors and key-managerial personnel and investigate the cause and consequences of the actions of IGESL in collusion with IWL.





## CHAMBERS OF JOSHI & SINGH

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9. The request made in the foregoing Paragraph No. 8 is in consonance with Section 24 of the Companies Act, 2013 r/w Securities and Exchange Board of India Act, 1992 which empowers the SEBI to take both corrective as well as preventive action to safeguard the interests of investors. In this regard, reliance is placed on the judgement of *Kimsuk Krishna Sinha vs SEBI 2010 SCC OnLine Del 1448* passed by the Hon'ble High Court of Delhi rendered in the context of Section 55A of the Companies Act, 1956 (Section 55A was similarly worded to the present Section 24 of the Companies Act, 2013):

"21. ... The purpose of inserting Section 55A in the Companies Act was to empower the SEBI to take both corrective and preventive action. This is perhaps because as a regulatory body SEBI gets to see the draft prospectus preceding a public issue by a company even before the public gets to see the RHP. SEBI is enabled and empowered to examine the DRHP and insist on complete and truthful disclosure of all relevant facts therein. The very purpose of having an independent regulatory authority like SEBI, and vesting it with statutory powers of inquiry, is to enable it to take prompt action in matters relating to issue and transfer of shares. Particularly, SEBI is expected to be the sentinel, read the fine print of prospectuses keeping the investors' interests in view. It has both a preventive and corrective role to perform. Therefore, it is not possible to place a narrow interpretation on the words "issue and transfer of securities" occurring in Section 55-A of the Companies Act. Given the object and purpose of the provision, it should be broadly construed."

[Emphasis Supplied]

Best Regards,

*N. Joshi*

[Naman Joshi]



## CHAMBERS OF JOSHI & SINGH

**Naman Joshi**  
CC: *Founding Partner*

1. GOVERNMENT OF INDIA,  
MINISTRY OF CORPORATE AFFAIRS,  
OFFICE OF REGISTRAR OF COMPANIES CUM OFFICIAL LIQUIDATOR,  
HIMACHAL PRADESH, CORPORATE BHAWAN,  
PLOT NO. 4-B, SECTOR 27B,  
CHANDIGARH - 160 019  
[ROC.CHANDIGARH@MCA.GOV.IN](mailto:ROC.CHANDIGARH@MCA.GOV.IN)
  
2. INOX GREEN ENERGY SERVICES LIMITED  
(FORMERLY, INOX WIND INFRASTRUCTURE SERVICES LIMITED),  
SURVEY NO. 1837 & 1834,  
AT MOJE JETALPUR,  
ABS TOWERS, SECOND FLOOR,  
OLD PADRA ROAD,  
VADODARA - 390 007  
GUJARAT  
[INVESTORS.IWL@INOXWIND.COM](mailto:INVESTORS.IWL@INOXWIND.COM)

HAVING ITS CORPORATE OFFICE AT:  
INOX GREEN ENERGY SERVICES LIMITED,  
INOX TOWERS,  
PLOT NO. 17,  
SECTOR - 16A,  
NOIDA - 201 301,  
UTTAR PRADESH  
[INVESTORS.IWL@INOXWIND.COM](mailto:INVESTORS.IWL@INOXWIND.COM)