IN THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE COURTS, DELHI.

CBI No. 39/2021
RC No-221/2018/E/0002
PS : CBI-EO-III/New Delhi
Under Sections 120-B read with 420 & 201 IPC
& Under Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988

Central Bureau of Investigation (CBI)

V.

1. Arun Dudi
S/o Raj Kumar Dudi
the then Administrative Officer
Marine Department, Oriental Insurance Co. Ltd,
Oriental House, A-25/27 Asaf Ali Road, New Delhi
R/o H. No. 311, Trimurti Apartment, Plot No.20
Sector-12, Dwarka, New Delhi. **...(A-1)**

2. Akhilesh Mishra
S/o Awadh Bihari Mishra
the then Dy. General Manager
Marine Department, Oriental Insurance Co. Ltd,
Oriental House, A-25/27 Asaf Ali Road, New Delhi
R/o H. No. 1610, Tower-6, Purvanchal Royal Park,
Sector -137, NOIDA **...(A-2)**

3. Pramod Kumar
S/o Moti Prasad
the then Manager,
Marine Department, Oriental Insurance Co. Ltd,
Oriental House, A-25/27 Asaf Ali Road, New Delhi
R/o H. no. E-31+32, Mantri Kishore Park, Ashok Nagar
Bhosle Nagar, Pune-411007 **...(A-3)**

4. Surender Singh Selal
S/o Khali Singh Selal

the then Chief Manager,
Marine Department, Oriental Insurance Co. Ltd,
Oriental House, A-25/27 Asaf Ali Road, New Delhi
R/o House No. 409, Oriental Apartment, C-58/26
Sector-62, NOIDA **...(A-4)**

5.Sumit Verma
S/o Subhash Chandra Verma
the then Director, RI, M/s Bharat Reinsurance
Broker Pvt Ltd. Chennai **...(A-5)**

R/o H.No. N-34, Ist Floor, Greater Kailash-I
New Delhi & C-50, 2nd Floor Jungpura Ext. New Delhi-110014

6. Thyagarajan Vijay
S/o R. Thyagarajan
Managing Director & Principal Officer
M/s Bharat Reinsurance Broker Pvt Ltd. Chennai
R/o House No. 48/8A, Jeevarthnam Nagar, 2nd Street
Channai-20 **...(A-6)**

7. Kishan Agarwal
S/o Shiv Charan Agarwal
Managing Director and Principal Officer
M/s Worldwide Insurance Broker Ltd., B-42 Sector-63
NOIDA
R/o House No. 24-D, Mansarovar Apartment, Sector-61
NOIDA **...(A-7)**

8. M/s Bharat Reinsurance Brokers Pvt Ltd.
Through its Director Thyagarajan Vijay (A-6)
Address: 6 (Old No.12), Poes Road, Off Eldams Road
Teynampet Chennai-600018 **...(A-8)**

9. M/s Worldwide Insurance Brokers Ltd
Through its Director Kishan Agarwal (A-7)
Address: B-42, Sector-63, NOIDA **...(A-9)**

INDEX

<u>ORDER ON CHARGE:-</u>

1. This order shall decide the question of framing of charges against the accused persons as well as the applications moved on behalf of Thyagarajan Vijay (A-6) and M/s Bharat Reinsurance Brokers Pvt Ltd (A-8) seeking their discharge.

(A) Allegations in FIR

2. The present FIR was registered on the complaint of Shri Subhash Pandey, DSP/EO-III. The Oriental Insurance Company Ltd (**hereinafter referred to as** '**OICL'**) insures vessels against war risk due to which it is exposed to risk of unusually high amount. The OICL, in order to mitigate its risk which is beyond its retention capacity , used to obtain reinsurance from re-insurers. Thus, OICL obtained five marine hull war risk re-insurance polices through Bharat Re-Insurance Brokers Pvt Ltd (**hereinafter referred to as 'Bharat RE'**) **(A-8)** and one from M/s Worldwide Insurance Brokers Ltd (hereinafter referred to as (**'WWIBL'**) **(A-9).** It is further alleged that Arun Dudi **(A-1)** was posted in Marine Department, HO , OICL and was dealing with such cases. He used to report to Akhilesh Mishra **(A-2)**, DGM, Marine Department,HO OICL.

2.1 It is further alleged that Arun Dudi (A-1) and Akhilesh Mishra (A-2) were communicated the rates of re-insurance by GIC RE vide email dated 12.03.2014. The rates offered was 0.0125%. It is further alleged in the present case six vessels Surya-I, Kanchipuram , Mahesh, Madhawa , Kuber and Neel Samunder were got re-insured by OICL but none of them were re-insured with GIC Re. Arun Dudi (A-1) dishonestly initiated the process of re-insurance in these cases and obtained quotes from Bharat RE (A-8) and WWIBL (A-9). Arun Dudi sent mails to Bharat RE (A-8) for Vessels Surya-I , Kanchipuram and exorbitantly high rates of 0.5% were offered by Bharat RE (A-8) but despite that the same were processed by A-1 and other officers of OICL. Thereafter, Arun Dudi (A-1) allegedly processed re-insurance related payments in the said two cases which were approved by Akhilesh Mishra (A-2). Thereafter, payments were made by OICL to Bharat RE to the tune of Rs. 44,88,798/- and Rs.31,35,127/- respectively for re-insurance of vessels Surya-I and Kanchipuram.

It is further alleged that Arun Dudi (A-1) also engaged the services of WWIBL (A-9) and processed the re-insurance war cover of vessel Neel Samunder. The WWIBL (A-9) further engaged services of SSS Insurance Services Pvt Ltd (a broker company registered in Maldives) and offered rate of 0.5% to OICL which was accepted by A-1 on behalf of OICL. WWIBL (A-9) issued debit note on the basis of which Arun Dudi (A-1) prepared facultative note. The said facultative note was approved by Akhilesh Mishra (A-2), SS Selal (A-4) and subsequently closing particulars for vessel Neel Samunder was prepared for Rs.45,00,047/- in favour of

WWIBL (A-9). After approval, payment of Rs. 45,00,047/- was made to WWIBL (A-9). Further it is alleged that in all the three cases viz; Vessels Surya-I, Kanchipuram and Neel Samunder), the entire amount of Rs. 1,12,23,9971/- was paid by OICL to the brokers which was total loss to OICL **as the re-insurance was not required at all. In all the said cases none of the said vessel was insured with OICL and hence no question of its reinsurance**

2.2 It is further alleged that Arun Dudi (A-1) and Akhilesh Mishra (A-2) in connivance with Bharat RE (A-8) made excess payments pertaining to re-insurance of vessels Madhwa, Mahesh and Kuber. A-1 is further alleged to have sought quotes for reinsurance through email from Bharat RE (A-8) and he dishonestly did not get the Re-insurance done through GIC RE which had lower rates of re-insurance. A-1 is further alleged to have not obtained rates from any other broker for comparison and arriving at lowest rates. A-1 in conspiracy also accepted exorbitant rates in order to cheat OICL and cause undue pecuniary benefits to Bharat RE (A-8).

It is further alleged that Arun Dudi (A-1) also dishonestly communicated rates on his own of 0.02%,0.01%, and 0.01% to Division Office Mumbai ,OICL for re-insurance for the said vessels, whereas he dishonestly accepted rates of 0.03%, 0.03% and 0.04% offered by Bharat RE (A-8) through Sumit Verma (A5) for reinsurance of vessels Madhawa, Mahesh and Kuber respectively. Due to this, OICL had to incur higher cost on re-insurance than what it had received as consideration for war insurance cover from the clients. Bharat RE (A-8) prepared debits notes in favour of OICL on exorbitant rates. A-1 Arun Dudi processed the debit notes and A-2 Akhilesh Mishra approved the same. Thus, the payment of Rs. 45,648/-, Rs.1,25,400/- and Rs.7,49,857/- for re-insurance of vessels Madhawa, Mahesh and Kuber was the loss of OICL.

2.3 It is, further, alleged that Arun Dudi (A-1) and A-2 Akhilesh Mishra (A-2) did not protect the interest of their organization and made excess payments to brokers despite being fully aware of existing lower rates of GIC RE for reinsurance. The accused persons willingly and deliberately caused undue pecuniary favours of Bharat RE (A-8) and WWIBL (A-9). By the aforesaid acts of omission and commission, Arun Dudi (A-1) and Akhilesh Mishra (A-2) in conspiracy with private parties namely Bharat RE (A-8) and WWIBL (A-9) and other unknown others caused total loss of Rs.1,30,43,876/- to OICL. The total amount of Rs. 1,30,43,876/- was subsequently recovered from aforesaid brokers by OICL when the matter of fraudulent payments came to the notice of higher authorities. The brokers repaid the amount without any contest which shows their guilt and confession to the crime.

Investigation/Chargesheet

3. The investigation in the present case covers allegations regarding irregularities in reinsurance qua six vessels. In three cases i.e Vessel Madhwa, Vessel Mahesh, and Vessel Kuber the

allegations are related to excess payments and qua remaining three cases i.e Vessel Surya-I, Vessel Kanchipuram and Vessel Neel Samundar the allegations are related to substantial amount paid to the broker companies against non-existent base policies by accused public servants of OICL.

(I) Vessel Madhwa

3.1 The proposal qua this vessel for war risk insurance was initially received by Mumbai Office/DOS of OICL on 04.03.2014 from Punj Lloyd. The said proposal was forwarded to the Head Office (Marine Department). Arun Dudi (A-1), Administrative Officer (AO) posted at Head Office on his own conveyed war rate @ 0.02% for vessel Madhwa to Mumbai Office through e-mail dated 05.03.2014. Thereafter, the Mumbai office is stated to have received payment of Rs.1,34,832/- towards war insurance from the client. Then, Ms. Sheela Abraham, Assistant, D.O., Mumbai sought approval from Akhilesh Mishra (A-2), DGM, Marine Department (Head office) through email dated 13.03.2014. Akhilesh Mishra (A-2) communicated the approval for war risk of vessel Madhwa through email dated 13.03.2014 and war insurance policy No. 111900/22/2014779 dated 13.03.2014 was issued in favour of the client.

3.2 The investigation though revealed that Arun Dudi (A-1) sent one e-mail dated 12.03.2014 to Sumit Verma (A-5), Director of Bharat RE Insurance Brokers Pvt Ltd (A-8) and sought war rate for ship Madhwa. Sumit Verma (A-5) quoted war rate @ 0.03% through e-mail dated 13.03.2014. Arun Dudi (A-1), thereafter, placed binding of Fac Order of 78.33% of 100% of war risk of vessel Madhwa through his email dated 13.03.2014. Accordingly, debit note dated 13.03.2014 against OICL by was sent Sumit Verma (A-5) for making payment of Rs. 1,33,944/- (Total Premium was Rs.1,80,000/-), Facultative Note **(hereinafter referred to as 'Fac Note')** of the vessel Madhwa dated 24.03.2014 was prepared and put up by Arun Dudi (A-1) which was having premium rate @ 0.03% despite the fact that DO/Mumbai office had collected rate @0.02%. The said note was recommended by Pramod Kumar (A-3), the then Manager, Marine Department, Smt. Lakshmikala Raghupathy, the then Chief Manager, RI Head Office and was finally approved by Akhilesh Mishra (A-2). The first page of note bore the signatures of Arun Dudi (A-1) and second bore the signatures of all aforesaid four officers. Thereafter, Arun Dudi (A-1) prepared and put up closing particular No. OIC/M/CP/155/2013 dated 25.03.2014 which contained details and net premium of Rs. 1,33,945/-. Thereafter, the payment was made by OICL through RTGS on 27.03.2014 in account no. 30073714428 of Bharat RE Insurance Brokers Pvt Ltd (A-8).

3.3 The further investigation revealed that Bharat RE Insurance Brokers Pvt Ltd (A-8) further placed qua the said vessel war risk with Re-Insurer M/s Tysers. Sumit Verma (A-5) communicated with Tysers vide his email dated 13.03.2014 and in reference to the said email, Tysers quoted rate 0.01% vide e-mail dated 13.03.2014.

Sumit Verma (A-5) confirmed placement of 78.33% of 100% of the order and requested to bind the risk at 0.01%. M/s Tysers raised debit note no. MA142134/001 dated 13.03.2014 against Bharat RE Insurance Brokers Pvt Ltd (A-8) in respect of vehicle Madhwa for making payment of net premium of Rs.46,998/-. The premium was payable in four quarterly installments of Rs.11,749.50/- each. The payment of Rs. 45,917/- was paid to M/s Tysers against debit note on 02.04.2014.

3.4 The investigation further revealed that Arun Dudi (A-) & Akhilesh Mishra (A-2) did not approach GIC RE for placing reinsurance of vessel Madhwa and thus, OICL suffered a substantial loss and wrongful gain to broker company. A-1 communicated the rate of 0.02% to Mumbai Office on 5th March,2014 despite the rate of 0.03% being offered by Bharat Re on 13.03.2014. None of the said facts were checked while approving the Fac Note by A-2, A-3 and others .The said loss and wrongful gain has been shown in the chargesheet in tabulated form in the following manner:

Name of Vessel	Policy	Bharat RE Debit Note	Closing Particulars made by Marine Hull Department H.O	Tysers Debit Note
Madhwa	Premium Received Rs.1,20,000+ Rs.14,832 (ST)= Rs.1,34,832/-	Debit Note Rs.1,33,945/- (i.e 78.33% fac order of	Premium Rs.1,80,000/- Fac Order Rs.1,40,995/-	Gross Premium Rs. 60,000/- Fac Order

	Fac Order (78.33%) Rs. 93,996/- minus Rs.4700/- (Commission @ 5%) Net Payment to be made to Bharat RE Insurance Brokers Pvt Ltd (A-8) was Rs.89296/-	Total Gross Premium Rs. 1,80,000/-	(78.33%) minus Rs.7050/- (5% Fac Commission Net Payment made to Bharat RE = Rs. 1,33,944/-	Rs. 46,998/- (78.33%) Net Premium due to Bharat RE Rs.46,998/-
Loss	**Rs. 1,33,944 minus Rs.89,296/- = Rs. 44,648**			

(II) Vessel Mahesh

4. The investigation qua Vessel Mahesh revealed that proposal for the said vessel for H&M insurance was received by Mumbai Office/DO, OICL on 28/11/2014. The said proposal was forwarded to Delhi Office by Sh. Rajender P Chavan, DO of Mumbai Office and Arun Dudi (A-1), A.O, HO (Marine Hull Department), who conveyed war rate cover @ 0.01% to Mumbai office through email dated 02.12.2014. On receipt of war rate from Head office, the client was requested to make payment of war insurance of vessel Mahesh. One e-mail dated 05.12.2014 was sent by Shri Ravi Prakash Gupta of Punj Lloyd qua payment of Rs.89,888/-.After receiving payment from client, Smt. Sheela Abraham, Assistant, D.O., Mumbai sought system approval from Akhilesh Mishra (A-2) which was accorded through email dated 08.12.2014.Thereafter, insurance policy No. 111900/22/ 2015/766 dated 08.12.2014 having

war premium of Rs. 89,888/- was issued in respect of vessel Mahesh in favour of the client.

4.1 However, the investigation revealed that the process of reinsurance of vessel Mahesh was initiated by Arun Dudi (A-1) after he sent solitary e-mail dated 28.11.2014 to Sumit Verma (A-5), Director RI, Bharat RE Insurance Brokers Pvt Ltd (A-8) and sought war rate. Accordingly, Sumit Verma (A-5) quoted war rate @ 0.03% vide email dated 02.12.2024. Arun Dudi (A-1) placed binding of fac order of 82.50% of 100% of war risk of vessel through his email dated 05.12.2014. Accordingly, Sumit Verma (A-5) raised debit note dated 08.12.2014 against OICL for making payment of Rs. 1,88,100/-.But A-1 had communicated rate @ 0.01% through his email 2.12.2014 to Mumbai Office on basis of which premium was collected.

4.2 The investigation also disclosed that facultative note of vessel Mahesh was not traceable and therefore, role of other OICL officers could not be ascertained.

4.3 Thereafter, Arun Dudi (A-1), A.O, prepared and put up closing particular no. OIC/MH/CP/090/2014 dated 12.12.2014 of vessel Mahesh. The said closing particular bore signatures of Pramod Kumar (A-3), the then Manager. He approved the said closing particulars and the Account Section ,OICL was instructed to make payment in favour Bharat RE Insurance Brokers Pvt Ltd (A-8). Accordingly, payment of Rs. 1,88,100/- against the said closing particular was made through RTGS dated 15.12.2014.

The investigation also revealed that Bharat RE Insurance Brokers Pvt Ltd (A-8) placed war risk with re-insurer M/s Tysers, London which raised debit note No.MA142737/001 dated 05.12.2014 against A-8 for making payment of net premium of Rs.59,400/-, which too was payable in four quarterly installments of Rs.14,850/- each.

4.4 The investigation further revealed that Arun Dudi (A-) & Akhilesh Mishra (A-2) did not approach GIC RE for placing reinsurance of vessel Mahesh and thus, OICL suffered a substantial loss and wrongful gain to broker company. Further the rate offered to Mumbai office was 0.01% while the rate accepted as was offered by A-5 was 0.03%. The said loss and wrongful gain has been shown in the chargesheet in tabulated form in the following manner:

Name of Vessel	Policy	Bharat RE Debit Note	Closing Particulars made by Marine Hull Department H.O	Tysers Debit Note
Mahesh	Premium Received Rs.80,000+ Rs.9888/- (ST)=	Debit Note Rs.1,88,100/- (i.e 82.50% fac order of	Premium Rs.2,40,000/- Fac Order	Gross Premium Rs. 72,000/-

	Rs.89,888/- Fac Order (82.50%) Rs. 66,000/- minus Rs.3300/- (Commission @ 5%) Net Payment to be made to Bharat RE Insurance Brokers Pvt Ltd (A-8) as per the rate communicated by A-1 was Rs.62,700/-	Total Gross Premium Rs. 2,40,000/-	Rs.1,98,000/- (82.50%) minus Rs.9900/- (5% Fac Commission Net Payment made to Bharat RE = Rs. 1,88,100/-	Fac Order Rs. 59,400/- (82.50%) Net Premium due to Bharat RE Rs.59,400/-
Loss	**Rs. 1,88,100 minus Rs.62,700/- = Rs. 1,25,400/-**			

(III) Vessel Kuber

5. The investigation qua the Vessel Kuber revealed that the client submitted the proposal of war risk insurance with Mumbai/DO, OICL. The Mumbai Office accordingly sought rate form Head Office vide email dated 6.01.2015 to A-1. Arun Dudi (A-1) conveyed General Insurance Company (GIC) war rate @ 0.01%. Then, Rajendra Chavan, Divisional Manager, Mumbai conveyed the said rate and asked/requested the client to make payment. Thus, an amount of Rs. 65,194/- (first installment) was receivd from Punj Lloyds. Ms. Sheela Abraham sought system

approval from Akhilesh Mishra (A-2) through her email dated 30.01.2015. The said approval was granted by Akhilesh Mishra (A-2) through his email dated 30.01.2015. Accordingly, policy no. 111900/22/813 was issued in favour of M/s Punj Lloyd Ltd .

5.1 Further investigation revealed that Arun Dudi (A-1) again requested Sumit Verma (A-5), Director RI of Bharat RE Insurance Brokers Pvt Ltd (A-8) to submit quote for war reinsurance in respect of vessel Kuber. Sumit Verma (A-5) provided war rate @ 0.04% including 5% ceding commission to OICL vide email dated 15/01/2015. Thereafter, Arun Dudi (A-1), AO placed Fac Order of 90.69% of 100% with Bharat RE Insurance Brokers Pvt Ltd (A-8). Having confirmed war risk, Sumit Verma (A-5) raised a debit note No. OIC/2015/0102/Marine/ W&SRCC dated 30.01.2015. The said note was issued under the signature of Sumit Verma (A-5). Bharat RE Insurance Brokers Pvt Ltd (A-8) through debit note made demand of premium of Rs. 799,851.19 qua war risk reinsurance of vessel Kuber.

5.2 The investigation also disclosed that facultative note of vessel Mahesh was not traceable and therefore, role of concerned OICL officers could not be ascertained.

5.3 The investigation also transpired that closing particulars No.

OIC/MH/CP/100/2014 dated 04.02.2015 was prepared by Arun Dudi (A-1) which was approved by Akhilesh Mishra (A-2). Thereafter, the same was sent to Accounts Department for making payment to Bharat RE Insurance Brokers Pvt Ltd (A-8). Accordingly, payment of Rs. 7,99,851/- was transferred in the account of Bharat RE Insurance Brokers Pvt Ltd (A-8) through RTGS on 10.02.2015.

5.4 The investigation also revealed that the war risk reinsurance of vessel Kuber was placed with re-insurer M/s Tysers, London by Bharat RE Insurance Brokers Pvt Ltd (A-8). Accordingly, M/s Tyser quoted net war rate of 0.009% to Bharat RE Insurance Brokers Pvt Ltd (A-8) and issued debit note No. MA152787/001 for payment of only Rs. 1,89,438/- which was to made in four installments of Rs.47,359.61 each.

5.5 The investigation further revealed that Arun Dudi (A-) & Akhilesh Mishra (A-2) did not approach GIC RE for placing reinsurance of vessel Kuber and thus, OICL suffered a substantial loss and wrongful gain to broker company. Further the rate quoted and sought from client was 0.01% while the approved rate was 0.04%. The said loss and wrongful gain has been shown in the chargesheet in tabulated form in the following manner:

Name of Vessel	Policy	Bharat RE Debit Note	Closing Particulars made by Marine Hull Department H.O	Tysers Debit Note
Kuber	Premium Received Rs.58,024 (1st Installment) + Rs.7172/- (ST)= Rs.65,196/- (**Three remaining installments were not received from the insurer)** Fac Order (90.69%) Rs. 58,024/- minus Rs.2631/- (Commission @ 5%) Net Payment which was to be made to Bharat RE Insurance Brokers Pvt Ltd (A-8) as per the rate quoted by A-1 , Rs.49,994/-	Debit Note Rs.7,99,851/-	Premium Rs.9,28,381/- Fac Order Rs.8,91,949/- (90.69%) minus Rs.42,097/- (5% Fac Commission Net Payment made to Bharat RE = Rs. 7,99,851/-	Gross Premium Rs.2,08,885.70 Fac Order Rs. 1,89,438/- (90.69%) Net Premium due to Bharat RE Rs.1,89,434.44
Loss	**Rs. 7,99,851 minus Rs.49,994/- = Rs. 7,49,857-**			

(IV) Vessel Surya-I

6. The investigation in respect of Vessel Surya-I revealed that no Marine Hull War Policy was ever issued by OICL qua vessel Surya-

I and thus, no premium was received. Despite that, Arun Dudi (A-1), the then A.O at Head Office sought rates for war risk cover based on GIC/Indian War Scheme from Bharat RE Insurance Brokers Pvt Ltd (A-8) through e-mail dated 04.04.2015. Sumit Verma (A-5), Director, Bharat RE Insurance Brokers Pvt Ltd (A-8) offered rate of 0.5% including 5% ceding commission to OICL. Thereafter, Arun Dudi (A-1) placed Fac order of 85.91% of 100% with Bharat RE Insurance Brokers Pvt Ltd (A-8). Sumit Verma (A-5) of Bharat RE Insurance Brokers Pvt Ltd (A-8) raised debit note No. OIC/2015/0301/Marine/W&SRCC for premium amount of Rs. 44,88,797.50 qua vessel Surya-I.

6.1 The investigation also disclosed that Facultative Note of vessel Surya-I was not traceable and therefore, role of concerned OICL officers could not be ascertained.

6.2 The investigation further transpired that Arun Dudi (A-1) prepared Closing Particular No. OIC/MH/CP/121/2014 and sent a copy of the same to Account Branch for remittance of premium amount of Rs.44,88,798/- to Bharat RE Insurance Brokers Pvt Ltd (A-8). The said Closing Particular was approved by Akhilesh Mishra (A-2). Accordingly, the sum of Rs. 44,88,797/- was transferred in the account of Bharat RE Insurance Brokers Pvt Ltd (A-8) through RTGS on 30.03.2015. <u>It is a case of total loss to OICL as no base policy was issued by them</u>.

6.3 The investigation revealed that Bharat RE Insurance Brokers Pvt Ltd (A-8) placed risk of vessel Surya-I with M/s Tysers. M/s Tysers offered a rate of 0.05% to Sumit Verma (A-5) through email. Sumit Verma (A-5) confirmed placement of 85.9% of 100% and requested to bind the risk at 0.05%. Accordingly, M/s Tysers issued debit note No. MA152840/001 dated 10.03.2015 qua vessel Surya-I. Thereafter, payment of Rs.4,72,505/- against the said debit note was made to M/s Tysers on 31.003.2015 by Bharat RE Insurance Brokers Pvt Ltd (A-8).

(V) Vessel Kanchipuram

7. Investigation qua Vessel Kanchipuram also revealed that no Marine Hull War Policy was ever issued by OICL qua said vessel and thus, no premium was received by OICL in this regard. Despite that, Arun Dudi (A-1), the then A.O sought rates for war risk based on GIC/Indian War Scheme from Bharat RE Insurance Brokers Pvt Ltd (A-8) through e-mail dated 13.02.2015. Sumit Verma (A-5), Director, Bharat RE Insurance Brokers Pvt Ltd (A-8) offered rate of 0.5% including 5% ceding commission to OICL. Thereafter, Arun Dudi (A-1) placed fac order of 85.91% of 100% with Bharat RE Insurance Brokers Pvt Ltd (A-8). Sumit Verma (A-5) of Bharat RE Insurance Brokers Pvt Ltd (A-8) raised debit note No. OIC/2015/0201/Marine/W&SRCC dated 25.02.2015 for premium amount of Rs. 31,35,127.36 qua vessel Kanchipuram.

7.1 The investigation also discloses that facultative note of vessel was not traceable and therefore, role of concerned OICL officers could not be ascertained.

7.2 The investigation further transpired that Arun Dudi (A-1) prepared Closing Particular No. OIC/MH/CP/110/2014 in terms of Fac Note and sent a copy of the same to Account Branch for remittance of premium amount of Rs.31,35,127/- to Bharat RE Insurance Brokers Pvt Ltd (A-8). The said Closing Particular was approved by Akhilesh Mishra (A-2). Accordingly, the sum of **Rs.** Rs.31,35,127/- was transferred in the account of Bharat RE Insurance Brokers Pvt Ltd (A-8). <u>It is a case of total loss to OICL as no base policy was issued by them.</u>

7.3 The investigation further revealed that Bharat RE Insurance Brokers Pvt Ltd (A-8) placed risk of vessel Kanchipuram with M/s Tysers. M/s Tysers offered a rate of 0.05% to Sumit Verma (A-5) through email. Sumit Verma (A-5) confirmed placement of 82.50% of 100% and requested to bind the risk at 0.05%. Accordingly, M/s Tysers issued debit note No. MA152805/001 dated 24.02.2015 qua vessel Kanchipuram. Thereafter, payment of Rs.3,30,313/- against the said debit note was made to M/s Tysers on 31.003.2015 by Bharat RE Insurance Brokers Pvt Ltd (A-8).

(VI) Vessel Neel Samundar

8. The investigation qua the said vessel also revealed that no Marine Hull War Policy was ever issued and thus no war premium was received by OICL. Despite that, Arun Dudi (A-1), A.O processed reinsurance of War Risk of vessel Neel Samundar and firstly sent email on 25.06.2015 to Shri Mukesh Jain, Vice President of Bajaj Capital Insurance Broking Ltd. Sh. Mukesh Jain quoted rate of 0.5% including 5% ceding commission to OIC. However, through e-mail dated 09.07.2015, Sh. Mukesh Jain refused to confirm binding for RI terms of the vessel in the absence of satisfactory supporting reinsurance credentials. Thereafter, Arun Dudi (A-1) approached another broker and sent e-mail for same proposal to M/s Howden Insurance Brokers India Ltd. They too quoted rate of 0.5% including 5% ceding commission. Thereafter, Arun Dudi (A-1) from his personal email-id arundudioicl@gmail.com sent an email to Mr. Ruth of M/s Howden Insurance Brokers India Ltd confirming binding of fac order 85.93% of 100%. However, Mr. Ruth informed Arun Dudi (A-1) about withdrawal of their proposal through email dated 10.08.2015.

8.1 The investigation further disclosed that after withdrawal of Fac placement order by M/s Bajaj Capital Insurance Broker and M/s Howden Insurance Broker, Arun Dudi (A-1)sought war rate from WWIBL (A-9). Shri Krishan Aggarwal (A-7), M.D &

Principal Officer of WWIBL (A-9) quoted rate for Hull War Risk @ 0.50% including 5% ceding commission to OICL. Thereafter, Arun Dudi (A-1) placed Fac order of 85.93% of 100% with WWIBL (A-9). Sh. Krishan Aggarwal (A-7) of WWIBL (A-9) raised debit note dated 14.08.2015 for net premium of Rs. 45,00,047/- qua vessel Neel Samundar. A-1 then prepared and recommended Facultative Reinsurance Note of Vessel Neel Samundar from insurer/broker "Worldwide Insurance Brokers India Pvt Ltd" (**WWIBL)(A-9).** It is further alleged that Facultative Note has two pages and the same was put up before Facultative Committee consisting of four OICL Officers namely Arun Dudi (A-1), Surender Singh Selal(A-4) , Alok Yagnik and Akhilesh Mishra (A-2). The said note was signed by afore-mentioned four officers. Thus, a fake and fictitious re-insurance of vessel Neel Samundar was recommended and approved. It is a case of total loss to OICL as no base policy was issued by them .

8.2 The investigation revealed that WWIBL (A-9) placed risk of vessel Neel Samundar with another broker M/s SSS Insurance Pvt Ltd. Maldives. M/s SSS Insurance Pvt Ltd offered a rate of 0.435% for covering the risk and raised debit note dated 26.08.2015 for remitting net premium amount of US$ 61,508,89. Accordingly, WWIBL (A-9) transferred a sum of Rs. 41,040,54/- in the account of M/s SSS Insurance Services Pvt Ltd.

Role of Arun Dudi (A-1) & Akhilesh Mishra (A-2)

9. The investigation further revealed that A-1 was the Administrative officer in the Marine Department, Head Office, Delhi and A-2 was the Head of the Marine Department, at Head Office, Delhi. They both are alleged to have played the deciding role in respect to reinsurance of all the above-referred vessels . A-1 being the Administrative Officer, was the designated underwriter at Head Office who used to initiate the process of inviting quotes of rates from various reinsurers upon receiving the request of reinsurance from their Regional Office/ Divisional Office, OICL. It is further alleged that A-1 in the present case qua all the above-referred vessels except Neel Samundar instead of seeking multiple rates/offers from various reinsurers preferred the exclusive communication for rate with sole broker i.e A-5, Director RI, Bharat Re (A-8). The GIC was never involved by A-1 in seeking rates qua all the above-referred vessels. As far as vessel Neel Samunder is concerned, again single quote was sought firstly from Bajaj Capital Insurer Broking Ltd who after giving the rates withdrew their offer and then from Howden Insurer Broker who too withdrew their offer. Therefore, lastly A-1 approached broker A-9 (WWIBL) through their M.D, A-7.

9.1 As far as the first three vessels are concerned, there was discrepancy in rates of war reinsurance communicated by A-1 to Regional Office/Divisional Office vis-a-vis rates quoted by the broker. As far as the last set of three vessels are concerned, it has been alleged as discussed above there was no base insurance with OICL and hence, there was no question of seeking reinsurance which allegedly A-1 did so in furtherance of criminal conspiracy. In none of the cases, the public sector reinsurance firm GIC was involved.

9.2 It is further alleged that A-2 was the Head of Marine Department, Head Office, who was involved as such qua all the above-referred six vessels and had approved the Fac Note despite the fact of discrepancies in the war rates communicated to the D.O qua the first three vessels and non-existence of base policies qua the last set of three vessels. He had also approved another crucial document qua some of the said vessels i.e Closing Particulars which ultimately led to approval of debit notes/payment in favour of brokers. Therefore, it is alleged that A-2 was involved in the said criminal conspiracy firstly in approving the Fac note and thereafter the Closing Particulars which ultimately led to wrongful loss of Rs. 1,30,43876 to OICL.

Role of Accused Pramod Kumar (A-3)

10. It is further stated in the chargesheet, the investigation in the matter further revealed that Pramod Kumar (A-3) was the Manager in Marine Hull Department (H.O). Pramod Kumar (A-3) is alleged to have signed the closing particulars of vessel Mahesh after which

an amount of Rs. 1,88,100/- was transferred from OICL to Bharat RE Insurance Brokers Pvt Ltd (A-8). Since Pramod Kumar (A-3) was from Technical Department, he was under the obligation to verify the premium rate to be paid to Bharat RE Insurance Brokers Pvt Ltd (A-8) against the premium rate charged from the original client as communicated to Mumbai Office . Pramod Kumar (A-3) had recommended/endorsed Facultative note dated 24.03.2014 of Vessel Madhwa without doing due diligence and verifying the facts pertaining to collection particular rate to be paid to the broker company against the premium charged from the original client. He is alleged to be part of the criminal conspiracy hatched by A-1 and others at Head Office OICL.

Role of Surender Singh Selal (A-4)

11. The investigation qua Surender Singh Selal (A-4) revealed that he was the Chief Manager of Marine Department. As per the chargesheet, he is alleged to have endorsed/recommended fake/fictitious note dated 10.08.2015 which was prepared by Arun Dudi (A-1), A.O qua the reinsurance of vessel **Neel Samundar**. The said facultative note is against non-existent insurance policy. He was also required to see/verify the premium rate to be paid to the broker company against premium charged from the original client. Surender Singh Selal (A-4) despite being from the Technical department did not bother to check the existence of base policy or its details. It is thus alleged that he was part of the criminal conspiracy .

Role of Sumit Verma (A-5)

12. The investigation qua Sumit Verma (A-5), Director, Bharat RE Insurance Brokers Pvt Ltd (A-8) revealed that he quoted war rate of existing policies of vessels Madhwa, Mahesh and Kuber at the rate of 0.03%, 0.03% and 0.04% which is exorbitant rate and against the market standard . He also quoted war rate for the non-existent policy of vessels Surya-I and Kanchipuram @ 0.5% each. He procured war risk policies against the said vessel's from M/s Tysers, London at very nominal reinsurance rates .Thus it is alleged that he was one of the main player in the criminal conspiracy to cheat the OICL and was communicating exclusively with A-1 .

Role of Thyagarajan Vijay (A-6)

13. The investigation qua Thyagarajan Vijay (A-6) revealed that he is also Managing Director and Principal Officer of Bharat RE Insurance Brokers Pvt Ltd (A-8). The said company got wrongful gain on account of excess premium rates charged in respect of three vessels and exorbitant premium rate against two non-existent war polices. The rates charged by Bharat RE Insurance Brokers Pvt Ltd (A-8) were unusually high and defrauded amount was credited/transferred in company account. He is thus one of the beneficiary of the said fraud.

Role of Kishan Agarwal A-7 and WWIBL (A-9)

14. The investigation qua Kishan Agarwal (A-7) revealed that he is the Managing Director of WWIBL (A-9). He is alleged to have communicated with OICL on behalf WWIBL (A-9) in respect of reinsurance of non-existent war policy of vessel Neel Samundar. Thus, WWIBL (A-9) got undue pecuniary advantage on account of war risk placement against the non-existent policy. The rate charged by WWIBL (A-9) was unusually very high and the defrauded amount was credited in the company's account.

15. Thus, it is concluded that the whole investigation revealed that accused public servants Arun Dudi (A-1), Akhilesh Mishra (A-2), Pramod Kumar (A-3), Smt. Lashimi Kala Raghupahy, Surender Singh Selal (A-4) and Along Yagnik alongwith other co-accused brokers/private persons i.e Sumit Verma (A-5), Thyagarajan Vijay (A-6), Bharat RE Insurance Brokers Pvt Ltd (A-8) and WWIBL (A-9), acted in criminal conspiracy with each other and committed fraud under Section 120-B r/w Section 420 . They are also liable for destruction of evidence under section 201 IPC and Section 13(2) r/w Section 13 (1) (d) of PC Act. The said accused persons defrauded Oriental Insurance Company Ltd and caused wrongful loss of Rs.1,30,43,876/- to the said company (OICL) and wrongful gain to two broker companies i.e A-8 and A-9.

15.1 It is further stated that accordingly CBI sent report dated

03.12.2019 to the Chief Vigilance Officer, OICL through which prosecution sanction under the provisions of Prevention of Corruption Act 1988 was sought. The Competent Authority of OICL gave prosecution sanction against four accused persons i.e Arun Dudi (A-1), Akhilesh Mishra (A-2), S.S. Selal (A-5) and Pramod Kumar (A-3). **However, no prosecution sanction is given qua two suspects/accused persons namely Lakshmi Kala Raghupathy and Alok Yagnik.**

Arguments on behalf of CBI

16. Ld. Senior (Sr.) Public Prosecutor for the CBI has argued that the present case concerns six war risk reinsurance policies issued by OICL. Out of the said six war risk reinsurance policies for which payment was made to brokers Bharat RE (A-8) and WWIBL (A-9), no base policy was issued at all by OICL qua three vessels Surya-I, Kanchipuram and Neel Samundar . As far as three policies qua ships namely Madhwa, Mahesh and Kuber are concerned, the excess payment has been made to above referred broker i.e. (A-8) who too has been chargesheeted. The said misconduct on the part of the officials of OICL posted at Head Office is on account of the criminal conspiracy hatched by them . The conspiracy was hatched by the officials i.e Arun Dudi (A-1), Akhilesh Mishra (A-2), Pramod Kumar (A-3), Surender Singh Selal (A-4) with Sumit Verma (A-5) and Thyagarajan Vijay (A-6) who were the Director (RI) and Managing Director respectively in M/s Bharat RE (A-8) .

A-7 is the Managing Director of WWIBL (A-9) and he too joined in the said conspiracy at the later stage .

16.1 It is further argued on behalf of CBI that qua the above-referred six reinsurance policies, four facultative notes of reinsurance are missing and have been destroyed by A-1, A-2, A-3 and A-4 who were having the custody of the same. It is further argued that statement by LW-1 Saroj Kumar Rath, Assistant General Manager, GIC corroborates their case as how the public sector undertaking i.e GIC Re which is in the business of reinsurance was ignored and benefit of reinsurance was given to private brokers (A-8) & (A-9). The reason for the same was *quid pro quo* between the private accused persons and officals of OICL. Hence, Ld. Sr.P.P for the CBI submitted that there is sufficient material on record to frame charges against all the accused person for the offences they have been chargesheeted .

Arguments on behalf of Arun Dudi (A-1)

17. Per contra, Ld. Counsel for A-1 has argued by placing reliance on Vigilance Report (D-14) that he was not at all directly connected with any of the clients seeking insurance. The entire communication with the clients was done by Sh. Rajendra P. Chavan of the Operating Office, GIC. The job of A-1 being posted at the Head Office as Administrative Officer was only to obtain rates from the brokers and after finalization of the rates, put up the Fac Note

before the Facultative Committee which comprised of A-2, A-3 and A-4. He had no role in the approval of the said Fac Note. It is further argued that the contentions raised on behalf of A-2, A-3 and A-4 that the Fac Notes prepared qua the above-referred six ships reinsurance being forged or fabricated was never raised during the Departmental Vigilance Inquiry. The FSL report too demolishes their contention regarding any such manipulation.

17.1 Apart from that reliance is also placed on document D-15 which shows that the payment was released to the brokers by the Accounts Department and A-1 had no role in it. None of the officials from Accounts Department have been named in the present case by the prosecution. Therefore he is liable to be discharged .

Arguments on behalf of Akhilesh Mishra (A-2)

18. Ld. Counsel for A-2 has argued that the entire money which is alleged to be loss to OICL amounting to Rs. 1,30,43876/- has been received back even before filing of the complaint with the CBI. Therefore, there is no wrongful loss or wrongful gain to OICL or the brokers respectively.

18.1 Further, it is argued that as per the OICL policy the Treaty of Reinsurance is sought by the insurer in case the value of risk is beyond the automatic retention capacity of the company. In case of

Marine Hull War Risk, OICL has to obtain reinsurance cover and the said process is done by Head Office, Marine Department of OICL. The Regional Office (R.O.) or Divisional Office (D.O.) has no role qua the reinsurance approval. **In the present case in hand, A-1 was the officer who was designated as Underwriter, in the Head Office Marine Department and he initiated the process for facultative reinsurance qua all the six ships as referred above**. He directly communicated with A-5, Director of Bharat RE (A-8) or A-7 Director of WWIBL (A-9) while seeking rates for reinsurance qua all the six vessels. The said request email of A-1 is surprisingly not copied to any other official of OICL including A-2, despite the fact the other emails in the said entire process of insurance or reinsurance are copied by the sender to other officials working in the same department including A-2. The said act shows the malafide intention on the part of A-1 and shows that A-2, A-3or A-4 had no role in the said criminal conspiracy perpetuated by A-1 in connivance with A-5, A-6 and A-7. A-2 merely being the member of Facultative Committee approved the Fac Note. Even the other members of Facultative Committee whose role is at par with A-2 have not been named in the present case as sanction for prosecution has been denied by OICL.

18.2 Further, it is argued that the contract stood concluded, the moment A-1 responded to the rate received from the broker by binding the risk on behalf of OICL. Till that point of time, Fac

Committee had no role in it. The Fac Committee is only supposed to the see that risk placed with broker is as per the policy of OICL. The CBI has misinterpreted the role and domain of the Committee. A-1 also never pleaded during the departmental inquiry that he was acting on directions of A-2 to A-4. It is further argued on behalf of A-2 that in the regular departmental inquiry against them, A-2 and A-3 have only been found to be negligent and A-4 has been exonerated.

18.3 The second part of the allegations of prosecution in the present case is that no proposal for reinsurance was sought from GIC Re despite the fact the GIC Re being the public sector reinsurance company. The statement u/s 161 CrPC of LW-9 Uday Bhanu, now working as Chief Manager, Marine & Aviation, OICL, clarifies that there is no process of inviting tenders for best rates from different reinsurer's. The reinsurance is done through intermediaries or brokers and there is no requirement of seeking rates only from GIC as GIC does not provide the reinsurance under the London War Scheme which is the case herein. Further, it is argued that the said fact is also rebutted vide emails dated 30.09.2014 to 6.2.2015 Part of D-11 which shows that GIC was approached with respect to Vessel Kuber, but GIC quoted higher than market rates. Further, the rates of GIC (D-29) itself shows that GIC rates were higher than the market rate and the rate offered vide the said circular was not applicable at that point of time. The obligation of Public Sector Insurers approaching the GIC for reinsurance was voluntarily one and now it has been made mandatory as reflected in letter dated 31.09.2018 (Part of D-93).

18.4 As far as the destruction of original facultative notes qua four ships is concerned, again reference has been made to the version of LW-9 Uday Bhanu stating that A-2 was never the custodian and the entire record was in the custody of A-1. Further, the Fac Notes available on record reflect that only the second page has his signatures and first page which all the details qua the rate of reinsurance etc is signed by A-1 only. Thus forgery has been committed by A-1 in replacing the said first page of Fac Note .

18.5 It is also argued that A-2 after coming to know about the said fraud being perpetuated by A-1 in connivance with the brokers, A-2 only initiated the process of getting the refund of excess amount from Bharat RE (A-8) and WWIBL (A-9).The emails in this regard are part of the record. Due to his efforts only, the entire money could be got refunded.

18.6 It is further argued that as far as the case of prosecution qua sixth ship Neel Samunder is concerned, it is the case of the prosecution itself that the reinsurance of the said ship was obtained by WWIBL (A-9) through S.S.S Brokers. But, the said broker has not been named either as prosecution witness or accused.

18.7 Lastly, there are no allegations in the entire chargesheet qua any *quid pro quo* between him and the brokers. The house-search of A-2 was also conducted which reflects that no extra assets or unaccounted cash was found.

The written arguments filed on behalf of A-2 are also on the similar lines. The reliance has also been placed upon the following judgments:-

(i) Mir Nagvi Askari V. CBI (2009) 15 SCC 643

(ii) Union of India V. Prafulla Kumar Samal & Anr (1979) 3 SCC 4.

(iii) State of Orissa V. Debendra Nath Padhi (2003) 2 SCC 711.

(iv) R.S Mishra V. State of Orissa & Ors (2011) 2 SCC 689

(v) Sheoraj Singh Ahlawat & Ors V. State of U.P (2013) 11 SCC 476

(vi) Nathulal V. State of M.P AIR 1966 SC 43.

(vii) T. Barai V. Heny Ah Hoe & Anr (1983) 1 SCC 177

Arguments on behalf of Pramod Kumar (A-3)

19. Ld. Counsel for A-3 has argued that only allegation against A-3 is lack of due diligence in approving the facultative note being the member of Facultative Reinsurance Committee. He too has been exonerated in the regular Departmental Vigilance Inquiry conducted by OICL. **His role while acting as a member of Facultative Committee was only to check the deviations in the proposal and**

therefore, had no role in the finalization of rates of reinsurance which is the key issue herein. His regular posting was rather in Marine Claims Department and therefore, he had no control or role over the working of A-1. The reliance is also placed upon Work Charter D-48 which shows A-3 had very limited role being the member of Facultative Committee only. Rather, he was acting due to absence of another official i.e Ms. Kritika.

19.1 Ld. Counsel for A-3 further adopted the remaining arguments advanced on behalf of A-2.

Arguments on behalf of Surender Singh Selal (A-4)

20. The arguments advanced on behalf of A-4 by his Ld. Counsel are also similar to the arguments advanced on behalf of A-2. Apart from that, it is argued that the role of A-4 is only concerning one ship i.e Neel Samunder as he was posted in the Marine Hull Department only on 25th of March 2015. Prior to that he was on deputation with India International Insurance at Singapore.

20.1 It is further argued that A-4 came to know about the irregularities qua ship Neel Samundar on 31.8.2015 and due to his efforts only, the entire payment was got refunded by WWIBL (A-9). He thus played a crucial role in exposing the fraud being played by A-1 in conspiracy with the brokers. Even the credit note qua ship Neel Samundar has not been signed by A-4. The facultative note qua the said ship is also forged one as the second page of the said note has his signature wherein no particulars of broker or the rates being offered by the broker are mentioned. He has already been exonerated in regular departmental inquiry conducted by OICL.

Arguments on behalf of Sumit Verma (A-5)

21. Ld. Counsel for A-5 placed reliance upon documents D-92 and D-101 which are the documents of Insurance Regulatory Development Authority **(IRDA)**. It clarifies that there is no capping as to the amount of brokerage to be charged. The role of A-5 was that he was only acting on behalf of broker Bharat RE (A-8). He was not Director of the said company but only a employee drawing salary of around Rs 50,000/-. The rates which were quoted by him to A-1 in response to the email qua ships Madhwa ,Mahesh, Kuber, Kanchipuram and Surya-I were as per their company policy. Further, the claim of the company that he was acting on his own is also rebutted through emails addressed by him to re-insurer M/s Tysers, London. The said email is copied to other officials of Bharat RE (A-8). It is not his fault that A-1 quoted the false rates qua ship Madhwa, Mahesh and Kuber with his Mumbai Office. He never had any opportunity or occasion as to check the rate which was communicated by A-1 to his Divisional/ Regional Office.

21.1 As far as two other ships i.e Surya-I and Kanchipuram are concerned, A-5 never knew about the non-existence of base insurance qua the said ships. If indeed he was acting in conspiracy with A-1, why they would have never bought the war cover for the said non-existed policies from M/s Tysers London. The reliance is also placed upon D-45 which is the statement of account of Bharat RE (A-8) and the same shows that the premium being further paid by A-8 qua all the said ships to M/s Tysers London.

21.2 Further, it is argued that Bharat RE (A-8) has already refunded the extra amount charged qua Madhwa, Mahesh and Kuber and the amount qua Surya-I and Kanchipuram, which shows that there is no wrongful loss or gain. It also shows that there is no unjust enrichment of A-5. Rather, reliance is placed upon the statement of LW 13 V. Ramesh which shows that his salary was rather reduced by Bharat RE. There is no evidence at all showing as to how he was acting in conspiracy with other public servants of OICL.The written arguments too are on the similar line. Reliance is placed upon the following judgments:

(i) Union of India V. Prafulla Kumar Samal & Anr. AIR 1979 SC 366

(ii) Satish Mehra V. Delhi Administration & Anr. 1996 JJC 507

(iii) Dilwar Babu Kurane V. State of Maharashtra 2002 Crl. 980 SC

(iv) Century Spinning & Manufacturing Company Ltd & Anr V. State of Maharashtra, 1972 Crl. Law Journal 329 SC.

(v) State of UP through CBI V. Dr. Sanjay Singh & Anr 1994 SCC (Criminal) 1701.

Arguments on behalf of Thyagarajan Vijay A-6 and Bharat RE (A-8)

22. Ld. Counsel for A-6 and A-8 has argued that A-6 has been chargesheeted merely on the premises that he was Managing Director and the Principal Officer of M/s Bharat RE (A-8). None of the prosecution witnesses cited in the chargesheet has deposed anything incriminating against the accused. Rather, LW-13, LW-26, LW-29 and LW-33 who are all officials of Bharat RE (A-8), in these statements, stated A-6 was not all in picture in all the five transactions of reinsurance. The entire thing was being done by A-5 and it is he alone who was communicating the rates of reinsurance with OICL and seeking rates from M/s Tysers London. Thus, in view of want of any specific act, A-6 cannot be prosecuted in the present case.

22.1 Reliance is placed upon the following judgments:

(a) Sunil Bharti Mittal V. CBI AIR 2015 SC 923

(b) Shiv Kumar Jatia V. State of NCT of Delhi AIR 2019 SC 4463

(c) Ravindranatha Bajpe V. Mangalore Special Economic Zone Ltd & Ors etc AIR 2021 SC 4587

(d) K.R Purushothaman V. State of Kerala (2005) 12 SCC 631

(e) Satish Mehra V. Delhi Administration & Anr. 1996 JCC 507

(f) Ram Sharan Chaturvedi V. State of Madhya Pradesh Criminal Appeal No. 1066 of 2010

(g) Union of India V. Prafulla Kumar Samal & Anr. AIR 1979 SC 366

(h) Century Spinning & Manufacturing Co. Ltd & Anr. V. The State of Maharashtra 1972 CLJ 329 SC

22.2 As far as the issue of destruction of original facultative notes are concerned, he or his company has no role in it. Similar are the arguments advanced on behalf Bharat RE (A-8). Further, it is argued that after coming to know about the said fraud being perpetuated by A-1, they refunded the entire extra amount or the amount charged against non existent polices to OICL. The written arguments too are on similar lines .

Arguments on behalf of Kishan Agarwal (A-7) and WWIBL (A-9).

23. Ld. Counsel for A-7 and A-9 argued that they are concerned only qua reinsurance/ War Risk of vessel Neel Samundar. As far as reinsurance qua the said vessel/ship is concerned, documents filed by the prosecution itself as well as the statements of witnesses namely Rajnish (LW-27) and Mukesh Jain (LW-30) reflect that Arun Dudi (A-1) being the Underwriter at OICL, before approaching them had approached M/s Bajaj Capital Insurance Broking Pvt Ltd and M/s Howden Insurance Brokers Pvt Ltd. The rates were quoted by both of the said brokers. The offered rates by M/s Bajaj Capital and M/s Howden Insurance were same i.e 0.50% for the risk including 5% ceding commission to OICL. But somehow, the business or did not materialise with both the said brokers as they withdrew the offers due to some discrepancies in the proposal .

23.1 A-1 lastly approached A-7 through his email dated 11.08.2015 at 10:47 a.m. (part of D-46). The said email was thereafter was forwarded by A-7 to their Chief Operating Officer Inderjeet Jain cited as LW- 12. The communication further developed at their firm and one of their other official namely Pawan Gupta too was involved who further communicated with broker M/s SSS Insurance Service Pvt. Ltd, at Male, Republic of Maldives. After getting the rates from said broker M/s SSS Insurance Service Pvt. Ltd, the rate was offered by A-7 to A-1 through email dated 11.08.2015 at 3:57 p.m. **The same rate was offered i.e 0.50% towards risk including 5% seeding commission to OICL. It is the same rate which was earlier offered by two previous brokers.** Therefore, it cannot be said that A-7 had offered an exorbitant rate.

23.2 Apart from that, the emails which are part of D-46 and D-62 itself reflect that A-7 was not the sole person who was involved in the transaction. Besides him, Inderjeet Jain and Pawan Gupta too were communicating with the broker M/s SSS Insurance Service Pvt. Ltd. as well as OICL. But, none of them has been named as accused and he has been arbitrarily named as an accused.

23.3 Further, the reliance is placed upon the said email itself to show that there was no mala-fide intention on the part of either A-7 or their Company WWIBL (A-9) while binding the Fac Order qua vessel Neel Samundar. Their conduct of having done all the due diligence without having any inkling of conspiracy on the part of OICL officials qua raising reinsurance request for non-existing policy is reflected from verification email sent by Pawan Gupta on 12.08.2015 at 16:41 p.m . It is also copied to A-7 and Inderjeet Jain. The credentials of broker M/s SSS Insurance Service Pvt. Ltd were sought to be confirmed from Re-Insurer from M/s Tysers London. Only after getting the response from M/s Tysers, the risk was bound by them through mail dated 14.08.2015.

23.4 It is further argued by the Ld. Counsel that record itself reflects they received the payment from OICL on 27.08.2015. Within a few days of receiving the said payment, an email was received from A-1 on 01.09.2015 intimating that policy has been cancelled since inception and requesting for refund the reinsurance premium immediately. They again thereafter contacted brokers M/s SSS Insurance Service Pvt. Ltd. and after receiving positive response and payment from M/s SSS Insurance Service Pvt. Ltd, the payment was remitted back to OICL on 09.09.2015. The amount which was received by them from OICL was Rs.45,000,47/-. The amount remitted back was Rs. 44,123,30/-. The difference was on account of bank charges and change in dollars rates. But again request was received from A-1 seeking refund of entire amount through his email dated 09.09.2025. **A-7 and A-9 agreed to refund the entire amount by agreeing to take hit of Rs.87,717/-. Thus, there is total loss of Rs. 87,717/- to them in the entire transaction**

which itself shows that they were neither aware of the conspiracy hatched by officials of OICL or the role of M/s SSS Insurance Service Pvt. Ltd. in the said conspiracy if any. No investigation has been conducted qua M/s SSS Insurance Service Pvt Ltd whose name was suggested by A-1 as has been stated by LW 12 Inderjeet Jain. Even IRDA was informed by them only about the said transaction which again reflects there being no malafide intention on their part. IRDA too has exonerated them .

23.5 In support of his arguments, Ld. Counsel for A-7 and A-9 has relied upon the following judgments:

(I) State V. S. Selvi & Another Criminal (2018) 13 SCC 455

(II) Yogesh @ Sachin Jagdish Joshi V. State of Maharashtra (2008) 10 SCC 394

(III) Union of India V. Prafulla Kumar Samal & Anr (1979) 3 SCC 4.

Rebuttal Arguments of CBI

24. Ld. Sr. PP for the CBI in rebuttal to the arguments advanced on behalf of A-2 to A-4 that they merely signed the fact note and the said act was unintentional one is liable to be rejected. The signing of fact note was not an empty formality. The departmental inquiry proceedings (D-14) reflect that the members of the Fac Committee were burdened with the duty to check that the proposal under consideration is as per the rules and policy of OICL. As far as their

argument that Facultative Note has been forged by A-1 is also not proved during the investigation is concerned. It is further argued that the mere denial of prosecution sanction qua one or two of the members of Fac Committee cannot be the ground for discharge of A-2 to A-4. The CBI had no role or authority to question the said denial. As far as the Account Department personnel are concerned, they had no role in approval of RI Proposal. They merely processed the debit notes after receiving Closing Particulars from A-2.

24.1 Lastly, it is argued that none of the accused persons has denied the factum of wrongdoing and fraud in the present case. They have rather tried to shirk from their liability and pass the back on each other. The subsequent recovery of the cheated amount will not have any bearing on the prosecution as the offence stood completed when the cheated money was transferred to brokers A-8 and A-9.

<u>Appreciation of Arguments, Analysis & Reasoning</u>

25. The issue involved in the present case concerns re-insurance for war risk cover in respect of six ships/vessels done by OICL on behalf of their clients by taking services of reinsurance brokers. Before appreciating the allegations the process and requirement of reinsurance needs to be discussed .

The procedure for getting the reinsurance is done as per the guidelines and policy framed by OICL, which has been explained in detail by Uday Bhanu (LW-9), Chief Manager, Marine & Aviation, OICL. **He explained that there are two types of reinsurance arrangements, one is Treaty Reinsurance and other is Facultative Reinsurance**. In case of Treaty Reinsurance, the arrangement is done sector wise/line of business wise. Annual Treaties are done with different re-insurers. Particular insurance is automatic treaty made by any company, then there is no requirement of separate Facultative Reinsurance arrangement. The said type of reinsurance i.e Treaty Reinsurance is not relevant herein. The other **Facultative Reinsurance** which is the fact-in-issue in the present concerning all the above-referred six ships has been explained by him as under:

> **"Facultative Reinsurance- If value of the risk is beyond and automatic retention capacity of the company then this re-insurance is obtained on case to case basis."**

25.1 The company in case of Marine Hull War Risk has to obtain reinsurance cover as the sum insured in these cases is beyond the retention capacity of the insurance company. He further explained the procedure of Facultative Reinsurance concerning Marine Hull War Risk by stating that there is an officer who is designated as Underwriter in Head Office, Marine Department (A-1 in present case) and he initiates the proposal for facultative reinsurance.

25.2 The retention capacity of the ship qua Marine Hull War Risk is Rs.10 crores and if the sum assured is beyond Rs.10 crores, the facultative reinsurance comes into play. Any reinsurance in Marine Hull War Risk beyond Rs.10 crores comes to the Head Office of the Company. The HO is only authorised to obtain facultative reinsurance. The proposal comes from the Regional Office or Marine Hull Division Office, Mumbai. Thereafter, the Underwriter who is designated officer in Head Office, Marine Department, obtains rates and terms from the reinsurance market. He further explains the said procedure by stating that the reinsurance market operates through intermediaries/brokers. As far as selection of intermediaries/ brokers is concerned, their company sees convenience, past experience record, expertise etc. Once the rate is received from the broker for reinsurance, the quotation is communicated to the Regional Office or their Division Office from where the proposal was received. Thereupon, the said office confirms the acceptance of the client to the Head Office. After the receipt of the acceptance by the client and it being communicated to the Head Office, reinsurance slip is obtained from the broker which contains necessary particulars such as rate, terms, conditions, name of reinsurer etc. Then, a Facultative Note **(hereinafter referred as 'Fac Note')** is prepared by the designated officer of Marine Department containing all the above-said detail. Hard copy of the same is also prepared and retained in the file. The said Fac Note is then approved by the Competent Authority/ Facultative Committee which comprises of two Chief Managers and Head of the Marine

Department. After the approval, the debit note raised by the broker in favour of the company is processed on the basis of Fac Note. The said document is called C.P (Closing Particulars) and it is signed by Chief Manager of the Department or in his absence by his junior. Thereupon the said C.P is forwarded to reinsurance Accounts Department who thereafter initiates the process of payment to the broker. In the meantime, the policy issuance process is also done by the Regional or Divisional office i.e policy issuing office.

25.3 So, in the said backdrop of procedure for issuance of Marine Hull War risk policy, the case of the prosecution is required to be appreciated qua the above-noted six ships/vessels. In all the said six vessel's the facultative reinsurance was obtained through brokers namely Bharat RE (A-8) and WWIBL (A-9).

25.4 There are certain facts which are undisputed at this stage being reflected from the documents seized by the CBI from the OICL, Bharat RE (A-8) and WWIBL (A-9). It is reflected from the said documents that as far as vessels viz; Madhwa, Mahesh and Kuber are concerned, the proposal of reinsurance was received from Division Office-14, Mumbai through emails of Rajendra P. Chavan (LW-4). The said mails were addressed to S.K. Rath of GIC, Group I.D of Marine Team and Arun Dudi (A-1). The mail has been copied Akhilesh Mishra (A-2), DGM and others.

25.5 The process of reinsurance thereafter has admittedly been initiated A-1 by getting quote from sole broker. But, in the above-referred three cases, surprisingly only a solitary mail was sent to a single broker i.e Sumit Verma (A-5) of Bharat RE (A-8). It is also reflected qua the above referred three ships that even before getting the response from the said sole broker, A-1 communicated the quote on his own to Division Office through mail which ultimately was found to be less in comparison to the sole quote received from A-5 of Bharat RE (A-8). The quote communicated by A-1 to Division Office was .02,% .01% and .01% respectively qua the said three ships. On the contrary, the rates quoted by A-5 on behalf of Bharat RE (A-8) and later on accepted by A-1 were .03%, .03% and .04% respectively. Therefore, in this manner, the loss was suffered by OICL as the amount collected from the client was less than the amount paid by OICL to broker Bharat RE. The difference of the amount is discussed/illustrated in following Chart. **The said chart also shows how there was windfall for the brokers as they availed the War Cover Policy from Re-Insurer (M/s Tysers, London) at pittance** :

Name of Vessel	Premium Received by OICLfrom the client as per Policy and rate communicated by A-1	Premium paid Paid by OICL for reinsurance to Broker Bharat RE (A-8) as per Debit Note	Premium paid by Bharat RE to M/s Tysers London for reinsurance.	Date of Refund
Madhwa	Fac Order Rs.89296	Rs. 1,33,945/-	60,000/-	03.11.2015

Mahesh	Fac order Rs.62,700/-	1,88,100/-	72,000/-	19.10.2015
Kuber	Rs. 49,994	7,99,851/-	1,89,438/-	19.10.2015
Surya-I	No policy issued	44,88,797/-	4,72,505/-	09.10.2015
Kanchi-puram	No policy issued	31,35,127.36	3,30,313/-	09.10.15

26. Now, coming to the next set of admitted facts which are reflected from the record itself which concerns the other three ships namely **Surya-I, Kanchipuram and Neel Samundar.** Two of the said three ships, the facultative reinsurance was obtained from Bharat RE (A-8) and third one from WWIBL(A-9) by Arun Dudi (A-)1 at very exorbitantly high rates without the vessel's being insured by the client at first place with OICL. No proposal was ever received by A-1from DO/Mumbai Office and he, on his own, initiated the proposal of reinsurance which led transfer of huge amount to the tune of Rs.44,88,798/, Rs.31,35,127/- and Rs. 45,00,047/- respectively to brokers. Thus, in all the three cases, a total of Rs 1,21, 23,971/- was paid by OICL to broker's which is a total loss as no war insurance was required in the first place.

26.1 Another set of facts which are reflected from the documents itself is the facultative notes concerning all the above-referred ships were prepared by A-1 and thereafter approved by **Committee comprising of Akhilesh Mishra (A-2) and others. Pramod**

Kumar (A-3) and SS Selal (A-4) were part of the committee which approved the Fac Notes of vessels viz; Madhwa, Mahesh, and Neel Samundar respectively. Subsequently, the closing particulars on the basis of which the money was released in favour of broker too has been signed by A-2 or A-3 only. Thus, the factum of fraud & loss to OICL is not under challenge.

26.2 In view of the said backdrop and admitted facts, the first limb of common argument advanced on behalf of all the accused persons, is that not a single rupee loss has been caused to OICL. The entire money has been refunded to them by Bharat RE (A-8) and WWIBL (A-9) in the year 2015 itself. Therefore, there is no wrongful loss or gain to anyone. Hence it is prayed that no offence u/s 420 IPC is made out .

26.3 The said argument, on the face of it might appear to be attractive, but when seen in light of the admitted facts, it is *prima facie* apparent that the alleged act of misconduct and cheating on the part of the officials of OICL in issuing the policies by making the excess payments or payments against non-existence policies, the offence stood completed after the payment to brokers. The subsequent act on the part of Broker's refunding the payment after being pursued by OICL after the said fraudulent practice came to their knowledge, does not exonerate the previous misconduct or obliterate the offence which stood concluded upon the receipt of payment by brokers. It is also not the case that the brokers on their own refunded the excess payment or wrong payment's. Rather, they acted only upon being pursued by OICL .One of the broker ie. A-8 rather refunded the amount after much efforts only .

26.4 It is not the case that either the alleged public servants involved in the above-referred instances of excess payments or payment qua non- existence policy after noticing their mistake initiated the process of getting the refund or the companies themselves initiated the said process. Rather, it is only when matter got highlighted in the last week of August 2015 as per the written statement of A-2 (Part of D-16). The Vigilance Enquiry record reflects that the said act of fraud was reported to him on 31.08.2015 by one Sh. Amitesh Sinha, GM OICL and Shri Anil Varma of M/s M/s Howden (another broker of reinsurance) regarding some wrong payments and irregularities. Though none of them has been examined during the investigation. Therefore, it is apparent that the Marine Department headed by A-2, then only woke up from the deep slumber and initiated the process of refund by contacting the brokers. Ultimately, the refund was received in September from the broker WWIBL (A-9) and in October / November 2015 from Bharat RE (A-8). Therefore the argument advanced on behalf of the accused that there is no wrongful loss is without any basis . Even the temporary loss of Rs.13043876/- is sufficient for the proseution of the offenders .

Conspiracy

27. Now, coming to the aspect of criminal conspiracy and the players involved in it. It has been argued on behalf of all the accused they were not aware of any such conspiracy and tried to shift the blame upon each other .

It is well settled proposition of law in cases of criminal conspiracy direct evidence is rarely available. The only evidence generally available in the cases of conspiracy is the circumstantial evidence which includes the conduct of the parties or their acts. In the said backdrop the issue to be seen herein is whether the evidence disclose the criminal conspiracy between the accused named in the present case or not.

28. Before discussing the criminal conspiracy and the players involved in it, the understanding the process of facultative reinsurance is necessary . It is explained by LW-9 Uday Bhanu which is shown as a chart hereunder:

Flow Chart of Procedure for Reinsurance

Regional Office (R.O) /Divisional Office (DO) receives Proposal for insurance from client and RO/DO communicates the same to Head Office (HO) Marine Department if the proposal is beyond the retention capacity of OICL .

↓

The request of reinsurance from R.O, will be processed by Underwriter at HO

Underwriter at H.O will seek rates from GIC/Broker's depending upon the scheme of War Risk Insurance sought

Underwriter at H.O after receiving the rates will forward it to RO/D.O for clients' approval

R.O/D.O after receiving assent/confirmation from client will communicate with H.O for binding the risk

H.O will bind with respective the risk with respective Reinsurer/ Broker

Reinsurer./ Broker after confirmation of risk will send the Debit Note

The proposal of reinsurance will be approved by FAC Committee (Comprising of Akhilesh Mishra(A-2), Pramod Kumar (-3) and Surender Singh Selal (A-4)

Closing Particulars of Reinsurance Policy is prepared at HO and it is approved by Manager Reinsurance and forwarded to Accounts Dept for payment to Reinsurer / Broker

Accounts Department at H.O makes payment to the Broker/Re insurer.

28.1 So, it is reflected from the above-drawn flow chart that any proposal for re-insurance originates from the Division Office (D.O) or the Regional Office (R.O). In present case, it is R.O-1/MCDO-14

Mumbai. They initiated the request seeking war reinsurance qua the three ships namely Mahesh, Madhwa and Kuber only. It started with the mail from LW-4 Rajendra P. Chavan. The said email seeking rates for war reinsurance was also copied to A-2 being the DGM of Head Office (H.O) and others. It is addressed to A-1 being the Underwriter at the H.O. A-1. But surprisingly, in all the above referred insurance qua 3 ships (as well as qua ships Surya-I/ Kanchipuram) , A-1 sought reinsurance rates from a sole broker i.e A-5 Sumit Verma Director Reinsurance of Bharat RE (A-8). A-5 qua the said three ships namely Madhwa, Mahesh and Kuber communicated the rates of reinsurance at .03%, .03% and 0.04% respectively. On the other hand, A-1 communicated the rates on his own to R.O i.e Rajendra P. Chavan (LW-4) at 0.02%, .01 and .01 respectively. Thus, due to the variation in the rates communicated by A-1 to RO as compared to the rates quoted by A-5, a substantial lesser amount of premium was charged and received by OICL from the client's. The amount of premium charged by OICL qua the said above three ships was Rs.93996, Rs. 66000/- and Rs. 260782/- respectively qua ships Madhwa, Mahesh and Kuber. On the contrary, OICL for reinsurance qua the said ships paid net amount of Rs. 1,33,944/-, Rs.1,88,100/- and Rs.7,99,851/- respectively to broker Bharat RE (A-8). Thus, there was substantial loss to OICL to due to excess payment paid to Bharat RE (A-8).

28.2 The next issue which raises a strong suspicion over the players involved qua the said three ships is the amount in turn paid by broker Bharat RE (A-8) to reinsurer M/s Tysers, London qua War Insurance of the said ship's . The amount paid by them is paltry as compared to the amount received by them from OICL. Bharat Re paid Rs. 46988, Rs. 59400 and Rs. 189438/- respectively and the said amount was to be paid in four quarterly installments by Bharat RE (A-8). Thus, there was substantial gain by Bharat RE (A-8) while acting as broker for reinsurance and substantial loss to OICL .But the officers of OICL failed to notice the discrepancies raising suspicion over their conduct .

28.3 The next issue to be seen is as to whether there was any said standard set by regulator IRDA or not as to the amount of brokerage. It is to be seen whether the Broker acted within the regulatory framework or not in charging a huge amount of brokerage. In this regard, the reliance has been placed by Ld. Counsels for accused upon documents D-92 and D-101 by arguing that there is no such limit of brokerage . The IRDA has not set any limit in brokerage for the brokers operating in the field of reinsurance. But the issue to be seen is as to whether the amount of brokerage charged by Bharat RE (A-8) qua the said three ships is the usual business as is argued by the accused persons (specially by A-5 and A-6) or unusual one.

28.4 In this regard, the statement of LW-13 V. Ramesh, Sr. Vice

President Bharat RE (A-8) is the most crucial one. He though exonerates A-6 from any liability by claiming that A-5 was authorised and competent to do the business on behalf of their company and had not to seek any approval from the higher authorities before submitting the rates to OICL. A specific query was put by the Investigating Officer (I.O) and his response to the said specific query reflects the existence of criminal conspiracy in the present case. The said part is reproduced hereunder:

> **"On being asked today about other policy/instances wherein our company would have charged more than 50% brokerage on the quotes received from reinsurance/brokers, I have to stated that I could not find any single case."**

28.5 Thus, it is apparent that not a single instance could be found by him at wherein their company(Bharat RE) has charged more than 50% brokerage for quotes of reinsurance.

28.6 Another witness who again nails the contention's of A-5 and A-8 and officials of OICL regarding war rates quoted by Bharat RE (A-8) being not unusual, is LW Mukesh Jain the Director of Bajaj Capital Insurance who too are in the same business . He stated that though there is no prescribed limit for brokerage for reinsurance but the market of reinsurance operates on very nominal rates. Thus, his version too at this prima facie reflect that exorbitant brokerage charged by Bharat RE (A-8) was prima facie only on account of criminal conspiracy hatched by them with the officials of OICL.

29. Now comes the role of officers of OICL in the said criminal conspiracy. The crucial aspect to be seen is the main role of A-1 in the said entire process. As has been explained in the flow chart that his role as Underwriter at Head Office, Marine Department is the most crucial one. It is he only who has to obtain the rates for reinsurance for Marine Hull War Risk either from GIC or by private brokers as the case may be. In the present case qua the above-referred three ships Madhwa, Mahesh and Kuber, the record, reflects that he obtained the rates for reinsurance for War Risk Insurance only from i.e Bharat RE (A-8) by communicating directly with A-5 through mail. He sought rates from private brokers despite the client having sought GIC War Cover.

Statement of LW-9 Uday Bhanu is relevant in this regard and he has explained the process of reinsurance and the role played by their office. They obtain the rates from GIC and various brokers, though the process of inviting rates through tender is not feasible due to shortage of time. He further explains that A-1 was having the obligation to ask rates from various brokers. Even as per Audit Report (D-115) of OICL too, it has been held that A-1 failed to do so . Thus at this stage, the only inference which to has to be drawn at this stage is that it was only due for ulterior motives. During the Vigilance inquiry the admission of A-1 in this regard has also come on record. He claimed he was doing so as he being extorted in this regard , but sadly the said fact has not been investigated. As far as other two vessel's Surya-I and Kanchipuram are concerned, A-1 initiated the process seeking rates for War Risk Insurance from A-5 without having received the request form Regional Office or Division Office, which again shows his prominent role in the conspiracy.

29.1 It has also been argued on behalf of A-1 that there is *quid pro quo* as no benefit accrued to A-1 or other officials of OICL in these matters of fraudulent reinsurance. In this regard, though there is no direct evidence for *quid pro quo* but the statement of account of A-1 of UCO Bank which has been seized herein being part of D- 59 reflects the benefits. There are regular entries of cash in his account which continued till the about the third quarter of 2014. Thereafter, the said entries dried up despite the fact that A-1 was suspended from his service in September 2015. It is the defence of A-1 that these cash deposits were made by his parents to support him. If indeed,the said defence was true, then the cash entries should have rather continued after September 2015 when he was suspended from his post. Therefore, the said evidence, at this stage, prima facie shows *quid pro quo* between the OICL officials and the brokers while they were operating and processing files of reinsurance.

29.2 The next central character apart from A-1 in the said fraud involving all the ships is Sumit Verma (A-5) of Bharat RE (A-8).

It is not in dispute that he worked as Director (RI) in Bharat RE (A-8) with effect from 01.02.2013 till March 2015. {as stated by LW-13 V. Ramesh, who is the Senior Vice President in Bharat RE (A-8). A-5 was initially appointed on monthly CTC of Rs.50,000/- which was subsequently reduced to Rs.25,000/- after five months. He remained with the company till March 2015 and left thereafter by submitting the resignation. So, as far as the status of employment from February 2013 till March 2015 of A-5 as Director in Bharat RE (A-8) is concerned, there is no dispute.

30. It is his case that first of all, as far as the capping of the brokerage is concerned, the guidelines of IRDA, part of document D-92 and D-101 are silent. The second limb of his argument is that he has done the work which was within the scope of his jurisdiction . He also kept the other officials of Bharat RE (A-8) in loop as is reflected from the mails exhanged with Tysers ,London . As regards the irregularities committed by A-1 regarding disclosure lesser War Insurance Rates qua ships Madhwa, Mahesh and Kuber or ship Surya-I or Kanchipuram having no base policy is concerned, he had no knowledge or any means to know about the said irregularities .

30.1 No doubt, the IRDA guidelines are silent qua the capping of the amount of remuneration or brokerage in reinsurance routine business. But the issue herein is the exorbitant rate of brokerage charged by M/s Bharat RE (A-8) who in turn got the War Insurance from M/s Tysers at pittance. The guidelines (Document D-101) of IRDA itself addresses the said issue. It is stated that the renumeration or reward as mentioned in the present case is unusally high. Therefore, first limb of argument advanced on behalf of A-5 that charging of exorbitant brokerage is not illegal, but the same is unusually high which raises a finger of grave suspicion.

Further when seen in light of other circumstantial evidence, it raises a finger of great suspicion over his role. The statement of LW-13 V. Ramesh (Sr Vice President Bharat RE) itself show that he was not able to point out even a single policy or instance where M/s Bharat RE (A-8) had charged more than 50% of the brokerage on the quote received from reinsurers (M/s Tysers in present case).

30.2 The next limb of his argument is on the point that Sumit Verma (A-5) had no knowledge or means about illegalities committed by Arun Dudi (A-1) while working at OICL. The said argument though on the face , appears to be a quite attractive , but when seen in the light of documents filed on record by CBI, it reflects otherwise. It is the admitted case of the A-5 that he resigned from M/s Bharat RE (A-8) in March 2015. Therefore, in the said backdrop, he could not have any role in reinsurance qua war risk of sixth vessel i.e Neel Samundar. The process of reinsurance qua the said vessel was initiated in June 2015 by A-1. The documents,(part of D-46) concerning vessel Neel Samundar show that in June 2015 as A-5 was no longer at Bharat RE (A-8), A-1 had to approach a new broker and he sent the email request seeking war rates from broker M/s Bajaj Capital. The said business could not be materialize as M/s Bajaj Capital withdrew their offer .A-1 then approached another broker i.e M/s Howden. There too the business could not be materialize and lastly A-1 approached another broker i.e WWIBL (A-9) who ultimately bound the reinsurance war risk. **The detailed role of WWIBL (A-9) and its M.D Kishan Aggaarwa (A-7) will discussed later on**. But the trail of said emails of A-1 having firstly approached M/s Bajaj Capital and then M/s Howden and lastly WWIBL (A-9) in the month of June-August 2015 for war insurance risk qua vessel Neel Samundar reflects that A-1 was forced to approach the other broker's as A-5 had resigned from Bharat RE which *prima facie* shows the deep involvement of A-5 in the conspiracy. Due to said reason only, A-1 did not communicate with any other official of Bharat RE (A-8), despite the fact on earlier five occasions the sole broker Bharat RE (A-8) was approached.

30.3 Another document which concerns vessel Neel Samundar only, (part of D-22,) again shows the deep conspiracy between A-1 and A-5 even at that stage, despite the fact of resignation by A-5 from M/s Bharat RE (A-8). The inquiry was initiated by OICL in September 2015 after getting to know about the fraud in reinsurance of above-referred six vessels. Accordingly, they contacted re-insurer

M/s Tysers, London. Various documents were sought from said M/s Tysers which they provided and while examining the said documents, it revealed that even qua vessel Neel Samundar, Sumit Verma (A-5) of Bharat RE (A-8) was operating behind the scene. The email dated 17.12.2015 of Swati Panesar (swati.panesar@tysers.com) reported about the involvement of A-5 qua vessel Neel Samundar and they having cancelled the placement on being informed about the same through his (A-5) email 2nd September2015 only. Thus, the said document on record reflects that even after having resigned from Bharat RE (A-8), A-5 continued assisting A-1 in the said conspiracy by communicating illegally on behalf of Bharat RE (A-8) with various other brokers and reinsurer. Therefore the argument advanced on behalf of A-5 that he no knowledge of irregularities of A-1 at OICL is a false version. Rather he was acting in collusion with A-1 .

30.4 His last argument that he had no knowledge about the conspiracy and this fact is corroborated from the record as A-5 indeed purchased War Covers from M/s Tysers. In case, he was part of the conspiracy, then no ordinary prudent person would have purchased War Cover for 3 Vessels having no base policies. The said argument also does not hold good as it cannot be assumed that all the players in conspiracy had knowledge about details of entire conspiracy.

30.5 Thus, it has to be observed that at this stage, there is sufficient *prima facie* material against A-1 as well as A-2 on record being part of criminal conspiracy.

Accordingly, the judgments relied upon on behalf of A-5 are not applicable herein being distinguishable on facts.

Alleged Role of remaining Officials (A-2, A-3 & A-4) of OICL

31. The next set of important players named by CBI qua the said six transactions were the members of Facultative Committee (Fac Committee) at different times at OICL i.e Akhilesh Mishra (A-2) (DGM), Pramod Kumar (A-3) (Chief Manager) and Surender Singh Selal (A-4), Chief Manager. A-2 apart from being Head of the Fac Committee, he was also heading the Marine Department at Head Office OICL. The crux of the arguments on their behalf is that they had no knowledge about the fraud being perpetuated by A-1 and A-1 was alone operating and conniving with A-5 as the said emails seeking rates were never copied to any other official of Marine Department of OICL or any other official. They have also argued that CBI misinterpreted the role of Fac Committee.

32. Before discussing the said aspect of the knowledge on the part of other officials of Marine Department Head Office regarding the conspiracy being perpetuated by A-1, the purpose of Facultative Committee and the role of its member needs to be discussed. The office order of OICL dated 06.02.2003 (part of D-108) spells out the

role of the said Committee and its object. The relevant part of the said office order is reproduced hereunder:

> **In order to formularise the procedures to be followed while handing the under mentioned cases certain set procedures are being laid out:**
>
> **a. Facultative placements**
>
> **b. Reinsurance underwriting of risks beyond the specifications of the Reinsurance Programme.**
>
> **It has been decided that a committee comprising of the following members would now vet the facultative placements and cases where the underwriting is done beyond scope of Reinsurance Programme. The Committee would comprise of the following members:**
>
> **a. Manager (Incharge) of concerned department.**
>
> **b. Manager (Incharge) RI Deptt.**
>
> **c. AGM (Incharge) Tech.**

32.1 Thus, it is apparent from the said office order that the members of Facultative Committee who were supposed to approve the Fac Note regarding reinsurance underwriting beyond the retention capacity of the company were supposed to vet the said note and ensure the compliance of the company policy. Their role was not to check mere deviations as has been argued on behalf accused. Their role has also been enumerated by LW-9 Uday Bhanu and LW-2 Chiranji Lal, Vigilance Officer, OICL. LW-9 Uday Bhanu explained that the members of Facultative Committee have to approve the facultative reinsurance note (Fac Note) and the said note is initiated by Administrative Officer (A-1 herein). **The note has all the relevant details as well as the details received from operating office. The documents accompanying the said note are**

to be seen by the concerned officers which can either seen in the file or computer system. They are supposed to ascertain or verify all the risk mentioned in the said facultative note and only thereafter it is to be approved. Similarly, LW-2 Chiranji Lal, Vigilance Officer who was the part of the vigilance inquiry who had submitted the report dated 09.01.2016 too spelled out the role of the said committee and its members. He found that the Fac Notes were approved by the Committee members without seeing the grave discrepancies including non-availability of base policy concerning three vessels Surya -I, Kanchipuram and Neel Samundar and discerpancy in the rate quoted for vessels Madhwa, Mahesh and Kuber. The Vigilance Report (D-14) dated 09.01.2016 too narrates about the role and misconduct on the part of the members of the said Committee. The said evidence thus at this stage rebuts the argument on behalf of A-2 to A-4 that their role as member's of Fac Commttee was only formal one and they were only to see the deviations in the proposal .

32.2 Now, in the said backdrop, the next limb of the arguments on behalf of A-2, A-3 and A-4 that they had signed the facultative note without any malafide intention and without going through the details mentioned therein. The said averment requires to be appreciated by seeing/looking into the entire sequence as well as the duties assigned to them. The officer order dated 06.02.2003 imposes a onus upon them to vet the Fac Note put before the committee by examining the same with the supporting documents. It was their duty to ensure the compliance of company policy and protect the interest of the company. They miserably failed to do so and it cannot be merely termed as mere lapse or dereliction of duty . It is also not a case stray dereliction of duty, rather they failed to perform the duty diligently on six occasions. The signing of Fac Note was not mere empty formality as has been tried to be argued on their behalf .

32.3 The contents of the Vigilance Report (D-14) dated 09.01.2016, also, discusses about the malafide intent on the part of said officials. Apart from that, the Audit Report (D-115) dated 10.12.2015 too points out the grave irregularities in the working of Marine Hull Department at Head Office, which was headed by A-2. A-3 and A-4 were holding important positions in the same. It also appears that effort was also made to scuttle the said audit as A-2 firstly through his letter dated 02.09.2015 asked for deferring the said audit and thereafter despite repeated efforts, his department failed to provide the important documents such as Fac Notes, comparison quotes, policy number of 15 C.P etc. In para-7 of the said report, it has also been opined that broker Bharat RE (A-8) is the party involved in five suspected cases and from whom the recovery has been made. They returned the amount without lodging any protest and their role also need to be further probed. Therefore the said material collected by the prosecution at this stage raises grave suspicion against the said officers of their conduct and they being part of the criminal conspiracy .

32.4 The statements of A-2, A-3 and A-4 recorded in the Vigilance Inquiry too does not in any manner exonerate them at this stage. **Rather none of them raised the issue of forgery in the first page of FAC Note as has now been argued in the court. Thus, it has to be said that *prima facie* the material at this stage does not in any manner exonerate the said officials Akhilesh Mishra (A-2), Pramod Kumar (A-3) and Surender Singh Selal (A-4). Rather the only inference to be drawn is that they were having knowledge regarding the fraud being perpetuated by A-1 with the help of A-5. They willingly became party to the said conspiracy .**

33. Now, coming to the specific role of A-2 Akhilesh Mishra who was head of Marine Department being the Deputy General Manager since May,2013. It is not disputed in all the six cases of above-referred ships/vessels, A-2 firstly approved the Facultative Note and thereafter the Closing Particulars (CP) in some of the cases and lastly gave system approval for issuance of the policy. The defence of A-2 qua the said financial irregularities qua the said six ships/vessels is that Arun Dudi (A-1) being the Underwriter sought rates from the broker without keeping him (A-2) or other officers of Marine Department OICL in loop. A-1 sought rates from Sumit

Verma (A-5) of Bharat RE (A-8). The said email's were never copied to him or any other officer of OICL.

33.1 No doubt, the said argument in view of the emails exchanged between A-1 and A-5 makes the defence of A-2 or other officers somewhat probable, but the said fact alone cannot be deciding the role of other officials allegedly involved in the criminal conspiracy. It has already been discussed that A-2 being the final authority in the Fac Committee was supposed to check into the particulars in the Fac Note presented by A-1 as per the objective and purpose of the said Committee as stipulated in the office order dated 6th February 2003. It was not merely an empty formality as seems to be the argument of A-2.The details were to checked with the supporting documents as has been stated by LW Uday Bhanu .

33.2 Apart from that another crucial circumstantial evidence which goes against A-2, at this stage, is the non-availability of original Fac Notes of four vessels Mahesh, Kuber & Surya-I and Kanchipuram . No doubt the custodian of the said record was A-1 , but A-2 being the head of the Department was the ultimate custodian of the record and he cannot put blame solely upon A-1 .

33.3 Besides this, another document D-99 which is the letter of Uday Bhanu (LW-9), Deputy General, OICL whereby he addressed the queries raised to the department during the investigation. It has been reported by him that as per the prevalent practice any such proposal for reinsurance, if materialised, has to be properly documented. The file has all the correspondences exchanged including processing of notes, fact note, closing particulars etc. **But in the present case in hand, the original file containing the said particulars of all the six vessels was not found in the department.** The mails could only be extracted from the desktop of A-1 by the IT Department of OICL during the enquiry, though the original Closing Particulars (CP) were found. Thus at this stage, the said circumstantial evidence of non-availability of complete files of all the six vessels again raises a grave suspicion against A-2 being the most senior officer/Head of the Marine Department, Head office and having dealt with all the above-referred six cases.

33.4 The other plea of circumstantial evidence against A-2 is that A-2 having signed and being involved in the approval of Fac Note, A-2 also approved 'Closing Particular' of vessel Neel Samundar despite the fact that the same was not within his jurisdiction as at that point of time, the Chief Manager being available, who was supposed to do it. The letter dated 12.02.2016 of A-2 being part of D-16, itself records the said submission which again raises strong suspicion against A-2. The only inference from the said material which can be drawn is that he was party to the conspiracy hatched by A-1 and A-5.

33.5 On behalf of A-2, A-3 and A-4, it has also been argued regarding the fact of forgery as their signatures only appear on the second page of the Fac Note. The first page of the said Fac Note which has all the particulars including the name of the broker, payment made and rate offered by broker etc. is not signed by them. The said first page of document is forged one and it is signed by A-1 only.

33.6 The said plea seems to be the new defence on their behalf. During the inquiry proceedings (D-17) conducted by OICL, the written statement dated 18.11.2015 was submitted by A-2. In the said written statement, it was pleaded that A-1 misrepresented the information before the senior officials of the department and fraudulently obtained their signature on the documents. He further, at that point of time, alleged that his signatures being obtained on the basis of misrepresentation or in connivance with the brokers. But now fresh defence now has been taken qua the forgery in the Fac Note. Even if, for the sake of arguments, it is believed that the first page of the Fac Note was forged by A-1, then still onus was upon A-2, A-3 and A-4 only to disclose about the existence of original first page as per them. No such original document surfaced either during vigilance inquiry proceedings or during the investigation in the present case. Therefore, at this stage, a inference has to be drawn against A-2, A-3 and A-4 of having approved the said proposal presented by A-1 in conspiracy with him. **They never cared to verify the particulars of the same with the supporting document's ,which if done would have prevented the fraud.** In case they had done so they would have noticed about the discrepancy in rate of risk communicated by A-1 to Mumbai Office and rate actually offered by A-5 qua vessel's Madhwa, Mahesh and Kuber. As far as three other vessel's are concerned the said exercise would have highlighted the non existence of base policy and fraud being played by A-1.

33.7 The last limb of their arguments is that another member's of the Fac Committee Lakshmi Kala Raghupathy or Alok Yagnik have not been chargesheeted as the sanction for their prosecution has been denied by the OICL. They stand on same footing with them. No doubt, the said Lakshmi Kala Raghupathy, Chief Manager, R.I, was also part of the Fac Committee,and she was party to approval of said Fac Note investigated in present case. But the fact remains that the sanction for her prosecution has been denied by the department and the reasons for the same are not before the Court. It is not clear as to how her or role of Alok Yagnik role has been differentiated by OICL. It also cannot be the ground for discharge of the accused No. 2,3 and 4 herein against whom the sanction for prosecution has been given by OICL. The CBI never on their own dropped the proceedings against them.

34. Another crucial fact is nature of war risk insurance sought in case of all the six vessel's vessels Surya-I, Kanchipuram , Mahesh, Madhawa, Kuber and Neel Samunder. It has already been discussed above, the vessel owners have the option of seeking the GIC War scheme or London War Scheme. It is the case of the CBI that despite the fact that the rates offered by the GIC for the GIC War Risk Scheme being lower than the private brokers, A-1 to A-4 ignored the said fact and placed the risk with private Reinsurers causing loss to OICL. In this regard, the most crucial document is part of D-29, the mail dated 12.03.2014 of S.K. Rath, Chief Manager, RI, GIC. He communicated their revised rates for GIC War Scheme effective from 01.04.2014. The rates as communicated were as under:

> **"Clients with more than 30 vessels, .005% per annum**
>
> **Clients with 11 to 30 vessels .0100% per annum**
>
> **Clients with vessels upto 10, .0125% per annum"**

34.1 The said mail was also forwarded to A-1 and A-2. The precursor to the said revision of rates was loss of business by GIC on account of client's choosing London War Scheme which was available at cheaper rate. Therefore, the said revision of rates was within the knowledge of officials of OICL.

34.2 On the said aspect, it has been argued on behalf of A-2 to A-4 that the said allegation of CBI stands rebutted by the documents which are part of the chargesheet. In this regard, reliance is placed upon D-11 (Page-79) and D-82 (Page-150) wherein GIC refused for the placement of reinsurance business concerning vessel Kuber.

The said argument advanced on behalf of accused person only appear to be misinterpretation of the documents on record. As far as the e-mails from S.K. Rath of GIC (part of D-82), the subject referred to said mails itself clarifies the request received from A-1 on behalf of Oriental Insurance. The subject of the mail is **"Re: Revised Quote: Barge-Kuber Marine Hull Renewal-2014-2015".** So, the rate was only sought with respect to the Marine and Hull insurance of the vessel Kuber. No quote was sought for the War Cover.

34.3 Next set of mails relied by the A-2 are Part of D-11. These were exchanged between S.K Rath of GIC and Rajender P Chauhan, Deputy Manager Oriental Insurance Company Ltd, Mumbai. The email dated 30.09.2014 (2:58 p.m) by S.K. Rath to Rajender P Chauhan is not the refusal by GIC to provide War Cover. Rather, it was informed that as per the procedure agreed respective Head Office of PSU company has to seek the quote from GIC and not individual Divisional Office. Therefore, the argument advanced on behalf of accused persons that GIC refused to cover vessel Kuber is against the record.

35. Now, coming to the next limb of the arguments that the rates

quoted by GIC being higher than the rates offered by other reinsurers including rates of offered broker M/s Bharat RE (A-8) in the present case. In this regard, the revised rates of GIC War Scheme were communicated to A-1 and A-2 through mail of S.K. Rath of GIC dated 12.03.2014 (Part of D-21). The said rates which are admittedly lower than the rates offered by brokers M/s Bharat Re (A-8) and M/s WWIBL (A-9) qua the vessels in question. **The said revised rates of GIC were effective with effect from 1st April 2014. Therefore, the said revised rates were available with A-1 and A-2 and could have been utilized for reinsurance of all the vessels except vessel Madhwa for which the process was initiated on 4th of March 2014. But A-1 failed to seek rates from GIC and none of other OICL officials directed him to do so.**

36. Lastly, it has also been argued on their behalf they A-2, A3 and A4 have been exonerated in regular departmental proceedings. The said disciplinary proceedings are not part of the chargesheet and therefore cannot be looked into at this stage. Rather Vigilance Report and the Audit report which is part of the chargesheet raises the issue of their misconduct and suspicion of their involvement. Therefore it has to be observed at this stage that the evidence on record *prima facie* raises grave suspicion against A-2,3 and A-4 of they being involved in the present case of fraud, criminal misconduct and conspiracy.

Accordingly, the judgments relied upon on behalf of A-2 are not applicable to the facts of the present case being distinguishable on facts.

Role of Thyagarrajan Vijay (A-6)

37. Now, coming to the case of the prosecution qua Thyagarrajan Vijay **(**A-6) being the Managing Director of M/s Bharat RE (A-8). The crux of the arguments advanced on behalf of A-6 is that there is no *iota* of evidence to show that he was part of the criminal conspiracy involving Sumit Verma (A-5) and Arun Dudi (A-1). Rather all the other officials of M/s Bharat RE (A-8) viz; LW-13, LW-26, LW-28, LW-29 & LW-33 have exonerated A-6 in their statement recorded under Section 161 Cr.P.C.

37.1 It is not in dispute as is reflected from the statements of the witnesses namely V. Ramesh (LW-13), Senior Vice President, Bharat RE (A-8), T.N Arunachalam (LW-26),Director,Selvarj (LW-28), Shri Swaminathan (LW-29), Reinsurance Technical Director and Dinesh Narang (LW-33), General Manager that they have all stated two crucial facts concering A-6 and A-5. First is the scope and authority of work of A-5 in dealing on behalf of the company. The second aspect is the fact that A-1 was the Principal Officer of their company and he having played no role at all in the five transactions of reinsurance involving vessels Madhwa, Mahesh, Kuber, Surya-I and Kanchipuram.

The most crucial version in this regard is that of V. Ramesh (LW-13). He has claimed that A-5 was authorised and competent to quote rates on behalf of the company. LW-13 also stated that A-5 was also authorized to obtain the rates from re-insurer M/s Tysers, London. No approval of higher authority of their company was sought while submitting the rates to OICL. The said fact as stated by LW-13 is also reflected from email exchanged between A-1 and A-5 on the one hand and between A-5 and M/s Tysers London for whom M/s Bharat RE (A-8) was acting as a broker. All the said communications of giving the rates and thereafter binding the risk are exclusive communications between A-1 and A-5 .

37.2 So in the said backdrop, the fact-in-issue to be seen herein is the role played by A-6 in all the above-referred five transactions of reinsurance done by his company. Merely because he was the Principal Officer or the Managing Director cannot be the ground for presuming that he had knowledge and involvement in all the acts or misdeeds done on behalf of the company. Even no evidence has been collected by the CBI to show as to who was the reporting authority of A-5 and who was supposed to assess his work or whether A-6 was in any manner involved in this exercise. The reason for reduction of his salary from Rs.50,000/- to Rs.25,000/- too has not been investigated. So, in absence of the role played by A-6, he cannot be held liable for all the misdeeds of the company he was heading.

37.3 In this regard, the judgment of of Hon'ble Supreme Court in case titled **Sunil Bharti Mittal V. Central Bureau of Investigation (Supra) case** relied upon by A-6 is relevant. The relevant para 40 of the same is reproduced hereunder:

> "**(iii)Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person42.No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.**
>
> **43.Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.**
>
> **44.When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hadav.Godfather Travels & Tours (P)Ltd., (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is,therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction,namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there**

has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company"

37.4 The said view has been reiterated by the Hon'ble Supreme **Court in Shiv Kumar Jatia vs State Of Nct Of Delhi AIR 2019 SUPREME COURT 4463** and the relevant part of the same is re-produced hereunder :-

> **"By applying the ratio laid down by this Court in the case of Sunil Bharti Mittal it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused…….".**

37.5 Thus, it has to be observed in the present case that in view of the said settled position of law naming Managing Director/Principal Officer of M/s Bharat Re as accused in present case without showing any *actus reus* or the *mens rea* is not sufficient to proceed against him.

38. The second crucial aspect in this regard is the trail of the money which came in the account of M/s Bharat RE (A-8) at SBI Chennai. As per the guidelines of IRDA, the reinsurance broker has to open an exclusive account where the money obtained from the client has to come and from the same account the money is debited

for the payment given to the re-insurer company which is in the present case is M/s Tysers London. The prosecution has filed on record the statement of account of said account as D-45. The second bank account which is being operated by M/s Bharat RE (A-8) is that of ICICI Bank Chennai (part of document D-52). The closer scrutiny of the said bank accounts reflects that there was regular transfer of money earned through reinsurance brokerage from the said account of SBI to ICICI Bank account. Then, there is huge withdrawal in cash at regular intervals from ICICI Bank Chennai of M/s Bharat RE (A-8). No investigation has been conducted qua the trail of said huge cash withdrawals. The identity of the person who got the said cash withdrawal done is also not investigated by CBI.

38.1 The documents on record also reflects that apart from A-6, several other officials were the authorised signatories for operating the said bank account and therefore, it cannot assumed that A-6 was only involved in withdrawal of said cash from ICICI Bank account, Chennai. Therefore, it cannot be presumed that A-6 was the beneficiary in all the said fraudulent transactions done by his company or having knowledge about the acts of his employee (A-5).

<u>Role of M/s Bharat RE(A-8)</u>

39. Now, coming to the role of the company M/s Bharat RE (A-8), the same arguments were advanced on its behalf by arguing that A-5 was operating in an independent manner and therefore, no fault

can be attributed upon the company for the illegal acts committed its employee. No doubt, as has already been discussed A-5 was operating in independent manner by having exclusive communication with A-1 while communicating the rates for the above-referred five vessels and thereafter binding the risk. But the fact remains as is reflected from the statement of V. Ramesh (LW-13) that he was not able to point out from the entire record of the company wherein they had charged more than 50% of the brokerage on the quotes received on re-insurer .

40. In the present case in hand, huge amounts of brokerage has been charged qua the five vessels by Ms/ Bharat RE (A-8). The comparison chart is reproduced hereunder for the sake convenience:

Comparison Chart

S. No	Name of the Vessel/Ship	Amount Received by M/s Bharat RE (A-8) for re-insurance from OICL	Amount Paid by Bharat Re to M/s Tysers ,London
1	Madhwa	Rs. 1,33,945/-	Rs.60,000/-
2	Mahesh	Rs. 1,88,100/-	Rs. 72,000/-
3	Kuber	Rs. 7,99,851/-	Rs 1,89,438/-
4	Surya -1	Rs. 44,88,797/-	Rs. 4,72,505/-
5	Kancipuram	Rs.31,35,127.36	Rs. 3,30,313/-
		87,45,820.36	**Rs.11,24,256/-**

40.1 The said chart, thus, clearly reflects that in all the cases of five vessels the amount of brokerage charged by them is unusually high and the said fact too has been flagged by IRDA in their communication to CBI(part of document D-101).

It has already been discussed while discussing the role of A-6 that M/s Bharat RE (A-8) is operating two accounts, one at SBI and another ICICI Chennai. The SBI account is the exclusive account wherein the payments are received from the clients and thereafter debit is made towards the reinsurance company. The profit accrued through brokerage earned by the companies is regularly transferred to another account i.e ICICI Chennai. The perusal of accounts statement at ICICI Chennai reflects huge cash withdrawals which raises a finger of suspicion over the working of M/s Bharat RE (A-8) and they having failed to flag the illegalities and irregularities of A-5 despite having knowledge of it. They kept on enjoying the huge benefits accrued to them on account of exorbitant brokerage charged qua five vessel's. The only inference, at this stage, which has to be drawn is that the company (A-8) too was involved in the criminal conspiracy and enjoyed the fruit of wrongful gain accrued to it.

40.2 Another fact regarding the conduct of M/s Bharat RE (A-8) or their possible involvement in the said financial irregularities and fraud played upon OICL is spelled out in the Vigilance Inquiry Report (D-14). It has been specifically found that OICL after coming to know about the financial irregularities initiated the process of getting the refund and M/s Bharat RE (A-8) without any protest refunded the amount as was sought. In case there was no irregularity in their business then they should have refused the refund to OICL. **Thus, it has to be observed that at this stage there is *prima facie* material which shows the involvement of M/s Bharat RE (A-8) in the conspiracy. Therefore, the application for discharge of A-8 is accordingly dismissed.**

Accordingly, the judgments relied upon on behalf of A-8 are not applicable in the present case being distinguishable on facts.

Role of of Kishan Agarwal (A-7) & WWIBL (A-9)

41. The reinsurance qua Neel Samundar is entirely different from the remaining five vessels except to the extent of involvement of OICL officials and surprisingly that of Sumit Verma (A-5).

41.1 It is the case of the prosecution itself that as A-5 had left M/s Bharat RE (A-8) in March 2015, therefore, the said war insurance qua non-existence policy qua the said vessel could not be got placed with Bharat RE (A-8) by A-1 . It is also reflected from the record itself that due to this reason only, A-1 was forced to firstly contact Bajaj Capital Insurance Broking Ltd through his email dated 25.06.2015 requesting to provide war rates under GIC War Scheme for vessel Neel Samundar and then on their refusal to M/s Howden. They also withdrew their offer after firstly giving the rate to A-1.

41.2 The first aspect which is reflected from said series of mail's exchanged between A-1 and Bajaj Capital Insurance Broking Ltd as well as M/s Howden is the fact that A-1 initiated the said proposal of reinsurance without being asked to do so by the Regional Office or Divisional Office. Another fact which emerges from the emails exchanged between A-1 and above-referred three brokers i.e M/s Howden, M/s Bajaj Capital Insurance Broking Ltd and WWIBL (A-9) is that in all the said emails, A-1 had sought reinsurance cover war rates under GIC Scheme in respect of vessel Neel Samundar. So, even if it is believed that this was a genuine transaction, the National Reinsurer ie. GIC should have been approached which is the practice followed by OICL and other public sector insurance companies. GIC rates already communicated to them through email dated 12.03.2014 (Part of D-29) was at the rate 0.005%(more than 30 vessel's), 0.0100%(11 to 30 vessel's and 0.0125% (upto 10 vessel's) were admittedly quite less as compared to rates quoted above by all the three brokers. But despite the said fact, A-1 approached the private brokers and other officials of OICL i.e A-2 and A-4 who approved the Fac Note of reinsurance for GIC War Scheme for vessel Neel Samundar never objected to the said act of A-1.

41.3 The next starking fact which emerges from the e-mails exchanged firstly between officials of A-9 (WWIBL) namely Pawan Gupta, Indeerjeet Jain and A-7 with M/s SSS Insurance

Service Pvt. Ltd or M/s Tysers London and the emails exchanged between the office of OICL and M/s Tysers during internal inquiry, is the role played by A-5. It has already come on record through statement of V. Ramesh (LW-13) that A-5, Director (RI) of M/s Bharat RE (A-8) resigned from his post and left the company in March 2015. But surprisingly, despite having left job and no longer working with M/s Bharat RE (A-8), he still continued communicating with M/s Tysers qua vessel Neel Samundar on behalf of Bharat RE (A-8) .

41.4 The response was sought from M/s Tysers by OICL during the internal inquiry as to the vessel Neel Samundar. (email part of D-22). On 17.12.2015 Ms. Swati Panesar of M/s Tysers London responded to the said email. The same is reproduced hereunder:

> **"**Please find attached a copy of the evidence of cover and debit note. The total premium charged for this risk was INR 85,264.04 for a 85.93% order.
>
> **Please note on 2nd September we received an email from Sumit Verma of Bharat Re asking us to cancel this placement as "Oriental has cancelled this policy from inception on the request of their client.** Accordingly we cancelled this transaction with the Lloyds insurers. No premium has been received for this risk.
>
> Should you require anything else, please do not hesitate to get in touch.
>
> **Best regards,**
>
> **Swati"**

41.5 So, it is reflected from the record that A-5 continued to operate by representing himself to be still working with Bharat RE

(A-8) by communicating with M/s Tysers. Rather, it reflects his deep involvement in the conspiracy with other officials of OICL including A-1 . Even the debit note raised by M/s Tysers London too names the broker as M/s Bharat RE instead of M/s SSS Insurance Service Pvt. Ltd, Male, Maldives with whom the risk was placed by WWIBL (A-9). **But sadly, the role and the involvement of M/s SSS Insurance Service Pvt. Ltd. or the officials of M/s Tysers London has not been investigated by CBI for the reasons best known to them.** Rather surprisingly, WWIBL (A-9) and A-7 have been named as accused despite the fact they were not even aware about the characters operating behind the curtains qua reinsurance of vessel Neel Samundar.

41.6 Now, coming to the issue of involvement of of A-7 or A-9. Their role can also be deciphered from the huge difference of brokerage charged by WWIBL (A-9)qua vessel Neel Samundar and M/s Bharat RE (A-8) qua the above-referred five vessels. The chart below here beings out the vast difference of said brokerage.

Name of Vessel	Premium Received by OICL as per Policy	Premium paid by OICL for reinsurance to Worldwide Insurance Brokers Ltd (A-9) as per Debit Note	Premium paid by WWIBL **to M/s SSS Insurance Pvt Ltd** for reinsurance as per debit note	Amount of Brokerage Charged
Neel Samundar	No policy issued	Rs.45,000,47/	Rs. 41,040,54 /-	Rs. 3,95,993/-

41.7 But in the end after refund, it caused net loss of Rs. 87,717/- to WWIBL (A-9). Further the amount of brokerage qua the reinsurance of vessel Neel Samundar remained with WWIBL (A-9) for a short duration from 27.08.2015 till 09.09.2015 when it was refunded back by taking hit of Rs. 87,717/- consequent to the request of A-1.

42. Another crucial fact which seems to have been left unnoticed and univestigated by the Investigating Authority is the fact that the said reinsurance was ultimately placed by M/s SSS Insurance Service Pvt. Ltd at paltry sum of Rs.85264/- with Tysers, London despite having charged Rs. 41,00,000/- from WWIBL (A-9). **So, the beneficiary even qua the said transaction was either A-5 or M/s Bharat RE (A-8) who is referred as broker in Debit Note and other officials of OICL who were operating behind the curtains by utilizing the services of M/s SSS Insurance Service Pvt. Ltd, Male, Maldive. But again, no investigation has been conducted with respect to the role of officials of M/s SSS Insurance Service Pvt. Ltd.**

42.1 Another fact which has been overlooked which should have been investigated by the Investigating Authority qua the vessel Neel Samundar is the conduct of WWIBL (A-9) or its officials. The war quote was sought by A-1 from them on 11.08.2015 and the officials of A-9 contacted broker M/s SSS Insurance Service Pvt. Ltd. only on the asking of A-1 as has been stated by LW Inderjeet Jain. After receiving the rates from M/s SSS Insurance Service Pvt. Ltd through email dated 11.08.2015 at 15:45 p.m, they forwarded the rate to A-1 and after receiving the binding response from A-1, the risk was placed with M/s SSS Insurance Service Pvt. Ltd. But before proceeding further with transaction, they even sent a verification email to one Harry Simpson of M/s Tysers , London through their email dated 12.08.2015 at 16:45 p.m (Part of D-19) . The said email was responded by Ms. Swati Panesar of M/s Tysers London on 12.08.2015 at 21:13 p.m wherein they confirmed that they had placed the order for vessel Neel Samundar but A-9 was directed to liaison with M/s SSS Insurance Service Pvt. Ltd, Maldives.

42.2 It has already come on record as discussed above that A-5 on behalf of M/s Bharat RE (A-8) was rather acting behind the scene while communicating with M/s Tysers qua the said vessel and not M/s SSS Insurance Service Pvt. Ltd as was responded by Ms. Swati Panesar. Even the debit note (part of D-22) raised by M/s Tysers is in the name of M/s Bharat RE (A-8) which also falsify the said confirmation mail of Ms Swati Panesar sent to WWIBL (A-9). But the said fact too has been ignored and remains uninvestigated by the Investigating Authority. The fact which emerges form the said emails that WWIBL (A-9) or its officials were never aware about the internal dealings of M/s SSS Insurance Service Pvt. Ltd with M/s Tysers or the role of A-5 or Bharat RE (A-8) in it. The amount of brokerage charged by WWIBL (A-9) was as per the industry standard which was not the case qua the brokerage charged for other five vessel's by Bharat RE (A-8).

42.3 Another fact which shows lack of malafide intention on the part of WWIBL (A-9) is their act after coming to know about the said fraud. They on their own reported about this case to IRDA on 3rd October 2015 (email Part of D-64)which differentiates them from Ms/ Bharat RE (A-8).

43. In view of the above-discussed facts and circumstances of the case, it has to be observed that there is not sufficient material on record to show the involvement of A-7 and A-9 in the criminal conspiracy hatched by the Officers of OICL and A-5. Rather they unintentionally became the victim of the fraud and conspiracy played by A-1, A-5 M/s SSS Insurance Service Pvt. Ltd and M/s Tysers and others.

Conclusion

44. There is sufficient *prima facie* material on record to frame charges against **Arun Dudi (A-1), Akhilesh Mishra (A-2), Pramod Kumar (A-3), Surender Singh Selal (A-4), Sumit Verma (A-5) for the offence u/s 120B r/w 420 IPC and 13(1) (d) r/w 13(2) of Prevention of Corruption Act. A-1 to A4 are also liable to face**

trial for substantive charge u/s 13(1) (d) r/w 13(2) of Prevention of Corruption Act. A-1 is also liable to face separately for the offence u/s 201 IPC. However, **there is not sufficient material on record to proceed against Thyagarajan Vijay (A-6) as discussed in detail above in the order. Similar is the case qua A-7 and WWIBL (A-9). <u>Accordingly, Thyagarajan Vijay (A-6) Kishan Agarwal (A-7) and WWIBL (A-9) stand discharged.</u>**

The charges as stated-herein-above,be framed separately.

It is clarified that nothing expressed herein shall tantamount to expression of opinion on the merits of the present case at the time of final disposal.

Announced in open Court
on 8th May 2024

(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
Rouse Avenue Courts, New Delhi