

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A. No. 783/KB/2022
In
CP(IB) No. 723/KB/2019

*An Application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

Rishav Coke Product Private Limited

....Operational Creditor

Versus

Modern India Con-cast Limited

.....Corporate Debtor

And

In the matter of:

Mr. Sanjai Kumar Gupta,

.... Applicant

Versus

- 1. Regional Claim Manager, SBI General Insurance Company Limited;**
- 2. Mehta & Padamsey Insurance Surveyors & Loss Assessors Private Limited**

....Respondents

Date of pronouncing the order: 22nd February 2023

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video conferencing/ physical):

For the Applicant:

Mr. Rishad Medora, Advocate
Mr. Shaunak Mukhopadhyay, Advocate
Mr. Sayantan Bose, Advocate

For the Respondent SBI in IA 783/KB/2021:

Mr. Soumalya Ganguli, Advocate
Ms. Sudarshana Dutta, Advocate
Mr. Aditya Atheya, Advocate

For the Respondent in IA 980/KB/2021 & IA 103/KB/2022:

Mr. Joy Saha, Sr. Advocate
Mr. Supriyo Gole, Advocate

For the Liquidator:

Mr. Jishnu Chowdhury, Advocate
Mr. Vikash Singh, Advocate
Ms. Zeenat Shabab, Advocate

For Cospic Ferro in IA 806/KB/2020:

Mr. Dharendra Nath Sharma, Advocate
Mr. Naresh Balodia, Advocate

ORDER

Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.
2. The instant interlocutory application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) has been filed by **Sanjai Kumar Gupta** (*the Liquidator of the Corporate Debtor*), seeking the following reliefs:
 - a) *To direct the respondents to accept the claim in connection with the damage caused by the Cyclone Amphan at the Haldia and Bishnupur plant of the Corporate Debtor;*
 - b) *Any other, as the Adjudicating Authority may deem fit.*

- 3.1 The case of the Applicant herein is that two plants of the Corporate Debtor were insured by SBI General Insurance vide Policy No. 15657977 for Haldia Plant and Policy No. 15573364 for Bishnupur Plant. By an order dated October 22, 2019 this Adjudicating Authority initiated the Corporate Insolvency Resolution Process against the Corporate Debtor. Further, *vide* order dated January 5, 2021 this Adjudicating Authority, admitted an application under section 33 of the IBC initiated the Liquidation Process in respect of Corporate Debtor and appointed the Applicant herein as the liquidator.
- 3.2 On May 20, 2020 a powerful and catastrophic tropical cyclone, named as 'Amphan', caused widespread damage in eastern part of India, specifically in the State of West Bengal. The said plants suffered damages due to the cyclone. On June 5, 2020, the Resolution Professional submitted its claim to the Regional Claim Manager, SBI General Insurance Company Limited in connection with the Haldia and Bishnupur plant of Corporate Debtor along with the detailed assessment of losses.
- 3.3 Thereafter, on June 9, 2020 and June 10, 2020 the Respondent No. 2, visited the plants of the Corporate Debtor at Haldia and Bishnupur to survey and assess the damage and/or loss caused by the Cyclone Amphan. By mail dated June 15, 2020 and June 17, 2020 the said Respondent No. 2 submitted its detailed estimates and requested the RP to provide point wise response on the various observation raised.
- 3.4 The Respondent no. 2 by several mails requested the RP to provide its point wise observation as required in their mail dated June 15, 2020 and June 17, 2020. However, due to lockdown imposed in various parts of country including the State of West Bengal, such necessary documents could not be assessed and provided to the Respondent No. 2.

3.5 Thereafter, several further requests were made before the respondents to consider the claim. However, the respondent No. 2 kept delaying the same and it has till date not considered the claim of the Applicant.

3. **Submissions on behalf of the Respondent:**

4.1 The Respondent has submitted that the claims of the Applicant were rejected on the basis of the Final Survey Report (“FSR”) issued by the surveyor in respect of above-mentioned plants in which it was recorded that the Corporate Debtor’s claims were in violation of General Condition – 6 (“GC6”) of the policies. General Condition-6 (“GC6”) of the Policy reads as follows:

(B) General Conditions:

6. (i) On the happening of any loss or damage the insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company.

a. A claim in writing for the loss or damage containing as particular an account as may be reasonably practicable of all the several articles or items or property damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage not including profit of any kind.

b. Particulars of all other insurances, if any:

The Insured shall also at all times at his own expense produce, procure and give to the Company all such further particulars, plans, specification books, vouchers, invoices, duplicates or

copies thereof, documents, investigation reports (internal/external), proofs and information with respect to the claim and the origin and cause of the loss and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith.

4.2 It is submitted that, as per GC6, it was incumbent upon the Corporate Debtor to substantiate its claims by submitting the requisite documents and information to the surveyor. However, the Corporate Debtor failed to furnish such supporting documents/ information despite repeated opportunities provided by the surveyor and in view of these facts, the surveyor arrived at its findings in the FSRs.

4.3 It has been further submitted that an insurance contract is a commercial contract under the Commercial Courts Act 2015 and an insured is a consumer under the Consumer Protection Act 2019. Therefore, in case of repudiation for a claim under a standard fire and special perils insurance policy an insured has the right to approach either the commercial civil courts or the consumer court.

4.4 The Corporate Debtors dispute with the Respondent has no relation whatsoever to its insolvency and its liquidation. This is evident from the fact that the repudiation of the claim is on the basis of violation of GC6 as the Corporate Debtor failed to provide the requisite documentation / information to substantiate its claim, and not because the Corporate Debtor is undergoing insolvency resolution / liquidation. The Respondent's right to repudiate the claim arises from the policies and in

the given factual matrix, the Respondent would have been entitled to repudiate the same even de hors the insolvency/liquidation proceedings.

4.5 The Respondent, in support of his arguments, has relied on the following judgments:

- a. *Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Others*¹;
- b. *Tata Consultancy Services Limited vs. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited*²;
- c. *S. Rajendran, RP of Empee Distilleries Limited and Ors. vs. South (India) Hotels Private Limited and Ors.*³;
- d. *Central Board of Indirect Taxes and Customs vs. Sundaresh Bhatt, Liquidator of ABG Shipyard and Ors.*⁴;
- e. *ArcelorMittal India Private Limited vs. Satish Kumar Gupta and Ors.*⁵

5 Analysis and Findings:

- 5.1 Heard the Ld. Counsel on behalf of the Applicant and the Ld. Counsel for the Respondents and perused the records.
- 5.2 By an order dated 22.10.2019 passed in CP (IB) No. 723 of 2019, this Adjudicating Authority admitted the Corporate Debtor into Corporate Insolvency Resolution Process. By another order dated 05.01.2021 an order of liquidation was passed against the said Corporate Debtor.

¹ (2021) 7 SCC 209

² (2021) SCC OnLine SC 1113

³ MANU/NC/3444/2021

⁴ MANU/NL/0511/2021

⁵ MANU/SC/1123/2018

- 5.3 During the CIRP period, the assets of the Corporate Debtor situated at Bishnupur and Haldia Plant were hit by a cyclone, “Amphan”, by reason whereof, the Corporate Debtor suffered heavy losses and damages. Accordingly, the Applicant herein duly filed its claim before the Respondent Insurance Company.
4. It is noted that during the pendency of the instant interlocutory application, the Corporate Debtor, along with all its assets and properties other than the non-core assets were sold to Kashvi Power and Steel Pvt. Ltd., as a going concern. The only assets excluded from the sale included the following:
- i. Flats in Haldia
 - ii. Land at Bishnupur and Singur;
 - iii. Silico Manganese Slag (waste);
 - iv. Vehicles;
 - v. Raw material.
- 5.4 As such, the insurance claims were also sold to the purchaser of the Corporate Debtor as a going concern. Subject to any contrary clause in the sale agreement, the right to proceed with legal action in regards to such assets will pass on to the purchaser. Since the insurance policies form part of the assets sold to Kashvi Power and Steel Pvt. Ltd. and since the corporate existence of the Corporate Debtor has been revived upon its sale as a going concern, the liquidator has become *functus officio* and all subsequent steps to be taken with regard to the rejection of the claim by the insurance company, would be taken by the successful purchaser or by the Corporate Debtor and not by the liquidator.
- 5.5 Further, this Adjudicating Authority, in its order dated January 4, 2022 in IA 756 of 2021 has granted certain reliefs and concessions. In the said order, the right to pursue the insurance claim filed by Liquidator has been granted as a relief to the Applicant therein (Kashvi Power and Steel Pvt. Ltd.).

- 5.6 We therefore are of the opinion that on an as is where is basis, insurance claims, if any, need to be made by the purchaser of Corporate Debtor in the instant case. Further, since the rejection of the insurance claim would amount to contractual dispute, this Adjudicating Authority, while exercising summary jurisdiction, cannot go into the issue of rejection of such insurance claims, which otherwise require a regular trial.
- 5.7 However, we are of the view that the buyer may take steps permissible by law to seek the said claims, if any, or challenge the decision of the insurer before an appropriate forum.
- 5.8 As such, **I.A. (IBC) No. 783/KB/2021** is hereby *dismissed*.
- 5.9 **CP (IB) No. 723/KB/2019** to come up on **14.04.2023** for filing the progress report.
- 5.10 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi

Member (Technical)

Rohit Kapoor

Member (Judicial)

Signed on this, the 22nd day of February, 2023

SM(LRA)