

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Cont. Petition (IB) No.9/KB/2022

And

I.A (IB) No. 809/KB/2021

In

Company Petition (IB) No. 1694/KB/2018

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

IN THE MATTER OF:

**M/s. Kohinoor Paper and
Newsprint Private Limited** (in
Liquidation), represented by the
Liquidator, **Shri Uday Narayan
Mitra.**

... Corporate Debtor.

And

Uday Narayan Mitra, Liquidator

... Applicant.

Verses

Oriental Insurance Company Ltd

... Respondent No. 1.

And

Mr. Rohit Kumar Singla

... Respondent No. 2.

Date of Pronouncement: March 5th, 2024.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. BALRAJ JOSHI, MEMBER (TECHNICAL)

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APPEARANCE:

For the Liquidator in

IA (IB) No. 809/KB/2021:

Mr. Swatarup Banerjee, Adv.

Mr. S. K. Tiwari, Adv.

Mr. Jayesh Kumar Choradia, Adv.

For the Contemnor No. 1

in Cont. A. 9 of 2022

and IA 809 of 2021:

Mr. Rajesh Singh, Adv.

Mr. Aniruddha Singh, Adv.

ORDER

PER Bidisha Banerjee, Member (Judicial):

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsels for both the parties.

NATURE AND SCOPE OF THE APPLICATION

I.A. (IBC)/809/KB/2021:

3. Uday Narayan Mitra, the liquidator has referred this **I.A. (IBC)/809/KB/2021** to seek a direction upon Oriental Insurance not to classify the claims of the Corporate Debtor (In Liquidation) as “No Claim” and/ or further direction upon the respondent no. 1 to settle the claim of the Corporate Debtor (In Liquidation) along with other consequential reliefs.

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Cont. Petition (IB) No.9/KB/2022:

4. The Liquidator has also filed **Cont. A. (IBC) No. 9/KB/2022** for the alleged contempt of the order dated 27th October 2021 in the C.P. (IB) No. 1694/KB/2018.

5. **Factual Matrix:**

5.1 It is contended that the company had availed the services of respondent no. 1 by obtaining a policy namely, "Industrial All Risk Policy for fire, machinery breakdown and BI (Flop) for a sum assured of Rs. 4,153,350,000.00; Rs. 3,060,000.00 and Rs. 10,000,000.00 for the location Falta IND GRW CTR – Falta, Ramnagar. The said policy was valid from 20th October 2019 till midnight of 19th August 2020.

5.2 During the policy period, super- cyclone 'Amphan' caused damages to the Properties in the various parts of West Bengal and Orissa.

5.3 The CIRP commenced against the company (In Liquidation under IBC, ON 26th September 2019, by an order of this tribunal wherein the applicant was appointed as RP and thereafter as liquidator vide order dated 12th July 2021.

5.4 An inspection was carried on 28th May 2020 and spot survey was conducted by one, Mr. Dasgupta to figure out the extent

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of damages and a preliminary survey report was prepared by him.

- 5.5** Mr. Rohit Kumar & Co; the respondent no. 2 was appointed as Surveyor and loss Assessor by the respondent no. 1 as per the provisions of the Insurance Act, 1938.
- 5.6** The Surveyor filed the Final Survey and Assessment Report dated 19th August 2021 and a special note for the respondent no 1's contemplation as mentioned in clause 14.01 to clause 14.05, having opined that the respondent no .1 should look into the relevant underwriting aspects, facts relating to the claims, terms and conditions and exceptions of the subject policy and decide the claim accordingly.
- 5.7** After receiving the Final Survey and Assessment Report the respondent no. 1 sought certain specific opinion and the report dated 19th August 2021, regarding the compliance of the guarantee and condition and the admission of liability, vide e-mail dated 26th October 2021.
- 5.8** The respondent no. 2, in response vide dated 29th October 2021 gave an opinion that the company (In Liquidation) represented by the applicant had neither taken any safeguard / safety measures to protect the property in open and potential risk areas inspite of the warning of impending 'Amphan' cyclone

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which amounted to willful negligence on the part of the insured.

5.9 As per the “Exclusion -A Excluded Causes no. 2 “of the insurance policy , the subject policy excluded the loss/damage caused by willful negligence as according to the report the insured had neither taken any preventive substantive measures before Amphan Cyclone to restrict the loss/ damage, nor had taken any immediate steps after the Amphan Cyclone to minimize loss/ damage was caused by such negligence which under ‘Excluded Causes no. 2’ was beyond the scope of the subject policy.

5.10 On the basis of the aforesaid observation, the respondent no. 2 concluded its opinion that the nature of occupation of the affected premises had been altered from manufacturing unit to silent risk with effect from 26th September 2019 and hence, there was a breach of the general condition of the subject policy.

5.11 Further that, there was insured’s willful negligence as well as consequential and indirect aggravation damage/loss to the insured’s property. Therefore, such claim against loss/damage was falling under the ‘Excluded Causes no. 2’ and the insurance cover had ceased with effect from 26th September 2019.

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5.12 However, till filing of this application the insurance company being Resolution no. 1 had not taken any decision in regard to the claims of the company (In Liquidation) under the provisions of the Insurance Act, 1938.

5.13 It is evident that this Tribunal as diverse occasions passed interim orders, details whereof would be thus:

SN	Date	Interim Order
1	27.10.2021	Till the next day of hearing, insurance company shall not take any final decision in the matter to the detriment of the company (In Liquidation).
2.	29.11.2021	Interim Order, if any; is extended till next date of hearing.
3.	21.12.2021	Interim Order, if any; is continue till next date of hearing.
4.	11.02.2021	Interim order, if any, passed in I.A (IBC)/809/KB/2021 will continue till the next date of hearing.
5.	25.03.2022	No specific Order is recorded.
6.	04.05.2022	No specific Order is recorded.
7.	10.06.2022	No specific Order is recorded.

6. The interim order dated 27.01.21 was extended formally till 11.02.2021 which was meant to continue till the next date of

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hearing. On 25.03.22, 04.05.2022, 10.06.2022 no hearing took place, and interim order was not formally extended till the next date.

7. Taking advantage of the situation, the respondent no. 1 vide its letter of repudiation dated 14th July 2022 repudiated the claims of the applicant. It is evident that the interim order was not subsisting on 14th July 2022 when the respondent no. 1 adjudicated and/or settled the claims of the company (in liquidation) represented by the applicant.
8. The respondent no. 1 claims that with the repudiation of the insurance claim of the company (In Liquidation) represented by the applicant, the applicant being I.A.(I/B)809/KB/2021 has become infructuous.
9. The applicant on the other hand has filed an application alleging willful and deliberate violation of the order dated 27th October 2021 which was never vacated.
10. ***Applicant's submission:***
 - 10.1 The applicant would urge that since the interim order extended till 11.02.2022 was meant to continue till the next date of hearing, and no hearing of the matter took place till 10.06.2022, the respondent no. 1 could not have repudiated the claim on while interim order was subsisting, there is a deliberate, in violation of the interim order.

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10.2The applicant would rely upon the decision of the **Hon'ble Allahabad High Court in the case of Ashiq Ali vs. Mohd. Shakeel & Ors. Reported in (1985) SCC Online All 625** where the Hon'ble Court having noticed that as after passing of an interim order case could not be taken up and the Hon'ble High Court has held that the interim order did not automatically stand vacated.

10.3The applicant has relied upon the decision in **Centre of Excellence in Disaster Mitigation and Management, IIT, Roorkee, Disaster Haridwar vs. M/s. S. k. Dynamics Pvt. Ltd & Ors, reported in (2016) SCC Online Utt 2234** and **Biva Pyne vs. Chunilal Pyne reported in (2008) SCC Online Cal 119** where the Hon'ble Calcutta High Court having considered the decision of the Hon'ble Supreme Court in *Dr. Luis Proto Barbosa vs. Union of India & Ors. (1992) Suppl. (2) SCC 644* interpreted the term 'in the meantime'.

11. Rival contention of the Respondent:

11.1 The respondent no. 1 is entitled to adjudicate and or settle the claims of the insured under the provisions of the Insurance Act ,1938 and the Insurance Regulatory and Development authority of India (Protection of policy Holders Interests) Regulation, 2017.

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11.2The present dispute is completely within the domain of the civil Court where the disputed question of facts is required to be adjudicated in case the company (In Liquidation) represented by the applicant challenges the letter of repudiation.

11.3In *Gujarat Urja Vikas Nigan Limited vs. Amit Gupta reported in (2021) 7 SCC 209*, the Hon'ble Supreme Court has held that Section 60(5) of IBC vests NCLT with wide power since it can entertain and dispose of any question of fact or law arising out or in relation to the Insolvency Resolution Process and NCLT cannot do what IBC consciously does not provide.

11.4The cited decision in *Ashiq Ali supra* does not apply to the present case as after passing of an interim order case could not taken up and the HON'BLE High Court has held that the interim order did not automatically stand vacated.

11.5On the contrary in *Arjan Singh vs. Punit Ahluwalia & Ors. reported in (2008) 8 SCC 348* the Hon'ble Supreme Court has held that if the order of injunction was operative up to a particular date, technically the order of injunction shall not remain operative thereafter.

11.6In *Iqbal Husain vs. District Judge, Moradabad & Ors. reported in (2002) ILR (3) All 741*, the Hon'ble Allahabad High Court held that when a Court passes a time bound

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interim for a particular period, then such an order cannot be deemed to be extended it was granted or afresh stay order passed.

Analysis and Findings:

- 12.** We have considered the rival contentions, perused the material on record and considered the implication of the decisions cited.
- 13.** It is evident from records that the interim order dated 27.10.21 was formally extended till 11 .02.2022 when the matter was taken up for hearing. On the subsequent dates, i.e. on 25.03.2022, 04.05.2022 and 10.06.2022, the matter was not taken up for hearing and as such no prayer could be made by the respondents to seek vacation or variation of the interim order.
- 14.** The interim order extended till 11.02.2022 cannot be deemed to have been vacated on the next date i.e. 25.03.2022 for the interim order was meant to continue till the next date of hearing and no “hearing “took place on 25.03.2022, 04.05.2022 etc., as the record of the case is suggestive of.
- 15.** Further, without hearing the parties, particularly the one who would be prejudiced due to vacation of interim order, the interim order could not have been vacated or treated to be vacated by a deeming fiction.

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- 16.** Thus, in all fairness, the interim order should be deemed to continue till the date of next hearing.
- 17.** The act on the part of respondent no. 1, to repudiate the claim on 14.07.2022 is thus in violation of the interim order granted by this Tribunal.
- 18.** Having observed as above, we are inclined to pass the following order:
IA (IB) No. 809/22 is **disposed of** with direction upon the Respondent no. 1 to immediately take steps to recall its order dated 14.07.2022.
- 19. Cont. Petition (IB) No. 9/KB/2022:** Issue notice to alleged contemnor to justify why a rule will not be issued for deliberate, conscious and contumacious violation of the interim order dated 27.10.21, that continued till 11.02.2022 and even beyond.
- 20.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties for compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 5th Day of March 2024.

Tiwari. V. [LRA]