

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

**I.A. No. /2020
In
C.P.(IB) No. 44/CTB/2020**

In the Matter of:

An application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the Matter of:

M/S. HIRA WASTAGE SUPPLY CO., a sole proprietorship firm, registered under provisions of the Companies Act, 1956 and having its Registered Office situated at Jaunliapatty, P.O. Telengabazar, P.S. Purighat, Cuttack – 753009, Odisha;

....Operational Creditor

Versus

In the Matter of:

M/S. COS BOARD INDUSTRIES LIMITED, a private company limited by shares registered under provisions of the Companies Act, 1956 and having its Registered Office situated at Jagatpur (New) Industrial Estate, Phase – II, Jagatpur, Cuttack 754 021, Odisha.

....Corporate Debtor

And

In the Matter of:

An application u/s. 19(2) and 19(3) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the matter of:

Mr. Umesh Chandra Sahoo, Resolution Professional of the Corporate Debtor;

...Applicant

Versus

1. **M/S. COS BOARD INDUSTRIES LIMITED, Corporate Debtor.**
2. **THE NEW INDIA ASSURANCE COMPANY LIMITED** represented by the General Manager, Hyderabad Regional Office, Seventh Floor, C-Block, Surya Towers, S. P. Road, Secundarabad, Pin 500 003.

...Opposite Party

Counsel appeared through Video Conference

1. Mr. Umesh Chandra Sahoo, Resolution Professional] For self
2. Mr. Shiva Sankar Chaini, Advocate] For the RP

1. Mr. Sudhakar, Advocate] For Mr. Subir Talukdar, The New India
] Assurance Company Limited

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Date of hearing: 13/07/2020

Order delivered on: 13/07/2020

ORDER

Per Shri Jinan K.R., Hon'ble Member (Judicial)

1. Mr. Umesh Chandra Sahoo, Resolution Professional of M/s. COS BOARD INDUSTRIES LIMITED has moved this unnumbered IA No. of 2020 arising out of CP(IB) No. 44/CTB/2019 under Sections 19(2) and 19(3) of the Insolvency and Bankruptcy Code, 2016 (in short, 'I & B Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 for issuance of directions upon the General Manager, The New India Assurance Company Limited, to release the insurance claim within a stipulated period along with 18% interest for the delay in releasing the same and not to seek any CIRP documents which are prohibited under IBBI (Insolvency Professionals) Regulations, 2016.

2. The urgency set out in the application being found satisfactorily explained and since the lockdown due to prevailing pandemic COVID-19 has not been lifted, the unnumbered application was listed on today for hearing through Video Conferencing (VC) by giving advance notice from the Registry to the applicant (Resolution Professional) as well as to the Opposite Party, The New India Assurance Company Limited, directing them to submit written notes of defence.

3. Today when this case was taken up for hearing, the applicant appears in person and The New India Assurance Company Limited appears through their Counsel.

4. Brief facts.

5. The Corporate Debtor was admitted under Corporate Insolvency Resolution Process (in short, 'CIRP') vide order dated 16/12/2019 passed by the National Company Law Tribunal, Orissa Bench u/s. 9 of the 'I & B Code' appointing Mr. Umesh Chandra Sahoo, the applicant herein, as Interim Resolution Professional and subsequently his appointment was confirmed as Resolution Professional. In pursuance of the aforesaid appointment, public announcement u/s. 15 of the 'I & B Code' was made in the newspapers, viz. "Times of India" and "Prajatantra" on 17/12/2019 as well as also on the website of Insolvency and Bankruptcy Board of India inviting claims, copies whereof were annexed as Annexure – 'B' with the application. In pursuance of advertisement claims were received. On receipt of claims, a Committee of Creditors (in short, 'CoC') was formed.

6. The applicant has also intimated to the Employee(s)/ Officer(s)/ Manager(s)/ Suspended Directors of the Board of Directors of the Corporate Debtor, along with the Bankers, Statutory Auditors, Income Tax Department, GST Department, Local Police Station, Collector, Cuttack, Cuttack Municipal Corporation, MCA, RBI, SEBI, BSE and Share Trader Agents about the initiation of CIRP against the Corporate Debtor and his appointment as Interim Resolution Professional and the personnel of the Corporate Debtor has extended their cooperation to the applicant to take custody of the factory and office of the Corporate Debtor.

7. On going through the records of the Corporate Debtor, the applicant came to know that a claim of Rs. 15.47 Crores is pending with THE NEW INDIA ASSURANCE COMPANY LIMITED against the Policy No. 6102001190100000007 effective from 03/04/2019 to 02/04/2020 for an assured sum of Rs.57,54,00,000/- issued by their office at BASHEER BAGH (TIED DO) (610200), 9TH FLOOR, PARISHRAM BHAVAN, BASHEERBAGH 500029, TELANGANA 500029 against the damages occurred in the Super Cyclone on 3rd May, 2019. After due inquiry, it was found that the claim made by the Corporate

Debtor is with Mr. Anjan Dey, General Manager and Mr. Subir Talukdar, DGM of The New India Assurance Company Limited, Hyderabad.

8. The applicant had visited the Office of The New India Assurance Company Limited on 24/01/2020 and though they had assured to release the amount as soon as possible but they have not released the amount in spite of several requests made through e-mails. On 17/03/2020 applicant has received an email from the New India Assurance Company Limited, wherein they have stated that they want some time for seeking legal opinion requesting for a week's time. However, on 24/03/2020, the applicant has received another email from the New India Assurance Company Limited requesting to provide a copy of application u/s. 9 of 'I & B Code' filed by M/s. Hira Wastage Supply and reply filed by the Insured (Corporate Debtor) before the NCLT, Cuttack Bench; minutes of meeting of Committee of Creditors; and copy of Progress Reports filed by the RP to the Adjudicating Authority. The applicant has declined to give these documents as the New India Assurance Company Limited is not a relevant party. The amount relates to an insurance claim made by the Corporate Debtor due to Super Cyclone on 3rd May, 2019 before the initiation of CIRP and to release the insurance claim there is no need of these documents as per IRDA Regulations or any circular. Upon the said contentions this application was moved by the RP praying for issuing direction to R2 for releasing the claim amount without any further delay with interest at 18% for the delay already caused by the R2..

9. Heard both sides, Perused the documents.

10. Ld. Counsel Mr. Shiva Sankar Chaini, submitted that the demand for copy of Progress Reports filed by the RP to the Adjudicating Authority for enabling it to process the claim is not proper or legal and thereby the applicant has declined to give these documents as the New India Assurance Company Limited (R2) is not a relevant party. According to him the amount relates to an insurance claim made by the Corporate Debtor due to Super Cyclone on 3rd May, 2019 before the initiation of CIRP and to release the insurance claim there is no need of these documents as per IRDA Regulations or any circular. He further submitted that the copy of application filed for initiating CIRP was also asked for and the same is to

be submitted to the respondent if directed. According to him the documents asked for are documents which are prohibited under IBBI (Insolvency Professionals) Regulations, 2016 and hence, the RP rightly declined to provide it.

11. The Id. Counsel Mr. Sudhakar for the R2 / The New India Assurance Company Limited firstly submitted that R2 was not in receipt of the application, but immediately he corrected on showing proof of delivery of email and service proof by post, and submitted that the copy of the application by way of email was received on 10th July 2020. According to him the process for sanctioning the claim is pending for want of documents requested on 24/03/2020 and reminder sent on 26/05/2020. He would submit that Copy of petition u/s. 9 of the IBC and the reply submitted by the Insured (Corporate Debtor) and copy of the Minutes of the CoC meetings and the Progress Report of the CIRP were asked to submit to the R2 and so far the same not submitted to the R2 by the RP and hence the delay. He also assured that within ten days of receipt of the said documents R2 is ready and willing to process the claim and would provide the sum eligible to be sanctioned to CD.

12. The above said submissions on both sides lead to a conclusion that the delay in processing the claim by the R2 was not at the fault of R2. It is significant to note here that RP has admittedly declined to submit those two documents on a misreading his power in regards disclosure of confidential documents to a party not connected to CIRP. Admittedly the claim is related to damages to the Raw materials and building of the CD. The Ld. Counsel for the RP unable to convince us any restriction on the RP under the provisions of IBBI (Insolvency Professionals) Regulations, 2016. His attempt was to show that requesting any CIRP documents by the R2 are prohibited under IBBI (Insolvency Professionals) Regulations, 2016. We are afraid, none of the provisions under the regulations restrict him from communicating with R2 in respect of realisation of the pending claim from the R2. The documents called for not at all to be construed as confidential documents as far as R2 is concerned. The Code of conduct for insolvency professionals are laid down under Schedule 1 of the said Regulations. Clause 3 says that:

“An insolvency professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of

interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not

Similarly what confidentiality the RP to be maintained is provided under Clause 21 of the said Schedule. It read as:

“An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law”.

The clauses read above itself sufficient to hold that the RP declined submissions of documents to the R2 without exercising due diligence. In view of the matter the application deserves dismissal with cost. However, we are not doing so in the better interest of the CD which is undergoing CIRP and for avoiding multiplicity of litigations. Accordingly, the application is to be disposed of upon the following directions:

i). The R2 is directed to expeditious the determination of the claim, preferably within ten days from the date of the receipt of the documents called for by the respondent from the RP;

ii). **The un numbered I.A. No./2020 in C.P.(IB) No. 44/CTB/2020 is disposed of as above.**

lii). **The Registry is directed to send e-mail copies of the order forthwith to all the parties.**

**(Jinan K.R.)
Member (Judicial)
In-charge of Cuttack Bench**

Signed on this, the 13th day of July, 2020.

hb.