

**In the National Company Law Tribunal  
Kolkata Bench, (Court-II), Kolkata**

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

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

CP(IB) No. 1694/( KB) /2018

***An Application under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read  
with Rule 11 of the NCLT, Rules, 2016;***

**In the Matter of:**

M/s. Kohinoor Paper and Newsprint Private Limited (In Liquidation), represented by the Liquidator Mr. Uday Narayan Mitra, Regn. No. IBBI/IPA-001/IP-P00793/2017-2018/11360 having his office at 72/1, Dawnagazi Road, Bally, Howrah, West Bengal- 711 201.

**... Corporate Debtor**

And

Uday Narayan Mitra, Regn. No. IBBI/IPA-001/IP-P00793/2017-2018/11360 having his office at 72/1, Dawnagazi Road, Bally, Howrah, West Bengal- 711 201.

**....Petitioner / Liquidator**

Versus

1. Mr. Toton Chakraborty, having Reg. office at 7, Red Cross Place, Kolkata – 700 001.
2. Mr. Rohit Kumar Singla, carrying on business under the name and style of M/s. Rohit Kumar & Co., having reg. office at UB-12, Indra Prakash Building, 21, Barakhamba Road, New Delhi – 110001.

**.... Contemnors / Respondents**

**Date of Hearing: 28.02.2023**

**Date of Pronouncement of order: 19.09. 2023**

**Coram:**

**Smt Bidisha Banerjee** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

**Counsel appeared physically / through video Conferencing**

**For the Liquidator in IA 752 of 2022, IA 762 of 2022, IA 220 of 2022, IA 1233 of 2022, Cont. A. 9 of 2022, IA 1644 of 2022 & IA 809 of 2021**

1. Mr. Swatarup Banerjee, Adv.
2. Mr. S. K. Tiwari, Adv.
3. Mr. Jayesh Kr. Choradia, Adv.

**For the Liquidator in IA 6950 of 2022, IA 201 of 2020 & IA 946 of 2020**

1. Mr. Shaunak Mitra, Adv.
2. Ms. Shreya Choudhary, Adv.
3. Mr. Uday Narayan Mitra, Adv.

**For the Contemnor No. 1 in Cont. A. 9 of 2022 and IA 809 of 2021**

1. Mr. Rajesh Singh, Adv.
2. Mr. Aniruddha Singh, Adv.

**ORDER**

**Per Bidisha Banerjee, Member (Judicial):**

1. Heard the Counsel on both sides.
2. The Corporate Debtor (the Petitioner Company in Liquidation) in Contempt Petition (IB) No. 9/KB/2022 in IA (IB) No. 809 (KB) 2021 connected with CP(IB)/1694(KB)2018, had prayed for the following reliefs inter alia:

- a. “The Contemnors be held guilty of contempt of the order dated 27th October, 2021 as extended from time to time, passed by this Tribunal and necessary consequential order be passed as this Tribunal may deem fit and proper;*
- b. The Contemnor Nos. 1 & 2 be forthwith directed to recall the order and / or letter dated 14th July, 2022;*
- c. Ad interim order in terms of prayers above;”*

### **3. The Background of the case:**

- a. The CIRP of the Corporate Debtor (in liquidation) commenced on 26<sup>th</sup> September, 2019. Thereafter, the process was conducted and resolution plans were invited and submitted. However, no resolution plan was approved by the Committee of Creditors (CoC) with the 330 days of CIRP period which expired on 21<sup>st</sup> August, 2020.
- b. HENCH, IA No. 1174/KB/2020 was filed by Mr. Uday Narayan Mitra, RP of Kohinoor Paper and Newsprint Pvt Ltd., seeking liquidation of the Corporate Debtor, which was allowed. The Corporate Debtor was allowed to be liquidated in terms of section 33(2) of the IB Code read with sub-section (1) thereof.
- c. M/s. Kohinoor Paper and Newsprint Pvt Ltd. (the Company in liquidation) prior to commencement of CIRP had executed an Industrial Risk Policy, with the respondent on year to year basis against its property and / or asset located at Falta Industrial Growth Centre, Ram Nagar, District - 24 Parganas (South), West Bengal (referred to as the “said property”). The last policy was IAR Policy No. 311800/11/2020/370.
- d. On 18<sup>th</sup> May, 2020, a Super Cyclone named as “Amphan” hit the State of West Bengal and adjoining states caused widespread damage and destruction of lives and properties in Eastern India, specially West Bengal and Odisha. It also caused damage to the “said property”.
- e. On 28<sup>th</sup> May, 2020, an inspection was carried out and spot survey was conducted by one Mr. K. Dasgupta appointed by the Respondent No. 1. Accordingly, the Respondents prepared “as is where is survey report”.

- f. On 10<sup>th</sup> June, 2020 and 10<sup>th</sup> July, 2020 the Respondent No. 2 sent letters to the applicant for damage estimation and sought compliance of certain requirements as stated therein. The said letters were duly replied to by the applicant through his email dated 28<sup>th</sup> July, 2020. The applicant had through the email dated 28<sup>th</sup> July, 2020 intimated the **damage estimation** incurred by it, to the respondents.
- g. Despite that, by a letter dated 29<sup>th</sup> August, 2020, the Respondent No. 2 once again requested compliance. The said letter was also duly replied to by the applicant through his email dated 05<sup>th</sup> September, 2020 and 16<sup>th</sup> September, 2020.
- h. The Applicant claims that In furtherance of its ill motive, by letters dated 15<sup>th</sup> December, 2020 and 12<sup>th</sup> January, 2021, the Respondent No. 2 yet again requested the applicant to comply with certain requirements as stated therein, despite the correspondences vide email dated 28<sup>th</sup> July, 2020; 05<sup>th</sup> September, 2020 and 16<sup>th</sup> September, 2020. The said letters dated letters dated 15<sup>th</sup> December, 2020 and 12<sup>th</sup> January, 2021 were duly replied to by the Applicant.
- i. On receipt of a further letter dated 06<sup>th</sup> February, 2021 from the Respondent No. 2 asking the applicant to comply with further requirements as stated therein, the applicant vide his email dated 08<sup>th</sup> February, 2021 **asked for 75% of the assessed loss as “on account” payment to enable completion of restoration work.**
- j. On 12<sup>th</sup> May, 2021, the Applicant informed Respondent No. 1 that the Company is under CIRP and due to then prevailing COVID conditions he will need more time to complete restoration work. Further,

Respondent No. 2 was asked to consider this and allow extension of time so that necessary action can be taken and work can be completed.

- k. By a letter dated 16<sup>th</sup> June, 2021, the Respondent No. 2 alleged that:
  - i. The applicant has not taken any steps to restore the affected property which has resulted in the aggravation of their damage or losses;
  - ii. The Applicant has not submitted the pending claim document for reinstatement of the affected property as stated in the insurance policy, is also over.
  - iii. It has been presumed that the applicant is not interested to pursue the claim and it shall issue independent survey report accordingly and no further communication will be done.
- l. Since the Respondents threatened the Applicant that it would classify the claim of the Corporate Debtor (In Liquidation) as “NO CLAIM”, the Applicant was constrained to file the present application being no. IA(IBC)/809(KB)2021 under Section 60(5) of the IBC, 2016 seeking certain reliefs / directions from this Tribunal against the Respondents herein as under:
  - i. Direction upon the Respondents not to classify the claim of the Corporate Debtor (In Liquidation) as “NO CLAIM”.
  - ii. Direction upon the Respondents to honour and / or settle the claim of the Corporate Debtor (In Liquidation);
  - iii. Direction upon the Respondents to consider the applicants email dated 28<sup>th</sup> July, 2020; 05<sup>th</sup> September, 2020 and 16<sup>th</sup> September, 2020; 19<sup>th</sup> December, 2020; 31<sup>st</sup> December, 2020; 26<sup>th</sup> January,

2021; 29<sup>th</sup> January, 2021; 08<sup>th</sup> February, 2021; 12<sup>th</sup> May, 2021; 29<sup>th</sup> June, 2021 and 14<sup>th</sup> July, 2021 as compliance for passing the claim;

m. The Order dated 27<sup>th</sup> October, 2021, this Tribunal was pleased to pass an order restraining the Insurance Company from taking any final decision in the matter to the detriment of the Company (In Liquidation) till the next date of hearing and as such next date was fixed on 29<sup>th</sup> November, 2021.

**4. The order dated 27.10.2021 of this Tribunal is extracted in part is verbatim herein below for clarity:**

*“3. Let the matter be listed on 29/11/2021. Till the next date of hearing, the Insurance Company shall not take any final decision in the matter to the detriment of the company in liquidation. All other IAs shall be tagged along on that date.”*

5. The interim order passed on 27.10.2021 was extended from time to time vide orders dated 29.11.2021, 21.12.2021, 11.02.2022 and 25.03.2022.
6. It is alleged that In violation of said directions upon the insurance company to “not take any final decision in the matter to the detriment of the company in liquidation,” the alleged Contemnor No. 1 being the insurance company has passed an order dated 14.07.2022, as contained in Annexure -G of the present Petition communicating to the Petitioner herein its inability to admit any liability for the loss claimed, and intimating that the claim of the Petitioners stands repudiated and so it may be treated as FINAL NOTICE OF “**NO CLAIM**” and no further communication would be entertained in regard to the said claim.

7. The Petitioner is aggrieved with the said communication, which according to the Petitioner is in violation of the directions given by the Tribunal dated 27.10.2021. Petitioner asserts that violation of such solemn order, renders the insurance company liable to be hauled up in contempt proceedings in an appropriate manner.
8. Ld. Counsel for the Respondent / insurance company, however, repelled the contention stating that although the said interim order dated 27.10.2021 was extended from time to time until 25.03.2022, on 25.03.2022, the matter was not taken up for hearing, it was simply posted for hearing on 04.05.2022 and thereafter on 10.06.2022 without specifically granting extension of interim order that was granted on 27.10.2021. Therefore, the respondent was free to take a final decision in the matter and hence there has been no violation of the directions of this Tribunal. The Contempt Petition should be dismissed.
9. Ld. Counsel for the Petitioner would submit that although no specific directions were given on 25.03.2021 and 04.05.2022 and 10.06.2022 in regard to extension of the interim order, no hearing took place on the said dates, the natural implication whereof would be that the interim order granted on 27.10.2021 stood extended up to 11.02.2022, and further extended automatically till the next date of hearing which was 21.07.2022. The communication dated 14.07.2022, was therefore in a deliberate and clear violation of the interim order.
10. The Ld. Counsel for the Applicant, in support of its contention would place the following decision:
  - i. **Centre of Excellence in Disaster Mitigation and Management IIT, Roorkee, District Haridwar Vs. M/s. SK Dynamics Pvt. Ltd. & Ors.**

rendered by the Hon'ble High Court at Uttarakhand, Nainital, **2016, SCC Online Utt 2234.**

In the said matter, a Bank Guarantee was encashed on 07.03.2015 on the ground that the stay against invocation of Bank Guarantee could not be extended from 04.03.2015. An application was moved on 09.03.2015 in the court of District Judge, when the Ld. Additional District Judge ordered that the stay order / interim order shall remain in force till 08.04.2015 which order came to be challenged in the Hon'ble High Court.

**In the said matter, the Petitioner had argued that:**

*“deeming of continuation of the stay order by the Court below even without any express extension, is not sound in itself. Learned Court below has deemed the continuation of stay order on the strength of the precedent rendered by the Hon'ble Rajasthan High Court in Kanahiya Lal v. Thakurji Shri Keshoraiji, 2004 (3) Civil Court Cases 294 (Rajasthan). Learned Senior Counsel has relied upon the another precedent of Allahabad High Court rendered in Iqbal Husain v. District Judge, Moradabad, 2003 (94) RD 104, wherein it was held that if the interim order passed was in the nature of “in the meantime”, then it would expire on the date fixed by the Court; interim order till the next date of listing or till a particular date of expiry on the date when it is listed, cannot be deemed to be extended or treated to be operative from earlier date; time bound stay order for a particular period cannot be deemed to be extended unless another order is passed extending it before expiry of the period.”*

**The Hon'ble Court observed:** *“On this controversy, it would be quite germane to refer the judgment of this very court passed on 09.08.2016 in Civil Revision No. 42/2016 & connected matters, wherein a number of precedents have been discussed, like Ram Abhilakh Misra v. Cane Commissioner, ARC 1998 (1) 526; Ashiq Ali v. Mohammad Shakeel, 1985 LCD 363 and Vishnu Dutt Sharma v. Regional Joint Director of Education, Agra, 2001 Supreme (All) 33, and it was held that time bound stay orders do not cease to be effective by efflux of time. The result in law is that ”time bound order has the same effect as an order till further orders of the Court. In other words, it continues to operate till it is recalled, vacated or modified or specifically mentioned by the Court “not extended.*

**(emphasis added)**

- ii. In **Ashiq Ali Vs. Mohd. Shakeel and others** before the Allahabad High Court, Lucknow Bench, **1985 SCC Online All 625: (1985) 2 ARC 514**, *“where steps were being taken to execute an eviction decree against the petitioner on the ground that the stay of eviction from the premises in question were automatically exhausted on 02.09.1985 since the said order subsisting as on 05.08.1985 was not extended and the matter was listed for hearing”, the Hon'ble Court found that “on the next day of listing that as on 12.07.1985, the said order did not automatically stand vacated because of the next day of listing i.e. on 07.08.1985, the case was not taken up for hearing and the add interim order in record to stay would have continued still the next date listing”.*

11. It is alleged that during pendency of the application No. IA (IBC)809/KB/2021 referred on 24.08.2022, the Respondent / Insurance Company has illegally proceeded to classify the claim of the Corporate Debtor (In liquidation) as “**NO CLAIM**”. A supplementary affidavit has been preferred by the Liquidator to bring on record the said letter dated 14.07.2022.

12. Per contra, the Insurance Company by way of written submissions stated the following:

- i. “Inspection was carried on 28<sup>th</sup> May, 2020 and spot survey was conducted by one, Mr. K. Dasgupta.”
- ii. “Mr. K. Dasgupta prepared a preliminary survey report and one, Mr. Rohit Kumar & Co., was appointed as Surveyor and Loss Assessor by the respondent no. 1 as per the provisions of the Insurance Act, 1938.”
- iii. “The Surveyor, being the Respondent No. 2 filed the Final Survey and Assessment Report dated 19<sup>th</sup> August, 2021.”
- iv. “After receiving the Final Survey and Assessment Report dated 19<sup>th</sup> August, 2021, the respondent no. 1 sought certain specific opinion regarding the compliance of the guarantee and condition and the admission of liability vide e-mail dated 26<sup>th</sup> October, 2021.”
- v. “The respondent no. 2 vide letter dated 29<sup>th</sup> October, 2021 had given 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 in spite of the warning of impending ‘Amphan’ cyclone nor any immediate steps were taken to minimize the loss by segregating the damaged stocks or e-leaning / drying up/dismantling / restoration of the effected building, plant and

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

vi. “As per the “Exclusions-A Excluded Clauses no. 2 of the insurance policy, the subject policy excluded the loss / damage caused by willful negligence as well as aggravation because 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 which reflected insured’s willful negligence as well as consequential or indirect aggravation of damage / loss to the insured property. Therefore, the loss / damage caused by such negligence and indirect loss / damage was caused due to the ‘Excluded Causes No. 2’ which was beyond the scope of subject property.”

vii. “On the basis of the aforesaid observation, the respondent no. 2 concluded its opinion that as the nature of occupation of the affected premises had been altered from manufacturing unit to silent risk with effect from 26<sup>th</sup> September, 2019 onwards and no endorsement upon the policy had been taken from the respondent no.1 as per the general condition no. 3 of the subject policy. In such circumstances, the insurance coverage had ceased with effect from 26<sup>th</sup> September, 2019 and hence, there was a breach of the general condition of the subject policy.”

viii. “The Respondent no. 2 further observed 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 26<sup>th</sup> September, 2019.

ix. "Till the filing of the application, being IA(IB)/809/KB/2021 the insurance company had not taken any decision and / or settled and / or adjudicated the claims of the company (In Liquidation)".

x. "It is evident that the interim order was not subsisting on 14<sup>th</sup> July, 2022 when the respondent no. 1 adjudicated and / or settled the claims of the company (in Liquidation) represented by the application."

xi. In the case of **Arjan Singh -vs.- Punit Ahluwalia & Ors. Reported in (2008) 8 SCC 348**, the Hon'ble Supreme Court held that if the order of injunction was operative upto a particular date, technically the order of injunction shall not remain operative thereafter.[Para 17].

xii. In the case of **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 interim order for a particular period, then such an order cannot be deemed to be extended, unless another order is passed extending it before expiry of the period for which it was granted or a fresh stay order passed.

13. Ld. Counsel for the parties were heard and the records perused. The implication of the decisions cited have taken into consideration.

14. The following orders, passed by this Tribunal in this matter, are extracted hereunder for clarity:

**i. On 27.10.2021, this Tribunal passed orders as under:**

*"1. Ld. Counsel for the parties present.*

2. IA(IBC)/809(KB)2021 - This is an application filed by the Liquidator against Oriental Insurance Company Ltd. and another, praying for directions not to classify the claim of the Corporate Debtor as “no claim” and to honour / settle the claim of the Corporate Debtor. It is submitted that all the documents have been submitted to the Insurance Company and the company declined to honour the same. Nobody appears on behalf of the Insurance Company. Let notice be issued to the Oriental Insurance Company Limited. Let reply affidavit be filed within three weeks of receipt of notice, copies of which shall be served on the Ld. Counsel-on-Record of the Liquidator and the Liquidator.

3. Let the matter be listed on 29.11.2021. Till the next date of hearing, the Insurance Company shall not take any final decision in the matter to the detriment of the company in liquidation. All other IAs shall be tagged along on that date.

**ii. On 29.11.2021, this Tribunal had passed orders para ‘3’ whereof reads as under:**

*“3. IA(IBC)/809(KB)2021- At the request of the Ld. Counsel for the applicant two weeks time is granted to file rejoinder to the reply filed by the respondent. Interim order, if any, is extended till next date of hearing.”*

**iii. On 21.12.2021, this Tribunal had passed orders, para ‘5’ whereof reads as under:**

*“5. IA(IBC)/490(KB)2020- & IA(IBC)/809(KB)2021- List these matters on 11.02.2022. Interim order, if any, will continue till next date of hearing.”*

**iv. On 11.02.2022, this Tribunal had passed orders, para ‘2’ whereof reads as under:**

*“2. List this matter again on 25.03.2022. Interim order, if any, in IA(IBC)/809(KB)2021- will continue till the next date of hearing.”*

**v. On 25.03.2022 no hearing took place. This Tribunal had passed orders as under:**

*“1. Ld. Senior Counsel / Ld. Counsel for the parties present.*

*“2. List this matter again on 04.05.2022.”*

**vi. On 04.05.2022, this Tribunal had passed orders in para ‘6’ read as under:**

*“6. IA (IBC)/809(KB)2021 - List this matter again on 21.07.2022.”*

**vii. On 21.07.2022, this Tribunal had passed orders, para ‘2’ whereof reads as under:**

*“2. IA (IBC)/809(KB)2021 - Ld. Counsel for the Liquidator submits that on 14<sup>th</sup> July 2021, the Insurance Company repudiated the claim raised by the Liquidator. The Ld. Counsel seeks time to place on record the order passed by the Insurance Company. He may do so within two weeks.”*

It is noticed that in the order dated 21.07.2022, a typographical error had crept in, i.e. “**14<sup>th</sup> July 2021**” of which should read as “**14<sup>th</sup> July 2022**”.

15. The order dated 27.10.2021 is loud and clear. It is quite discernible that this Tribunal vide its order dated 27.10.2021, had in no uncertain terms restrained the insurance company from taking any final decision to the detriment of the company **till next date of hearing**, which protection was continued on 21.12.2021 and 11.02.2022. The matter was never taken up for hearing on 25.03.2022 when the protection was never lifted or interim order vacated, therefore, in all fairness the interim order shall be deemed to have continued till the matter was heard out, irrespective of whether the interim was extended by way of daily orders.
16. It is evident that none appeared on behalf of the Insurance company and hence notices were issued to The Oriental Insurance Company Ltd asking for reply affidavit in the matter. They have filed their written arguments though.
17. It appears that the Insurance Company was restrained from taking any final decision in the matter to the detriment of the company in liquidation, since there was an apprehension that the claim of the Corporate Debtor would be classified as “NO CLAIM”.
18. There is an emphatic admission on the part of the Insurance Company that it has taken a final decision after adjudicating /settling the claim.
19. In our considered opinion, since the intention of the Bench was to restrain the insurance company from repudiating the claim of insured while the liquidation proceedings were on, the Interim Order should be deemed to continue till the next date of hearing and not merely till the next date of listing when no hearing took place.
20. It is evident that the order dated 14.07.2022 has issued by Regional Manager of Oriental Insurance Company Ltd. (the Respondent No. 1 herein)

repudiating the claim as “NO CLAIM”, taking full advantage of the failure of the Bench to take up the matter for hearing.

21. Given the intention of the Bench was to continue the interim order till the next date of hearing, and before the matter could be heard out the communication dated 14.07.2022 was issued, the acts and actions on the part of the insurance company repudiating the claim to the detriment of the Company in Liquidation is in clear, deliberate and conscious violation of the interim order passed by this Tribunal.
22. Having noted as above, we issue Rule against Respondents / alleged Contemnor No. 1 in the contempt application, to Show Cause within 14 days as to why contempt proceedings should not be initiated against them in an appropriate manner in accordance with law for violating the interim order of this Tribunal.
23. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
24. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
25. List this matter for further consideration on **06.11.2023**.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee,**  
**Member (Judicial)**

Signed on this the 19<sup>th</sup> day of September, 2023

M. Jana, PS