

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 16.03.2018

Misc. Application No. 2 of 2018
And
IRDAI Appeal No. 2 of 2018

M/s. Atkins Special Risks Ltd.
through its Managing Director
Mr. Graham Atkins
62, Wilson Street, London EC2A 2BU. Appellant

Versus

1. Insurance Regulatory & Development
Authority of India
through its Chairman
Survey No. 115/1, Financial District,
Nanakramguda, Hyderabad – 500 032.
2. M/s. Marsh India Insurance Brokers Pvt. Ltd.
through its Managing Director
1201-02, One Indiabulls Centre, Tower-2,
Jupiter Mills Compound,
Senapati Bapat Marg,
Elphinstone Road (W), Mumbai 400 013.
3. M/s. Safeway Insurance Brokers Pvt. Ltd.
through its Managing Director
2 and 4, Jeevan Deep Annexe,
10, Parliament Street, New Delhi 110001.
4. Sarabjot Singh
Previs Homes Ltd.,
334, Nilgiri Apartments, Alaknanda,
New Delhi, India 110019.
5. Jagdish Gupta,
Chairman,
Jagson International Ltd.
12 E & F, Vandana Building,
11, Tolstoy Marg, New Delhi 110001. ... Respondents

Mr. T. Srinivasa Murthy, Advocate with Mr. Ativ Patel, Advocate i/b AVP
Partners for the Appellant.

Mr. Shrinivas Bhave, Advocate with Mr. Gaurav Yadav, Advocate i/b
Bhave & Co. for the Respondent No. 1.

Mr. Animesh Bisht, Advocate with Ms. Saloni Kapadia, Advocate i/b Cyril
Amarchand Mangaldas for the Respondent No. 2.

None for the Respondent Nos. 3 to 5.

CORAM : Justice J. P. Devadhar, Presiding Officer
Dr. C. K. G. Nair, Member

Per : Justice J. P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by *Mr. P. J. Joseph, Member (Non-life) of Insurance Regulatory & Development Authority of India (“IRDAI” for short) on January 9, 2018 which, in our opinion, is passed in gross abuse of the process of law and dereliction of duty.

2. Appellant company incorporated in the United Kingdom is specialized in broking special risk insurance and re-insurance with core competency in Marine and Energy insurance.

3. During the years 2002 to 2012 appellant provided international re-insurance cover to Jagson International Ltd. (“Jagson” for convenience) on yearly brokerage / commission of 27.5% of the premium that was paid for the cover.

4. It is the case of the appellant that from the year 2010 onwards Jagdish Gupta, Chairman of Jagson started demanding via email written to the appellant, a cut from commission earned by the appellant which the appellant declined. In the year 2012 the re-insurance business of Jagson was taken away from the appellant and given to Marsh India Insurance Brokers Pvt. Ltd. (“Marsh” for convenience).

5. Suspecting that illegal means has been used for diverting the reinsurance business from the appellant to Marsh, appellant caused a detailed investigation by a globally reputed investigating firm. Reports submitted by that firm confirmed that kick-backs were given to Jagdish

Gupta by Marsh for diverting the reinsurance business from the appellant to Marsh.

6. Thereupon, the attorneys of the appellant filed a complaint on August 11, 2015 before IRDAI. In that complaint specific dates on which Mr. Jagdish Gupta, Chairman of Jagson had sent his emails demanding kick-backs from the appellant were set out. It was also alleged that during the telephonic conversation, Mr. Jagdish Gupta has told the appellant that Marsh had agreed to pay him US\$ 4,00,000 in order to obtain Jagson's business. In the complaint, it was further stated that in view of aforesaid material evidence as also the third party evidence, it is apparent that Section 41(1) of the Indian Insurance Act, 1938 and Regulation 37(1) of the Insurance Regulatory and Development Authority (Insurance Brokers) Regulations, 2013 have been violated.

7. As no action was taken, appellant filed a writ petition in the Telangana and Andhra Pradesh High Court which was disposed of on September 19, 2017 by directing IRDAI to consider the complaint filed by the appellant in accordance with law.

8. Thereafter, Mr. P. J. Joseph, Member (non-life) heard the appellant on November 16, 2017 and passed the impugned order on January 9, 2018. By the said order complaint filed by the appellant has been disposed of by simply stating that the appellant has not submitted any documentary proof, material information or evidence in support of its contention.

9. Perusal of the complaint filed by the appellant clearly shows that the appellant had relied on documentary evidence in support of the contention that Jagdish Gupta, Chairman of Jagson had sought bribe and was bribed by the officers of Marsh for diverting the reinsurance business from the

appellant to Marsh. In such a case, to hold that the appellant has not submitted any documentary proof would be totally false. We fail to understand as to how Member (non-life) could make such false statement in the impugned order. In our opinion, the impugned order passed by Mr. P. J. Joseph (non-life) virtually amounts to aiding and abetting corruption in the insurance business by the regulator which cannot be tolerated.

10. In these circumstances, we set aside the impugned order and direct IRDAI to entrust the matter to a competent officer other than Mr. P. J. Joseph, Member (non-life) for passing fresh order on the complaint filed by the appellant on merits and in accordance with law.

11. We make it clear that we have not expressed any opinion on the merits of the complaint filed by the appellant.

12. Appeal is disposed of in the aforesaid terms with no order as to costs.

13. Registry is directed to send a copy of this order to the Hon'ble Finance Minister for information.

14. In view of the disposal of the appeal nothing survives in the misc. application. Accordingly, the Misc. Application is also disposed of with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

16.03.2018
Prepared & Compared by
PTM

*Amended pursuant to order dated 21.03.2018.

Prepared & Compared By: PK