REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).4678-4681 OF 2018

MARSH INDIA INSURANCE BROKERS PRIVATE LIMITED **...APPELLANT(S)**

VERSUS

M/S ATKINS SPECIAL RISKS LTD. & ORS. **...RESPONDENT(S)**

J U D G M E N T

ANIRUDDHA BOSE, J.

The appellant before us is an Insurance and Re-insurance Brokerage firm questioning the legality of an order passed by the Securities Appellate Tribunal ("Tribunal"), Mumbai on 16th March 2018. By that order, the Tribunal has set aside a decision of the Insurance Regulatory and Development Authority of India ("IRDA") dismissing a complaint made by the first respondent alleging adoption of illegal means by the appellant in obtaining business of international re-insurance cover of another firm, Jagson International Limited ("Jagson") on yearly brokerage/commission. The first respondent had such business with Jagson for the years between 2002-2012.

2. By the impugned order, the Tribunal has directed the IRDA, in effect, to revisit the complaint made by the respondent no.1 and pass a fresh order. Substance of the complaint made by the first respondent, also an Insurance and Re-insurance Brokerage entity was that the appellant had paid bribe to one Mr. Jagdish Gupta ("respondent no.5"), the Chairman of Jagson for obtaining the brokerage contract. Jagson is involved in the business of oil exploration and such insurance is mainly with regard to its exploration equipments.

3. The basis of complaint of the first respondent was certain emails referred to by the first respondent by which the respondent no.5 allegedly had made demand for illegal gratification in exchange of handing over the brokerage contract to the appellant. There is also allegation against the respondent no.5 of informing the respondent no.1, through telephonic conversation, about demand of bribe from the appellant. We find from pleadings that there was increase in the number and size of rigs of Jagson subsequent to the year 2012, which required enhanced coverage. Contention of the respondent represented by Mr. T. Srinivasa Murthy, learned counsel is that the appellant has used an India based direct insurance

broker to pay money to respondent no.5, as part of the appellant's commission to India. The case of the first respondent is that the payment, as is alleged to have been made to the respondent no.5, is violative of the provisions of Section 41(1) of the Insurance Act, 1938 as also Clause 37(1) of the Insurance Regulatory and Development Authority (Insurance Brokers) Regulations, 2013.

4. A complaint to that effect was made with the IRDA on 11th August 2015 on behalf of the first respondent, which was followed by a writ petition in the High Court (at that time it was the High Court for the State of Telangana and the State of Andhra Pradesh) seeking an inquiry in respect of the said complaint. This writ petition, registered as W.P. No. 27220 of 2017, was disposed of on 19th September 2017 with a direction on the IRDA to consider the complaint of M/s. Atkins Special Risk Limited by following due process; preferably within a period of four weeks from the date of receipt of copy of the Order. In the ensuing hearing, IRDA disposed of the complaint finding lack of any evidence substantiating the complaint. In its order passed on 9th January 2018, P.J. Joseph, Member (Non-Life) of IRDA who heard the complaint recorded that it was established that no proof of evidence had been brought in by the representative of the first respondent to prove his allegations and the authority could not further proceed with the complaint.

5. The Insurance Regulator i.e., IRDA, represented by Mr. Arvind Datar, learned senior counsel has reiterated this stand before us.

6. Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the appellant has argued that there was no foundation of the complaint made by the first respondent. As a result, there was no scope of interference by the Tribunal with the order of the IRDA. Drawing our attention towards various e-mails referred to by Mr. Murthy, it has been argued on behalf of the appellant that none of them related to any illegal demand made by the appellant from Jagson or respondent no.5. Barring a statement of a telephonic conversation of one Mr. Graham Atkins, managing director of the respondent no.1, in which respondent no.5 was alleged to have mentioned that appellant had agreed to pay him certain sum of money to obtain the business, there was no other material showing any illegality being committed by his client in obtaining the contract from Jagson.

7. Mr. Murthy on the other hand submitted that the scope and power of the investigation of IRDA is very wide and his client had obtained an investigation report by a private investigator which hinted at 'illegality' being committed by the appellant.

8. Argument was also made as to whether the IRDA could enter into this controversy having regard to the scope of their intervention delineated in Section 14(2) of the Insurance Regulatory and Development Authority Act, 1999.

9. In this judgment, however, we are not getting into that controversy as regards jurisdiction of the IRDA to conduct investigation as such investigation was directed by an order of the High Court, particulars of which we have given earlier. So far as jurisdiction or power of IRDA is concerned, we accept the submission of Mr. Murthy that it is of wide amplitude.

10. But, on going through the materials made available before us at the time of hearing, we are of the opinion that there was no occasion for interfering with the order of the IRDA by the Tribunal. It is a fact that the order of the Tribunal is in the nature of a remand order and this order in effect has only directed a fresh inquiry. Mr. Murthy had argued that so far as his client's complaint is concerned, they had discharged their onus by raising sufficient suspicion as regards the deal between the respondent no.5 and the appellant. But, we find that barring the fact that the appellant had been given the brokerage contract, there is no other cogent material which would warrant a detailed investigation. The Tribunal has, ex-

facie, gone wrong in observing that the first respondent had relied on documentary evidence in support of the complaint. We have referred to the nature of the documents but we accept the argument of Mr. Datar that these cannot constitute materials to trigger off an inquiry on the aspect of bribery being indulged into by the appellant to obtain the business from Jagson.

11. The fact finding body has already come to its conclusion on lack of evidence. In the given circumstances, we do not find any useful purpose that would be served in subjecting the appellant or their contract with Jagson to another round of inquiry. In the order under appeal, the Tribunal has observed that the complaint showed that the first respondent had relied on documentary evidence in support of the contention that Jagdish Gupta had sought bribe and was bribed by the officers of Marsh for diverting their re-insurance business. But we fail to find any such document from which such a conclusion could be reached.

12. Under these circumstances, we set aside the order of the Tribunal and allow the present appeals. The order of the IRDA passed on 9th January 2018 is sustained.

13. Pending application(s), if any, shall stand disposed of.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SUDHANSHU DHULIA]

NEW DELHI;
MARCH 24, 2023.