

IN THE COURT OF SH. AJAY GULATI
SPECIAL JUDGE (PC ACT), CBI-12,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI.

CC No. 170/2019
CBI Vs. Om Arora & Ors.

31.08.2020

Present:- Dr. Jyotsna Sharma Pandey, Ld. PP for CBI.
Sh. V. K. Ohri, Ld. Counsel for A1.
Sh. Dinkar Singh, Ld. Counsel for A3.
Sh. H. K. Sharma and Sh. Lakshya Parasher, Ld. Counsels for A4.
Accused Sanjay Dutta is present through video conference.

Present proceedings have been taken up through video conference hosted by court Reader Sh. Virender Yadav.

Application U/s 91 Cr. P. C. moved on behalf of A-3 has been received on the email of court. A copy of the same has been forwarded to the Ld. PP for CBI.

Application is taken on record. Ld. PP for CBI seeks three days' time to file reply to the above application. The reply be filed on the court email and a soft copy be supplied to the applicant/accused's counsel.

Put up for arguments on the above application on 9.9.2020, to be taken up through physical hearing.

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(AJAY GULATI)
Spl. Judge (PC Act), CBI-12
RADCC/New Delhi/31.08.2020

IN THE COURT OF SH. AJAY GULATI
SPECIAL JUDGE (PC ACT), CBI-12,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI.

Closure report No. 04/2019
CBI Vs. Divyanshu Navlakha & Ors.

31.08.2020

Present:- Ms. Priyanka Bhagat, Ld. PP for CBI.

Present proceedings have been taken up through video conference hosted by court Reader Sh. Virender Yadav.

Vide separate order announced through video conference, closure report submitted by the IO, CBI has not been accepted. There is sufficient material on record which discloses the commission of the offence u/s 120 B IPC read with section 420 IPC and 13 (1) (d) and Section 13 (2) of the Prevention of Corruption Act 1988. Since IO Seema Pahuja is said to have been transferred to Chandigarh, HIO is directed to place all the relevant material, along with a copy of this order, before the concerned authority of the OIC which is competent to accord sanction for prosecution of **Neeraj Kalra**, who was Branch Manager at the relevant time, **Sanjay Tayal**, who was Manager at the Regional Office at the relevant time, **C.S. Tandon**, who was DGM at the Regional Office at the relevant time, **G.K. Aggarwal**, who was Chief Manager at the Head office at the relevant time, **Virender Kumar**, who was DGM at the Head Office at the relevant time and **Neeraj Kumar**, who was General Manager at the Head Office at the relevant time.

Put up for report of the HIO on 26.9.2020.

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(**AJAY GULATI**)
Spl. Judge (PC Act), CBI-12
RADCC/New Delhi/31.08.2020

**IN THE COURT OF SHRI AJAY GULATI
SPECIAL JUDGE (PC ACT), CBI-12,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI.**

Closure Report No. 04/2019

CBI V/s Divyanshu Navlakha & Ors.

ORDER

1. The present closure report has been filed by CBI after investigation into RC No. SI 1/2011/S0004/SC-1/CBI/ND registered U/s 120B IPC r/w section 420 IPC & section 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988. The RC was registered against 2 directors of *M/s Anshumita Jewels Pvt. Ltd* i.e. Divyanshu Navlakha and Amita Navlakha, and Others with the allegation that both entered into a conspiracy with unknown officials of Oriental Insurance Company (OIC) for passing of a false insurance claim which subsequently was processed by the officials of OIC and cleared.

2. Relevant facts leading upto the registration of the present RC are as follows. *M/s Anshumita Jewels Pvt. Ltd.* of which Divyanshu Navlakha and Amita Navlakha are Directors, took an 'All Risk' policy from Oriental Insurance Company (OIC) for taking two strolley's containing studded gold jewelery to US from New Delhi, primarily for exhibiting the jewelery at an exhibition in Las Vegas from 30.05.2008 to 03.06.2008. The policy was taken for specific geographical areas/sectors i.e. New Delhi to Newark, Newark to Las Vegas, Las Vegas to Los Angeles, Los Angeles to New York and New York to New Delhi. The period of insurance cover was from 28.5.2008 to 18.6.2008. The insurance policy was for a risk covering Rs. Rs.1,21,83,545/-, (US\$ 305352). The total insurance premium paid was Rs. 27,722 /-. *M/s Anshumita*

Jewels had taken permission from Gems and Jewelry Export Promotion Council (GJEPC) for attending the exhibition at Las Vegas *though* the same was not a precondition for taking out an insurance policy. The insured jewelery was taken to US by Divyanshu Navlakha, his mother Amita Navlakha and Arpita Navlakha w/o Divyanshu Navlakha. On 6.7.2008, part of the insured jewelery was segregated and brought back to India by Amita Navlakha. The rest of jewelery remained with Divyanshu while he stayed on in USA. On 10.6.2008, Divyanshu Navlakha travelled from Los Angeles to Irvine to a friend's house along with certain part of the insured jewelery. At the point when Divyanshu got down from the rented car outside his destination in Irvine and opened the boot of the taxi, the bag containing the jewelery articles was robbed by 2 persons at gun point. The matter was reported to the Irvine Police who launched a formal investigation. In the meanwhile, Amita Navlakha who had by then returned to India, informed the concerned Branch of OIC (CBO 13, Connaught Place¹) on 11.6.2018 regarding robbery of insured jewelery who was then asked to submit further documentation in this regard. The regional office of the OIC was informed by the Branch office regarding the incident of robbery as narrated by Amita Navlakha. Regional office further informed the Head Office. Subsequently, the matter was referred to the company surveyor and foreign investigator. After considering the report of the insurance surveyor regarding the assessment of loss, and of foreign investigator regarding the incident of robbery, insurance claim was allowed for Rs. 42,70,268/- on 'compromise/negotiated basis' though the claim amount was of Rs. 77,21,705/-. A cheque of the said amount was issued to *M/s Anshumita Jewels* which stands encashed.

¹ This Branch has since shifted to Lajpat Nagar, New Delhi.

3. In this brief factual backdrop, allegations levelled were that during the period 2008-2010, Divyanshu Navlakha and Amita Navlakha, Directors of M/s Anshumita Jewels Pvt. Ltd. entered into a criminal conspiracy with unknown officers of Oriental Insurance Co. Ltd., with the object to cheat Oriental Insurance Company. In pursuance of the said conspiracy, some unknown officials of Oriental Insurance Company (OIC for short), by misuse of their official positions, allowed the aforesaid insurance claim of M/s Anshumita Jewels Pvt. Ltd. for Rs.42,70,268/- i.e. for the jewelery which had been robbed in the USA. This claim is said to have been allowed on a ‘compromised settlement’ basis by the Bank officials but it was alleged in the RC that the same was in violation of law and prescribed rules and regulations. **However**, after detailed investigation, the Investigating Officer concluded that the compromised settlement procedure adopted by the OIC officials was in accordance with the circular no. HO/AGM (TECH)/47/2004/CR-5289 dated 03.12.2004 issued by OIC Ltd. Head Office (Tech Deptt.) and hence, no delinquency was made out on the part of Divyanshu Navlakha or Amita Navlakha, or any of the OIC officials.

4. As per the closure report, after the jewelery exhibition in Las Vegas², insured jewelery was segregated in two bags. One of those bags was carried to India by Smt. Amita Navlakha and other bag was taken by Divyanshu Navlakha for sale in Los Angeles and New York. On 06.07.2008, Smt. Amita Navlakha reached India with part of insured merchandise worth US\$108303.26. The bag which was kept back in US by Divyanshu was shipped through **M/s Malca-Amit**, a domestic shipping company specializing in jewelery transportation. This bag contained jewelery worth US \$ 2 lacs, as per the signed declaration of Divyanshu Navlakha. The jewelery was collected from Los Angeles office of

² The exhibition was from 30.5.2008 to 3.6.2008

M/s Malca Amit on 09.06.2008. For the night of 09.06.2008, jewelery was kept in the locker of Mr. Jawahari's office who was an acquaintance of Divyanshu Navlakha and on 10.06.2008, jewelery was collected and taken to *M/s XIV Carats Ltd.*, where some items worth US\$ 7400 were sold. Thereafter, at around 1600 hours, jewelery was packed back into a suitcase and was placed in a rental car where-after Arpita Navlakha and Divyanshu Navlakha started their journey for 18, Calavera, Irvine, CA, which was the residence of Gaurav Tiwari, who was their friend. On reaching their friend's residence, Divyanshu Navlakha deboarded from the car and when he opened the dickey of the car, two persons with muffled faces attacked him. One of them pointed a revolver at him and pushed him as well as Arpita on the ground, and then both ran away with the bag containing the jewelery after puncturing the tyres of the car. The matter was reported to the police department, Irvine on 06.10.2008 at 1814 hours and a "Consolidated Occurrence Report" vide DR No. 08-08995 was registered on 10.06.2008 at 1814 hours by the Irvine Police for commission of crime under code Sec. 211 *i.e.* Robbery.

5. It has been further submitted in the closure report that Amita Navlakha vide letter dated 11.6.2008 gave the above information to Oriental Insurance Company, CBO 13. The insurance company deputed *M/s Alka Gupta and Associates* as surveyor for conducting verification and assessment about the loss. The matter was also referred to foreign investigator *M/s WK Webster (Overseas) Ltd.* for conducting investigation of the matter in USA. The Foreign investigator submitted its final report dated 20.03.2009 and opined '*supplemental*' to be suspicious. The '*supplemental*' refers to the revised value of jewelery of *M/s Anshumita Jewels* which was robbed. While transporting insured jewelery within US through domestic courier *Malca-Amit*, Divyanshu Navlakha had stated the declared value of parcel as US \$ 200,000.00. However, Divyanshu Navlakha reported to the Irvine Police deptt. the value of jewelery

robbed worth US\$ 500,000.00 out of which the insured jewelery was worth US \$ 200,000. Vide a supplementary statement submitted to the Irvine police on 13.6.2008, Divyanshu Navlakha **revised** the value of insured jewelery to be US \$300,000. Divyanshu Navlakha claimed that at the last moment when the jewelery was to be handed over to the domestic courier agency Malca-Amit, a part of jewelery owned by the company of Arpita Navlakha's father **i.e.** C. Mahendra & Co., was added in the bag which was subsequently snatched away by robbers. Foreign surveyor also observed that the place of incident *i.e.* 18 Calavera, Irvine was outside the scope of voyages covered by the insurance policy and as such, the liability of the insurance company would not stand.

6. It has been further disclosed in the closure report that after receipt of the report of surveyors and foreign investigators, the claim was processed at Oriental Insurance Company and was finally approved by General Manager on 31.03.2010 for Rs.42,70,268/- on "negotiation basis".

7. The investigation has revealed that the insurance policy in this case was issued on the basis of a proposal form signed by Amita Navlakha wherein she had mentioned in the column no. 7 & 9, the places and period for which the jewelery was to be transported as Newark to Las Vegas, Las Vegas to Los Angeles, Los Angeles to New York and New York-New Delhi, the period of travel being from 28.05.2008 to 18.06.2008.

8. Vide its report dated 02.12.2008, surveyor *M/s Alka Gupta & Associates* concluded that the documents as regards the exports and re-import of the insured jewelery had been verified and found to be in order. *M/s WK Webster* submitted its final report on 20.03.2009 and opined supplemental to be suspicious, as already highlighted.

9. On 03.06.2009, Sh. Neeraj Kalra, Branch Manager recommended for settlement of claim and sent the file to the Divisional Manager. On 11.06.2008, Sh. Sunil Sonkar, the Divisional Manager also agreed with the recommendations of the Branch Manager and sent the matter to the Regional Office. The claim was processed at RO-I by Mrs. Praveen Vasudeva, Assistant Manager vide a detailed note dated 14.07.2009. Thereafter, the claim was recommended by Sh. Sanjay Tayal, Manager at RO-I for approval on 'compromise' basis @ 75% of the assessed amount of Rs.77,21,705/- i.e. Rs.57,91,000/-. Thereafter, the claim file was put up before the Dy. General Manager, RO-I who forwarded the file with his recommendation to the Head Office (HO) for approval on 'non-standard' basis. The claim was processed at the Head Office where the Chief Manager HO, recommended the claim for approval on 'compromise' basis @ 65% i.e. Rs.42,70,268/-. Claim file was then submitted to the DGM, HO who further recommended the claim to the GM, HO.

10. Investigation further revealed that in the meantime, Sh. Sunil Sonkar, Divisional Manager, exceeding his competency, engaged *M/s GB Mathur & Co.* as **investigator** to examine the claim of M/s Anshumita Jewels Pvt. Ltd. and to submit its report. On 13.05.2009, M/s GB Mathur & Co. submitted its report and opined that documents were missing to justify the admissibility of the insured's claim for the loss of jewelery. It was suggested that the claim be re-examined. M/s GB Mathur & Co. recommended against passing the insurance claim. However, the said report was not taken on record of OIC.

11. Vide note dated 31.03.2010, the claim for Rs.42,70,268/- was finally approved by Sh. Neeraj Kumar, General Manager on negotiated basis and a

cheque for Rs.42,70,268/- was released by the Branch Office of OIC in favour of *M/s Anshumita Jewels Pvt Ltd.*

12. In the grounds seeking closure of the case, it has been submitted that circular no. HO/AGM (TECH)/47/2004/CR-5289 dated 03.12.2004 issued by OIC Ltd. Head Office (Tech Deptt.) gives *ample discretion* to the insurance company to settle the claim on compromise basis *even* if there is a breach of policy conditions/ warranty, **non-compliance, misrepresentation or lapses of any kind** on the basis of which technically the company can repudiate liability. Though *M/s Anshumita Jewels Pvt. Ltd.* had concealed material information from the insurance company to the effect that Gems & Jewellery Export Promotion Council (GJEPC) had permitted the Directors of *M/s Anshumita Jewels* to attend JCK Las Vegas exhibition **only** but they got insurance cover for three more places. However, during investigation, nothing came on record to show that approval of GJEPC was a condition precedent for issue of the insurance policy. *M/s Anshumita Jewels Pvt. Ltd.* could have got the insurance cover without the permission from GJEPC. Further, the insurance policy was obtained by paying the requisite premium.

13. In regard to the ‘supplemental’ claim of Divyanshu Navlakha being suspicious, as per the report of the foreign surveyor, the investigation revealed that initially Divyanshu Navlakha informed Irvine Police Department about the estimated value of robbed jewelery as approximately US\$ 500000 (\$ 200000 belonging to *M/s Anshumita Jewels* and \$300000 belonging to C. Mahendra, a company of the parents of Smt. Arpita Parikh represented by her in Las Vegas jewelery exhibition). Later on, Divyanshu Navlakha made amendments in the amount of jewelery by mentioning the value of robbed jewelery of *M/s Anshumita Jewels* as US \$300000 and US \$200000 as that of C. Mahendra &

Co.. Investigating Officer concluded that during the course of investigation, no evidence to disbelieve the version of Divyanshu Navlakha, has come on record.

14. As per the report of investigator, the place of occurrence was outside the prescribed voyage route conveyed by the insurance policy. However, the investigation has revealed that the insurance cover was wide enough to cover the place of occurrence. The insurance cover mentions the voyage route from New Delhi to Newark to JCK, Las Vegas, Las Vegas to Los Angeles, Los Angeles to New York, and New York to New Delhi. IO states in the report that it can be “inferred” on the basis of the policy that if anything happens in between, the insurer would be entitled for the claim.

15. It has been further submitted in the closure report that registration of DR No. 08-08995 and closure of investigation by Irvine Police Department has been confirmed by Interpol Washington. The report of Irvine Police Department confirms the robbery of insured jewelery and thus, the payment of compromised claim cannot be disputed. Closure report mentions that during the course of investigation, certain irregularities on the part of OIC at the time of issuance of insurance policy and processing of insurance claim were noticed. However, in this regard, a self-contained note has been sent to the competent authority of OIC to take action as it deemed fit. Investigating Officer thus concluded that the allegations levelled in the FIR could not be substantiated against the suspects and consequently, closure report is being filed.

16. Having gone through the RC closure report and analysed the conclusion arrived at by the Investigating Officer in the light of the statements of witnesses recorded under section 161 of the Cr.PC, this Court is of the clear understanding

that the closure report **cannot be accepted**. The detailed reasons for not accepting the closure report are as follows.

17. The entire investigation revolves around the allegation that the insurance claim of M/s *Anshumita Jewels Pvt. Ltd* under an 'All Risk policy' was illegally allowed in furtherance to a conspiracy between the directors of Anshumita Jewels and some officers of the OIC. The Investigating officer has given exclusive weightage to the fact that the insurance claim was allowed under a circular which permitted the Oriental Insurance Co. to settle claims on a compromise basis even where there has been a violation of the material conditions of a policy or misrepresentation by the insured, including of an All Risk policy.

18. The entire investigation has been structured around the proposition as to whether the insurance claim could have been allowed despite breach of one of the material conditions **i.e.** the insured jewelery was taken out of the geographical limits for which the policy had been taken out. As per the circular which forms the basis for the insurance company to have allowed the claim of M/s *Anshumita Jewels Pvt. Ltd.*, in case of a material breach of policy condition, the claim can be settled on a compromise basis for an amount upto 75% of the claim amount.

19. However, what is intriguing is the convenience with which the Investigating Officer has completely ignored the statements of the official witnesses recorded u/s 161 Cr.PC which bring out a startling fact – the policy issued to M/s *Anshumita Jewels Pvt. Ltd.* itself was wrongly issued since Branch had no authority to issue a policy covering monetary risk beyond 10 lacs. The policy could either have been issued by a Regional Office or in the alternative, post facto sanction was to be obtained from the Regional Office by the Branch office if it had issued such a policy. Statements of officers of OIC

examined by the Investigating Officer patently brings out the fact that no post-facto sanction was ever sought by the Branch office which issued the policy in question. What is even more astounding is that this fact about fundamental defect in the issuance of the policy was in the knowledge of the entire hierarchy of officers of Oriental Insurance Co. which recommended and ultimately passed the claim **i.e.** from the Branch Manager Neeraj Kalra who recommended the claim, right upto Neeraj Kumar who was the General Manager OIC and the final authority who passed the claim amount of Rs. 42,70,268/-. This aspect is clearly reflected in the statements of all those officers of OIC who were a part of the claim processing. The investigating officer did not bother to apply her mind at all to the fact that if the 'All Risk policy' itself could not have been issued, how could the circular dt. 03.12.2004 issued by OIC Head Office (Tech Deptt.) which provided the discretion to the OIC to ignore material breach of the said policy conditions and allow the claim on a compromise basis, be relevant at all? Instead of taking disciplinary action against the Branch Manager Bhag Singh Chauhan who issued the policy without any authority and who did not even seek post-facto sanction from the Regional Office, the OIC processed the insurance claim ignoring the fundamental defect in the policy despite the same being in the clear knowledge of the OIC officers. It needs a specific highlight that the 'All Risk policy' was issued in May 2008 while the intimation regarding the robbery of insured jewelery was sent to Br. Manager Bhag Singh Chauhan in June 2008 who further sent the information to higher authorities and also asked Amita Navlkaha to submit details of the robbery incident. Mr. Bhag Singh Chauhan retired in September 2008, much after the issuance of 'All Risk' policy in question and the incident of robbery had been brought to the notice of the higher authorities of OIC and yet, none of them took note of such a crucial aspect. Had the OIC authorities taken timely action, the entire liability of the insurance claim could have been recovered from the terminal dues of Bhag Singh Chauhan.

20. Pw 1 *Neeraj Kalra*, Branch Manager who initiated the recommendation of the settlement of insurance claim of Anshumita Jewels Pvt. Ltd., admitted in his statement that the Branch office was not competent to issue the 'All Risk Policy'. If this fundamental fact was in his knowledge, why did he even recommend the claim? Infact, perusal of his statement shows that he was over-zealous in processing the claim of Anshumita Jewels P. Ltd. He claims to have met Divisional Manager **Sunil Sonkar** and DGM **Virender Kumar** 5-6 times for finalization of the claim of Anshumita Jewels. It is beyond understanding that why did Neeraj Kalra make such strenuous efforts to process the claim of Anshumita Jewels when he could have simply put up a Note recommending repudiation of the insurance claim on the ground that the policy was a *non-est*. He further claimed in his statement that after meeting Sunil Sonkar and Virender Kumar, he was 'directed' to go in for compromise settlement. However, statement of Pw 5 Sunil Sonkar reveals that Neeraj Kalra **never** discussed the matter with him regarding the claim of M/s Anshumita Jewels. Pw Virender Kumar in his statement u/s 161 Cr. PC maintained silence on whether Neeraj Kalra met him in this regard. Neeraj Kalra contacted Amita Navlakha who was one of the directors of M/s Anshumita Jewels and agreed to settle the claim for 75% of the claimed loss. It needs a highlight that 75% was the outer limit for settling an insurance claim where the insured had committed a material breach of policy condition which in the present case, as admitted by the OIC itself, was taking the insured jewelery outside the geographical limits as specified in the policy bond. It is not understandable as to why did Neeraj Kalra recommend for the highest possible settlement for a policy which he knew to have been issued without authority. Further, in response to a specific question put to Neeraj Kalra about the policy bond having been issued by one Kishan Singh, Sr. Assistant OIC and his authority to issue the policy bond, Neeraj Kalra responded that he was not aware as to in what capacity did Kishan Singh approve the policy bond. He further stated that he got Kishan Singh transferred

as he was not satisfied with his working style. Despite all these facts, Neeraj Kalra processed the claim which defies all logic.

21. Statements of Pw 2 Ravi Sethi and Pw 7 Ms. Anita Chawla, both Assistant level officials of OIC, reveals that Neeraj Kalra asked them to prepare a scrutiny sheet regarding the claimed loss of M/s *Anshumita Jewels* and **also asked** these officials to recommend the claim but both these officials refused to make any recommendation and only prepared the scrutiny sheet. Both these officials in their respective statements claim that Neeraj Kalra **ignored** the points raised by them in the scrutiny sheet and went ahead with the recommendation.

22. Statement of Pw 8 Arti Mathur (Chief Manager) reveals 2 crucial facts – *first*, Branch Office could only issue a policy with a limit of risk upto Rs. 10 lacs; and *second*, the risk in the policy was covered “only for the places mentioned by the client/insured in the proposal form”. Admittedly, insured jewelery was taken out the geographical areas/sectors which were mentioned in the proposal form. This witness categorically stated that Branch office was not competent to issue the policy in question nor did the Branch office at any time seek approval for the same from the Divisional Office. Infact, **she also stated that there are no records that the issuance of policy was ever intimated to the Divisional office.**

23. Perusal of statement of Pw 15 Bhag Singh Chauhan and Pw 16 RS Kalra confirms the fact that no intimation was ever sent to the regional office of OIC regarding issuance of questioned policy. Bhag Singh stated that intimation might have been sent by Kishan Singh, Assistant or RS Kalra, Admn. Officer whereas RS Kalra stated that the intimation might have been sent by Bhag Singh Chauhan.

24. It is surprising that the noting forwarded by GK Aggarwal Chief Manager at Head Office (HO) recommending the claim to Virender Kumar DGM at HO, contained explicit reference to the clarification submitted by the foreign surveyor (M/s WK Websters) that the place of occurrence i.e. Irvine was outside the insured voyage and hence the liability under the covering policy '**would not engage**'. Despite this, the claim was not only further recommended by Virender Kumar DGM and but finally approved by GM Neeraj Kumar at the HO.

25. The statement of Pw 19 GK Aggarwal, Chief Manager makes an even more interesting reading. GK Aggarwal processed the claim of M/s Anshumita Jewels at the Head Office where after he forwarded the claim to DGM Virender Kumar who further forwarded the claim to GM Neeraj Kumar. Perusal of statement of GK Aggarwal reveals that he also had clear knowledge about the fact that the insured company had committed a material breach *i.e.* taking out the insured articles outside the geographical area specified in the policy. He was also aware of the opinion of the foreign investigator which was to the effect that because of the above said breach, the liability of OIC would be negated. Yet he processed the claim. Surprisingly, he seems to have ignored the opinion of foreign investigator to the effect that 'liability of OIC would not engage' owing to breach of policy condition **but** for the purpose of recommending the claim, highlighted its opinion that the place of occurrence (i.e. Irvine) was a low crime area. It is not understandable as to how could this aspect be relevant in recommending the claim? Further, the IO specifically put to this witness as to whether there was any doubt about the legal liability of OIC *i.e.* as per the circular relied upon for compromising the claim, which might have a bearing on the claim being recommended? In response, the witness clearly evaded the direct query and tried to give an evasive answer. Above all, it is almost shocking as to how GK Aggarwal tried to cover up in his statement the aspect of unauthorised issuance of policy in question. He stated that at the time of

processing the claim in question, GM Neeraj Kumar had issued an advisory in matters relating to covering the risk of jewelery articles and had instructed that care be exercised in underwriting such proposals. GK Aggarwal then stated that because this advisory letter was issued by GM Neeraj Kumar it “implies’ that the lapse in the issuance of the policy stood ratified by the competent authority. It is beyond any sense of reasoning as to how this letter issued *post facto* which was only a general advisory could have ratified the fundamental defect in the issuance of the policy. What is interesting to note in this regard is that GM Neeraj Kumar in his statement u/s 161 Cr.PC stated that the policy in question was never ratified at any stage.

26. Statement of Pw 21 DGM Virender Kumar which is brief, also brings out the fact that policy in question was issued without authorisation and that at no stage any *post facto* approval was sought. He sought to justify his recommendation on the ground that the claim was processed to ‘avoid any litigation’. However, what needs a specific highlight is that at no stage did the OIC even receive a legal notice from the insured company in regard to the claim. The question of litigation would have arisen only if OIC officials would have sent out a repudiation claim/notice to the insured citing breach of material condition or informing it about the unauthorised issuance of policy. **It simply baffles the Court as to what were the factors which led the OIC officials to go in for a compromised settlement.** For a premium of Rs. 27,722 /- paid by the insured company, OIC ended up paying a whopping Rs. 42 lac odd. The aspect of compromised settlement would have arisen if at all the insured had threatened to take the OIC to litigation and even in such a scenario, the OIC had very sound reasons for repudiating the insurance claim, mention of which has already been made above. It needs a further highlight that like GK Aggarwal Chief Manager at HO who in his statement tried to cover up the lapse of unauthorised issuance of questioned policy, Virender Kumar also tried to cover

in his statement the conscious breach of material condition by the insured. This Officer stated that as per google maps, Irvine forms a part of Greater Los Angeles area which covers both LA county and Orange county of which Irvine is a part. Despite the fact that insurance policy covered the risk only for specific cities and the travel between these cities, this Officer found a unique way to push under the carpet such a material breach of policy condition. It is appalling as to how the OIC officers have tried to prepare a recommendation in favour of the insured company by conveniently ignoring the sound grounds available to OIC for repudiating the claim.

27. Statement of Pw 22 Rita Singh who is a senior officer in the OIC but was **not** a part of the hierarchy of officers which recommended the claim, reconfirms the fact that policy was issued provisionally but no post facto ratification/approval was sought from the Divisional Office by the Branch which issued the Policy. This witness also stated that while issuing the policy, the Branch did not examine the document vide which GJEPC had granted permission to *M/s Anshumita Jewels* to take the jewelery for exhibition only to specified cities whereas the policy bond covered areas greater than those for which the permission was granted. **In this context**, statement of GB Mathur Pw 20 would become relevant. Statement of Pw 20 GB Mathur who carried out a sperate investigation at the asking of Sunil Sonkar, reveals a very relevant fact. As per his investigation, the US Customs authority had granted permission for entry of jewelery by *M/s Anshumita Jewels* from 28.5.2008 till 10.6.2008 wheras Amit Nvalakaha travelled with a major part of that jewelery on 10.6.2008 from LA to Irvine. It is not clear whether the OIC examined this aspect that it could have avoided its liability on this additional ground that the jewelery remained in US beyond the period of permission granted by the US authorities. Even though the period of insurance cover was till 18.6.2008, once the jewelery which was robbed could not have been kept in the US beyond 10 June 2008,

there would probably be a ground for OIC to repudiate its liability. It would have been a different matter if Divyanshu Navlakha would have started his journey back to Delhi from New York on 10.6.2008 and the robbery had occurred during the course of such transit or any time after that till 18.6.2008. Further, statements of 2 witnesses i.e. Pw Tara Chand and Pw Pranabes Hazra reveals that the insured jewelry could have been taken only to the places for which the GJEPC had granted express permission, which in the present case was only Las Vegas.

28. Statement of Pw 23 CS Tandon DGM at Regional Office shows that he was also aware of the unauthorised issuance of policy in question by the Bank. He was also aware of the fact that the incident of robbery had taken outside the geographical limits set out in the policy. Yet, this officer recommended the claim from the Regional Office to the Head Office for settling the claim on compromise basis to the extent of 75% of the claim amount.

29. Statement of Pw 24 Sh. N. Tobdan who was the **Chief Vigilance Officer** of OIC, implicates the entire hierarchy of officials who processed and recommended the claim, by highlighting the report of foreign investigator and breach of geographical area condition by the insured. This witness even went to the extent of stating that the insured company obtained the policy cover by concealing from the OIC and misrepresenting to it regarding the permission granted to M/s Anshumita Jewels for display and sale of jewelery at places other than the exhibition at Las Vegas. It is most strange that the Investigating officer ignored his statement while preparing the closure statement. It appears that the Investigating officer has not applied her mind at all while preparing the closure report.

30. Statement of Pw 25 GM Neeraj Kumar who finally approved the claim for 65% of the claim amount, shows that he had clear knowledge of all the relevant facts concerning the issuance of policy and yet he approved the same.

Interesting to highlight that at the time of final approval by GM Neeraj, he was **not even dealing with the said claim**. This fact has been admitted by GM Neeraj Kumar himself in his statement. It is not understandable as to how could he have been permitted to approve the claim as a matter of convenience simply because he dealt with the claim at one stage. Further, he justified approval of claim by stating that it was the ‘right decision to avoid further litigation’. The fact of the matter however is that at that point of time, not even a legal notice had been served by the insured company.

31. This Court cannot fathom any reason as to why the OIC officers should have gone in for a compromise settlement with M/s *Anshumita Jewels*. For a meagre premium of Rs. 27,722 / - earned by the OIC, it ended up paying Rs. 42 lacs belonging to the investors. In the understanding of the Court, a completely avoidable monetary loss to the OIC has been caused due to the misconduct on the part of its officers. The Investigating Officer has hardly applied her mind while preparing the closure report. IO’s ‘inference’ that robbery of insured jewellery would be covered in the scope of journey and anything in-between, is most absurd. As per the statement of BM Neeraj Kalra, he held negotiations with Amita Navlakha where-after he recommended passing of 75% of the insurance claim which points towards the existence of conspiring minds.

32. In view of the above observations, the closure report cannot be accepted. There is sufficient material on record which discloses the commission of the offence u/s 120 B IPC read with section 420 IPC and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act 1988. I, therefore, direct the HIO to place all the relevant material, alongwith a copy of this order, before the concerned authority of the OIC which is competent to accord sanction for prosecution of the following OIC officers -

Neeraj Kalra, Branch Manager at the relevant time

Sanjay Tayal, Manager at the Regional Office at the relevant time

CS Tandon, DGM at the Regional Office at the relevant time

GK Aggarwal, Chief Manager at the Head office at the relevant time

Virender Kumar, DGM at the Head Office at the relevant time

Neeraj Kumar, General Manager at the Head Office at the relevant time

33. It needs a highlight that though Divisional Manager Sunil Sonkar was very much a part of the hierarchy which processed and recommended the claim, he redeemed himself by 2 very important acts – *first*, he recommended the claim subject to clearance by internal audit which recommendation he made on the basis of the report of investigator M/s WK Websters which found not only the value of claim suspicious **but also** opined that the liability of OIC would be *excluded* due to breach of geographical area clause by the insured. The audit was never carried out despite his recommendation. *Second*, he called for a 2nd report from an investigator since he had suspicion about the genuineness of the claim. Even though Sunil Sonkar *prima facie* had no authority to call for another report from a 2nd investigator, the fact that he did carry out this exercise shows that he made all efforts at his end to protect the OIC from incurring wrongful loss. I therefore would give him the benefit of his bonafide actions and not club him along with the other officers qua whom I have directed the HIO to approach the concerned authority of OIC which is competent to accord sanction for prosecution of the OIC officers.

34. I am also not directing the HIO at this stage for seeking sanction for prosecution of Parveen Vasudeva since she/he was an Assistant Manager at the Regional Office and appears to have merely acted as a forwarding authority.

35. It would also need a highlight that so far as the role of Bhag Singh Chauhan, Kishan Singh and RS Kalra is concerned, their role in issuance of a policy which could not have been issued by the Branch, was an administrative misconduct but which falls in the purview of disciplinary proceedings of the

OIC. The **actual misconduct** which benefitted *M/s Anshumita Jewels* and which falls within the purview of Section 120 B IPC read with section 420 IPC and Section 13 (1) (d) and Section 13 (2) of the PC Act was of those officials who processed the claim knowing well that not only was the policy issued without authorisation but the OIC could have very well avoided its liability since there was a breach of material condition committed by the insured. Additionally, there was a prima facie misrepresentation by *M/s Anshumita Jewels Pvt. Ltd.* while taking the policy cover.

Announced through Video Conference

Dated : 31.8.2020

**AJAY
GULATI**

Digitally signed by AJAY
GULATI
Date: 2020.08.31
14:56:26 +05'30'

**(AJAY GULATI)
Spl. Judge (PC Act),CBI-12
RADCC / New Delhi**