IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION

INTERIM APPLICATION NO. 3960 OF 2025
IN
COMMERCIAL ADMIRALTY SUIT NO. 2 OF 2025

Tristar Intercontinental Pvt. Ltd. …Applicant/Plaintiff
V/s.
Gladstone Agencies Limited … Defendant/Respondent

Mr. Milan Desai instructed by T. R. Patel, Advocate for the Plaintiff.
None for the Respondent/Defendant.

CORAM : ABHAY AHUJA, J.
RESERVED ON : 16th DECEMBER,2026
PRONOUNCED ON: 6th APRIL, 2026

P.C. :

1. This Interim Application seeks a Summary Judgment under Order XIII A of the Code of Civil Procedure, 1908 (the "CPC") in terms of prayer Clause (a) to the Application which reads thus:-

> "a) This Hon'ble Court be pleased to pass Summary Judgment under order XIII A of the CPC and thereby pass order and decree directing and ordering the Respondent to pay to the Applicant sum of Rs. 87,12,571/- (Rupees Eighty Seven Lakhs Twelve Thousand Five Hundred Seventy One Only) as more particularly set out in particulars of claim at Exhibit "M" hereto together with the interest thereon at the rate 18% p.a. from the date of filing of the suit till payment realization and cost of the suit".

2. Mr. Desai, learned Counsel appearing for the Applicant/ Plaintiff has sought to canvas before this Court that in view of the decision of

the Hon'ble Supreme Court in the case of ***Bajaj Allianz General Insurance Co. Ltd & Anr Vs. The State of Madhya Pradesh***[1], where it has been observed that the term transit does not mean that the goods must be actually moving at the relevant time but they must however be still in possession of the carrier and the definition of transit also includes the act of passing which applies to the facts of this case and therefore, the Suit be decreed in favour of the Plaintiff under Order XII A of the CPC as the Defendant although served and not appearing in the matter, has no real prospect of successfully defending the claim.

3. The Suit had been filed earlier seeking the following prayers:-

> "(a) The Defendant be ordered and decreed to pay to the plaintiff sum of Rs. 87,12,571/- (Rupees Eighty Seven Lakhs Twelve Thousand Five Hundred Seventy One Only) as more particularly set out in particulars of claim at Exhibit "M" hereto together with the interest thereon at the rate 18% p.a. from the date of filing of the suit till payment realization and cost of the suit."

4. The Plaintiff statedly is a private limited company registered under the provisions of the Companies Act, 1956 and has filed Commercial Suit as can be seen for recovery of Rs. 87,12,571/- along with the interest at the rate of 18%.

1 Civil Application No. 2366-67 of 2020.

5. It has been submitted that the Applicant-Company in the course of its business had placed order with one M/s Techwool Trading Private Limited ("Techwool"), having its office in Australia for importing conditioned / chargeable weight 6,265 kgs of 21 micron Australian Scoured Wool ("ASW") at the rate of 11.47 Euros per kg and conditioned / chargeable weight of 13789 kgs of 20.5 micron ASW at Euro 11.40 per kg, which was inclusive of freight from Australia to India and insurance from warehouse of the exporter i.e. Techwool to the Applicant's warehouse. That the Applicant-Company had imported the aforesaid goods from the aforesaid exporter under the Letter of Credit issued by the Bank of Baroda (erstwhile Dena Bank), Main Branch, Mumbai under the terms payment as per the Letter of Credit on 180 days from the date of Bill of Lading falling due on 29th August, 2020.

6. That on or about 2nd March, 2020, the exporter had shipped from Melbourne Port, the aforesaid goods packed in total 145 Bales, being 45 Bales of 21 micron of ASW and 100 Bales of 20.5 microns of ASW, through Orient Overseas container Lines, which reached the Kolkata Port some time in April, 2020 and was discharged from vessel sometime between 6th April, 2020 to 23rd April, 2020.

7. That the Applicant states that in the meantime due to the outbreak of the Covid pandemic there was a lockdown declared from 22nd March, 2020, wherein only emergency essential services were permitted to operate. As the business of the Applicant-Company did not fall within category of emergency essential services, in view of the lockdown imposed, the Applicant-Company was shut down since 22nd March, 2020 till some time in the month of November, 2020, when pursuant to unlock policy declared from time to time, the Applicant-Company could partly resume its work.

8. It is submitted that the Bank of Baroda (erstwhile Dena Bank) released import documents on or about 11th March, 2020 by signing Bill of Exchange for 180 days by the Applicant. The import documents were forwarded on 12th March, 2020 through DTDC courier vide consignment Note No. M96701074 to M/s Khemka Shipping Agency having its office in Kolkata, a registered clearing agent appointed by the Applicant for the purpose of clearing the imported cargo from the port.

9. It is the case of the Applicant that the Letter of Credit under which the aforesaid cargo was imported to India by the Applicant was negotiated on the due date of the said Letter of Credit i.e. 29th August, 2020 and the entire consignment value of Euro 2,29,054.15 was paid

to the exporter's bank and the aforesaid documents were handed over by the Bank of Baroda (erstwhile Dena Bank) to the Applicant.

10. Mr. Desai has submitted that a copy of the commercial invoice issued by the exporter Techwool is on record as the same was issued in the course of the aforesaid business transaction and the payment of the said transaction was made through the Letter of Credit opened through the Bank of Baroda and hence, the said invoice was transacted through the Bank of Baroda having seal and stamp of the said bank and also evidencing that the same was delivered to the Applicant. Mr. Desai has submitted that not only the original of the same has been produced and identified but even copy of the Bill of Lading under which the goods under which the said commercial transaction was shipped from Australia and the original of the same along with the acknowledgment of the Bank of Baroda evidencing that the same was delivered to the Applicant and has been produced and identified on behalf of the Applicant. Mr. Desai has submitted that the original copy of the packing list issued by the exporter Techwool while shipping the goods under the aforesaid invoice imported by the Applicant's Company is also produced and identified.

11. Learned Counsel submits that the cargo /goods were insured on warehouse of exporter to the warehouse of the importer by the parent company of the Respondent / Defendant viz. Chubb Insurance Australia Limited, for the insured value of Euros 2,51,959.57 under its Marine Cargo Insurance Policy bearing Policy No. 02OC023148 and certificate No. CBTW000036808 (the "Marine Insurance Policy"). Mr. Desai submits that the original copy of the said is being produced.

12. It is submitted that in the said Marine Insurance Policy, it has been categorically mentioned under the heading "Remarks" as under:-

> "COVERING INTER-ALIA TRANSIT (WAREHOUSE TO WAREHOUSE) CLAUSE PERTAINING TO CURRENT SHIPMENT OR DISPATCHES COVERING INSTITUTE CARGO CLAUSE A INSTITUTE WAR CLAUSE AND INSTITUTE STRIKE CLAUSE (CARGO) WITH CLAIMS PAYABLE IN INDIA."
>
> (emphasis supplied)

13. Mr. Desai submits that it is clear from the aforesaid Clause that the cargo goods imported were insured under the aforesaid insurance policy from the exporter's viz. Techwool's warehouse in Australia to the Applicant's warehouse in India, which is at Raipur. Mr. Desai submits that as the activities at port and the customs were exempted from the lockdown, despite the lockdown the clearing agent was compelled to fulfill the customs formalities and was further compelled to put cargo in transit by paying appropriate custom duties and accordingly, the

aforesaid clearing agent sought to transport the aforesaid imported goods to the Applicant's warehouse at Raipur, Chattisgarh, however, the truck carrying consignment to Raipur, due to the imposed lockdown, was not permitted to leave the Kolkata city and was forced to temporarily deposit the imported cargo, as cargo in transit warehouse at ATC Global Logistics, 9 Hukan Godown, Khidderpur, Near Vishwanath Kanta, Kolkata-700088.

14. Mr. Desai submits that the neither the customs department nor the clearing agent performs the quality check / or verifies the state of the received cargo at the port as the only concern of the customs department is to verify that the cargo that the cargo received at the port is as per the manifest attached to the documents, whereas, the job and function of the clearing agent is to complete necessary customs formalities and to put the imported goods in transit to its final destination. That post the imported goods being discharged at Kolkata port, without verifying the quality / the state of the imported goods, the Applicant's clearing agent had put the imported goods in transit to Raipur, which in the peculiar circumstances of the lockdown came to be temporarily deposited as the goods in transit at the warehouse of ATC Global Logistics.

15. Mr. Desai submits that on or about 18th November, 2020, post easing of stringent lockdown conditions, when the interstate trasport movements were permitted between Kolkata, West Bengal and Raipur Chhattisgarh, the imported goods in transit from Kolkata Port to the Applicant's warehouse at Raipur, which was temporarily deposited with the ATC Global Logistics warehouse at Kolkata as goods in transit resumed its transit to its destination at the Applicant's warehouse at Raipur and on or about 23rd November, 2020, reached its final destination i.e. the Applicant's warehouse at Raipur Chhattisgarh, at the warehouse situated at Uniworth Textiles Ltd, 923-945, Urla Growth Centre, Urla Industrial Estate, Post Sarora, Sector-D, Urla, Raipur-492001.

16. It is submitted that immediately on the goods being received at the Applicant's warehouse in Raipur, the Applicant verified the state of the imported goods and upon such verification it was found that the imported goods were stinking, the bales were discoloured and were found to be covered with fungus and moss and as such the majority of cargo / consignment of the imported goods were found to be in completely damaged state making the same completely unusable. Mr. Desai submits that the condition of the goods was noted on the back

side of the lorry receipt by the employee of the Applicant and the Applicant identified the said writing. Mr. Desai has submitted that as per the insurance policy, the Application for survey was to be made to the Defendant / Respondent viz. Gladstone Agencies Ltd. at 1A, Janki Shah road, Hatings, Kolkata, India-700022 at Phone No. +91(33)22230054-6 and email– info@gladstoneagencies.com.

17. It is submitted that, the Applicant upon seeing the entire cargo in completely damages state, immediately called the Respondent-Company on the phone and informed them about the same and in accordance with the terms of the insurance policy within three days of having received the imported goods in their warehouse at Raipur, vide its letter dated 24th November, 2020 and email dated 25th November, 2020 informed the Respondent about having received the imported goods in damaged state and also informed that as per the Applicant's conservative estimate Rs. 1 Cr worth of imported goods were damaged for which, the Defendants were to pay the Applicant as per the terms and conditions of the marine policy also as the cargo was insured from the warehouse of the exporter in Australia to the Applicant's warehouse in India and the Respondents-Defendants were responsible and liable to pay the value of the insured goods and requested them to immediately

depute surveyor for the purpose of surveying the state of the imported goods. Mr. Desai submits that on being so informed, the Respondent company immediately conveyed to the Applicant-Company that they would immediately appoint a surveyor who would visit the Applicant's warehouse at the earliest for the purpose of verifying the state of the imported goods and for the purpose of surveying the approximate loss of goods.

18. It is submitted that thereafter on or about, 30th November, 2020, one Mr. Irfan Dinani, local surveyor appointed by the Respondent-Company, visited the Applicant's warehouse and after seeing the imported cargo, advised the Applicant to initially open the very badly damaged 12 Bales of 21 microns and 54 Bales of 20.5 microns, so as to assess the damaged caused and at the same time directed the Applicant to segregate the Bales, so that the liability can be assessed. Thereafter, on being informed about having opened the Bales and having segregated the Bales as directed by Mr. Dinani, on or about 4th January, 2021, Mr. Dinani visited the Applicant's warehouse and verified and surveyed the imported goods on 4th January, 2021 and 5th January, 2021 in the presence of the staff of M/s Indoworth India Limited, (D.T.A. Unit), appointed by the Applicant-Company. It is submitted that

in the course of his survey, Mr. Dinani took several photographs of the imported goods and thereafter, observed that in his estimation the entire consignment of imported goods was not completely damaged nor the entire consignment of the imported goods rendered in unusable condition. On segregation it was found by Mr. Dinani that 12 Bales of 21 microns of ASW weighing 445.85 kgs and 54 Bales of 20.5 microns of ASW weighing 2163.80 kgs was completely damaged and rendered unusable and the remaining consignment though damaged was not completely rendered unusable, however, due to the damage caused, its value was reduced by 35%.

19. Mr. Desai submits that although a request was made to Mr. Dinani to furnish the survey report along with photographs, however, he refused saying that as per the Respondent-Company policy, the survey report is confidential and the same has to be submitted by the concerned local surveyor only to the Respondent-Company.

20. Mr. Desai submits that while the imported goods were being so surveyed by Mr. Dinani, on behalf of the Respondent-Company, the Applicant had as noted above, also appointed M/s Indoworth India Limited (“Indoworth”), to survey the damage caused to the imported goods and the surveyor appointed by the Applicant had submitted its

report as under:-

> "66 bales which were kept outside for inspection by surveyor of insurance are as under:
>
> Invoice No. UN-607>12 Bales outside sorted out and filed in 19 bags as good material weighing 1177.15 kgs.
>
> Damaged Bags 6 bales > weighing 225.85 kgs.
>
> Invoice No. UN-607>54 Bales outside sorted out and filed in 79 bags as good material weighing 5101.20 kgs.
>
> All the above material is kept in Uniworth Ltd, Raipur, godown for further inspection and settlement of claims are with Uniworth Ltd., Raipur."

21. Mr. Desai submits that the said report is also been produced.

22. Mr. Desai submits that the Applicant-Company has also taken photographs of the imported goods showing the condition fo the Bales as were received at its warehouse in Raipur and has printed out the same from the device on which the photographs were taken and has also produced the certificate under Section 65-B of the Indian Evidence Act. Mr. Desai submits that as per the Bales segregated by the surveyor of deputed by the Respondent-company 12 Bales of 21 microns of ASW material weighting 445.85 kgs worth Rs. 4,47,671/- and 54 Bales of 20.5 microns of ASW after being segregated and found fully damaged, material weighing 2163.80 kgs worth Rs. 21,59,377/- was completely damaged and rendered unusable and value of the balance consignment was reduced by 35% and thus the value of the balance microns of ASW

weighing 5819.15 kgs was reduced to Rs. 37,97,894/- and the value of the balance 20.5 microns ASW weighing 11,625.20 kgs was reduced to Rs. 75,40,935/- and thus the damage caused to imported goods while under transit amounted to Rs. 87,12,571/-.

23. Mr. Desai submits that the Respondent-Company thereafter, sent its survey report to their parent company M/s Chubb Insurance, Australia for taking necessary actions thereon and after receiving the instructions, the Respondent – Company vide its letter dated 15th January, 2021, which was received by the Applicant-Company on email on 25th January, 2021, informed the Applicant-Company that M/s Chubb Insurance Australia has denied any liability to pay the Applicant the insured amount on the ground that the container carrying 145 Bales of imported goods, which was cleared from CFT on 30th April, 2020, was de-stuffed in private warehouse enroute to the Applicant's warehouse in Raipur and that the same was intentional and not part of ordinary course of transit and so being the case, coverage / risk stood expired immediately upon delivery to the said warehouse. The Insurer's instructions are usefully quoted as under:-

> "Quote:-
>
> from details provided there is no evidence of any loss or damage in transit nothing the transit ended once the goods

were collected from the port of Kolkata and delivered to the consignee's warehouse. We believe the policy would not respond in this instance as the loss occurred outside of CIF terms and after the goods had been delivered to the consignee's nominated warehouse.

Unquote:

Policy coverage / risk would stand expired immediately upon delivery to any warehouse or place of storage, even prior to the destination named on the policy, which is elected for storage. In view of the above, the insurers are unable to take up this claim under insurance. "

24. Mr. Desai submits that the said letter dated 15th January, 2021 by the insurer is produced. Mr. Desai submits that, thereafter, by its mail dated 25th January, 2021, the Applicant-Company refuted the claim by the Respondent-Company and further vide letter dated 27th January, 2021 pointed out to them the peculiar, compelling and emergency circumstances of national lockdown, under which the truck carrying the imported goods were not permitted to leave Kolkata city and as such the imported goods in transit had to be temporarily deposited at a warehouse in Kolkata and the same was neither intentional nor did the same amount to de-stuffing of goods at importer's warehouse as the goods were in transit to the Applicant's warehouse and remained as goods in transit until 23rd November, 2020 when it finally reached the Applicant's warehouse and that as per the terms and conditions of the marine policy under which they were insured, they remained duly

covered under the marine policy, which had not expired till it reached the Applicant's warehouse in Raipur on 23rd November, 2020 and therefore, the Respondent was liable to make good the losses as per the Marine Insurance Policy. Mr. Desai submits that the said communication was signed by the CEO of the Applicant and also produced the office copy of the said letter and also the Applicant has also identified the signature of the CEO.

25. Mr. Desai submits that the said communication was sent to the Respondent through speed post and when despite receiving the same, neither any payment was made to the Applicant for the loss nor any reply was was received, the Applicant once again vide their letter dated 2nd March, 2021 apprised the Respondent of its liability under the Marine Insurance Policy for the damage, office copy of which letter which was signed by the CEO, is available and also identified by the Applicant.

26. Mr. Desai submits that the said letter was sent to the Respondent -Company through RPAD and was duly received, however, till the date of the Suit and even the date of the Interim application no payment has been received.

27. Mr. Desai submits that by letter dated 15th January, 2021, the

Respondent have admitted that the deposition of the imported goods at warehouse in Kolkata was not part of ordinary course of transit and thus, they have admitted that the ordinary course of transit was from Kolkata port to the Applicant-Company's warehouse at Raipur and have also admitted that the same was under the emergency situation of the Covid pandemic due to which the imported goods were forced to be temporarily deposited at warehouse in Kolkata, however, to wriggle out of their liability to pay the Applicant for the loss / damage to the imported goods as per the marine policy under which the Applicant was insured, the Respondent Company has falsely and fraudulently termed such temporary deposition of imported goods in transit to an intentional storage in private warehouse. Mr. Desai submits that the same is *ex-facie* false.

28. Mr. Desai submits that the Respondent in its letter dated 15th January, 2021 has sought to portray that the risk or coverage expired on the imported goods being deposited in warehouse at Kolkata, while admitting that the same was not its final destination when they mentioned mentioned that the coverage / risk stand expired upon delivery to any warehouse or place of storage even prior to the destination named in the policy.

29. Mr. Desai submits that warehouse to warehouse clause in the Marine Insurance Policy amounts to movement of insured cargo from its point of origin at the exporter's warehouse and which ends in its delivery to the importer's destination warehouse and it covers all intermediary stages where the goods may have to be stored due to various reasons.

30. Mr. Desai submits that, therefore, the short point is involved is whether the goods were in transit till it reached in Plaintiff / Applicants warehouse in Raipur or the transit ended when the transporter was forced to store the goods in the warehouse in Kolkata. Mr. Desai has sought to rely upon the decision of the Hon'ble Supreme Court in the case of *Bajaj Allianz General Insurance Co. Ltd. & Anr. Vs. The State of Madhya Pradesh (supra).*

31. Mr. Desai submits that it is in this view of the matter, that the Plaintiff has sought a Summary Judgment under Order XIII-A of the CPC for directions to the Respondent to pay Rs. 87,12,571/- being the total damage caused to the imported goods along with interest at the rate of 18% as per the Particulars of Claim being Exhibit- M to the Plaint on the following grounds:-

(a) The Respondent has no defence and that they have categorically admitted their liability to pay under the aforesaid Marine / Insurance Policy.

(b) The Respondent has no prospect at all of succeeding in defending the claim of the Applicant.

(c) The entire claim of applicant is based on the adduced documentary evidence, and thus there is no compelling reasons why the claim should not be disposed of before recording oral evidence.

(d) that the term of the Marine Insurance Policy is admittedly insured the imported goods from warehouse of the Exporter in Australia to the warehouse of the Applicant in Raipur, India; and the goods were admittedly delivered in damaged condition at the warehouse at Raipur, India and thus the insurer i.e. the Respondent is liable to pay the claim of the Applicant as set out in Plaint.

(e) That it is admitted position that the imported goods were admittedly damaged in the transit from Australia to the Applicant's godown / warehouse in Raipur, India and thus under the aforesaid Marine/ Insurance Policy the Respondent is liable to make good the claims fo the Applicant as set out in the Plaint.

(f) For the reasons elaborately stated in the foregoing paragraphs of the present Application it is apparent that the Respondent has no defence and that they are liable to pay the claims of the Applicant as stated in the Plaint.

32. I have heard the learned Counsel at length on 19th September, 2025 as well as on 16th December, 2025, when the order was reserved and the learned Counsel was also given liberty to file written submissions. On 5th January, 2026, a short points of arguments have been filed on behalf of the Applicant.

33. While deciding the Application for Summary Judgment under Order XIII-A of the CPC what needs to be considered is that either the Plaintiff has no real prospect of succeeding on the claim or the Defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The grounds for Summary Judgment as noted above have been set out under Rule 3 of Order XIII-A of the CPC as applicable to the commercial disputes. Under Rule 4, there is a procedure prescribed.

34. It is to be noted that although the Interim Application has been served on the Respondent-Defendant on 19th April, 2025, none appeared for the Respondent at the hearing of the Application.

35. Although Mr.Desai, learned Counsel for the Plaintiff/Applicant has relied upon the decision of the Hon'ble Supreme Court in the case of *Bajaj Allianz General Insurance Co. Ltd. & Anr. Vs. The State of Madhya Pradesh (supra)*, where the Hon'ble Supreme Court has observed that the words "in transit" do not require transportation of the consignment in a single trip from the commencement to the final destination but includes those interruptions in motion that are incidental to or in furtherance of the conveyance or transportation of the consignment to submit that the reason the Respondent has given to refute the claim of the Applicant/Plaintiff that transit ended when the transporter was forced to store the goods in the warehouse in Kolkata, would not be tenable, I am of the view that the Application for summary judgment cannot be allowed in the absence of oral evidence led by the Applicant/Plaintiff and an opportunity to the Respondent to cross-examine the Plaintiff's witness(es) and the Plaintiff's facts having been proved as there are conflicting / unproved facts, with respect to the condition of the imported goods as contained in the report of Indoworth and the report of the Respondent's surveyor Mr. Irfan Dinani, which report has admittedly not been furnished to the Applicant/Plaintiff.

36. M/s Chubb Insurance Australia, who has denied liability on the ground that the container carrying 145 bales of imported goods, which was cleared from CFT on 30th April, 2020, was de-stuffed in private warehouse en-route to the Applicant's warehouse in Raipur and the same was intentional and not part of the ordinary course of transit and therefore, the coverage / risk stood expired immediately upon delivery to the said private warehouse viz. ATC Global Logistics, Kolkata, would need to be given an opportunity to cross-examine the Applicant/Plaintiff, alongwith the Respondent. The Respondent would also need to be given opportunity to lead evidence. The facts as to how the Covid pandemic as claimed by the Applicant/Plaintiff led to temporary de-stuffing at Kolkata would need to be proved in addition to demonstrating the fact that the de-stuffing was temporary and under circumstances covered under the marine policy.

37. The grounds, therefore, to seek a summary judgment in favour of the Applicant / Plaintiff, in my view, cannot be sustained. It cannot be said that the Respondent has categorically admitted to their liability to pay under the Marine Insurance Policy or that the Respondent has no prospect of defending the claim of the Applicant/Plaintiff or that there is no compelling reason as to why the claim should not be disposed of

before recording oral evidence. Even if some of the goods are damaged, there is no clarity as to the quantity of such damaged goods as the report of the Defendant's surveyor is admittedly not available and can only be brought on record at the stage of evidence at a trial

38. Since, there are triable issues to be decided, the claim cannot be disposed of before recording of oral evidence and, therefore, I am not inclined to allow this Application and pass the following order:-

ORDER

(i) The Interim Application is accordingly dismissed.

(ii) Let the Plaintiff within a period of four weeks, file and serve affidavit in lieu of examination in chief of the Plaintiff's witness and affidavit and compilation of documents along with list of witnesses.

(iii) Discovery and inspection to be completed within a period of two weeks thereafter.

(iii) Defendant to file statement of admission and denial within a period of two weeks after that with a copy to the other side.

(iv) List for marking of Plaintiff's documents on **8th June, 2026.**

(v) Let the Plaintiff's witness remain present in Court on the next date.

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2026.04.13 19:05:33 +0530

(ABHAY AHUJA, J.)