

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 821 OF 2013

(Against the Order dated 16/09/2013 in Complaint No. 14/2012 of the State Commission
Punjab)

1. M/S. NANCY OVERSEAS, IMPORTERS & EXPORTERS

Through its Prop. Smt. inderjit Kaur, 2-B, Model House, Near 4
Khamba Road,

LUDHIANA

PUNJAB

.....Appellant(s)

Versus

1. EXPORT CREDIT GUARANTEE CORPORATION OF
INDIA LTD. & ANR.

10th Floor, Express Towers, Nariman Point,

MUMBAI-400021

MAHARASHTRA

2. EXPORT CREDIT GUARANTEE CORPORATION OF
INDIA LTD.,

SURYA KIRAN COMPLEX, 2ND FLOOR, THE MALL,

LUDHIANA

PUNJAB

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE APPELLANT :

FOR APPELLANT : MS. AAKRITI GOEL, ADVOCATE, WITH
APPELLANT IN PERSON

FOR THE RESPONDENT :

FOR RESPONDENTS : MR. BHARAT SANGAL, SR. ADVOCATE
WITH
MS. BABITA KUSHWAHA, ADVOCATE

Dated : 29 August 2024

ORDER

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 ('the Act') against the Order dated 16.09.2013 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh ('the State Commission'), in Consumer Complaint No.14 of 2012, wherein the Complaint filed by the Complainant (Appellant herein) was dismissed.

2. For Convenience, the parties in the present matter are being referred to as mentioned in the complaint before State Commission. M/s. Nancy Overseas, Importers & Exporters is the Complainant and Export Credit Guarantee Corporation of India Ltd. & Anr are the Opposite Parties (OPs) (Respondents herein).

3. Brief relevant facts of the case, as per the Complainant, are that **M/s Nancy Overseas**, a sole proprietorship concern filed a complaint before the State Commission through its Sole Proprietor, **Inderjit Kaur**, seeking directions for the OPs to pay **₹57,00,000** on account of the insured value, along with **18% interest per annum** from the date of the claim on **03.02.2010** until payment and **₹10,00,000** as damages due to deficiency in service due to harassment, mental tension, inconvenience and financial and business loss.

4. Smt. Inderjit Kaur, engaged in the export business purchased a **Shipment (Comprehensive Risks) Policy** dated **16.11.2007** for **₹60,00,000** from the OPs, valid from **15.11.2007** to **30.11.2009**. She received an export order from **M/s Import Ishwar Impex DI Singh Jarnail** in Italy for various goods and applied for a credit limit against the buyer with OPs, deposited requisite fee vide letter dated 05.01.2008 for a sum of **₹57,00,000**. After submitting requisite documents, including Shipment Declaration Form and the balance premium, the buyer failed to pay the bill on the due date. She reported the default to OP. Despite several efforts to recover the payment, including involving the Embassy of India in Italy and a Debt Recovery Agency, the buyer did not fulfil the obligations of payment. She submitted the claim form to the OPs on **13.01.2010**, which was rejected on **05.08.2010** on the grounds deemed frivolous. The complainant contended that there was no misrepresentation or suppression of facts on her part, and she complied with all directions issued by the OPs. She contends that the reasons for rejecting her claim are not valid and that the rejection was wrongful and illegal.

5. In their joint written reply, the OPs acknowledged the issuance of the Shipment Policy and the subsequent credit limit but contended that the entire subject matter of the complaint is commercial in nature, making the complainant not a consumer under Section 2(1)(d) of the Act, 1986. The complainant suppressed material facts and provided misleading information, which voided the policy under its terms and conditions. She failed to pay requisite premium before shipment and delayed the noting and protesting of the bill, impairing the possibility of recovery from the buyer. Thus, the claim was repudiated. The OPs also argued that the representation against rejection of the claim was made beyond the permissible period, making it non-actionable.

6. The learned State Commission, vide Order dated 16.09.2013 dismissed the complaint with following observations:

***“11. So far as the first two grounds are concerned, as already discussed above, those could not have been made the ground for the rejection of the claim of the complainant. After the submission of the reply of the complainant regarding the change of address of the bank etc., the opposite parties decided to continue with the policy. The full premium had been paid by the complainant as she paid Rs.30,000/- by means of cheque and Rs.10,000/- was already lying deposited in her premium account.*”**

12. The ground that the value of transaction did not commensurate with the income/sales reported in the income tax returns is not valid for rejection of the claim as there is no such term and condition in the policy. Learned counsel for the opposite parties could not point out to any of the correspondence between the parties on the basis of which it may be concluded that it was ever brought to the notice of the complainant that the claim to be made by her under the policy could have been rejected on the said ground.

13. The opposite parties have not stated the fact that Inderjit Kaur, whose name appeared in their S.A.L. was the complainant herself, for the first time, in their written reply. Legal notice was served by the complainant upon the opposite parties Ex.C3, which was duly replied and the reply so given was proved on the record by the complainant herself as Ex.C-34. It was mentioned in that reply that the name of the complainant was appearing in S.A.L. as she was the guarantor of M/s Jaggi Brothers International, Jalandhar, which was a firm and her husband, Paramjit Singh was one of the partners of that Firm. The addresses as disclosed by that Inderjit Kaur and Ranjit Singh were the same. It was also stated in the reply that the policy was obtained on the basis of deliberately providing false and misleading declaration of S.A.L. The stand of the opposite parties to that effect, as taken in the written reply, has already been discussed above. After these facts had been brought to the notice of the complainant before the commencement of the evidence, she was required to prove on record that her name never figured in S.A.L. She did not depose about that fact in her affidavit Ex.C-8. This omission in her affidavit is very material. On the other hand, from the affidavit of A. Augustus Ex.R-1, it stands proved that the name of the complainant appeared in the S.A.L. and she deliberately did not disclose the name of her husband in the proposal form submitted by her for obtaining the policy. It is pertinent to note that the complainant tried to give explanation of the grounds so mentioned in the letters Ex.C-23 and Ex.C-27 by means of her letter Ex.C-28 and which have been reproduced above but the same is silent regarding these facts. It means that she had nothing to say about that fact and she impliedly admits that she is the wife of Paramjit Singh, the name of whose firm was appearing in S.A.L. and her name was also figured therein as guarantor of that firm. No doubt, she has been able to reply the query of the opposite parties regarding the change of the registered address of her concern and the name of the bank but it can be inferred that she changed the registered address of her concern and the banker so that the above said facts may not come to the knowledge of the opposite parties. It was not denied at the time of arguments that she did not disclose the name of her husband in the proposal form. From all these facts, it can well be inferred that she intentionally suppressed the information regarding the name of her husband and that their names appeared in the S.A.L. Had these facts come to the notice of the opposite parties that was certainly bound to affect their judgment in accepting or rejecting the proposal. They would not have been issued policy in favour of a person whose name was appearing in S.A.L., as in those lists the names of those persons are incorporated, who indulge in unfair trade practices regarding the export of the goods. The information so suppressed by her was material and was suppressed with the intention of obtaining undue advantage

and to commit a fraud upon the opposite parties. That was a valid ground for the rejection of her claim.

14. The complainant proved on record Form No.205 Ex.C-10, which contains the details of the buyer, the date on which the bill was drawn and the due date of payment. The date on bill drawn was 20.6.2008 and the due date of payment has been mentioned as 20.8.2008. According to Section 99 of the Negotiable Instruments Act, 1881, when a bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonor to be noted by a Notary Public upon the instrument or upon a paper attached thereto or partly upon each. Such note is required to be made within a reasonable time after dishonor and must specify the date of dishonour, the reason, if any, assigned for such dishonor. Therefore, the complainant was required to get the bill of exchange noted or protested by a Notary Public within reasonable time of the date of payment i.e. 20.8.2008. As per the letter dated 26.9.2008 Ex.C-11, the complainant was required by the opposite parties to ascertain the reason for non-payment by getting the bill noted/protested through a Notary and to inform them the reason. The reply dated 7.10,2008 given to that letter is on the record but never tendered in evidence by the complainant. The same is silent about getting the bill noted and protested through the Notary. No evidence was produced by the complainant for proving that she ever complied with the provisions of Section 99 of the said Act or the direction as given by the opposite parties within reasonable time. That amounts to breach of the terms and conditions of the insurance policy as according to clause (7) thereof she was to use all reasonable and usual care and to take all practical measures to prevent or minimize the loss and to institute legal proceedings against the buyer to take control of the goods and/or to recover the costs and the damages etc. It is not the case of the complainant that she ever instituted any legal proceedings for recovery of the price of the goods from the buyer. Therefore, the opposite parties were justified in repudiating her claim on that ground also.

15. From our above discussion, we conclude that the opposite parties validly repudiated the claim of the complainant and, therefore, it cannot be held that there was any deficiency in service on their part. We find no merit in this complaint and the same is hereby dismissed. However, no order is made as to costs.”

7. Being aggrieved the Appellant/Complainant filed the instant First Appeal No.821 of 2013 with the following prayers:

(i) To allow the Appeal

(ii) To set aside the Impugned Order dated 16.09.2013 passed by the Ld. State Commission, Chandigarh, Punjab.

(iii) Pass such other order(s) as it may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

8. In the instant Appeal, the Appellant/complainant mainly raised the following grounds:
- A. The State Commission failed to consider that the respondents, despite being aware that the appellant's name was on Special Approval List (SAL) and that the appellant was a guarantor for another export firm, M/s Jaggi Brothers, still increased the credit limit from 30 to 60 days. Even after noting discrepancies, they confirmed the increased credit limit and accepted the premium. These establish that the discrepancies were not material. Further, they failed to produce letters dated 19.11.2007 or 29.11.2007 in which they claimed to have informed the appellant about the discrepancies.
- B. The first reason for rejecting the claim as incorrect information in the proposal form is baseless and frivolous. Nothing was concealed or incorrect information was furnished in the proposal. The State Commission unjustly relied on the unproved proposal form referred by the respondents, with incorrect address and omission of husband's name, which remained unsubstantiated.
- C. The State Commission did not consider that Respondent No.2 accepted the premium of Rs.37,985 despite being fully aware of the appellant's husband being listed in the SAL. Also if the respondents had discovered any concealment, they should have cancelled the policy and refunded the premium, which they did not. Even if there was concealment, it was not of material fact.
- D. The second reason for rejection as no cover available due to insufficient credit balance is factually incorrect and misrepresents the terms of the cover. The respondents accepted the premium covering the shipment on 09.07.2008 and should have refunded it if they did not intend to cover the risk.
- E. The third reason for rejection as the value of the transaction not being commensurate with reported income/sales is outside the scope of the cover's terms and conditions. Evidently, the OPs are seeking grounds to reject a legitimate claim.
- F. The rejection based on the delay in getting the bill noted and protested is unjust, as these actions were carried out with considerable effort, proving the loss suffered by the appellant due to non-payment by the buyer. She made every possible effort, including contacting the Embassy of India in Italy and engaging a debt recovery agency (Dun Bradstreet, Cedex) to recover dues to avoid liability on OPs, which caused some delay.
9. The learned Counsel for the Appellant/ Complainant argued that she purchased a Comprehensive Risks Policy (No. 0120003142) from ECGC of India Ltd., effective from 15.11.2007 to 30.11.2009 and the OPs were fully satisfied with the explanations provided by her and reinstated the guarantee/credit limit, issuing an amended guarantee vide letter No. LUDHILOGO1/Italy/1000452737/573414/2008 dated 11.06.2008, wherein the period was

extended from 30 to 60 days. The appellant dispatched a shipment to a buyer in Italy, submitting Shipment Declaration Form No. 203 dated 07.07.2008, duly signed, along with a balance premium payment of Rs. 30,000 by cheque. She requested the OPs to adjust Rs. 37,085 as premium, as there was a credit balance of Rs. 10,000 in her account. She submitted Form No. 205 to cover the risk. However, OPs unjustifiably repudiated the claim even after submitting all required documents demanded by OP-2. She also clarified all points raised by OP-2 in reply dated 05.08.2010, but the OPs again rejected the claim mechanically on 15.04.2011. The State Commission overlooked that the OPs increased her credit limit from 30 to 60 days, despite knowing her name was on the SAL List and that she was a guarantor for another export firm, M/s Jaggi Brothers. It also failed to recognize that the OPs confirmed the increased credit limit and accepted the premium, implying that any discrepancies were not material. The OPs failed to produce the letter dated 19.11.2007, wherein it was claimed to have informed her about discrepancies in the proposal form. The State Commission also overlooked that the OPs accepted the premium and adjusted Rs.37,985 towards the risks involved, despite being fully aware of all the said facts. Even if there was some concealment by her, the OPs did not cancel the policy or refund the premium. Without filing the relevant documents, the State Commission ought not to have considered the same. After the buyer refused to make payment, she made extensive efforts to recover the dues, to avoid liability on the OPs, which caused some delay in getting the bill noted and protested through a notary. The State Commission failed to appreciate that the OPs had earlier conducted an inquiry and were aware of her name on the SAL and as a guarantor for M/s Jaggi Brothers. Despite this, they confirmed the increased credit limit, indicating they were satisfied with the clarification provided. The State Commission overlooked that the OPs accepted the premium of Rs.37,985 toward the risks involved, despite being fully aware of her circumstances. This indicates that any alleged concealment was not material. The State Commission did not consider that issues regarding the suppression of material facts only arose after the shipment was delivered and payment was not received, which suggests an intent to deny her legitimate claim. The rejection of the claim on the ground of insufficient credit balance is incorrect and misrepresents the facts and terms of the cover. The OPs should have refunded the premium if they were not prepared to cover the risk due to insufficient credit balance. The delay in getting the bill noted and protested was due to these efforts. He sought to allow the appeal and set aside the impugned order passed by the State Commission.

10. On the other hand, in his arguments, the learned Counsel for the Respondent/ OPs admitted the Shipment (Comprehensive Risks) Policy No. 0120003142, effective from 15.11.2007 to 30.11.2009. The policy included a separate credit limit of Rs. 57,00,000/- on documents against acceptance (DA) with a 30-day payment basis, which was subject to the policy's terms and conditions. He contended that the Appellant requested an enhancement of the credit limit. However, the OPs vide letter dated 14.05.2008, suspended the earlier sanctioned limit due to doubts regarding the information provided by her. She responded on 16.05.2008, and after further communication, the credit limit was eventually enhanced to 60 days on 11.06.2008. She shipped goods worth Euro 102,221.12 on 24.03.2008, but the payment period was only extended to 60 days on 11.06.2008, after the shipment had already occurred. Additionally, the premium paid by her for the enhanced credit limit was insufficient, as only Rs. 30,000/- of the required Rs. 37,085/- was paid. The OPs rejected her claim on 05.08.2010, citing non-compliance with policy conditions, including insufficient premium payment and delayed submission of required documents. The OPs also noted that

she failed to get the bill noted and processed through a notary in a timely manner, impairing the possibility of recovery from buyer. The OPs emphasized that the insurance contract is based on the principle of "Uberrima Fides" (utmost good faith). Her failure to disclose material facts, including the correct address and the relationship with M/s Jaggi Brothers International, voids the policy under Clauses 1 & 2 of the terms and conditions. She deliberately provided misleading and false information to obtain the policy. Her representation against the claim rejection was made on 22.02.2011, well beyond the stipulated three-months period after the claim rejection on 05.08.2010, which further invalidates her claim. In terms of Section 64 VB of the Insurance Act 1938 and Clause 10(b) of the policy, the premium must be paid before the risk under the policy begins. Since the shipment was made on 20.06.2008 without full premium payment, no risk was covered under the policy. Therefore, the claim was rightly rejected due to the suppression of material facts, misleading information, and non-compliance with the terms and conditions of the policy. He relied upon the following judgments in support of his arguments:

- A. United India Insurance Co. Ltd. v. M.K. J. Corporation, (1996) 6 SCC 428;**
- B. Carter v. Boehm, Reported 3 Burr. 1905;**
- C. Oriental Insurance Co Ltd v. Sony Cheriyan, (1999) 6 SCC 451;**
- D. Union of India & Ors. V Chetan S. Naik, (1999) 6 SCC 457;**
- E. BHS Industries v. Export Credit Guarantee Corporation Ltd. & Anr., (2015) 9 SCC 414;**

11. I have examined the pleadings and associated documents placed on record are rendered thoughtful consideration to the arguments advanced by the learned Counsels of both the parties.

12. The present case revolves around whether the Appellant (Complainant) sufficiently complied with the terms of the insurance policy and whether the Respondent (OP) was justified in rejecting the insurance claim?

13. The insurance policy in question was a Comprehensive Risks Policy covering a specific period from 15.11.2007 to 30.11.2009. This included a credit limit, initially set at 30 days, which was later extended to 60 days on 11.06.2008. The Appellant shipped goods to a buyer in Italy on 24.03.2008, before the credit limit extension. This timeline raises concerns about whether the shipment was adequately covered under the original policy terms, considering the later modification. The main assertion of the respondent is that the shipment was not covered due to insufficient premium payment and delayed submission of documents. This has merit. According to the respondent, the appellant did not pay the full premium amount required to cover the extended credit limit, which is imperative before any risk coverage begins, under Section 64 VB of the Insurance Act 1938 and Clause 10(b) of the policy. The appellant paid only Rs.30,000/- instead of the required Rs. 37,085/-, indicating non-

compliance with policy terms. This resulted in an untenable situation where, without OP receiving the complete premium required before the risk commenced, the Appellant is asserting the insurance cover.

14. The principle of "Uberrima Fides" (utmost good faith) is foundational in insurance contracts, requiring full disclosure of all material facts by the insured. The respondent contention that the appellant failed to disclose a significant relationship with M/s Jaggi Brothers International, a fact material to the risk assessment. Moreover, the respondent asserts that the appellant provided misleading information to obtain the insurance policy, voiding the policy under Clauses 1 and 2 of the terms and conditions.

15. The respondent further argued that the appellant delayed the required process of getting the bill noted and processed through a notary, which is a critical step in the recovery process under international trade law. This delay, they claim, impaired the possibility of recovering the dues from the Italian buyer, thereby justifying the rejection of the insurance claim. The judgments cited by the respondent provide a strong foundation for the argument that non-disclosure and misrepresentation of material facts are sufficient grounds for voiding an insurance contract. Particularly, the case of *United India Insurance Co. Ltd. v. M.K. J. Corporation* (Supra) emphasizes the importance of full disclosure in insurance contracts. The appellant's failure to comply with the necessary preconditions of the insurance policy and the delayed representation against the claim rejection further weaken the case for appeal.

16. Based on the aforementioned deliberations, the rejection of the appellant's insurance claim by the respondent is due to non-compliance with the policy terms, insufficient premium payment, and the alleged concealment of material facts. The appellant's arguments, including the acceptance of the premium by the respondent and the extension of the credit limit, do not negate the fact that the shipment occurred before the policy's modification, and the full premium was not paid before the risk commenced.

17. In view of the foregoing discussions, I do not find any reason to interfere with the derailed and well reasoned order passed by the learned State Commission dated 16.09.2013. Therefore, the present First Appeal No.821 of 2013 is dismissed.

18. There is no order as to costs.

19. All pending Applications, if any, stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER