



- 2.1. The Respondent(s) filed a Consumer Complaint No. 280 of 2015 before the NCDRC on 12.05.2015, claiming a total amount of INR 47,36,25,000 (Indian Rupees Forty Seven Crore Thirty Six Lakh Twenty Five Thousand) as compensation on account of *inter alia* the death of his wife due to alleged medical negligence; and adoption of unfair trade practices by the Petitioner(s) herein whilst conducting a left thoracotomy i.e., mediastinal tumour excision under general anaesthesia (the “**Underlying Complaint**”).
- 2.2. In this context, *vide* an order dated 14.05.2015, the NCDRC issued notice to the opposite party i.e., the Appellants herein.
- 2.3. The Notice was received by the Appellant(s) on 27.05.2015; and accordingly, the Appellant(s) ought to have filed its’ WS within a period of 30 (thirty) days thereafter i.e., on or before 28.06.2015. However, the Appellant(s) filed its WS together with an application seeking condonation of delay on 12.04.2016 before the NCDRC i.e., after a delay of 285 (two hundred eighty-five) days beyond the 30 (thirty) day period granted to Appellant(s).
- 2.4. *Vide* the Impugned Order, the NCDRC closed the right of the Appellant(s) from filing their written statement on

account of them exceeding the statutory period prescribed for filing such written statement, under Section 13 of the Act.

- 2.5. Aggrieved by the aforesaid, the Appellant(s) preferred the Special Leave Petition No. 36048 of 2016 i.e., now converted to this instant appeal.
- 2.6. *Vide* an order dated 16.12.2016, this Court issued notice in the instant appeal; and directed the Appellant(s) to pay a sum of INR 50,000 (Indian Rupees Fifty Thousand) as costs to the Respondent(s) pursuant to which upon receiving consent from the Respondents herein, the NCDRC was at liberty to proceed with the adjudication of the Underlying Complaint. Alternatively, the Respondents herein were free to seek a stay of proceeding(s) before the NCDRC pending disposal of the instant appeal.
- 2.7. *Vide* an order dated 01.11.2017, on account of the non-acceptance of the aforesaid cost(s) by the Respondents herein, the NCDRC kept further proceeding(s) in abeyance in terms of the order dated 16.12.2016 passed by this Court.
- 2.8. In the *interregnum*, a co-ordinate bench of this Court, noticed a conflict of opinion(s) in *inter alia New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage*

*(P) Ltd.*, (2015) 16 SCC 20 (“*New India Assurance 1*”); *J.J. Merchant (Dr) v. Shrinath Chaturvedi*, (2002) 6 SCC 635; *Kailash v. Nanhku*, (2005) 4 SCC 480; *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344; and *Topline Shoes Limited v. Corporation Bank*, (2002) 6 SCC 33, and accordingly, placed similarly placed appeal(s) before a Constitution Bench of this Court *vide* an order dated 30.10.2017, with a view to bring a sense of finality *vis-à-vis* the manner of operation of Section 13 of the Act (the “**Constitution Bench**”).

- 2.9. Pertinently, the Constitution Bench *vide* its decision in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2020) 5 SCC 757 (hereinafter “**New India Assurance 2**”) categorically observed that the rigours of Section 13 of the Act needed to be complied with mandatorily; however, on account of various conflicting decision(s) of this Court, the Constitution Bench clarified that *New India Assurance 2 (Supra)* would operate prospectively.
- 2.10. Pertinently, during the pendency of *New India Assurance 2 (Supra)*, a Division Bench of this Court in *Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd.*, (2021) 3 SCC 673 held

that the *consumer fora* were permitted to accept written statements beyond the stipulated maximum 45 (forty-five) day period in an appropriate case on suitable terms. This position was followed by this Court pursuant to the ***New India Assurance 2 (Supra)*** in respect of application(s) seeking condonation of delay in filing the written statements/reply that either had been decided or were pending prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2 (Supra)***<sup>1</sup>.

2.11. Despite the aforesaid, a divergent view came to be taken by a Division Bench of this Court in ***Daddy's Builders (P) Ltd. v. Manisha Bhargava, (2021) 3 SCC 669*** observed as under:

*“7. As observed by the National Commission that despite sufficient time granted the written statement was not filed within the prescribed period of limitation. Therefore, the National Commission has considered the aspect of condonation of delay on merits also. In any case, in view of the earlier decision of this Court in J.J. Merchant [J.J. Merchant v. Shrinath Chaturvedi, (2002) 6 SCC 635] and the subsequent authoritative decision of the Constitution Bench of this Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd. [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338] , Consumer Fora have no jurisdiction and/or power to accept the written statement beyond the period of 45 days, we see no reason to*

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<sup>1</sup>Refer: *A. Suresh Kumar v. Amit Agarwal, (2021) 7 SCC 466; and Bhasin Infotech & Infrastructure (P) Ltd. v. Neema Agarwal, (2021) 18 SCC 301*

*interfere with the impugned order [Daddy's Builders (P) Ltd. v. Manisha Bhargava, 2020 SCC OnLine NCDRC 697] passed by the learned National Commission.”*

2.12. In this context, a 3 Judge Bench of this Court in ***Diamond Exports v. United India Insurance Co. Ltd.***, (2022) 4 SCC 169 were tasked with *inter alia* reconciling and authoritatively settling the divergent views taken by this Court in respect of underlying complaint(s) either pending or instituted prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2 (Supra)***. Thus, in this context, this Court in ***Diamond Exports (Supra)*** categorically held that ***Daddy's Builders (P) Ltd. (Supra)*** would not affect applications seeking condonation of delay that were pending or decided on or before 04.03.2020, and accordingly, such application(s) seeking condonation of delay would be entitled to the benefit granted by this Court in ***Mampee Timbers (Supra)***. The relevant paragraph is reproduced as under:

*“24....Thus, the decision in Daddy's Builders [Daddy's Builders (P) Ltd. v. Manisha Bhargava, (2021) 3 SCC 669 : (2021) 2 SCC (Civ) 319] would not affect applications that were pending or decided before 4-3-2020. Such applications for condonation would be entitled to the benefit of the position in Mampee Timbers & Hardwares [Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd., (2021) 3 SCC 673*

: (2021) 2 SCC (Civ) 323] which directed Consumer Fora to render a decision on merits. We have expounded on the above principles in order to adopt a bright-line standard which obviates uncertainty on the legal position before the Consumer Fora and obviates further litigation.”

3. Turning to the issue at hand, the undisputed fact(s) of the present *lis* reveal that the Impugned Order was passed by the NCDRC on 22.07.2016 i.e., prior to 04.03.2020 the date of pronouncement of the decision in ***New India Assurance 2 (Supra)*** by the Constitution Bench. Accordingly, in this background it was contended by the Appellant(s) that on account of the prospective operation of the said decision, coupled with the observations of this Court in ***Diamond Exports (Supra)***, the instant appeal ought to be allowed with a direction to the NCDRC to render a decision on merits qua the underlying application seeking condonation of delay in filing the WS.

4. In the considered opinion of this Court, the categorical observation(s) of the Constitution Bench in ***New India Assurance 2 (Supra)***; coupled with the finding(s) of a Bench of 3 Judges of this Court in ***Diamond Exports (Supra)*** have authoritatively brought quietus to the underlying issue. The application(s) seeking condonation of delay preferred before the *consumer fora* prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2 (Supra)***, must be decided on merits; and ought not to be summarily dismissed.

5. Accordingly, on an overall consideration, we are convinced that the Impugned Order be set aside; and the instant appeal be allowed. The NCDRC is directed to adjudicate the underlying application seeking condonation of delay in filing the WS in the Underlying Complaint on merits.

6. The appeal is accordingly allowed. Pending application(s), if any, stand disposed of. No order as to cost(s).

.....**J.**  
**[BELA M. TRIVEDI]**

.....**J.**  
**[SATISH CHANDRA SHARMA]**

NEW DELHI  
AUGUST 22, 2024



**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 10941-10942 OF 2013**

**NEW INDIA ASSURANCE  
CO. LTD** **...APPELLANT(S)**

**VERSUS**

**HILLI MULTIPURPOSE  
COLD STORAGE PVT LTD** **...RESPONDENT(S)**

**J U D G M E N T**

**SATISH CHANDRA SHARMA, J.**

1. These appeal(s) arise from (i) an order dated 22.08.2013 in Consumer Complaint No. 52 of 2013, wherein the National Consumer Disputes Redressal Commission (hereinafter referred to as the “NCDRC”) forfeited the right of the Appellant Company to file its written statement on account of the Appellant Company’s lapse in conforming to statutory period prescribed for filing its written statement, under Section 13 of the Consumer Protection Act, 1986 (the “Act”); and (ii) an order dated

30.09.2013 wherein the NCDRC dismissed the Review Application bearing number 309 of 2013 filed against the aforementioned order dated 22.08.2013 (hereinafter (a) the order dated 22.08.2013; and (b) the order dated 30.09.2013, shall collectively be referred to as the “**Impugned Order**”).

2. The facts and proceedings germane to the contextual understanding of the present *lis* are as follows:

2.1. The Respondent filed a Consumer Complaint No. 52 of 2013 before the NCDRC on 27.02.2013, *vis-à-vis* the repudiation of claim made on the strength of 4 (four) insurance policies availed from the Appellant Company. Pertinently, the underlying claim emanated from losses arising out of an incident of ‘*sprouting of potatoes*’ that took place at the factory of the Respondent (the “**Underlying Complaint**”).

2.2. In this context, *vide* an order dated 08.03.2013, the NCDRC issued notice to the opposite party i.e., the Appellant Company herein, and directed it to file its written submission (“**WS**”) in response to the Underlying Complaint within 30 (thirty) days from the receipt of notice under Section 13 of the Act.

2.3. Notice was received by the Appellant Company on 19.03.2013; and accordingly, the Appellant Company ought to have filed its’ WS within a period of 30 (thirty)

days thereafter. However, the Appellant Company filed its WS together with an application seeking condonation of delay on 23.07.2013 before the NCDRC i.e., after a delay of 79 (seventy-nine) days beyond the 30 (thirty) day period granted to Appellant Company.

- 2.4. *Vide* the Impugned Order, the NCDRC forfeited the right of the Appellant Company from filing its written statement on account of a contravention of the statutory period prescribed for filing such written statement, under Section 13 of the Act.
- 2.5. Aggrieved by the aforesaid, the Appellant Company preferred the instant appeal under Section 23 of the Act.
- 2.6. *Vide* an order dated 29.11.2013 this Court (i) admitted the underlying appeal(s) and took note of the difference of opinion *inter se* co-ordinate benches of this Court in *J.J. Merchant (Dr) v. Shrinath Chaturvedi*, (2002) 6 SCC 635 and *Kailash v. Nanhku*, (2005) 4 SCC 480 vis-à-vis limitation period for filing of a written statement under Section 13 of the Act; (ii) directed the Appellant to a sum of INR 45,00,000 (Indian Rupees Forty Five Lakh) i.e., the damage amount assessed by a surveyor under Section 64UM of the Act, towards the claim of the Respondent (the “**Subject Amount**”); and (iii) stayed the operation of the Impugned Order.

- 2.7. Accordingly, in compliance with the aforesaid order, the Appellant Company deposited the Subject Amount before the Registry of this Court.
- 2.8. Thereafter, the instant appeal together with several similarly placed appeal(s) were placed for consideration before a Bench comprising of 3 Judges of this Court. The said Bench *vide* their decision in ***New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.***, (2015) 16 SCC 20 (hereinafter “**New India Assurance 1**”) held that the rigours of Section 13 of the Act were mandatory and accordingly, observed that the law laid down by this Court in ***J.J. Merchant (Supra)*** would prevail.
- 2.9. Subsequently, a co-ordinate bench of this Court, noticed a conflict of opinion(s) in *inter alia* ***New India Assurance 1 (Supra)*** ; ***J.J. Merchant (Supra)***; ***Kailash (Supra)***; ***Salem Advocate Bar Association v. Union of India***, (2005) 6 SCC 344; and ***Topline Shoes Limited v. Corporation Bank***, (2002) 6 SCC 33, and accordingly, referred the matter to Hon’ble the Chief Justice of India for appropriate orders. In this context, *vide* an order dated 30.10.2017, the instant appeal came to be placed before a Constitution Bench of this Court, with a view to bring a sense of finality *vis-à-vis* the underlying legal

question vis-à-vis the manner of operation of Section 13 of the Act (the “**Constitution Bench**”). Pertinently, the Constitution Bench *vide* its decision in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2020) 5 SCC 757 (hereinafter “**New India Assurance 2**”) categorically observed that the rigours of Section 13 of the Act needed to be complied with mandatorily; however, on account of various conflicting decision(s) of this Court, the Constitution Bench clarified that *New India Assurance 2 (Supra)* would operate prospectively.

- 2.10. Pertinently, during the pendency of *New India Assurance 2 (Supra)*, a Division Bench of this Court in *Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd.*, (2021) 3 SCC 673 held that the *consumer fora* were permitted to accept written statements beyond the stipulated maximum 45 (forty-five) day period in an appropriate case on suitable terms. This position was followed by this Court pursuant to the *New India Assurance 2 (Supra)* in respect of application(s) seeking condonation of delay in filing the written statements/reply that either had been decided or

were pending prior to 04.03.2020 i.e., the date of pronouncement of *New India Assurance 2 (Supra)*<sup>1</sup>.

2.11. Despite the aforesaid, a divergent view came to be taken by a Division Bench of this Court in *Daddy's Builders (P) Ltd. v. Manisha Bhargava*, (2021) 3 SCC 669 observed as under:

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2.12. In this context, a 3 Judge Bench of this Court in *Diamond Exports v. United India Insurance Co. Ltd.*, (2022) 4 SCC 169 were tasked with *inter alia* reconciling and authoritatively settling the divergent views taken by this Court in respect of underlying

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complaint(s) either pending or instituted prior to 04.03.2020 i.e., the date of pronouncement of *New India Assurance 2 (Supra)*. Thus, in this context, this Court in *Diamond Exports (Supra)* categorically held that *Daddy's Builders (P) Ltd. (Supra)* would not affect applications seeking condonation of delay that were pending or decided on or before 04.03.2020, and accordingly, such application(s) seeking condonation of delay would be entitled to the benefit granted by this Court in *Mampee Timbers (Supra)*. The relevant paragraph is reproduced as under:

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3. Turning to the issue at hand, the undisputed fact(s) of the present *lis* reveal that the Impugned Order was passed by the NCDRC on 22.08.2013 i.e., prior to 04.03.2020 - the date of pronouncement of the decision in *New India Assurance 2 (Supra)* by the Constitution Bench. Accordingly, in this

background it was contended by the Appellant(s) that on account of the prospective operation of the said decision, coupled with the observations of this Court in ***Diamond Exports (Supra)***, the instant appeal ought to be allowed with a direction to the NCDRC to render a decision on merits qua the underlying application seeking condonation of delay in filing the WS.

4. In the considered opinion of this Court, the categorical observation(s) of the Constitution Bench in ***New India Assurance 2 (Supra)***; coupled with the finding(s) of a Bench of 3 Judges of this Court in ***Diamond Exports (Supra)*** have authoritatively brought quietus to the underlying issue. The application(s) seeking condonation of delay preferred before the *consumer fora* prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2 (Supra)***, must be decided on merits; and ought not to be summarily dismissed.

5. Accordingly, on an overall consideration, we are convinced that the Impugned Order be set aside; and the instant appeal be allowed with the following directions(s):

5.1. The NCDRC is directed to adjudicate the underlying application seeking condonation of delay in filing the WS in the Underlying Complaint on merits; and

5.2. The Registry is directed to transmit the Subject Amount and all accrued interest thereon to the NCDRC, which in turn shall deposit the Subject Amount together with all



accrued interest in an interest-bearing fixed deposit account. The aforesaid amount shall remain deposited subject to the final outcome of the Underlying Complaint before the NCDRC.

6. The appeals are accordingly allowed. Pending application(s), if any, stand disposed of. No order as to cost(s).

.....**J.**  
**[BELA M. TRIVEDI]**

.....**J.**  
**[SATISH CHANDRA SHARMA]**

NEW DELHI  
AUGUST 22, 2024