

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2344 OF 2019

(Against the Order dated 13/11/2019 in Complaint No. 985/2017 of the State Commission
Maharashtra)

1. ECGC OF INDIA LTD.

THROUGH ITS MANAGING DIRECTOR/AUTHORIZED
REPRESENTATIVE , REGISTERED OFFICE AT EXPRESS
TOWERS, 10TH FLOOR, NARIMAN POINT,
MUMBAI-400021
MAHARASHTRA

.....Appellant(s)

Versus

1. BLOSSOM GROCERY & FOODS INDIA PVT. LTD.

THROUGH ITS AUTHORIZED REPRESENTATIVE 1508,
15TH FLOOR, SATRA PLAZA PALM BEACH ROAD,
SECTOR 19D, VASHI,
NAVI MUMBAI-400705,
MAHARASHTRA

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT : MR. BHARAT SANGAL, SR. ADVOCATE WITH
 MR. R. R. KUMAR, ADVOCATE
 MS. MANJULA GUPTA, ADVOCATE
 MS. BABITA KUSHWAHA, ADVOCATE

FOR THE RESPONDENT : MS. UDITA SINGH, ADVOCATE

Dated : 06 November 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 in challenge to the Order dated 13.11.2019 of the State Commission in complaint no. 985 of 2017, whereby the complaint was partly allowed.
2. We have heard the learned counsel for the appellant – insurance company (hereinafter referred to as the ‘insurance company’) and the learned counsel for the respondent – Blossom Grocery & Foods India Pvt. Ltd. (hereinafter referred to as the ‘complainant company’) and perused the record including the State Commission’s impugned Order dated 13.11.2019 and the memorandum of appeal.
3. The appeal has been filed with reported delay of 1 day.

In the interest of justice, the short delay in filing the appeal is condoned.

4. The brief facts leading to the present appeal, as culled out from the complaint, are that the complainant company, which is involved in carrying out the work of export of onion to various countries, obtained a Multi-Buyer Exposure Policy for a sum insured of Rs. 8 crore from the insurance company. The said policy was valid for the period from 13.11.2014 to 12.11.2015. The said policy covers the loss during export of the onion. It is alleged that the complainant company got the order from VIET Onion Export-Import Company Limited of Vietnam for purchasing onion from it and accordingly, the complainant company booked four consignments between 11th November to 17th November, 2014. It is further alleged that first two consignments reached Vietnam on 19th November, 2014 and the complainant company received email from the purchaser on 20.11.2014 requesting for not sending the rest two (3rd and 4th consignments) consignments due to financial and marketing problems. It is further alleged by the complainant company that the purchaser had not raised any issue regarding the quality of the onion in the first email and by that time, the complainant company had already dispatched the last two (3rd and 4th consignments) consignments. Therefore, the complainant company in order to reduce the loss sought permission from the insurance company to resell the last two consignments. Though the permission was rejected but the insurance company permitted suitable action by the complainant company to reduce the loss. Therefore, the last two consignments were sold to two different parties, MAI TRANG PRO CORP, VIETNAM and HAI XHENG IMPORT & EXPORT SDN BHD, MALAYSHIA and informed the cargo movers accordingly. It is alleged that after selling the balanced consignments to two different buyers, the loss occurred during this export was quantified by the Chartered Accountant and it was calculated at Rs. 48,70,234/-. The complainant company submitted the claim form on 23.02.2015 under the policy from the insurance company. The insurance company repudiated the claim on 10.09.2015 on the following grounds:

“We regret to state that your claim has not been considered favourably due to following reasons.

1. Quality dispute raised by the buyer. The risk is not covered as per clause 13(e)(ii) of terms and conditions of the policy.
2. Violation of basic principles of insurance i.e. utmost good faith by hiding the material fact of quality dispute shared by buyer on 11th and 12th of December 2014. The risk is not covered as per clause 1(c) of terms and condition of the policy.”

It is further alleged that in spite of exchanges of emails between the complainant company and the insurance company, complaining to IRDA and setting of independent review committee by the insurance company, the settlement of claim did not take place.

5. Aggrieved by the repudiation made by the insurance company, the complainant company filed a complaint before the State Commission seeking direction to the insurance company to pay to the complainant company a sum of Rs. 48,70,234/- being the loss suffered by the complainant along with interest at the rate of 24% on Rs. 48,70,234/- from 10.09.2015 to 30.05.2017 amounting to Rs. 20,14,275/- and compensation of Rs. 5,00,000/- towards compensation and Rs. 5,00,000/- towards legal and incidental charges.

6. The insurance company contested the complaint by filing written statement stating that the complaint involves triable issues, which cannot be decided in absence of Viet Onion Import Export Co. Ltd.-Vietnam. It is further submitted that even after receiving the email on 20.11.2014 from the buyer not to send further shipments, the complainant company misrepresented to the said buyer that the shipments have already been made as per the agreed terms of the contract. Further, the complainant company had deliberately sent the 4th shipment on 24.11.2014 and the complainant company cautiously chose to not annex corresponding Bill of Lading for the 3rd shipment and 4th shipment. It is further stated that there is violation of the basic principle of insurance i.e. utmost good faith, by concealing material facts, therefore, the risks, if any as alleged, were not covered under clause 1(c) of the terms and conditions of the policy. It is further stated that the complainant company did not take any step to bring the goods back after its alleged shipment. It is further stated that the complainant company sent four shipments to the said buyer of which it received full payment for the 1st invoice and part payment towards the 2nd invoice. The dispute regarding payment remained unresolved by and between the complainant and the said buyer on the ground of quality and these facts were not even divulged to the insurance company. It is further alleged that the buyer had informed the insurance company that the goods sent by the complainant company were of poor quality and the buyer had informed of the same to the complainant company but the complainant company never countered the quality dispute. It is further stated that the complainant company had sought to coerce and deliberate exports in breach of the contract with the said buyers, misrepresented to the said buyer thereon and has misled the insurance company. It is further stated that the complainant company is not a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986. It is further stated that there is no deficiency in service on the part of the insurance company.

7. The State Commission vide impugned Order dated 13.11.2019 allowed the complaint in part. The order dated 13.11.2019 of the State Commission reads as under:

“1. The complaint is partly allowed with costs quantified to Rs. 50,000/- (Fifty Thousand only) to be paid by the respondent – opposite party to the complainant. Opposite party is held responsible for unfair trade practice and deficiency in service.

2. The opposite party is hereby directed to pay Rs. 48,70,234/- (Forty Eight Lakh Seventy Thousand Two Hundred Thirty Four only) towards the loss suffered by the complainant within the period of one month from the date of this order, failing which the amount will carry interest @9% per annum.

3. The opposite party is also hereby directed to pay Rs. 5,00,000/- (Rs. Five lakh only) towards mental agony, stress and hardship suffered by the complainant within one month from the date of this order, failing which the amount will carry interest @9% per annum.

8. Aggrieved by the said Order dated 13.11.2019 of the State Commission, the insurance company filed the instant appeal before this Commission.

9. The main issue before us is as to whether the repudiation of the claim by the insurance company was justified or not.

10. Before this Commission, learned counsel for the insurance company argued that the claim was repudiated as the buyer had raised an issue regarding the quality of the shipment and therefore, it was hit by Section 13(e)(ii) of the policy. Clause 13(e)(ii) of the policy reads as under:

“...(ii) if in the case of Protracted Default the Insured Buyer claims that he is entitled to withhold payment of all or any part of the insured debt for any reason whatsoever including but not limited to his allegations relating to quality, quantity, shipment date etc., in respect of your present or past supplies, or raises a counterclaim on you for any set-off, etc., and we are satisfied that a dispute exists between you and the Insured Buyer which has not been resolved by legal or other appropriate proceedings. It is clarified that the disputes raised or allegations made by the Insured Buyer need not necessarily relate to any insured debt.”

It was further argued that the complainant company through its letter dated 11.03.2016 had clearly admitted that he had voluntarily given up its claim on its buyer due to the costly and time-consuming legal proceedings in Vietnam. Vide its letter, a contravention of Clause 13(e)(ii) stands admitted and there is no liability on this ground alone. It was further argued that 3rd and 4th consignments were sold to some alternate buyers despite the insurance company refusing permission for the alternate sale vide its letter dated 07.01.2015. Since these sales were made to some buyers, which are not covered by the policy, no question of liability on these amounts arises.

He further argued that the complainant company had not informed the insurance company about the quality issues and having the fact stated that the buyer had sought time to make payment due to slow market condition in Vietnam. However, the complainant company was already in receipt of emails in December 2014 of the buyer raising issue of quality of the shipments. This material fact was not disclosed to the insurance company and when the insurance company made inquiries with the buyer and received the emails, it got to know. They had sent the emails so received from the buyer to the complainant company on 03.08.2015 seeking their comments. However, the complainant company did not respond to the same. This conduct of the complainant company was against the concept of good faith which is the essence of the contract of insurance. It was also argued that each and every terms and conditions of the policy have to be strictly complied with and are binding. Reliance was placed on the following decisions:

(i) Oriental Insurance Co. Ltd. vs. Sony Cherian (1999) 6 SCC 451

(ii) M/s BHS Industries vs. Export Credit Guarantee Corp. Ltd. & Anr. (2015) 9
SCC 414

(iii) Carter vs. Boehm 1766 (3) Burr 1905

(iv) M/s Cosmic Trends Pvt. Ltd. vs. ECGC & Ors., R.P. No. 1966 of 2013 decided on 01.08.2022.

11. Learned counsel for the complainant company has argued that the complainant company had provided ample evidence to show that the issue of quality was an afterthought made by a buyer only to avoid its payment liabilities. It was also argued that the insurance company had not shared the input received from the buyer with the complainant company and that the insurance company had not checked the veracity of the claims made by the buyer. It was also argued that the refusal of liability of the two latter sales by the insurance company on the ground that it had refused permission, is contradictory because in its refusal letter, the insurance company itself had asked the complainant company to take adequate steps as it deemed fit to minimize its losses.

12. In this case, the claim has been repudiated vide letter dated 10.09.2015 stating the following reasons:

“Sub: Claim preferred on buyer M/s Viet Onion Import & Export Co. Ltd. – Vietnam.

We have received your letter dated 04.09.2015 and noted the content.

We regret to state that your claim has not been considered favourably due to following reasons:

1. Quality dispute raised by the buyer. The risk is not covered as per Clause 13(e)(ii) of terms and conditions of the policy.
2. Violation of basic principle of Insurance i.e. Utmost good faith by hiding the material fact of quality dispute shared by buyer on 11th & 12th December, 2014. The risk is not covered as per Clause 1(c) of terms and conditions of the policy.

Further, the letter denying the permission to sell the goods of the latter two consignments is dated 07.01.2015 and reads as under:

“This is with reference to your application for permission to re-sale the goods originally exported to M/s Viet Onion Import Export Company Ltd. Vietnam.

We regret to inform you that, the said application is rejected due to below reasons:

1. It is found that shipments effected on 19/11/2014 & 24/11/2014 are delayed by one day and 3 days respectively. This is violation of terms and condition of the contract, and not covered under policy.
2. There is no direct correspondence with the original buyer. Bad market condition is informed by Nguyen huu danh through email ID nhuudanh2002yahoo.com, and requested to support. Relation between this person and buyer is not established.

You are requested to take suitable action to minimize the loss as you deem fit. Claim if any will be subject to terms and conditions of policy issued to you.”

13. In this case, from a perusal of the record, it is clear that the buyer raised the issue of quality of the shipment to the insured on 04.12.2014 and it was reiterated on 12.12.2014. However, the issue of dispute raised by the buyer was never brought to the notice of the insurance company and came to the knowledge of the insurance company subsequently when the insurance company made inquiries in respect of the claim lodged. It is also clear from the

record that the insurance company had sent an email dated 03.08.2015 enclosing all the emails received by them from the buyer seeking the insured’s comments. It is also not denied by the complainant company that they had written to the insurance company on 11.03.2016 stating that it had given up their claim on the buyer due to costly and long legal proceedings in Vietnam.

14. The policy document is a valid document and binding on both the parties. It is a settled position that the contract terms in insurance need to be interpreted strictly and no argument regarding the ambiguity in the terms of the policy document has been set forth by the insured in this case. A plain reading of clause 13(e)(ii) of the policy clearly brings up that once the dispute regarding the quality of the product has been raised by the buyer, then no liability would arise on the part of the insurance company unless the complainant company obtains a decree from a court of the concerned country. From the facts evidence on record, the buyer has raised the issue regarding the quality of the shipment along with photographs of the same and therefore, as regards the 2nd consignment wherein the complainant company had received only 50% of the payment, the invocation of clause 13(e)(ii) is correct and it is squarely applicable. In our opinion, the repudiation of the claim is correct. As regards the different buyers of consignment no. 3 and 4 are concerned, it is abundantly clear that the insurance company had refused permission for sale to alternate buyer on specific grounds. Since the new buyers were not covered under the insurance policy and no permission to sell to them was given, the question of any liability on account of loss on that transaction on the part of the insurance company does not arise. There is no contradiction with regard to asking the complainant company to take steps to minimize its losses as the complainant company by selling the goods did mitigate its own losses on the transaction. Further, the dispute about the quality of goods was not communicated to the insurance company, who got to know about it through its own inquiries, does amount to suppression of material facts and hence, clause 1(c) of the policy as mentioned in the repudiation letter is also attracted.

15. In view of the above, we are of the view that the claim has been rightly repudiated by the insurance company. Therefore, the order dated 13.11.2019 of the State Commission is set aside and the complaint is dismissed.

16. In the result, the appeal is allowed. All pending I.A.s stand disposed of.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**