Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2729 OF 2009

M/s. BHS Industries ... Appellant

Versus

Export Credit Guarantee Corp. & Anr. ... Respondents

J U D G M E N T

Dipak Misra, J.

The present appeal, by special leave, assails the judgment and order dated 20.08.2007 passed by National Consumer Disputes Redressal Commission, New Delhi (for short "the Commission") in First Appeal No.189 of 2007 whereby it has affirmed the Judgment and Order dated 15.2.2007 passed by the State Consumer Disputes Redressal Commission, Union Territory of Chandigarh (for short, "the State Commission") in complaint case No. 82/2002 (Pb)/RBT No. 46 of 2006 wherein the State Commission had rejected the claim of the

complainant-appellant on two counts, namely, the claim was barred by limitation, and that under the postulates of the policy, it was totally untenable.

2. The factual score that is essential to be depicted is that the appellant, a small scale industry and a proprietary concern dealing in handicraft goods, being desirous of exporting its goods to a buyer, namely, M/s Treasures of India, Atlanta, USA took insurance cover from the first respondent on 15.6.1999 and accordingly the appellant was issued a Shipment Comprehensive Risk Policy on the same date. The maximum liability of the respondent-insurer under the policy was Rs.30 lakhs. The insurer had initially granted provisional credit limit of Rs.8 lakhs on 14.7.1999 in respect of M/s Treasures of India which was enhanced to Rs.10 lakhs on 20.7.1999 and later on enhanced to Rs.20 lakhs. The appellant had sent one consignment of Rs.6,50,000/- to M/s Treasures of India on 15.7.1999 and a declaration to that effect was duly sent to the respondents. Be it noted, the appellant has arrayed the Export Credit Guarantee Corporation Limited, Nariman Point, Mumbai through its Managing Director and the same

corporation at Suryakant Complex, Ludhiana through its Branch Manager as respondents 1 and 2 respectively. As averred, the appellant had obtained further orders from the aforesaid buyer and the shipments were required to be sent immediately. The appellant kept writing to the respondents to send the approval for the additional limit in respect of the said buyer. On 20.8.1999 the appellant made another shipment of Rs.4,76,139/- to the said buyer and a declaration to that effect was also sent to the respondents. The appellant received further orders from the buyer but the corporation had not accorded approval for the additional credit. Under these circumstances the appellant had sent two shipments amounting to Rs.2,77,732/- and 1,00,512/- on 20.8.1999. It is the case of the appellant that the said two shipments were sent at its own risk as the corporation had not accorded the additional limit as asked for. When the matter stood thus, on 29.9.1999 the appellant was informed by its bank that the buyer had refused to accept the documents negotiated with the drawee bank i.e Sun Trust Altanta, USA in respect of the shipments sent vide invoices dated 15.7.1999 and 20.8.1999 and

accordingly the documents were returned. Since the buyer had refused to accept the goods which had already been exported from India, the appellant on 22.10.1999 intimated the corporation regarding non-acceptance of documents by the buyer. The appellant also informed the respondent-corporation regarding the shipment which was not covered through insurance by letter dated 10.12.1999.

3. As the factual matrix would further unfurl, on 22.12.1999 the corporation sent a communication stating that the approved limit was Rs.20 lacs, and it required the appellant to comply with the formalities on the prescribed format. On 11.1.2000, the corporation asked the appellant the reason for non-payment and to explore the possibilities and further negotiate with the buyer and to take steps. Thereafter, the appellant sent a letter for payment of the aforesaid claim and as there was no response to the said communication, it sent reminders to process the claim with expediency. In response to said letters the respondents on 6.6.2000 repudiated the claim by stating that the corporation's liability was not attracted because of series of unavoidable lapses.

4. Being aggrieved by the aforesaid communication, the appellant approached the State Commission for redressal of its grievance. Though two appeals were filed, the State Commission treated them as one appeal. The respondents before the State Commission took two preliminary objections that the complaint was barred by limitation, and it had not been filed by the authorised person. The State Commission, appreciating the factual matrix in entirety came to hold that the complaint had been filed by a properly authorised person but it was barred by limitation. However, the State Commission proceeded to deal with the matter on merits and in that regard came to hold that:-

> "27. The shipment made on 20.8.99 vide invoice No.006 for Rs.4,76,139/-, whose copy is annexure P-13 cannot be taken into consideration because complainant had changed the terms of payment which had been mentioned as 60 days DA i.e. payment after 60 days of delivery while it is mentioned to be 90 days DA in annexure P-9 i.e. payment on acceptance of documents within 90 days from the date of shipment and not 60 days. It has been stated in the insurance policy under the terms and conditions, whose copy is annexure P-4 under heading "General" in conditions 28 and 29 that due performance and observance of each term and condition contained herein or in the proposal or declaration shall be a condition precedent to any liability of the Corporation hereunder and if the insured fails to comply with the condition,

then policy shall be deemed to have been waived. Since, complainant failed to comply with condition of 90 days DA with respect to 2nd shipment dated 20.8.99 for Rs.4,76,139/- as term of payment was changed to 60 days DA instead of 90 days DA, so, OP was absolved from making payment of this amount.

28. The further case of complainant is that buyer did not retire the documents and had refused to accept the goods and as such documents were returned to Punjab & Sind Bank. Nothing is known as to what happened to the goods which were whipped through invoice No.005 on 15.7.99 or invoice No.006 dated 20.8.99. It is stated in annexure P-35 that the goods were lying in bonded warehouse. It is not known what steps were taken by the complainant to get those goods sold and to retrieve some money. The bills were not got 'noted and protested' through a notary. It is alleged that the drawee's bank had refused to get the documents 'noted and protested'. If complainant had taken some steps then perhaps goods had been retrieved or could have been auctioned and some money would have been got but complainant did not bother for goods shipped considering that OP was bound to make payment of those goods. There is no evidence that complainant had written any letter to the Debt Collecting Agency in USA. Thus, the complainant did not take proper steps to safeguard the goods and as such is not entitled to claim the amount. Complainant should have safeguarded the goods by opening letter of credit but it failed to do so. There is no letter from drawee's bank Sun Trust International Atlanta, USA that it had 'noted and protested' the documents. No steps were taken to bring back goods. Certainly act of the complainant is against terms and conditions of the policy and as such is not entitled to the claimed amount."

5. The unsuccess before the State Commission constrained the appellant to prefer a first appeal before the Commission which did not agree with the finding of the State Commission that the complaint was barred by time. However, the Commission referred to the terms and conditions of the policy, specifically condition no. 28, 29, the exclusion clause no. 7 of the policy, referred to the communication dated 26.1.2000 which was a reply given by the respondent to the letters dated 15.1.2000 and 18.1.2000 of the appellant, the communication of repudiation, emphasised on the unilateral change of terms and conditions relating to the terms of payment, the non-taking of steps by the appellant for retrieving the goods and accordingly opined that there had been violation of the terms of the policy and the appellant had not been diligent to protect the shipment. Being of this view, it dismissed the appeal.

6. We have heard Mr. Nidhesh Gupta, learned senior counsel for the appellant and Mr. Bharat Sangal, learned counsel for the respondents.

7. On a scrutiny of facts, it is clear as crystal that one consignment of Rs.6,50,000/- was sent to M/s. Treasures of India on 15.7.1999 and a declaration to that effect was also communicated to the respondents. Similarly, on 20.8.1999, the appellant made another shipment of Rs.4,76,139/- to the same buyer i.e. M/s. Treasures of India and declaration was sent to the Corporation. It is also undisputed that the appellant had sent two shipments amounting to Rs.2,77,732/- and Rs.1,00,512/- on 20.8.1999. The stand of the appellant is that as the earlier two transactions covered the credit limit of Rs.10 lakhs and as the Corporation was causing undue delay in granting the limit, the latter two consignments were sent at the risk of the appellant. As the buyer refused to accept the goods, the appellant communicated the same on 22.10.1999 to the Corporation and on 10.12.1999 intimated regarding the shipments which were not covered under the insurance. It is the stance of the appellant that the Corporation communicated on 22.12.1999 stating that the approved limit was Rs.20 lakhs and asked the appellant to intimate on the prescribed format, which was duly complied with by

the appellant, but despite such a situation, the Corporation vide letter dated 6.6.2000 repudiated the claim of the appellant. The relevant part of the communication by the insurer is reproduced hereinbelow:-

> "1. The terms of payment mentioned in order form as DA-90 days via Sea, but you have effected the shipment worth Rs. 4,76,139/- by air on DA-60 days. As far as shipment worth Rs. 6,50,000/- effected on DA-90 days is concerned, the Invoice shows the terms of payment as DA-90 days, whereas the Bill of Exchange was drawn on DA-60 days basis. This is construed as a violation of contract on the part of you.
>
> 2. You have omitted to declare shipments amounting to 50% in number and 34% in value. This is considered as serious and uncondonable lapse, violating clauses nos. 1,2,8(a) 10, 19(1), 28, 7(a) and 29 of the Policy Bond.
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> 3. Bill was not Noted and Protested at buyer's country."

8. The crux of the matter whether the reasons ascribed for repudiation by the insurer withstand scrutiny. Mr. Nidhesh Gupta, learned senior counsel has commended us to certain authorities, which, according to him, are relevant when a Court is required to construe an insurance policy. We shall refer to the authorities first and thereafter in the backdrop of the ratio laid down therein shall scrutinize the various clauses in the insurance policy and express our

views with regard to the issue whether they are applicable to the case at hand and if so, whether such applicability would demolish the claim of the appellant.

9. At the outset, it may be stated that contracts of insurance are contracts of *uberrima fides* and every material fact is required to be disclosed. In ***United India Insurance Co. Ltd. v. M.K.J. Corpn.***[1], a two-Judge Bench has observed:-

> "It is a fundamental principle of Insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, "similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured"."

Regard being had to these principles, the authorities cited by Mr. Gupta, learned senior counsel for the appellant are to be seen.

[1] (1996) 6 SCC 428

10. In ***Amalgamated Electricity Co. v. Ajmer Municipality***[2], though in a different context, it has been held that:-

> "In construing the true nature of the contract entered into between the parties, the contract has to be read as a whole and if so read it is clear that what the plaintiff undertook was to pump water from the wells in question and not to supply any electrical energy. Hence we are in agreement with the learned Judges of the High Court that the plaintiff's case in this regard should fail."

11. In ***Bay Berry Apartments (P) Ltd. and Another v. Shobha and others***[3], the Court has observed that in construing a document, the Court cannot assign any other meaning; and a document as is well known must be construed in its entirety.

12. In ***Polymer India (P) Ltd. and Another v. National Insurance Co. Ltd. and Others***[4], this Court has held thus:-

> **"19.** In this connection, a reference may be made to a series of decisions of this Court wherein it has been held that it is the duty of the court to interpret the document of contract as was understood between the parties. In .the case of *General Assurance Society Ltd.* v. *Chandumull Jain*[5], it was observed as under:

[2] (1969) 2 SCR 430 = AIR 1969 SC 227
[3] (2006) 13 SCC 737
[4] (2005) 9 SCC 174
[5] (1996) 3 SCR 500 : AIR 1966 SC 1644

> "In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves."

20. Similarly, in the case of *Oriental Insurance Co. Ltd.* v. *Samayanallur Primary Agricultural Coop. Bank*[6], it was observed as under:

> "The insurance policy has to be construed having reference only to the stipulations contained in it and no artificial far-fetched meaning could be given to the words appearing in it."

21. Therefore, the terms of the contract have to be construed strictly without altering the nature of the contract as it may affect the interest of parties adversely."

13. Learned senior counsel for the appellant has also drawn inspiration from the decision in ***General Assurance Society Ltd. v. Chandmull Jain***[7], rendered by the Constitution Bench wherein it has been held that:-

> "In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of *uberrima fides* i.e. good faith on the part of the assured and the contract is likely to be construed *contra proferentem* that is against the company in case of ambiguity or doubt. A contract is formed when there is an unqualified

[6] (1999) 8 SCC 543
[7] (1966) 3 SCR 500 = AIR 1966 SC 1644

> acceptance of the proposal. Acceptance may be expressed in writing or it may even be implied if the insurer accepts the premium and retains it. In the case of the assured, a positive act on his part by which he recognises or seeks to enforce the policy amounts to an affirmation of it. This position was clearly recognised by the assured himself, because he wrote, close upon the expiry of the time of the cover notes that either a policy should be issued to him before that period had expired or the cover note extended in time. In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Looking at the proposal, the letter of acceptance and the cover notes, it is clear that a contract of insurance under the standard policy for fire and extended to cover flood, cyclone etc. had come into being."

14. Mr. Gupta, learned senior counsel for the appellant has also drawn our attention to ***Baj (Run Off) Ltd. v. Durham and others***[8], wherein the Supreme Court of United Kingdom, while interpreting the contract of insurance has opined:-

> "To resolve these questions it is necessary to avoid over-concentration on the meaning of single words or phrases viewed in isolation, and to look at the insurance contracts more broadly. As Lord Mustill observed in *Charter Reinsurance Co. Ltd. v. Fagan*[9], all such words "must be set in the landscape of the instrument as a whole" at p.381,

[8] (2012) UKSC 14
[9] [1977] AC 313, 384

> any "instinctive response" to their meaning "must be verified by studying the other terms of the contract, placed in the context of the factual and commercial background of the transaction". The present case has given rise to considerable argument about what constitutes and is admissible as part of the commercial background to the insurances, which may shape their meaning. But in my opinion, considerable insight into the scope, purpose and proper interpretation of each of these insurances is to be gained from a study of its language, read in its entirety. So, for the moment, I concentrate on the assistance to be gained in that connection."

15. Relying on the authorities which have been stated by Mr. Gupta, it is submitted by him that the policy between the parties is required to be read as a whole and on a reading of the policy in entirety, it is clear that the declaration of all the shipments whether covered under the policy or not, is not mandatory and only the shipments in respect of which claims are lodged are required to be declared. As an alternative submission, it is urged by him that the respondent-Corporation had vide letter dated 26.1.2000 deducted premium in respect of the two undeclared shipments from the credit balance of the appellant and, therefore, the respondent-Corporation had itself ratified the action of the appellant of sending the aforesaid two shipments and under these circumstances, it

was not justified on its part in rejecting the claim of the appellant on the foundation that there had been non-declaration of the said shipments. To buttress the concept of ratification, he has commended us to the authorities in ***High Court of Judicature for Rajasthan v. P.P. Singh***[10], ***Marathwada University v. Seshrao Balwant Rao Chavan***[11] and ***Babu Varghese v. Bar Council of Kerala***[12]. We think it appropriate that this submission of Mr. Gupta has to be dealt with while construing the other clauses of the policy.

16. Mr. Gupta, while criticizing the repudiation of the claim, has drawn our attention to clause 3 of the communication which states that the bill was not noted and protested at buyer's country and in that regard argued that the ascription of the said reason is beyond the terms and conditions of the policy, for it has nowhere been prescribed in the policy that insured has to get the bill noted and protested at buyer's country in order to claim the amount under the policy. It is argued by him that the terms of the policy are to be construed strictly and neither any addition

[10] (2003) 4 SCC 239
[11] (1989) 3 SCC 132
[12] (1999) 3 SCC 422

nor any subtraction from it is permissible. To substantiate the said stand, he has placed reliance on ***United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal***[13].

17. The aforesaid authorities being basically pronouncements pertaining to the construction to be placed on a policy, we shall proceed to deal with the terms and conditions of the policy. We may hasten to add that Mr. Bharat Sangal, learned counsel for the respondent-Corporation has basically urged that there has been gross violation of the terms and conditions of the policy and the clauses in policy have to be read as they are inasmuch as there is no ambiguity in any of the clauses. As regards the interpretation, he has placed reliance on ***Oriental Insurance Co. Ltd. v. Sony Cheriyan***[14], wherein it has been held thus:-

> "The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act

[13] (2004) 8 SCC 644
[14] (1999) 6 SCC 451

> strictly in accordance with the statutory limitations or terms of the policy expressly set out therein."

18. Apart from the aforesaid authority, he has also commended us to two decisions of the Commission wherein claim was rejected and he has been emboldened to do so as one of the orders was assailed before this Court in Civil Appeal No. 8052 of 2004, and this Court has dismissed the appeal in limine.

19. Presently to the basic anatomy of the policy. At the outset it is essential to state that we, in due course, refer to the clauses of the policy in extenso as learned counsel for both the parties have relied upon, but prior to that the framework of the policy is apposite to be indicated. The initial part of the policy refer to the risks insured and the proviso appended thereto. Clause 2 of the Policy, as is evident, requires the insured to disclose the facts at the date of issue of the policy and also at all times during the operation of the policy that affect the risks of the insured. Clause 3 deals with covering of shipments and exceptions. The said coverage is subject to terms and conditions of the policy. Clause 5 deals with shipments which are not

covered and includes grant of credit of the insured to the buyer for a period longer than 180 days from the date of shipment. Clause 7, requires the insured to notify to the Corporation of the occurrence of any event likely to cause a loss maximum within 30 days. Clause 8(a) requires a declaration to be given as regards the shipment. Clause 14B(b) states that the goods that have not been delivered remains the property of the insured and any resale thereof by the insured shall be with the prior approval of the Corporation. Clause 19 that deals with the exclusion of liability under sub-clause (a) stipulate that if the insured has failed to declare, without any omission, all the shipments required to be declared in terms of clause 8(a) of the policy and to pay premium in terms of clause 10 of the policy, the insurer would not be liable unless otherwise agreed to by the Corporation in writing. Clause 28 provides for observance of conditions which specifically states that due performance and observance of each term and condition contained in the policy or the declaration or the proposal or declaration shall be a condition precedent to fasten liability on the Corporation. Clause 29 deals with the

failure to comply with the conditions. It says that no failure by the insured to comply with the terms and conditions of the policy would bee deemed to have been waived, excused or accepted by the Corporation unless there has been express waiver by the Corporation in writing. Clause 30 deals with uncovered risks and states that if any account or bill in respect of any shipment declared exceeds the limits provided under the policy, no acknowledgement of the declaration of the Corporation, no payment or tender of premium by the insured shall be deemed to bind the Corporation to undertake the liability. These are the basic components of the policy.

20. Learned counsel for the respondents has contended that the appellant has violated clauses 3, 7, 8, 19, 27, 28 and 29 of the policy. Relying on the authorities which we have referred to hereinbefore, if clauses 2 and 10 are read together, it becomes quite clear that the premium is payable only in respect of the shipments to which the policy applies. The appellant had sent two shipments at its own risk as the credit limit already stood exhausted and no cover was sought by the appellant in respect of the said shipments. In

this backdrop, submission of Mr. Gupta, learned senior counsel for the appellant is that policy does not cover the two shipments and hence, there was no obligation on the part of the appellant to declare the same to the respondent-Corporation. Referring to Clause 8(a), it is contended by him that the words used therein i.e. all shipments have to be understood in the backdrop of Clause 10 and Clause 10 uses the word "relevant declaration" and, therefore, only relevant declarations are to be made. Referring to the concept of premium, contends Mr. Gupta, that the premium payable is on the gross invoice value and all shipments to which the policy applies and the said premium is payable to the Corporation while submitting the relevant declaration of the shipment as per Clause 8(a) of the policy and, therefore, the payment to be made under Clause 10 is in relation to the gross invoice value of all shipments to which the policy applies and the declaration to be made under Clause 8(a) is also in relation thereto. Emphasising on the language employed in Clause 14B(b), it is urged by him that the policy envisages the liability of the Corporation with regard to only such shipments which are

intended to be covered and the Corporation is not liable to suffer the loss and the insured will not get the benefit of the shipments which are not covered under the insurance cover. Criticizing the reliance on Clause 30 by the learned counsel for the respondents, it is highlighted by Mr. Gupta that it deals with uncovered risks inasmuch as the words used are "not in accordance with the policy" and in the case at hand at best the two undeclared shipments can be termed as not in accordance with the policy and the same can be treated as uncovered risks. In any case, there is no claim in respect of the same. As far as the reduction of the debts from 90 days to 60 days, it has been canvassed that it is within the outer limit and no exception can be taken to the same.

21. Another aspect which has been highlighted by him is that the Commission has returned a finding that the appellant has not taken any steps to retrieve the goods and has not communicated anything to the Debt Collecting Agency. It is argued that there is no obligation under the policy conditions to do so and, in fact, the appellant had taken all requisite steps as suggested by the Corporation

vide letter dated 11.1.2000. In any case, as per Clause 23 of the policy, there is a postulate that the respondent-Corporation has to make payment to the appellant of the amount due under the policy and only after payment of such amount, the Corporation could ask the insured to take steps as stipulated in the clause and, therefore, the finding recorded by the Commission is absolutely misconceived. As far as writing to the Debt Collecting Agency is concerned, learned senior counsel has seriously criticized the finding recorded by the Commission on the ground that there are documents to show that it had communicated as per the address given by the Corporation and there was a communication by the insured to the insurer that the address was incorrect and the registered letter sent by him had returned. The request sent at the correct address remained unresponded.

22. First, we shall deal with Clause 5 that deals with the shipments not covered. The said clause reads as follows:-

> "5. Shipments not covered. Except with the approval in writing of the Corporation (which the Corporation shall not be obliged to give), this Policy shall not apply to any shipment which:

(a) is made under a contract or agreement of sale which does not specify the nature, the quantity and price of the goods sold or agreed to be sold, the due date of payment and the currency in which the payment is to be made;

(b) is invoiced to any buyer in a currency not permitted by the exchange control laws, rules and/or regulations for the time being in force in India;

(c) Involves granting of credit by the Insured to the buyer for a period longer than 180 days from the date of shipment unless specifically agreed to the contrary by the Corporation in writing.

23. Clause 5(c) of the policy, as we find, requires the grant of credit by the insured to the buyer not for a longer period than 180 days unless specifically agreed to the contrary by the Corporation in writing. As per the letter dated 2.9.1999, the appellant has shown the terms of payment due within 90 days of the shipment. The appellant had given a credit of 60 days which is well within the outer limit of 90 days. If the Clause 5(c) is properly understood, in the obtaining factual matrix we are unable to agree with the findings recorded by the State Commission and the Commission that there has been violation of the terms of the policy as regards the reduction of the period for payment. What is stipulated is that the Corporation should not be liable if the

insured gives credit for more than 180 days. That is the outer limit and as the insured has fixed the debt within the said period, that cannot be held against him.

24. The second violation of condition relates to omission of declaration of shipments amounting to 50% in number and 30% in value. The Corporation has considered the said lapse as serious and uncondonable being violative of Clauses 1, 2, 7(a), 8(a), 10, 19(a), 28, and 29 of the policy. To appreciate the controversy in an appropriate manner, we reproduce the said clauses hereunder:-

> "1. Proposal and Declaration: The Proposal and the Declaration therein shall be the basis of this Policy and shall form part thereof and if any of the statements contained in the Proposal or the Declaration be untrue or incorrect in any respect, this Policy shall be void but the Corporation may retain any premium that has been paid.
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> 2. Disclosure of facts: Without prejudice to any rule of law it is declared that this Policy is given on condition that the Insured has at the date of issue of this Policy disclosed and will at all times during the operation of this Policy promptly disclose all facts in any way affecting the risks injured.
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> xxx xxx xxx
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> 7. Obligations of the Insured: The Insured shall:

(a) use all reasonable and usual care, skill and forethought and take all practicable measures, including any measures which may be required by the Corporation, (including if so required the institution of legal proceedings) to prevent or minimize loss.

8. Declarations:
(a) Declarations of shipments: On or before the 15th day of each calendar month, the Insured shall deliver to the Corporation a declaration, in the form prescribed by the Corporation, of all shipments made by him during the previous month. If no shipment has been made during a month, a 'NIL' declaration shall nevertheless be submitted.

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10. Incidence of premium and payment of additional premium: The Insured shall be liable to pay premium, at the rates set out in Schedule-II hereto, or, as the case may be, at such other rates for the time being in force, on the gross invoice value of all shipments to which this Policy applies forthwith on the making of such shipments and shall pay to the Corporation additional premium, if any, that may become due and payable after adjustment of the Minimum Premium referred to hereinabove, while submitting the relevant declaration of shipments as per clause 8(a) of this Policy.

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19. Exclusion of Liability: Notwithstanding anything to the contrary contained in this Policy, unless otherwise agreed to by the Corporation in writing, the Corporation shall cease to have any liability in respect of the gross invoice value of any shipment or part thereof, if;

(a) the Insured has failed to declare, without any omission, all the shipments required to be declared in terms of clause 8(a) of the Policy and to pay premium in terms of clause 10 of the Policy.

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28. Observance of conditions: The due performance and observance of each term and condition contained herein or in the proposal or declaration shall be a condition precedent to any liability of the Corporation hereunder and to the enforcement thereof by the insured.

29. Failure to comply with conditions: No failure by the Insured to comply with the terms and conditions of the Policy shall be deemed to have been waived, excused or accepted by the Corporation unless the same is expressly so waived, excused or accepted by the Corporation in writing and such waiver, excuse or acceptable shall be subject to such terms and conditions as the Corporation may stipulate, including a reduction in the percentage specified under clause 30 of this policy being the percentage of loss payable by the Corporation."

25. As has been held in ***Chandmull Jain*** (supra) by the Constitution Bench that in a contract of insurance, there is a requirement of good faith on the part of the insured and in case of ambiguity, it has to be construed against the company. As per other authorities, the insurance policy has to be strictly construed and it has to be read as a whole and nothing should be added or subtracted. That apart, as

has been held in ***Polymer India (P) Ltd.*** (supra), it is the duty of the Court to interpret the document as is understood between the parties and regard being had to the reference to the stipulations contained in it.

26. Keeping in view the aforesaid parameters of law, we are required to appreciate the stipulations in the policy pertaining to rejection on the said score. Clause 8(a) which deals with declarations, assumes significance. The said clause requires that before the 15th day of each calendar month, the insured shall deliver to the Corporation a declaration in the prescribed format of all shipments made by him during the previous month and if no shipment has been made during a month, a 'NIL' declaration shall nevertheless be submitted. Clause 9 deals with minimum premium and Clause 10 with incidence of premium and payment of additional premium. Clause 19(a), as has been indicated earlier, deals with exclusion of liability. Clause 19, the exclusionary clause, categorically states that unless otherwise agreed to by the Corporation in writing, the Corporation shall cease to have any liability in respect of gross invoice value of any shipment or part thereof if the

insured has failed to declare, without any omission, all the shipments required to be declared in terms of Clause 8(a) of the Policy and to pay premium in terms of Clause 10 of the Policy. Submission of Mr. Sangal is that these clauses are binding on the insured and he cannot play with the requirements at his own will. Mr. Gupta, learned senior counsel, as we have noted earlier, has contended that these clauses are to be read in juxtaposition with Clauses 2, 10 and 30, for the Policy has to be read in entirety and so read, the clauses do not require that all shipments are to be declared. To appreciate the submission, we think it appropriate to reproduce Clauses 2, 10, and 30:-

> "2. Disclosure of facts: Without prejudice to any rule of law it is declared that this Policy is given on condition that the Insured has at the date of issue of this Policy disclosed and will at all times during the operation of this Policy promptly disclose all facts in any way affecting the risks injured.
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> xxx xxx xxx
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> 10. Incidence of premium and payment of additional premium: The Insured shall be liable to pay premium, at the rates set out in Schedule-II hereto, or, as the case may be, at such other rates for the time being in force, on the gross invoice value of all shipments to which this Policy applies forthwith on the making of such shipments and shall pay to the Corporation additional premium, if any, that may become due and payable after adjustment of the Minimum Premium referred to hereinabove, while submitting the relevant

declaration of shipments as per clause 8(a) of this Policy.

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30. Uncovered Risks: If any account or bill (or any extension or renewal thereof) in respect of any shipment declared hereunder exceeds the limits hereinbefore provided or is otherwise not in accordance with the Policy, no acknowledgement of the declaration by the Corporation and no payment or tender of premium by the Insured shall be deemed to bind the Corporation to undertake liability in respect of such account or bill (or to approve of the renewal or extension)."

27. Mr. Gupta, learned senior counsel for the appellant has laid immense emphasis on the words that the insured shall "disclose all the facts" in any manner affecting the risks insured. Similarly, he has also highlighted the words "on the gross invoice value of all shipments to which this policy applies" occurring is clause 10. Clause 30, as Mr. Gupta would submit, deals with uncovered risks which are not in accordance with the policy. It is his submission that payment of premium in respect of uncovered risks shall not bind the Corporation to undertake the liability. The proponement propounded by Mr. Gupta, on a first blush, seems quite attractive, but on a keener scrutiny it has to pale into insignificance. Terms of the policy are to be strictly construed. There can be no cavil about the

proposition of law that in case of ambiguity, the construction has to be made in favour of the insured. Clauses 8(a) and 19(a) deal with declarations and the exclusion of liability respectively. They are absolutely specific. Clause 2 deals with disclosure of facts. Clause 10 deals with incidence of premium and payment of additional premium and Clause 30 with uncovered risks. Clause 8(a) and 19(a), which we have reproduced hereinabove are absolutely clear as crystal and as per the stipulations therein the insured has been cast an obligation under the policy. He is obliged under the policy to deliver to the Corporation a declaration on or before 15th day of each calendar month in a prescribed format details of all shipments made during the previous month and even he is required to give a 'nil' declaration if no shipment has been made. Clause 19(a) refers to the declaration in terms of Clause 8(a). It also uses the word "without any omission". It adds a further postulate relating to payment of the premium in terms of Clause 10. The prescription of twin requirements in Clause 19(a) are cumulative. They cannot be read in segregation. The insured has to declare the

shipments in terms of Clause 8(a) without omission and also pay the premium in terms of Clause 10. Premium of payment alone does not make the Corporation liable to indemnify the loss or fasten the liability on it. It is also required on the part of the insured for the purpose of sustaining the claim to show that there has been compliance as regards the declaration. To construe Clause 8(a) that the insured has a choice to declare which shipment he would cover and which ones he would leave, would run counter to the mandate of the policy. It has to be borne in mind that these are specific clauses relating to the obligations of the insured. The attempt on the part of the appellant to inject concept of payment of premium and the risk covered to this realm would not be acceptable. The general clauses basically convey which risks are covered and which risks are not covered, how the premium is to be computed and paid. What eventually matters is where the liability of the insurer is exclusively excluded, the said clauses of the policy are absolutely clear, unequivocal and unambiguous. The insured after availing a policy in commercial transactions is to understand the policy in

entirety. The construction of the policy in entirety and in a harmonious manner leaves no room for doubt that there is no equivocality or ambiguity warranting an interpretation in favour of the insured-appellant. Whatever the reasons the appellant may give, he having not declared as prescribed in Clause 8(a), which is again reiterated by way of reference in Clause 19(a), the exclusionary clause, it will be an anathema to the concept of interpretation of contract of insurance of such a nature, if liability is fastened on the insurer. The finding of the Commission that the appellant had not take steps to retrieve the goods is absolutely immaterial for the present purpose. The said finding though is flawed, the ultimate conclusion, which is based upon our independent analysis, is correct.

28. Before parting with the case we must take note of another aspect which has been highlighted by Mr. Gupta relying upon the decision in ***ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and other***[15]**.** In the said case the Export Credit Guarantee Corporation of India Ltd., an instrumentality of State, had repudiated the claim of the claimant against

[15] (2004) 3 SCC 553

which a writ petition was filed before the learned Single Judge of the Calcutta High Court praying for quashment of the repudiation. The learned Single Judge after hearing parties came to the conclusion that the dispute between the parties arose out of a contract of insurance and the first respondent being a State for the purpose of Article 12, was bound by the terms of the contract and accordingly allowed the writ petition. In intra-court appeal the Division Bench opined that the claim of the writ petitioner involved disputed questions of fact and hence, could not be adjudicated in a writ proceeding under Article 226 of the Constitution. However, it proceeded to state that the learned Single Judge had erroneously applied the law and further came to hold that the insured had violated certain terms of the contract. This Court referred to number of decisions as regards the maintainability of the writ petition and expressed the view that merely because one of the parties to the litigation raises a dispute in regards to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. After so holding the Court

opined once the State or instrumentality is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India, and therefore, being the instrumentality of the State, the Corporation had acted in contravention of the requirements of Article 14, and hence, the writ court could issue appropriate writ to nullify the arbitrary action. The court referred to relevant Clauses of contract of insurance in the background of admitted facts. The contract of insurance between the insured and insurer was primarily based on the contract between exporter and the Kazak Corporation. The relevant Clause in regard to payment of the tea exported was incorporated in Clause 6. The said Clause came to be amended on the very same day when the contract was signed by the exporter and the Kazak Corporation by way of an addendum. The Court opined the addendum in the obtaining facts therein had become an integral part of the original Clause 6 of the Contract. The Court further proceeded to deal with the Clauses in the agreement and held that alternative modes of

payment of consideration were permissible as per Clause 6. In that context the Court further opined:-

> "The terms of the insurance contract which were agreed between the parties were after the terms of the contract between the exporter and the importer were executed which included the addendum, therefore, without hesitation we must proceed on the basis that the first respondent issued the insurance policy knowing very well that there was more than one mode of payment of consideration and it had insured failure of all the modes of payment of consideration. From the correspondence as well as from the terms of the policy, it is noticed that existence of only two conditions has been made as a condition precedent for making the first respondent Corporation liable to pay for the insured risk, that is: (i) there should be a default on the part of the Kazak Corporation to pay for the goods received; and (ii) there should be a failure on the part of the Kazakhstan Government to fulfil their guarantee."

After so stating the court ruled that there was no violation of the stipulations of the contract by the insured. While dealing with the grant of relief the court referred to the decision in ***Kumari Shrilekha Vidyarthi v. State of U.P.***[16] and held thus:-

> "53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee

[16] (1991) 1 SCC 212

> found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of the State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after receiving huge sums of money as premium exceeding Rs. 16 lakhs. On facts we have found that the terms of the policy do not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when the Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner."

29. Mr. Gupta learned senior counsel has laid immense emphasis on the aforequoted paragraph. We have analysed the decision to appreciate the context and the factual score as depicted in the decision which clearly show that the court had arrived at indubitable conclusion that there had been no violation of the terms of the contract of insurance. Therefore, the said decision in our considered opinion is not applicable to the facts of the present case as in the instant

case, as has been held earlier, there have been violations of the terms and conditions of the contract of insurance. We are compelled to observe that the said decision possibly has been cited as an authority as the respondent-corporation was also the respondent therein.

30. Consequently, the appeal, being devoid of merit, stands dismissed. However, we refrain from awarding any costs.

.....J.
[Dipak Misra]

..... J.
[V. Gopala Gowda]

New Delhi
July 7, 2015