

(2007) 05 NCDRC CK 0006

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

HEWLETT-PACKARD GLOBAL
SOFT LTD.FORMERLY DIGITAL
EQUIPMENT (INDIA) LTD.

APPELLANT

Vs

UNITED INDIA INSURANCE CO.
LTD.

RESPONDENT

Date of Decision: May 14, 2007

Citation: 2007 0 NCDRC 35 : 2007 2 CPJ 270

Hon'ble Judges: M.B.SHAH , RAJYALAKSHMI RAO J.

Final Decision: Petition is disposed

Judgement

1. THE only question which requires consideration in this complaint is : "whether the endorsement No. 9 of 1996 dated 7.9.1996 issued covering the risk for the quantity of stock stored at Turbhe, New Bombay, binds the Insurance Company?"

2. IN our view, for the reasons recorded below, the aforesaid endorsement binds the Insurance Company because: Firstly, that endorsement is issued by the Senior Divisional Manager. He has not denied the issuance of the said endorsement and the issuance of the said endorsement is not disputed by the Insurance Company. The only dispute is whether it is ante-dated. Secondly, the Insurance Company has accepted that the endorsement No. 10 of 1996 dated 10.9.1996 was issued to cover the additional stock of Rs.50 lakhs. Therefore, it is rightly pointed out that once the endorsement No.10 is accepted there is no reason to dispute endorsement No.9.

Thirdly, once it is accepted that signature on the endorsement No.9 is that of competent officer, it is for the Insurance Company to establish beyond doubt that

the same was not issued before the incident of fire and there is nothing on record to establish that the said endorsement was not issued prior to the incident of fire.

3. FOURTHLY , the Surveyor, M/s. Trans Ocean Marine & General Survey Agencies, have reported that the fire was accidental, the insured has suffered damages and that endorsement No.9 was genuine. Fifthly, the Insurance Company appointed an Investigator, Mr.D.Srinivas. He has also endorsed the say of the Surveyor and found that Endorsement No. 9 was genuine. Again the Insurance Company appointed second Investigator, M/s. Vasu & Associates. He has also opined that endorsement was genuine and the insured has suffered the loss.

4. DESPITE this, Insurance Company has repudiated the claim on the ground that the Endorsement No.9 of 1996 covering the risk of the stocks at Turbhe, was subsequent to the occurrence of fire. In our view, this is totally unjustified and without any basis. Facts: Now, we would refer to few facts:

It is the case of the Complainant that it took a fire policy from the Opposite Party Insurance Company for the period from 1.4.1996 to 31.3.1997 in respect of its stocks stored in godowns all over India for Rs.3 Crores, and specific locations were mentioned for the sake of convenience which are as under:

5. THEREAFTER , the Complainant shifted stock from Bangalore to Turbhe, New Bombay and wrote a letter to the Insurance Company in response whereof Endorsement No. 9 of 1996 dated 7.9.1996 was issued by the Insurance Company covering the risk for the stock which was shifted from Bangalore to New Bombay. This did not involve any payment of additional premium. Hence endorsement No.9 was issued on 7.9.1996 as prayed for by the Complainant. Thereafter, the Complainant applied for enhancing the risk cover by Rs.50 lakhs. For that Endorsement No.10 dated 10.9.1996 was issued. For this endorsement it is to be stated that there is no specific statement that risk cover was confined for the stock

situated at any of the godowns mentioned above for which the first policy was taken.

6. ON 30th September, 1996 a devastating fire took place in the godown situated at Turbhe, New Bombay. The Complainant lodged a claim with the Insurance Company for reimbursement of the loss suffered.

The Insurance Company appointed M/s.Trans Ocean Marine and General Survey Agencies as Surveyors. The Surveyors by report dated 21st December, 1996 recommended the reimbursement for a sum of Rs.27,48,576/-.

7. HOWEVER , the Insurance Company appointed an Investigator, Mr. D.Srinivas who submitted his report after a lapse of 8 months, i.e. on 14th August, 1997 reporting that the records maintained by the Insurance Company were chaotic and could not be relied upon. They specifically arrived at the conclusion that the Endorsement No.9 of 1996 dated 7.9.1996 was correct and genuine and also observed that it was issued well before the occurrence of fire. Thereafter, the Insurance Company appointed a second Investigator, M/s. Vasu & Associates. They submitted their report on 28.12.1997 to the same effect.

8. IT is also to be stated that even after fire, by letter dated 19.6.1997 the Senior Divisional Manager suggested to the Complainant for renewal of marine policy worth Rs.250 Crores with the break up for the premium and also stated that net premium payable was Rs.31,00,979/- and requested the Complainant to arrange to send the premium by cheque before 30th June, 1997 to enable them to renew the policy. On the said letter it is mentioned that with regard to major claim that occurred at the Bombay godown it was being discussed at regional office and they would take best possible efforts to clear the case well before the end of June, 1997. Despite this, the claim was repudiated. Finally, the Insurance Company repudiated the claim by letter dated 15.1.1998. The grounds mentioned in the letter are as

under:

"With reference to the papers submitted by you in respect of the above claim, the matter was referred to the competent authority and it has been decided by the competent authority that the claim cannot be paid on the following grounds: 1. No record is available either with the insured or our DO to establish that the letter from M/s. Digital addressed to our DO for inclusion of Elbee Godown, Turbhe, New Bombay in place of item NO.1, Bangalore, was in fact issued by you and received by them on 4.6.1996 on which date the same is said to have been issued. 2. The papers submitted indicate that the actual quantity of the insured's stocks in the said location at Turbhe was much more than the value for which insurance has been sought. 3. There is reason to believe that the endorsement including the Elbee godown at Turbhe was actually issued after the loss. We regret to convey the above information, which please acknowledge."

That the repudiation of the claim is challenged by filing this complaint wherein the Complainant has prayed that the Insurance Company be directed to pay a sum of Rs.27,57,957/- as compensation as recommended by the Surveyor, with interest at the rate of 24% p.a. w.e.f. 30th September, 1996, i.e. the date of the loss. It has also prayed that the Insurance Company be directed to pay a compensation of Rs.20 lakhs as damages for the loss of business, reputation and good will suffered by the Complainant, with a prayer to direct the Insurance Company to pay Rs.2 lakhs as legal expenses incurred for pursuing the claim. Submissions of the Insurance Company:

9. THE Insurance Company in its written version has stated that there is no dispute between the parties that the Complainant has taken the policies covering the goods stored by it at various locations including Bangalore and the total sum insured under the policies was Rs.3 Crores and in respect of the goods at Bangalore it was for a sum of Rs.31 lakhs. However it is contended that the goods stored at Trubhe godown, New Bombay, are not covered by the policy and as complicated question of facts are involved, this Commission cannot entertain the complaint. Thereafter, it is pointed out that for the Endorsement No.9 of 1996 issued from the Divisional Office, Bangalore, record with the office does not justify. And, therefore, the circumstances, fortifies reasonable belief of the Insurance Company that the said endorsement is manipulated. Findings: From the facts narrated by the Complainant it is apparent that the Complainant was taking various policies covering the business risk.

10. IN short, it is the say of the Complainant that the Complainant obtained insurance policies from July, 1994 to October, 1997. In all, the sum assured was Rs.627.24 Crores for which he paid Rs.1,12,73,436/- towards premium. The fire policy "C" was taken in respect of stocks of the Complainant spreading through out the country for the period from 1.4.1996 to 31.3.1997 with break up for various branches in India, as per the schedule attached thereto for the stocks of Rs.3 Crores, and the stocks which were in transit were also covered under separate open marine policies. As the volume of the business increased, the Complainant obtained enhancement of insurance cover vide Endorsement No. 8 of 1995 dated 23rd August, 1995 by Rs.1 Crore. Thereafter, the Complainant shifted their sales and service from Jatti Complex, Sankey Road, Bangalore to Tumkur Road, Beshwanthpur, Bangalore in November/December, 1995, and, took fire policy for the stocks for a sum of Rs.7 Crores for the period from 11.10.1995 to 10.10.1996. It is pointed out that the said policy was sufficient to cover the entire stocks at Bangalore and the cover under the policy for Rs.31 lakhs for Bangalore had become superfluous.

He further contends that on 3.6.1996 the Complainant received the policy from officers of the Insurance Company and on verification it was found that they continued to mention the cover of Rs.31 lakhs for stocks at Bangalore contrary to their previous undertaking to delete the same, because the stocks at Bangalore was adequately insured against Fire for a sum of Rs.8.50 Crores. Thereafter, on 4.6.1996 the Complainant wrote a letter to the Divisional Office of the Insurance Company requesting them to have insurance cover for stocks of Rs.31 lakhs stored at Turbhe godown instead of Bangalore. As against this letter, the disputed endorsement No.9 of 1996 dated 7.9.1996 was issued by the Divisional Officer at Bangalore. The Endorsement is as under:

"Notwithstanding anything contained herein to the contrary it is hereby noted and declared at the request of the insured that the stocks, PCs and other computer parts is being located at "Elbee Godown, Turbha, New Bombay", with effect from 4.6.1996 amounting to Rs.31,00,000/- instead at Bangalore as mentioned in the policy".

Further, there is no dispute with regard to similar endorsement No. 10 of 1996 issued by the same office for enhancing the cover by Rs.50 lakhs. This endorsement was issued covering the risks of goods for additional sum of Rs.50 lakhs, but it did not specify any particular godown/location. Therefore, in addition, it is contended that it would cover the stock maintained by the Complainant wherever the loss occurs, to the tune of Rs.50 lakhs. The Insurance Company has admitted issuance of the said endorsement increasing the insurance cover from Rs.3 Crores to Rs.3.5 Crores.

11. KEEPING these facts in mind, we have to consider the survey reports. The relevant portion of the conclusions reached by the Surveyors and the two investigators are as under: Surveyors findings: (i). Conclusion by Trans Ocean Marine & General Survey Agencies:

"Insurable interest: Assured M/s. Digital Equipment (I) Ltd., have insurable interest in respect of items surveyed arising out of their ownership of the computers. Subject matter of insurance: Stock surveyed in respect of this claim form part of stock which is insured the subject policy. Location of godown: Policy endorsement No.9/96 indicate inclusion of Elbee godown, Turbhe. The fire damages were noticed at following godown of Elbee Services Ltd., at Turbhe. (Policy endorsement has not given complete address of the godown). M/s. Elbee Services Ltd., C/o Shri Swami Samarth Automobiles, D-207, TTC, Industrial Estate, Turbhe, New Bombay. Final loss assessment: The assured have claimed Rs.27,51,076.00. Considering the extent of damages, we recommend Rs.27,48,576/-. Details are given in Annexure "A" to the report. (ii). Conclusion by D.Srinivas, Investigator: "Insured made a categorical statement that on 4.6.1996 they intimated the insurers in a letter for change of location of stock stored for issue of an amendment to the policy issued by them, canceling Item No.1 of the locations indicated in the policy.

12. AS there was no financial aspects like payment of additional premium towards the policy already issued, insured did not effectively pursue for the above amendment immediately. As no endorsement was forthcoming, insured (Sri A.R.Venkatachalam) spoke to Sri G.Gopal and Mr.Somanna followed by sending a copy of letter of 4.6.1996 again for immediate action, which was handed over to the insurer's representative Mr.Gopal at the Digital office and remarks made by the insurers on the copy as "change of location" on 3.9.1996, leading to the issue of amendment on 7.9.1996. As per my personal verification the sum insured under the policy covering the stock in S.T./P. is found to be adequate during any period of insurance. Ms. Digital being one of the largest computer software exporter and besides dealing with hardware also. I observe that the system of maintaining of accounts is satisfactory. From the records verified and also the discussions I had with insured, I have no hesitation to infer that the insured has requested for the cover and obtain endorsement much before the fire accident. (iii). Conclusion by Vasu Associations, Investigators:

"Insured is in the habit of covering not only their offices but also their C&F agents where, their products are stored. This is as per their contractual obligation. Insured had sent in their request for covering the site where, fire had occurred, very much in advance, but, it was the mistake of the insurers not to have passed the endorsement as requested by insured. As far as the insured is concerned the peril is held covered not only because they requested it, but also because they are having an endorsement to the effect given by the insurers."

However, learned Counsel for the Insurance Company submitted that the Divisional Office of the Insurance Company maintains three documents for issuance of the policy and endorsement, such as, (i) Kutcha Register; (ii) Acceptance Advice Register; and (iii) Premium Register. In our view, whether the Insurance Company maintains three registers or ten registers, is of no consequence, because Endorsement No.9 which is produced on record, is signed by a competent officer. That competent officer has never denied issuance of such endorsement. Secondly, even the Investigator has mentioned in his report that there is a mess in maintaining record by the Divisional Office. In such set of circumstances, no reliance can be placed on the said contention. Further, it is to be stated that the stock, which was kept at Bangalore premises, was shifted at Turbhe, New Bombay and, hence, change in the schedule of the insurance policy was sought by an endorsement. Therefore, there was no question of paying any additional premium.

Learned Counsel for the Insurance Company further submitted that once there is an allegation of forgery, the Complainant should be directed to approach civil court. In our view, it is easy to make an allegation of forgery, but there must be some evidence to substantiate that allegation. The officer who issued the endorsement has not disputed the issuance of the endorsement. Secondly, genuineness of the endorsement is not doubted, even in the repudiation letter. The only contention raised is that it is ante-dated. In our view, this is only an assumption on the part of the Insurance Company because endorsement No.10 is a subsequent endorsement covering the additional risk for which additional premium is paid and this is not disputed. In this view of the matter, there is no substance in the contentions raised by the Insurance Company and the said contentions are frivolous.

13. IN the result, the complaint is allowed. The insurance is directed to pay the sum of Rs.27,48,576/- (the amount of loss assessed by the Surveyor), with interest at the rate of 12% p.a. from a date after three months from the date of survey report, i.e. 21.3.1997 till the date of payment. The Insurance Company is directed to pay in addition a sum of Rs.50,000/- as costs.

14. THE Original Petition is disposed of accordingly.