

(2010) 07 NCDRC CK 0021

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Taiyabi Khilona Stores

APPELLANT

Vs

Export Credit Guarantee
Corporation of India Limited

RESPONDENT

Date of Decision: July 28, 2010

Citation: 2010 3 CPJ 366 : 2010 3 CPR 312

Hon'ble Judges: R.C.Jain , Anupam Dasgupta J.

Advocate: S.K.Sharma , R.R.Kumar

Judgement

1. THIS revision petition has been filed by the complainant who was before the District Consumer Disputes Redressal Forum, Udaipur (in short, "the District Forum") with its complaint No. 117 of 2005. By its order dated 16.10.2007, the District Forum dismissed the complaint. In fact, the complaint had been filed before the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (in short, "the State Commission") on 27.2.1998 with a total claim of a little over Rs. 9.44 lakh. However, the complaint was transferred to the District Forum, Udaipur by the State Commission under what appears to be a mis-interpretation of the amendment to the Consumer Protection Act, 1986 by which the pecuniary jurisdiction of the District Forums, State Commissions and the National Commission were enhanced w.e.f. 15.3.2003. Be that as it may.

2. THE complainant's case is that it, a manufacturer and exporter of small toys obtained a policy known as Shipments (Comprehensive Risk) Policy No. 90265 from the respondent, Export Credit Guarantee Corporation of India Limited (hereafter, "ECGC"). The policy was valid for the period from 16.11.1995 to 30.11.1997 for a sum

of Rs. 10 lakh ("credit limit" on the basis of D.P. Documents against Payment). Under invoice dated 27.12.1995, the complainant exported some goods to a buyer in London which were shipped out on 2.2.1996. The buyer did not accept the consignment whereupon the complainant looked for alternative buyer(s). This effort was also in vain. Since the complainant did not receive any payment for the goods exported, it preferred a claim before the ECGC under the above-mentioned policy on 15.1.1997. After some correspondence, the ECGC repudiated the claim by its letter dated 27.6.1997, citing specific grounds for doing so. The complainant apparently represented against this repudiation and the ECGC, after considering the said representation, reiterated its decision by letter dated 23.9.1997. This led the complainant to file the above-mentioned complaint.

3. AFTER detailed discussion of the facts of the case, evidence and material brought on record and the relevant conditions of the aforesaid policy, the District Forum dismissed the complaint. The appeal of the complainant before the State Commission also did not succeed. It is against this order dated 27.4.2009 of the State Commission that the complainant has preferred this revision petition.

4. WE have heard Mr. S.K. Sharma, learned Counsel for the petitioner/complainant and Mr. R.R. Kumar, learned Counsel on behalf of the respondent - ECGC.

5. THE main point urged by Mr. S.K. Sharma is that the complainant was never provided a complete copy of the aforesaid policy. He seeks to rely upon a judgment of the Apex Court in the case of Modern Insulators Ltd. v. Oriental Insurance Co., I (2000) CPJ 1 (SC)=II (2000) SLT 323=(2000) 2 SCC 734, on the strength of which he urges that the claim of the complainant may be considered sympathetically. He also adds that if the claim cannot be admitted in full, it may be settled on "non-standard" basis on the lines that public sector General Insurance Companies treat such claims.

6. ON the other hand, Mr. Kumar for ECGC, emphatically states that the plea of the insurance policy document not being supplied to the petitioner/complainant is altogether new and not factually correct. He adds that the petitioner/complainant has deliberately filed only one page of the policy with this petition to create the impression that the full policy document was not supplied. He further adds that this policy of ECGC is not at all akin to any general insurance policy where the entire premium for the sum assured is paid upfront before the policy is issued. He clarifies that the "credit limit" under the ECGC policy is the ceiling of the value of goods which can be exported by the policy holder at one point of time (or, over time), during the period of validity of the policy and the policy is issued on payment of a nominal fee. The factual premium for each export shipment is to be paid post-shipment released on the basis of the monthly statements/ declarations which the exporter is duty-bound to submit to ECGC by the prescribed dates in accordance with Clause 8 of the policy.

7. IT is clear from the impugned order that the State Commission has taken due cognisance of each of the relevant conditions/clauses of the policy and discussed the status of compliance of each such condition by the complainant in respect of the export consignment in question. It is only after a thorough examination of the relevant conditions/clauses of the policy and the extent of their compliance by the complainant that the State Commission has come to the conclusion that Clause 8(b) of the policy was violated and as such, in accordance with Clause 19 of the policy, ECGC ceased to have any liability to indemnify. The State Commission has also taken note of the provisions of Clauses 28 and 29 of the said policy in coming to this conclusion. The inadmissibility of partial indemnification of the alleged loss, on so-called "non-standard" basis, has also been upheld by the State Commission on valid grounds. The view taken by the State Commission is fully in accord with the judgment of this Commission in First Appeal No. 567 of 2007, *Subaica International v. Export Credit Guarantee Corporation of India Limited*, II (2010) CPJ 202 (NC).

8. AFTER careful consideration, we are thus unable to see any reason to interfere with the detailed and well-reasoned order of the State Commission in exercise of the powers under Section 24(b) of the Consumer Protection Act, 1986. The revision petition is accordingly dismissed. Revision Petition dismissed.