

**BEFORE THE HON'BLE STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION, MAHARASHTRA, MUMBAI**

**CONSUMER COMPLAINT NO.CC/17/985**

BLOSSOM GROCERY & FOODS INDIA PVT LTD  
1508, 15<sup>th</sup> Floor, Satra Plaza, Palm Beach Road,  
Sector 19 D, Vashi, Navi Mumbai- 400 705

.....Complainant

**Versus**

EXPORT CREDIT GUARANTEE CORPORATION OF  
INDIA LTD  
Policy Issuing Branch: Thane Branch  
Kusumanjali, 1<sup>st</sup> Floor, Gokhale Road, Naupada,  
Thane (W)- 400 602

.....Opponent

**BEFORE:**

**JUSTICE A P BHANGALE, PRESIDENT  
DR.S.K.KAKADE, MEMBER**

**For the  
Complainant : Adv.Supriya Patil  
i/b Adv.Uday Wavikar**

**For the Opponent : Adv.Ketan Gupta  
i/b Legaleye Associates**

**ORDER**

**Per Dr.S.K.Kakade, Hon'ble Member**

1. Aggrieved by repudiation of the insurance claim by the opposite party, the complainant, Blossom Grocery and Foods India Private Limited from Navi Mumbai filed this complaint against the opposite party, Export Credit Guarantee Corporation of India Limited, Thane branch; under section 17 of the Consumer Protection Act 1986 and prayed for holding and declaring the

opposite party as guilty of deficiency in service and unfair trade practices as per the provisions of the Consumer Protection Act 1986, claimed the payment from opposite party Rs. 48,70,294/- (Rs.Forty Eight Lakh Seventy Thousand Two Hundred Ninety Four only) being loss due to buyers mistake, as per the insurance policy coverage issued by the opposite party. The complainant also prayed for the interest @ 24% per annum on the same amount from the date of repudiation i.e.10<sup>th</sup> September 2015 till 30<sup>th</sup> may 2017. Additionally prayed for compensation Rs. 5,00,000/- from the opposite party towards mental agony, stress and hardship suffered by the complainant and also sum of Rs. 5,00,000/- towards legal and incidental charges. The facts necessary for deciding this complaint are as follows:-

2. The complainant Blossom Grocery and Foods India Private Limited whose office is at Navi Mumbai, is a private limited company carries out the work of export of onion to various countries for the last 10 years and has a good reputation in the export market. The opposite party is Export Credit Guarantee Corporation of India Limited, issued Multi-Buyer Exposure Policy no. 031 1000 2255, for the period of 13<sup>th</sup> November 2014 to 12<sup>th</sup> November 2015, for the premium of Rs. 5, 20,000/- (Rs.Five Lakh Twenty Thousand ) only. The complainant bought this insurance, for insuring the loss during export of the onion and the sum assured was Rs. 8 crores. The complainant got the order from VIET Onion export-import Company Limited of Vietnam for purchasing onion from the complainant. Accordingly, the complainant booked four consignments between 11<sup>th</sup> November to 17<sup>th</sup> November 2014. First two consignments reached Vietnam on 19<sup>th</sup> November 2014, complainant received email from purchaser on 20<sup>th</sup> November 2014 stating that due to financial and marketing problems, requested not to ship last two consignments, there was no quality issue raised by the purchaser

in the first email. By that time the complainant had already dispatched the last two assignments. So as to reduce the loss, complainant sought permission from opposite party to resell the last two consignments, though rejected the permission, opposite party permitted suitable action by complaint to reduce the loss. Hence the balance two consignments were sold to two different parties, MAI TRANG PRO CORP, VIETNAM and HAI XHENG IMPOPRT & EXPORT SDN BHD, MALAYSHIA and informed the cargo movers accordingly.

3. 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 as Rs.48, 70, 234/- (Rs.Forty Eight Lakh Seventy Thousand Two Hundred Thirty Four only). The complainant submitted claim form on 23<sup>rd</sup> February 2015 under the policy from the opposite party. The same was repudiated by the opposite party, on 10<sup>th</sup> September 2015 stating the following,

“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 11<sup>th</sup> and 12<sup>th</sup> of December 2014. The risk is not covered as per clause 1 (c) of terms and condition of the policy.”

In spite of exchanges of emails between the complainant and opposite party, complaining to IRDA and setting of independent review committee by opposite party, the settlement of claim didn't take place and hence the complainant approached this commission to seek settlement of the dispute arisen due to

repudiation of the claim. The opposite party resisted the complaint by filing written statement and denied any deficiency in service and unfair trade practice.

4. Considering the rival contentions of both parties, submissions made before us, considering record and scope of the complaint, following points arise for our determination and our findings thereon are noted against them for the reasons given below:

**POINTS:**

<b>Sr.No.</b>	<b>Point</b>	<b>Findings</b>
1.	Whether complainant has proved that it is consumer as per Consumer Protection Act 1986 and whether the complaint is within the pecuniary jurisdiction of this commission?	Yes
2.	Whether complainant has proved that there was deficiency in service/ unfair trade practice by the opposite parties in repudiating the insurance claim?	Yes
3.	Whether the complainant is entitled for recovery of quantified loss Rs. 48,70,234/- and compensation?	Yes
4.	What Order?	As per the final order

**REASONS:**

**5. As to POINT No.1 Consumer / Pecuniary jurisdiction**

Learned advocate for the opposite party opposed the submission by advocate for complainant that Blossom Grocery & Foods India Pvt.Ltd is consumer and contended that complainant is not consumer within the meaning of section 2 (1) (d) of the Consumer

Protection Act. Also since the sum assured for the Insurance policy is Rs.8 Crore which is clearly out of jurisdiction of this commission and thus the complaint is not maintainable in this State Consumer Commission. Learned advocate for the complainant invited our attention to the ratios and legal principles in rulings, submitted as follows. Case Laws Referred by Complainant.

A. Sugandha Kumar vs United India Insurance Company FA 261 of 2016, NCDRC, decide on 25<sup>th</sup> May 2017

“The purpose of obtaining the insurance policy to indemnify the damage / loss during any of the perils covered under the policy. This commission has held that, the insurance policies are not taken with the motive to earn profit and hence the consumer complaint filed against the Insurance Company is maintainable”

B. M/s Polyplex Corporation Limited vs National Insurance Company Limited and others, CC/145/2011, NCDRC, decided on 7<sup>th</sup> April 2017

“Hiring services of the Insurance Company by taking Insurance policy by complainants involved in commercial activities cannot be held to be a commercial purpose”

C. M/s Maharani of India vs Branch Manager, United India Insurance Company Limited, New Delhi, RP/1794/2017 NCDRC, decided on 11<sup>th</sup> January 2018

“When an insurance policy is taken by a person he pays a premium to the insurer for hiring or availing its services. It is the premium paid by the insured to the insurer and not the extent of the sum insured which constitutes the agreed consideration and therefore in my opinion, it is the premium paid to the insurer which when added to the compensation claimed in the complaint would determine the pecuniary jurisdiction of this commission. The extent of the sum assured would have no bearing on determination of the pecuniary jurisdiction of a consumer forum”

*D. Harsolia Motors vs National Insurance Company Limited, FA / 159, 160 & 161/ 2004, NCDRC*

Hon'ble National Consumer Disputes Redressal Commission has held that, "If the goods are purchased for resale or for commercial purpose then such consumer would be excluded from the coverage of [Consumer Protection Act](#), 1986. Such illustration could be that a manufacturer who is producing one product A', for such production he may be required to purchase articles, which may be raw-material, then purchase of such articles would be for commercial purpose. As against this, the same manufacturer if he purchases a refrigerator, a television or an air-conditioner for his use at his residence or even in his office, it cannot be held to be for commercial purpose and for this purpose he is entitled to approach the consumer forum under the Act."

6. Since the complainant is the company dealing with export import business, being commercial entity involved in business whether the complainant is consumer? This question was agitated before this State Consumer Commission on previous date. Since hon'ble members of this Commission had two different opinions and views, one supporting the view that the complainant is consumer and other view that the complainant is not "consumer" as defined in section 2 (1) (d) of the Consumer Protection Act 1986, special three member bench was constituted that included hon'ble President of this State Consumer Commission, Maharashtra State. Special bench heard submissions from both the parties and came to the conclusion that, even though complainant is commercial organisation, insurance purchased to cover loss during business comes under purview of definition of service and hence special bench decided on 30<sup>th</sup> April 2019 that the "complainant is consumer". Here special bench referred the ruling by Hon'ble National Commission in First Appeal No.60 of 2018 in the case of *Ambica Steels Ltd. V/s. Oriental Insurance Co.*

*Ltd. decided on 26/11/2018 wherein reference is made to decision of Hon'ble National Commission in the case of M/s.Maharani of India V/s. Branch Manager, United India Insurance Co. Ltd. in Revision Petition No.1794/2017 decided on 11/01/2018 quoting following observations:- "When an insurance policy is taken by a person he pays a premium to the insurer for hiring or availing its services. It is the premium paid by the insured to the insurer and not the extent of the sum insured which constitutes the agreed consideration and therefore in my opinion, it is the premium paid to the insurer which when added to the compensation claimed in the complaint would determine the pecuniary jurisdiction of this Commission. The extent of the sum assured would have no bearing on determination of the pecuniary jurisdiction of a consumer forum." Finally while deciding on the issue, the commission concluded that, "We approve the view taken by Hon'ble Presiding Judicial Member Mrs.Usha S. Thakare in the Consumer Complaint No.CC/14/179. We therefore hold that this State Commission can entertain and try the complaint."*

7. In view of above discussions and the principles set in various referred rulings this commission has already decided on 30<sup>th</sup> April 2019 that the complainant in this complaint case no. CC/17/985, is consumer, also the complaint lies within the pecuniary jurisdiction of this commission and hence we answer the **POINT no. 1** as **AFFIRMATIVE**.

8. **As to POINT No.2**                      **Deficiency in Service/ Unfair Trade Practice**

Learned Advocate for complainant submitted that the complainant had purchased Multi Buyer Exposure Policy no. 03 1000 2255 from the opposite party, for the duration of one year from 13<sup>th</sup> November 2014 to 12<sup>th</sup> November 2015 by paying high premium of Rs. 5, 20,000/- every

quarterly which had Aggregate Loss Limit to Rs. 8 Crore, page number 285 to 316, document dated 17<sup>th</sup> November 2014. Advocate invited our attention to the email from the buyer dated 28<sup>th</sup> November 2014, page 232 compilation that States as "the market in Vietnam at this time is very slow and very low price. So please support us by delay shipment packing for BG 1313 and BG 1316 after 15 days. We really need your help. Thanks a lot." Another email from the buyer, dated 16<sup>th</sup> July 2015, stating as, "we could not sell it because of the nature of shipment of inferior quality". It was contended by the advocate when the quality issue after first consignment was not raised by buyer and it was raised for the first time in the month of July 2015. As per the Contract all the four consignments, were shipped between 11<sup>th</sup> November and 18<sup>th</sup> November 2014. Since the consignments had onion, perishable goods, earlier use was recommended. The buyer thus had cheated and raised quality issue at later time for not accepting the balance consignments and so there was a loss to the complainant. The opposite party relied upon the communication of the first buyer later raising the quality issue and based on the same the genuine claim of the complainant was rejected. Hence learned advocate for complainant submitted that there was deficiency in service and unfair trade practice by the opposite party in rejecting the claim of the complainant.

9. Learned advocate for the opposite party submitted that the complainant has not followed course of action as per the terms and conditions of the said policy and invited our attention to clause (vii) of Multi Buyer Exposure Policy no. 0310002255, page C7, which is as follows,

"(Vii). Immediate steps to be taken in the event of non-receipt of payment for any shipment,

(a) Persuading the buyer to make the payment while, at the same time maintaining your recourse against him by getting the bill noted and tested for non-payment.



(b) Not agreeing to give any extension to the due date of Bill unless there are good reasons for doing so.(If it is found necessary, prior approval of the corporation should be taken for granting such extension)

(c) If the documents / goods have not been accepted by the buyer taking action to safeguard the goods and to resell them to an alternative buyer after giving due notice to the original buyer. Prior approval of the corporation should be taken for resale.

(d) Arranging to bring the goods back to India with prior approval of the corporation, if resale is not possible

(e) Desisting from making any further shipments to the buyer until he has made the payment for the bill in default.

Learned advocate for the opposite party also invited our attention to page C 17, part of terms and conditions of the policy as follows,

“1 (c) These warranties do not restrict any legal obligation or duty ( at common law or otherwise) on you to disclose to us all material facts and circumstances and to act with utmost good faith at all times” He also invited our attention to the obligations placed on insured by the terms and conditions.

10. Learned advocate for the opposite party contended that as per the terms and conditions 13, the claim is not payable. page C 24, term and condition 13 Claims, mentions in clause “(e) Will not be liable to ascertain the cause of loss or the amount of insured loss and no claim shall become due for payment

(ii)If in case of protracted default the insurance claims that he is entitled to withhold payment of all or any part of the insured, debit for any reason whatsoever including but not limited to his allegations relating to quality, quantity, shipment date, in respect of your present or past supplies, or raises 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 appropriate proceedings. It is clarified that the disputes raised or allegations made by the Insured Buyer need not necessarily relate to any insured debt."

11. The advocate for opposite party invited our attention to the report of Customs. Page C 44 that mentions that, "This consignment was not opened for physical examination by customs", so that the quality of the goods was not ascertained and that was directly rejected by the buyer when reached. Thus the complainant was responsible for sending inferior quality consignment which is not acceptable as per the terms and conditions of the policy. He also submitted the as per page 379, the claim submitted was exaggerated claim due to miscalculation of the loss occurred. The actual loss was not calculated and also as per the terms and conditions no legal course was taken by the insured and thus the opposite party rightly rejected the claim of the complainant. The opposite party has not placed any document on record of any actual calculation of the loss incurred by the complainant.

12. Supporting his arguments, learned advocate for opposite party submitted ruling and argued the case as follows, in the case of *"M/s Suzuki Motorcycle India Pvt.Ltd vs M/s Nagana Roadlines, CC/ 185 of 2009, NCDRC, decided on 12<sup>th</sup> October 2015"* The facts of the said ruling do not apply to the instant case and hence cannot be considered and the issue of "consumer" has already been decided this commission on 30<sup>th</sup> April 2019 by a separate order of special 3 member bench, hence these rulings cannot be considered as applicable. Similarly another ruling referred by the advocate of opposite party is, *"M/S. Suraj Mal Ram Niwas Oil Mills vs United India Insurance Company Ltd & Anr"*, passed on October 2010 that observed that "breach of special condition incorporated cover note that every consignment

must be declared".(page 391) The said principle is not applicable to the instant case for the simple reason that there was no special condition in the cover note of the policy.

13. We are of the opinion that the opposite party Export Credit Guarantee Corporation of India Limited, after insuring the complainant for loss of during import export, rejected the claim on the basis of late communication by the original buyer, the real reason being inability to pay to the complainant. The opposite party did not submit calculation of actual loss nor did counter the document submitted by complainant, report of the chartered accountant, page C-109. Also the opposite party did not bring on record, any quality expert report and hence was not successful in proving its own contention. Not considering this contention and rejecting the claim of the complainant amounted to deficiency in service and unfair trade practice. So we hold the opposite party responsible for unfair trade practice in rejecting the genuine claim and also deficiency in service. We Answer **POINT no. 2** as **AFFIRMATIVE.**

14. **As to POINT No.3 Entitlement for compensation**

In view of the discussion above in point no.1 and 2, the complainant is entitled to compensation to the tune of the loss quantified by the complainant, Rs. 48,70,234/- (Rs.Forty Eight Lakh Seventy Thousand Two Hundred and Thirty Four only) and additional compensation of Rs. 5,00,000/- towards mental agony, stress and hardship suffered by the complainant would be just and reasonable. Hence we answer the **POINT No.3** as **AFFIRMATIVE.**

15. **As to POINT No.4 Order**

In view of the discussion in point no. 1, 2 and 3, the complaint deserves to be allowed and hence we pass following order.

**ORDER**

1. The complaint is partly allowed with costs quantified to Rs.50,000/- (Rs.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/- (Rs.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.
4. Free certified copies of the order be furnished to the parties forthwith.

**Pronounced**  
**Dated 13<sup>th</sup> November 2019**

**[JUSTICE A P BHANGALE]**  
**PRESIDENT**

**[DR.S.K.KAKADE]**  
**MEMBER**

