Case Comment: *Export Credit Guarantee Corp of India Ltd v Garg Sons International*

3 April 2013

The Supreme Court's January 2013 decision in the ECGC case is a useful reminder that, at least at the highest levels, the Courts will respect clear policy terms and conditions, and it contains useful material for selective use before lower Courts.

Facts:

The Insured purchased protection for exports to a UK buyer. The buyer defaulted in making payments and the Insured presented numerous claims, all of which were rejected by ECGC because the buyer's default was not notified within the 45 day time limit stipulated in the policy.

The Insured filed several complaints before the State Commission which directed ECGC to pay all of the claims with 9% interest. On appeal the National Commission directed ECGC to pay 11 claims but it rejected 5. ECGC appealed to the Supreme Court.

Supreme Court's Decision:

1. The meaning of the notification clauses was clear and "*Non-compliance with the said term(s) of contract, will exonerate the Insurer of all liability in this regard.*"

2. The Supreme Court again underlined the importance of construing policy terms and conditions strictly:

> "*It is a settled legal proposition that while construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words.*"

3. The Supreme Court was critical of the tendency to move away from this position:

> *"Thus, it is not permissible for the court to substitute the terms of the contract itself, under the garb of construing terms incorporated in the agreement of insurance. No exceptions can be made on the ground of equity. The liberal attitude adopted by the court, by way of which it interferes in the terms of an insurance agreement, is not permitted.*"

4. The Supreme Court made an interesting observation regarding the applicability of the *contra preferentem* principle to commercial contracts:

> "*The contract must be read as a whole and every attempt should be made to harmonize the terms thereof, keeping in mind that the rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon.*"

The Supreme Court did not say that insurance contracts are within the purview of commercial contracts where the principle of *contra preferentem* does not apply, and there seem to be sufficient other cases to say that insurance contracts are subject to the *contra proferentem* principle. However, the point is worth bearing in mind for policies that are in fact negotiated.

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