* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01st JULY, 2026

IN THE MATTER OF:

I.A. 2613/2025

IN

\+ **CS(COMM) 40/2023**

M/S PANORAMA EXPORTS PVT. LTD. .....Plaintiffs

Through: Mr. Gaurav M. Liberhan, Ms. Akriti Gupta, Mr. Sumant Vyas and Mr. Arun Singh Rawat, Advocates.

versus

EXPORT CREDIT GUARANTEE CORPORATION LTD LARGE EXPORTER BRANCH .....Defendant

Through: Mr. Abhishek Puri and Ms. Surbhi Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 2613/2025

1. The present application has been filed under Order XIII-A of the Code of Civil Procedure *(herein **"CPC")*** for the pronouncement of a summary judgement. The present suit was filed by the Plaintiff for the recovery of insurance claim amounting to Rs. 2,82,06,229/- along with pre suit and pendente lite interest.

2. Shorn of unnecessary details, the facts leading to the filing of the present application are as follows:

a. The Plaintiff, M/S Panorama Exports Pvt. Ltd., is a private limited company engaged in the export of goods. The Defendant, Export Credit Guarantee Corporation Limited, is a Government enterprise providing export credit insurance.

b. In February 2017, the Plaintiff applied for a Single Buyer Exposure Policy *(herein **"SBE Policy")*** to cover commercial and political risks associated with its exports. The policy (No. SBE/0270003142) was renewed annually and was valid for the period from March 1, 2019, to February 29, 2020.

c. Initially set at Rs. 2 Crores, the loss limit was enhanced at the Plaintiff's request first to Rs. 3 Crores in June 2018 and finally to Rs. 5 Crores in July 2018. It is submitted that the Plaintiff submitted documentation, including a common ledger and invoices, during the proposal and enhancement stages.

d. In addition to the SBE Policy, the Plaintiff held a Shipment (Comprehensive Risk) Policy (No. 0270003132), (herein "**SCR policy)** which served as a base policy for its overall export business.

e. The main bone of contention between the parties is the identity of the 'Insured Buyer'. It is submitted that the Plaintiff's primary overseas buyer was Mothercare UK Ltd., a subsidiary of Mothercare PLC. The shipments were made in the name of Mothercare UK Ltd. but the SBE Policy was issued in the name of Mothercare PLC.

f. For the shipments made by the Plaintiff to the Insured Buyer, the Insured Buyer issued a Letter of Credit *(herein **"LC")*** on 07.06.2019, which was amended on 21.10.2019, to a total amount of USD 4,85,925.75. The purpose of this LC was to guarantee the Plaintiff that it would receive the payment for the shipments made by the Plaintiff.

g. On 5.11.2019, Mothercare UK Ltd. entered into administration and winding-up proceedings. It is submitted that the Plaintiff provided telephonic notice of this administration to the Defendant on 6.11.2019, and held a physical meeting with Defendant officials on 8.11.2019.

h. It is submitted that on 19.11.2019, the Plaintiff formally intimated the loss suffered by it during the course of transaction with the Insured Buyer to the Defendant. It is submitted that a provisional claim or a Report of Default (herein as **" ROD")** for USD 3,39,708.25 was lodged on 13.12.2019, covering unpaid exports made between May and October 2019.

i. Following this, the Plaintiff issued a legal notice for the stoppage of goods in transit on 13.12.2019, and successfully withheld delivery of goods valued at USD 1,41,535.43.

j. On 20.02.2020, a supplementary claim for USD 1,12,722.48 was filed by the Plaintiff with the Defendant.

k. The total claim value for the loss suffered amounted to Rs. 3,13,40,255/-

l. Based on the above claim, the Defendant issued the first rejection letter on 28.09.2020, maintaining that the shipments under the claim were made to Mothercare UK Ltd., whereas the named insured buyer under the SBE Policy was Mothercare PLC.

m. The Plaintiff submitted representations for review, which resulted in subsequent rejection letters dated 9.03.2021, and 14.10.2020. In the rejection letter dated 9.03.2021, the Defendant stated that Shipments were made to Mothercare UK, but the policy only covered Mothercare PLC. Further, the Plaintiff accepted a reduced/discounted settlement for LC shipments from the administrator without obtaining prior approval from ECGC.

n. The Plaintiff initiated Pre-Institution Mediation in November 2022; however, the Defendant declined to participate, leading to a "non-starter" report issued on 07.12.2022.

o. Conclusively, the Plaintiff filed the recovery suit seeking Rs. 2,82,06,229/-, representing the 90% insured portion of the total loss. The Plaint was later amended seeking pre-suit interest of Rs. 1,43,85,176.79 (calculated at 18% p.a. from 20.02.2020, to 20.12.2022)

SUBMISSIONS OF THE PARTIES

<u>Plaintiff's Submissions</u>

3. It is the case of the Plaintiff that it availed the Policy on a specific understanding between the parties that multiple buyers were covered under the umbrella of holding company being Mothercare PLC. It is stated that Mothercare UK is a wholly owned subsidiary of Mothercare PLC and, therefore, the Mothercare PLC would cover Mothercare UK.

4. It is the Plaintiff's case that it availed SBE Policy under the buyer Mothercare PLC based on information and advice received from the officials of the Defendant since the Plaintiff exported to multiple entities of Mothercare. It is stated by the Plaintiff that the Defendant with the knowledge of the Plaintiff's exports to multiple destinations had advised the Plaintiff to get a policy issued in the name of Mothercare PLC, being the parent company, which would cover the entire export of the Plaintiff to all the subsidiaries of Mothercare PLC.

5. It is stated that Mothercare is the brand name, and the Plaintiff is exporting to more than 25 countries. Nevertheless, the Defendant had made enquiries and only after getting proper verification by independent agency, wherein, the name of the Plaintiff was also verified, the policy was issued.

6. It is the case of the Plaintiff that the term "Insured Buyer" would include Mothercare UK and even as per Defendant's own definition an 'Insured Buyer' is one to whom shipments covered under this policy will be despatched by the insured and in respect of whom the corporation has specified a loss limit under the policy. A bare perusal of the definition would reveal that even as per their own definition, it is only the one to whom shipments covered under this policy will be despatched by the insured and no other.

7. The Plaintiff contends that it was within the Defendant's knowledge that the shipments were being despatched to various entities of Mothercare PLC in 25 countries and not to Mothercare PLC itself since it was merely an administrative head office.

8. It is further contended that along with the proposal form, the Plaintiff also submitted the lists of documents highlighting the goods supplied to Mothercare UK, including details of invoices, date of payment etc, which clearly shows that the Company to whom the export was being made i.e., Mothercare UK and the purpose for which the SBE Policy was sought by the Plaintiff.

9. It is the Plaintiff's case that for the purpose of the SBE Policy, the Plaintiff submitted its ledger which reflected that the exports to various entities of Mothercare were done by the Plaintiff under one common ledger. Further, the details of the invoices with numbers, date of payment and

amounts etc, submitted by the Plaintiff to the Defendant were of Mothercare UK, and the Plaintiff was made to believe by the Defendant that the SBE policy would cover all exports with Mothercare UK, as exports were being made to Mothercare UK, irrespective of the specific companies, including the one for which the claim has been filed by the Plaintiff. At no point during the process of submission of ledger/documents, NCLT did the Defendant raise any objections as to the supply of goods being made to Mothercare UK and not Mothercare PLC.

10. It is further stated that the claim form was submitted under the bonafide belief that the policy covers all exports to all the entities of Mothercare, as was assured by the officials of the Defendant while issuing the policy and determining the limit. The Plaintiff being a customer of the Defendant in respect of the aforesaid policy since 2017, has thereafter renewed the said policy from time to time. The Plaintiff continued to pay premium without any default on regular basis to the Defendant to ensure that they cover all the risks associated with the Plaintiff's export business to Mothercare UK and were confident that the Defendant being a government undertaking would protect the Plaintiffs' interest.

Submissions of the Defendant

11. Per contra, it is the case of the Defendant that the present case passes the test of Order XIII-A of the CPC and is squarely covered by sub-clause (b) of Rule 1(2) of Order XIII-A CPC. As per the Defendant, the insurance claim is liable to fail even if one ground of violation of the SBE policy as set out in the rejection letters in upheld, based on the admitted documents and the position of law.

12. The Defendant has placed reliance on the test laid down in Su-kam

Power Systems Ltd vs. Kunwer Sachdev, **(2019) 264 DLT 326**. Based on the above judgement it is submitted by the Defendant that the claims filed by the Plaintiff have no realistic prospect of success and carries no degree of conviction.

13. It is submitted that the express terms of the insurance policy are binding on the parties and no issue of any ambiguity in terms of the policy has been raised by the Plaintiff.

14. It is submitted that the Plaintiff had vide its Affidavit of Admission and Denial dated 16.09.2024 has admitted that further shipments were affected by the Plaintiff despite the earlier shipments not being paid in addition to filing the ROD in a belated manner. Reliance has been placed on the Judgment of the Apex Court in Rajiv Ghosh v. Satya Naryan Jaiswal, **2025 SCC Online 751,** to buttress that admission made in pleadings or otherwise on any issue falls within the scope of admission and the High Courts and the Apex Court, in the context of Insurance Policies of the Defendant have affirmed that the aforesaid grounds are sufficient for rejection of insurance claims.

15. It is their case that the admitted documents including the Proposal form, application for enhancement, claim forms and annual returns of Mothercare Group clearly contradicts the case sought to be pleaded by the Plaintiff.

16. It is submitted that on the disputed aspect of the identity of the 'Insured Buyer', no material particulars of fraud or misrepresentation as is required in law has been pleaded and the name of Mothercare UK was first revealed only upon submission of the ROD. Hence, where pleadings are vague and lacking material particulars, no issue on the basis of such

pleadings can be framed by the Court.

17. With reference to the specific clauses of the SBE policy, it is the case of the Defendant, that the Plaintiff has violated Clause 2(a) of the SBE Policy as per which it was obligated to stop the dispatch of any further shipments if payments with respect to any earlier shipments are unpaid by the 'Insured Buyer' after the due date of payment. Despite this clause in the policy, the Plaintiff had made 87 shipments even after the there was default on the part of the insured buyer to clear dues for the first shipments.

18. It is submitted that the Plaintiff is in violation of Clause 3 of SBE Policy, as per which it was mandated to submit a ROD in case the insured debt remained unpaid for 30 days or more after its due date of payment. The Plaintiff was required to do the same no later than the 15th day of the succeeding month. It is the defendant's case that the ROD became due on 15.09.2019, however the letter incorporating the entire claim is much beyond the date for lodging the ROD as per the policy.

19. It is also contended that Part III Sub Clause 4 of SBE Policy specifically states that if payments are not made by the 'Insured Buyer' after the due date, the Defendant shall not be liable for the losses arising out of the dispatch of goods to the Insured Buyer. It is, therefore, the case of the Defendant that the Plaintiff has no realistic prospect of success in view of the documents which have been admitted by the Plaintiff and also in view of the Policy on which the Plaintiff has placed reliance on.

20. It is the case of the Defendant that the claim dated 02.06.2020 filed by the Claimant included shipments for which full and final settlement of payment was accepted by the Plaintiff after accepting a discount from the administrator of the buyer and the same was done without obtaining any

permission from the Defendant and later claiming the balance from the Defendant.

21. Conclusively, it is the Defendant's case that the policy was availed in the name of Mothercare PLC, however as per the invoices, shipping bills and claims raised, the shipments related to Mothercare UK, who was not the insured buyer.

22. Heard the counsel for the parties and perused the material on record.

ANALYSIS

23. The facts of the case reveal that insurance claims have been raised by the Plaintiff under the SBE Policy and the said policy was entered into between the Defendant and the Plaintiff for covering commercial and potential risks with respect to shipments made to a specific buyer "Mothercare PLC Ltd." for the time period 01.03.2019 to 29.02.2020.

24. The proposal form and all documents indicate that the Plaintiff had availed the Policy of a specific buyer, namely, Mothercare PLC Ltd. The payment for the first shipment fell due on 26.07.2019 and in the ROD, the name of the buyer is mentioned as Mothercare UK, which is a distinct subsidiary of Mothercare PLC Ltd., on whose name the insurance policy was purchased.

25. A perusal of the claim form dated 02.06.2020 submitted by the Plaintiff for 94 shipments indicates that the same is in the name of Mothercare UK Ltd., which is, by no implication the Insured Buyer.

26. Attention of this Court has been drawn to various clauses of the SBE Policy to contend that the claim of the Plaintiff cannot sustain in view of the specific document entered into between the parties. It is the case of the Defendant that there has been a delay in notifying the claims. Relevant

Clauses of the SBE Policy, which are relevant for the present case, reads as under:

> *"2. YOUR OBLIGATIONS*
>
> ***(a) It is your duty to exercise reasonable care and prudence in granting credit to the Insured Buyer and you will take all practicable measures available to you to prevent any loss arising (to you and/or us) and should any loss arise, to minimize it Including but not limited to stopping despatch of any further shipment to the Insured Buyer if-***
>
> > ***(i) payments in respect of any of your earlier shipments to the Insured Buyer are remaining unpaid after its due date of payment; or***
> >
> > ***(ii) you have knowledge of the insured buyer having falled and defaulted in meeting his obligations to any other supplier of goods or services; or***
> >
> > ***(iii) you have received information to the effect that the insured Buyer is or is likely to be in insolvency:***
>
> *(b) After we have made a claim payment to you in respect of the Insured Buyer you will continue to take all practicable measures to collect or realize insured debt and if required by us you will assign the relevant insured debt to us and we shall account to you for any uninsured proportion of any recoveries.*
>
> *Your strict observance and adherence to your obligations under the Policy as indicated above shall be a condition precedent to our liability.*
>
> *3. NOTIFICATION AND CONSULTATION*

(a) If you have reason to believe that the Insured Buyer is unable to or is likely to be unable to perform or comply with his obligations to you under any contract of sale which shall include non-payment of a bill of exchange on due date you must notify us immediately either in writing or (with our prior approval) electronically but in any case by not later than 30 days after you become aware of one or more of the circumstances mentioned above;

(b) It as on the last day of a month any insured debt is remaining unpaid for 30 days or more after its due date of payment, you must notify us in our prescribed form full details of all such payments remaining overdue and unpaid by not later than the 15th day of the succeeding month:

(c) In the event of the occurrence of any of the insured perils, you must notify us in writing immediately but in any case by not later than 30 days after such occurrence

(d) In all the cases explained in (b) and (c) above you must-

(i) continue to notify us every month in the format required by us until-

- *Insolvency has occurred; or*
- *a claim has been submitted to us; or*
- *the Insured debt has been paid or realized, whichever is the earlier.*

(ii) provide us in writing without delay with any information which we may request following our receipt of notification in pursuance of (a), (b) or (c) above;

(iii) take all practicable measures available to you to prevent ar minimize any loss in respect of your exports to the Insured Buyer;

(iv) Continue to take all prudent and reasonable steps, Including such steps as we may require which may include Institution of legal proceedings, in connection with any loss which you may have incurred or may be likely to Incur. It requested by us to do so, you shall execute such documents and take such actions as we may require of you to enable us to intervene directly in any proceedings relating to an insured debt."

(emphasis supplied)

*****

"PART –III -EXCLUSIONS .

(4) We shall not be liable for any losses arising out of Despatch of goods to the Insured Buyer-

(c) If as at the time of such despatch, the policy is no more valid and is liable to be cancelled in pursuance of the provisions contained in the Policy; or
(b) At a time when the whole or any part of a debt owed to you by that buyer is remaining unpaid atter its due date; or
(c) After the date of the occurrence of any of the insured risks, unless we have agreed otherwise in writing."

27. The ROD is dated 13.12.2019. It is the Defendant's case that the same has been filed belatedly by Plaintiff, and hence the claims arising out of the same are not entertainable. The report of default has been admitted by the Plaintiff. At this juncture, this Court is not going into this question. What

this Court is concerned is as to whether the shipment made to Mothercare UK can be covered under a policy which has been specifically issued in the name of Mothercare PLC.

28. At this stage, it is pertinent to reproduce the Proposal Form and the same is as under:

Proposal for Buyer Exposure Policy

We hereby apply for Buyer Exposure Policy of the Export Credit Guarantee Corporation of India Limited to pay us a proportion of the loss as defined therein that we may sustain in accordance with the terms and conditions of the said Policy (which we have already read).

Part I: Information on the Exporter (Details in the Column No. 4 to 8 to be submitted when the first application is made and changes to be informed on subsequent applications.)

1.	Name of the Exporter	**PANORAMA EXPORTS PVT LTD** ~~Proprietorship/partnership~~/**Pvt. Limited Company**, / ~~Public Limited Company/others (pl. specify)~~ Formatted:
2.	Address	**B-188, OKHLA INDUSRIAL AREA, PHASE-1, NEW DELHI , Pin:--10020** Phone No 011-49520000 Cell No. Fax No.91-011-26816293 E-mail: mail@panorama.ind.in
3	Import Export Code No.	0588089231
4	Name & Address of the exporter's bank	PUNJAB & SIND BANK, 6, IBD, SINDHIA HOUSE, CONNAUGHT PLACE, NEW DELHI-110001.
5	Status of the Unit	Export House / ~~Trading House / Star Trading House Super Star Trading House / others~~
6	Contact Person & Designation	Mobile No. Phone No. Email No.

7	Names of the Proprietor / Partners/ Directors (Including Surname, Father's/ Husband's Name)	Full Name (if Partners or Directors are related please mention the relationship also) 1.MR.SHYAM SAHNI 2.MRS.VEENA SAHNI 3. MR RAJAN SAHNI 4. MR.NAVIN SAHNI
8	Name of the sister concerns and their address	1. M/S PAN OVERSEAS 76, DLF INDUSTRIAL AREA, FARIDABAD. 2. 3.

Part II –Buyer details and requirement

9. Risk to be covered

(Tick whichever is applicable)
Commercial Risks on the buyer/ bank and Political Risks/ Political Risks only

10. Name and address of the
Buyer: M/s. **Mother care PLC**
Address: **Cherry Tree Road Watford, Hertfordshire, 4 WD 246SH, England United Kingdom**

BC- 1000488296 ✓
LR- 137715
OL-

(Please specify Whether buyer is
Government buyer or Associate buyer)---------------No---------------

Telephone: **+044-1923 206173**
Fax:
E-mail: **Trusha@mothercare.com**
Contact Person: **Trusha**

11. Name and address of the Buyers Bank
(and/or LC opening bank)------------------------------NA-------------------

Telephone
Fax
Email
Bank account No. (if available)

✓1000617876 H.O.

12. Experience with the buyer \
LC opening bank for the last one year if any
(Separate sheet may be enclosed)

S.No	Date of shipment	Value (in Rs.)	Terms of Payment	Date of realization	Reason for delay / overdue, if any

AS PER SEPARATE SHEET ATTACHED

13. Anticipated turnover for the next one year with the buyer on whom this policy is applied

Value of shipments	Terms of payment
Rs 27 Crore	60 Days

~~(If you have schedule of shipments to be effected copy may be attached)~~

14. Commodity : Ready Made Garments

15. Value of contract / Lc on hand if any :
Amount in Foreign currency : USD $ 5,51,067
Amount in Indian Rupees : Rs 3,69,21,489

16. Expected exposure limit
Maximum level of outstanding
at any one point of time : Rs 3 Crore

17. Processing fee Rs.1000/- (to be paid along with the application per buyer / banker)

Cheque No. Dated drawn on Bank

29. It is the case of the Defendant that other than Mothercare PLC, whose name and address is given in the proposal form, the insurance amount cannot be paid to any other entity.

30. The object of Order XIII-A of the CPC is to avoid protracted litigation. Order XIII-A(3) gives the grounds for summary judgment against the Plaintiff or Defendant and the same reads as under:

"Order XIII-A : *Summary Judgment*

....

3. Grounds for summary judgment.—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

.....”

31. The Apex Court in Reliance Eminent Trading & Commercial (P) Ltd. v. DDA, **2026 SCC OnLine SC 744**, has laid down the legal contours to mindful of while passing a judgement under Order XIII-A of the CPC and the same reads as under:

“***59****. Therefore, while considering an application for summary judgment under Order XIII-A of the CPC, the following non-exhaustive guidelines have to be complied-*

(i) That the procedural mandate under Order XIII-A, CPC be strictly complied.

(ii) The Court should consider,

(a) Whether Plaintiff has no real prospect of succeeding on the claim or issue; or

(b) Whether the defendant has no real prospect of

successfully defending the claim or issue; and

(iii) The Court should also consider whether there is no other reason why the case or issue(s) should be allowed to go to trial.

(iv) While ascertaining above, the Court does not have to take everything on the face value, but it must also not conduct a mini trial at the same time.

(v) That the Court has to differentiate between a cause of action/defence respectively, which is real as opposed to fanciful prospect.

(vi) That the Court ought to grasp the nettle, when dealing with the summary judgment applications to decide short points of law and interpretations.

(vii) The Court must take into account not only the evidence before it but also the evidence that can reasonably be expected to be led/available at the trial.

(viii) That the Court's usage of power under Order XIII-A, CPC is exceptional as it cuts short the process of trial and ought to be exercised where oral evidence and full trial is not required.

(ix) In order to ascertain the need for full trial over summary judgment, the Court has to see whether, in the interest of justice, it is more suited to conduct trial to -

(a) Weigh the evidence,

(b) Evaluate the credibility of a deponents,

(c) Draw reasonable inferences from the

evidence."

32. It is to be borne in mind that the Court dealing with an application under Order XIII-A of the CPC needs to assess whether the Plaintiff has a real prospect of succeeding in a "claim" and "there is no other compelling reason why the claim should not be disposed of before recording of oral evidence."

33. This Court, while keeping the above mentioned prospects in mind, would now proceed to evaluate the specific contentions raised by both the Parties.

34. At this juncture, it is also relevant to reproduce Sections 91 and 92 of the Evidence Act, 1872 and the same reads as under:

> "*Section 91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.*
>
> *When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.*
>
> *Exception 1.-- When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.*
>
> *Exception 2. -- Wills admitted to probate in India may*

be proved by the probate.

Explanation 1.-- This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2. -- Where there are more originals than one, one original only need be proved.

Explanation 3. -- The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion. Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Section 92. Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1[want or failure] of consideration, or mistake in fact or law.

Proviso (2). -- The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). -- The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). -- The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has *been registered according to the law in force for the time being as to the registration of documents.*

Proviso (5). Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). -- Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods in ships from Calcutta to London. The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called the Rampore tea estate is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of Bs as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the

contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500. B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written -- "Rooms, Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered"

35. None of the provisos to Section 92 of the Evidence Act are applicable in the facts of the present case.

36. The terms of the insurance policy are binding on all the parties. The

insured buyer has been defined in Part IV of the SBE Policy, and the same reads as under:

> ***"(5) INSURED BUYER***
> ***An 'Insured Buyer' is the buyer specified in the Schedule to whom shipments covered under this policy will be despatched by the Insured and in respect of whom the Corporation has specified a Loss Limit under this policy****."* (emphasis supplied)

37. The Proposal form of the Policy states the name and address of the buyer as Mothercare PLC Ltd. The goods have been dispatched to Mothercare UK Ltd. In this Court's opinion, Mothercare UK and Mothercare PLC cannot be said to be one and the same entities.

38. There is no material in the entire Plaint or any other document to show that Mothercare UK and Mothercare PLC are same. The only case of the Plaintiff is that Mothercare UK is the wholly owned subsidiary of Mothercare PLC. Irrespective of this fact, Mothercare UK is still a distinct entity from Mothercare PLC. The argument of the Plaintiff that Mothercare UK and Mothercare PLC is one and the same, therefore, cannot be accepted.

39. Since Mothercare UK is a distinct legal entity, it was for the Plaintiff to get it insured separately. In addition to this, there is no indication in the SBE Policy that that all the Mothercare companies/subsidaries were insured under the umbrella of Mothercare PLC.

40. In any event, Section 92 of the Evidence Act prohibits leading evidence for purposes of contradicting, varying, adding to, or subtracting terms of a contract which has been reduced in the form of an document.

41. The Apex Court in Mangala Waman Karandikar v. Prakash Damodar

Ranade, **(2021) 6 SCC 139,** while dealing with a case relating to proviso 6 to Section 92 of the Evidence Act, has held as under:

> "***15***. *It is manifest from these two sections that it is only in cases where the terms of the document leave the question in doubt, then resort could be had to the proviso. But when a document is a straightforward one and presents no difficulty in construing it, the proviso does not apply. In this regard, we may state that Section 95 only builds on Proviso (6) of Section 92.*
>
> ***16***. *If the contrary view is adopted as correct it would render Section 92 of the Evidence Act, otiose and also enlarge the ambit of Proviso (6) beyond the main section itself. Such interpretation, provided by the High Court violates basic tenets of legal interpretation. [Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451 at p. 459 : (2013) 3 SCC (L&S) 368]* ***Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms. If, as stated by the learned Judge, oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section."*** (emphasis supplied)

42. Similarly, the Apex Court in Tamil Nadu Electricity Board v. N. Raju Reddiar, **(1996) 4 SCC 551**, has observed as under:

> "*7*. ***At the outset it must be borne in mind that the agreement between the parties was a written***

agreement and therefore the parties are bound by the terms and conditions of the agreement. Once a contract is reduced to writing, by operation of Section 91 of the Evidence Act, 1872 it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties. Under Section 92 of the Evidence Act where the written instrument appears to contain the whole terms of the contract then parties to the contract are not entitled to lead any oral evidence to ascertain the terms of the contract. It is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity then oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract. *The case in hand has to be adjudged bearing in mind the aforesaid principles and the plaintiffs being conscious of this position along with the tender appended a letter and in that letter inserted certain terms by writing in ink to establish the case that the acceptance of the plaintiffs' tender would tantamount to the acceptance to the terms contained in the letter in which there was insertion in writing to the effect that it was on multi-slab basis. It is in this context the question whether such handwritten portion was originally there or was subsequently inserted assumes great significance. We are unable to accept the stand taken by the learned counsel for the respondents that there was no such issue on this question inasmuch as this question was considered by the learned trial Judge while discussing Issue 1 on the basis of evidence laid and the trial Judge had given a finding in favour of the plaintiffs. The said finding, however, on the face of it appears to us to be wholly unsustainable. As has been stated earlier there was no signature either by the persons submitting the tender or by the persons receiving the same on the* *handwritten portion of the letter. The learned trial Judge had noticed that the certified copy which was issued by the Board on 11-7-1978 of the aforesaid letter clearly contains the handwritten portion and therefore he came to the conclusion that the handwritten portion was there at the time of submission of the tender. The tender itself was submitted on 12-7-1978 and we fail to understand how the Board could grant a certified copy of the letter on 11-7-1978 when the plaintiffs' case itself is that along with the tender he had appended the letter in question. On this ground alone it can be safely held that handwritten portion in Exhibit P-1 was not there at the time of submission of the tender but was subsequently inserted obviously with the connivance of the officers of the Board. The Board in its rejoinder-affidavit filed in this Court has stated that the attested copy was actually received on 28-12-1978, much later than the finalisation of the tenders and agreement and in order to build up a case the aforesaid interpolation has been made. In the facts and circumstances of the present case the aforesaid stand of the Board appears to us to be wholly justified and at any rate we have no hesitation to come to the conclusion that the handwritten portion in Exhibit P-1 was not there initially and has been inserted subsequently. The main basis of the plaintiffs' case on which a multi-slab rate was claimed therefore fails. The written agreement between the parties nowhere indicates that the rate to be paid to the plaintiffs was on multi-slab basis and the terms and conditions of the written contract is not susceptible of such a construction."*

(emphasis supplied)

43. Furthermore, the Apex Court, in Anantha Raju v. T.M. Narasimhan, **(2021) 17 SCC 165**, has made the following observations:

*"**34**. This Court has further held in Roop Kumar case*

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[Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595] that Sections 91 and 92 of the Evidence Act would apply only when the document on the face of it contains or appears to contain all the terms of the contract. It has been held that after the document has been produced to prove its terms under Section 91, the provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. It has been held that it would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory. It has been held that when parties deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory."

44. In addition to the fact that the insured entity is entirely different entity, this Court is of the opinion that the claim of the Plaintiff is also hit by clauses of the SBE Policy.

45. Under clause 2(a) of the SBE Policy, the Plaintiff was required to take precautionary measures such as stopping the despatch of goods to the Insured Buyer in case any payment with respect to any earlier shipment remained unpaid after its due date of payment. On this specific issue, there is no targeted averment made in the Plaint. Additionally, Document R-14, a document prepared by the Defendant which contains the data of shipments made by the Plaintiff, shows that multiple shipments were made even after

the first due date i.e. 26.07.2019. The said document is admitted by the Plaintiff.

46. With respect to Clause 3(b) of the SBE Policy, under the said clause, the Plaintiff was to notify the Defendant if as on the last day of a month, any insured debt remained unpaid for 30 days or more, after its due date of payment. The only defence taken by the Plaintiff to this specific issue is that the Plaintiff had acted swifty by calling the Defendant on 06.11.2019, meeting with them on 08.11.2019 and writing a letter to the Defendant incorporating the entire on 19.112019. This Court, is in fact, convinced that this specific averment, by no means indicate the compliance with the requirements of the clause. Document R-14, which details the shipments carried out by the Plaintiff records the first due date to be as 26.07.2019, and as the same is an admitted document, it is in fact true that the ROD has been filed belatedly.

47. In view of the law laid down by the Apex Court, the Plaintiff cannot be permitted to take any other stand other than the admitted documents and the terms of the Policy. It is well settled that under Section 58 of the Indian Evidence Act, 1872 what has been admitted need not be proved. Relevant provision is extracted below and the same reads as under:

> "*Section 58. Facts admitted need not be proved.*
>
> *No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:*
> *Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such*

admissions."

48. In light of the above settled position of law, this Court is of the opinion that there is no real prospect of the Plaintiff succeeding in the suit.

49. Accordingly, the present application stands allowed.

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Consequently, since the application under Order XIII-A is allowed, the Suit stands dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 01, 2026
Rahul/VG