



No. IRDA/NL/ORD/RIN/117/07/2010

26th July, 2010

**ORDER
OF INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY**

AGAINST

NATIONAL INSURANCE CO. LTD.

**IN THE MATTER OF POLICIES ISSUED TO
M/S.CLOUGH ENGINEERING LTD AND M/S.OIL & NATURAL
GAS COMMISSION**

1. This order is directed against National Insurance Co. Ltd having its registered office at 3, Middleton Street, P.B. No. 9229, Kolkata - 700 071 (hereinafter referred to as NIC) on account of their failure to comply with the provisions of the Insurance Act, 1938, the relevant Regulations made thereunder as also the directions issued by the Insurance Regulatory and Development Authority (hereinafter referred to as 'the Authority') from time to time, as discussed hereinafter.

2. The facts and circumstances of the case are as under:

3. The Central Bureau of Investigation (CBI), Chennai, informed the Authority, vide its letter No. RC8/E/2005/CBI/EOW/ CHENNAI/2536 dated 17th November, 2006 that a case being No. RC.8/E/2005-CBI/EOW/Chennai had been registered which pertained to the construction of all risk and third party liability policies issued by the NIC to M/s. Clough Engineering Limited and M/s. Oil and Natural Gas Commission (ONGC). In this context, the CBI also requested the Authority to initiate appropriate action for the alleged violations under intimation to them.

4. In order to ascertain the position as regards the same, the Authority called for information from NIC. The details of the letters issued by the Authority and the response of the NIC are tabulated below.

| SNo. | Correspondence from IRDA | Reply of insurer |
|------|--------------------------|------------------|
| 1 | 31.01.2007 | 07.02.2007 |
| 2 | 05.02.2007 | 28.03.2007 |
| 3 | 26.04.2007 | 22.06.2007 |
| 4 | 18.09.2007 | 19.11.2007 |

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|---|------------|------------|
| 5 | 16.11.2007 | |
| 6 | 19.12.2007 | 03.01.2008 |
| 7 | 12.11.2009 | 23.11.2009 |
| 8 | 26.11.2009 | 18.12.2009 |

5. From the information submitted by NIC, the following was inter alia noted:

(i) M/s. ONGC had awarded a turnkey project (G1/GS 15 Offshore Construction Project - ONGC Krishna Godavari Off-shore project) to the contractor M/s.Clough Engineering Limited (hereinafter referred as CEL) in the year 2004 for Rs.1280 Crs. As per the contract agreement entered into between ONGC and CEL, the contractor i.e, CEL had to arrange and maintain the following policies :-

- (a) Cargo Transit Insurance
- (b) Contractor's All Risk Insurance
- (c) Third Party Liability Insurance
- (d) Automobile and Transportation Liability Insurance
- (e) Workman's Compensation Policy

(ii) For the said purpose, the NIC had issued the Construction All Risk and Third Party Liability insurance cover under Policy No. 25030022044100010 to CEL and ONGC, through M/s. Marsh Australia.

6. As the information submitted by NIC and the explanation provided by them in this regard inter alia revealed that NIC had violated the provisions of the Insurance Act, 1938, the relevant regulations framed thereunder as also the directions issued by the Authority from time to time, the Authority issued a notice no. 88/Clough-NIC/09-10 dated 12.11.2009 to NIC, advising them to show cause as to why appropriate action be not initiated against them for the said violations. NIC replied to the notice vide their letter dated 18.12.2009 in which they denied the charges leveled against them.

APPRECIATION OF FACTS

7. Upon examining the submissions made by NIC in the context of the relevant provisions of law, the material on record as well as the facts and circumstances of the case, my views are as follows:-

(i) I have noted that the details of risk cover offered by NIC, as submitted to the Authority, are as under:-

| Terms | NIC Details |
|------------|-------------------|
| Policy No. | 25030022044100010 |



| | |
|-----------------|--|
| Sum insured | Rs. 849.25 Crs |
| Premium | Rs.17,36,09,161 (\$40,37,422.34) |
| Policy Coverage | Property Damage Third Party Liability |
| Coverage period | 07.01.2005 to 06.11.2006 (22 months) followed by maintenance period concurrently with discovery period of upto 12 months after project period. Policy subsequently extended from 06.11.2006 to 15.04.2007 and then from 16.04.2007 to 15.04.2008 |
| Reinsurance | 98.0160% of 100% of Property Damage 85.9265% of 100% of Third Party Liability |

(ii) It is observed that the terms and conditions of risk cover that were offered were in fact developed by M/s. Marsh Australia, which were then forwarded to the insured by NIC. From the copies of the documents pertaining to the subject matter, submitted by NIC to the Authority at different points of time, it is also noted that NIC had acted upon the instructions of M/s. Marsh Australia and had placed the direct insurance and reinsurance through them. The documents ascertained by the Authority during the said examination also revealed that fronting fee was paid to the said entity.

(iii) I have noted that NIC had tried to justify their action by stating that they were not aware as to when M/s. Marsh Australia had entered the picture and hence were unable to comment on their role. They have also stated that their dealings were only through Marsh India Pvt. Ltd. except in the matter relating to the payment of a refund of premium to the insured which was remitted to M/s. Marsh Australia as per the advices of Marsh India. NIC further stated that they were not aware of the role of Marsh UK to place the reinsurance in that, all the reinsurance placement orders were directed to Marsh India who were licensed to act as reinsurance brokers in India.

(iv) However, these contentions stand negated on account of the following facts:

(a) Several e-mails were exchanged between NIC and Marsh Australia, detailing the remittance of premium to NIC by Marsh Australia, thus indicating that NIC was not unaware of Marsh, Australia's role. It also appears that premium was also accepted by NIC from M/s. Marsh Australia into the Bank Account at London on behalf of the insured.



(b) A letter from NIC was issued to Marsh in which NIC was shown to have accepted Marsh's terms of placing 90% of the reinsurance placement to Marsh UK., indicating that NIC was aware of the role of Marsh, UK in the placement of reinsurance and yet was fronting for a foreign insurer and in the process was also dealing with an entity not registered as an intermediary. These actions of NIC have resulted in the non-compliance of the provisions of law enumerated below:

- Section 3(2) of Insurance Regulatory and Development Authority (General Insurance - Reinsurance) Regulations, 2000 states as follows:

"Every insurer shall maintain the maximum possible retention commensurate with its financial strength and volume of business. The Authority may require an insurer to justify its retention policy and may give such directions as considered necessary in order to ensure that the Indian insurer is not merely fronting for a foreign insurer."

- Section 42D(8) of Insurance Act 1938 reads as under:

"Any person who acts as an intermediary or an insurance intermediary without holding a licence issued under this section to act as such, shall be punishable with fine, and any insurer or any person who appoints as an intermediary or an insurance intermediary or any person not licensed to act as such or transacts any insurance business in India through any such person, shall be punishable with fine."

8. From the provisions detailed above, it is clear that an Indian insurer should not merely be fronting for a foreign insurer but shall maintain the maximum possible retention commensurate with its financial strength and volume of business and further that such an insurer shall not appoint any person as an intermediary or an insurance intermediary who is not licensed to act as such and/or transact any insurance business through such a person.

9. However, from the actions of NIC, it is clear that they have failed to comply with the provisions as discussed above. Thus, their actions constitute improper competitive practice that is detrimental to the general interests of the market in maintaining sound market practices, besides amounting to a clear violation of the mandated provisions of law and instructions issued by the Authority.

10. At stake here is also the expressed desire of the Regulator for authorized entities, i.e., insurers, brokers, intermediaries to avoid dealings with unlicensed entities; avoid fronting for foreign reinsurer; dis-allowing brokers to specify terms and conditions; to ensure maximum possible retention within the country, to name just a few. It is thus clear that if such instructions are violated, occurrence of loss is



inevitable as the interest of the orderly growth of the insurance and re-insurance business is jeopardized. Hence, the Authority is of the view that sufficient cognizance has to be taken of such disregard by NIC of the provisions of law specified by the Authority and responsibility should be fixed with punitive effect thereupon, else the entire purpose of enactment of the statute would become redundant.

11. I am also cognizant of the fact that in the present matter, a penalty of Rs.2 lacs was imposed by the Authority on M/s. Marsh India Pvt. Ltd., the Indian broker, for their role in the afore discussed violation.

12. In view thereof, taking into consideration the facts and circumstances explained above and bearing in mind that NIC is a registered entity and on account of the same ought to have exercised greater professional care, skill and diligence which they failed to do and thus violated the provisions of law detailed above, the Authority, is of the considered view that a penalty of Rs.5,00,000/- (Rupees Five lakhs) be imposed upon National Insurance Company Limited, Kolkata. Accordingly, on a judicious exercise of the powers conferred upon me under Section 14(1) of the Insurance Regulatory and Development Authority Act, 1999 read with Section 102 of Insurance Act, 1938, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five lakhs) on M/s. National Insurance Company Ltd.

13. The penalty amount of Rs.5,00,000/- shall be paid by National Insurance Company within a period of ten days from the date of receipt of this order, through a crossed demand draft in favour of Insurance Regulatory and Development Authority and payable at Hyderabad which may be sent to Shri Prabodh Chander, Executive Director at the Insurance Regulatory and Development Authority, 3rd Floor, Parisrama Bhavan, Basheerbagh, Hyderabad - 500 004.

Place: Hyderabad
Date: July 26, 2010


J. HARI NARAYAN
CHAIRMAN