



No. IRDA/NL/ORD/GRV/264/12/2011

05.12.2011

**ORDER
OF INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
AGAINST
NATIONAL INSURANCE CO. LTD.
IN THE MATTER RELATING TO COMPLAINT FILED BY
M/s ABHINAV TRADERS.**

1. This order is directed against National Insurance CO. Ltd. (hereinafter referred to as NIC) under Section 102 of the Insurance Act, 1938 on account of findings of violation of various regulations as per law specified by the Insurance Regulatory and Development Authority (hereinafter referred to as the Authority).

2. The facts and circumstances necessitating the issuance of this order are given under:-

(i). Violation of regulation 3(2) of IRDA (Protection of policyholder's interest) Regulations 2002 – prospect was not properly guided at proposal stage and initially claim was declined on grounds that shopkeeper policy does not grant cover for godown. Reasons for initial repudiation on this ground may be explained.

(ii). Violation of regulation 4(1) of IRDA (Protection of policyholder's interest) Regulations 2002 – insurer accepted risk without proposal from

insured and failed to assess and rate the risk properly. NIC has vide mail dated 02.08.2010 to Authority has accepted that risk was accepted without proposal form.

(iii). Violation of Regulation 4(4) of IRDA (Protection of policyholder's interest) Regulations 2002 – NIC has not complied to the above regulation under which if proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy.

(iv). Violation of Regulation 7(1) of IRDA (Protection of policyholder's interest) Regulations 2002 – Policy terms and conditions were provided to insured only on his requesting for the same under RTI Act. NIC in their reply to Authority vide mail dated 19.08.2010 has accepted that the policy with all terms and conditions was generated but inadvertently the same could not be dispatched.

(v). Violation of Regulation 9(5) of IRDA (Protection of policyholder's interest) Regulations 2002 – Survey report was stated to be submitted on 15.11.2008, where as claim was repudiated on 17.03.2009. reasons for delay not explained.

(vi). Not clarifying the grounds of repudiation quoting the relevant policy conditions.

(vii). Not clarifying that how loss caused by stray heavy rain, rain water splashes & or accumulation of water is outside the scope of the policy.

APPRECIATION OF FACTS

3. After examining the charges levelled as against NIC, vide its reply dated 05.01.2011, the gist of submissions made by NIC in response to the same, the material on record as well as the facts and circumstances of the case and my views on the same are as under:-

- (i) *Risk accepted based on information provided by insured and corporate agent and at no stage insured complained that he was not properly guided at proposal stage*
- (ii) *Regarding improper issue of policy, insurer stated that policy can always be rectified even after a loss in case it is found that there was a genuine mistake. In this case also, approval was given for rectification of the policy.*
- (iii) *Insurer is silent in his reply on these observations.*
- (iv) *Based on surveyor as well as investigator report which stated that there no evidence of loss resulting from flood or inundation.*

Regulations under (Protection of policy holder's interest) IRDA Regulations 2002, which are violated by NIC:-

- (i) Regulation 3(2) - An insurer or its agent or other intermediary shall provide all material information in respect of a proposed cover to the prospect to enable the prospect to decide on the best cover that would be in his or her interest.

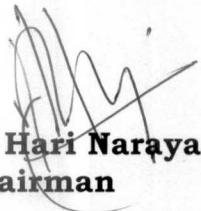
- (ii) Regulation 4(1) - Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duties of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.
- (iii) Regulation 4(4) - Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover.
- (iv) Regulation 7(1) - A general insurance policy shall clearly state:
- (a) The name(s) and address(es) of the insured and of any bank(s) or any other person having financial interest in the subject matter of insurance;
 - (b) Full description of the property or interest insured;
 - (c) The location or locations of the property or interest insured under the policy and, where appropriate with respective insures values;
 - (d) Period of Insurance;
 - (e) Sums insured;
 - (f) Perils covered and not covered;
 - (h) Any franchise or deductible applicable;

- (i) Premium payable and where the premium is provisional subject to adjustment, the basis of adjustment of premium be stated;
 - (j) Policy terms, conditions and warranties;
 - (k) Action to be taken by the insured upon occurrence of a contingency likely to give rise to a claim under the policy;
 - (l) The obligations of the insured in relation to the subject matter of insurance upon occurrence of an event giving rise to a claim and the rights of the insurer in the circumstances;
 - (m) Any special conditions attaching to the policy;
 - (n) Provision for cancellation of the policy on grounds of misrepresentation, fraud, non-disclosure of material facts or non-co-operation of the insured;
 - (o) The address of the insurer to which all communications in respect of the insurance contract should be sent;
 - (p) The details of the riders attaching to the main policy;
 - (q) Proforma of any communication the insurer may seek from the policyholders to service the policy.
- (v) Regulation 9(5) - On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.

4. Accordingly, based on the facts and circumstances discussed earlier and bearing in mind the fact that NIC is an insurer registered with the Authority and on account of the same ought to have exercised greater

professional care, skill and diligence which they failed to do, 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.

5. The penalty amount of Rs.5, 00,000/- (Rupees Five lakhs) 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 Randip Singh Jagpal, Joint Director at the Insurance Regulatory and Development Authority, 3rd Floor, Parisrama Bhavan, Basheerbagh, Hyderabad – 500 004.



(J. Hari Narayan)
Chairman