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बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY

ORDER

OF THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

AGAINST

ICICI-LOMBARD GENERAL INSURANCE COMPANY LIMITED

1. The present order stands directed against ICICI-Lombard General Insurance Company Ltd having its registered office at ICICI Bank Towers, Bandra-Kurla Complex, Mumbai 400 051 (hereinafter referred to as ICICI Lombard) on account of their alleged default in complying with the instructions issued by the Insurance and Regulatory Development Authority (hereinafter referred to as the Authority).
2. The undisputed facts related to this case are as follows:-

M/s Indian Oil Corporation Limited (IOL) had invited bids by floating a tender for the renewal of the Mega Risk Policy for their Refineries Division vide their Tender No.RD/F/460 dated July 30, 2007. Many insurance companies submitted their bids in response to the same. ICICI Lombard too had submitted a price-bid to IOL.
3. Arising out of reports of failure on the part of some of the companies to adhere to the guidelines/instructions issued by the Authority while submitting the bids, the Authority called for related information from the insurance companies.
4. Upon perusal of the information so submitted, it was inter-alia noted that a few insurers including ICICI Lombard had deviated from the



instructions issued by the Authority at various points of time and had also failed to adhere to the File and Use Guidelines issued by this Authority vide circular nos. IRDA/20/F&U/07-08 dated 25 June, 2007 and IRDA/30/F&U/07-08 dated 13 August, 2007. ICICI Lombard was also found to have failed to comply with the direction of the Authority dated September 21, 2007 to submit a photocopy of the reinsurance terms as quoted by the leader on the placement slip for this risk.

5. In view thereof, a notice dated November 08, 2007 was issued to ICICI Lombard, in terms of which ICICI Lombard was advised to show cause as to why appropriate action should not be initiated against them for the violations specified therein and to make their written submissions within the stipulated period of fifteen days. ICICI Lombard offered their submissions under cover of their reply dated November 30, 2007, in which they inter-alia denied the charges leveled against them and justified their actions being based on their understanding of the regulatory framework and prevalent market practices.

APPRECIATION OF FACTS

6. I have examined the submissions urged on behalf of ICICI Lombard, the documentary material on record as well as the facts and circumstances of the case. The essence of the submissions of ICICI Lombard is that there is no willful disregard by them of any the instructions issued by the Authority and that they had acted as per the prevalent market practices and that if at all, they may have interpreted the instructions of the Authority differently. To determine the veracity of the same, it would be relevant to refer to charges leveled against them



बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY

7. **(i) Failure to adhere to the file and use guidelines issued by the Authority.** The relevant portion of the said circulars alleged to have been violated is as follows:-

Circular No IRDA/20/F&U/07-08 dated 25 June, 2007:

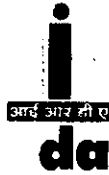
Para (x)(b) :- Any client who wants the benefit of international terms for his insurance requirements qualifying as a large risk should be willing to accept the rates, terms and conditions as received from the leaders in the international market without requiring the Indian insurer to provide wider cover than obtained from the international market. Where terms are developed from the international market on 'net rates' basis, the rates quoted to the Indian client should be loaded to include the direct insurance commission or brokerage and reinsurance brokerage payable and a reasonable profit margin.

Circular No IRDA/30/F&U/07-08 dated 13 August, 2007

Para 10:- The condition that where a risk is rated on terms developed from international markets, the terms offered to the client must not be different from those secured from the international market, will not be relaxed.

Thus the circulars reproduced above mandate that the terms quoted to the client on large risks should not vary from the terms developed from the re-insurers. This mandate was also clearly spelt by the Authority at the meeting held on August, 6, 2007 with the CEO's of various General Insurers.

8. In the instant case, I have examined the information submitted by ICICI Lombard especially the details of the risk cover offered by them which is as under:



बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY

- i. Sum Insured: Rs.62,231 crores
 - ii Loss Limit: Rs.3500 crores
 - iii. Deductible
 - A. Property damage – Rs.2.5 crores
 - B. Loss of Profit – 30 days
 - iv. Renewal Date – 01.10.2007
 - v. Premium quoted from terms developed in the international markets: Rs. 53 crores with 10% deduction.
 - vi. Price quoted by ICICI Lombard to the client: Rs.39.7 crs
9. ICICI Lombard is stated to have developed the terms for the quotation for the aforesaid cover through the brokers, Cooper Gay & Co. Ltd (hereinafter referred to as Cooper Gay) and with the support of Arch Insurance. During the course of the submissions made by ICICI Lombard to the Authority at different points of time, they had represented that the International market terms secured by them were a premium amount of Rs.53 crores with 10% deduction for the insurance limits and deductibles acceptable to the client i.e. IOL. Yet contrary to the instructions of the Authority and in clear violation of the above mentioned circulars, instead of quoting the terms as developed from the International re-insurers, ICICI Lombard was found to have offered their client a further discount in premium by rebating the reinsurance commission received on their reinsurance placement i.e. the terms quoted by ICICI Lombard for the aforesaid coverage was admittedly a premium of Rs.39.7 crores.
10. Although ICICI Lombard have justified their actions by stating that the instructions of the Authority only required the terms secured from the international markets to be the same as the terms quoted to the client and that the rates quoted by them are independent of the terms and

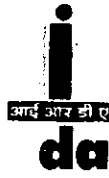


conditions of the said policy, in a mega risk policy, rates cannot be independent of the terms and conditions of the policy in as much as the same constitute an inseparable part of the terms of the Policy. If ICICI Lombard takes the stand that it quoted its own individual-rated terms then ICICI Lombard should have offered only cover as per the erstwhile tariff wordings and on the rates and basis filed by them with the Authority, subject to the letter of the Authority dated 13 March 2007, which they failed to do.

12. Undisputedly ICICI Lombard have totally misinterpreted the said circulars and instead have presented their own line of argument which appears to be an after-thought, designed to cover up their contraventions of the instructions issued by the Authority. In the process, they have overlooked the fact that as an individually rated risk also, their action in relation to their quotation constitutes improper competitive practice that is detrimental to the general interests of the market in maintaining sound competitive practices.

13. **(ii) Failure to furnish a copy of the reinsurance terms as quoted by the leader on the placement slip for this risk.**

I have noted that the Authority had vide letter dated September 21, 2007 directed ICICI Lombard to submit a photocopy of the placement slip where the lead re-insurer, whose terms formed the basis of their quotation, had indicated the terms and signed the slip and indicated the share he was willing to write at those terms. This document forms the basis of the rate indication given to ICICI Lombard by their broker, Cooper Gay, and in terms of para 1(m) of the Guidelines on insurance and reinsurance of general insurance risks contained in the circular no. 020/NL/IRDA/06 dated September 15, 2006, is a necessary requirement



बीमा विनियामक और विकास प्राधिकरण

INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY

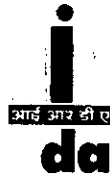
to verify the terms quoted by the international market. However ICICI Lombard failed to comply with this direction of the Authority too, giving rise to the premise that ICICI Lombard had quoted terms to the client without first securing written indication of the terms from the international re-insurers.

14. ICICI Lombard has contended that the broker had originally developed terms from re-insurers on layered placement basis. This response of ICICI Lombard reveals a lack of understanding of instructions contained in the circular dated 15 Sept 2006 issued by the Authority. Brokers do not quote terms as underwriters. Brokers are expected to communicate the terms quoted by re-insurers and not put forward, as a quotation, what in their opinion, are the terms at which they hope to place the business. Only insurers or re-insurers quote. Even if what ICICI Lombard suggested was true, the terms would have been quoted to them on a 'net rate' basis and not a 'gross rate' with 10% deduction. However the layered placement slips that were put together by the broker subsequent to ICICI Lombard being appointed as the lead insurer was not led by all the re-insurers that the broker mentioned in its letter to ICICI Lombard dated 24 August 2007, especially Arch Insurance. The final placement by the broker was materially different from the terms indicated by ICICI Lombard in their letter dated 24 August 2007 and hence their argument is not acceptable. Clearly, after ICICI Lombard was selected by the client to provide the insurance, their broker tried to put together a layered excess of loss reinsurance placement instead of the single value reinsurance rate indication originally reported. This is evident from the fact that even the layered excess of loss cover placement is at terms that do not correspond with the premium indication on which ICICI Lombard based their quotation to the client.



बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY

15. I have also noted that ICICI Lombard have denied paying brokerage on the reinsurance placement. This seems irrelevant in as much as brokerage is paid by the re-insurer and not by the ceding company, which only pays the gross premium. However ignoring this important fact, ICICI Lombard have tried to justify their actions by looking at the reinsurance ceded premium net of brokerage.
16. Clearly ICICI Lombard quoted terms based on desk quotes. Their failure to ensure that the reinsurance terms, including the rates of premium on which their quotation to the IOL group was based, were indeed the rates and terms quoted by the international re-insurers are contrary to the instructions of the Authority.
17. From the above, it is apparent that ICICI Lombard have acted in an unprofessional manner and in breach of good faith in relation to their non-reporting obligatory reinsurance treaties by improperly reducing the premium that should have been ceded to the treaties to the extent of reinsurance ceded commission. The ethics of operating re-insurance treaties that are automatic and non-reporting have been ignored, while their justification for their deviations from the instructions issued by the Authority reveals that the same were done willfully in total disregard of the mandate of the Authority.
18. At stake here is also the oft expressed desire of the Regulator to maintain proper standards in underwriting in the insurance sector which has to be respected. It is 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 sufficient cognizance has to



बीमा विनियामक और विकास प्राधिकरण
**INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY**

be taken of such disregard and suitable liability should be fixed there upon or else, the entire purpose of enactment of the statute would become redundant.

19. In view of the above, on a judicious exercise of the discretion conferred upon me, bearing in mind the fact that ICICI Lombard 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, I, in 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, am of the considered view that a penalty of Rs. 5,00,000/- (Rupees five lakhs only) be imposed upon ICICI Lombard General Insurance Company Ltd.
- 20.. The penalty amount shall be paid within a period of ten days from the date of receipt of this order through a crossed demand draft drawn 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, Basheer Bagh, Hyderabad 500 004.

PLACE: HYDERABAD

DATE: 9th January, 2008

CS Rao
9.1.08

C.S. RAO

CHAIRMAN