2026 INSC 876

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7687-7688 OF 2025

THE NEW INDIA ASSURANCE COMPANY LIMITED & ORS. … APPELLANT(S)

VERSUS

M/S LOUIS DREYFUS COMMODITIES INDIA PVT. LTD. …RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. These appeals under Section 23 of the Consumer Protection Act, 1986[1] challenge the correctness of the final judgment and order dated 21.05.2025, passed by the National Consumer Disputes Redressal Commission[2] in Complaint No.259 of 2012 and 396 of 2014.

2. The two appeals before us arise out of two separate incidents involving the very same parties. For convenience, we may refer to the facts of the Complaint Case No.259 of 2012 only.

[1] Hereinafter 'the Act'.
[2] 'NCDRC' for short.

3. The respondent, being an ongoing business concern involved in the trade of commodities, secured from the appellants a Marine Cargo Annual Turnover Policy, bearing Policy No.350200/21/09/14/00000369 extending to INR 1200 Crores for the period 01.01.2010 to 31.12.2010. The premium thereon was payable in two equal instalments. About halfway through the year, the expected turnover of the respondent increased, and as such they set about communicating with the appellants regarding enhancement of the insurance coverage. There was apparently an assurance that coverage would continue as long as the instalments were paid on time. The incident germane to the present dispute was that a fire broke out at the Container Freight Station on 07.11.2010, when the respondent had received 41,481 cotton bales and stored them. Smoke was seen emanating from the heaps, and while attempts were made to quell the fire, the appellants were informed about such incidents on the same day.

4. The surveyor appointed by the appellants assessed the damages at Rs.22,01,29,271/-. However, the appellants appointed a second surveyor, which was allegedly without the approval of the Insurance Regulatory and Development Authority[3]. The Report produced by such second surveyor is alleged to have not been furnished to the respondents. The appellants, *vide* email dated 14.12.2010, sought the payment of additional premium to the tune of Rs.86,86,125/- to enhance the coverage to INR 1500 Crores. The said payment was made on

[3] 'IRDA' for short.

17.12.2010. The claim made by the respondent was eventually repudiated *vide* letter dated 27.07.2012, leading to the filing of the complaint before NCDRC.

5. The case of the appellants before the NCDRC, in opposing the complaint, primarily was that the respondent's turnover as on 30.06.2010 was INR 1016.35 Crores, which was well beyond INR 600 Crores coverage for the first half of the year. The second instalment was paid on 01.07.2010, but on the 10th of that month itself, the turnover had crossed INR 1200 Crores, i.e., the total amount of the coverage, and on the date of the incident, the said turnover was INR 1724.12 Crores. Since the respondent had not paid any additional premium for the excess amount, on the said date there was no active coverage. This position was contended as per Section 64 VB of the Insurance Act, 1938[4]. The premium was eventually paid six weeks after the alleged incident, apparently trying to retrospectively regularise the policy. Further, the email dated 14.12.2010 on the basis of which the additional premium was paid was sent by an officer without the requisite approval and, therefore, it did not bind the appellants. The respondent, *inter alia*, rejected the appellant's reliance on Section 64 VB of the Insurance Act, since the Special Condition No.4 of the Insurance Agreement states that the premium is subject to the annual Turnover and will be charged as per actual turnover in the Policy Period and also because the payment of additional premium had been accepted without any objection.

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[4] Hereinafter the 'Insurance Act'.

6. The NCDRC allowed the petition, ordering the appellants to pay the amount as assessed by the surveyor appointed by the appellants on account of the fact that the clarification regarding the policy issued by the appellants dated 17.05.2010, in response to the respondent's email dated 15.05.2010, clearly stated that the insurance coverage would continue till the end date irrespective of the turnover exceeding the insured amount i.e. INR 1200 Crores.

7. Certain documents are essential to the decision in this case:

7.1. Marine Cargo – Annual Turnover Policy dated 01.01.2010:

"THE NEW INDIA ASSURANCE COMPANY LIMITED
DO II SCO 104-106, Sector 34A, Chandigarh

MARINE CARGO – ANNUAL TURN OVER POLICY
FOR
ANNUAL SALES TURNOVER POLICY EXPECTED
TURNOVER RS.1200 CRORES
(PREMIUM ON HALF YEARLY BASIS)
Of
Louis Dreyfus Commodities India Pvt. Ltd.
(Policy No. 350200/21/09/14/0000369)

Issued by
The New India Assurance Co. Ltd.
(A Government of India Enterprises)
DO II
(SCO 104-106, Sector 34A, Chandigarh)
Tele Fax: +91 172 2601036

… … …

SUM INSURED

Annual Turnover Rs.l200 Crores
Half Yearly Turnover Rs. 600 Crores.

… … …

SPECIAL CONDITIONS

1. Warranted that the dispatches should be by closed wagon or closed / tarpaulin covered lorries or any other waterproof material to avoid ingress of water.
2. Rain Water, Fresh Water, River Water and Lake Water damage is covered and excess will be policy excess.
3. Consignment is covered on Warehouse to Warehouse basis.
4. <u>Premium is subject to the annual Turnover and will be charged as per actual turnover in the Policy Period</u>.
5. Loading - unloading covered."

(emphasis supplied)

7.2. Email dated 15.05.2010:

"From: Santosh K Sinha <santoshksinha®kmddelhi.com>
Subject: Queries in sales turnover policy
To: "rameshkaul" <fannyria@yahoo.com>
Cc: "raman" <raman@kmddelhi.com>,
"dinesh Mangla, NIA" <dkmangla@gmail.com>

Date: Saturday, May 15, 2010, 4:09 AM

Dear Ramesh,
We forward the mail received from the Client raising certain specific queries under STOP Policy. Our opinion is in the red as follows:

- Do we need to enhance our STOP policy If we cross 600 crones before six months. No. Premium will be adjusted based on Balance Sheet Figures after the expiry of the Policy.
- Our all transits are covered till six months whether our turnover crosses 600 crores in six months. Yes.
- Enhancement can be done anytime before consuming 1200 crores. There is no need of payment during the Policy period. Even if the value exceeds Rs.l200 Crores during the Policy Period, premium will be payable only after the expiry of the Policy based on certified Balance Sheet figures- extra payment or refund as the case may be.

Please confirm, for the sake of good order and records, whether our understanding is right."

7.3. Email dated 17.05.2010:

"From: "ramesh kaur' <fannyria@yahoo.com>
To: "Santosh K Sinha" santoshksinha@kmddelhi.com
Sent: Monday, May 17, 2010 11:54 AM

Subject: Re: Queries in sales turnover policy

Dear Santosh,

Against point no.one, we want to clarify that we are taking premium in two instalments hence we have to increase the sum insured to 1200 crores by paying 2nd instalment i.e.in the month of July,2010. Alter payment of 2nd instalment, all the transits are covered till the expiry of policy even if it crosses 1200 crores.

If we take total premium in advance, then there is no need to enhance the sum insured during the currency of policy provided the sum insured is based on last years balance sheet.

regards,
DR. RAMESH KAUL
DIVISIONAL MANAGER
THE NEW INDIA ASSURANCE CO. LTD."

7.4. Email 14.12.2010:

"From: "Dinesh Mangla" <dkmangla@gmail.com>
To: "Santosh K Sinha" <santoshksinha@kmddelhi.com>
CC: "Raman" <raman@kmddelhi.com> ; "fannyria" <fannyria@yahoo.com>
Sent: Tuesday, December 14, 2010 6:59 PM
Subject: SALES TURN OVER POLICY A/C LD

Dear Mr.Santosh,
As you know we have issued Turnover policy to LD for estimated turnover of Rs.1300 crores and with the growth of the company turnover has increased many fold, hence as on date it might have exhausted the estimated turnover. you are requested to release another instalment based on the current turnover.

Pl take this on priority as incase of any claim, the competent authority will raise this question and to avoid any ambarrassment at the time of claim, we should regularise the turnover.

regards,
..

DINESH K. MANGLA
RELATIONSHIP MANAGER
THE NEW INDIA ASSURANCE CO. LTD.
S.C.O.-104-106, SECTOR-34-A,
CHANDIGARH-160022.
TELEFAX- 0172-2609107,2667306
MOB. 098147-13251"

7.5. Endorsement dated 17.12.2010:

"THE NEW INDIA ASSURANCE CO. LTD.
(Wholly owned by the Govt. of India)
ADDITIONAL ENDORSEMENT DOCUMENT
Open Policy

Insured Name: Louis Dreyfus Commodities India Pvt. Ltd. (P006056330)
Address: IInd Floor, Tower 98, DLF Phase III, Gurgaon, Haryana, 122001
Telephone
Fax
Email
Insurer Office Code: SCO-104-106, Sector 34A, Chandigarh (350200)
Address: SCO 104-106, Sector 34A, Chandigarh
Telephone: 2501036/2504450
Fax: 2609107
Email
Endorsement attached to the forming
part of the Policy No.: 35020021091400000363
Department: Marine Cargo
Cover: Open Policy Cover Policy
Period of Insurance: From 01/01/2010 06.13.33 PM to 31/12/2010 11.59.59 PM
Endorsement No.
Effective Date 17 December 2010
Date Signed 13/12/2010
Additional Premium including ST INR 8,686,125.00
Sum insured (INR)
Premium (INR) N/A

It is hereby understood and agreed that with effect from 17 December 2010.

Reason
In witness whereof the policy was issued at.

For and on behalf of
The New India Assurance Co. Ltd.
Authorized Signatory

Date 17.12.2010"

7.6. Repudiation letter dated 27.07.2012:

"THE NEW INDIA ASSURANCE CODMPANY LIMITED
DIVISIONAL OFFICE - II
S.C.O. 104-106, Sector 34-A, Chandigarh - 160 022

Registered A/D

Without Prejudice

27th July 2012

M/s. Louis Dreyfus Commodities India Pvt. Ltd.
8th Floor, Tower A, Building No. 5,
Cyber City, DLF Phase-ill,
Gurgaon— 122 002 (Haryana).

Re Fire loss amounting to Rs. 20,65,60,422/- to cotton consignments on 07.11.2010 Marine Cargo Claim No. 350200/21/09/14/90000135, Annual Turnover Policy No. 350200/21/09/14/0000369 (Period from 01.01.2010 to 31.12.2010)

Dear Sirs,

… … …

While we value our longstanding relationship with you and have examined the claim from all possible angles on this major loss, we hereby repudiate liability on the following grounds.

As evident from the survey report, the cotton stock of hazardous nature was stored in the open and that the total value of the cotton stored at Container Freight Station at the time of the loss was Rs.66,10,90,120.10 as against the value of Rs. 25 crore being the limit per location under the policy. As your sales turnover during the policy period had exceeded the amount declared by you, to ascertain the exact magnitude of the sales turnover, we have got your books of account verified by the C.A. firm, M/s. P. R. Shah & Co. According to their report, your total sales turn over from Jan. 2010 to Dec. 2010 was Rs. 2,734.30 crore and the cumulative sales turnover from Jan. 2010 to May 2010 was Rs. 794.07 crore i.e. it exceeded the initial sum insured of Rs. 600 crore in May 2010 itself only for which the premium had been paid by you at the inception. The cumulative sales turnover from Jan. 2010 to July 2010 was Rs. 1,264.02 crore. Even if the enhancement of the sum insured by another Rs. 600 crore is considered w.e.f. 01.07.2010, the sum insured was exhausted in the first week of Oct. 2010, because the sales turn over from July to Sept. 2010 itself is Rs. 598.33 crore. In fact there was no balance of premium to cover the risk after the first week of October 2010 while the loss has taken place on 07.11.2010.

Being a big corporate house and represented by the well-known & qualified brokers M/s. K. M. Dastur, you and your Brokers ought to have been aware of the provisions of Section 64V(B) of Insurance Act and the principles of utmost good faith and duty of disclosure. If there is no premium, the insurance company can not go on/assume the risk. You should have paid the premium in advance and maintained the adequacy of the sum insured in order to keep the coverage in place. The e-mails exchanged between your Broker & the Divisional Manger cannot be in violation of the Sec.64V(B) of the Insurance Act in any way. The Premium Adjustment Clause in the policy can be interpreted only for downward adjustment of the premium in view of the provisions of the Sec. 64V(B) of the Insurance Aet & can not be interpreted in breach of it. It is surprising that even while raising a query about the possible exhaustion of the sum insured, the exact amount of the sales turnover achieved as on the date of seeking clarification by e-mail (i.e. on 15.05.2010) was not disclosed for the reasons best known to you/your broker.

The sales turnover during the policy period from 01.01.2010 to 31.12.2010 was Rs. 2,734.30 crore, which should have been insured for at least by Rs. 2,734.30 crore + 10%. As against this, the fair estimate of the sales turnover of only Rs. 1,200/- crore was given to us. Such downward variation was not substantiated by reasons. It is improbable for any corporate to run the same operation with less than half the turnover of the previous year. The broker's action amounts to breach of utmost good faith and willful mis-declaration of material information and an attempt to defer payment of premium."

8. We have heard Mr. Salil Paul, learned counsel for the appellants, and Mr. Joy Basu, learned senior counsel for the respondent.

9. Section 64VB of the Insurance Act reads as under:

"**64VB. No risk to be assumed unless premium is received in advance**.—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by [it] or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. —Where the premium is tendered by postal money order or cheque sent by post [or by any online mode], the risk may be assumed on the date on which the money order is booked or the cheque is posted [or the money is received in insurer's bank account], as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the

insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

[(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.]"

10. A perusal of the above reveals that there is a statutory embargo on an insurer assuming risk if the premium has not been paid to them, either prior to such assumption or within the stipulated time period in which it is guaranteed to be paid. Sub-section (2) also makes this clear that the risk cannot be assumed earlier than the date on which the premium has been paid. [See: ***Deokar Exports (P) Ltd. v. New India Assurance Co. Ltd.***[5]] Sub-sections (3) and (4) are procedural stipulations regarding refund, and the latter accounts for a situation where an agent collects the premium on behalf of the insurer. Sub-sections (5) and (6) grant power to the Central Government to relax requirements and for the Authority to specify the manner of receipt of payment by the insurer, respectively.

11. We are of the considered view that Section 64 VB of the Insurance Act would be attracted in the present case. In the policy secured by the respondent i.e., the Marine Cargo Annual Turnover Policy, the turnover of the respondent

[5] (2008) 14 SCC 598.

was a central aspect in the functioning of the insurance cover so provided. The agreement was extended to INR 1200 Crores and was adjustable, under the special conditions, in accordance with the actual turnover. The amount for which the respondent stood insured was exceeded in terms of turnover on 10.07.2010 itself, well before the incident. It was, therefore, incumbent upon the respondent, in view of the clear stipulation under Section 64VB, to either extend the coverage by paying the amount based on estimated turnover or at least guaranteeing to pay the same within a particular time period.

12. Undisputedly, the extent of the insurance coverage was extended post the incident. As the endorsement dated 17.12.2010 extracted *supra* shows, the responsibility of the appellants accrues from the said date. As per the respondent, it is not so, for, one of the grounds pressed into service by the respondent was the email dated 17.05.2010 assuring the respondents that coverage would continue even if the turnover would exceed the insured amount. This was accepted by the NCDRC, but we find it difficult to do so. The appellants have placed on record guidelines of the company issued on 16.10.2006 by the Head Office to all its Regional Offices clearly stating that – "*6. Premium adjustment to be done only downwards, in view of the provisions of Section 64VB.*" While it is a settled position of law that a principal is liable for the actions of its agents, it is also trite that the same should be done in accordance with the rules and regulations of the principal or, in other words, in the regular course of duty by the agent. It can only be expected, and reasonably so, by the appellants that its agent would be cognizant of the directives issued by it. In that view of the matter, no occasion arose for the Divisional Manager of the appellants to assure the respondent of extension of coverage. In ***Harshad J. Shah v. LIC of India,***[6] it has been provided that an authority to an agent need not be expressed and it may be implied from circumstances. Granted that an agent of the appellant was dealing with the respondent's case and would ordinarily have the authority, but in view of the clear directive of 2006, the circumstances do not permit such authority. [See also: ***State of Orissa v. United India Insurance Co. Ltd.***[7] and ***State Bank of India v. Shyama Devi***[8]]

13. Another argument must be dealt with that since the appellants had accepted the payment of additional premium, it is now estopped from refusing to cover the incident. This argument cannot be accepted for two reasons. It is a position in law that if an insurer does a particular act for their own convenience, such as taking the premium in instalments, they cannot hide behind Section 64VB but this situation would have been applicable to the present case if the additional amount paid was a part of the original coverage of INR 1200 Crores for which payments in instalments was agreed to be accepted by the appellants. But since this payment directly links to turnover and would in effect make the appellant liable for an

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[6] (1997) 5 SCC 64.
[7] (1997) 5 SCC 512.
[8] (1978) 3 SCC 399.

incident that took place at a time when the coverage based on the turnover had already been surpassed, it has to be hit by Section 64VB, which provides no possibility for *post facto* regularisation. The rule of estoppel has been discussed in ***Shyam Telelink Ltd. v. Union of India,***[9] but it is well settled that the same cannot apply against or in contravention of a statute. [See: ***Electronics Corpn. of India Ltd. v. Secy., Revenue Deptt., Govt. of A.P.***[10] and ***State of W.B. v. Gitashree Dutta***[11]] As such, since the Section clearly enjoins the assumption of risk by insurance companies such as the appellants before the amount is paid, the statement by the employee of the appellants would not have any value. Furthermore, the additional endorsement issued by the appellants accepting the additional premium paid by the respondent on 17.12.2010 clearly states that the effect of such acceptance would accrue from the said date. Accordingly, the argument by the respondent that a condition for the benefit of the insurer (Section 64 VB) can be, and has been in the present case, waived by conduct has to be negated because the appellants have assumed the risk arising out of the payment of additional premium only from the date of its payment and not prior thereto.

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[9] (2010) 10 SCC 165.
[10] (1999) 4 SCC 458.
[11] (2022) 19 SCC 388.

14. For all the aforesaid reasons, both the appeals are allowed. Pending application(s), if any, shall stand disposed of.

……… ……………………………………..J.
(SANJAY KAROL)

...…………………………………………..J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
AUGUST 18, 2026

<u>REPORTABLE</u>

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

<u>CIVIL APPEAL NOs.7687-7688 OF 2025</u>

THE NEW INDIA ASSURANCE CO. LTD. & ORS. ...APPELLANT(S)

VERSUS

M/s LOUIS DREYFUS COMMODITIES INDIA PVT. LTD. ...RESPONDENT(S)

<u>J U D G M E N T</u>

<u>NONGMEIKAPAM KOTISWAR SINGH, J.</u>

1. I have gone through the judgment penned by my esteemed Brother Sanjay Karol, J., and I have taken the privilege to make certain observations into the relationship of agent and principal which will have a bearing on the decision in this case.

Principal and Agent relationship

2. The Respondent relies upon the email dated 17 May 2010 addressed by the Divisional Manager of the Appellant insurer to the insurance broker as an assurance that, after payment of the second installment of premium, all transits would remain covered until expiry of the policy even if the turnover crossed ₹1,200 crore. The Appellants contend that the Divisional Manager had no authority to enlarge this risk undertaken under the policy. The issue therefore, has to be examined in the statutory light of the existence of agency, scope of its authority, and the legal capacity of an agent to bind the principal.

3. Section 182 of the Indian Contract Act, 1872 ("*Act*" for short) defines "*agent*" and *"principal"* and their relationship in the following terms:

> *"**182**. An 'agent' is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'."*

Sections 186 and 187 of the Act provide that the authority of an agent may be express or implied, and that implied authority may be inferred from the circumstances, the things spoken or written, or the ordinary course of dealing.

Section 188 of the Act explains the extent of such authority:

> *"**188**. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business."*

These provisions make two principles clear. First, an officer may be an employee of the company and, at the same time, be its agent for the purpose of representing it in dealings with policyholders. Secondly, the authority attached to an agent extends to acts which are necessary, usual and lawful in the conduct of the authorised business and it does not extend merely because the act relates generally to the employer's business. Thus, a Divisional Manager entrusted with administration of a policy may ordinarily communicate with the insured, explain the policy and call for premium, but that does not establish authority to create a new risk, enlarge the sum insured or enlarge the scope of liability of the insurer or dispense with a statutory precondition for attachment of risk.

4. The consequence of an act performed within authority is stated in Section 226 of the Act, which reads as follows :

> *"**226**. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person."*

However, where the actual authority is absent, the question shifts to apparent or ostensible authority as conceptualized in Section 237 of the Act. Section 237 of the Act embodies the doctrine of holding out or agency by estoppel and provides:

> *"**237**. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority."*

5. In ***Harshad J. Shah v. Life Insurance Corporation of India**, **(1997) 5 SCC 64***, this Court explained that actual authority proceeds from the principal's manifestation to the agent, whereas apparent authority proceeds from the principal's manifestation to the third party. The Court observed that apparent authority is 'the authority of an agent as it appears to others' and is essentially confined to the relationship between the principal and the third party. The agent cannot create such authority by his own assertion and the representation must be traceable to the words, conduct, course of dealing or organisational position conferred by the principal.

Para 13 and 14 of the ***Harshad J. Shah*** (supra) concerning the above analysis is reproduced hereunder:

> ***"13.****Actual authority results from a manifestation of consent that he should represent or act for the principal made by the principal to the agent himself. It may be express if it is given wholly or in part by means of words or writing or it may be implied when it is regarded by the law as the principal having given him because of the interpretation put by the law on the relationship and dealings of the two parties. Implied authority may arise in the form of incidental authority, i.e., authority to do whatever is necessarily or normally incidental to the activity expressly authorised, or usual authority, i.e., authority to do whatever an agent of the type concerned would usually have authority to do, or customary authority, i.e., authority to act in accordance with such applicable business customs as are reasonable. The authority of the agent may also be implied from the circumstances of the particular case.*
>
> ***14.****The authority of the agent is apparent where it results from a manifestation made by the principal to third parties. The doctrine of apparent authority involves the assumption that there is in fact no authority at all. It is the authority of an agent as it appears to others. Under this doctrine where a principal represents, or is regarded by law as representing, that another has authority, he may be bound as against a third party by the acts of that other person within the authority which that person appears to have though he had not in fact given that person such authority or had limited the authority by instructions not made known to the third party. The notion of apparent authority is essentially confined to the relationship between the principal and the third party. (See: Bowstead on Agency, 15th Edn., Article 22, pp. 92 to 94.)"*

This Court in ***Harshad J. Shah*** (supra) also held that where statutory regulations expressly prohibited the agent from collecting premium, neither implied authority nor apparent authority could be inferred merely from the agent's conduct. In paras 17 and 18 of the said decision, this Court held:

> *"**17.** In the instant case, it cannot be said that respondent No.3 had the express authority to receive the premium on behalf of the LIC because in the letter of appointment dated December 5, 1962 there was a condition expressly prohibiting him from collecting the premium on behalf of the LIC. Nor can it be said that respondent No.3 had an implied authority to collect the premium on behalf of the LIC because in 1972 the LIC has made a regulation [Regulation 8(4)], which in 1981 became a rule, prohibiting the agents from collecting premium on behalf of the LIC…"*
>
> "***18.** …it cannot be said that the LIC induced the insured to believe that respondent No.3 had been authorised by the LIC to receive premium on behalf of the LIC. We are, therefore, unable to hold that the doctrine of apparent authority underlying Section 237 of the Indian Contract Act can be invoked in the facts of this case especially when the LIC has been careful in making an express provision in the Regulations/Rules, which are statutory in nature, indicating that the agents are not authorised to collect any moneys or accept any risk on behalf of the LIC and they collect so only if they are expressly authorised to do so."*

6. The principle in ***Harshad J. Shah*** (supra) was considered by this Court subsequently in ***Delhi Electric Supply Undertaking v. Basanti Devi & Anr., (1999) 8 SCC 229***. The case arose under the Salary Savings Scheme of the Life Insurance Corporation of India ("LIC"), under which the employer, Delhi Electric Supply Undertaking ("DESU"), was entrusted with deducting the premium from the salary of the insured employee and remitting it to LIC. Although DESU was not an "insurance agent" appointed under the Insurance Act and the applicable Regulations, this Court held that its relationship with LIC was nevertheless required to be examined under the general law of agency contained in the Contract Act. In para 12 of the said decision in ***Basanti devi*** (supra), this Court held:

> ***"12.*** *'Agent' in Section 182 means a person employed to do any act for another, or to represent another in dealings with third persons and the person for whom such act is done, or who, is so represented, is called the principal. Under Section 185 no consideration is necessary to create an agency. As far as Bhim Singh is concerned, there was no obligation cast on him to pay premium direct to LIC. Under the agreement between LIC and DESU, premium was payable to DESU who was to deduct every month from the salary of Bhim Singh and to transmit the same to LIC. DESU had, therefore, implied authority to collect premium from Bhim Singh on behalf of LIC. There was, thus, valid payment of premium by Bhim Singh. Authority of DESU to collect premium on behalf of LIC is implied. In any case, DESU had ostensible authority to collect premium from Bhim Singh on behalf of LIC. So far as Bhim Singh is concerned DESU was agent of LIC to collect premium on its behalf."*

The significance of ***Basanti Devi*** *(*supra) lies further in the fact that LIC relied upon its internal arrangement with DESU under which DESU was described as the agent of the employee and not as the agent of LIC. This Court declined to allow such an undisclosed arrangement to determine the position of the insured. While distinguishing ***Harshad J. Shah*** (supra), the Court observed in para 14:

> *"**14.** We do not think the decision of this Court in Harshad J. Shah v. Life Insurance Corporation of India, (1997) 5 SCC 64 has any application in the present case before us. Formation of the contract of insurance is between the Life Insurance Corporation and the employee of the DESU. The Scheme has been introduced by the Life Insurance Corporation purely on business considerations… Though in the pro forma letter written by the DESU to the Life Insurance Corporation it is mentioned that the DESU would be an agent of its employee and not that of the Life Insurance Corporation this understanding between the Life Insurance Corporation and the DESU was not communicated or made known to the employee. As far as the employee is concerned he is told that the premium will be deducted from his salary every month and remitted by the DESU to the Life Insurance Corporation under an agreement between the Life Insurance Corporation and the DESU. For the employee of the DESU, therefore, the DESU had implied authority as an agent of the Life Insurance Corporation to collect the premium on its behalf and then pay it to the Life Insurance Corporation. There is nothing on the record to show that Bhim Singh was ever made aware of the fact that the DESU was not acting as agent of the Life Insurance Corporation. Rather in the nature of the Scheme, the employee was made to believe that it is the duty of the employer… to collect the premium… and to remit the same to the Life Insurance Corporation… As to what is the arrangement between the Life Insurance Corporation and the DESU the employee is not concerned."*

Basanti Devi (supra) thus makes the distinction between actual authority and ostensible authority particularly clear. The actual authority concerns the authority which the principal has in fact conferred upon the agent and may be circumscribed by internal instructions. The ostensible authority concerns the authority which, by the principal's own words, conduct, business arrangement or the position in which the agent has been placed, the third party is reasonably led to believe that the agent possesses. An internal restriction upon the officer's authority is therefore relevant to the relationship between the principal and the agent, but however, if such restriction was never communicated to the third party, its mere existence cannot defeat an otherwise established case of ostensible authority under Section 237 of the Act. That is precisely why ***Basanti Devi*** *(*supra) distinguished ***Harshad J. Shah*** (supra), where in ***Harshad J. Shah*** (supra), there was no material to show any holding out by LIC that the insurance agent was authorised to receive premium, whereas in ***Basanti Devi*** *(*supra), the very arrangement created by LIC placed DESU in a position in which the insured was entitled to regard it as authorised to receive premium. The judgment itself records that ***Harshad J. Shah*** (supra) involved an insurance agent whose governing Regulations expressly prohibited collection of premium, whereas DESU's authority arose from LIC's own scheme and conduct.

The principle in ***Basanti Devi*** (supra), however, must be applied with regard to the particular act for which authority is asserted. There, LIC had itself entrusted DESU with the very function which was in issue, namely, collection and remittance of premium, something the agent would normally perform. The finding of ostensible authority therefore related to an act which formed part of the arrangement created by the principal itself in the mind of the insured. The present case stands differently insofar as the disputed portion of the email is relied upon not merely as an act of policy administration, but as authority for continuation of insurance risk beyond the extent which, for the reasons recorded in the main judgment, could lawfully attach without further compliance with Section 64VB of the Insurance Act, 1938. ***Basanti Devi*** (supra) does not hold that an undisclosed limitation upon an agent's authority enables the agent to undertake an act which the principal itself could not lawfully undertake in that manner.

7. At this stage, it would also be apposite to notice Section 64VB of the Insurance Act, 1938, which places the statutory restriction upon the insurer itself. The relevant portion reads thus:

> ***"64-VB. No risk to be assumed unless premium is received in advance.—***
>
> *(1) No insurer shall assume any risk in India… unless*

> *and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.*
>
> *(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer."*

It is not in dispute that the statutory command is directed to the insurer as principal. Consequently, for the reasons recorded in the main judgment, assumption or continuation of the additional risk required compliance with Section 64VB, an agent cannot, by invoking actual or ostensible authority, confer upon the insurer a capacity which the statute itself withholds.

8. Further, in ***Dilawari Exporters v. Alitalia Cargo & Ors., (2010) 5 SCC 754***, this Court held that where a party seeks to bind the principal under Section 237 of the Contract Act on the basis of an agent's act, the burden lies upon that party to establish that the act was within the agent's actual authority or within the ostensible or apparent authority which the principal had held out the agent as possessing. Mere proof that the person was an employee or agent of the principal is, by itself, insufficient.

9. While applying the above principles to the present case, the Divisional Manager's mail cannot be treated as a purely private communication unrelated to the insurer. The email was issued by the Divisional Manager of the policy-issuing office, in response to a query concerning the operation of an existing policy, and dealt with premium and coverage. The officer, therefore, possessed at least the usual and implied authority to correspond concerning and explain the policy. The communication is consequently relevant as a contemporaneous representation of the issuing office and cannot be discarded merely because it was sent by an employee.

That conclusion, however, does not answer the distinct question whether the officer had authority to alter the contractual risk. Authority to administer or explain an existing policy is not equivalent to authority to rewrite it. Section 188 of the Contract Act deliberately confines incidental and usual authority to every 'lawful' thing necessary or usually done in conducting the authorised business. An agent cannot acquire, by implication, authority to do that which the principal has not authorised, or to undertake a liability which the governing statute does not permit the principal to assume in that manner.

The respondent has, therefore, established that the Divisional Manager possessed authority to correspond concerning and administer the policy, but what it has not established, as required by ***Dilawari Exporters*** (supra), is that the appellant had, by its words, conduct or course of dealing, held the Divisional Manager out as possessing authority independently to enlarge the turnover-based risk undertaken under the policy or to dispense with the statutory requirement governing attachment of such additional risk.

10. The decision in ***State of Orissa v. United India Insurance Co. Ltd., (1997) 5 SCC 512*** is directly instructive. The Branch Manager had incorporated in an insurance policy a guarantee relating to non-supply of bulldozers. This Court held that the High Court has recorded the finding that the Branch Manager of the Insurance Company exceeded his authority as an agent by underwriting in the policy the guarantee for the non-supply of bulldozers. The principal is not bound by such an undertaking, by operation of Section 237 of the Contract Act.

This Court, thereafter, concluded that, the Manager having no authority to undertake such liability by subsequent incorporation into the policy, the insurance company was not bound by his act. The ratio is that a managerial designation does not, by itself, confer authority to add an undertaking which lies outside the policy and outside the authority held out by the insurer.

11. Section 227 of the Contract Act also permits the authorised part of an agent's act to be separated from the excess. It provides that where an agent does more than he is authorised to do, and the authorised part can be separated from the unauthorised part, 'so much only of what he does as is within his authority is binding'. Accordingly, the email may be recognised as a valid clarification insofar as it concerned payment of the scheduled instalments and operation of the policy within the sum lawfully insured. It cannot, however, merely by reason of the same communication, be treated as an independent undertaking of unlimited or retrospectively enlarged cover.

12. The Respondent also relies upon the subsequent demand and acceptance of additional premium. Section 196 of the Act provides that where an act is done on behalf of another without authority, the person on whose behalf it was done 'may elect to ratify or to disown such acts', and that ratification gives the act the same effect as if originally authorised. Ratification, however, must be a conscious adoption of the very act in question. Here, the endorsement enhancing the sum insured expressly took effect from 17 December 2010. Its prospective commencement is inconsistent with an intention to ratify, retrospectively, an assurance that additional cover had already been attached before the losses occurred earlier in November 2010. Further, ratification may cure an absence of authority, but it cannot be employed to defeat a mandatory statutory requirement governing the assumption of insurance risk.

13. We accordingly hold that the email dated 17 May 2010 was issued in the course of the insurer's business and is relevant to the contemporaneous understanding of the policy. It binds the insurer only to the extent that it concerned matters falling within the Divisional Manager's actual or apparent authority. It cannot, however, operate as an independent source of additional or unlimited insurance, nor can the subsequent endorsement, expressly effective from 17 December 2010, retrospectively ratify such an undertaking. Therefore, the principle *qui facit per alium facit per se* applies to acts within the agent's authority, however, it does not enable an agent to confer upon the Principal a liability which the agent was neither authorised nor legally competent to assume on its behalf.

14. With these supplementary observations, I respectfully concur with the reasoning, the conclusions, and the judgment by my learned Brother, Sanjay Karol, J.

……………………………………………….J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
AUGUST 18, 2026.