

RESERVED ON 22.04.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF JUNE, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 426 OF 2025

**BETWEEN:**

1. PRAKRUTHI PRODUCTS PVT. LTD  
HAVING ITS OFFICE AT  
NO. 71, 1<sup>ST</sup> FLOOR, 4<sup>TH</sup> MAKIN  
WEST OF CHORD ROAD  
BASAVESHWARA NAGAR  
BENGALURU - 560 079  
REP. BY ITS CHAIRMAN  
M.R. SHETTY  
S/O LATE SUNDAR SHETTY  
AGED ABOUT 61 YEARS

ALSO AT:  
GROUND FLOOR  
SAGAR COMPLEX  
NEAR MARUTHI TEMPLE  
MARUTHI TEMPLE ROAD  
KARWAR - 581 301

...APPELLANT

(BY SRI S. RAJASHEKAR, ADVOCATE)

**AND:**

1. EXPORT CREDIT GURANTEE  
CORPORATION OF INDIA LTD  
HAVING ITS REGISTERED OFFICE AT  
1<sup>ST</sup> FLOOR, ESSEL TOWER



BUNTS HOTEL CIRCLE  
MANGALURU - 575 003  
REP. BY ITS BRANCH MANAGER

...RESPONDENT

(BY SRI. LAKSHMI MENON, ADVOCATE FOR C/RESPONDENT)

THIS COMMERCIAL APPEAL UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DECREE DATED 16.06.2025 PASSED IN COM.O.S.No.1126/2023 PASSED BY LXXXVI ADDL. CITY CIVIL AND SESSIONS JUDGE, (COMMERCIAL COURT) AT BENGALURU (CCH-87).

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE  
and  
HON'BLE MR. JUSTICE C.M. POONACHA

**C.A.V JUDGMENT**

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal impugning the judgment and decree dated 16.06.2025 passed by the LXXXVI Additional City Civil and Sessions Judge, Bengaluru, in Comm O.S. No. 1126 of 2023, [**Commercial Court**], dismissing the said suit.

2. The appellant [**the Plaintiff**] had filed the said suit for recovery of a sum of ₹32,14,000/- (Rupees thirty two lakhs fourteen thousand only) along with interest at the rate of 18% per annum from 15.10.2019 till its realisation, which it claimed was due and payable by the respondent [**ECGC**].

3. The Plaintiff, M/s. Prakruti Products Pvt. Ltd. is a private limited company engaged in the manufacture and export of standardised herbal extracts and nutraceutical ingredients. ECGC (formerly, Export Credit Guarantee Corporation of India Ltd.), is a wholly-owned Government of India enterprise that provides export credit insurance to exporters, inter alia, covering their commercial and political risks. The Plaintiff states that it is a policyholder with ECGC since 2009.

4. The parties entered into an insurance contract, and on 28.05.2018, ECGC issued a Shipment Comprehensive Risk Policy bearing No. 0090003412 [**SCR Policy**], valid for the period 01.05.2018 to 30.04.2019. The SCR Policy was a 'Whole Turnover' declaration-based policy that covered all shipments made by the Plaintiff to its overseas buyers during the policy period against specified commercial and political risks, subject to its terms and

conditions. ECGC's maximum liability under the SCR Policy was ₹5,00,00,000/- (Rupees five crores only).

5. In the course of its business, the Plaintiff had applied for, and ECGC had communicated its approval of, a Credit Limit of ₹10,00,000/- (Rupees ten lakhs only) in respect of one of the Plaintiff's buyers in the United Kingdom, named 'The Herbs in a Bottle Company' [**the Buyer**]. This approved Credit Limit was subsisting as of the date of the shipment.

6. The Plaintiff accepted a purchase order and exported organic curcumin extract (containing 85% curcuminoids turmeric extract) to the Buyer at an invoice value of ₹42,14,000/- (Rupees forty two lakhs fourteen thousand only). The goods were shipped on 06.09.2018, with a 45-day credit period. The Buyer acknowledged receipt of the goods.

7. In terms of Clause 8(a) of the SCR Policy, the Plaintiff declared the shipment at its full value of ₹42,14,000/- (Rupees forty two lakh fourteen thousand only) in Form No. 203 on 15.10.2018. On receipt of this declaration, ECGC debited a premium of ₹18,267.69/- (Rupees eighteen thousand two hundred and sixty seven paise sixty nine only) from the Plaintiff's advance deposit

premium account. Admittedly, this premium was calculated on the entire gross invoice value of ₹42,14,000/- (Rupees forty two lakh fourteen thousand only), and not merely on the approved Credit Limit of ₹10,00,000/- (Rupees ten lakhs only). Whilst the shipment value was ₹42,14,000/- (Rupees forty two lakh fourteen thousand only), the Plaintiff does not dispute that it had not filed any application – for enhancement of the Credit Limit from ₹10,00,000/- (Rupees ten lakhs only) approved by ECGC in respect of the Buyer, either before or after the shipment.

8. The Buyer failed to make payment of the invoice amount. The Plaintiff sent an e-mail dated 16.11.2018 to ECGC, reporting that the amount receivable from the Buyer was overdue, and furnished a declaration to that effect in the prescribed form, Form No. 205, on 15.01.2019. On receipt of the overdue declaration, ECGC cancelled the Credit Limit in respect of the Buyer and issued a recovery advisory letter dated 17.01.2019, advising the Plaintiff to initiate steps to recover its dues from the Buyer.

9. The Plaintiff formally filed its claim for ₹42,14,000/- (Rupees forty two lakh fourteen thousand only) on 05.07.2019. ECGC sent a letter dated 15.10.2019 (Ex.P.3/Ex.D.11), accepting its liability

under the SCR Policy to the extent of ₹10,00,000/- (Rupees ten lakhs only) only. According to ECGC, its liability was limited to the extent of the approved Credit Limit in respect of the Buyer. ECGC declined to pay the balance of ₹32,14,000/- (Rupees thirty two lakh fourteen thousand only) and informed the Plaintiff that, in terms of Clause 20 of the SCR Policy, its liability in respect of shipments to any one buyer is limited to the approved Credit Limit.

10. The Plaintiff, aggrieved by the partial settlement, addressed an undated letter (Ex.P.4/Ex.D.12/Ex.D.27) to ECGC, which was received by it on 25.10.2019. In this letter, the Plaintiff, inter alia, stated as under:

"(3) By mistake, our staff forgot to send you the Enhancement of limit application and it is purely a clerical mistake"

11. ECGC states that it treated the letter as a claim representation, which the competent authority re-examined and rejected. ECGC communicated the rejection by letter dated 08.11.2019, reiterating that its liability was restricted to the approved Credit Limit.

12. Thereafter, the Plaintiff made further representations vide letters dated 30.11.2019, 10.01.2020, 24.02.2020, and 18.07.2020.

Each of these representations was examined and rejected by ECGC at progressively higher levels of authority. The Apex Customer Grievance Committee of ECGC communicated its rejection by an e-mail dated 07.07.2021.

13. ECGC consistently maintained that the Plaintiff's claim had been settled to the full extent of the approved Credit Limit, in conformity with the terms of the SCR Policy.

14. The Plaintiff caused a legal notice dated 24.04.2023 to be issued, calling upon ECGC to pay ₹32,14,000/- (Rupees thirty two lakh fourteen thousand only) with interest at 18% per annum. ECGC replied on 02.05.2023 and 25.05.2023, denying the said claim.

15. The Plaintiff referred the dispute to pre-institution mediation under Section 12-A of the Commercial Courts Act, 2015. However, the same was recorded as a Non-Starter.

### **THE PROCEEDINGS BEFORE THE LEARNED COMMERCIAL COURT**

16. The Plaintiff instituted the suit before the learned Commercial Court on 30.09.2023 for recovery of the balance of ₹32,14,000/-

(Rupees thirty two lakh fourteen thousand only) with interest at 18% per annum from 15.10.2019 till realisation, along with costs.

17. ECGC filed its Written Statement, admitting the issuance of the SCR Policy, the period of cover, the Maximum Liability of ₹5,00,00,000/- (Rupees five crores only), the Plaintiff's declaration of the full gross invoice value of ₹42,14,000/- (Rupees forty two lakh fourteen thousand only), and the consequent deduction of premium thereon. ECGC denied any liability beyond the approved Credit Limit of ₹10,00,000/- (Rupees ten lakhs only) for the Buyer.

18. ECGC argued that the Credit Limit mechanism is the bedrock of the SCR Policy's indemnification structure for commercial risks; that the Plaintiff, as a policyholder of over 14 years standing and a sophisticated exporter, was fully aware of the requirement to apply for and obtain a suitable Credit Limit in respect of each buyer before making shipments; that the Plaintiff had, on multiple prior occasions, applied for and obtained enhancements of Credit Limits in respect of various other buyers; that the Plaintiff's own undated letter (Ex.D.27) contains an express admission of its failure to apply for the enhancement; and that mere collection and retention of premium on the declared shipment value does not, in law or under

the terms of the SCR Policy, amount to an extension or implied enhancement of the Credit Limit.

19. ECGC claimed that Clause 10(h) of the Policy entitles it to demand, receive, and retain full premium on all declared shipments irrespective of whether it has any ultimate liability in respect of such shipment by reason of any lapse on the part of the insured. Further, Clause 30 expressly provides that mere acknowledgement of a declaration or acceptance of premium does not bind ECGC to undertake liability in respect of any shipment or bill that exceeds the limits provided in the Policy.

20. The Plaintiff examined its Chairman, Sri. M.R. Shetty, as PW-1 and proved 33 documents, which were marked as Exhibits P-1 to P-33. ECGC examined its Assistant General Manager, Sri. Pawan Kumar Burman, as DW-1, proved 34 documents, which were marked as Exhibits D-1 to D-34. Both parties admitted the contents and authenticity of the SCR Policy and the Cover Letter (Ex.D.2/Ex.P.1). In the cross-examination, PW-1 admitted that the approved Credit Limit under Ex.P.1 was ₹10,00,000/- (Rupees ten lakhs only), that he had not approached ECGC for enhancement of the Credit Limit, and that he had sent a letter stating that due to a clerical mistake his staff had not applied for the enhancement; he

also admitted the averments made in paragraph no. 38 of the Written Statement — which sets out the five prior instances where the Plaintiff had applied for and obtained enhancements of Credit Limits on other buyers.

21. The learned commercial court struck the following two issues:

**“ISSUES**

1. Whether the Plaintiff proved that it had an approved Credit Limit/ enhancement of limit of Rs. 42,14,000/- under the SCR policy towards risks insured on a particular buyer in question?
2. What order or decree?”

22. In respect of the first issue, the learned commercial court found in the negative. Noting that there was no dispute on the facts, and that the approved Credit Limit in respect of the Buyer as on the date of shipment was undisputedly Rs. 10,00,000/- (Rupees ten lakhs only). The Court held that Clause 21(a) of the SCR Policy makes the filing of an application for enhancement, and the approval and communication thereof by ECGC, a condition precedent to the operability of an enhanced Credit Limit; that this process is not a mechanical or merely clerical act; that the Plaintiff's failure to file any application for enhancement, as

expressly admitted in its own letter (Ex.D.12/Ex.D.27), was fatal to its claim; and that the Plaintiff's payment of premium on the full gross invoice value could not override the specific contractual requirement of Clause 21(a), particularly in the light of Clauses 10(h) and 30 of the Policy.

23. The learned Commercial Court referred to the decisions of the Supreme Court in **Vikram Greentech India Limited v. New India Assurance Company Ltd.**<sup>1</sup>, **Bajaj Allianz General Insurance Company Limited v. State of Madhya Pradesh**,<sup>2</sup> and the decision in **M/s. BHS Industries v. Export Credit Guarantee Corporation of India & Another**<sup>3</sup>, and held that payment of premium alone does not fasten liability on the insurer. The trial court held that Clause 21(a) must be satisfied for liability to arise beyond the approved Credit Limit.

24. Accordingly, the learned commercial court dismissed the suit. However, the parties were directed to bear their own costs.

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<sup>1</sup> (2009) 5 SCC 599

<sup>2</sup> (2020) 18 SCC 376

<sup>3</sup> CA.No. 2729 of 2009

## **REASONS AND CONCLUSION**

25. The learned counsel for the Plaintiff advanced submissions assailing the impugned judgment on the following principal grounds. First, he contended that ECGC had collected and retained the premium calculated on the entire gross invoice value of ₹42,14,000/- (Rupees forty two lakh fourteen thousand only) and thus could not avoid its liability. He argued that if ECGC intended to cover only ₹10,00,000/- (Rupees ten lakhs only), it ought to have collected a premium commensurate to that amount alone. He submitted that by collecting a premium on the full shipment value, ECGC had impliedly enhanced the Credit Limit to cover the entire shipment.

26. Second, he submitted that at the time of accepting the shipment declaration and debiting the premium, ECGC had failed to inform the Plaintiff that an application for enhancement of the Credit Limit was required. He submitted that had such intimation been given, the Plaintiff would have filed the necessary application. He submitted that ECGC's conduct amounts to a waiver and estoppel.

27. Third, he pointed out that DW-1 had admitted in cross-examination that the premium is deducted based on the value declared in the shipment declaration, and that ₹18,267/- (Rupees eighteen thousand two hundred and sixty seven only) was sufficient premium to cover the risk of the full shipment value of ₹42,14,000/- (Rupees forty two lakh fourteen thousand only).

28. Lastly, he submitted that the Plaintiff's failure to apply for enhancement was a clerical oversight at best, and it cannot be non-suited for such a technical omission in circumstances where ECGC had appropriated the premium on the entire shipment value.

29. The SCR Policy draws a critical distinction between the Maximum Liability and Credit Limit. The Maximum Liability of ₹5,00,00,000/- (Rupees five crores only) is policy-specific and not buyer-specific; it represents the aggregate upper cap on ECGC's total indemnification obligations under the SCR Policy across all buyers in a given policy year. The Credit Limit, by contrast, is buyer-specific. It is an upper threshold fixed by ECGC for a particular buyer, up to which ECGC assumes liability for losses arising from the materialization of the commercial risks insured

under the Policy in respect of shipments made to the buyer. Clause 20 of the Policy reads as under:

"20. The liability of ECGC under this policy for losses, occasioned owing to any of the commercial risks described in clauses (i), (ii) or (iii) of the 'Risks Insured' in respect of shipments made to any one buyer shall be limited to the amount hereinafter defined as the Amount of Credit Limit."

30. Clause 21(a) prescribes how the Credit Limit is fixed: upon an application made by the insured in the prescribed form, ECGC must approve and communicate to the insured, in writing, an amount as the Credit Limit on a particular buyer; only upon such approval and communication does the Credit Limit become operative. Clause 22 separately provides that the aggregate liability of ECGC shall not in any circumstances exceed the Maximum Liability. Clause 28 makes the due observance of each term and condition a condition precedent to any liability of ECGC.

31. In terms of Clause 20 of the Policy, the liability of ECGC for losses of risk insured in respect of shipments made to "any one buyer" was limited to the amount of the Credit Limit. Thus, although the plaintiff was covered for a maximum liability of ₹5,00,00,000/- (Rupees five crores only) in respect of all buyers, the ECGC's

liability in respect of any one buyer was limited to the maximum amount of Credit in respect of the specified buyer.

32. In the present case, the liability in respect of the Buyer is limited to ₹10,00,000/- (Rupees ten lakhs only), as that is the Credit Limit approved in respect of the said buyer. Thus, ECGC could not be called upon to pay any amount exceeding ₹10,00,000/- (Rupees ten lakhs only) under the SCR Policy.

33. There was much debate on whether the modification of the Credit Limit was only a ministerial act. According to the Plaintiff, it had the option to modify the Credit Limit within the overall cover of ₹5,00,00,000/- (Rupees five crores only), but had inadvertently overlooked seeking a modification of the Credit Limit.

34. In this regard, we may refer to Clauses 21 and 22 of the SCR Policy which are set out below:

**"Amount of Credit Limit**

21. The amount of Credit Limit on any particular buyer shall be:

(a) where on an application made by the Insured in the prescribed form, ECGC has approved and communicated to the Insured in writing an amount as the Credit Limit on a particular buyer, the amount so specified shall be the credit limit in respect of that buyer. Such approved credit limit shall always be subject to the terms of payment

and the terms and conditions specified in or appended to the relevant credit limit approval. If, in respect of any particular buyer, ECGC is of the opinion that a higher share of commercial risk shall be retained by the Insured and has specified a percentage as the percentage of loss covered in respect of that particular buyer then in that case, irrespective of what is stated under condition 13 herein above, the percentage of loss payable by ECGC for any loss arising out of commercial risks on that buyer shall not exceed the said percentage so specified in the credit limit approval.

(b) where no application for approval of credit limit has been made by the insured or where against an application made, ECGC is yet to communicate its decision to the Insured, then the credit limit shall be as under, subject to the buyers not in the list of Buyers who have come to the adverse notice of ECGC which is available on its website and Insured is required to access it by obtaining an user id and password from the Insurer:

(i) If the transaction is on Documents against payment (DP) or Cash against Documents (CAD) terms of payment, then Rs.40,00,000/- (Rupees Forty Lacs only) provided that the number of claims payable on credit limits availed under this clause shall not exceed two; or

(ii) If the transaction is on Documents against Acceptance (DA) or 'Open Delivery' terms, then Rs.20,00,000/- (Rupees Twenty Lacs only) provided that the Insured has completed the preceding Policy Period prior to the month of shipment and an amount of not less than Rupees Five Lacs has already been paid by the Insured as premium on shipments made during the said Policy-Period and provided further that the number of claims payable on credit limits availed under this sub-clause shall not exceed two; or

(iii) If, during the two-years period immediately preceding the date of shipment, the Insured had made at least one shipment previously to that particular buyer on payment terms identical to the

shipment(s) in question and had duly realized all payments on the respective due dates, then the highest amount that remained outstanding due from the buyer on any of those shipments on similar payment terms subject to a limit of Rs.80,00,000/- (Rupees Eighty Lacs only) per buyer with a sub-limit of Rs.30,00,000/- (Rupees Thirty Lacs only) therein for open account transactions, i.e. for shipments made on 'Open Delivery' or DA terms.

**Maximum Liability**

22. The aggregate liability of ECGC under this policy shall not under any circumstances exceed the amount specified in Schedule as the Maximum Liability, subject to such modifications as may be agreed to from time to time between the Insured and ECGC."

35. In the present case, it is not disputed that sum of ₹10,00,000/- (Rupees ten lakhs only) was approved by ECGC.

36. In view of the plain language of Clause 21 of the SCR Policy, we are unable to accept that modification of the Credit Limit is a ministerial act. However, even if it is accepted that the plaintiff could modify the Credit Limit by merely communicating the same, the undisputed fact is that the Plaintiff had not modified the credit limit and therefore, ECGC's liability is confined to the credit limit as specified.

37. It is also relevant to refer to the Cover Letter dated 28.05.2018, which forms part of the SCR Policy documents. Clause 3(l) of the said letter is relevant and is set out below:

"(l) CREDIT LIMITS ON BUYERS: Wherever shipments are made on DP, DA or Open delivery terms, it is essential that you get a suitable Credit Limit approved by the Corporation on each of the buyers unless your requirements are met by Clause 21(b) of the policy. In the absence of such Credit Limits, the Corporation will not admit any claim arising from any of the commercial risks your having paid the premium for covering comprehensive risks on such shipments. Applications for Credit Limits are to be made on FormNo.144, supply of the forms sent herewith. If you want a Credit Limit to be increased, you have to use Form No.144-A which can be obtained from us as and when required."

38. There is evidence on record to indicate that the premium paid by the Plaintiff was sufficient to cover the risk in respect of the shipment to the full extent. However, we are unable to accept that ECGC's liability would be enhanced beyond the approved Credit Limit on that ground. The learned Commercial Court had considered this contention and rightly rejected it.

39. The contention that ECGC should be held liable to pay the entire amount payable by the Buyer on the ground of equity, is unmerited. The contract between the parties is a written contract, and ECGC's liability is required to be determined strictly on the

basis of the terms of the SCR Policy. There is no scope to apply any equitable principles to enhance ECGC's liability under the SCR Policy.

40. In view of the above, we find no merit in the present appeal. The same is accordingly dismissed.

**Sd/-  
(VIBHU BAKHRU)  
CHIEF JUSTICE**

**Sd/-  
(C.M. POONACHA)  
JUDGE**

KPS