

ORDER
OF
THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
AGAINST
DINESH CHAND JAIN

1. All surveyors and loss assessors functioning in the general insurance sector are subject to the provisions of Section 64UM read with Section 42D of the Insurance Act, 1938 (hereinafter called 'the Act') as also the provisions of the Insurance Surveyors and Loss Assessors (Licensing, Professional Requirement and Code of Conduct) Regulations, 2000 (hereinafter referred to as 'the Regulations').
2. Dinesh Chand Jain (hereinafter referred to as 'the Surveyor') was granted a license by the Insurance Regulatory and Development Authority (hereinafter referred to as 'the Authority') to carry out survey and loss assessment vide license No. SLA-65351/98-08 dated August, 22, 2003 that was valid up to August, 25, 2008. Prior to the expiry of the license, the surveyor submitted an application dated August, 14, 2008 seeking renewal of his license which is the subject matter of the present proceedings.
3. At the time of consideration of the application, the following related facts were brought to the attention of the Authority :-
 - (i) Complaints were received by the Authority as against the surveyor, alleging criminal intimidation and malpractices in his work. Hence, the Authority called for an explanation

from the surveyor who vide his letter dated February 28, 2007, denied any liability.

- (ii) A Special Civil Application (SCA) No. 7095/08 was filed by one M/s Giriraj Pharma before the Gujarat High Court at Ahmedabad, in which M/s Kaypsens Surveyors Pvt. Ltd., represented by the surveyor, M/s. United India Insurance Company Limited (the insurer) and the Authority were impleaded as respondents. In the petition, while challenging the incomplete settlement of their insurance claim by the insurer, the petitioner had also alleged that the surveyor in association with Kalyan Prasad Sen; another licensed surveyor and loss assessor had carried out the work of survey and loss assessment as a 'corporate surveyor and loss assessor', in the name and style of 'M/s Kaypsens Surveyors Pvt. Ltd.' without being licensed by the Authority. Vide an order dated 5th September, 2008, the court disposed off the petition with a direction to the insurer to pay the undisputed amount of the claim to the petitioner, who was also directed to approach the consumer forum in respect of the remaining claim amount. In compliance thereof, M/s Giriraj Pharma filed a consumer case i.e. CC No. 907/2008 before the District Consumer Forum, Vadodara which was allowed vide order dated June 01, 2009, against which the insurer filed an appeal before the State Forum which is presently pending. However, aggrieved by the order of the Gujarat High Court, both the insurer and M/s Kaypsens Surveyors Pvt. Ltd. filed LPA Nos. 127/08 and 1273/08 respectively. However, the Division Bench of the High Court vide its order dated January 21, 2009, upheld the order of the single judge and disposed off the appeals on the ground that since the

claimants had already moved the Consumer Forum and the matter was pending before the said forum, the same was to be considered by the forum itself. The court further observed that appropriate action in accordance with law was to be taken by the Authority in case the surveyor and loss assessor as licensed by the Authority was found to have committed any violations of the provisions of the Insurance Act, 1938 and the IRDA Act, 1999.

4. Having regard to these fact as also the observations of the Division Bench of the Gujarat High Court, the Authority issued a notice dated September, 23, 2008 upon the surveyor calling upon him to show cause as to why appropriate action should not be initiated against him. The surveyor replied to the notice vide his letter dated October, 21, 2008, in which he inter-alia stated as follows :-

- i. He had undertaken work of survey and loss assessment jointly with another licensed surveyor and loss assessor; Kalyan Prasad Sen, although the surveyor related work was allotted to them in their individual names and they had submitted the reports of survey/inspection jointly signed by them.
- ii. He and Kalyan Prasad Sen had together formed a Private Limited Company namely 'M/s Kaypsons Surveyors Pvt. Ltd.', Insurance Surveyors and Loss Assessors", in 2002 registered with RoC, Ahmedabad.
- iii. As per the licensing provisions of the Insurance Act, a company or a firm was required to have a license to act as surveyor and loss assessor only in case all its directors,

individually though eligible for a surveyor's license, did not possess the individual surveyor's license.

iv. As they did not consider it necessary to obtain a surveyor's license for their corporate firm, it was not licensed.

5. Having regard to the facts of the case, IRDA issued a notice of hearing dated March 04, 2009, upon the surveyor providing him an opportunity of personal hearing on April 02, 2009.
6. The surveyor appeared before the Authority for the hearing on the scheduled date and reiterated the contentions advanced earlier. While admitting to signing on the letter heads of the corporate firm; M/s Kaypsens Surveyors Pvt. Ltd., Insurance Surveyors and Loss Assessors, in their capacity as individual surveyor and loss assessor license holders, he however pointed out that his license to act as a surveyor and loss assessor had expired on August 25, 2008 and his application seeking renewal of license had not been granted, he had stopped accepting new assignments since the date of the expiry of his license on August 25, 2008 and that he had not violated any of the provisions of the Insurance Act or the IRDA Act.
7. Upon consideration of the facts and circumstances of the case and the submissions made by 'the Surveyor' in writing and during the course of the personal hearing, it is observed as follows:-
 - i. Section 64UM(1)(D)(ii) of the Act as also Regulation 4(1) of the Regulations categorically provide that where an applicant seeking a license to act as a surveyor or loss assessor is a company or a firm, it is required to satisfy the Authority that all its directors or partners as the case may be, possess one or more of the qualifications specified in Section 64UM(1)(D)(i) of

the Act and that none of such directors or partners suffer from any of the disqualifications mentioned in Section 42(4) of the Act. This unequivocally means that notwithstanding the directors/partners of a corporate or a firm, fulfilling the prescribed qualifications and also licensed to operate as a surveyor and loss assessor, the corporate or the firm would also have to be necessarily licensed to operate as a corporate surveyor and loss assessor. This view is reinforced from the provisions of Regulations 7(3)(i) and 7(3)(ii) of the Regulations which mandate every applicant, be it a company or a firm, seeking renewal of its license, to certify to the Authority that he/they have not contravened any of the provisions of the IRDA Act, Insurance Act, or the Rules and Regulations made under those Acts or any order or direction issued by the Authority and that they have not made a statement which is false, in material particulars with regard to his/their eligibility for license or renewal thereof in respect of the activities transacted by him/them or matters connected therewith as a surveyor or loss assessor.

- ii. In the facts of the given case, the surveyor was granted a license to act as a surveyor and loss assessor as an individual only. So also was the case of another licensed surveyor and loss assessor. Admittedly, both these licensed surveyor and loss assessors were undertaking the work of surveyor and loss assessors and submitting their reports under the umbrella of an entity namely 'M/s Kaypsens Surveyors Pvt. Ltd'. Admittedly, this entity is a registered entity but not licensed to act as a surveyor and loss assessor.
- iii. As is apparent from a cumulative reading of the facts of the case and the provisions of the law referred to above, there are

no two views about the fact that an entity who seeks to function as a surveyor and loss assessor, be it an individual or a firm, is required to be licensed by the Authority and no leeway is provided in case of a company whose directors are holding individual surveyor licenses. The contention that the firm per se was not functioning as a licensed surveyor and loss assessor but that the surveyor related works were being carried out as an individual, though submitted under the letter head of the corporate firm, carries no weight in as much as the surveyor related activities carried out whether singly/jointly with another surveyor, when submitted under the letter head of the corporate surveyor firm, gives rise to the mistaken assumption of any person with ordinary prudence that the corporate firm is a licensed entity

iv. Although the surveyor had admitted to the charge, he has tried to justify his actions by attributing the same to his understanding of the relevant legal provisions i.e. that there was no need for a corporate firm to have a surveyors license and that such a company needed to have a license only in case its directors although eligible for a surveyor's license, did not possess the individual surveyor license. However, this explanation is unacceptable since, being a licensed entity, the surveyor is expected to be quite thorough in all aspects of the insurance business and ought to be aware of the mandate prescribed by the Authority

v. I have also noted that while responding to the complaint forwarded to him by the Authority, the surveyor vide his letter dated 28.02.07, had represented himself under the letter head of 'M/s Kaypsens Surveyors Pvt. Ltd.'. This further reinforces

the findings of the Authority that the Surveyor had been representing M/s Kaypsens Surveyors and Loss Assessors.

vi. Both the individuals i.e. the surveyor and Kalyan Prasad Jain, were associated with M/s Kaypsens Surveyors Pvt. Ltd. as Directors and were representing themselves through the said entity. The blatant usage of the letter head of an unlicensed corporate firm, during the course of survey and loss assessment jobs as also the fact that the letter head of the corporate firm 'Kaypsens Surveyors Pvt. Ltd' is followed by the words 'Insurance Surveyors and Loss Assessors', lends credence to the facts of them trying to mislead any unsuspecting policyholder and clearly amounts to a violation of the code of conduct, which, inter-alia requires such an entity to behave ethically and with integrity in the professional pursuits which includes fair dealings and truthfulness.

vii. The facts detailed above clearly establish that the surveyor has acted in a manner amounting to issuing a statement which is false, in material particulars, in respect of the activities transacted by him as a surveyor and loss assessor. He has clearly failed to discharge the duties and responsibilities in a satisfactory and professional manner.

viii. All regulated entities are expected to observe all the laid down rules, regulations and guidelines in letter and in spirit at all times. The non-observance of the fundamental piece of legislation relating to the mandatory licensing of a regulated entity indicates the casual manner in which the surveyor chose to operate. It is therefore imperative to check such actions that are bound to cause unnecessary confusion in the minds of the

policy holders, else such deviations could disrupt the smooth regulation of the insurance business in India.

- ix. Regulation 8(4) of the Regulations empowers the Authority to refuse to renew the license of a surveyor or loss assessor in case he fails to discharge the duties and responsibilities in a satisfactory and professional manner or violates the code of conduct prescribed under the Regulations.
8. Having regard to the facts of the case and the gravity of the violations committed by 'the Surveyor', the Authority is of the considered opinion that the application seeking grant of renewal of license earlier granted to the surveyor to act as a licensed surveyor and loss assessor, be rejected.
9. Accordingly, on a judicious exercise of the powers and the discretion vested in the Authority under Section 14(1) of the Insurance Regulatory and Development Authority Act, 1999 read with Regulation 8(4) of the Regulations, the application filed by Dinesh Chand Jain seeking grant of renewal of license earlier granted to him to act as a licensed surveyor and loss assessor is hereby rejected.

PLACE: HYDERABAD
DATE: 15th SEPTEMBER, 2009

T S NAIK
DEPUTY DIRECTOR