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Beacon Insurance Brokers Pvt. Ltd.
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THE BEACON BULLETIN

Beacon Monthly Newsletter: Credit and Liability Insurance

CREDIT INSURANCE

MITIGATION OF PAYMENT RISK IN RECENT COVID-19 SCENARIO

Macroeconomic indicators show that the pandemic has severely impacted the global economy and more specifically, international trade. The Covid-19 pandemic has brought global corporate giants and small businesses who are a part of global supply chain to halt owing to containing the spread of COVID-19 by enforcing lock-downs in different continents. The lock-down across countries has impacted core trade operations. In the Europe & US many technically credit worthy buyers are becoming high credit risk as compared to they were in the past.

The initial impact is more certain in sectors like textiles, ready made garments, apparel & luxury goods industries. Industry experts say that buyers in the west and other regions are looking to cancel orders and as cargos are not being shipped and buyers have ways in getting out of the contract.

Order cancellations and non-acceptance of goods are becoming quite rampant. There are also situations where the goods have reached the buyer but they are not accepting the goods. In such cases, to ensure that business doesn't get disrupted and risk associated with it is fully covered, Trade Credit Policy can be used as a risk mitigation tool. Various coverage under the policy are mentioned as below:

COMMERCIAL RISK

1) Risks covered on the overseas buyers:

- Insolvency of the buyer.
- Failure of the buyer to make the payment due within a specified period, normally four months from the due date.
- Buyer's failure to accept the goods, subject to certain conditions.

2) Risks covered on the L/c opening Bank:

- Insolvency of the L/c Opening bank.
- Failure of the L/C opening bank to make the payment due within a specified period normally four months from the due date.
- Insolvency of the L/c Opening bank.

POLITICAL RISK

- Imposition of restriction by the Government of the buyer's country or any Government action, which may block or delay the transfer of payment made by the buyer.
- War, civil war, revolution or civil disturbances in the buyer's country. New import restrictions or cancellation of a valid import license in the buyer's country.
- Interruption or diversion of voyage outside India resulting in payment of additional freight or insurance charges which cannot be recovered from the buyer.
- Any other cause of loss occurring outside India not normally insured by general insurers, and beyond the control of both the exporter and the buyer.

PRODUCT LIABILITY UNDER COMMON LAW (OVER & ABOVE; IN ADDITION TO LIABILITY UNDER CONSUMER PROTECTION LAW)

India is a common law country. The courts & similar quasi-judicial tribunals constitute a body of written opinions commonly referred as common law. Howsoever, these institutions are influenced by equality, justice, good conscience & principles of natural justice, contract & tort.

Under Contract Law Product Liability embodies the principle of 'warranty' wherein damages are awarded by courts upon breach of any warranty made; however, Indian courts have developed principles of strict liability, absolute liability and negligence to underpin tort law for product liability.

WARRANTY

A warranty can either be implied or express; just like a guarantee. Any manifestation about the nature or quality of goods that forms the basis of the sale amounts to a warranty. Thus, any non conformance with the warranted quality or nature of goods may attract contractual liability action against the seller. However, the protection offered by doctrine of "warranty" under contract law in product liability cases was inadequate, which led the courts to move towards tort law principles of negligence and strict liability. The Sale of Goods Act, 1930 (SGA) specifically provides for implied or warranties with respect to fitness and merchantable quality of the product.

NEGLIGENCE

Negligence means failure of due or reasonable care, defective designs, improper warnings and privity. Failure to exercise due caution may amount to negligence. However, defenses like misuse/alteration of product, contributory negligence, proximate cause & assumption of risk by the claimant – rule out the protection for product liability.

STRICT LIABILITY

When the pleas of "warranty" & "negligence" failed, the courts developed principle of strict liability; wherein products that are unreasonably defective and dangerous; the seller would be made liable for any loss or personal injury.

DAMAGES

In India, the general law of damages is covered under SGA, Contract Act & Consumer Protection Act 2019 (CPA) and the tort law. Damages can be categorized as 'direct', 'indirect', 'consequential' or 'remote'; and 'punitive' or 'exemplary' damages. Under a contract, damages may be either liquidated (agreed upon and fixed in anticipation of breaches) or un-liquidated (assessed or quantified subsequently). In an action based on tort, damages may be nominal, ordinary or exemplary. Compensation to aggrieved party for injury suffered is the primary object of awarding damages under tort. However, in certain cases by awarding (in addition to compensatory damages) exemplary, punitive, retributory or vindictive damages; the secondary object of awarding damages is achieved.

INSURANCE COVERAGE

The Commercial General Liability (CGL) Policy usually covers premises & product operational liabilities. It covers the legal obligation of seller to pay damages due to resulting "injury" or "damage" arising out of alleged product. The CGL Policy also covers the defense cost incurred to defend such allegation against the seller. CGL policy does not cover liquidated or un-liquidated damages and punitive or exemplary damage.

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STAY SAFE!

FIGHT COVID19!