

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI**

**RESERVED ON: 16.12.2024
PRONOUNCED ON: 09.05.2025**

CONSUMER COMPLAINT NO. 218 OF 2014

Roland Exports 407,
The Mall, Ludhiana (Punjab) Complainant

Versus

M/s National Insurance Company Limited
Kochhar Market, Model Gram, Ludhiana
Through Branch Manager ... Opposite Party

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER**

For the Complainant : Mr. A. Mishra, Advocate

For the Opposite Party : Mr. Yogesh Malhotra, Advocate

JUDGMENT

AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER

1. This Consumer Complaint has been filed under Section 21 of the Consumer Protection Act, 1986 (for short "the Act") against the Opposite Party seeking to direct the OP:

“(i). Award a sum of Rs.2,88,76,088.00 in favour of the complainant against the opposite party in reference to the fire claim policy issued by the opposite party.;

ii) Award interest @ 24% per annum from the date of lodging of the fire claim by the complainant with the opposite party, till the date of its actual realization of the claim, in favour of Complainant and against the opposite party;

(iii) Award a sum of Rs.10,00,000/- on account of mental agony and harassment in favor of Complainant and against the opposite party;

(iv) Award cost of the present proceedings in favor of the Complainant and against the opposite party; and

(v) This Hon'ble Commission may also pass such further order(s) as it may deem fit and proper on the facts and in the circumstances of the present case.

2. Brief facts of the case, as per the Complainant, are that the complaint is aggrieved by the manifest deficiency in service by National Insurance Co. Ltd. Opposite Party (OP), in repudiating their fire loss claim of Rs.2,88,76,088 under Standard Fire Policy No. 404000/11/10/3300000427. The complainant contended that the claim, supported by Fire Claim Form dated 08.10.2011, arose from a blaze that engulfed their insured godown at Plot No. 78, Goindwal Industrial Complex, in the early hours on 08.10.2011, destroying about 280 tonnes of polyester raw material valued at about Rs.3.50 Crore. The fire was promptly reported to the Corporation Fire Service, and three tenders extinguished the fire after four hours. Police Station Goindwal Sahib, which recorded Daily Diary Report No. 9 of 17.10.2011 noting that the likely cause was festive activities during Dussehra. They contended that the firm was originally a partnership of Mr Rajesh Gupta and Mr Sanjay Goel formed in 2003 for trading and processing natural and synthetic fibres, converted to a sole-proprietorship under Mr Gupta on 06.07.2011. It had insured, on a floater basis, stocks of yarn, fibre, and allied goods valued at Rs.26 Crores at several locations from 20.01.2011 to 19.01.2012, and by endorsement dated 15.07.2011 duly added the Goindwal premises to the Schedule while deleting three others. Immediately after the incident they notified its bankers, Allahabad Bank and the State Bank of India, as well as the

insurer, and lodged the claim. The complainant contended that the insurer appointed three surveyors viz. Ashwani Gupta & Co. to take a preliminary view, Truth Labs to conduct forensic investigation and Atul Kapoor & Co. to assess the quantum of loss. At every stage the complainant furnished all documents and explanations requested, yet the insurer neither disclosed the surveyors' adverse observations nor afforded opportunity to rebut them. Instead, OP issued a show-cause notice dated 07.06.2013, relying chiefly on Truth Labs' speculative assertion that kerosene accelerant proved deliberate arson, and threatened to repudiate the claim. They responded on 18.06.2013 with a detailed refutation grounded in police report, the absence of electric supply, and the surveyors' own internal inconsistencies, particularly the third surveyor's self-contradictory stance of quantifying loss at over Rs. 52 Lakhs while denial of liability. Yet within 10 days, and without reasoned consideration of that reply, the insurer confirmed its decision to repudiate the claim. They secured the survey reports through the RTI Act, 2005 on 19.08.2013 and discovered that it rested on conjectures, uncorroborated allegations of fabricated stock records, and extraneous matters such as landlord disputes or business dealings with Arihant Threads Ltd., none of which bears on policy cover. The The Complainant was kept in the dark and the repudiation is unlawful and constitutes a clear deficiency in service by OP.

3. Upon notice, the complaint was forcefully resisted by the OP by filing their written version and contended that the complaint is, frivolous and filed with mala-fide intent. The complainant enterprise is engaged in commercial trading of fibres and yarn and the manufacture of twisted/doubled yarn, cannot claim the status of a “consumer” under Section 2(1)(d) of the Act, because the insurance was obtained exclusively for commercial gain, not for livelihood by self-employment. Jurisdictional objections also arise from non-joinder of indispensable parties. State Bank of India and Allahabad Bank hold an agreed-bank clause and hypothecated charge over the insured stock, have asserted an insurable interest, and must be arrayed. Universal Sompo General Insurance Co. Ltd., which bears thirty-per-cent co-insurance under the same policy, is likewise absent. On merits, the claim was processed in strict accordance with the policy. The complainant held Floater Policy No. 404000/11/10/3300000427 for Rs.26 crore, later endorsed on 15 July 2011 to include Plot No. 78, Industrial Complex, Goindwal Sahib. Upon receiving intimation of a nocturnal fire on 10 October 2011, the insurer deputed (i) Ashwani Gupta & Co. for a spot survey, (ii) Atul Kapoor & Co. for final loss assessment, and (iii) Truth Labs, a team headed by two former Directors of the Punjab Forensic Science Laboratory and a former CBI Superintendent for forensic and field investigation. The spot surveyor recorded wholesale non-co-operation,

late production of only photocopied stock registers and physical implausibility of stacking 280-plus tonnes of polyester in the modest shed. He noted that neighbouring premises of Arihant Threads Ltd. closely linked with them contained identical bales, suggesting translocation of stock. The final surveyor inspected all relevant sites, confirmed that the godown lacked authorised electricity, and found the stock register freshly written “in one go”. Measuring floor area and bale dimensions, he concluded that the maximum conceivable quantity was far below the 281 MT claimed. Employing a volumetric calculation, adjusting for poor-quality and extraneous material detected by Truth Labs, and applying the contractual excess, he valued the net loss at Rs.50,34,186. In view of material irregularities he advised the insurer to examine liability on the policy terms. Truth Labs’ exhaustive investigation excluded accidental causes, no power supply, no human presence, no propensity for spontaneous combustion, and detected kerosene-range hydrocarbons throughout the debris. Forensic GC-MS analyses, corroborated by controlled burn tests, demonstrated deliberate ignition with accelerants. White ash and molten flows evidenced low-grade or extraneous matter. Handwriting examination of the photocopied stock register showed all entries penned by one individual at one sitting, confirming fabrication. Truth Labs opined that the management, having motive, means, and opportunity, likely

orchestrated the fire for financial gain. On 07.06.2013 the insurer issued a detailed show-cause notice reciting the findings and invoking Conditions 6 and 8 of the Policy, which respectively require full production of authentic records and forfeit all benefits where fraud or wilful destruction is involved. Their reply of 18.06.2013 offered no credible rebuttal, failed to produce original registers, call-data records, or evidence of stock movements, and did not explain the presence of accelerants. After multi-layered scrutiny, OP repudiated the claim vide letter dated 30.06.2013 and the same is neither arbitrary nor deficient in service; it is the inevitable consequence of contractual breaches established by independent experts. The Apex Court has consistently held most recently in "*Vikram Greentech India Ltd. v. New India Assurance Co. Ltd. (2009 5 SCC 599)*" and "*Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd. (2010 10 SCC 567)*", that insurance contracts must be enforced according to their express terms, that uberrima fides is essential, and that courts may neither rewrite policies nor extend cover beyond their language. Even assuming that any liability survived, it could never exceed the final surveyor's quantified loss of Rs.50,34,186. In the circumstances, the claim stands vitiated ab initio by the insured's failure to comply with Condition 6 and by the fraudulent conduct proscribed by Condition 8. The OP therefore prays that the complaint be dismissed with costs.

4. The Complainant filed Rejoinder and reiterated the facts of the complaint.

5. In evidence the complainant filed a copy of Fire Policy (Exhibit CW1/1), a copy of endorsement (Exhibit CW1/2), a copy of the complaint to police and Municipal Corporation Fire Service, Amritsar (Exhibit CW1/3), a copy of the report in Punjabi and its translation in English (Exhibit CW1/4), a copy of the said intimation letters (Exhibit CW1/5), a copy of the Fire Claim Form with claim bill (Exhibit CW1/6), a copy of the report dated 18/10/2011 (Exhibit CW1/7), a copy of the report dated 21/10/2011 (Exhibit CW1/8), a copy of the letter dated 31/10/2011 (Exhibit CW1/9), a copy of the letter dated 03/12/2011 (Exhibit CW1/10), a copy of the letter dated 19/12/2011 (Exhibit CW1/11), a copy of the letter dated 27/12/2011 (Exhibit CW1/12), a copy of the letter dated 10/01/2012 (Exhibit CW1/13), a copy of the letter dated 31/01/2012 along with letter dated 21/03/2012 (Exhibit CW1/14), a copy of the letter dated 06/04/2013 (Exhibit CW1/15), a copy of the letters dated 06/05/2013, 14/05/2013 and 15/05/2013 (Exhibit CW1/16), a copy of letter dated 07/06/2013 (Exhibit CW1/17), a copy of the letter dated 18/06/2013 (Exhibit CW1/18), a copy of the RTI dated 18/06/2013 (Exhibit CW1/19), a copy of the letter dated 01/07/2013 (Exhibit CW1/20), a copy of the letter dated 01/08/2013 (Exhibit CW1/21), a copy of letter dated 19/08/2013 (Exhibit CW1/22),

6. Opposite party has filed its evidence affidavit.

7. The learned counsel for the complainant argued that the Complainant, is the proprietor carrying on business under the name of Roland Exports, held a floater Standard Fire Policy (No. 404000/11/10/3300000427 valid from 20.01.2011 to 19.01.2012 issued by the OP and co-insured 30% by Universal Sampo. An endorsement dated 15.07.2011 added the insured location at Plot No. 78, Industrial Complex, Goindwal Sahib, Tarn Taran, Punjab. He argued that in the early hours of 08.10.2011 a fire broke out in that godown, destroying polyester staple-fibre stock valued, per contemporaneous claim bill and Fire Claim Form lodged the same day at Rs.2,88,76,088. The loss was promptly notified to the insurer and to the complainant's bankers, State Bank of India and Allahabad Bank, whose charges were noted in the policy. The National Insurance appointed successive surveyors and investigators, Ashwani Gupta & Co for spot survey on 18.10.2011, Atul Kapoor & Co. for preliminary survey on 21.10.2011 and final survey on 18.05.2013 and Truth Labs for forensic investigation on 15.11.2012. While the first two reports questioned the volume of stock and the authenticity of production records, Truth Labs opined that kerosene accelerant suggested deliberate ignition and that their stock register was freshly fabricated. Relying exclusively on these reports, none of which was supplied to the Complainant until obtained under

the RTI Act on 19.08.2013, the insurer issued a show-cause notice on 07.06.2013 and the complainant received a detailed rebuttal on 18.06.2013 yet repudiated the claim by letter dated 30.09.2013 without addressing their explanations. He argued that repudiation is arbitrary, that no opportunity was given to confront or clarify the surveyors' allegations, and that the conclusions in the four reports are internally inconsistent and unsupported by credible evidence. It maintains that all policy conditions were honoured, that the original claim bill (45,856 kg of specified polyester grades) remains unrebutted, and that the insurer's concealment of investigative material and failure to engage with complainant's responses constitute a clear deficiency in service.

8. The learned counsel for the OP contended that the complaint is misconceived, frivolous, mala fide and not maintainable. Because the Complainant is a commercial concern engaged in trading and manufacturing for profit, it is not a "consumer" within the meaning of the Consumer Protection Act, 1986, and its dispute, replete with complex questions of fact and law, cannot be resolved in this Commission's summary jurisdiction. The claim was examined by the competent authority in light of the spot-survey report of Ashwani Gupta & Co., the final-survey report of Atul Kapoor & Co., the forensic-and-field-investigation report of Truth Labs, and the policy's terms and conditions; after full consideration the claim was repudiated and the

complainant was so informed by detailed letter dated 30.09.2013. Procedurally, the complaint is defective for non-joinder of parties which are indispensable. The policy carries an Agreed Bank Clause in favour of State Bank of India and Allahabad Bank, both of which have asserted insurable rights by letters dated 02.12.2011 and 31.12.2012. Moreover, Universal Sompo General Insurance Co. Ltd. holds a 30% co-insurance share under the same floater policy and has not been impleaded. The policy itself insured stock valued at Rs.26 Crore for 20.01.2011 to 19.01.2012; by endorsement effective 15.07.2011 the complainant added Plot No. 78, Industrial Complex, Goindwal Sahib, Tarn Taran, and deleted three earlier locations. The Complainant's intimation of a fire at 02.00 AM on 08.10.2011, received on 10.10.2011, estimated a loss of about Rs. 4 Crore in stored fibre and yarn. Ashwani Gupta & Co. conducted a spot survey on 18.10.2011, found the samples not "fresh," recorded non-cooperation and contradictions and recommended an investigation. Atul Kapoor & Co. visited on 14.10.2011 and in a preliminary report dated 21.10.2011 likewise urged independent investigation into cause and stock correlation. Because the godown lacked authorised electricity, the preliminary surveyor rejected "short circuit" and noted unauthorised loose wiring in the caretaker's rooms. Accordingly, on 04.11.2011 the OP appointed Truth Labs, represented by two former FSL Directors

and a former CBI SP, whose detailed report of 15.11.2012 concluded that (i) kerosene accelerants initiated the fire, the stock register was fabricated, and management motive and opportunity for financial gain could not be ruled out. Atul Kapoor & Co. then issued a final survey report dated 18.05.2013 which, without prejudice, valued a maximum net loss of Rs.50,34,186 after volumetric analysis, quality deductions, salvage, policy excess and application of Truth Labs' findings; the surveyor reiterated that the quantity claimed was excessive and that the burnt material differed from that declared. On 07.06.2013 the OP issued a detailed notice setting out why the claim was inadmissible under Conditions 6 and 8 of the Standard Fire Policy and invited a response within fifteen days. Their letter of 18.06.2013 offered no satisfactory proof, failed to produce the original stock register, and did not address the forensic evidence. After multi-level scrutiny, the competent authority repudiated liability vide letter dated 30.09.2013 noting deliberate breaches of Condition 6 (non-production of authentic records) and Condition 8 (fraudulent means and wilful destruction). Repudiation was made in good faith on the strength of expert survey and investigation cannot constitute "deficiency in service." Insurance contracts are governed strictly by their terms; the Hon'ble Supreme Court in cases such as "*Export Credit Guarantee Corp. v. Garg Sons International (2014 1 SCC 686)*", "*Suraj Mal Oil Mills v. United India*

(2010 10 SCC 567)", "United India v. Harchand Rai (2004 8 SCC 644)"; and "Vikram Greentech v. New India (2009 5 SCC 599)", has consistently held that policy conditions must be strictly enforced and survey reports treated as vital evidence ("United India v. Kantika Colour Lab, 2010 6 SCC 449"). Even assuming liability survived these breaches, it could not exceed surveyor's assessment of Rs.50,34,186. For all these reasons there is no cause of action, no deficiency in service and the complaint deserves outright dismissal with costs.

9. We have examined the pleadings, associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

10. It is a matter of record that Complainant had obtained a Standard Fire Policy No. 404000/11/10/3300000427 valid from 20.01.2011 to 19.01.2012 from OP insurer. It is the contention of the complainant contended that in the fire incident on 08.10.2011 complainant suffered loss of Rs.2,88,76,088 at their godown at Plot No. 78, Goindwal Industrial Complex. It is undisputed that the matter was reported to Corporation Fire Service, who immediately attended and extinguished the fire after four hours. The Police as well as the OP insurer were notified. The Complainant preferred the claim for Rs.2,86,76,088. The complainant insured, on a floater basis, stocks of yarn, fibre, and allied

goods valued at Rs.26 Crores at several locations for the period 20.01.2011 to 19.01.2012, and by endorsement dated 15.07.2011 duly added the Goindwal premises to the Schedule while deleting three others. Immediately after the incident they notified its bankers, Allahabad Bank and the State Bank of India, as well as the insurer, and lodged the claim. It is also a matter of record that, on receipt of the information of the fire incident, the insurer appointed M/s Ashwani Gupta & Co. for an on the spot survey, M/s Truth Labs to conduct forensic investigation and M/s Atul Kapoor & Co. to survey and render a report. The said M/s Ashwani Gupta & Co. filed a report dated 18.10.2011; M/s Truth Labs filed their report on 15.11.2011 and M/s Atul Kapoor & Co. has filed the report on 18.05.2013.

11. The report of M/s Ashwani Gupta & Co. dated 18.10.2011 reveals that the agency examined the incident and observed that the reported fire took place in the night of 07-08 of August 2011 and the fire brigade got initiation intimation at 2:00 PM and reached the site at 2:50 AM the fire brigade was informed by a person from Arihant Thread Limited at 2:00 AM. The fire brigade finally left the site at 09.05 AM on 08.10.2011. The surveyor observed the attitude of representative of the insured as non-cooperative and they were adopting the techniques of delaying the matter. Even when they called for certain records, the records were supplied with lot of delay. The surveyor observed significant non-

cooperation from the insured and there were issues with the landlord as well. It is the observation of the surveyor that, the fire occurred in the night of 07/08.10.2011 (Friday to Saturday). They visited on Monday at about 5:00 PM and again on 11.10.2011. By that time, Godown was completely burnt and only small sample of fibre collected from the debris. While the fire brigade left the premises after extinguishing the fire at 9:00 AM on 08.10.2011, the debris were allowed to burn for three days, so that one could not make clue of the items burnt and make assessment on some realistic basis. Samples were collected from the site are not fresh material as claimed. The surveyor considered that the insured was non-cooperative and was displaying tactics. The inspection of the site also revealed that relation between Mrs Arihant Trade Limited was such that there were contradictory statements given by the representatives of the insured and information gathered. The surveyor recommended for further investigations into the matter. Evidently, this report of the initial surveyor verger to adverse in nature. Further. M/s Truth Labs which filed the report on 15.11.2011 collected physical evidence with respect to the fire incident as well as necessary documents and analysed the evidence as well as the records produced by the insured. The report stated 'This gives an unambiguous indication that burnt debris contained traces of accelerants such as kerosene which could not

have been present as part of polyester stocks or in the Godown for any other purposes. This further leads to irrefutable conclusion that fire was initiated by igniting the stocks by pouring fire accelerants like kerosene to salvage the material quickly with a motive. The report concluded that 'the fire originated in the polyester fibre yarn godown could have been initiated by means of extraneous fire accelerator such as kerosene detected in forensic GC- MS examination of the burnt debris. The failure of the management to substantiate the statements relating to stock availability, inability to submit original stock register, failure to convince the reasons for variations in the address of invoices, forensic document examination confirming copy of stock register was fabricated probably for misleading the investigation and a series of other inconsistencies in their statements reveal an effort to deliberate suppression by the management to mislead the fact relating to cause of fire and therefore the possibility of management who only has the means, motive and opportunity to set fire for financial gain cannot be ruled out. In the report filed M/s Atul Kapoor & Co. on 18.05.2013, the surveyor went into deep analysis of the entire issue as well as the records produced to determine the liability of the insurer with respect to the incident, based on the policy in question. Careful perusal of the report reveals that the loss assessed was Rs.52,99,144 and the adjusted loss is Rs.50,34,186. After detailed evaluation of the

entire incident the surveyor has also relied on the report the M/s Truth Labs that the incident 'gives an unambiguous indication that the burnt debris contained traces of fire accelerants such as kerosene which could not have been present as part of polyester or in the godown for any other purposes. It further leads to irrefutable conclusion that the fire was initiated by igniting stocks by pouring fire accelerants like kerosene. The report of Truth Labs concludes that their investigations reveal an effort of deliberate suppression by management to misread the facts relating to cause of fire. The said report further indicates the possibility of management who only has the means and motive and opportunity to set fire for financial gain cannot be ruled out. The surveyor considered that it is also apparent from the report of Truth Labs that based on their forensic testing they have concluded that the debris contained substandard fibre as well as extraneous matter which have not been declared by the insured. Further the quantity claimed is far higher than the quantity as per the volumetric and other analysis done by Truth Labs. It was also observed that the claimed item normally melts on being ignited and then shrinks but the flames get self extinguished/ dies on its own, perhaps due to molten layer form foamy over the burning fibres which prevents oxygen reaching the inner layers. Hence, if such large quantity of polyester staple fibre had burnt, it would be expected that it would leave rock like stacks formed

after the outer layers of the bales start burning. However, in the instant case no such stacks were observed after burning/ during survey, and only molten debris along the floor were found. This further corroborated that the quantity claimed was excessive and/or the item burnt may not have been the item claimed, as also pointed out by the investigator. The insurers may keep these aspects in mind before deciding the claim on merits and as per policy terms.

12. Based on the based on the detailed reports of the surveyors bringing out the specific instances of use of inflammable material in the fire incident, which otherwise has no room to be present, the OP repudiated the claim.

13. In the aforesaid context, it is crucial to highlight that in catena of judgements the Hon'ble Supreme Court observed that the assessment made by a surveyor in such cases holds significant importance. The relevance of considering the Surveyor's Report was elucidated in *Sri Venkateshwara Syndicate Vs. Oriental Insurance Company Limited* (2009) 8 SCC 507, the Hon'ble Supreme Court has further observed as under:

“22. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the

link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.”

14. The Hon'ble Supreme Court in ***Khatema Fibres Ltd. v. New India Assurance Company Ltd., 2021 SCC OnLine SC 818***, decided on **28.09.2021** has held that:

“32. It is true that even any inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or which has been undertaken to be performed pursuant to a contract, will fall within the definition of the expression ‘deficiency’. But to come within the said parameter, the appellant should be able to establish (i) either that the Surveyor did not comply with the code of conduct in respect of his duties,

responsibilities and other professional requirements as specified by the regulations made under the Act, in terms of Section 64UM(1A) of the Insurance Act, 1938, as it stood then; or (ii) that the insurer acted arbitrarily in rejecting the whole or a part of the Surveyor's Report in exercise of the discretion available under the Proviso to section 64UM(2) of the Insurance Act, 1938.

...

37. Two things flow out of the above discussion, They are (i) that the surveyor is governed by a code of conduct, the breach of which may give rise to an allegation of deficiency in service; and (ii) that the discretion vested in the insurer to reject the report of the surveyor in whole or in part, cannot be exercised arbitrarily or whimsically and that if so done, there could be an allegation of deficiency in service.

38. A Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor's report to forensic examination of its anatomy, just as a civil court could do. ***Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop.***

15. In a recent case of **National Insurance Co.Ltd. Vs. M/s Hareshwar Enterprises Pvt. Ltd. & Ors.**, Civil Appeal No.7033 of 2009 decided on 18.8.2021, 2021 SCC Online SC 628, the Hon'ble Supreme Court has been held as under :

"17.....Therefore, in the facts and circumstances herein the surveyors report was submitted as the natural process, the conclusion reached therein is more plausible and reliable rather than the investigation report keeping in view the manner in which the insurer had proceeded in the matter. Hence, the reliance placed on the surveyor's report by the NCDRC without giving credence to the investigation report in the facts and circumstances of the instant case cannot be faulted. In that view, the conclusion reached on this aspect by the NCDRC does not call for interference."

“18. ... Having considered this aspect, the rate of interest to be awarded in normal circumstance should be commensurate so as to enable the claimant for such benefit for the delayed payment. There is no specific reason for which the NCDRC has thought it fit to award interest at 12% per annum. Therefore, the normal bank rate or thereabout would justify the grant the grant of interest at 9% per annum. Accordingly, the amount as ordered by the NCDRC shall be payable with interest at 9% per annum instead of 12% per annum. To that extent, the order shall stand modified...”

16. It is an established principle of law that in matters of insurance contracts the parties shall be transparent and act in absolute good faith. In the case in question, the records reveal non-cooperation of the insured with respect to the details sought by the surveyor or investigator. Considering the nature of the incident involving the specific nature of stocks that were burnt, the OP appropriately engaged an investigator to undertake forensic evaluation. The report of Truth Lab is significant bringing out the likely involvement of the insured in contribution to the incident, misrepresentation and exaggeration of the claim. Evidently, the insured is found wanting in giving necessary clarifications and maintaining transparency. Mere fact that three independent agencies which have investigated the matter have brought out malafide on the part of the insured/complainant with respect to contractual obligations as well as the incident in question reveals that the claim the complainant did not approach the matter with clean hands. Prior to the final consideration of the claim, OP had also issued a show cause notice dated 07.06.2013 seeking

clarifications on the issues adverse to the claim that emerged in the forensic and other evaluations. The complainant responded on 18.06.2013 with details and placing reliance on police report which considered festival season as the likely cause of fire, absence of electric supply and the surveyors' own internal inconsistencies in the report, particularly quantifying loss as Rs.50,34,186, while recommending denial of liability. While the complainant contradicted the contentions in the notice, clearly the same are inadequate vis-a-vis significant factual observations and presence of inflammable material alien to the stocks. Therefore, we are of the considered view that he repudiation of the claim by the OP insurer is within the scope of the policy in question.

17. In view of the foregoing, after carefully considered the pleadings, evidence, reports of independent surveyors and the arguments advanced by both the parties, we find the repudiation of the claim by the OP is within the scope of the policy terms and conditions.

18. The Complaint case No.218 of 2014 is, therefore, dismissed.

19. There shall be no order as to costs.

20. All pending Applications, if any, also stand disposed of accordingly.

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(SUBHASH CHANDRA)
PRESIDING MEMBER

.....
(AVM J. RAJENDRA AVSM VSM (Retd.))
MEMBER