(2016) 02 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Case No : 109 of 2007

ANJAL GARMENTS — APPELLANT

Vs

ORIENTAL INSURANCE CO LTD — RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Insurance Act, 1938, Section 64UM, Section 64UM(c) - Licensing of surveyors and loss assessors - Licensing of surveyors and loss assessors

Citation : (2016) 02 NCDRC CK 0007

Hon'ble Judges : V K Jain, B C Gupta

Advocate : Meenakshi Midha, Vishnu Mehra

Final Decision : Complaint Dismissed

Judgement

1. The complainant firm, which is engaged in the business of manufacturing and exporting home furnishing products at D-18, Sector -17, Kavi Nagar Industrial Area, Ghaziabad obtained two Standard Fire and Special Perils policies from the opposite party, insuring its factory premises, machinery, furniture & fixture, stocks including raw materials, finished, semi-finished goods as well as the goods in process and packing materials, to the extent of Rs.7 Crores. It is alleged by the complainant that in the evening of 21.03.2005, there was a major fire in its factory on account of short circuit, causing heavy loss to the premises as well as the stock lying and machinery installed therein. The intimation of the fire was given to the insurance company on 22.03.2005, estimating the loss at Rs.4 Crores. Later, the complainant lodged a claim seeking reimbursement to the extent of Rs.5,11,08,267/-. The insurer appointed M/s. Aditi Consultants Pvt. Ltd. to ascertain the cause of fire and asses the loss to the complainant. Loss Prevention Association was also asked to examine the claim lodged by the complainant. Vide letter dated 21.02.2006, the insurer informed the complainant that they were examining the survey report and had also appointed M/s. Royal Associates to investigate the matter.

2. The claim lodged by the complainant came to be repudiated by the insurer vide its letter dated 10.08.2006 alleging violation of condition no.6 of the policy of insurance by the complainant by failing to co-operate with the surveyor in providing material information and documents. Quoting from the report of the surveyor and the investigator, the insurer also alleged breach of condition no.8 of the policy of insurance, by the complainant, taking the stand that the cause of fire was not short circuiting and the said fire was not accidental. It was also claimed that purchase bills were initiated and/or arranged, to exaggerate the stock position and a false declaration in support of the claim were made by the complainant, thereby committing breach of condition no.8 of the insurance policy. Being aggrieved from the repudiation of the claim, the complainant is before this Commission seeking the following reliefs:- "i. award a sum of Rs.5,11,01,267/- less salvage amount on account of loss caused to the stocks and Rs.17,057/- towards the expenses for disposal of salvage in favour of Complainant and against Respondent;

ii. award interest @ 24% per annum on Rs.5,11,01,267/- and from the date of fire till the date of realization of amount in favour of Complainant and against Respondent.

iii. award additional interest @ 2% per annum under Regulation 9(6) of IRDA on Rs.5,11,01, 267/- from the date of fire till the date of realization of amount in favour of complainant and against Respondent.

iv. award a sum of Rs.7,69,43,910/- on account of loss of business in favour of Complainant and against Respondent;

v. award a sum as this Hon''ble Commission may deem fit on account of loss of goodwill in favour of Complainant and against Respondent;

vi. award a sum as this Hon''ble Commission may deem fit on account of mental agony and harassment in favour of Complainant and against Respondent;

vii. award cost of the present proceedings in favour of the complainant and against Respondent."

3. The complaint has been resisted by the opposite party reiterating breach of conditions no.6 and 8 of the insurance policy by the complainant. It is alleged in the reply that the complainant failed to produce the entire relevant record before the surveyor M/s. Aditi Consultants Pvt. Ltd. and had lodged a highly exaggerated claim. It is also claimed in the written version of the opposite party that in the intimation given to them the complainant had claimed loss of Rs.2 Crores but later claimed of more than Rs.5 Crores was lodged. The opposite party has quoted extensively from the report of the surveyor and the investigator, in order to justify the repudiation of the claim.

4. At the outset, the learned counsel for the complainant drew our attention to the letter dated 22.03.2005 sent to the insurance company intimating the loss due to fire in the night of 21.03.2005 at about 8 PM and submitted that the

figure of Rs.4 Crores written by the complainant in the second paragraph of this letter was changed by the insurer to Rs.2 Crores and in order to conceal the interpolation, the figure of Rs.''two Crores'' was inserted by hand. She also pointed out that the aforesaid figure of Rs.4 Crores had been changed to Rs.2 Crores not only in the above referred letter of the complainant but also in the internal memo dated 22.03.2005 prepared in the office of the insurance company as well as in the intimation for deputation of surveyor, prepared by the insurer on the same date. The learned counsel for the insurer, on the other hand, maintained that no interpolation was made by them and the complainant itself had changed the figure from Rs.4 Crores to Rs.2 Crores. In our opinion, we need not go into the question as to whether the initial estimate of the loss given by the complainant was Rs.2 Crores or Rs.4 Crores since the claim has to be adjudicated on its merit irrespective of the estimate given in the initial intimation to the insurer. If the complainant is so advised it can initiate such action may be open in law against the concerned officers of the insurer for the alleged interpolation in the above referred documents.

5. The report of the surveyor, to the extent it is relied upon by the opposite party in its written version, reads as under: "We have examined the site and electrical fittings. The electrical fittings of the main switch of the godown although damaged but does not appear to be the cause of the fire keeping in view the condition of table and chair lying nearby.

The Store Incharge Mr. Satish Kumar has in his statement stated that while leaving at 6.20 p.m. on 21st March, 2005, we have got the store closed and the MCB and electric connection or the store inside were shut down.

The insured has claimed loss on account of damage to building from the New India Assurance Co. Ltd. who have appointed Mr. C.K. Bhatia as surveyor, the correspondence received from him regarding cause of fire is enclosed as per Annexure-V.

The windows of the godown were in closed / sealed position and further the store is located on the near side and the flooring is at around 3'' height from the outside path. The chances of ignition of fire through throwing of bidi etc. appears to be remote.

Although the accurate cause of fire has remained unestablished, however no adverse was noticed which rule out that this is just an accidental fire.

The loss is mainly on account of Raw Material stored in that godown. The loss claimed by the insured appeared to be exaggerated. The quantity of salvage available does not justify the quantum of loss claimed by the insured. The Insured was asked to substantiate the claim by the quantitative analysis. The insured was reluctant in providing all the records. No books of accounts were produced before us, initially, only purchase & sale bills were provided. The Insured is always trying to avoid providing the details. Sometimes they stated that all the documents will be available at the factory premises, however only except purchase bills & sales bills no other details were provided. On certain occasion it was represented that all the records have been provided to us and other attempts were made to avoid providing information/clarifications. The books of account have been produced lately in December month after finalization of balance sheet. No stacking plan for storage of material has been made available. The insured has been indulging in unnecessary correspondence and has not been substantiating the loss by documents. The copy of correspondence is as per Annexure-VI.

"Quantities

The insured is stating that the quantitative records being maintained in the affected area have been completely burnt and the computer in which the stock records were maintained have also been burnt. The fire had only affected the store located on the bank side of the ground floor. It is not possible that all the stock records have got destroyed. We have recovered one partly burnt stock register the same was identified immediately by putting our rubber stamp. The quantities of fabric appearing in the stock register comes to 31463 Meters. The statement is given as per Annexure-VII.

"The purchase bills of fabrics were examined and in respect of certain suppliers the purchase invoices were not found in order e.g. in certain cases the Serial No. of the invoices are continuous as if no other sale has been made other than Anjal Garment."

"INSURER''S LIABILITY

The insured has not been able to substantiate the loss claimed. The assessment of loss given for the information of the insurers. The assessment of loss has been done on the basis and circumstances given in the report. Our observations are summarized as below:

* The cause of fire could not be accurately established.

* No Correspondence relating to export orders was made available. The orders in hand include large chunk of orders of defaulting parties. The insured has exported without L/C and is having large over dues of more than Rupees six crore from the buyers for more than one year.

* No stock records have been made available to us. The insured is stating that all the records have been burnt in fire. The affected premises was one of the three premises insured and the affected portion was used as raw material godown as such the statement that all records were burnt is not justified. Certain records found at the premises reveal that stock records were available.

* The insured has stated that the inter unit movement records are not maintained. As the raw material is received at other factories also, the insured''s version is not tenable.

* One of the factory premises was closed in January 2005 and the material was

shifted to the affected premises. The insured has not been able provide the detail of such material shifted along with the details of buyer for whom same was purchased.

* The insured has furnished the purchase bills for our verification. The bills contain lot of anomalies and bills of certain parties is in continuous serial number. It appears that the insured has exaggerated the purchases.

* No job worker Register is stated to be maintained.

* No production record is stated to be maintained.

* No Stacking pattern was provided.

* The availability of Stock could not be related to available export orders.

* There are huge over dues of the bank and the account is operated on daily basis with same dues. The bank has classified the account as NPA.

* As per the audited balance sheet, insured is not maintaining stock register due to nature of business and products, hence it is not possible to furnish quantitative details and the insured has submitted statement of opening stock for each type of fabrics for which no basis was provided.

* The fact that the adjustment has been made in the opening stock and the manipulation in records to exaggerate the claim is established from the documents found form the accounts department is violation of condition no.6 of the insurance policy i.e. "False Declaration made/used in support by the insured to obtain any benefit under the policy.

In view of the above it appears that the insured has made attempt to file a claim which is substantially higher than the loss suffered and the claim may be dealt accordingly."

6. As noted earlier, M/s. Royal Associates was appointed by the insurance company to investigate the claim submitted by the complainant. It is not illegal or undesirable on the part of an Insurance Company to test and verify the genuineness of the claim, particularly when the claim amount happens to be substantial. In National Insurance Co. Ltd. Vs. Harjeet Rice Mills, 2005 3 CPJ 6 , the insurance company engaged a private investigator who reported that the fire might not have been caused by short-circuit as was claimed by the insured and that it could have been arson or a deliberate attempt to make an insurance claim. The claimant contended that the report of the private investigator could not be looked into in the light of Section 64 UM (c) of the Insurance Act. Rejecting the contention, it was held that the Section 64 UM of the Insurance Act cannot stand in the way of the Insurance Company in establishing that the claim was a fraud on the company or that it was a case of deliberately causing a fire so as to lay the foundation for an insurance claim. The report of the investigator dated 16.04.2006, to the extent referred in the written version of the opposite party, reads as under:

"Findings

23. Anjal Garments, used to get dyeing of cloths from some firms, but payment for dyeing expenses bills was usually not made against dyeing charges. These payments were made against purchase of cloth just to increase the stock on papers. The purchase bills placed in file on which it is written ''against processing charges" seems to obtained just to increase stock and to adjust payment of dyeing charges.

24. Alokik creation, Suruchi Dyeing, Ginni Embroidery, Universal Calendaring and Tax cad firms are being operated by one person Arun Aggarwal. All these firms are dealing in fabric dyeing and sale of cloths. Anjal Garments used to get dyeing work from these firms, but payments of these expenses bills were made against purchase of fabric. As in case of Suruchi dyeing and universal calendaring factory. Suruchi dyeing used to issue dyeing expenses slip for particular period for Anjal Garments, the payment of these amounts were never received in that firm. Anjal Garments, made payment of these expenses to universal calendaring factory against purchase bills of fabric. Anjal Garments used to write wording "Against Processing Charges" on such purchase bills. As in case of bill No.18 Dt. 27/11/04 of universal calendaring factory. Said bill was issued in the name of Anjal Garments for purchase of Grey Fabric for Rs.179360/-. Anjali Garments write down wording "Against Process Charges" on said bill. At the same time, Suruchi Dyeing also issued slip for period from 17/11/04 to 27/11/04 for Rs.179312/- as dyeing expenses of Anjal Garment. So Anjal Garments did not make payment to Suruchi dyeing, but said payment for purchase of fabric was made to universal calendaring. Whereas there was no actual purchase it was just to increase the stock of insured.

25. Vak N Pack firm is not in existence at the address D-198, Ramanuj Dayal Market Ghaziabad, at the address written on the bill, So all bills of M/s Vak ''N'' Pack seems to be fake.

26. No such firm "Jai Baba Textiles is/was in existence at the address given in bill. So this bill is fake and just managed by Anjal Garments to show increase in their stock.

32. The insured was submitting false stock statements to Bank to obtain cash credit limit.

33. Most of purchase bills of insured are without challans, G.R. etc. For every purchase there has to be challan G.R. etc.

34. Some of the payment of purchase bills were made bogus by insured. As the insured issued cheque for these payment and later on these cheques were not presented in bank so far.

35. The insured also submitted false estimate of loss to insurer and tried to cheat the insurer, which is breach of insurer contract.

"Opinion

On the basis of our investigation and findings, recorded above, we are of considered opinion that cause of fire shown by insured as short circuit seems to be not genuine, because there was no electricity supply to factory from 6.30 p.m. onward on that day, due to fault in factory transformer. Official complained about fault in transformer was lodged with electricity deptt. Kavi Nagar Ghaziabad. It is also confirmed by electricity deptt. that there was no electricity supply in Anjal Garments during 6.30 p.m. to 8.0 p.m. on 21/3/05. It is also confirmed by most of the employees of Anjal Garments that there was no electricity supply in factory during 6.30 p.m. to 8.0 p.m. on 21/3/05. Moreover storekeeper Satish Kumar, physically verified the stock at 6.15 p.m. on that day and cut down electricity supply of Godown by putting off main switch of godown. So the cause of fire cannot be short circuit. The insured is showing huge stock in his godown at the time of fire. But in actual usable stock present in godown was a sper the semi burnt stock register recovered by surveyor (which is placed in survey report). Moreover salvage sold by insured is 41.00 ton and not 54.00 ton as told by insured. Most of the stock burnt was lying in store for the last many years as dead stock. Most of the purchases bills were found fake, which breach of terms and conditions of insurance policy. Some of purchase bills were obtained against processing charges for dyeing of cloth, just to increase stock in books only. The insured also cheated bank by sending false stock statements and obtained cash credit limit. Most of the purchase bills are without challans and G.R. etc. Some of cheques of payment have not been presented in bank so far. So these purchases seems to be bogus. The insured also submitted fake estimate of loss, which is breach of insurance contract. Insurer may deal with claim keeping in view the above said findings as per terms and conditions of policy."

CAUSE OF FIRE

7. The first question which arises for our consideration in this case is as to whether the complainant disclosed a cause of fire, which it knew or reasonably believed to be correct, to the insurer. The case of the complainant is that the fire in its factory broke down in the night of 21.03.2005 at about 8.00 p.m. In the claim form submitted to the insurer, the complainant expressly declared that the said fire was occasioned, to the best of its knowledge and belief, by short-circuit. Even in the complaint, the complainant has expressly alleged in para-4 of the complaint that in the evening of 21.03.2005, there was a major fire at the insured premises of the complainant, on account of short-circuit. Thus, a specific cause of fire was declared to the insurance company though, the complainant, in case, it was not aware of the cause of the said fire, could have stated so in the claim submitted to the insurance company. Even after the repudiation of the claim, vide letter dated 10.08.2006, the complainant did not change its stand and maintained before this Commission that the fire had broken out on account of short circuit in its premises. It would be pertinent to note here that in the repudiation letter, the insurer had disputed the cause of fire being short-circuiting

and quoted extensively from the report of the surveyor in this regard. Despite that the complainant did not come out with an alternative cause of fire nor did it take the stand that the cause of the fire could not be ascertained by it or could be other than short circuiting.

8. The learned counsel for the complainant relied mainly upon the report of the Fire Department and the opinion of the surveyor engaged by the complainant in support of her contention that the fire was actually caused due to short circuiting in the factory premises of the complainant. We have carefully examined the report of the Chief Fire Officer, Meerut dated 08.5.2005. The said report gives electric short circuit as a possible and not as a verified cause of fire. In the body of the said report, the Chief Fire Officer, Meerut inter-alia stated that possibly the fire appeared to have been caused by short-circuiting. There is no evidence of the Fire Department having actually investigated the cause of the fire or having taken opinion of a laboratory or an expert. In the aforesaid report; it only opined that the said fire could possibly be on account of short-circuiting.

9. No expert such as an Electrical Engineer was engaged either by the complainant or by the surveyor appointed by the insurance company to visit the factory and ascertain the cause of fire. There is no evidence of the complainant having requested the insurer to appoint an expert to visit the site of fire and give an expert opinion as regards the cause of the said fire. Even after the rejection of the claim, the complainant did not examine any expert before us to establish that the fire in the insured premises was actually caused or could be caused due to electric short-circuiting. Though, the complainant engaged its own surveyor namely M/s. Luxmi Surveyors and Engineers, there is no material on record to indicate that they are Electrical Engineers or an expert to identify the cause of such a fire. They did not take any expert opinion to identify the cause or a possible cause of fire in the light of the facts and circumstances of the case. M/s. Luxmi Surveyors & Engineers did not even inspect the site of fire soon after the occurrence and they have submitted a report on 05.2.2009, almost four years after the fire had broken out in the factory of the complainant. The opinion of Luxmi Surveyors & Engineers is based primarily on their analysis of the report of the surveyors and the investigators appointed by the insurance company. Therefore, in our opinion, not much reliance can be placed upon the said report dated 05.2.2009.

10. In his statement dated 29.03.2006, Mr. Satish Kumar, Store Keeper of the complainant expressly stated that on the date the fire broke down in the night, there was a severe storm and there was no electricity in the factory. In his affidavit dated 07.4.2006, Shri Satish Kumar reiterated on Oath that on that date there was a severe storm and there was no light in the factory. The surveyor also recorded statement of Shri Vipin Kumar, guard, employed by the complainant, in its factory. Shri Vipin Kumar, inter-alia stated that there was no power throughout the day on 21.3.2005 and he was told by the watchman on duty in day-time that generator was being used on that day. The surveyor also recorded

the statement of Mr. Jagdish Gautam, another guard, who, inter-alia stated that when the power supply failed at about 6.15 p.m., electrician Ashok started the generator. However, no such claim was made by the electrician Ashok Kumar Tyagi in his statement recorded on 07.4.2006, wherein he maintained that when there was power failure at about 6.30 p.m., he after lodging the complaint of power failure, went to his house. Even Satish Kumar, store keeper did not claim in any of his statements that the generator set was switched on after power failure on 21.3.2005. Logically, the complainant was unlikely to keep the D.G. set running or to switch it on after the workers and the staff had left at about 6/6-15 p.m., running a D.G. set being a costly affair. Moreover, if there was no electricity throughout the day, it is unlikely that the D.G. set, though not switched on during the working hours, will be switched on after the staff had left or was leaving.

11. Be that as it may, we will test the probability of the fire having been caused due to short-circuiting in the store room, in both the scenarios, the first being that the D.G. Set was switched on during the day time itself due to there being no electricity throughout the day and was still in use till 8.00 p.m. when the fire was detected and the other being that the D.G. set was switched on after 6.00 p.m. on account of there being no electricity from 6.00 onwards. The statements and affidavit of store keeper Shri Satish Kumar clearly show that the main switch board of the store was just behind his seat in the store and he used to switch off the main switch and MCB before leaving the store in the evening. It is also evident from his statement and affidavit that the main switch of the store was switched off by him even on the fateful day at about 6.15 p.m. while closing and locking the store door. He has also maintained in his statement that the lights used to be switched off by him before locking the store. Even if we assume that he was not very careful in performance of his duties and had not switched off some of the switches in the store, there could be no supply of power to the store once the main switch/MCB on the main switch or MCB of the store room was switched off by him. Therefore, there is absolutely no possibility of any fire or even smouldering starting in the store after Shri Satish Kumar had left at about 6.15 p.m. on that day, irrespective of whether the DG set was being used at that time or not.

12. It was contended by the learned counsel for the complainant that the smouldering possibility started before Shri Satish Kumar switched off the main switch board, locked the store and left for his home. In this regard, she relied upon the report /opinion of M/s. Luxmi Surveyors & Engineers, whom the complainant had appointed to take his opinion. M/s. Luxmi Surveyors & Engineers observed in this regard that the ignition and smouldering was probably not noticed by Satish Kumar, who had closed the door at about 6.15 p.m. and the fire continued to smoulder till the smoke was seen coming out from the store at about 8.00 p.m.

13. Smouldering is a slow, low temperature flameless form of combustion

sustained by the heat evolved, when oxygen directly attracts the surface of condensed phase fuel. As per the definition of smouldering given in the Free Dictionary, it is ''burning with little smoke and no flame''. It is also defined as ''thick smoke resulting from a slow fire''. As per the definition given in the Collin''s, smouldering is ''burning slowly without flame usually emitting smoke''. Thus, though there will be no flame so long as the fire is at smouldering stage; some smoke and / or small will certainly be emitted on account of smouldering. Therefore, had smouldering started before Shri Satish Kumar had switched off the main switch/MCB, his seat being very close to the main switch, the smell/ smoke emitted due to smouldering would not have escaped his attention. In fact, smouldering anywhere in the store would not have escaped his attention, on account of the smoke/smell emitted by it. We would like to note here that this is not the case of the complainant anywhere in the complaint that Shri Satish Kumar had forgotten to switch off the main switch / MCB before he left for his home on that day. Therefore, there is no reasonable possibility of the smouldering in the store room being the cause of fire.

14. Even if we assume for the sake of arguments that smouldering in the store room had started before the main switch was switched off by the store keeper and the said smouldering also escaped his notice, once the main switch/MCB was switched off by the store keeper, no spark/flame would have been produced on account of the smouldering and there could be no question of any flame/spark falling on the cloth kept in the store. Once the electric supply is disconnected by switching off the main switch / MCB, there will no supply of electricity anywhere in the store room, irrespective of whether the power supply is available or a DG set is being used. DG set or power supply if available, in such a case, would provide electricity to other portions of the factory but not to the store room.

15. We would also like to note here that no expert has been examined by the complainant to prove that even in the absence of power supply, smouldering could have resulted in producing spark and / or flame in the store room. Considering the report of the surveyor appointed by the insurance company and the stand taken in the repudiation letter as well as the written version to the complaint, it was necessary for the complainant to produce an expert to prove that the smouldering even in the absence of power supply could have resulted in the full-fledged fire by producing sparks and / or flames.

16. As noted by the surveyor, the wooden table and chairs which had been kept near the main switch of the store room had not caught fire. We are in agreement with the surveyor that had spark / flame started from the main switch of the store room, the wooden table and chair would not have remained unaffected.

17. Condition No.8 of the insurance policy inter-alia stipulated that if the loss or damage be occasioned by the wilful act or with the connivance with the insured, all benefits under the policy shall be forfeited. Since this is not the case of the complainant that cause of fire is not known or could not be reasonably ascertained by it and the facts and circumstances of the case rule out any

reasonable possibility of the fire having been caused due to short-circuiting in the store room, there is no escape from the inference that the said fire was an either wilful act of the complainant or an act committed in connivance with it. Therefore, the insurance company was entitled to forfeit all the benefits which were available to the complainant under the policy taken by it. FRAUDULENT CLAIM

18. The complainant claimed that the salvage weighing 54 tons was removed by them from the factory in certain trucks, numbers of which were provided to the investigator. The trucks were hired through Kohinoor Transport. The owner of the transport company confirmed in writing that they had not sent truck No. UP-14-5521 on 13.6.2005, truck No. UP-14-9469 on 16.6.2005 and truck No. UP-14-8599 on 17.6.2005. The complainant had claimed to have lifted salvage weighing about 13 tons in the above referred trucks on the dates mentioned above. The investigator therefore, concluded that the actual weight of the salvage was only 41 tons as against 54 tons claimed by the complainant and fake challans No. 3007 dated 16.6.2005, 3011 dated 17.6.2005 and 3044 dated 30.6.2005 were submitted by the complainant. The complainant has not examined the owner of the transport to prove that in fact, truck No. UP-14-5521, truck No. UP-14-9469 and truck No. UP-14-8599 were deputed by them on 30.6.2005, 16.6.2005 and 17.6.2005 respectively. Thus, atleast part of the claim made by the complainant was false based since it was atleast partly on three fake challans referred above. The weight of the salvage was inflated, obviously with a view to justify the quantity of cloth claimed in the store.The insurance company was entitled to repudiate the entire claim on this ground alone, even if, the other grounds given for such repudiation, are not accepted.

19. The complainant submitted one bill of 27.11.2004 issued by Universal Calendaring factory amounting to Rs.1,79,350/- against the sale of 100% cotton grey fabric. The investigator confronted the partner of the complainant with a printing slip of Rs.1,79,312/- on which date was written as 17.11.2004 to 27.11.2004. "Against processing charges" was also written by hand on the bill. The partner of the complainant could not give any satisfactory explanation for the aforesaid writing and alleged that it had been written by the store keeper Mr. Satish Kumar. The surveyor then recorded the statement of store keeper Mr. Satish Kumar, who stated that bill No.18 dated 27.11.2004 had the writing "against processing charges" in his hand, because the said bill had been issued against processing charges which Mr. Arun Agarwal (running Universal Calendaring factory which had issued the bill as well as the Suruchi Dyeing to which processing charges were owned by the complainant firm) had to take from the complainant. Thus, the complainant falsified its record by showing purchase of cloth against payment for dyeing of cloth. As a result, the stock in the record of the complainant increased atleast to the extent of Rs.1,79,350/- without the complainant actually purchasing the cloth from M/s. Universal Calendaring factory. In fact, according to the Investigator, there were also other bills, taken against processing charges, without actually buying the cloth mentioned therein.

The insurer would be entitled to deny the claim, on this ground alone.

20. The investigator also visited the address printed on the cash credit memo issued by Jai Baba Textiles. The said cash credit memos were produced by the complainant firm. No such firm was found existing at that address and a resident of that place Mrs. Sujata Singh confirmed in writing that no such firm was situated at that address. No evidence has been led by the complainant before this Commission to prove that Jai Baba Textiles used to function at MS-3, 606, Kendriya Vihar, Sector-56, Gurgaon at the time the bill No.125 for Rs.35,767/- was purportedly issued by it. The inevitable inference therefore is a fake bill purportedly to be issued by Jai Baba Textiles was produced and relied upon by the complainant in support of its claim. If the claim was fraudulent being based upon fake invoice, even to the extent of Rs.35,767/-, the insurer was entitled as per the terms and conditions of the policy to reject the entire claim.

21. The investigator visited D-198, Raamanuj Dayal Market, Ghaziabad the premises of the Vak ''N'' Pack, cash memo of which firm was produced by the complainant firm and found no such firm at the address given on the bill / cash memo. On enquiry, the surveyor came to know that there was no property bearing No.D-198 in Raamanuj Dayal Market, Ghaziabad. The complainant has filed an affidavit of Mr. Amit Bhargav, who claims to be the partner of Vak ''N'' Pack functioning at C-43, Sector-6, Noida and in the aforesaid affidavit, he claimed that the said firm was functioning at D-138, Raamanuj Dayal Market, Ghaziabad in the year 2004-05 in a premises taken on lease through Mr. Ajay Bhargav. However, no affidavit of the owner of D-138, Raamanuj Dayal Market, Ghaziabad has been filed by the complainant and there is no documentary evidence of M/s. Vak ''N'' Pack having taken a premises or running business in property No. D-138, Raamanuj Dayal Market, Ghaziabad on lease. The explanation of Mr. Amit Bhargav that the address was wrongfully typed as D-198 but was overlooked by them, also does not appeal to us since no businessman is likely to use the bills having a wrong address printed on them, particularly when no building bearing that number actually exists. The least he would do, in such a case, is to correct the address while issuing the bill, either by putting a stamp bearing correct address on the bill or by correcting the address by hand. The trader knows that if a bill bearing wrong address is used, a customer looking for the firm will not be able to reach him, particularly when there is no property bearing a municipal number given on the bill in that locality.

22. The complainant submitted bills purported to be issued by Ginni Embroidery, Delhi but the investigator, on visiting the address given on the bill found no such firm functioning there. The complainant also submitted bill purporting to be issued by the Alokik Creations, D-4, Pandav Nagar. When the investigator visited the address given on the bill, no such firm was found situated there. In his statement to the surveyor of the complainant, Mr. Arun Agarwal purportedly stated that Ginni Embroidery proprietorship concern of Mrs. Manju Rani Agarwal had shifted from D-5, Pandav Nagar to 37 South Side Industrial Area, Ghaziabad

in the year 2005-06. However, no statement of Mr. Manju Rani, proprietor of Ginni Embroidery was recorded by the surveyor of the complainant. No affidavit of Mrs. Manju Rani Agarwal has been filed before this Commission, despite the investigator of the insurer having reported that no such firm was existing at the address given on the bill purporting to be issued by the said firm. Though, Mr. Arun Agarwal, who did not own Ginni Embroidery claimed that the said firm was functioning at D-5, Pandav Nagar before shifting to Ghaziabad in the year 2005-06, no documentary proof of the said firm functioning at Pandav Nagar till the year 2004-05 was produced by the complainant either before the insurer or before this Commission. In our opinion, considering the report of the investigator, it was necessary for the complainant to prove before us that Ginni Embroidery was actually functioning at the address given on bill at the time the said bill purported to have been issued.

23. The investigator also found discrepancies in the amount which the complainant claimed to be payable to certain firms and the amount which those firms claimed to be due from the complainant. The discrepancies were found in the accounts of the Arihant Textiles and Garvit Textiles. This is yet another circumstance indicating that the documents produced and relied upon by the complainant did not reflect the true position of the stock available in the factory at the time fire erupted in the night of 21st March, 2005.

24. Condition No.8 of the insurance policy taken by the complainant reads as under: "If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy or if the loss of damage be accessioned by the wilful act, or with the connivance of the insured, all benefits under this policy shall be forfeited".

For the reasons stated hereinabove, we are satisfied that the claim lodged and the declaration made by the complainant was alteast partly false and fraudulent and they have also used fake documents in order to obtain benefit under the policy. The quantity of the salvage was 41 tons as against 54 tons claimed by the complainant and fake challans were produced in order to inflate the weight of the salvage; the invoices purporting to be issued by Jai Baba Textiles were fake since no such firm was found functioning at the given address; the invoices purported to be issued by Ginni Embroidery, Vak ''N'' Pack also appears to be forged documents, their genuineness having not been established before us and the complainant inflated the stock by obtaining invoices showing purchase of goods against the dyeing charges payable by them to certain firms. The repudiation of claim therefore is justified on this ground alone, even if we assume, despite our finding to the contrary, that the fire broke out due to short circuiting in the store room.

25. The surveyor, on scrutiny of the record of the complainant noticed that in certain cases serial numbers of the purchase bills submitted by the complainant were continuous as if no sale had been made to anyone other than the

complainant firm. The complainant produced several bills purporting to be issued by Alokik Creations. Bill No.800 was dated 6.11.2004, whereas bill No. 801 was 24.11.2004. This could not be possible unless there was no sale by Alokik Creations for eighteen days at a stretch. The complainant also produced bill No. 10 dated 07.7.2004 and bill No.11 dated 15.9.2004, both issued by Akarshan Fabrics. If these bills are genuine, it would mean that no sale at all was made by Akarshan Fabrics for more than two months at a stretch. In fact, out of bill numbers 6 to 14, purporting to be issued by Akarshan Fabrics, all the bills except bill No.9 were issued in favour of the complainant and the said bills were issued between 30.5.2004 to 6.10.2004, meaning thereby that for more than four months, only one bill to a purchaser other than the complainant was issued by Akarshan Fabrics. There is a time lag of nineteen days even between bill No. 12 and 13 of Akarshan Fabrics. Bill No. 1 to 12 purported to be issued by Garvit Textiles in favour of the complainant though on different dates in April, 2004, meaning thereby that no other sale took place during the aforesaid period. Out of bill No. 1 to 75, M/s. Garvit Textiles purportedly issued 71 bills in favour of the complainant giving an impression that the complainant was almost the sole purchaser from them for a period of more than six months to which these bills pertain. In fact, out of bill numbers 1 to 143 issued between 08.4.2004 to 19.3.2005, 99 bills were issued only to the complainant, which in the absence of a satisfactory explanation creates doubt on the genuineness of the aforesaid bills. We also find that the date of bill No. 14 is 24.4.2004, whereas the date of bill No.15 is 13.4.2004. We note further two bills dated 8.4.2004, one bearing serial no. 16 and the other bearing serial number 17, whereas the bills of 13.4.2004 bear serial number 7 to 12. In the normal course, the serial numbers of the bills dated 8.4.2004 would be prior to serial number of bills dated 13.4.2004 and 24.4.2004. We also notice that bill No. 19 is dated 24.4.2004 whereas bill No.18 is dated 28.4.2004. In the normal course, the serial number of the bill of 28.4.2004 should be later than the serial number of 24.4.2004. We also note that the bill no. 28 is dated 7.5.2004 whereas bill number 29 is 30.4.2004. In the ordinary course, the bill of 7.5.2004 should bear a later number than the bill of 30.4.2004. We also note that bill No.48 is dated 5.7.2004, whereas bill No.49 is dated 02.7.2004. In the ordinary course, it should have been the other way round. Bill No.83 is dated 15.10.2004, whereas bill No.84 is dated 14.10.2004. Again, the serial number of the bills should have been vice-versa. We also note that there is a bill dated 12.4.2004 for Rs.157.50 bearing serial number 853. We fail to appreciate how the number of this bill could be 853 when the numbers of the other bills in April, 2004 were from 1 to 24. Though, bill No.853 is in respect of the sample, there is another bill of sample dated 3.8.2004 and the number of the said bill is 58.

26. The above referred discrepancies strongly indicate that not all the documents submitted by the complainant to the surveyor of the insurer were authentic and genuine. However, even if we ignore the aforesaid discrepancies in the serial numbers vis- -vis dates of the bills, the complaint is liable to be dismissed for the

reasons summarized in para-24 hereinabove.

27. For the reasons stated hereinabove, the complaint is hereby dismissed, with no order as to costs.