(2013) 01 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

M/S. Sukhjika Industries APPELLANT

Vs

NATIONAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Citation : 2013 0 NCDRC 504 : 2013 1 CPJ 98

Hon'ble Judges : R.Lakshminarasimha Rao , Thota Ashok Kumar J.

Advocate : NISARUDDIN AHMED JEDDY

Judgement

1. THE complaint is filed seeking direction to the opposite party Insurance Company to pay a sum of Rs. 63,97,020 besides Rs. 10 lakh towards compensation towards suffering mental agony as also costs.

2. THE averments of the complaint are that the complainant, a proprietary concern engaged in business of manufacturing and trading of cattle feed since 1963 and purchased the machine made in China for manufacturing feed packing material. The complainant firm insured the machine and building as also the packing material for the cattle feed under Insurance Policy bearing No. 551703/11/08/3100000716 for the period commencing from 20.12.2008 till 19.12.2009 for the sum assured Rs. 75 lakh. The complainant firm obtained the Insurance Policy basing on the representations of the opposite party Insurance Company. The proprietor of the complainant firm is an illiterate lady and the opposite party has obtained her signature on the blank proposal form. On 27.1.2009 at about 1.30 a.m. a fire accident took place which was extinguished by two fire engines by 4 a.m. The complainant firm suffered loss of the machinery and packing material and also the building. The complainant lodged complaint with the police Rajendra Nagar. A case in FIR 94 of 2009 was registered on 27.1.2009. Due to the fire accident the packing material got melted and the melted material was spread over the entire room where the machine was installed and the machine was encompassed by the melted plastic material.

3. THE opposite party Insurance Company deputed surveyor M/s. N.V. Rao Associates who on 29.1.2009 addressed letter calling upon the complainant to

submit the details of the accident and the documents. As the premises was not conducive for the business purpose, the complainant vacated the premises and started to retrieve the machine which was totally engulfed by the melted plastic material and for removing the melted plastic material the complainant incurred huge expenditure. The complainant could sell a few parts of the machinery, building, etc., and could recover few amounts. The surveyor requested the complainant to furnish the estimate of loss towards the repairs of the damaged machinery supported by the quotations from the competent repairers.

4. THE complainant brought to the notice of the surveyor that Davuri Srikanth Babu and Associates, Gampally Sridhar and Associates, Fricon Systems and M/s. Yin Sugmai Machinery Generalï¿ 1/2 Factoryï¿ 1/2 wereï¿ 1/2 approachedï¿ 1/2 besidesï¿ 1/2 M/s. Rajesh Engineering Constructions who examined the machine and certified that the machine is irreparable. The agencies concluded that due to the extensive fire accident the entire machine got totally burnt and it cannot be repaired. Some of the parts of the machine which could be segregated. The complainant informed the surveyor that the engineers from China and Haryana would visit the place for repairing the machine in the month of July 2010 and requested the surveyor to be present at the spot at the time of the inspection. The Engineers from China inspected the Machine and certified that the machine is beyond repairable stage. The complainant addressed letter dated 13.8.2009 to the surveyor, along with the required documents for processing the claim. The Surveyor acknowledged the receipt of the letter through their letter dated 15.9.2009 which stated that the complainant had not enclosed the estimate of loss towards repairs of the damaged parts nor any quotations from competent repairers. The complainant had given reply 28.1.2010 stating that it had submitted the certificates issued by, Fricon Systems and M/s. Yin Sugmai Machinery General Factory stating that the machine was irreparable. The surveyor addressed letter dated 28.2.2010 disputing the certificate given by the agencies and stated that they informed the Surveyor that the damage caused to the machinery was minor and the machine can be repaired and the surveyor reiterated their demand for furnishing quotation from competent repairers.

5. THE complainant was informed on 10.8.2010 that the surveyor had been to USA and the complainant ''s meeting with the Surveyor would be arranged after the Surveyor has returned to India. The complainant approached the grievance cell, IRDA on 12.8.2010 and the authority addressed letter dated 6.9.2010 calling upon the opposite party Insurance Company to resolve the grievance of the complainant firm. The complainant addressed letter dated 7.9.2010 requesting the opposite party to settle the claim and the opposite party threatened to reject the claim on the premise that the complainant approached the IRDA.

6. THE opposite party in collusion with the Surveyor has repudiated the claim. The Surveyor addressed letter dated 30.9.2010 expressing surprise about the complainant ''s statement that the entire factory was gutted due to short circuit.

The complainant several times informed the Surveyor about the certificates issued by different agencies and despite that the Surveyor instructed the complaint to do the impossible act. The complainant addressed several letters to the opposite party on 14.9.2010 and the opposite party requested the complainant to furnish estimate for repairing the machine. The complainant ''s proprietor addressed letter on 23.10.2010 to the opposite party bringing to its knowledge her trouble and her failing health. The survey report was submitted to the opposite party which exhibits the supine indifference developed by the Surveyor against complainant who threatened the proprietor of the complainant firm for addressing the correspondence in Hindi. The complainant got translated the letter into English on 23.10.2010. The opposite party repudiated the claim on 28.10.2010 on untenable and vexatious grounds that the Surveyor assessed the loss at Rs. 8,72,126 and that the claim in respect of feed is only for cattle feed and that the complainant has no insurable interest. It is stated that the condition No. 6 of the policy was violated. The claim was repudiated on unreasonable grounds. The complainant firm submitted its reply on 6.11.2010 to the grounds of repudiation and requested the opposite party to reconsider its decision for which the opposite party on 13.4.2011 agreed to reconsider its decision and appointed M/s. Zuber and Co., to look into the matter.

7. VOLUMINOUS questionnaire was put to the complainant firm by M/s. Zuber and Co., and the complainant replied to it by letter dated 14.7.2011. The opposite party addressed letter on 8.9.2011 confirming the earlier repudiation. Fresh consideration of the claim was a hogwash and it was not objectively considered by the opposite party. The grounds of repudiation are not sustainable for improper appreciation of the claim.

8. THE complainant under RTI Act sought for the documents from the opposite party company which was rejected on 13.5.2011, the opposite party exhibited vindictiveness against the complainant. The attitude of the opposite party to reject the request on one ground or the other and there was no rational approach in assessing the claim. The complainant has submitted to the opposite party about their interest in building and as regards mis-description and misrepresentation the ground of repudiation is vague and the complainant has not violated any terms of Insurance Policy. The complainant has claimed the amount of Rs. 63,97,020 after deducting salvage to the tune of Rs. 3,15,660. The repudiation of the claim on unreasonable grounds amounts to deficiency in service on the part of the opposite party Insurance Company. The opposite party-Insurance Company has resisted the claim by filing written version in the shape of counter affidavit and contended on the premise that the proprietor of the complainant-firm has not filed any documents to show that she has been the proprietor of the complainant-firm since 1963 and the complainant-firm is engaged in manufacturing and trading of cattle feed. The complainant-firm is not a consumer to maintain the complaint. The Chinese machinery is of substandard nature and the complainant-firm has not filed documents to show that the machinery was imported from China.

9. THE complainant-firm filed the case on untenable grounds. The opposite party has not obtained the signature of the proprietor of the complainant-firm on blank proposal form. The managers of the complainant-firm would be applying their mind to such documents before signing them. The complainant-firm has created the Fire Attendance Certificate in support of its claim for Rs. 63,97,020. The fire attendance certificate was issued by a non-competent officer who is not authorized to certify the loss. The District Officer is competent authority to certify the loss by conducting Panchanama, investigation and examination of witnesses. No Panchanama was conducted by the Fire Attendance Officer.

10. AS per Section 17 of A.P. Fire Service Act, 1999 and Fire and Emergency Operations and levy of fee Rules, the members of the Fire Service have to report about the negligence of the holders of the licence mentioned under Rule 24 and Sections 13 to 18 of the Act to the Director General of Fire Service and the Director General would conduct inquiry to take appropriate action. The officer-in-charge of the Fire Station will report of any damage done to any premises or property on the occasion of fire by the members of the service to his immediate superiors and the Director General of Fire Services. The Fire Certificate is erroneously marked to the complainant. The complainant-firm has violated the provisions of the National Building Code in regard to fire prevention and safety measures. None of the statutory agencies certified the loss and the fire accident. The complainant-firm without obtaining licence from fire service department is running hazardous and illegal factory. This Commission cannot acquiesce in an illegal matter which amounts to perpetuating illegalities. The complainant-firm has not furnished estimate of loss towards repairs of damaged machine supported by quotation from competent repairers. As per Clause 6 of the Insurance Policy, the insured has to produce further particulars, documents, information with respect to the claim and cause and origin of the loss.

11. THE complainant mentioned many authorities who have to be examined/ cross examined to ascertain the genuineness of the letters/reports. In summary proceedings so many witnesses cannot be examined. All the documents filed by the complainant-firm are denied. The complainant-firm has not mentioned as to which parts of the machine were sold and the complainant-firm has not submitted the estimate and quotation from competent repairers. The opposite party-Insurance Company does not know the two authorities, Sili Hu of Yin Sugmai Machinery General Factory and Fricon systems. The opposite party was not requested to witness their findings.

12. THE opposite party Insurance Company has repudiated the claim on the grounds that at the time of loss the stocks of cattle feed for covering which the Insurance policy was issued, stocks of cattle feed were not there. The complainant-firm has no insurable interest in the building as per the terms of the lease agreement which does not indicate requirement to insure the premises. The complainant-firm has not submitted the estimate of repairs to the machine and building or any documents related to purchase of stocks. Some of the

documents submitted by the complainant-firm amounts to misdescription and misrepresentation. The opposite party Insurance Company has reconsidered the matter at the request of the complainant-firm and appointed investigators and the complainant-firm has not submitted the information required by the investigators. The opposite party Insurance Company was compelled to invoke earlier repudiation letter dated 28.10.2010. The complainant involved in hogwash and tried to hoodwink the Courts to obtain unlawful advantage to which it is not entitled to. The opposite party Insurance Company is not bound to supply the surveyor ''s report to the complainant. The opposite party Insurance Company supplied repudiation letter dated 28.10.2010 to the complainant.

13. THE law is settled that the complainant cannot take advantage of the weakness of the opposite party and get away with what she is not legally entitled to. The complainant has no cause of action to file the complaint. In the month of December, 2007 the complainant got renewed the Insurance Policy for a period of one year for the cattle feed manufacturing and in the month of September, 2008 the lease agreement was entered into between the husband and wife which was expired in August, 2009 and the name of Sukhjika Industries is not mentioned in the lease deed. In the month of October, 2008 the complainant got installed the China Machine and to the question as to how the machine was installed even before it was purchased, the complainant gave evasive reply. The complainant informed the opposite party that its sister concern M/s. Sukhjika Impex Pvt. Ltd. purchased the machine in January, 2008 and it was sold to the complainant in the month of October, 2008.

14. IN December, 2008 the Insurance Policy was renewed for one year with the addition of packing material apart from the cattle feed and no proposal was sought for from the complainant as it was renewal of the Insurance policy. On 27.1.2009 the loss occurred and it was not known whether the machine was on trial run or it started production. On 28.1.2009 the opposite party appointed the surveyor and the complainant has not furnished the documents required for settlement of the claim. On 13.8.2009 the complainant submitted letter requesting for rectification of Insurance coverage from cattle feed manufacturing to HDPE manufacturing. The opposite party has not agreed for correction or amendment as the fire accident occurred on 27.1.2009 and the complainant already lodged the claim. In January, 2010 the complainant submitted two certificates, one from one unknown China company and the other from Fricon of Delhi. The complainant firm has not explained as to why the surveyor and the opposite party were not informed about the visit of the China engineer and the representative from Fricon. If the complainant could not approach the surveyor, it could have approached the opposite party. From February, 2010 till now the proprietor ''s son Rajesh Kedia has been acting on behalf of his mother and he signed the claim form and lodged complaint with the police and the Fire Department and has been signing the documents and contacting the surveyor. When she came to know that the claim is not payable, she started signing the letters to gain sympathy that she is an aged lady and a cancer patient and she

started writing letters in Hindi. Earlier all their letters were written in Hindi. The surveyor reported that the claim is not payable as the complainant has no insurable interest and the subject matter is different from what is mentioned in the Insurance Policy. In the month of May, 2011 the complainant applied for surveyor ''s report under RTI Act and the opposite party refused to issue it to the complainant. On 1.9.2011 the investigator submitted report stating that the complainant has not cooperated by not submitting the relevant documents.

15. THE proprietor of the complainant firm has filed her affidavit and the documents Exs. A1 to A63. On behalf of the opposite party Insurance Company, its Deputy Manager has filed his affidavit and the documents Exs. B1 to B5. The opposite party has also filed the affidavit of the surveyor.

16. COUNSEL for both the parties have filed written arguments. The points for consideration are: (1) Whether the repudiation of the claim is justifiable? (2) Whether the complainant-firm entitled to the amount sought for? (3) To what relief? Point Nos. 1 and 2:

17. THE opposite party Insurance Company has ''issued Insurance policy bearing number 551703/11/08/3100000716 in favour of the complainant-firm for the period from 20.12.2008 till 19.12.2009. Though the issuance of the Insurance Policy is not disputed, the opposite party Insurance Company disputed coverage of risk as regards to packaging material. The opposite party Insurance Company repudiated the claim on the premise that the Insurance Policy was issued covering risk of stock of cattle feed and not the packing material.

18. THE learned Counsel for the complainant-firm has contended that the packing materials (HDPE granules and sheet rolls) are covered by the Insurance Policy and the intention of the opposite party-Insurance Company is evident from the policy document. He has submitted that the risk in regard to the packing material is mentioned in the Insurance policy for two times and non-mention of it under the column "Description of the property " does not by itself does not mean that the risk on packing material is not covered. He has relied upon the decision of the Hon ''ble Supreme Court in New India Assurance Company Ltd. v. Zuary Industries Limited, reported in IV (2009) CPJ 19 (SC)=VII (2009) SLT 122=IV (2009) ACC 390 (SC)=(2009) 9 SCC 70, wherein it was held at paragraph 22 as follows: "....Moreover, in General Assurance Society Ltd. v. Chanddmull Jain, it was observed by a Constitution Bench of this Court that in case of ambiguity in a contract of Insurance the ambiguity should be resolved in favour of the claimant and against the Insurance Company. "

The learned Counsel for the opposite party-Insurance Company has contended that while referring to removal of part of the burnt material and its sale by the proprietor of the complainant-firm has relied upon the decision of the Hon ''ble Supreme Court in M/s. Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Company Ltd., IV (2010) CPJ 38 (SC)=VIII (2010) SLT 375=IV (2010) ACC 653 (SC)=2011 (2) SCJ 500, to contend that in a contract of insurance,ï¿ 1/2 the rights and obligations of are governed by the terms of the contract which have to be strictly construed and no exception can be made on the ground of equity.

19. IN the Insurance Policy, under the column "Description of Risk " it is mentioned that "On Super Structure Of The Building, On Cattle Feed, Packing Material And Plant And Machinary ". The same description is mentioned at the bottom portion of the Insurance policy.

20. THE Deputy Manager of the opposite party Insurance Company has stated that the complainant firm got renewed the Insurance Policy in the month of December, 2007 for a period of one year and the policy was issued covering risk of cattle manufacture and in the year the Insurance Policy was renewed from December, 2008 till December, 2009. He has stated in his counter affidavit that: "In December, 2008 Insurance Policy No. 732 expired and renewed by complainant as Policy No. 7I6 for one year from December 2008 upto December 2009. Only addition is packing material also apart from cattle feed. Renewal Policy Number 732 was mentioned in the Policy No. 716. No proposal form was asked by complainant as it was renewal. "

The statement of the Deputy Manager of the opposite party coupled with the specific mentioning of packing material would establish that the packing material along with the cattle feed and plant and machinery were provided with insurance coverage. The decision in the aforementioned case is squarely applicable to the facts of the case and the ambiguity in mentioning the packing material at two spaces in the Insurance Policy and not mentioning the same at another place in the same Insurance Policy would in the light of the ratio laid in the above said decision is to be interpreted in favour of the complainant firm.

21. THE opposite party has repudiated the claim of the complainant firm on the ground the complainant firm has no insurable interest in the building covered by the Insurance Policy as also that the complainant firm has not submitted estimate of repairs and some of the documents submitted by the complainant amounts to mis-description or misrepresentation and there was violation of condition No. 1 of the Insurance policy. The repudiation letter which is the subject of the dispute between the parties reads as under: 1. The policy issued to you covers the stocks of cattle feed. At the time of loss stocks of HDPE granules and sheet rolls were only found in damaged condition due to fire accident, but there were no stocks of cattle feed. Hence as per condition No. 3(a) of the policy issued to you, the claim is not payable. 2. It was found that you have no insurable interest in the building covered in the policy as per the lease agreement and further the lease agreement does not indicate any requirement to insure the premises nor about any liability in the event of a fortuitous occurrence. Hence the claim is not payable. 3. You have not furnished the estimate of repairs to the machine and building nor any documents related to the purchase of stocks. As you have violated General Condition No. 6 of the policy issued to you, the claim is not payable. 4. Some of the documents submitted by

you amounts to misdescription and/or mis-representation. Hence the claim is not payable as per the condition No. 1 of the policy issued to you.

22. THE first ground of repudiation in the foregoing paragraph is held unsustainable. Before proceeding to consider the second ground of repudiation, the contention of the opposite party in regard to the allegation that the Fire Attendance Certificate is manipulated need be considered. The opposite party contends that the complainant manipulated the fire attendance certificate and the Station Fire Officer is not competent to issue the fire attendance certificate. The opposite party has filed reply of the District Fire Officer, Mahaboobnagar to its query that the Director General of Fire and Emergency Services Department, A.P. Hyderabad and the Station Fire Officer are competent to issue the fire attendance certificate and the Station Fire Officer will assess the supposed cause of fire and incorporate the same in the ire report. The District Fire Officer has replied to the query of the opposite party that the Station Fire Officer does not mention the loss of property in the fire attendance certificate and the value of the property lost is mentioned in the fire report as reported by the owner of the premises. The opposite party contends that the fire officer is directed by the Director General of Fire Services not to issue fire certificate in proforma filed by the complainant as A11. It is contended that the complainant managed/ manipulated the fire attendance certificate.

23. THE learned Counsel for the complainant has submitted that the opposite party had gone to the extent of disputing the fire incident itself even after the surveyor appointed by the opposite party as categorically stated in the report that the cause of loss was the fire and it falls within the scope of the Insurance coverage. The surveyor in his report has opined in (Ex. B3), 4.4. and 4.5: Clause 4.4 -Discreet inquiries were made by us with the people of the locality regarding the nature of occurrence and they have confirmed the statement of the insured. Our physical inspection of the premises indicated that a short-circuit might have occurred in the electrical wiring near the water pump igniting the insulation of the loose wires and the flames spread to the entire wiring, the HDPE rolls which are inflammable and the mult-ifunctional laminating machine. The fire had resulted in partial damage to all the contents and also part of the building.

4.5 Cause -We are of the opinion that the cause of fire might be electrical short circuit. In our opinion, the cause of loss falls within the scope of cover of the policy subject to policy conditions.

24. AS the surveyor on making discreet enquiries came to conclusion that the fire was accidental and was the cause of accident. The Station Fire Officer is held competent to issue the Fire Attendance Certificate and he specifically mentioned that he has issued the certificate. There is no meaning in saying that the fire attendance certificate is manipulated. The opposite party has not repudiated the claim on the ground that the complainant has engineered the fire or that the complainant firm has manipulated the fire attendance certificate. The opposite party has taken the plea outside the scope of the repudiation letter which in any

manner is not permissible. For the first time before this Commission, the opposite party has attributed mala fide to the complainant firm as to the origin of fire and the genuineness of the fire attendance certificate. Such type of plea on a set of ground completely strange to the grounds of repudiation is not sustainable. The opposite party has contended that the machinery insured by the complainant firm is substandard. The learned Counsel for the complainant has contended that the allegation as to the standard of the machinery is uncalled for as the opposite party with open eyes has insured the machinery and the plea taken in the counter affidavit is not borne by the repudiation letter.

25. THE plea in regard to the fire attendance certificate and the standard or quality of the machinery is not borne out by the repudiation letter so is the plea in regard to the violation of National Building Code of India. The learned Counsel for the complainant has contended that the opposite party has taken into cognizance of everything prior to the date of issuing the Insurance policy and the allegation is vague and that the claim was not repudiated on the ground.

26. THE second ground on which the claim was repudiated is in regard to lack of or absence of insurable interest of the complainant firm in building covered by the terms of the Insurance Policy. It is not disputed that the building in question was covered by the terms of the Insurance policy. The proprietor of the complainant firm in her affidavit has stated that the claim was repudiated on unintelligible and arbitrary grounds. She has stated in her affidavit that: It is submitted that the opposite party having received premium, it is their bounden duty to compensate me for the loss suffered. Unfortunately, the claims raised by me are repudiated on unintelligible grounds. The opposite party with a sole intention to repudiate my claims of the complainant did not advert to any of the material placed by me. As such, the services of the opposite party are deficient and deplorable. The attitude of the opposite party is only to reject all my requests on one ground or the other.

The opposite party is supposed to verify all aspects as to the interest of the complainant firm in the building before issuing the Insurance policy wherein specifically the building is mentioned as one of the items to be covered with the risk. In the absence of relevant material and the opposite parties being estopped from taking such plea as it had issued the Insurance Policy having examined all the aspects in regard to the insurable interest of the complainant, the repudiation on the ground that the complainant has no insurable interest in the building is held not justified.

27. THE third ground of repudiation is in regard to non-submission of estimate of repairs to the machine and building and documents related to purchase of stocks as also violation of General Condition No. 6 of the Insurance policy.

28. CONDITION No. 6 of the Insurance Policy refers to intimation of claim within the stipulated time and submission of the documents such as specification books, invoices, investigation reports with respect to the claim and the origin and cause

of the loss. Condition No. 6 reads as under: 6. (i) On the happening of any loss or damage the insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company - (a) A claim in writing for the loss or damage containing as particular an account as may be reasonably practicable of all the several articles or items or property damaged or des-troyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage not including profit of any kind. (b) Particulars of the other Insurance, if any. The insured shall also at the times at his own expense produce, procure and give to the Company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents, investi-gation Reports (internal/external), proofs and infor-mation with respect to the claim and the original and cause of the loss the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration of oath or in other legal form of the truth of the claim and of any matters connected therewith. No claim under this policy shall be payable unless the terms of this condition have been complied with.

The learned Counsel for the complainant has submitted that the complainant firm had submitted the reports of M/s. Rajesh Engineering and Constructions, Davuluri Srikanth Babu and Associations, Gampala Sridharï¿ 1/2 andï¿ 1/2 Associates,ï¿ 1/2 Friconï¿ 1/2 Systemsï¿ 1/2 and M/s. Yin Sugmai Machinery General Factory. The opposite party has attributed violation of Clause 6 of the Insurance policy on the premise that the complainant firm has not submitted estimate of repairs. The learned Counsel for the complainant has submitted that the complainant has already submitted the reports of the aforementioned agencies to the effect the machinery was beyond the stage of repair and even without admitting that the certificates produced by the complainant has not inspired confidence to the opposite party, the opposite party could have as well got the estimation done.

29. THE opposite party all through has been contending that the agencies which were contacted by the complainant firm are not competent to issue the certificates to the effect the machinery was in irreparable condition.

30. THE complainant as well could have submitted the report of a competent repairer instead of insisting on to accept the reports issued by M/s. Fricon Systems and M/s. Yin Sugmai Machinery General Factory. The opposite party has rightly contended that in the absence of the stock, registers and report of repairers the assessment on loss by the surveyor would be difficult task and as the surveyor ''s report is made on the basis of the inspection made of the machinery and building as also the documents submitted by the complainant company has to be accepted in toto. The learned Counsel for the complainant has contended that the opposite party has raised fourth ground of repudiation

that there was misdescription or misrepre-sentation in some of the documents submitted by the complainant which is arbitrary cannot be countenanced in law. As contended that the ground of repudiation is vague and it is not stated by the opposite party as to what document contains misdescription to render the policy void. He has submitted that at any point of time the opposite party has not put the complainant on notice about the misdescription or mis-representation on the part of the complainant. The submission of the complainant as acceptable force as the ground of repudiation is much vague and it does not refer to any specific aspect of misdescription or mis-representation on the part of the complainant and no specific document is pointed out to have contained any misï¿ 1/2representation said to have been made by the complainant. In the circumstances, we do not find any sustainable force in the ground No. 4 of repudiation.

31. BOTH parties have filed photocopies of documents. The learned Counsel for the opposite party has contended that the copies of the documents filed by the complainant are created and self-serving documents and they have no evidentiary value. Whereas the learned Counsel for the complainant has contended that the copies of the documents produced by the opposite party cannot be relied upon.

32. AS held in the aforementioned paragraphs the Complainant firm has not submitted the stock registers and report of repairer, the surveyors report attains significance. The surveyor has submitted his report stating that the complainant was requested to submit the estimates for the repairs of the damaged machine supported by the quotations from competent repairers and to the effect several letters were sent to the complainant firm for which there was no response from the representatives of the complainant firm. The surveyor had assessed the loss based on their physical observation and the prevailing market rate of materials and labour charges at the time of occurrence of the fire and the gross loss as per the Surveyor Rs. 11,11,733 and the net loss is Rs. 8,72,126. The fire accident occurred on 27.1.2009 and on the same day the complainant has informed the opposite party about the accident. M/s. Fricon Systems and M/s. Yin Sugmai Machinery General Factory, M/s. Davuri Srikanth Babu and Associates and S. Rajesh Kedia have issued certificates on different dates to the effect that the machine cannot be repaired. M/s. Ruby Constructions issued construction completed certificate to the effect a sum of Rs. 2,50,000 construction worth was completed to the building. A copy of letter dated 13.8.2009 addressed to the surveyor by the complainant firm would establish that the complainant has submitted the documents, statement of occurrence, copy of layout plan of the premises, copy of lease agreement, copy of the invoice of the multifunctional laminating machine, copy of bank statements, copies of purchase invoices of raw material and sale invoices, copy of fire brigade report, copy of FIR, estimate of loss supported by quotations claim form and copy of photos taken after the occurrence. Of these documents, the surveyor had accepted and acknowledged except the estimate of loss towards repairs of the damaged machinery and

quotations from the competent repairers.

33. THE surveyor has issued reminder on 28.12.2009 seeking for submission of estimate of loss supported by quotations and another reminder on 3.1.2010. The surveyor has addressed letter dated 28.2.2010 bringing it to the notice of the complainant firm that the complainant had not informed them the time of inspection of the machinery by M/s. Yin Sugmai Machinery General Factory and M/s. Fricon Systems, Faridabad. The surveyor had questioned the delay for in submission of the documents issued by the agencies as the documents were dated 13th and 29th August, 2009 which was sent to the surveyor on 28.1.2010.

34. THE opposite party has addressed mail to the complainant company through Kedel Insurance Brokers Pvt. Ltd., that a meeting be arranged with the surveyor the complainant company and the opposite party as soon as the surveyor has returned from USA, to settle the issue amicably. Much correspondence was made between the complainant and the opposite party, the opposite party and the surveyor seeking for stock registers and certificate of repairer while the complainant informing the opposite party that the certificates of M/s. Fricon Systems and M/s. Yin Sugmai Machinery General Factory, M/s. Davuri Srikanth Babu and Associates and S. Rajesh Kedia would do. Ultimately as the complainant firm has not submitted the relevant documents in compliance of condition No. 6 of the Insurance Policy, the opposite party has repudiated the claim whereupon the complainant firm requested through letter dated 18.3.2011 to reconsider the repudiation and the opposite party responded on 13.4.2011 requesting the complainant firm to furnish the relevant documents to their investigator enabling him to submit the report.

35. THE complainant addressed letter dated 20.4.2011 that she was suffering from cancer and she requires time to collect the details from various organizations as required by the investigator.

36. THE complainant requested the opposite party on 16.5.2011 to issue copies of proposal form, Insurance policy, surveyor report and claim form by filing application under RTI Act for which the opposite party has replied that there was no proposal form as the Insurance policy was a renewal of the earlier policy without any break and the Insurance Policy was already furnished to the complainant and they had not received the surveyor ''s report and the copy of surveyor report would be furnished to the complainant as soon as it is furnished to the surveyor. The learned Counsel for the opposite party has relied upon the decision of the Hon ''ble Supreme Court in M/s. Suraj Mal Ram Nivas Oil Mills Pvt. Ltd. v. United India Insurance Company Limited and Another (supra), wherein it was held that in a contract of Insurance, the rights and obligations are governed by the terms of contract which have to be strictly construed and no exception can be made on the ground of equity. Words mentioned in the contract must be given paramount importance and Court cannot add or delete any word. The decision was cited to contend that the removal of some of the material without giving the surveyor a chance to assess the loss. In the present case the opposite

party has not taken any objection and on the other hand the surveyor assessed the loss of the salvage at Rs. 1,84,020 as against which the complainant has assessed the salvage to the tune of Rs. 3,15,660.

37. THE opposite party has relied upon the decision of the Hon ''ble National Commission, in United India Insurance Co. Ltd. v. M/s. Sri Dwaraka Deesh Industries, 2008 (III) CPR 292, which was a case the complainant claimed damage caused to rice mill due to thunderstorm with lighting and high velocity wind. The National Commission held that it was required to be seen whether newly constructed godowns were included in the value of the building, their construction value and the facts and plea relating to forgery of the documents and voluminous evidence. The National Commission held that proceedings before Consumer Forum are summary in nature and adjudication of disputed factual questions can be examined by a competent Court. In the case on hand there is no allegation of forgery nor any involvement of complicated issues and adjudication of disputed factual position.

38. THE other decision relied upon by the opposite party is Karnavati Vinners Pvt. Ltd. v. New India Assurance Co. Ltd. and Others, IV (2012) CPJ 269 (NC), wherein the National Commission held that the complainant has to lead evidence in support of its claim that fire was caused by burning fireworks falling in factory premises. The Insurance Company repudiated the claim on the premise that fire was not caused by burning of crackers and in the absence of evidence on the side of the insured, it was held that the repudiation was justified. In the present case, the repudiation was not made on the ground of any engineered fire. As such, the decision has no application to the facts of the case on hand. The learned Counsel for the opposite party has relied upon the decision of the Hon ''ble National Commission in National Insurance Company Limited v. Jyothi Tobaccoa Traders, IV (2012) CPJ 103 (NC), wherein it was held that the reasons given by the surveyor quantifying the loss was justifiable and the report of surveyor is an important substantial piece of evidence unless it is controverted cogent and convincing reasons. This decision is squarely applicable to the facts of the present case. The surveyor has given cogent reasons and adequate justification for quantifying the loss suffered by the complainant firm in fire at Rs. 8,72,126 which we hold reasonable and justifiable.

39. IN the result, the complaint is partly allowed directing the opposite party to pay Rs. 8,72,126 with interest @ 9% per annum from the date of complaint till payment and Rs. 5,000 towards costs. Time for compliance four weeks. Complaint partly allowed.

