

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI**

**JUDGEMENT RESERVED ON: 26/05/2026  
JUDGEMENT PRONOUNCED ON:16/10/2026**

**FIRST APPEAL NO. 168 OF 2016**

(Against the Order dated 25<sup>th</sup> January 2016 in Complaint No. 38/2009 of the State Consumer Disputes Redressal Commission Rajasthan)

Chitresh Cold Storage Private Limited, Through Its Director, Shri Harish Kumar Kotwani,  
S/o Late Shri Bhagchand Ji Kotwani R/o 173 Sindhi Colony, Vallabh Nagar, Kota,  
Rajasthan  
**.....Appellant**

**Versus**

1. Divisional Manager Oriental Insurance Company Limited, Divisional Office-II, Above Kamal Auto Company, Jhalawar Road, Kota, Rajasthan.
2. Oriental Insurance Company Limited, Regional Office, Old Reserve Bank Building, M.I. Road, Jaipur, Rajasthan.  
**.....Respondents**

**BEFORE:**

**HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT  
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER**

For The Appellant : Mr. S. N. Bohra, Advocate

For The Respondent : Mr. Amandeep Singh, Mr. Dev Bhardwaj, Advocates

**JUDGMENT**

**PER HON'BLE MR. BHARATKUMAR PANDYA, MEMBER**

1. Heard Mr. S. N. Bohra, learned counsel for the Appellant and Mr. Amandeep Singh, Mr. Dev Bhardwaj learned counsels for the Respondents. The brief facts of the complainant case, as pleaded in the consumer complaint before the State Commission, are that the complainant, M/s Chitresh Cold Storage Pvt. Ltd., a private limited company represented through its Director, Mr. Harish Kotwani, was engaged in the business of operating a cold storage at Kota, Rajasthan. In order to safeguard its business assets, the complainant obtained a Standard Fire and Special Perils Insurance Policy from the Opposite Parties, namely The Oriental Insurance Co. Ltd., for the period from 05.04.2004 to 04.04.2005, whereby the building was insured for Rs.40,00,000/-, the plant and machinery for Rs.20,53,900/-, making the total sum insured Rs.60,53,900/-. During the currency of the policy, on 19.02.2005, a devastating fire broke out in the

insured cold storage premises causing extensive damage to the building and machinery. The complainant immediately informed the insurance company about the incident and also lodged FIR No. 62/2005 dated 28.02.2005 at Police Station Udyog Nagar. Upon investigation, the police concluded that the fire had occurred due to a short circuit and that there was no misappropriation, negligence or foul play on the part of the complainant. Thereafter, the insurance company appointed a surveyor, who conducted a spot inspection of the premises and, vide letter dated 02.03.2005, sought certain documents from the complainant. According to the complainant, all the documents required by the surveyor were duly furnished, including through its letter dated 05.12.2005, yet the surveyor failed to submit the final survey report within a reasonable period. Instead, the complainant continued to receive repeated communications requiring production of documents, despite having already complied with the surveyor's requirements. The complainant alleged that the delay in processing the claim was entirely attributable to the surveyor and the insurer and not to any lapse on its part. Ultimately, instead of settling the claim, the insurance company rejected the claim vide letter dated 26.07.2007, treating it as a 'No Claim', on the allegation that the complainant had failed to furnish the requisite documents. Aggrieved by the arbitrary rejection, the complainant addressed a representation to the Deputy Chief Manager of the insurance company, seeking reconsideration of its claim, whereupon a reply was received indicating that the matter was still under consideration and appropriate action was being taken. On the strength of this correspondence, the complainant pleaded that the cause of action continued and finally arose on 20.11.2007, as the insurer had not finally closed the matter but had kept the claim alive for reconsideration. The complainant asserted that the repudiation of its genuine insurance claim was wholly arbitrary, illegal and amounted to deficiency in service and unfair trade practice, particularly when the fire, the occurrence of which is not doubted or denied, was an insured peril, the police investigation had ruled out any wrongdoing by the complainant, and the insurer had failed to settle the claim despite prolonged correspondence. Consequently, the complainant approached the Rajasthan State Commission seeking directions to the insurance company to honour and pay the insurance claim together with appropriate compensation for the financial loss suffered, interest on the claim

amount, compensation for mental agony and harassment, and the costs of the proceedings.

2. The Opposite Parties, The Oriental Insurance Co. Ltd., contested the complaint by raising preliminary objections that the consumer complaint was hopelessly barred by limitation, as the complainant's insurance claim had been finally repudiated on 26.07.2007, whereas the complaint was instituted only on 05.10.2009 without filing any application for condonation of delay under Section 24A of the Consumer Protection Act. They further relied upon Condition No. 6(ii) of the Policy, which stipulated that if the insured failed to make the rejection of the claim the subject matter of any suit or complaint within twelve months from the date of repudiation, the claim would be deemed to have been abandoned and would thereafter become irrecoverable. On merits, the Opposite Parties denied any deficiency in service and submitted that immediately after the fire incident, a licensed surveyor was appointed to assess the loss, who repeatedly called upon the complainant to furnish the requisite documents necessary for processing the claim. Despite several reminders and repeated opportunities, the complainant failed to submit the essential documents sought by the surveyor, due to which the claim could not be properly assessed. The Opposite Parties further pleaded that the claim had initially been closed on 12.07.2006 for non-submission of documents but, on the request of the complainant, the matter was re-opened on 18.08.2006 to provide another opportunity to furnish the required documents. Even thereafter, the complainant failed to comply with the surveyor's requirements. It was specifically asserted that the repudiation was based solely upon the complainant's failure to cooperate and furnish the requisite documents and not due to any mala fide intention on the part of the insurer. The Opposite Parties, therefore, maintained that the repudiation of the insurance claim was fully justified in accordance with the terms and conditions of the policy, that no deficiency in service or unfair trade practice could be attributed to them, and that the complaint, being barred by limitation as well as devoid of merit, deserved to be dismissed with costs.

3. After hearing the learned counsel for the parties, perusing the pleadings, affidavits, documentary evidence and the entire record of the case, the State Commission proceeded to examine the preliminary objection regarding limitation raised

by the Opposite Parties. The Commission observed that the insurance claim had been finally repudiated by the Opposite Parties vide letter dated 26.07.2007, and, therefore, the cause of action arose from the date of such repudiation. The Commission rejected the complainant's contention that the subsequent correspondence with the Deputy Chief Manager dated 20.11.2007 gave rise to a fresh cause of action, holding that the said correspondence merely sought reconsideration of the already repudiated claim and could not extend or revive the statutory period of limitation. The Commission further held that the communication dated 26.07.2007, whereby the claim was treated as 'No Claim', amounted to a final repudiation of the insurance claim and not merely a conditional closure. It also accepted the insurer's contention that the complainant had failed to furnish the requisite documents despite repeated opportunities and reminders, and therefore, the repudiation of the claim could not be termed as deficiency in service. Accordingly, the State Commission concluded that the consumer complaint, having been filed beyond the prescribed period of limitation under Section 24A of the Consumer Protection Act, was barred by limitation and was, therefore, liable to be rejected. The order of State Commission is reproduced herein below:

*"As per pleading of the complainant his contention is that cause of action arose on 28.11.2007 vide Ex.19. This letter has been addressed to Dy. Chief Manager and the reply of the same Ex.21 is also on record and further his other contention is that his claim has not been denied only it was made 'No Claim', which was intimated to him vide Ex. 18.*

*Article 44-B of the Limitation Act reads as follows:*

*"The date of the occurrence causing the loss, or where the claim on the policy is denied, either partly or wholly, the date of such denial."*  
*speaks that cause of action would arise when occurrence causing the loss was committed or where the claim on the policy is denied from the date of such denial and admittedly vide Ex. 18 the claim of the complainant was denied.*

*The complainant has relied upon II (2006) CPJ 333 (NC) National Insurance Co. Ltd. Vs. Sukhdev Singh Gill where the court has held that 'No Claim' could not be treated as final repudiation. The facts of the case were quite different from the present case. A letter was issued to the complainant as reminder to 'submit several documents and it has also been stated that the documents should be deposited in the branch office within 15 days otherwise the case will be closed as 'No claim'. Hence, the letter was conditional but here in the present case no such condition is imposed in Ex. 18. There is a clear narration of the fact that the complainant is failed to submit the required documents and therefore, claim has been filed as 'no claim'. In complaint it has also been pleaded by the complainant that his claim has been denied vide Ex. 18 and this fact has also been stated in Ex.19 dated 20.11.2007 when a letter has been written to the Dy.Chief Manager. There is a specific narration that his claim has been dismissed on 26.7.2007. Hence, it is crystal clear that the claim of the complainant was denied vide Ex. 18 dated 26.7.2007 and admittedly the complaint has been filed on 05.10.2009 which is barred by limitation as per s.24 A of the Consumer Protection Act.*

*The contention of the complainant is that fresh cause of action occurred vide Ex.19 dated 20.11.2007. The reading of Ex.19 speaks that it has been addressed to Deputy Chief Manager in the nature of complaint or request for reconsideration of the matter which was*

replied generally vide Ex.21 that they are looking into the matter. Ex.19 could not provide any cause of action to the complainant as admittedly the claim was denied earlier vide Ex.18 dated 26.7.2007. Further policy was issued by Kota office of the non-applicant. It has appointed the surveyor and all correspondence had taken place between complainant, surveyor and Kota office and even Deputy Chief Manager has not been made party in the complaint hence, Ex. 19 could not give rise to any cause of action and contention of the complainant is not acceptable.

The complainant has also relied upon HI (2012) CPJ 522 (NC) IFFCO Tokio Vs. Gokak Textiles Ltd. where it has been said that the period of limitation runs from the date of repudiation and not from the date of loss. There is no quarrel on the above preposition but here in the present case admittedly the claim has been denied on 26.7.2007 and within two years complaint has not been filed hence, the complaint is time barred.

The other contention of the non-applicant is in regard to policy condition 6 (ii) in which 12 months time has been restricted to file the claim or to made the claim the subject matter of the suit and his contention is that this condition has not been complied with hence, the complaint is time barred.

There is no dispute about the fact that immediately after occurrence of loss the claim has been filed which was kept pending with the non-applicant till 26.7.2007. The contention of the complainant is that such condition which curtail the period of limitation is void and reliance has been placed on 11(2005) CPJ 54 (NC) New India Assurance Co. Vs. KA Abdul Hameed where agreement u/s 28 (b) of the Indian Contract Act has been explained and it has been held that condition which extinguishes the right of the complainant to approach the court or Forum within specific time as per contract is void and cannot be enforced. Further reliance has been placed on 1 (2009) CPJ 1 (SC) H.P.State Forest Co.Ltd. Vs. United India Insurance Co. where it was held that curtailment of limitation period not permissible.

Per contra the non-applicant has relied upon II (1997) CPJ 1 (SC) National Insurance Co. Vs. Sujir Ganesh Nayak & Co. where distinction has been made between the agreement which did not curtail the time for enforcement of the right but provides forfeiture or waiver and the court was of the opinion that where only right has been extinguished and remedy has not been curtail, such agreements would not come under the mischief of section 28 of the Contract Act. Here in the present case the right of the party has not been curtailed. Only a restriction has been provided for enforcement of the same and a deeming clause has been provided that if in a particular time claim has not been preferred then it has deemed to be abandoned. Hence, there is no force in the plea raised by the complainant.

Further the contention of the complainant is that condition 6 (ii) refers to "suit" and it was held that complaint before the Consumer Forum are not in the nature of suit and reliance has been placed on III (2010) CPJ 466 (NC) United India Insurance Co. Vs. Joy Hukil & ors and HI (2009) CPJ 73 (SC) EICM Exports Vs. South Indian Corpn. where in relation to Indian Carriage of Goods Act it has been held that the proceedings before the Forum are not suits.

Contrary to it the non-applicant has relied upon (2000) 4 see 91 Patel Roadways Vs. Biria Yamaha where the apex court has held that proceedings before the National Commission comes within the term 'suit' as term 'suit' is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. Hence, in the light of law laid down in the case of Patel Roadways, the contention of the complainant is not acceptable but as the condition waives the right and not curtails the remedy, the plea taken by the complainant is not acceptable.

The contention of the non-applicant is that when relevant documents have not produced inspite of reminders, the claim was rightly denied and reliance has been placed on 1 (2009) CPJ 22 (NC) Priya Gopal Stores Vs. National Insurance Co. The contention of the complainant is that all the necessary documents were filed with the surveyor and it has been accepted by the Insurance Company vide letter Ex.A-14 dated 24.1.2006 where it has been stated that insured has complied with all the requirements and further reminder Ex.16 is issued to the surveyor to submit the report. These arguments have no force as after the issuance of letter Ex.14 the claim was denied on 12.7.2006 which was re-opened vide Ex.A-11 dated 18.8.2006 on the request of the complainant in which it has been specifically stated that Mr.G.D.Agarwal and Mr.Harish Kotwani representative of the complainant has

*promised to provide all the documents and in Ex.A-8 it has been specifically pointed out to the complainant that which documents are not provided completely and other objections were also stated which clearly speaks that inspite of re-opening of the case the complainant could not provide the requisite documents to the surveyor. Hence, the denial on the part of the Insurance Company cannot be said to be deficiency in service.*

*Per contra the complainant is guilty of not providing requisite documents. In Ex.14 it has not been stated that the requisite documents were filed to the surveyor but only a reference has been made that it came into notice of the Insurance Company that the insured had complied with all the requirements and as the matter was prolonged one, reminder Ex.16 was issued to the surveyor to submit the final survey report. In survey report also it has been stated that insured could not provide us the requisite documents and which is confirmed by the reminders issued from time to time. Hence, the complainant could not proved any deficiency of service on the part of the non-applicant.*

*It has also been argued by the counsel for the complainant that survey report is faulty. As per guidelines the surveyor should file the report within 30 days of his appointment and if case is complicated and special one further time may be allowed but in no case the surveyor should take more than six months from the date of his appointment to furnish his report.*

*There is no dispute about the guidelines but here in the present case the complainant himself was guilty for not providing the requisite documents and for the reason his claim was made 'no claim' earlier on 12.7.2006 and later on vide Ex. 18.*

*It has also been argued that survey report is not conclusive proof. It can be ignored if it is perverse or arbitrary and contention of the counsel for the complainant is that no reasons have been assigned for the conclusion that it was under insured . There is no requirement under the guidelines to give reasons for assessment of every loss. Only in the Insurance Surveyors and Loss Assessors (Licensing, Professional requirements and Code of Conduct) Regulations, 2000 S.13 (xiv) made it mandatory to give reasons for repudiation of claim but loss could be assessed by investigation, enquiry, spot survey, estimate and so on. Hence, giving reason on every conclusion is not an essential condition for the surveyor.*

*The contention of the complainant is that the survey report cannot be looked into as the affidavit of the surveyor has not been submitted. The argument is against the record as affidavit of surveyor Arun Gupta is submitted before the court hence, this contention has no basis.*

*From the above discussions it can be concluded that the complaint is time barred and is liable to be rejected. Hence, rejected."*

4. The Appellant/Complainant, being aggrieved by the impugned order dated 25.01.2016 passed by the Rajasthan State Commission, Jaipur Bench No. 1 in Complaint Case No. 38/2009, whereby the consumer complaint was dismissed solely on the preliminary ground that it was barred by limitation under Section 24A of the Consumer Protection Act, 1986, without adjudicating the dispute on merits, has preferred the present First Appeal before this Commission on 26.02.2016, inter alia, on the following grounds, which are urged without prejudice to one another:

- A. The State Commission erred in dismissing the complaint as barred by limitation, as the insurer's Head Office letter dated 27.11.2007 clearly showed that the claim was still under process. Hence, the complaint filed on 05.10.2009 was within limitation.
- B. The State Commission ignored the insurer's own letters dated 24.01.2006 and 31.05.2007, which admitted that the appellant had supplied all the required documents and that the delay in submission of the survey report was solely attributable to the surveyor.

- C. The State Commission failed to appreciate that the surveyor submitted the final survey report after more than two and a half years, in violation of the IRDA Regulations, 2002, which prescribe a maximum period of six months for submission of the survey report.
- D. The State Commission overlooked that the surveyor had assessed the loss at Rs.18,33,948/- on the basis of the documents furnished by the appellant. Therefore, the subsequent allegation of non-submission of documents in the letter dated 26.07.2007 was false, mala fide and intended to deprive the appellant of its legitimate claim.
- E. The State Commission failed to consider the settled legal principle laid down by the Hon'ble Supreme Court in EICM Exports Ltd. v. South Indian Corporation (Agencies) Ltd., that there is a distinction between a 'suit' and a 'consumer complaint', and that a "No Claim" communication could not be treated as a final repudiation in the facts of the present case.
- F. The State Commission wrongly held that the letter dated 20.11.2007 did not furnish a fresh cause of action. If the claim had already been finally repudiated, there was no occasion for the insurer to continue corresponding on the claim, which clearly showed that the claim remained under consideration.
- G. The State Commission erred in holding that the insurer's conduct did not amount to deficiency in service. Such finding is contrary to the facts and evidence on record and is liable to be set aside.
- H. The impugned order is not based on the evidence available on record but on conjectures, surmises, presumptions and assumptions, and is therefore perverse and unsustainable.
- I. If the impugned order is allowed to stand, it would result in grave miscarriage of justice and cause irreparable prejudice to the appellant.
- J. The appellant reserved its right to urge such other and further grounds at the time of hearing of the appeal.

5. During the pendency of the present appeal, this Commission, vide order dated 07.05.2025, observed that the insurance claim had been repudiated on the ground of non-submission of requisite documents and directed the appellant to clarify whether the documents sought by the surveyor had in fact been furnished. This Commission also noted the exchange of correspondence between the parties regarding the surveyor's queries. Thereafter, vide order dated 15.09.2025, this Commission considered the surveyor's report dated 15.06.2007 and observed that the repudiation was based on the alleged failure of the appellant to furnish the required documents. The Commission further took note of the appellant's contention regarding limitation based on the subsequent correspondence dated 20.11.2007 and 27.11.2007, and directed the appellant to prepare a comparative chart indicating the documents demanded by the surveyor, the documents supplied by the appellant, and the explanation regarding the documents that could not be furnished, particularly those allegedly destroyed in the fire. Order dated 07.05.2025 and 15.09.2025 is reproduced herein below:

***"Dated: 07.05.2025***

**ORDER**

*Heard Mr. Bohra, learned counsel for the appellant and Mr. Amandeep Singh, learned counsel for the Insurance Company. The claim of the appellant was repudiated on 26.07.2007 on the ground that the complainant has failed to furnish the requisite documents*

that were desired by the Insurance Company. The letter of repudiation dated 26.07.2007 is Annexure A-15 to the appeal, which recites that a last opportunity had been given to the appellant to file a reply, vide letter dated 26.06.2007, but since the complainant failed to respond to the same therefore the claim was closed.

From the record it appears that the surveyor had enlisted the documents that were wanting in paragraph 13.16 of his report. Mr. Bohra contends that the entire reply to the queries raised by the surveyor had been given and as a matter of fact the Insurance Company had written letters to the surveyor calling upon the surveyor to submit his report in respect of the reply having been tendered by the complainant.

It is also evident from the facts that the complainant in paragraph 20 admits having received the letter dated 26.06.2007 on 02.07.2007, to which a reply is stated to have been sent on 23.07.2007 to the Insurance Company. The complaint states that since there was a difference in the number of queries raised by the surveyor which were only three in number and that the queries raised by the Insurance Company were much larger therefore this is a point on which the complainant raised an objection. It is therefore evident that some communication has been exchanged between the complainant and the Insurance Company, but the issue is as to whether the documents that were demanded were furnished by the complainant/ appellant or not as to whether they were material for the purpose of assessing the claim of the complainant.

The arguments could not advance further due to paucity of time today.

Let the matter be listed on 15.09.2025 at 2 p.m."

**"DATED: 15/09/2025**

**ORDER**

We have heard Mr. Bohra, learned counsel for the appellant and Mr. Amandeep Singh, learned counsel for the Insurance Company.

Vide order dated 07.05.2025, we had called upon the learned counsel for the appellant to point out the status of the answers given to the queries raised by the surveyor including the documents that were desired by him.

Today, while going through the surveyor's report dated 15.06.2007, which is annexure-14 to the appeal, we find that the surveyor while recording observations about the loss overview has referred to that the complainant had been asked to explain about the documents and the details required for assessing the claim. The surveyor has indicated that barring a few documents, the insured could not provide requisite documents and details. The said recitals are contained in various sub paragraphs of Para 4 and then details of the documents are indicated in paragraph 4.16 and then in 4.18.

The conclusion drawn by the surveyor in the said paragraphs is that the complainant did not provide the documents as desired and this is the ground for repudiating the claim vide letter dated 26.07.2007.

On the issue of limitation, Mr. Bohra submits that after having received the said letter a request was once again made to the Insurance Company to reconsider the matter vide letter dated 20.11.2007 to which a reply was given on 27.11.2007 intimating the complainant that the case is being processed by the office and that appropriate information shall be given to him as soon as possible. It is urged that no intimation was given and as such the limitation period should be counted accordingly as the complainant was anticipating a reply to the letter dated 27.11.2007.

However on the issue relating to the supply of documents, in order to point clarity in the same, Mr. Bohra urges that a response had been given to the surveyor on 05.12.2005 and a copy of the said letter is at page 58.

We have perused the said letter and we find that the same requires to be explained keeping in view the documents that were demanded by the surveyor by explaining as to what is the relevance of the documents and as to why the said documents could not be supplied or were supplied by the complainant.

From the report of the surveyor we also find that the complainant appears to have intimated the surveyor that some of the documents had been burnt during the fire itself. Let a chart be prepared by Mr. Bohra, keeping in view the queries that have been indicated in

*paragraphs 4.16 and 4.18 of the surveyor's report dated 15.06.2007 and point it out specifically as how the said demand of the said documents were made and through which documents already on record. No fresh affidavit is required to be filed and therefore the chart be placed before us after given a copy of the same to the learned counsel for the Insurance Company.*

*Let the matter be listed on 16.01.2026 at 2 p.m."*

6. We have heard the advocates for the parties and have given our thoughtful consideration to the rival submissions advanced by the learned counsel for the parties and have carefully perused the records. It emerges that the controversy involved in the present appeal has three principal issues: (i) whether the consumer complaint was barred by limitation under Section 24A of the Consumer Protection Act, 1986; (ii) whether the repudiation ("no claim") of the insurance claim on the ground of alleged non-submission of documents was legally sustainable; and (iii) whether the conduct of the respondent-insurance company amounted to deficiency in service. The State Commission has though discussed the merits as also the issue of limitation, it has finally dismissed the complaint on the ground of limitation. The grounds raised, apart from the issue of limitation also therefore touch upon the merits.

7. We, on the issue of limitation, are not in agreement with the State Commission. The intimation dated 26.07.2007 of "no claim", was further followed up by the complainant. The insured did undertake communications with the insurer vide letter dated 20.11.2007 to which a reply was also given on 27.11.2007 intimating the complainant that the case is being further processed by the office and that appropriate information shall be given to him as soon as possible. Moreover, the claim has simply been made "no claim" for mere want of documents, and not strictly, in our opinion, repudiated, thus impliedly and likely inviting the compliance from the complainant. The complaint was filed thereafter filed on 05.10.2009, which was within two years from the date the insurance company's senior officer has intimated that the matter is under consideration. In our considered opinion, the State Commission has erred in adopting an unduly very strict approach with regard to the limitation by holding that such subsequent communications of November, 2007 cannot extend the limitation. We note that such further communications were not only initiated by the complainant within the period of two years from the date of intimation of "no claim", but was also responded to. Such communications having been undertaken within two years of the date of "no claim"

intimation, and not after such period of two years, in any case, the subsequent actions of likely negotiations were not still-born but, in our opinion, validly extended the limitation period till two years from the last of the OP-insurer's communication, which was on 27.11.2007. The limitation thus available till 26.11.2009, the complaint filed on 05.10.2009 was well within time. The State Commission's decision qua limitation thus needs to be disapproved.

8. In view of the fact that the event of fire and consequent loss, which is the subject matter of the controversy, took place nearly 21 years ago, and that the appeal itself has remained pending with this Commission for 10 years, and also that there was neither any further document excepting the survey report itself, for consideration on merit, before the State Commission, nor is there any such further document before us, we deem it proper to deal with the merits of the case as well, rather than restoring the matter to the State Commission. As narrated in detail in the survey report, the complainant has been evidently lethargic and even reluctant in filing the requisite documents before the Surveyor. The repeated reminders issued by the surveyor and repeated non-compliance by the complainant, and failure of the complainant in furnishing even the most basic and critical supporting documents and data is clearly brought out in detail in the survey report. The perusal of the following communications, in our opinion, disclose the inability and lack of interest and not-so-serious and responsible efforts by the complainant to submit the requisite documents or make compliance about most fundamental aspects of the loss-assessment, even after about 15 months of the loss, which got reflected in the "no claim" communication

- 26<sup>th</sup> July, 2007

WITHOUT PREJUDICE

M/s Chitresh Cold Storage Pvt Ltd  
Baran Road  
Borekheḍa  
Kota

Dear Sirs

REPORTED LOSS DUE TO FIRE ON 19.02.2006  
UNDER POLICY NO. 2005/0001

In reference to your letter Dt. 23.07.2007, which we received on 26.07.2007, the surveyor has requested several times to submit the required documents for disposal of your above said claim as well as we also, but neither you have submitted required documents to the surveyor nor to us. Therefore, we have given the last opportunity to submit the required documents, vide our letter Dt. 26.06.2007, but you failed to submit the required documents, therefore, we have filed the claim as NO CLAIM.

Anex.-8

Dated 19.02.2006

To,

Associate Surveyor & Consultant,

A-547, 1<sup>st</sup> Floor, School Block,

Vikas Marg, Delhi-110092

Ref. : Fire Claim No. 11/2005/0005  
11/2005/00001  
Date of Fire 19.02.2005

Sir,

We have enclosing detail estimate of plant and machinery. We have not yet received the copy of FR as desired by you from Court. As soon as we received from the Court we will send it to you or delivered to insurance company. We have also send the copy of engineer Briggopal long back. Regarding details estimate of building will taken by Sh. Sharma your representative at Kota visit.

Thanking & Assuring on best cooperation.

Your faithfully  
For Chitresh Cold Storage  
Ramgopal

Encl. Estimate

Date : 10.04.2006

REGD. A.D.  
WITHOUT PREJUDICE

M/s Chitresh Cold Storage Pvt. Ltd.,  
Baran Road, Borkheda,  
Kota, Rajasthan

Kind Attn.: Mr. G. D. Agarwal

RE: YOUR FIRE CLAIM AT YOUR COLD STORAGE

DATE OF LOSS : 19.02.2005

Dear Sir,

This is in reference to the various correspondences for the above said claim and our visit to site from 02.04.2006 to 05.04.2006. During the visit, we had detailed discussions about the damages sustained to the Building & Machinery with your Director Sh. G. D. Agarwal and the manager Mr. Ram Gopal.

We had also explained to you about the following remaining documents / details still required to process & finalise your claim for which you promises to provide shortly and request you to provide the following documents / details at the earliest.

- 1) Certified copy of Police Report alongwith details of investigation (If any) carried out by the Police and / or Civil Administration Authorities.
- 2) Fire Brigade Report.
- 3) Current Reinstatement Cost of Plant & Machinery together with supporting documents to substantiate the same.
- 4) Estimate of repairs / replacement of damaged items of plant and machinery alongwith the quotations of components from the suppliers.
- 5) Valuation of complete building complex and estimate of repairs, replacements for the damages sustained by the building together with bills of material and supporting documents for rates & quantities.

9. We also note that the fundamental details about the repair or replacement of the damaged insured items of Plant and Machinery and Buildings or the bills or details of for purchase or erection when made were not provided to the surveyor or to the State Commission. The estimates provided had also the deficiency and discrepancy noted by the surveyor as under:

4.18 The details of pending documents/details are as under

- (i) We have been repeatedly asking you to submit us copy of F.I.R lodged by you with the Police. But, you have just provided us the copy of Police Final Report. Please provide us the copy of F.I.R. also.
- (ii) Brief description of the incident under your signatures with details about how the fire was discovered, by whom discovered, and at what time it was discovered, when the fire brigade and police authorities were informed, how much time was taken to control / extinguish the fire. Further please comment upon cause of fire as well as provide details about the extent of damage.
- (iii) As we have been asking for the Current Reinstatement Cost of Plant & Machinery together with supporting documents to substantiate the same. In response you have provided us the quotation of M/s Friends Refrigeration Manufacturers Dtd. 25.11.2005 and Dtd. 20.04.2006 and both are different. So kindly explain the same. Further in the quotation Dtd. 20.04.2006 value of some of the items of Plant & Machinery is not mentioned, hence please provide us the detailed quotation of the supplier for all the plant & machinery installed in your Cold Store & Ice Factory. Further as a no. of items are not standard items and are rather customised items thus kindly provide details of the same in the format already provided to you vide our earlier letters.
- (iv) Further till date you had not provided the total estimated cost of repairs / replacement of damaged items of plant and machinery along with the quotations of components from the suppliers, hence please provide us the same along with the details of expected salvage value.
- (v) In case of valuation of building also, you had provided us the two quotations of J.K. Consultants & Builders, which are differing in values, hence please explain the same. Further in both the quotations, you had not provided us the basis of Quantity & Rates, hence please provide us the same in the format enclosed herewith as Annexure B (1) to (11).
- (vi) Please also provide us the Copy of original purchase bills of Plant & Machinery and construction cost bills of Building.
- (vii) Your Final Claim Bill alongwith supporting for quantities, rates & values so claimed.

4.19 But, inspite of our repeated visits, letters & telecons & even after been given enough opportunities, the insured could not provide us the pending documents/details, therefore the matter was discussed with the Insurers & as per discussions it was decided to have a final interaction with the insured to sort out the matter.

4.20 Accordingly, we contacted Mr. G. D. Agarwal, Director of the Company and informed them our visit schedule to their premises at Kota and also requested him to be present there. Prior to leaving Delhi, we again contacted Mr. G. D. Agarwal and enquired about the availability at Kota. He again assured us that he would be available in Kota. After fixing up the date and time and confirming the same with him, we visited Kota from 08.06.2007 to 09.06.2007 to discuss about the submission of the pending documents / details & to finalise the matter.

4.21 But, to our surprise, Mr. G. D Agarwal was not available there. We were informed by his friend Mr. Harish Kotwani that he is in Bhopal and could not come back from there. He had lost one of his relatives at Mumbai, therefore, he had to rush to Mumbai from Bhopal.

4.22 In the absence of Mr. G. D. Agarwal, we could not get any further documents/details. From the above it can be observed that inspite of the sufficient time and enough opportunities, the insured could not provide us the complete documents and details till date.

10. While the details or explanations, particularly with regard to the original investment in the Building and Plant and Machinery could not be provided by the complainant to the surveyor, the only explanation casually provided was that the estimates for repair or replacement as required by the surveyor were provided, and that all the relevant other original record was destroyed in the fire. In sum total, for establishing the loss, apart from claiming that the Plant and Machinery were "total loss", Building's and Plant's repair and reinstatement estimates were provided (though both with some discrepancy as noted by the surveyor), the bills or details of investment originally made could not be provided. In view of this, and such belated and partial compliance qua the documents called for, the action of the insurer in making the claim as "no claim", in principle, cannot be faulted with.

11. However, when we read and appreciate the survey report itself in its totality, we cannot help noting that there is no doubt at all, either to the surveyor, or after minutely perusing his report, to us, that the substantial loss of insured property took place in the fire which itself was quite intense and lasted for nearly 3-4 days and the intensity of it, restrained accessibility to the affected premises by the fire personnel including that the smoke made it difficult for the Fire Brigade to douse the fire are all positively noted by him. The graphic description of the incident, intensity and spread of fire and the damage suffered by the Building and Plant and Machinery is provided by the Surveyor after physical verification of the site and as supported by other contemporaneous evidence of police/fire reports and statements as discussed by him.:

9.05 The fire had started spreading into all directions inside the cold store chamber due to availability of combustible stocks, which rather acted as fuel to the fire. Due to continuous onslaught of such a high intensity fire and resultant heat, the fire also spread to chamber no. 2 through the door and windows fitted / installed at the 6<sup>th</sup> floor of the cold store in the common partition wall. It may be noted that at that point of time, chamber no. 2 was lying empty & was being prepared for coming Potato season.

9.06 Inside cold store, there have been laid wooden floors at all levels on which stocks of kirana items were stored and all such stocks as well as the wooden floorings caught fire and started burning.

9.07 The fire and resultant smoke engulfed the cold store building on all the floors in such a manner that it became almost impossible to enter into the cold store due to burning and falling objects. The burning of kirana goods. (including chillies) were adding suffocation / irritation in the atmosphere resulting into intensive suffocation and almost complete invisibility due to thick, heavy and polluted smoke (to which no outlet was available).

9.08 The fire fighters even tried to enter the cold store but as the intensity of fire and smoke was very high, so it was becoming difficult rather impossible to enter the cold store and not finding any control in sight. The authorities created openings by breaking walls of the building to throw water inside as well as to evacuate the smoke. But, these openings rather created natural air draft and once there was air circulation inside the cold store, the fire started burning with greater intensity, which was getting fuelled due to nature of stocks stored inside and the wooden floors on all levels. The fire was very intense and the smoke and heat of the same also travelled to the Chamber No. 2 which was empty & was being prepared to receive fresh stock of Potatoes. Due to exposure to the heat and smoke, the insulation of the walls, roof and floors of that chamber also got damaged.

9.09 Later on looking into this uncontrollable high intensity fire, the fire brigade could not do much to control the same (except continuously spraying water inside the cold store) and finally allowed the fire to subside on its own.

9.10 Though the major flames were put out by 23.02.2005 with the help of fire bridge staff but burning debris & there smoldering in the bags in such huge quantity remained on for a period of more than four months.

#### **11.02 BUILDING:**

11.02.1 As per the statement of the operator, the fire had originated somewhere at the first floor of chamber no. 1 and due to availability of easily burnable stocks of kirana items such as dry Dhania, Methi, and Jeera etc., the fire spread very fast and engulfed the entire building of Chamber No. 1. The building suffered extensive damages due to such high intensity & prolonged fire & heat. The stone and brick masonry walls got baked, the plaster of the walls got peeled off

and there developed thick and wide cracks in the walls. Some parts of the walls were broken by the fire brigade in order to control and extinguish the fire.

11.02.2 The load bearing RCC beam & column frame structure developed thick cracks, the upper layers were chipped and peeled off, the reinforcement got denuded and exposed. Due to suffering such a high intensity of fire and heat, the beams and columns lost their strength, got sagged in and/or buckled and even collapsed at several places and finding the building of chamber no. 1, damaged, the local authorities asked for demolition of the same.

11.02.3 A part of the building structure of chamber no. 1 fell on office, store and pump house building, which resulted into damage to these buildings also.

11.02.4 We observed the building of these blocks in partly damaged condition. The walls had cracks and the plaster of the same also got peeled off at several places.

11.02.5 The fire also travelled to chamber no. 2, which was lying empty and was being prepared for storage of Potatoes in the coming season from March/April. There, the RCC columns, beams and load bearing beams were found to have suffered minor damages and further the RCC roof/ceiling had also suffered minor damages.

11.02.6 The common partition wall between chamber no. 1 & 2 & other three walls of chamber no. 2 had cracked at several places and become weak, this wall to be rebuilt.

#### 11.03 PLANT & MACHINERY:

11.03.1 The items of plant & machinery were installed at various locations in the cold store and ice factory complex. The items fitted in the Machine room, Ice factory transformer and borewell etc. were saved completely, whereas, the items like cooling coil bunkers, ammonia accumulators, Condensers, Ammonia & G.I. pipings and fittings from machine room to cold store chamber no. 1 & 2 and inside the chamber no.1 & 2, electrical wiring, cabling & fittings, wooden flooring, glass wool insulation etc. got badly burnt and damaged in the subject fire.

11.03.2 It may be noted that the glass wool insulation provided on all the walls (including the partition wall), roof and floor slabs also contributed to the severity of damages to the building and plant and machinery fitted inside the chamber buildings of the cold store.

11.03.3 The structure of the building of chamber no. 1 had fallen on the condenser coil installed near to the building of chamber no. 1. Due to falling of the structure, the condenser coils also got damaged.

11.03.4 During our verifications, we found the entire wooden flooring of chamber no. 1 had burnt and the wooden flooring of chamber no. 2 also been removed as the same had also been damaged & affected.

12. After describing the physical loss, the surveyor has positively, diligently and scientifically, also made the assessment of the loss suffered with the help of the estimates provided by the insured and after comparing and matching the estimates with the physically observed actual loss as observed, estimated and verified by him. He has also prepared detailed annexures of computations of loss which are on record. Finally, as against the claim of nearly Rs. 90 lacs and sum assured of nearly Rs. 60 lacs, the

surveyor has made the assessment as under, notably, not recommending the repudiation of the liability:

|                                                                                                            |                  |
|------------------------------------------------------------------------------------------------------------|------------------|
| Less to the Plant & Machinery                                                                              | 3108200.00       |
| Less: Depreciation @ 6.67% p.a. for 13 years subject to maximum of 75% i.e. 75%                            | 2331150.00       |
|                                                                                                            | 777050.00        |
| Less: Extractable Salvage Value on account of Bunker coil & electric scarp & other machinery & metal scarp | 350000.00        |
| Less: Under Insurance 8.19%                                                                                | 427050.00        |
| Net assessment of loss                                                                                     | 38050.16         |
|                                                                                                            | <u>388999.84</u> |

#### BUILDING:

|                                                                                                    |            |                   |
|----------------------------------------------------------------------------------------------------|------------|-------------------|
|                                                                                                    | 6601850.00 | 4507665.05        |
| Less : Depreciation @ 26%                                                                          |            | <u>1171992.91</u> |
|                                                                                                    |            | 3335672.14        |
| Less : Recoverable Salvage Value towards steel scrap & portions/section of wooden floorings @ 2.5% |            | <u>83391.80</u>   |
| Assessed Loss:                                                                                     |            | 3252280.34        |
| Less : Under Insurance @ 55.11%                                                                    |            | <u>1792331.70</u> |
| Net Assessment of loss of building                                                                 |            | <u>1459948.64</u> |

#### 17.00 SUMMARY OF LOSS:

| Sl. No. | Description       | Assessed Loss (Rs.) | Depreciation (Rs.) | Salvage (Rs.)    | Under Insurance (Rs.) | Net Assessed Loss (Rs.) |
|---------|-------------------|---------------------|--------------------|------------------|-----------------------|-------------------------|
| 1       | Building          | 4507665.05          | 1171992.91         | 83391.80         | 1792331.70            | 1459948.64              |
| 2       | Plant & Machinery | 3108200.00          | 2331150.00         | 350000.00        | 38050.16              | 388999.84               |
|         | Total             | <u>7615865.05</u>   | <u>3503142.91</u>  | <u>433391.80</u> | <u>1830381.86</u>     | <u>1848948.48</u>       |

Less: Deduction under Electrical exclusion clause lump sum (See remark) 5000.00

1843948.48

Less: Policy excess under Standard Fire & Special Perils policy 10000.00

1833948.48

13. While, as discussed earlier, it is true that it is indeed recorded by the surveyor and otherwise also is evident that the insured has failed in his duty of producing relevant

information and evidence as asked for by the surveyor, and therefore the claim could have validly been made "no claim" in strict reading of the policy terms, and therefore there is strictly no deficiency in service when the insurer's action is seen strictly in light of the policy conditions. However, superimposing all the policy conditions and obligations of the parties to an insurance contract, still more cardinal in the insurance law, is the principle of *uberrima fide* the observance of which is to be exhibited by both the sides to the contract at all times. While the insured is either unable or lethargic in producing the documents, or may even have stated hyper-estimated loss which he is unable to support fully, but still, when there is no allegation or evidence at all of any involvement or foul play by the insured himself, when the incident of fire and its impact and consequent loss suffered by the insured are not disputed or disputable and when the surveyor himself, after due examination, physical observation and scientific application of mind, and on conservative basis, has assessed the loss which is not only matching with his physical observation of damage/loss, but is also in our opinion flawless, the ultimate obligation of the insurer under *uberrima fide* in hand-holding of the insured in difficult times of evident loss, could not have been overlooked or undermined by the insurer. It is under such evident circumstances, when the loss is *bona fide*, well-evident (though not so well-established by the insured because of the deficient production of documents), well-assessed but still there is technical violation of some policy condition which entitle the insurer to deny the liability, that the concept of non-standard settlement at 75% of the assessed loss, in the peculiar facts of each case, can and is generally applied by the insurers in appropriate cases. We believe that this case qualified for the same for the reasons that (i) There is no doubts about the bonafides and extent of fire and loss as described by the Surveyor as observed by him (ii) The conservative and detailed assessment made by the surveyor which appears realistic. (iii) Non-recommendation of repudiation of the liability by the surveyor, implying and evidencing his satisfaction about quantum of loss even in the face of the non-compliance *qua* submission of the documents by the insured. Therefore, we hold that there is deficiency in service on the part of the insurer in not applying the well-deserved insured-centric discretion of making a non-standard settlement at 75% under the principle of *uberrima fide* in the present case.

14. While applying or invoking or imposing the principle of *uberrima fide* in a consumer complaint on the insurer, we have also to be conscious that we ourselves are not overlooking and unduly justifying the deficient conduct of the insured himself which otherwise justified the action of the insurer in making the claim "no claim". The insured has therefore to suffer some negative consequence also at our hands. Therefore, to re-emphasize the principle, and related obligations of the insured too, that the strict, *bona fide* and complete compliance with the policy conditions, and more particularly, the *principle* that satisfactorily establishing the quantity, value and quantum of damage and consequent loss before the surveyor is that of the insured, we deem it proper to direct that the insured shall be entitled, and insurer shall be liable, for not 75% but only 70% of the loss as assessed by the surveyor.

15. We therefore direct that the insurer shall pay an amount of Rs. 12,83,764/- with 6% simple interest from 5.10.2009 (date of complaint) till the date of payment. The payment shall be made before 16.01.2027, failing which the interest shall be payable at enhanced 7% on the amount remaining unpaid after that date.

16. Appeal is partly allowed.

Sd/-

.....  
( A.P. SAHI, J. )  
PRESIDENT

Sd/-

.....  
(BHARAT KUMAR PANDYA)  
MEMBER

pawan/aj