

M/S. Satyamaharishi Power Corporation ... vs Iffco - Tokio General Insurance Co. Ltd. ... on 4 May, 2026

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

COUNSUMER COMPLAINT NO. 197 OF 2012

M/s Satyamaharishi Power Corporation Ltd.
Present Address: Through Mr. J. Dharma Rao,
Krosur Road, Muttaya Palem Village,
Amravathi Mandal, Guntur (District), Andhra Pradesh-52020

... Complainant(s)

Versus

IFFCO-TOKIO GENERAL INSURANCE CO. LTD.
PRESENT ADDRESS: THROUGH MR. S. Narayanan, Managing
Director, IFFCO Tower, 4th & 5th Floors, Plot No.3, Sector-29, Gurgaon,
122001, Haryana

M/s Peraj Insurance Broker Pvt. Ltd.
PRESENT ADDRESS - Through Mr. Tushar Peraj, Director & CEO
Vandana, 17, Vallabh Nagar Society, N.S Road No; 4, J.V.P.D Scheme,
Mumbai,-400056, Maharashtra,

M/s Bhatawadekar & Company
PRESENT ADDRESS: Through Mr. Bhatawadekar, Risk Survey, Insurance
Advisory Loss, Adjustment Surveyours, Shanti Nagar,
Bakola, Santacruz (East), Mumbai-400055, Maharashtra
(Deleted vide order dated 14.07.2015)

.....Opposite Party(s)

BEFORE

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

For the Complainant : Mr. Joy Basu, Sr. Advocate
with Dr. Varalakshmi Tadepalli, Advocate
Mr Anoop George, Advocate
For the OP-1 : Mr. Saurav Agrawal, Advocate
Mr. Mrinal Ojha, Advocate
Ms. Utsha Dasgupta, Advocate

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Ms. Manvi Adlakha, Advocate

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		Mr. Yogesh Singh, Advocate
		Mr. Harish Khabar, Advocate
		Mr. Tushar Nair, Advocate
For the OP-2	:	Ms. A. Subhashini, Advocate
For the OP-3	:	Deleted vide Order dated 14.07.2015

PRONOUNCED ON: 04TH May, 2026

ORDER

JUSTICE A.P SAHI, PRESIDENT

1. The dispute between the Contesting Parties is about an insurance claim regarding a Turbine Generating Unit of the Complainant that has been declined by the Opposite Party No.1/Insurance Company.

2. The claim of the Complainant for indemnification of loss under Machinery Breakdown and Consequential Loss of Profit Policy was not being settled as a result whereof the Complainant filed CC/66/2012 before this Commission. However, before the said Complaint could proceed further, the claim came to be repudiated by the Opposite Party No.1/Insurance Company on 26/03/2012. Resultantly, the Complaint was withdrawn with liberty to file a fresh Complaint.

3. The present Complaint was accordingly filed questioning the repudiation dated 26/03/2012 on the ground that it was based on unsustainable reasons and erroneous findings and therefore the same be declared invalid and the claim for indemnification for the loss and damage suffered to the machinery as well as the loss of profit to the Complainant be allowed.

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4. The Complaint was originally entertained with three Opposite Parties namely, the Insurance Company as Opposite Party No.1, the Broker, who is the Opposite Party No.2 and the Surveyors, M/s Bhatawadekar as Opposite Party No.3. The Opposite Party No.3, Surveyor responded to the Complaint and raised an objection on his impleadment as he was neither a proper nor necessary Party. It was also urged that there was no privity of contract between the Complainant and the Opposite Party No.3. An affidavit of Mr. Bhatawadekar, the Surveyor, is on Record that was filed on 18/12/2013 vide Diary No.26012. Vide Order dated 14/07/2015, the Opposite Party No.3 was deleted. The said Order is extracted herein under:-

"Counsel for the parties present. Opposite Party No. 3 is not a necessary party. Counsel for the complainant wants to delete it from the array of parties. The name of Opposite Party No. 3 is hereby deleted. OP-3 is hereby discharged.

Case is now fixed for Complainant's evidence by way of affidavit on 02.05.2016."

5. However, interestingly, we find that the same Surveyor has sworn an affidavit which has been introduced as evidence by the Insurance Company alongwith the copies of some of the mails relied on by the Insurance Company and the Interim and the Final Surveyor Reports Vide Diary No.50121 dated 28/11/2016 that shall be referred to herein after. Thus, finally it is the Opposite Party No.1/Insurance Company and the Opposite Party No.2/Broker who have contested this matter.

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6. The Opposite Party Nos.1 & 2 have filed their Replies and a Rejoinder to the Reply of the Opposite Party No.1 has been filed by the Complainant. Applications for accepting additional documents on Record were also filed to which Replies were filed and Orders were passed that shall be dealt with herein after. The Evidence Affidavit of the Complainant and the Opposite Parties as well as the Additional Affidavits have also been filed. The Evidence of the Complainant was filed in 2016 and the Affidavit of Evidence by the Opposite Party Nos.1 &2 was also filed on 19/10/2016. This stands recorded in the Order sheet dated 28/11/2016. Thereafter two IAs were filed for acceptance of additional documents on Record and to file additional Evidence being IA/10360/ 2017 and IA/10361/2017. Both these Applications were allowed subject to 1 Lakh costs on 08/01/2018.

7. Written Arguments have been filed coupled with Written Notes and Charts. It will be appropriate to mention that a Written Synopsis was filed on behalf of the Opposite Party No.1/Insurance Company on 07/07/2017 vide Diary No.27680. A revised short synopsis was filed by the Opposite Party No.1 on 14/03/2019 vide Diary No.10635. This was followed by a detailed Synopsis of Arguments once again, even though described as a short Synopsis, on 11/01/2021.

8. The Complainant filed a Synopsis alongwith list of dates and other submissions on 20/01/2021 and the Opposite Party No.2, the Broker represented by Advocate Ms. Subhashini .A filed Written Submissions on 25/01/2025 through Diary No.1269.

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9. It is in this background that the matter came up once again on 18/05/2024, when the following Order was passed:-

"The Complaint arises out of a repudiation of a claim under Machine Breakdown Policy which has been repudiated on 26.03.2012. A consequential claim of material loss of profit has also been made arising out of the same incident. The Complaint was originally filed as CC No. 66 of 2012 on 13.03.2012 alleging of inaction on the part of the Insurance Company in reimbursing the claim when it was brought to the notice of the Complainant that the claim has been finally repudiated on 26.03.2012. Accordingly, the earlier Complaint was withdrawn which was permitted by this Commission on 03.05.2012 with liberty to file a fresh complaint.

The present Complaint was, therefore, reinstated accordingly and pleadings have been exchanged between the parties.

In view of the nature of the dispute and the time that was likely to be consumed in the hearing of this Complaint, learned Counsel for the parties agreed that same be taken up on a Saturday and this is how the matter has commenced today with its hearing on the arguments advanced by the learned counsel for the Complainant.

Mr. Joy Basu, learned Senior Counsel has invited attention of the Bench to the written synopsis coupled with the list of dates and events to contend that the claim has been repudiated principally on the ground that Complainant had suppressed relevant facts of having installed a second hand/used rotor in the turbine for which the Machinery Breakdown Policy was taken from the Insurance Company on 10.03.2009 apart from some other indications in the order of repudiation referred to above.

Commencing his arguments, Mr. Basu stated that Complainant is part of the Velcan Global Group of France engaged in the business of power generation. The power plant in question where the turbine was installed is situate in Guntur. On 23.07.2008, during the annual repairs, the Complainant Company noted certain repairs to be undertaken in NC/CC/197/2012 5|Page the Rotor of the 11 Stage Rotor of the Turbine installed in the plant at Guntur.

The sister concern of the Complainant, namely, M/s RPPL also had a turbine with a 11 Stage Rotor. The said concern replaced its 11 Stage Rotor with a 20 Stage Rotor as a result whereof the 11 Stage Rotor became spare and, therefore, a proposal was mooted about the possibility of this 11 Stage Rotor for being installed at the Complainant's plant at Guntur. For this a decision was taken about both the Rotors, namely, the one that was proposed to be repaired belonging to the complainant and the other Rotor from the sister concern to be sent for a compatibility test to Hyderabad. Accordingly, both the Rotors were dispatched for the said purpose. While dispatching the same, the OP / Insurance Company was requested for a Marine Transit Policy to ensure the safe transportation of the rotors for test that was carried out at the firm named as Turbo Machinery Engineering Industries (TMEI). This was done with approval of the parent organization, namely, Velcan Energy, France after discussions with whom the matter was discussed and as a result thereof, request was made for the transit policies.

During the negotiations of the transit polices, the insurance deal was negotiated through OP No.2, Brokers of OP no.1 OP No.2 Broker after having discussed and confirmed the same with the Insurance Company, Marine Transit Policies were taken in the name of RPPL in respect of both the rotors that were moved to Hyderabad for its test.

In the meantime, a policy was also negotiated by RPPL with regard to the erection of the Rotor of 11 Stage Rotor of Rithwik RPPL at the plant of the complainant in Guntur. Mr. Basu pointed out that the communication which was exchanged with

regard to the erection policy also indicated full and complete information with regard to the same Rotor that was to be replaced after being dismantled from the plant at Rithwik and its subsequent installation at the Guntur plant of the Complainant. He, therefore, submits that there was no doubt about the equipments and parts to be installed and the description thereof was fully disclosed to the insurance company during this NC/CC/197/2012 6|Page transaction.

The firm TMEI certified that both the Rotors being of identical specifications, the spare Rotor of Rithwik can be installed at the complainant's plant at Guntur in the turbine for running the same at the same level.

He then submits that the said exercise was undertaken and a fresh policy from the OP/Insurance Company was solicited for the complainant's power plant at Guntur for its machinery and other items including the turbine in which the above named Rotor was installed after being transferred from Rithwik to complainant's plant.

Mr. Basu contends that thus, the Marine Transit Policy taken from the same company, and the erection policy also taken from the same insurance company, was in respect of same subject matter about which full information had been disclosed by the complainant to the Brokers, who in turn had intimated the same to the Complainant.

It was further contended that the status of a broker is statutorily controlled and regulated under the Insurance Regulatory and Development Authority (Insurance Brokers) Regulations 2002. Pointing out to the definition contained under Regulation 2(1) (e) coupled with Regulation 3 (a) to (k), it is submitted that Opposite Party No.2 is under a statutory obligation to communicate and to reciprocate on the communication specifying all the written mandates and to inform the insured about the exact coverage given. It is submitted that Schedule 3 under Regulation 21 further defines the Code of Conduct where under Clause 2 (h) read with Clause 4, the manner of furnishing information has been detailed. The Opposite Party No.2 has sworn an oath before this Commission clearly detailing all the correspondence that was entered into with the Insurance Company regarding every stage of all the three transactions namely Marine Insurance policy, Erection policy as well Machine break down policy. The contention is that these communications leave no room for doubt that the information about the replacement of 11 Stage Rotor of Rithwik to the complainant's plant was the subject matter of these negotiations with the Insurance Company, which is one and the same, and was NC/CC/197/2012 7|Page intimated about the equipment to be installed at the complainant's plant.

It is therefore submitted that coupled with these disclosures, the pre- inspection exercise by the Surveyor appointed by the Insurance Company for the Machine Breakdown Policy, his four visits to the site and then his recommendations finally confirmed that all facts pertaining to installation of the rotator in question was well

informed to the Insurance Company. Thus, it is urged that either way, the complainant had discharged his obligation of disclosing all facts to the Opposite Party No.2 who in turn, had intimated to the Opposite Party No.1 which has a statutory coverage and protection and on the other hand, the Insurance Company itself had obtained the information at the pre-inspection stage about the fact of the installation of the 11 Stage Rotor of that came from M/s Rithwik and was installed at the complainant's plant. Thus, the insurance company was well informed officially about the installation.

It is further submitted by the counsel for the Complainant that the Machinery Breakdown Policy dated 10.3.2009 categorically recites that the policy would come into effect only after the tests were carried out during the pre-inspection followed by a further report to be submitted in this regard. He submits that since both these contingencies stood fulfilled, it is only thereafter that the policy was issued on

10.3.2009. Consequently, all formalities having been completed with regard to information that was desirable, the conclusion drawn by the Insurance Company that there was non-disclosure is contrary to the evidence on record and hence, the repudiation is perverse. It is further submitted that the Machinery Breakdown Policy also records specific and special exclusions. It is pointed out that the policy recites that claims would be indemnified except those which are excluded. He therefore submits that all other contingencies would stand included unless specifically excluded under the policy. The contention is that no clause of the policy has been pointed out in the letter of repudiation to demonstrate a violation or fundamental breach of the policy or that part of the exclusion which may disqualify NC/CC/197/2012 8|Page the indemnification. He therefore submits that in the absence of any such recital in the letter of repudiation, the insurance company cannot travel beyond what is contained in the letter of repudiation and since it does not specify any condition of the policy having been violated by the complainant, repudiation does not in any way satisfy the terms and conditions of the policy. The contention therefore is that whatever the submissions made in this regard, it would not be possible for the insurance company to travel beyond, the scope of letter of repudiation i.e. 26.3.2012.

It is then urged that to appreciate of the Surveyor's report, certain facts need to be pointed out namely that the Survey which was conducted and report submitted by Mr.Sreenivasu and Mr.Bhise on 28.7.2009 was by Surveyors who were statutorily incompetent to carry out the survey for the loss alleged in as much as, they were Category 'C' surveyors whereas the loss that was to be assessed had to be necessarily executed by a class 'A' surveyor. For this, the relevant provisions and the material on record culled out from the Regulations applicable have been pointed out to urge that the facts and figures obtained from the Regulatory Authority regarding the licensing of the surveyor establish that Mr. Srinivas and Mr.Bhise were Category 'C' Surveyors who could not be entrusted with the task of survey.

It is further submitted that the Surveyor Mr. Bhatawadekar who had been entrusted with the task of the survey did not visit the site even once and recorded his report which was more or less reproduction of the reports tendered by Mr.Sreenivasu and Mr.Bhise without adverting to the

response that had been submitted in respect of all the queries made and the documents on record without taking into account the pre-inspection report which forms the basis of all information that was obtained by the Insurance Company itself. The assessment made by the Surveyor also proceeded on surmises and conjectures without there being any physical inspection and therefore it was not in conformity with IRDA Regulations.

It was also urged that a root cause analysis had been carried out that too on the asking of the insurance company from a Foreign Agency, NC/CC/197/2012 9|Page that was also submitted, and in fact the Surveyor himself has admitted that the said report clearly indicated that none of the exclusions under the policy are attracted. This aspect of the matter has been completely overlooked in the repudiation letter and therefore, the same suffers from a serious invalidity on that count.

Learned Counsel then urged that the inferences drawn by the Surveyor about no expert opinion having been taken from the original equipment manufacturer is also without taking into account the fact that the complainant had approached the original equipment manufacturer namely M/s Simens but they had not responded to the same. It is thereafter that the entire exercise was undertaken for getting the technical report or its examination done through the Agencies that have been referred to, including the exchange process of the Rotor that came to be certified of the exact configuration as required, where after the installation was made and which fact was also in the knowledge of not only the Surveyor but also the Insurance Company who have clearly overlooked the same.

It is urged that inspite of this the Surveyor has calculated the loss and has indicated the approximation of the loss suffered on account of the incident that gave rise to the filing of the complaint. It has been then contended by learned Counsel that in order to substantiate and prove their claim, the Complainant appointed its own surveyor which according to the learned counsel is permissible, keeping in view the provisions of the insurance Surveyor and Loss Assessor (Licensing, Professional Requirements and Code of Conduct) Regulations 2000. Reference was made in particular to Regulation 13

(ix) and Regulation 13 (iii) to contend that these regulations clearly reflect that the insured also can get a survey conducted on its own with a pre-condition that such a report will have to be sent to the insurer. Thus, in accordance with the same, the complainant also availed the service of M/s Rank Surveyors Pvt. Ltd., who tendered a report on 13.6.2011 and apart from the indications given, the calculation of the loss assessed by the surveyor also confirms the calculations of the loss suffered on account of the break down which NC/CC/197/2012 10 | P a g e under the Machinery Breakdown Policy has been assessed at Rs.4,08,60,259/-. Since the Surveyor appointed by Insurance Company did not carrying out any loss assessment under the Machinery loss of profit project, the said exercise was undertaken by the Surveyor of the complainant who arrived at the conclusion that the loss suffered as liable to be indemnified under the MLOP policy is Rs.3,05,63,535/. The submission therefore is that the said assessment made has also to be considered with the loss as claimed by the complainant. Mr. Basu concluded his arguments by inviting the attention of the Bench to a couple of judgments namely Canara Bank Vs. United India Insurance Co.Ltd. & Ors. (2020) 3 SCC 455, in para 22. He has further urged that so far as the category of insurance is concerned, he has been able to lay hands on the judgment of a single Bench of Delhi High Court reported in AIR CW 5733/2003

decided on 12.12.2003 in the case of Ashit Kapoor Vs. Union of India & Ors., where in para 6, the status of Surveyors has been categorically narrated which supports the contention of the complainant that the survey conducted by Mr.Sreenivasu and Mr.Bhise are incompetent and could not have been taken into consideration by the surveyor by reproducing the same and relying upon it.

The contention is that the Insurance Company while proceeding to assess the claim seems to be erroneously concentrating on the issue of the replacement of the Rotor, whereas the loss has occurred due to damage caused to the entire machine for which the claim was lodged. It is urged that the said restricted and narrow approach of the insurance company overlooks the actual claim made by the complainant in respect of a comprehensive loss suffered to the entire machinery under the Machinery Breakdown Policy including the loss suffered on account of damage to the Rotor. It is submitted that there cannot be any segregation of the claim by attempting to bifurcate and narrow it only to the loss suffered due to the Rotor replacement. It is also urged that the issue regarding not having taken the expert opinion of the original manufacturer does not appear to find place either in the letter dated 11.1.2012 or even the final letter which is the repudiation NC/CC/197/2012 11 | P a g e letter dated 26.3.2012.

As the arguments could not conclude today, learned Counsel for Insurance Company prays that the matter be taken up on some other day to enable them to advance submissions. Let the matter be listed on 9.11.2024, as prayed by the Learned Counsel for the Parties."

10. The case came up next on 13/05/2025 and the Arguments on behalf of the Complainant were led and concluded by the Ld. Sr. Counsel, Mr. Basu, once again subject to any Rejoinder or any further response. Ld. Counsel for the Opposite Party No.2, Broker, Ms. A. Subhashini urged that she adopts the arguments advanced by Mr. Basu and she also read out the Affidavit filed on behalf of the Opposite Party No.2 whereby the communications as relied on by the Complainant were admitted.

11. Mr. Saurav Agrawal, Ld. Counsel for the Opposite Party No.1 advanced his submissions and the same was recorded as follows:-

"1. Today, the arguments raised on 18.05.2024, were addressed once again before this Bench and was read out in extenso by learned Senior Counsel Mr. Joy Basu on behalf of the Complainant. Mr. Basu once again concluded his arguments urging that the entire movement of the turbines, their destinations and ultimate installations had been carried out well within the knowledge of the Opposite Party No. 1 Insurance Company that was communicated by the Complainant through the broker namely the Opposite Party No. 2, who in turn had communicated each and every step about the movement of the turbines and the purpose of seeking the insurance cover that was all well within the knowledge of the Opposite Party No. 1.

2. Mr. Basu urged that the claim was indemnifiable but the Insurance Company has chosen to repudiate the claim vide letter dated 26.03.2012 on allegations of alleged non-disclosure and misrepresentation of material facts. It is urged that the repudiation is vague and unjustifiably denies the damage suffered by the

NC/CC/197/2012 12 | P a g e Complainant in the incident on 22.07.2009. He urges that he will submit any rejoinder and any further response that may be desirable on the conclusion of the arguments by learned Counsel for the Opposite Parties.

3. Learned Counsel for the Opposite Party No. 2 Broker, Ms. A. Subhashini has urged that she adopts the arguments advanced by Mr. Basu and confirming the same, she has read out the affidavit filed on behalf of the Opposite Party No. 2 admitting the fact of the communications, which according to her were transmitted to the Opposite Party No. 1 Insurance Company. In essence, she has supported the contentions and the claim of the Complainant.

4. Mr. Saurav Aggarwal appearing for the Insurance Company - Opposite Party No. 1, advancing his submissions urged that all communications that are being relied on by the Complainant and by the learned Counsel for the Opposite Party No. 2 are oral communications or even communications which are confidentially internal between the Complainant and its sister concern and the Broker. The contention is that such communications do not bind the Insurance Company in as much as there are no documents or any proof to establish that such communications as are being alleged were ever routed through or brought to the knowledge of the Opposite Party No. 1 by any form of communication.

5. Mr. Aggarwal urged that the Broker is not an agent of the Insurance Company and that there is a distinction between the definition of an agent and a Broker. He points out that the licencing of Brokers and their functioning are regulated by the IRDA (Insurance Brokers) Regulations 2002 and they are in no way and in any manner whatever representatives of the Insurance Company. They are at best, the facilitators for their clients and therefore any communication by them with the Complainant without any intimation to the Opposite Party No. 1 is of no avail.

6. He then submits that interestingly there is no communication about the fitness or otherwise of the turbine that was shifted from Khammam and installed at Guntur on it being provided by M/s. RPPL to the Complainant. It is urged that the Original Equipment NC/CC/197/2012 13 | P a g e Manufacturers M/s. Siemens were not even impleaded as a Party, nor is there any document or communication certifying the appropriateness of the installation of the second hand turbine from Khammam plant to Guntur. He submits that the OEM M/s. Siemens could have been the best entity to have approved of such installation, but for reasons best known to the Complainant, it did not choose to consult them for approving such an installation. To the contrary, he submits that the documents on record indicate that the turbine in question had been described as a defective turbine, about which there was no communication to the Insurance Company.

7. He then contends that all the disputed documents in the shape of communications particularly the letters dated 18th, 19th and 20th of February, 2009 are nowhere

addressed to the Opposite Party No. 1 Insurance Company. These communications were not even sent to the Opposite Party No. 1. Not only this, such of these documents were not even part of the complaint and therefore were not pleadings but were very conveniently placed later on for the first time in the evidence affidavit of the Complainant. This was done after the Insurance Company had raised its objections and contested the complaint. It is urged that these documents and communications were not even pleaded in the rejoinder but were placed only in the evidence affidavit. Be that as it may, the said communications do not form part of any negotiations with the Opposite Party No. 1 nor any policies were extended or any promise extended to the Opposite Party No. 1 on the strength of such communications.

8. He has further commented heavily on the letter dated 20.02.2009, that is addressed by M/s. RPPL to the Complainant. Mr. Aggarwal submits that it was a totally internal arrangement of the transfer of a turbine on returnable basis. This communication is on a pad and not through mail. He further submits that the letters dated 18th, 19th and 20th of February, 2009 make an internal arrangement in quick succession to swap the second hand turbine from Khammam plant to Guntur, and to replace the damaged Turbine installed at Guntur by despatching it to Khammam.

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9. He submits that the Insurance Company had no intimation of any such arrangement as already indicated above but he reinforces his argument on the basis of the recital in the policies issued as Marine Transit Policies in respect of both the turbines separately. He submits that the turbine from Khammam was sent to TMEI, Hyderabad for technical feasibility study and the Marine Transit Policy was confined for the transport risk coverage of the said turbine from Khammam to Hyderabad only and back to Khammam. Similarly, the turbine from Guntur was also transported under a separate Marine transit policy to TMEI, Hyderabad for analysis and rectification. The said policy was nowhere destined for Khammam.

10. After both the turbines had reached Hyderabad, they had to return back to their respective original places and there was no communication or any desire expressed for any other transit policy for swapping the turbines from Khammam to Guntur and that from Guntur to Khammam.

11. However, the Complainant in total deviation of the respective destinations as indicated above, carved out a new journey for both the turbines and this deviation from Hyderabad was carried out without any marine policy to that effect. He further submits that this swapping was done by the Complainant and its associates on its own without there being any coverage of the risk of the change of destination and without any intimation in respect of swapping through any written communication. He has reiterated that the internal communications by the Complainant and its

parent company or its sister concern were never brought to the knowledge of the Insurance Company so as to even remotely suggest or impute any knowledge to the Opposite Party No. 1 about this new arrangement.

12. Mr. Aggarwal submits that all allegations and contentions are based on purely surmises and inferences and therefore the arguments advanced on behalf of the Complainant cannot be accepted as they remain unsubstantiated and unproved. He has then with the aid of the chart, prepared by his colleague, advanced his submissions to demonstrate that in effect the movement of the turbines without any policy on a fresh journey was a clear deviation of NC/CC/197/2012 15 | P a g e the terms of the policy and therefore there was no material to infer any knowledge about these diverted transactions executed by the Complainant.

13. He has then urged that the RPPL had no occasion to secure any erection policy for the turbine at Guntur at the complainant's plant. He submits that the policy could have been taken by the Complainant but to the contrary it was for reasons best known to the Complainant taken by M/s. RPPL. He therefore contends that this casts a serious doubt on the conduct of the Complainant and their designs coupled with the fact that none of the internal communications were ever known to the Opposite Party No. 1. He has therefore emphasised on the dates and the timings of the issuance of the policies, the respective movement of the turbines and their complete change in the destinations for being installed without any specific policy having been taken for the new journey that was planned and executed by the Complainant without information to the Insurance Company.

14. He further submits that the argument sought to be raised on the strength of the provisions of Section 19 of the Indian Contract Act for a presumption of a reasonable knowledge on the part of Opposite Party No. 1 is totally misplaced in as much as where policies are being documented with specific conditions, there cannot be any inference of a knowledge to the Insurance Company about the deviated journey of the turbines manipulated by the Complainant. Mr. Aggarwal has also prepared a list of dates and events and some written notes in response to the arguments advanced by Mr. Joy Basu on behalf of the Complainant and has also handed over a convenience compilation for reference during the course of the arguments.

The arguments could not conclude today due to paucity of time, therefore as agreed between the learned Counsel for the Parties, let the matter be listed on 11th and 12th September, 2025 at 2.00pm."

12. The Arguments of Mr. Saurav Agrawal were once again continued on 12/09/2025 in detail i.e extracted herein under:-

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1. The arguments in this Complaint commenced on 11.09.2025 and Mr. Saurav Aggarwal, learned Counsel for the Insurance Company advanced his submissions replying to the contentions raised by Mr. Joy Basu, learned Senior Counsel for the Complainant. At the outset, he invited the attention of the Bench to a flow chart to give an overall description of the status of the subject matter of claim viz-a-viz the rotor, its procurement, installation and erection culminating into the claim of insurance. He has also handed over a compilation of the 4 policies on the basis whereof the arguments have been advanced which are already on record. A list of dates and events with particulars has also been placed before us as part of the submissions.

2. To counter the submissions on behalf of the Complainant, regarding the attribution of knowledge to the Insurance Company about the swapping of the Rotors on the basis of the additional documents filed with the evidence of the Complainant, it has been urged that the said documents and the facts relating thereto are not part of the pleadings and therefore the introduction of these documents is vehemently opposed by him to urge that they cannot be looked into as they have been introduced for the first time after all pleadings had been exchanged. He submits that most of the documents are internal communications between the Complainant and the OP2 Broker which can in no way presume to be an evidence for the purpose of construing knowledge to the Insurance Company. Mr. Aggarwal has pointed out that there are two subsidiaries of M/s Velcan Energy SA, a Company in France. Velcan Energy India Pvt. Ltd. is a subsidiary that has set up the Complainant Power Plant Satya Maharishi Power Corporation Ltd. (SMPCL) whereas the other subsidiary, namely, M/s. Velcan Renewable Energy India Pvt. Ltd. has set up the Power Plant, named, Rithwik Power Project Ltd. (RPPL) at Khammam, Andhra Pradesh. The Complainant Plant is situate at Guntur.

3. According to Mr. Aggarwal the Khammam Power Plant as well as the Guntur Power Plant of the Complainant both had 11 stage Rotor turbines. The Rotor at Khammam, which according NC/CC/197/2012 17 | P a g e to Mr. Aggarwal, was defective was replaced by a 20 stage Rotor in June, 2006 and accordingly, the 11 stage Rotor was defective and lying idle as it was non-functional.

4. On the other hand, the Complainant's Power Plant at Guntur had a 11 stage Rotor that was damaged on 23.07.2008.

5. The 11 stage Rotor of RPPL at Khammam was transported to Hyderabad for its status assessment and for this transit, was covered under a policy which was a transit insurance policy for the period 28.11.2008 to 25.01.2009. This Rotor was to be transported to Turbo Machinery Engineering Industries (TMEI), Hyderabad for a technical feasibility study. It had a direct route for transit to Hyderabad and back to Khammam and the transit policy was acquired for the said route only.

6. The Rotor from SMPCL Guntur, that was damaged on 23.07.2008, also undertook a journey under a marine Policy that was valid from 03.10.2008 to 21.01.2009. The journey of this Rotor was specified in the policy from Guntur to Hyderabad and then back to Guntur.

7. Mr. Aggarwal contends that the Rotor from Guntur which had been damaged was examined by TMEI and was found to be damaged as per the Complainant but it is not known as to what was the

actual report and as to where the equipment was lying.

8. On the other hand, the Rotor which had arrived from RPPL Khammam for a technical feasibility assessment by TMEI at Hyderabad, instead of returning back to Khammam, was diverted to Guntur. Mr. Aggarwal submits that there was no transit policy at all for its diversion to Guntur. It is, at this stage, the real dispute commences in, as much as, Mr. Aggarwal submits that in the absence of any insurance policy having been obtained by the Complainant for the Rotor that arrived from M/s. Rithwik Power Project at Khammam, the claim was not indemnifiable.

9. He then points out to the two Erection Policies to urge that these policies were meant for coverage at Khammam itself and not for the Rotor that came to be installed at Guntur. The two erection policies have been taken by Rithwik and for coverage at Khammam. The contention is that the Complainant never NC/CC/197/2012 18 | Page took erection policy for the erection of the Rotor that was diverted from Khammam to Guntur.

10. Mr. Aggarwal points out that Khammam had already a 22 stage Rotor installed and running since 2006, yet the erection policy for the 11 stage Rotor was taken by RPPL for Khammam and not for Guntur. He submits that if at all it had to be insured for Guntur, then it is the complainant SMPCL who ought to have taken the policy. He submits that the RPPL Rotor which was shifted and diverted from Hyderabad to Guntur was a Rotor which had to return back to Khammam as it was not covered by any transit policy for Guntur, and in these circumstances the Rotor which travelled to Guntur was neither a subject matter of insurance acquired by the Complainant nor any erection insurance coverage was taken by SMPCL in respect of any equipment that was meant to be installed at Guntur.

11. He has further urged that this swapping of the Rotor from Khammam to Guntur was without information to the Insurance Company and this fact of an internal swapping was some internal arrangement by the subsidiary companies among themselves that had no legal insurance coverage for either a transit or erection at Guntur by SMPCL. He submits that the fact of swapping was suppressed and therefore, there is no reason to attribute knowledge to the insurance company about the swapping. It is this swapping which is questioned and it is urged by the learned Counsel that this was unauthorized, illegal and without any approval.

12. The flow chart therefore handed over by Mr. Aggarwal has to be understood in the light of the said contention. A scanned copy of the said flow chart is extracted hereinunder:

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13. Mr. Aggarwal submits that the absence of any valid policy, the facts seem to be patched up by arguments and introducing documents, which according to him have been filed with the evidence and then also along with the additional evidence that did not accompany the complaint. The documents are as follows:

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14. He then contends that this is a clear lacuna in the case and in the pleadings which is now sought to be introduced through the evidence and additional documents which he submits are exclusively internal communications. His contention is that once these documents are rejected then the entire edifice of the arguments in the Complaint would fall to the ground.

15. He has then advanced his submissions with the aid of his list of dates and events to point out that it is an attempt by the complainant in cooperation with the OP2 Insurance Broker to introduce these documents in the shape of mails which are internal between the Complainant and the OP2 and are totally therefore self-serving documents. He therefore urges that through an internal arrangement without any approval of the Original Equipment Manufacturer M/s. Siemens and without there being any express insurance policy for the installation of the Rotor from Khammam at Guntur is all contrary to the pleadings on record and any inference of a policy coverage in to that effect favour of the Complainant to that effect is without any basis.

16. He vehemently urges that the Complainant has not taken any policy of erection for the rotor from Khammam secretly NC/CC/197/2012 23 | Page diverted to Guntur and consequently the Complainant cannot claim any indemnification in the absence of any policy coverage.

17. He submits that even if the Complainant alleges that there is a mistake in the second erection policy, there is nothing on record that the Complainant or M/s. Rithwik either took any steps to intimate the Insurance Company of the error in the description of the policy No change whatsoever was sought and the Complainant was fully aware of the contents of the policy who could have very easily moved for any rectification, but the same was also not possible as the policy had not been taken by the Complainant Company. There was no effort from M/s. Rithwik as well to get the policy changed or intimate about any error in the same. In such circumstances, there is no occasion for the Insurance Company to have presumed any error in the policy.

18. The policy as it stands is acquired by RPPL of which the Complainant cannot claim to be a beneficiary.

19. Mr. Aggarwal then vehemently argued that the Insurance Broker OP2 is not an agent of the Insurance Company. Inviting the attention of the Bench to a set of regulations namely the Insurance Regulatory And Development Authority (Insurance Brokers) Regulations 2002, he has urged that the regulations clearly provide for a licensed broker and these brokers even though are obliged to collect information while negotiating a policy, they are neither the agent of the Insurance Company nor can they claim themselves to be so as they are independent assessors of the risk of Policy about which they advise to their client like the present Complainant. He therefore submits that the broker in no way can be presumed to be a person responsible to receive and communicate information on behalf of the Insurance Company. He submits that knowledge to the broker about any such swapping cannot automatically be presumed to be an automatic knowledge to the Insurance Company. If the broker has done something on his own, the same cannot attach liability to the Insurance Company. He therefore submits that there is no liability under the policy

NC/CC/197/2012 24 | Page issued by the Insurance Company for the loss claimed by the Complainant.

20.He next contends that the argument of the Complainant is on presumptive knowledge because of a pre-inspection survey by Mr. Markande Ulu is a misconceived argument, in as much as, there is no evidence to attribute knowledge to the Insurance Company regarding the swapping of the two Rotors. The pre- inspection therefore does not come to the aid to the Complainant.

21.Mr. Aggarwal has then taken us through the various emails on record to contend that even this internal swapping has been conducted in a way which does not inspire confidence, in as much as, according to the Complainant themselves the authorities authorizing the swapping had taken a decision to get an assessment of the Rotor at Khammam as to whether it would be compatible for installation at Guntur or not. A snap decision was taken within 24 hours treating it to be sufficiently efficient being installed. No inspection was carried out nor there is any report which may indicate that the Rotor from Khammam was in good working condition and was not defective. He submits that the presumption is that it was defective because as soon as it was installed at Guntur, the break down occurred. It is thus evident that a defective piece was procured between the sister concerns, and in spite of the fact that the Rotor was defective, the same was installed that probably resulted in the loss. In these circumstances, the contentions raised on behalf of the Complainant cannot be accepted.

22.Some written Notes of the arguments advanced on 11.09.2023 have also been handed over to contend that the Complainant is trying to plug in the gaps and the missing links by introducing facts which are neither substantiated nor can be accepted on record for all the reasons hereinabove. He therefore submits that the contentions of the Complainant deserve rejection.

23.Mr. Aggarwal then proceeded to point out towards the mails and communications on record and to contend that firstly there was no communication to the Insurance Company OP-1 about NC/CC/197/2012 25 | Page any intention to swap the rotor of Khammam to Guntur. He submits that according to the complainants themselves the decision was taken for the first time on 20.02.2009 and if that is correct, then there is no occasion to presume any communication being made prior to that about the swapping of the rotors. He submits that as is evident from the erection policies also, they do not specify the coverage of the erection of the 11 stage rotor brought from Khammam at Guntur. The installation itself took place on 04.03.2009. He therefore submits that the pre-inspection survey by Mr. Markande Ulu was also not available as any evidence as to interchange of the rotors seems to have taken place prior to the inspection. There is no evidence to impute any knowledge to the OP-1 about this fact as well. It is urged that this was a material fact and therefore this entire episode of swapping having not been disclosed, does not entitle the complainant for any claim.

24.Mr. Aggarwal emphasised that it is for this reason that all this material is now sought to be introduced through the evidence and through the written arguments which was never supplied to the Surveyor and in fact has nowhere been appropriately pleaded in the original complaint.

25.Mr. Aggarwal has seriously disputed the mail dated 10.12.2008 and its content which according to him nowhere suggests even an attempt to inform the OP-1 about any negotiation of the swapping. Surprisingly this document was allegedly issued by the Broker OP-2 to the complainant with no copy of it marked to the OP-1. The contents of the mail dated 12.12.2008 have also been disputed as it has no signatures and its authenticity is clearly doubtful.

26.Mr. Aggarwal then points out that the comparison contained in the document dated 12.12.2008 regarding the two rotors is not on the letter head of TMEI and the documents contained a separate signature as compared with the certificate dated 17.02.2009 issued by TMEI. It is also urged that no official of TMEI has filed any affidavit in support of the alleged report and therefore the same cannot be accepted as an evidence.

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27. Pointing out towards the mail dated 15.12.2008 that was sent from the OP-1 to the OP-2, it was clarified that the policy would commence from the date of functioning of the plant which implied that there was a shutdown of the plant. There is no mention about any swapping or any knowledge about the alleged swapping and therefore this communication cannot be construed to attribute any knowledge to the OP-1.

28.Mr. Aggarwal then pointed out that it was a defective rotor that was sought to be implanted at Guntur and for this, Mr. Aggarwal has indicated to the annual report of financial year 2007-2008 of M/s. Velcan Energy India Pvt. Ltd. where the complainant is stated to have suffered yearlong interruptions due to major technical problems related to their turbines.

29.The reference in the mail dated 27.01.2009 dispatched by OP- 2 to OP-1 seeking extension of transit policies has been explained contending that the words mentioned in the bracket about the spare rotor of RPPL moving to SMPCL was contrary to the terms of the policy itself and this information was not shared with the Insurance Company when the insurance coverage was being sought. The authenticity of the said mail has also been commented upon as it could not have been a trailing mail as suggested.

30.Mr. Aggarwal contended that as late as February, there were still discussions going on regarding replacement. Further the letter dated 18.02.2009, which is a communication from Velcone Energy to Velcone France is yet another internal mail with which the OP-1 is nowhere concerned, but surprisingly within one day on 19.02.2009, a meeting was convened at Dubai of the Board for taking a decision without even verifying the suitability. As a matter of fact, Velcome France had proposed that TMEI be approached to assess and test whether the spare turbine of RPPL at Khammam could be possibly used or not. Thus, the complainants themselves were still searching and attempting the suitability of the same and therefore there cannot be any assumption or attribution of knowledge about the swapping when the decision itself was taken on 20.02.2009 and that too even without any information to the OP-1 Insurance NC/CC/197/2012 27 | P a g e Company. Apart from this, the rotor was an asset of a sister concern set up by a different corporate entity and the transfer of such asset had not taken place nor there was any evidence to that effect from Khammam to the Guntur

plant of the complainant. There was therefore no question of giving any insurance coverage belonging to another entity and therefore there was no question of any claim arising in respect of the said rotor by the complainant under any policy.

31. It is for this reason that the learned counsel for the complainant has developed the argument of an implied knowledge about this alleged swapping through this insurance broker and is an attempt to demonstrate as if there was any involvement of the OP-1 in the said negotiations. Mr. Aggarwal points out that the certificate dated 17.02.2009 of TMEI indicated that it was only 90% efficient and not economically viable therefore it had to be replaced. It is in this context that the advice was sought from TMEI to use the rotor from Khammam in place of the rotor at Guntur, but no such document has been produced. The submission is that TMEI had declared the rotor at Guntur as unusable and there is nothing on record to indicate as to what happened to that rotor that stood rejected from Guntur. It is in this context that an alleged decision was taken in Dubai for replacement. Thus these circumstances also indicate that there was no decision prior to 20.02.2009 for shifting of the rotor and as such any communication prior to that interse between the complainant, the OP-2 or between the entities themselves can in no way construe as knowledge to the Insurance Company without any evidence to that effect.

32. Mr. Aggarwal emphasized that once the rotor at Guntur was rejected and was unusable, the decision to bring in the rotor from Khammam was also in respect of a defective rotor. He emphasized that the documents to show that the replacement by a 22 stage rotor was not a mere replacement, but it was installed after defects had occurred in the 11 stage rotor of RPPL at Khammam. It is this defective rotor which was sought to be implanted designedly at Guntur and it was proved that it was defective, in as much as, it immediately broke down after NC/CC/197/2012 28 | P a g e its installation at Guntur. The Insurance Company was never informed about a defective rotor being installed and the Surveyor had categorically had asked for any technical report certifying the rotor at Khammam to be free from defect, but no such report was given to the Surveyor. This information is now sought to be introduced through the additional evidence and the facts stated in the written arguments and therefore cannot be taken into account to discount the Surveyor's report. Withholding this important information was therefore yet another reason for not accepting the claim of the complainant. Mr. Aggarwal has then again invited the annual report reference to financial year 2008-2009 and to the grounds taken in paragraph XIII of the complaint to urge that the plant at Khammam of RPPL had problems regarding its rotor. He has again disputed the pre-inspection report on which reliance is placed and has denied the visit of the Inspector of the OP-1 on 04.03.2009. The pre-inspection report has also been contested.

33. Mr. Aggarwal then urged that the decision allegedly communicated through an internal e-mail dated 10.12.2008 could not have predated the actual decision which was taken on 20.02.2009. The argument therefore on behalf of the complainant that they had already taken a decision to swap the rotor is contrary to the evidence on record. There was no inspection of Mr. Markande Ulu on 20.12.2008 nor was he ever given any information about the swapping of the rotors.

34. He submits that the fact of swapping and the defect about the rotor from RPPL Khammam was material to assess for the insurer to agree to any risk or whether it could have taken the risk after

knowing about the defects of the said rotor. Nondisclosure of any such fact and basing the claim on an assumed knowledge about the same is therefore an attempt to mislead this Commission and such nondisclosure being a material fact entitles the Insurance Company to decline a claim.

35. Coming to the status of the rotor, it is urged that as a matter of fact, the premium which was paid was itself indicative of the fact that even prior to that, the rotor was itself a second hand rotor.

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36. The status of the policies was also explained to contend that the attribution of knowledge is totally misplaced and it is after consideration of all the material facts on record that the claim was repudiated on 26.03.2012.

37. Regarding the role and the status of the insurance broker namely the OP-2, it has been urged that the broker is not an agent of the Insurance Company and is a simple facilitator, hence any information to the OP-2 cannot be presumed to be knowledge of fact to the OP-1. To the contrary, the OP-2 according to the IRDA Insurance Brokers Regulations, 2002, the Broker acts on behalf of his clients and to arrange insurance contract for them, who in the present case is undoubtedly the complainant and not the OP-1. He has referred to the various provisions of the regulations to emphasize his submissions. Even the negotiation of claim is at the instance of the insured and therefore the broker does not become the agent of the Insurance Company. He further submits that there is a clear distinction between an insurance broker and an insurance agent. An agent is governed by the IRDA (Licensing of Insurance Agents) Regulations, 2000 and therefore the OP-2 is not an agent of the Insurance Company. On the other hand, the Code of Conduct of the Brokers Regulations, 2002 under Schedule 3 Clause 14 provides that an Insurance Broker shall not act as an Insurance Agent, keeping in view the provisions of Section 42 of the Insurance Act.

38. Mr. Aggarwal relied on a decision of the United States District Courts, Texas in the case of Evanston Insurance Company vs. Cheetah to urge that any notice to the Broker is not a notice to the Insurance Company. He further referred to the definition of Agency and Principle Agent Relationship under Section 182 of the Indian Contract Act to urge that the Broker cannot be construed to be an agent in any manner whatsoever. Other judgments were also relied on through a compilation that was handed over and it was urged that no reliance can be placed on an expert report without examination of the expert as a witness. Mr. Aggarwal concluded his arguments with the submissions advanced and a short written note was also NC/CC/197/2012 30 | Page handed over in respect of the arguments advanced on 12.09.2025.

39. The matter therefore has to proceed now for rebuttal in rejoinder on behalf of the complainant and as agreed between the learned counsel for the Parties, let the matter be listed on 30.10.2025."

13. A Rejoinder to the said Arguments was raised by Mr. Basu that stands recorded on 30/10/2025 extracted herein under:-

"1. Mr. Joy Basu, learned senior counsel commenced his arguments once again recapitulating the facts as already recorded in the order dated 13.05.2025 and then he responded to the point wise contentions raised by Mr. Saurav Aggarwal as recorded in the order dated 12.09.2025. Mr. Aggarwal has however pointed out that the last sentence in paragraph 32 of the order dated 12.09.2025 appears to have been incorrectly incorporated contending that what he intended to convey was that the OP-1 is relying on the report which has been erroneously recorded as being contested. Accordingly, the last line of paragraph 32 of the order dated 12.09.2025 shall stand deleted which runs as follows "He has again has also been contested."

2. Mr. Aggarwal has further placed a chart to urge that he has consolidated the list of certain documents not having been brought on record by the complainant in spite of certain references relating thereto and he has also urged that the evidence of the witnesses that were necessary and are missing has also been enlisted therein. The chart is extracted hereinunder:

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3. Mr. Basu, learned Senior Counsel for the complainant, advancing his submissions, urged that broadly the position that emerges for consideration of this Commission is in the background of certain facts which he has referred to bordering five issues. He urges that the extraordinary type of coverage regarding a turbine is a rare type of insurance coverage which is not usual or routine and therefore the Insurance Company is expected to have exercised a higher degree of due diligence in extending a coverage. The Insurance Company therefore having knowingly extended the coverage will be presumed to have exercised such a high degree of diligence before issuing the policy after assessing the entire information available to it.

4. As a sequel to this argument, he submits that secondly it is not that the complainant and the Insurance Company were negotiating about something which was unknown. To the contrary, both the parties were familiar and had complete knowledge about the NC/CC/197/2012 34 | Page existence of these turbines, their operations and the insurance coverages and therefore there was an extended relationship existing between the parties for long that stood cemented and which confirmed that the Insurance Company had been transacting the machinery breakdown Policy in relation to these turbines through the same Broker to whom the Insurance Company was paying the brokerage. The submission is that the communications regarding the nature of the coverage in respect of the rotor was a fact about which the Insurance Company had full knowledge.

5. His third broad submission was about the status of the 11 stage turbine, the rotor whereof at Khammam belonging to RTTP which he submits was without any defect. He submits that the presumptive arguments raised by Mr. Aggarwal about the 11 stage turbine of Khammam being defective and being replaced by a 20 stage rotor on account of the earlier turbine being defective is without any basis and therefore any argument advanced on that strength is speculative and deserves rejection.

6. He then contends that the allegation in the repudiation about non-disclosure on the part of the complainant has to be proved by the Insurance Company as the burden is on them to establish any non-disclosure, once the complainant has brought on record the material to demonstrate that the Insurance Company was well aware about the nature of the coverage that had been sought and granted relating to the loss of the equipment at the plant at Guntur. He submits that this burden had not been discharged by the Insurance Company and therefore they have failed to establish the cause of repudiation.

7. He has then urged that on the issue of quantum, the Surveyor appointed by the Insurance Company, Mr. Bhatawadekar had assessed the loss at approximately Rs. 3.37 Crores, whereas the Assessor appointed by the complainant M/s. Rank Surveyors Pvt. Ltd. have quantified it at approximately Rs. 4.07 Crores in respect of the machinery breakdown. Apart from this, an additional approximately 3 Crores have been assessed as a consequential loss of profit by M/s. Rank Surveyors Pvt. Ltd. which states the loss assessed to be Rs. 7 Crores and odd. He therefore submits that this assessment and claim on behalf of the complainant also deserves to be allowed.

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8. Mr. Basu elaborating on the submissions has proceeded by pointing out to the issues raised on behalf of the OPs as contained in the arguments of Mr. Aggarwal recorded in paragraph 23, 24, 25 and 29 of the order dated 12.09.2025. He submits that this pre-inspection report and the facts relating thereto have been asserted in paragraph 13 and paragraphs 14 (a to d). He submits that these pleadings have been supported by the evidence that has been filed and as such the argument of Mr. Aggarwal that this evidence cannot be read as there is no pleading is without any basis.

9. The report of Mr. Markande Ulu dated 11.03.2009 that has been filed at page no. 443 of the convenience compilation confirms that there is no defect in the Rotor that was brought from Khammam to Guntur and installed. For this, he has invited the attention of the terms of the policy that commenced on 10.03.2009 upon the report of Mr. Markande Ulu dated 11.03.2009 that had been obtained after carrying out the running test of the turbine in order to confirm its fitness. This test from 04.03.2009 to 10.03.2009 was confirmed by Mr. Markande Ulu in respect of the same Rotor that was subject matter of the policy that had been acquired by M/s. Rithwik and came to be installed at Guntur confirming that it was in good running condition. He therefore submits that there was no error at all in the MBD policy and the confusion sought to be raised with the help of the erection policy is also unfounded, in as much as, there were two separate erection policies taken by M/s. Rithwik, one which was for the 20 stage turbine installed in 2008. The 11 stage Rotor that was decommissioned at Khammam by M/s. Rithwik therefore was having a policy in which M/s. Rithwik had an insurable interest and it is for this reason that the erection policy of the 11 stage Rotor had been issued in the name of M/s. Rithwik. There is therefore no mistake as alleged by Mr. Aggarwal and it was the whole turbine which has been inspected by Mr. Markande Ulu, who tendered his report on 11.03.2009 whereupon the MBD policy was brought in operation with effect from 10.03.2009 as it was subject to the 7 days of test running that took place from 04.03.2009 to 10.03.2009.

10. While answering to the contentions raised in paragraph 21 of the order dated 12.09.2025 about the alleged defect in the Rotor, he submits that the installation at Guntur took place on 04.03.2009 and NC/CC/197/2012 36 | P a g e the problem leading to the incident occurred almost 4 ½ months thereafter on 22.07.2009. He therefore submits that the contention raised by Mr. Aggarwal as noted in paragraph 21 of the order referred to above is an incorrect argument as the problem was neither immediate nor did it occur immediately after its installation.

11. He has also urged that it is only the Rotor at Khammam which was changed and installed at Guntur and he submits that the breakdown has not occurred due to the Rotor nor the cause of loss is connected to the same. For this, he has invited the attention of the Bench to the Root Cause Analysis test from different sources including that of Cobham, U.K. for which he has invited the attention of the Bench to pages 505, 506, 514, 515, 648, 718 and 721 of the convenience compilation to urge that the said reports confirms that there was no breakdown due to the Rotor.

12. He has then proceeded to paragraph 13 of the order dated 12.09.2025 to urge that the evidence affidavit on behalf of the complainant was filed on 14.07.2015 and the order of this Commission dated 02.05.2016 accepts the same on record. He contends that till date the said evidence which narrated about the documents have nowhere been objected to or even referred to by the OPs in spite of the fact that they have filed their evidence on 19.10.2016 and therefore no such objection can be taken about any absence of pleadings or evidence at this stage of final hearing.

13. Coming to the paragraph 19, 37 and 38 of the order dated 12.09.2015, he submits that the role of the Broker is that of a bridge and the communications between the OP-1 Insurance Company and the OP-2 Broker inter se establishes the connecting link regarding the entire transaction. He submits that the Broker is an advisor to both sides and his communications are transmission of information officially which he is obliged to do keeping in view the conduct of the Broker being regulated statutorily under Schedule 3 of the IRDA Insurance Regulations, 2002. He has invited the attention of the Bench to Regulation 3(e), 4(d), 5, 7 and 9 to urge that the Broker is the main connecting link as the complainant has negotiated the policy through the Broker and therefore all communications through the Broker establish the movement of all information officially. The Broker has filed its affidavit which is on record. This affidavit of the OP-2 has NC/CC/197/2012 37 | P a g e neither been contested or rebutted by the OP-1. He therefore submits that the communications that have been pointed out and argued by him leave no room for doubt that the entire information regarding the coverage that was intended for the Rotor brought from Khammam and installed at Guntur was squarely within the knowledge of the Insurance Company while issuing the policy.

14. He submits that the Insurance Company is also authorised to take any action against the Broker in the event there is any breach of such conduct, but the Insurance Company has nowhere alleged that there was any such breach of conduct or that the Insurance Company had undertaken any exercise to reprimand the Broker or taken action against him for any such alleged breach. He therefore submits that this fact of the Insurance Company remaining silent about the stand taken by the Broker confirms that the Insurance Company had received all communications and information regarding the same Rotor while issuing the policy about which contentions have already been raised

and facts narrated in the arguments already raised previously.

15. Mr. Basu then urged that the burden was on the Insurance Company to prove any suppression and the best piece of evidence regarding any allegation of concealment or misrepresentation of material fact was the proposal form that led to the issuance of the policies. He submits that none of the proposal forms of any of the policies have been produced or filed and have been deliberately withheld which could have been the best piece of evidence to demonstrate any non-disclosure by the complainant. Since the Insurance Company has failed to do it, the contentions raised on behalf of the Insurance Company are unfounded. To substantiate the said submission, Mr. Basu has relied on Regulation 4 of the IRDA (Protection of Policyholders' Interests) Regulations, 2002 to contend that even if there is no proposal form used, the information has to be recorded and communicated as provided for under Regulation 4(4) and even this onus has not been discharged by them.

16. The arguments could not conclude today and therefore on the request of the learned counsel for the parties, as agreed, let the case be listed on 08.01.2026."

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14. The said Arguments of Mr. Basu could not be concluded and were continued partly on 08/01/2026, which is recorded herein under:-

1. Mr. Joy Basu, learned senior counsel advanced his submissions with the aid of a chart provided by him contending that neither is there any suppression of any material fact and even otherwise the allegation about the suppression becomes irrelevant on account of the pre-inspection of the equipment by Mr. Markandeyulu. He has then referred to the inter se correspondence that has been handed over through a fresh convenience volume today to substantiate his submissions.

2. Mr. Basu contended that all policies have been issued by one and the same office of the OP and it has been negotiated by one Ms. Shaina Taneja on behalf of the OP-1 which is evident from the name appearing in the e-mails that have been communicated on behalf of the OP-1. The extension of the transit policies were also communicated and negotiated through Ms. Shaina Taneja who had full knowledge about the swapping of the rotor for which this entire exercise had been undertaken. Not only this, the broker is also the same as is evident from a perusal of the Marine Specific Policy. The endorsements are signed by Ms. Shaina Taneja.

3. Mr. Basu has referred to the mail dated 10.12.2008 to urge that a reference with regard to the running and operation of the rotor for one week or 10 days and this subject matter of using the Rithwik rotor in the turbine stands confirmed with the recital contained in the subject of the mail of the same date that was sent in the reply. It categorically indicated that this was a test run and therefore the fact of the use of the rotor from the Rithwik plant for the plant at Satyamaharshi was therefore well-known and informed to the Insurance Company. It is these communications

which led to the inspection of Mr. Markande Ulu and was discussed by the OP-2 broker through the reply mail dated 10.12.2008 sent at 2.41pm.

4. The compatibility of the rotor being similar is evident from the chart prepared on 12.12.2008. The chart also records that the rotors of Satyamaharshi and Rithwik Power were inspected and the dimensions were compared concluding that both the rotors are NC/CC/197/2012 39 | P a g e identical. He has then invited the attention of the Bench to the mail dated 11.12.2008 and 12.12.2008 to point out that the arrangement of the Surveyor was being coordinated for the use of Rithwik rotor for the Satya turbine.

5. The next communication dated 12.12.2008 from the broker to the Insurance Company with a copy of the same to Ms. Shaina Taneja has been emphasized indicating of the movement of the Rithwik rotor to the complainant with the extension options. He has then invited the attention of the Bench to the mail dated 15.12.2008 replied by Ms. Shaina Taneja to the broker with a copy of the same to the Surveyor Mr. Markandeyulu. This communication is with regard to the machinery breakdown policy and its renewal subject to pre-

inspection of the plant. It also informs that Mr. Markandeyulu has been deputed for the pre-inspection and the following trailing mail indicates that this communication was also sent to Mr. Markandeyulu. The quotation from Iffco Tokio General Insurance Co. Ltd. regarding the Machinery Breakdown and Machinery Profit Policy indicating the risk description was dispatched by none else than Ms. Shaina Taneja on 30.12.2008 that has also been read out by Mr. Basu. This was followed by the Erection Policies.

6. Mr. Basu has then explained the timings and the period of the Erection Policy issued in the name of Rithwik dated 16.01.2009 to be effective till 15.03.2009.

7. The movement secured under the transit policies have been noted in the mail dated 27.01.2009 followed by the other communications which demonstrates the knowledge of the movement of the Rithwik rotor to Satyamaharshi.

8. It is then submitted that the Erection Policy dated 19.02.2009 issued in the name of Rithwik was absolutely unnecessary, in as much as, Rithwik already had a policy as referred to above. The issuance of this policy on 19.02.2009 was in effect for the erection at the Satyamaharshi unit with the rotor from Rithwik but the insurance premium was paid by Satyamaharshi for which he has relied on the voucher indicating the payment by Satyamaharshi for Erection All Risk Insurance as per enclosure.

9. He has then pointed out to the report of Mr. Markandeyulu dated 11.03.2009 and has read out that the inspections which had NC/CC/197/2012 40 | P a g e been made on 4 dates stands corroborated that were regarding the subject matter of the rotor from Rithwik being installed at Satyamaharshi and its operations.

10. Submissions were raised with the aid of the compilation and the same was required to be elaborated further for which learned counsel for the parties agreed that the matter may be taken up on 28.01.2026.

11. List on 28.01.2026."

15. Mr. Basu, ld. senior counsel concluded his arguments on 09/03/2026 to which a response was given by Mr. Agrawal urging that certain new arguments had been advanced and he therefore submitted a detailed note running into 30 paragraphs and advanced his submission that are recorded on 09/03/2026 extracted herein under:-

After Mr. Basu had concluded his rejoinder, Mr. Agrawal today has responded to it by contending that certain new arguments had been advanced and therefore it was necessary to give a response to the same. He contends broadly that the complainant has canvassed that information about Rithwik rotor being replaced at the Satyamaharishi unit at Guntur was well informed to the Insurance Company for which reliance has been placed on the communication made by the broker to the Insurance Company. Mr. Agrawal submits that there is no such evidence to establish any information about replacement being given to the Insurance Company or the Insurance Company having any knowledge about the replacement of the rotor. He submits, even otherwise the broker is no agent of the Insurance Company and according to the admission made by the complainant, the opposite party no.2, the broker, was described as a facilitator. He submits that the arguments advanced on behalf of the Insurance Company with the aid of the IRDA regulations to urge that the broker is no agent of the Insurance Company has not been controverted in the rejoinder.

NC/CC/197/2012 41 | P a g e Mr. Agrawal then urged that the allegation of information through the mail dated 28.01.2009 is based on it being relied on through the rejoinder. It is urged that in spite of the opportunity to the complainant, the said mail even though referred to in IA No. 10361 of 2017 and the order passed on 08.01.2018, the said document was never filed as evidence. The complainant did file their additional evidence thereafter but did not bring the said document on record. He submits that the same not being part of evidence cannot be looked into as had it been brought on record through evidence, the opposite party would have contradicted the same. He submits that the communication dated 27.01.2009 which is said to have been addressed by the broker to the Insurance Company nowhere talks of any replacement and the bracketed portion of the said mail does not in any way communicate any information regarding replacement. The word movement used therein is in relation to the transit policy and its extension which is to and fro the destination that were mentioned in the transit policies. The same is no acknowledgment of any intimation or knowledge being transmitted regarding replacement. He further submits that the bracketed portion is a parenthesis and it does not control what is written before or thereafter. The said mail dated 27.01.2009

is only in relation to extension of the transit policies and is not an information with regard to replacement of the Rithwik rotor to the complainant's plant at Guntur.

He has cited the decision in the case of Dozco India Pvt. Ltd. Vs. Doosan Infracore Company Ltd. (2011) 6 SCC 179, Paragraphs 15 and 19, and the decision in the case of Furest Day Lawson Ltd. Vs. Jindal Exports Ltd. (2011) 8 SCC 333, Paragraph 44 onwards. He submits that several arguments have been advanced for the first time on the basis of affidavit of evidence which were not there in the complaint and new documents were introduced. These documents were neither given to the surveyor nor stated in the complaint. Mr. Agrawal has referred to the internal communications between the companies and the parent company which are on letterheads and which were never shared with the Insurance Company. They were not even mails and they cannot be relied on as they do not in any way establish NC/CC/197/2012 42 | P a g e knowledge to the Insurance Company. Even the evidence has not been proved and it is doubtful and not credible evidence which should be discarded in this summary jurisdiction.

He has then urged that the arguments on pre-inspection by Mr. Markandeyulu and his report dated 04.03.2009 nowhere refers any replacement of the rotor. It only talks of repair and Mr. Markandeyulu was never intimated about such replacement. In fact the replacement was not the subject matter of inspection at all. He submits that there was no question of inspecting something about which no information was given by the complainant.

He then submits that this decision of replacement was taken allegedly on the basis of the report from Turbo Machinery Engineering Industries (TMEI) which was never shared with the Insurance Company nor it has been filed nor brought on record here.

He also submits that the Rithwik Khammam rotor was also defective and this fact has been stated in para-10 of the evidence affidavit of the complainant where it has been stated that there were some issues with the turbine.

He has then pointed out towards the averments made in para-11 to contend that no document has been filed to support the averments therein regarding the replacement or knowledge being attributed to the complainant.

He then submits that the erection policies were taken for the Rithwik rotor at Khammam and the contention now raised is that the policy had been issued erroneously and is of no relevance. Learned counsel submits that this is an inconsistent stand.

Mr. Agrawal has then invited the attention of the Bench to para-14 of the complaint to urge that the allegations made therein are totally unsubstantiated.

NC/CC/197/2012 43 | P a g e He has then pointed out to the mail dated 10.12.2008 to contend that the said mail was not marked to the Insurance Company and therefore the same cannot be pressed into service to attribute knowledge. He has then invited the attention of the Bench to the observations made in para-5 of the order passed by us on 08.01.2026 to contend that the argument

that on 12.12.2008 the broker sent a mail to the Insurance Company is absolutely incorrect, inasmuch as no such mail exists. The mail which was sent was not to the Insurance Company and to connect it with the response dated 15.12.2008 is absolutely wrong, inasmuch as the said mail does not refer any mail dated 12.12.2008. It does not talk of any replacement nor is the reply dated 15.12.2008 contained in reference so as to attribute knowledge of the replacement of the Rithwik rotor to the complainant's plant at Guntur. It is urged that this connect of dots attempted by the complainant by referring to the internal communications with the parent company and their decision to replace the rotor, the pre-inspection by Mr. Markandeyulu and the mail communications, is an attempt to create an argument as if the Insurance Company had knowledge about the replacement whereas the documents do not support the same in any manner whatsoever. Mr. Agrawal concluded his submissions by referring to the decisions that have been cited on behalf of the complainant and has urged that they are clearly distinguishable and are not applicable on the facts of this case. He has also handed over a chart in respect of the arguments advanced regarding the mail dated 28.01.2009.

He has finally submitted that the letter of repudiation narrates all the letters which are relevant on the basis whereof the claim was repudiated and in such circumstances the repudiation does not suffer from any infirmity.

A detail note on Sur-rejoinder has been tendered by Mr. Agrawal running into 39 paras, a copy whereof may be supplied to Mr. Basu as it contains the details of the arguments referred to hereinabove.

NC/CC/197/2012 44 | P a g e As agreed between learned counsel for the parties, let the matter be listed on 20.03.2026.

16. Since, Mr. Basu, ld. senior counsel wanted to clarify these Arguments, the matter was finally heard on 25/03/2026. The concluding Arguments proceeded on 25/03/2026 and were summed up by the learned counsel.

17. With the conclusions of the submissions on 25.03.2026, orders were reserved to be delivered on 04.05.2026.

18. Mr. Basu urged that the insurance coverage involved in the present case is a high value insurance contract with substantial stakes and therefore the Insurance Company is expected to have exercised a higher degree of due diligence while issuing the policy upon having full and complete information and after making a conscious assessment. He submits that the entire transaction is a chain and the issuance of the marine policies, the erection policies as well as the machinery breakdown policy and loss of profit policy have been negotiated by the same set of officers of whom Ms. Shaina Taneja is prominently the official who was involved in the finalisation of the policies.

19. He further submits that the internal mails that have been relied upon complete the chain of all events, and therefore an inference of knowledge about the nature of coverage, the subject matter of the goods insured as well as the risk involved were to the Insurance Company can be safely

gathered. He has then once again referred to the communication dated 10.12.2008, 12.12.2008 and the mail from the complainant to the OP-2 of the same date followed by the mail from the OP-1 Insurance Company to the Broker, OP-2 NC/CC/197/2012 45 | Page on 15.12.2008. He urges that it clearly indicates that the Machinery Breakdown cover was being offered subject to a pre-inspection for which Mr. Markandeyulu was deputed as an Inspector. He has then urged that the said communications were followed by the revised quotes that were communicated by the Insurance Company to the Broker, OP-2 on 31.12.2008 for issuance of the Machinery Breakdown Policy. The revised quote dated 01.01.2009 was also read out to urge that the same was sent by the Insurance Company to the OP-2 and a copy of the same was once again marked to Ms. Shaina Taneja. He has reiterated the fact of issuance of the erection policy and the quote regarding the same to the complainant as well as to Rithwik Power Plant, and both these policies were issued and signed by Ms. Shaina Taneja.

20. He has then re-emphasized on the mails dated 27.01.2009 sent by the Broker to the Insurance Company with a copy to Ms. Shaina Taneja about the movement of the spare rotor explaining and amplifying the subject matter. The mail from the Insurance Company to the Broker on 28.01.2009 has been once again read to urge that this is the document of the OP-1 Insurance Company to which objections have been taken by Mr. Agrawal regarding its admissibility and its correctness by contending that the document was placed in the rejoinder and has been orally argued without it being part of the evidence.

21. Mr. Basu has then once again urged that the submission of the learned counsel on parenthesis supported by the decision reported in (2011) 8 SCC 333 in a way comes to the aid of the complainant and he has therefore read NC/CC/197/2012 46 | Page out the meaning of the word parenthesis as used therein to mean amplification and explanation of the words outside the bracket. He has read paragraph 48 of the said decision.

22. He has then responded once again to the arguments of Mr. Agrawal on the admissibility of the documents particularly to the communications dated 05.01.2009 and 28.01.2009 that was filed through I.A. No. 10360 and I.A. No. 10361/2018. He has read out the order dated 08.01.2018 to contend that the applications were allowed on a cost of Rs. 1 lakh and therefore the documents filed along with the said documents are on record. Responding to the contention of Mr. Agrawal that the additional evidence that was filed thereafter did not annex the mail dated 28.01.2009, he contends that the objection is unfounded as the document was already on record and the evidence affidavit mentions it and hence, the same is to be accepted for the adjudication of the present controversy.

23. The aforesaid arguments have been advanced in support of the submissions that the OP-1 Insurance Company had knowledge about the movement of the rotor from Rithwik Power Plant and its replacement and installation at Guntur in the power plant of the complainant.

24. He has further submitted that the Machinery Breakdown Policy refers to proposal and declaration, but no material has been placed by the Insurance Company to demonstrate the same. He submits that with the aforesaid background, it was incumbent on the Insurance Company to have produced documents pertaining to the proposal, but there is no proposal form

NC/CC/197/2012 47 | Page and he submits that the learned counsel for the Insurance Company could not rebut the same.

25. He therefore submits that the allegation of suppression prior to taking the policy does not arise, in as much as, the proposal form would have indicated any queries regarding the description of the insured equipment. He also submits that it is not the allegation that the complainant has answered any query wrongly regarding the proposal prior to the issuance of the policy. He submits that the question of material non-disclosure therefore does not arise and he has cited the decision in the case of Manmohan Nanda vs. United India Assurance Co. Ltd. & Anr., (2022) 4 SCC 582 to urge that the duty of good faith requires the Insurance Company to come up with specific questions for clarification if they had any doubt about the insured equipments. He submits that there is neither any specific question raised for any clarity and he has once again substantiated his arguments with the aid of the decision in Kopargaon Sahakari Sakhar Karkhana Ltd. (Now Known as Karmaveer Shankarrao Kale Shahkari Shakhar Karkhana Ltd.) vs. National Insurance Co. Ltd. & Anr., 2025 SCC Online SC 2442, paragraphs 34 to

36. He therefore submits that the Insurance Company cannot take undue advantage of their own shortcomings by alleging suppression against the complainant.

26. He has further reiterated his arguments that mere suppression is not enough unless it is fraudulent and he has referred to the decision cited by him earlier of the Division Bench of the Madhya Pradesh High Court.

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27. He has then urged that there is no clause under the Machinery Breakdown Policy for voiding a claim or repudiating it on the ground of suppression. He submits that clause 2.4 of the policy refers only to any misrepresentation in a claim which may arise out of the policy after an incident and therefore the said clause nowhere applies to an allegation of non-disclosure at the time of proposal or inception or prior to the taking of the policy. He submits that this is further supported by the report of the Surveyor who himself has stated that none of the Exclusions in the policy apply. He further submits that the repudiation letter dated 26.03.2012 recites that the Insurer reserves his right to take any ground of bad faith or fraud in future, meaning thereby that the repudiation itself was not based either on bad faith or any fraudulent act of the complainant. He therefore submits that the suppression as alleged was a complete afterthought that was initiated after a prolonged survey, which had nowhere reflected any element of suppression. To the contrary the entire survey was conducted by calling for technical reports from abroad as well, and after finding out the root cause that the rotor had no defect, this theory of suppression was built-up later on.

28. He has then urged that the communications by the Broker is supported by the Broker's evidence that has been filed on record and has not been dislodged by the Insurance Company.

29. He has once again urged that there was no defect in the rotor and there is no nexus between the incident and any past defect in the rotor. He has further reiterated that even if the original

equipment manufacturer had not responded, the report given by TMEI as an expert was accepted by the NC/CC/197/2012 49 | Page Surveyor as well as by M/s. Cobham to whom the report had been sent while seeking the root cause analysis. He also submits that the entire turbine functioned satisfactorily as reported by Mr. Markandeyulu between 04.03.2009 and 10.03.2009 and even continued to function satisfactorily thereafter till 22.07.2009 for almost 4 months. Consequently, there was no defect in the rotor which stood confirmed by the root cause analysis as also approved by the TMEI report.

30. He submits that the issue of swapping of the rotor was known to the Surveyor in 2009 and if that was so, and if any fact had been suppressed, there is no explanation by the Insurance Company as to why they did not choose to repudiate the claim then and there instead of getting the enquiry and the analysis made through the Surveyor. Mr. Basu submits that the Insurance Company very well knew that there is no Exclusion under the Machinery Breakdown Policy so as to apply it for repudiation on the ground of the alleged suppression and therefore the Insurance Company repudiated the claim in 2012 after 3 years on a ground which could have been a possible ground for repudiation way back in 2009 itself. He therefore reiterates that it was once again an afterthought.

31. He has also reiterated the second limb of his argument without prejudice to the issue of the Insurance Company having knowledge, that once pre-inspection had been carried out in the presence of the Inspector appointed by the Insurance Company, who visited and witnessed the operation of the turbine of the swapped rotor, the question of suppression becomes immaterial and irrelevant. He once again urged that the NC/CC/197/2012 50 | Page communications and the mails read with the inspection report of Mr. Markandeyulu establishes that the movement of the spare rotor and its swapping in the turbine at Guntur was well known and hence any claim of the Insurance Company of not having any knowledge stands negated by their own conduct.

32. He concluded by urging that so far as the quantum is concerned, the chart handed over by him indicates the quantification and also includes the claim for the loss of profit incurred by the complainant under the MLOP Policy. He submits that the Surveyor had not quantified the same and therefore the calculation made with the help of the survey report tendered by M/s. Rank Associates, a Surveyor appointed by the complainant deserves to be taken into account. He submits that he has already advanced his submissions that the Surveyor privately appointed is permissible under the rules and the IRDAI Regulations, particularly Regulation 13 that has already been noted in the previous arguments. He therefore submits that the said report is admissible for the said purpose and should be taken into account.

33. Mr. Agrawal responding to this resubmission of the arguments already advanced earlier has urged that neither the internal mails have been proved to be genuine nor they have any evidentiary value, particularly the mails dated 27.01.2009 and 28.01.2009. He submits that these documents have come through the affidavit of the OP-2 who is virtually hand-in-gloves with the complainants. He submits that these new documents which are not part of the pleadings and some of it was introduced thereafter in the evidence NC/CC/197/2012 51 | Page affidavit deserve to be rejected and knowledge cannot therefore be imputed or implied.

34. He has reasserted that the word movement does not mean replacement and therefore even if the movement of the rotor has been made, there was no communication by the complainant to the Insurance Company about the replacement or swapping of the rotor of Rithwik to SMPL Guntur. He has once again referred to the fact that the e-mails came up for the first time in arguments and all improvements have been made in the submissions which are unsubstantiated without pleadings either in the complaint or even thereafter. He submits that the repudiation is based on a valid ground as the complainant has breached the doctrine of uberrimae fidei by having failed to produce any evidence with regard to any intimation about the swapping of the rotor.

35. He submits that the Broker, the OP-2 is not the agent of the Insurance Company and the alleged communication apart from being uncreditworthy nowhere reflects any intimation about the swapping of the rotor.

36. The submissions made by Mr. Basu and Mr. Agrawal are once again based on the previous submissions as well as their written notes, list of dates and other documents that have been referred to through their convenience compilations which are already on record. The list of dates and events as well as the supplementary notes have also been once again pressed into service to urge that the same may be taken into account.

37. With the conclusions of the submissions on 25.03.2026, orders were reserved to be delivered on 04.05.2026.

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38. The Complainant's Power plant was commissioned at Guntur in Andhra Pradesh in the year 2004 under a share purchase agreement on 07.04.2006 between the Complainant and M/s Velcan Energy India Private Limited, a power plant acquired by it. The Velcan Energy India Private Limited is a subsidiary of the parent company M/s Velcan Energy SA of France. The Complainant has been described and shall be described hereinafter as 'SMPCL' (Satyamaharishi Power Corporation Limited). The claim in the present Complaint arises out of a loss regarding the Turbo Generating set (a Turbine) of the Complainant installed at Guntur, A.P., which, according to the Complainant, was insured under a Machinery Breakdown (MBD) Policy and a Consequential Loss of Profit (MLOP) Policy dated 10.03.2009. The breakdown occurred on 22.07.2009 that gave rise to the claim which has been repudiated by the Insurance Company on 26.03.2012.

39. The incident was promptly reported to the Insurance Company who deputed the Surveyor and a first status report was tendered on 07.08.2009. This was followed by an interim report dated 08.11.2010 by the same Surveyor after obtaining a technical report from M/s Cobham Technical Services, United Kingdom in August 2010. The final survey report was tendered on 16.05.2011 and then the claim was repudiated thereafter on 26.03.2012. The letter of repudiation is extracted herein under:

"Registered A/D M/s Satyamaharishi Power Corporation Ltd.

Near Kosur Road, Muthayyapalem Village NC/CC/197/2012 53 | P a g e Amravati Mandal, Guntur- 522 020 (AP) Dear Sirs, Re: Notification dated 22 July 2009/Policy No. 32029141 We write further to our letter of 11 January 2012, and also the numerous discussions and correspondences preceding that letter, since our letter of 11 January, however, we have not had any contact from your end or any further explanation as regards the issue of the apparent non- disclosure and misrepresentation of material facts prior to the inception of the captioned policy. We are, therefore, left with no option but to conclude that Satyamaharishi Power Corporation Ltd. has no reasonable explanation or information to offer such that would allow us to reconsider our views in this matter.

Under the circumstances, we conclude that there had been a non disclosure and misrepresentation of material facts prior to the inception for the reasons more fully set out in our previous correspondences, all of which are incorporated herein by reference. Accordingly, we hereby avoid the captioned policy ab initio, and agree to tender a return of the premium paid. Please do let us know of the relevant bank account details for this purpose. The avoidance of the policy ab initio, and the tendering a return of the premium is without prejudice to our right to raise any contention as regards the existence of a bad faith and / or fraudulent non-disclosure and misrepresentation of material information prior to inception and / or the admissibility of the claim under the policy terms and conditions.

Please note that the forgoing is illustrative and not exhaustive of our position and the coverage points available to us whether under or in relation to the policy. Nothing contained herein should be construed as a waiver of our right to amend in any way the grounds mentioned above or to assert additional or different grounds for disclaiming or restricting coverage, whether based on material now known or that is discovered in the future. Our rights remain fully reserved.

Thanking you, For IFFCO-Tokio General Insurance Company Ltd."

40. The letter recites about apparent non-disclosure and mis-representation of material facts "prior to the inception of the policy", and in spite of demand there was no reasonable explanation or information offered so as to NC/CC/197/2012 54 | P a g e reconsider their views in the matter as indicated in their earlier communication dated 11.01.2012. It was accordingly concluded and informed that the Insurance Company was avoiding the captioned policy void ab initio and made an offer to return the premium paid. The letter of repudiation further adds that such avoidance is without prejudice to their rights to raise any other contention regarding the existence of bad faith or fraudulent non-disclosure and mis- representation as well as the admissibility of the claim under the policy terms and conditions. A further caveat was put in that the said recitals were without prejudice and should not be construed as a waiver of the rights of the Insurance Company to amend the grounds of repudiation or assert additional or different grounds whether based on the existing material or any discovery in future.

41. The repudiation has been vehemently contested and Mr. Basu, learned Senior Counsel for the Complainant has urged that the claim could not have been avoided for the reasons given in the policy inasmuch as there is no such term or condition either in the MBD or MLOP policies dated 10.03.2009 for invoking avoidance. He has referred to all the clauses of both the policies and has pointed out that condition No.2.4(b) of the MBD policy which is in relation to a false declaration or a fraudulent claim does not in any way cover any alleged non-disclosure or mis-representation at the inception of the policy. He submits that the said clause operates only after a claim has arisen and is in respect of the claim, and not with regard to any alleged non-disclosure before taking the policy. Clause 2.4(b) is extracted herein under:

"2.4 CONDITIONS NC/CC/197/2012 55 | P a g e b. If a claim is in respect fraudulent or if any false declaration is made or used in support thereof or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under this Policy or if a claim is made and rejected and no action, or suit is commenced within three months after such rejection or in case of arbitration taking place as provided herein within three months after the arbitrator or arbitrators or umpire have made their awards, all benefit under this policy shall be forfeited."

42. Mr. Basu has urged that there is no document, including a proposal form or any form of recording of a proposal directly from the Complainant by the Insurance Company which would even remotely demonstrate the suppression of any material fact or non-disclosure thereof. He submits that there is no proposal form on record nor has the Insurance Company produced any formal or informal document that may clarify as a proposal form filled up by the Complainant. He submits that there are neither any questionnaires nor any queries prior to the issuance of the policy which may even suggest an alleged incorrect declaration by the Complainant.

43. To the contrary he submits that the entire negotiations with regard to the acquisition of the policy were conducted by the Opposite Party No.-2 Broker who was given all information by the Complainant about the status of the insured goods and who in-turn had intimated the subject matter of insurance in detail to the Opposite Party No.-1 / Insurance Company. The primary argument of Mr. Basu is that the Insurance Company therefore had full and complete knowledge about the turbine that had been insured on 10.03.2009 which broke down on 22.07.2009. His contention is that this allegation of non- disclosure at the time of inception of policy is against record inasmuch as all the communications that have been filed on record and are part of the NC/CC/197/2012 56 | P a g e pleadings leave no room for doubt that every detail regarding the installation of the turbine, its inspection and its running despatched by the broker were all in the knowledge of the Insurance Company.

44. He submits that the excuse about the swapping of the rotor of the turbine, that was a spare rotor of the sister concerned of the Complainant was, clearly communicated with details and all clarity by the Opposite Party No.-2 / Broker who was negotiating the deal with the Opposite Party No.-1. He submits that the officials of Opposite Party No.-1 were well acquainted and aware about the installation of the spare rotor of the M/s Rithwik Power Plant in the turbo-generating set of the Complainant at Guntur. The movement of the rotor followed by its replacement, that was duly

intimated, clearly establishes that the fact of the rotor being replaced was well known to the Insurance Company prior to the issuance of the policy.

45. Mr. Basu urges that without prejudice to the said argument of knowledge to the Opposite Party No.-1, even otherwise the same loses relevance in the background that after the rotor was swapped and installed at Guntur, an inspection prior to the issuance of the policy was carried out through an Inspector appointed by and at the instance of the Insurance Company itself who verified and certified the smooth running of the turbine between 04.03.2009 and 09.03.2009 whereafter the policy was issued on 10.03.2009. He therefore submits that the allegation of any suppression regarding the swapping of the rotor is absolutely incorrect.

46. He therefore submits that the whole story of suppression was found a way out by the Insurance Company for denying the claim when in fact there is NC/CC/197/2012 57 | Page no such suppression nor was it relevant after the inspection was carried out, and the turbine ran at full efficiency for almost four months thereafter when it broke down on 24.07.2009.

47. Mr. Basu points out that this dispute arose because of certain inferences drawn by the Surveyor on the basis whereof the claim has been repudiated. To understand the nature of the information that was made the basis for repudiation, it would be appropriate to refer to the three reports of the Surveyor as well as the technical report that had arrived in between. The first status report tendered by the Surveyor dated 07.08.2009 does not indicate any such allegation of suppression.

48. It may be pointed out that the Surveyor had been insisting upon getting the Original Equipment Manufacturer M/s Siemens and Company for an assessment but the Complainant had indicated that the Manufacturer was not responding appropriately and therefore it may not be involved in the same. However from the reports we find that the Complainant on the insistence of the Insurance Company had met the original equipment manufacturer later on. The insured had also contacted another Manufacturer M/s Triveni, Bangalore for the replacement of the turbine but in order to ascertain the cause of the breakdown, the Surveyor insisted on a root cause analysis that was suggested to be undertaken from M/s AZT Germany. However the same did not materialise and the insured arranged for a failure analysis to be obtained from M/s ERA Cobham, UK which was an alternative suggested by the Insurance Company itself. This fact is noted in the interim report of the Surveyor dated 08.11.2010. The report from Cobham is of August, 2010.

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49. A perusal of the Cobham report would indicate that it was at the instance of and addressed to the Surveyor M/s Bhatawadekar & Company and it also records that the rotor had successfully sustained the RPM test and therefore it would be appropriate to assume that it was fit for the purpose of being installed and used within the bounds of its specified speed range. Mr. Basu urged that not only that, the said report also acknowledged and approved of the satisfactory test that was carried out by M/s Turbo Machinery Engineering Industries, Hyderabad (TMEI). The submission is that there was no defect discovered in the rotor of the turbine by the experts which was the spare rotor from Rithwik that had been installed in the turbine.

50. The Surveyor tendered his interim report on 08.11.2010 based on the aforesaid material stating therein that none of the exclusion clauses are attracted. However in this report the Surveyor for the first time noted the doubt about the installation of the spare rotor from M/s Rithwik Power Plant to be presumably without the knowledge of the insurers and without revealing this fact. In essence the doubt was as if the policy had been obtained without parting any information about the turbine having been installed with a spare rotor from M/s Rithwik Power Plant. The suspicion raised therefore was of mis-representation and non-disclosure of this material fact by the Complainant. The Surveyor also observed that this fact was also not known to the inspector who had carried out pre-inspection nor was the said fact was informed to the Insurance Company. As such the same amounted to a material non-disclosure.

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51. This was followed by the final survey report dated 16.05.2011 where the surveyor reiterated his opinion about the doubts regarding the suppression of the facts as mentioned above whereafter the claim was repudiated. Mr. Basu urged that as noted above, there is no clause for avoidance of the policy on account of an alleged non-disclosure at the inception of the policy. The relevant clause of the policy has already been extracted herein above. He submits that there is no provision on the basis whereof such a ground could have been taken by the Insurance Company to repudiate the policy. The Insurance Company cannot travel beyond the terms and conditions of the Insurance contract and, in the absence of any such provision, the repudiation is invalid.

52. He then submits that the very fact that there was suppression is against record. All the mails that have been brought on record clearly indicate that information at every step, whether it was the acquisition of the marine transit policy or the erection policies that the information and knowledge about the swapping of the rotor is clearly reflected. He submits that it is for the said reason that the learned Counsel for the Insurance Company has vehemently opposed the acceptance of the said mails as evidence on record. For this as already noted above, two Applications IA No. 10360 and 10361 of 2017 had been moved praying for accepting the said mails on record. Admittedly the said applications were allowed on cost of Rs.1,00,000/- on 08.01.2018. The contention of Mr. Agrawal is that even after the said Applications were allowed the additional affidavit that was filed did not contain the mail dated 28.01.2009 as part of the evidence affidavit even though it was mentioned in the index. He NC/CC/197/2012 60 | Page therefore submits that the said document cannot be read in evidence. He has also raised similar issues with regard to the other mails to urge that these are mails that might have been generated by the Complainant to suit its own purposes and has been pressed into service with the help of the affidavit of the Opposite Party No.-2 / Broker. He therefore submits that they are uncreditworthy as they have been denied and even otherwise there is no certificate under Section 65(b) of the Indian Evidence Act to substantiate this electronically generated evidence.

53. The complainant's case is founded on the fact that the complainant's plant went in for an annual shutdown in July, 2008. During the shutdown, the Original Equipment Manufacturers M/s. Siemens and their Engineers had also visited the plant and it was observed that there were cracks in some part of the rotor of the Turbine at Guntur, which was an 11 stage equipment. In order to get it

rectified, the complainant has alleged that the original equipments manufacturers were not responding appropriately as a result whereof it was decided to undertake the services of TMEI, Hyderabad. The rotor therefore had to be moved to Hyderabad from Guntur. In order to tranship the rotor, a Marine Transit Policy was taken from the OP Insurance Company. Accordingly, a policy dated 03.10.2008 was acquired and the rotor was sent to TMEI, Hyderabad for overhauling. It may be noted that upto that stage there was no occasion for any swapping of the rotor with any other spare equipment.

54. The rotor from the complainant's plant arrived at TMEI, Hyderabad, where it was examined and the condition of the rotor was found to be NC/CC/197/2012 61 | P a g e possessed of a cracked disk. The TMEI recommended for removing the said disk and then operate the plant at 90% efficiency. The complainant did not find it to be economically feasible and instead made a request to its parent company M/s. Velcan Energy India Pvt. Ltd. for shifting the rotor of a similar capacity and make, that was kept as a spare at the Rithwik Power Project Ltd., Khammam to Guntur. It is here where the complainant asserts of having made a proposal for the swapping of the Turbine rotor from Khammam as the rotor at the complainant's power plant was found to be not feasible.

55. In order to check the feasibility of this exchange and installation of the Khammam spare rotor of the Rithwik Power plant at the complainant's plant, the spare rotor of Rithwik was also dispatched separately under a Marine Policy dated 28.11.2008 to TMEI, Hyderabad for its examination and comparative analysis for its installation and utilization at Guntur. The intimation from the complainant to M/s. Velcan Energy for this swapping dated 14.11.2008 is extracted hereinunder:

NC/CC/197/2012

62 | P a g e

NC/CC/197/2012 63 | P a g e

56. The complainant communicated with the OP-2 Broker on 10.12.2008 which is extracted hereinunder:

57. A perusal thereof would indicate that the complainant had intimated to the Broker about some time being taken to repair the machinery sent from SMPCL and therefore an extension of the Marine Transit Policy dated 03.10.2008 was sought. It was also intimated that the Machinery Breakdown Policy and the Loss of Profits Policy for the Turbine unit at Guntur had not NC/CC/197/2012 64 | P a g e been renewed for which a request was made to the Insurance Company to clarify this point as to what could be the situation if the swapping of the rotor of Rithwik at the complainant's plant is carried out. It was further stated that a decision was taken that a technical team would decide whether the rotor would fit in or not and then the policy can be taken. It was also intimated that the Technical Engineer of the Insurance Company would be sent before the policy commenced after the Turbine operates for a week or 10 days and accordingly the Broker was requested to take steps in this regard.

58. The Broker Mr. Tushar responded on the same day through his mail dated 10.12.2008 stating therein that the matter had been discussed with the Insurance Company and the decision would abide by the technical expertise of the complainant's team. It was also informed by the Broker that the Insurance Company would get a risk inspection done through the appointed Surveyor /

Engineer whose details would be provided after the rotor was installed and the Engineer arrives for the test run. The mail dated 10.12.2008 is extracted hereinunder:

NC/CC/197/2012 65 | P a g e

59. Another mail arrived on 11.12.2008 from the Broker to the complainant informing that Mr. Bhaskar Kumar had been deputed as the Surveyor and his details were given in the said mail which is extracted hereinunder:

NC/CC/197/2012 66 | P a g e This communication specifies the subject of the utilization of Rithwik rotor for Sathya Turbine.

60. A day thereafter another mail was received from the Broker to the complainant that the Surveyor appointed by Iffco has to be contacted and given details and the Broker recommended to proceed with the installation. The said mail is extracted hereinunder:

NC/CC/197/2012 67 | P a g e

61. On 12.12.2008 itself the TMEI is stated to have given a report as claimed by the complainant on a comparison of the rotor dimensions after inspection that both the rotors are identical. The said comparison is extracted hereinunder:

NC/CC/197/2012

68 | P a g e

NC/CC/197/2012 69 | P a g e

62. The complainant on the same day i.e. 12.12.2008 intimated the Broker that the spare rotor from Rithwik appeared to be okay and fit in to the complainant's Turbine and further indicated a discussion held with the Insurance Company stating that some Engineer would visit and based on his report, the Insurance Company would issue the Machinery Breakdown and the Loss of Profits Policy. It was also mentioned in the said mail that there would be a clause say for 10 days which would be the testing period. The mail dated 12.12.2008 is extracted hereinunder:

NC/CC/197/2012 70 | P a g e

63. The said mail also refers to the subject of the Rithwik rotor being proposed to be installed in the complainant's Turbine with some proposal or report that may be required.

64. Then comes the mail from the Insurance Company through Ms. Shaina Taneja addressed to the Broker Mr. Tushar on 15.12.2008. The subject of the said mail is the renewal of the MBD policy of the complainant's Turbine. This NC/CC/197/2012 71 | P a g e mail is crucial and is a subject matter of contest between the parties. The same is extracted hereinunder:

65. A perusal of the said mail would indicate that Ms. Shaina Taneja, the official of the Insurance Company had discussed the matter over telephone and indicated that the cover for the Machinery Breakdown Policy for the complainant's Turbine shall commence from the day of the functioning of

the plant "subject to pre-inspection of the plant". It also recites that the quotations NC/CC/197/2012 72 | P a g e which had been sent to the Broker earlier were subject to revision based on "pre-inspection". It then details the name of the Engineer nominated and engaged by the Insurance Co. for pre-inspection along with his mobile number, namely Mr. B. J. Markandeyulu and therefore the Broker should coordinate with him for the inspection. The final terms were to be released based on the "inspection report" by the Surveyor / Commissioning report of the plant. The said mail was marked to Mr. Markandeyulu with a request to make himself available for pre-inspection as requested and the details of the machinery was enclosed for reference. This mail was also copied by the Broker on the same day to the complainant as endorsed.

66. Ms. Shaina Taneja, the Insurance Company official sent a mail to the Broker on 30.12.2008 enclosing the revised quote for the MBD policy for the complainant's Turbine which was stated to be tentative and was subject to revision after the inspection of the plant and its commissioning. It also refers to the finalising of the terms for the Loss of Profits Policy as well. The said communication with a copy marked to Puja Jaju and Girish Babu, officials of the Insurance Co. is extracted hereinunder:

NC/CC/197/2012 73 | P a g e

67. The tentative quote that was dispatched from the Bangalore Office through Ms. Shaina Raghav is extracted hereinunder:

NC/CC/197/2012

74 | P a g e

NC/CC/197/2012 75 | P a g e

68. The intimation of the revised premium quote was sent by the Insurance Company to the Broker on 01.01.2009 with a further indication regarding the terms of the Loss of Profits Policy. The said mail dated 01.01.2009 from Puja Jaju of the Insurance Company that is also marked to Ms. Shaina Taneja and Girish Babu of the Insurance Co., is extracted hereinunder:

NC/CC/197/2012 76 | P a g e

69. This document was part of I.A. No. 10361/2017 referred to above and was followed by an intimation about the Erection Policy on 05.01.2009. The proposal of the Erection All Risk Insurance Policy of the complainant is extracted hereinunder:

NC/CC/197/2012 77 | P a g e Another Erection Policy was taken in the name of M/s. Rithwik Power Projects on 16.01.2009 that was valid till 15.03.2009.

70. In between since the transit of the two rotors had to take place, therefore an extension for both the Marine Transit Policies was sought by the Broker from the Insurance Company on 27.01.2009. The same is extracted hereinunder:

71. A perusal of this intimation from the Broker to the complainant with a copy of the same to Ms. Shaina Taneja, the official of the Insurance Company reveals the disclosure of the "movement" of

the "spare rotor" of M/s. Rithwik to the complainant's Turbine plant. Extension was sought for NC/CC/197/2012 78 | P a g e both the policies and the same was negotiated and finalized on the quotations received from the Insurance Company and duly intimated on 28.01.2009. This exchange of mail between the Broker and the complainant is extracted hereinunder:

72. The mail from the Insurance Company through Girish Babu addressed to the Broker with a copy of the same to another official Puja Jaju about the period of extension for the transit policy is extracted hereinunder:

NC/CC/197/2012 79 | P a g e This communication refers to the transit of both the rotors which refers specifically to the "spare rotor" movement as indicated in the mail dated 27.01.2009 quoted hereinbefore. The Insurance Company was therefore NC/CC/197/2012 80 | P a g e consciously and knowingly negotiated the transit policy for the spare rotor of Rithwik to the complainants plant, Guntur.

73. During this period, the technical specifications of the feasibility of the Rithwik rotor being installed in the Turbine at the complainant's place was conducted and a certificate was issued by TMEI, Hyderabad on 17.02.2009.

The same is extracted hereinunder:

NC/CC/197/2012 81 | P a g e

74. Based on this report, whereby the two rotors were found to be identical and the spare rotor of Rithwik was satisfactorily tested @ 8400 R.P.M. to be used at the complainant's plant, M/s. Velcan Energy India Pvt. Ltd. dispatched a letter on 18.02.2009 to M/s. Velcan Energy S.A. France for permitting the said shifting. The letter dated 18.02.2009 is extracted hereinunder:

NC/CC/197/2012 82 | P a g e

75. According to the complainant, on receipt of this information, the same was placed before the Board of Directors of Velcan Renewable Energy in a meeting that was held in Dubai on 19.02.2009 and the resolution passed approved the proposal of the swapping of the rotor of the Rithwik Power Plant at the complainant's plant. The said resolution dated 19.02.2009 is extracted hereinunder:

NC/CC/197/2012 83 | P a g e

76. The Rithwik plant accordingly in compliance of the said resolution intimated the complainant and also advised the TMEI, Hyderabad to dispatch the Rithwik Rotors directly to the complainant's plant. The letter dated 20.02.2009 is extracted hereinunder:

NC/CC/197/2012 84 | P a g e

77. According to the complainant, in order to ensure the safety and risk of the Erection of the said spare rotor of Rithwik at the complainant's plant, another Erection Policy was taken on 19.02.2009. It is the contention of the complainant that even though the policy names M/s. Rithwik Power Projects Ltd, but the entire payment of premium for the acquisition of the said Erection Policy was made by the complainant SMPL and to substantiate the same, a copy of the voucher indicating the payment made by the complainant has also been brought on record. The 19.02.2009 policy is extracted hereinunder and the voucher indicating the payment by the complainant for the said policy is also reproduced:

NC/CC/197/2012

85 | Page

NC/CC/197/2012 86 | Page

78. A cheque issued by the complainant drawn in favour of the OP No. 1 from the Hongkong & Shanghai Bank to that effect has also been placed on record and is extracted hereinunder:

NC/CC/197/2012 87 | Page

79. The contention of the complainant therefore is that with all these documents, it is established that this entire exercise was undertaken for shifting the spare rotor of M/s. Rithwik to the plant of the complainant about which the communications clearly indicated the participation of and intimation to the Insurance Company through the Broker as also the relevant information about the said shifting and installation of the spare rotor at the complainant's plant at Guntur.

80. According to the complainant, Mr. Markandeyulu, the appointed Engineer for inspection by the Insurance Company an instructions dated 20.12.2008 visited the plant on four days and certified the smooth running of NC/CC/197/2012 88 | Page the Turbine at the Guntur plant of the complainant. It is the case of the complainant that the fact of the installation of the spare rotor and its running was well-known to Markandeyulu and he had certified that after carrying out the "repairs", the trial run was conducted from 04.03.2009 to 10.03.2009 and the plant was put into operation with effect from 10.03.2009. The said report of Mr. Markandeyulu as communicated on 11.03.2009 is extracted hereinunder:

NC/CC/197/2012

89 | Page

NC/CC/197/2012 90 | Page

NC/CC/197/2012 91 | Page

NC/CC/197/2012 92 | Page

81. It is urged by the complainant that with this satisfactory run and certification by the Engineer, the Machinery Breakdown Policy was issued on 10.03.2009 which is on record as well as the Machinery Loss of Profits Policy of the same date.

82. The details of the MBD Policy is extracted hereinunder:

NC/CC/197/2012

93 | Page

NC/CC/197/2012 94 | Page

83. The details of the Machinery Loss of Profits Policy is extracted hereinunder:

NC/CC/197/2012 95 | P a g e

84. With the aforesaid policies in place, the complainant has stated that the plant stood commissioned with the spare rotor from Rithwik and ran successfully for almost four months, when the breakdown occurred on 22.07.2009.

85. On 22.07.2009, the turbine rotor was damaged and it sheared off from the turbine, resulting in a fire. The incident was immediately reported to the broker, the Opposite Party No.2, for being forwarded to the insurance company, and a copy of the mail dated 22.07.2009 is extracted herein under:

NC/CC/197/2012 96 | P a g e

86. On the very next day, the complainant was informed that one Mr. Sreerama S. Vasu and Mr. Amol Bhise have been deputed by the Surveyor and Insurance Company to conduct the survey in respect of the incident. The mail dated 23.07.2009 is extracted hereinunder:

NC/CC/197/2012 97 | P a g e

87. Another mail was dispatched on the same day calling upon the complainants to provide information; the said mail is extracted herein under:

88. On 24.07.2009, another mail was received from the surveyor acknowledging the response and intimating that Mr. Bhise has already rushed to the site. Further information was sought with regard to the activities that were to follow, with directions to go ahead with dismantling, vide a mail dated 24.07.2009 sent at about 05:57 PM. The surveyor informed the complainant NC/CC/197/2012 98 | P a g e that he would be arriving on 27.07.2009 along with the officials of the insurance company. The said communication is extracted herein under:

NC/CC/197/2012 99 | P a g e

89. On the same day, another mail enumerated at about 09:54 PM wherein the insurance company official, Mr. Sreerama S. Vasu, informed that the information sought be tendered so as to consider the claim on merit. What is peculiar about this letter is the nature of the information sought, which in question No. 1 (c) calls for information regarding any modification or improvement carried out in any equipment in the plant, especially the turbo generating set. In paragraph 2 (c), the recital is about the spare turbine set being available at Rithwik Power Plant, and therefore the insurance company sought information from the complainant about its utility. The mail of 09:54 PM dated 24.07.2009 is extracted herein under:

NC/CC/197/2012

NC/CC/197/2012 101 | P a g e

NC/CC/197/2012 102 | P a g e

100 | P a g e

90. The inspection was carried out on 24th July, and on the basis thereof further communication ensued recording that the inspection had been carried out in the presence of the officials of the insurance company. The surveyor's mail is dated 28.07.2009. This mail contains a lot of information which needs to be pointed out. The surveyor records that the information that has been gathered indicates the replacement of the damaged rotor at the complainant's plant with that of the rotor from Rithwik, thereafter the turbine was commissioned. This letter further made queries about the spare turbine kept at Rithwik Power Plant and its ownership and it further, at item no. 18, states that since the complainant has ruled out any consultation with the original equipment manufacturer M/s Siemens India Limited, in that event, the surveyor suggested that the equipment be sent for inspection and failure analysis to M/s AZT Risk and Technology, Munich, Germany. This letter, therefore, confirms that the insurance company had gathered knowledge of the swapping of the rotor. The said mail being a crucial mail is extracted hereinunder:

NC/CC/197/2012

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NC/CC/197/2012 104 | Page
NC/CC/197/2012 105 | Page
NC/CC/197/2012 106 | Page
NC/CC/197/2012 107 | Page
NC/CC/197/2012 108 | Page
NC/CC/197/2012 109 | Page

91. On 31.07.2009, another intimation was sent by the surveyor again insisting on discussions with M/s Siemens and offering their services for the same. The said mail is extracted herein under:

NC/CC/197/2012 110 | Page

92. The surveyor again sent a mail on 03.08.2009 insisting that in case any response is not received, the surveyor shall go ahead and independently discuss the matter with the OEM, M/s Siemens India. A second alternative option for replacement was suggested from M/s Triveni, Bangalore, who had the capacity to supply and replace the turbine of the same capacity. The letter then reiterated that the equipment should be sent for failure analysis to M/s AZT Germany.

93. The said queries were responded to by the complainant on 04.08.2009, whereby it was intimated that the complainants would visit the original equipment manufacturer M/s Siemens for discussions with them. The surveyor on 05.08.2009 further responded by saying that not only the shaft is required to be examined, but all the damaged parts have to be sent, which should be analysed by M/s AZT Germany. The mail dated 05.08.2009 sent by the surveyor to the complainant is extracted herein under:

NC/CC/197/2012

111 | Page

NC/CC/197/2012 112 | Page

94. On 07.08.2009, another mail was received from the surveyor to the complainant to furnish all information with regard to repairs and replacement of the damaged turbine. Other information was also given, and contents of the said mail dated 07.08.2009 is extracted herein under:

NC/CC/197/2012 113 | Page

95. The complainant responded to the said mail by indicating that, on the insistence of the surveyor, the complainant held discussions with M/s Siemens. The mail dated 07.08.2009 is extracted herein under:

NC/CC/197/2012 114 | Page

96. It is on 07.08.2009 itself that the Surveyor tendered his First Status Report, that is extracted hereinunder:

NC/CC/197/2012		115 Page
NC/CC/197/2012	116 Page	
NC/CC/197/2012	117 Page	
NC/CC/197/2012	118 Page	
NC/CC/197/2012	119 Page	
NC/CC/197/2012	120 Page	
NC/CC/197/2012	121 Page	
NC/CC/197/2012	122 Page	
NC/CC/197/2012	123 Page	
NC/CC/197/2012	124 Page	
NC/CC/197/2012	125 Page	

97. The complainant also obtained a root cause analysis report from M/s Arani Power Systems, Hyderabad, on 14.08.2009, which is extracted herein under:

NC/CC/197/2012		126 Page
NC/CC/197/2012	127 Page	

98. This was accompanied by other reports that are on record. Thereafter, several mails ensued between the complainant and the insurance company.

99. In order to substantiate his own claim and the losses suffered, including the damage caused and the claim of loss of profit, the complainant undertook the services of M/s Rank Associates Surveyors, who tendered their report on 04.06.2010. The same is extracted hereinunder:

NC/CC/197/2012		128 Page
NC/CC/197/2012	129 Page	
NC/CC/197/2012	130 Page	
NC/CC/197/2012	131 Page	
NC/CC/197/2012	132 Page	
NC/CC/197/2012	133 Page	
NC/CC/197/2012	134 Page	
NC/CC/197/2012	135 Page	
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NC/CC/197/2012	138 Page	
NC/CC/197/2012	139 Page	
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NC/CC/197/2012	142		P a g e
NC/CC/197/2012	143		P a g e
NC/CC/197/2012	144		P a g e
NC/CC/197/2012	145		P a g e
NC/CC/197/2012	146		P a g e
NC/CC/197/2012	147		P a g e
NC/CC/197/2012	148		P a g e
NC/CC/197/2012	149		P a g e
NC/CC/197/2012	150		P a g e
NC/CC/197/2012	151		P a g e

100. Since the claim was not being settled and progress was not being made, a complaint was made by the complainant on 10.06.2010, also raising serious doubts about the competence and qualification of Mr. Vasu and Mr. Bhise. This complaint was made urging that Mr. Bhatawadekar was the only licensed surveyor and therefore the investigation carried out by the aforesaid two persons was without authority of law.

101. In between as already indicated hereinabove, the Surveyor was insisting on communications with the Original Equipment Manufacturer whom the complainant did meet, but at the same time the Original Equipment Manufacturer was not involved later on. The Surveyor therefore insisted on a Root Cause Analysis to be undertaken from M/s. AZT, Germany which did not materialise and therefore the said Root Cause Analysis / Failure Analysis was decided to be obtained from M/s. ERA Cobham, U.K. which was the firm suggested by the Insurance Company itself. This failure / Root Cause Analysis Test from M/s. Cobham at the instance of the Surveyor Mr. Bhatawadekar & Co. arrived in August, 2010, which is extracted hereinunder:

NC/CC/197/2012			
NC/CC/197/2012	153		P a g e
NC/CC/197/2012	154		P a g e
NC/CC/197/2012	155		P a g e
NC/CC/197/2012	156		P a g e
NC/CC/197/2012	157		P a g e
NC/CC/197/2012	158		P a g e
NC/CC/197/2012	159		P a g e
NC/CC/197/2012	160		P a g e
NC/CC/197/2012	161		P a g e
NC/CC/197/2012	162		P a g e
NC/CC/197/2012	163		P a g e
NC/CC/197/2012	164		P a g e
NC/CC/197/2012	165		P a g e
NC/CC/197/2012	166		P a g e
NC/CC/197/2012	167		P a g e
NC/CC/197/2012	168		P a g e
NC/CC/197/2012	169		P a g e
NC/CC/197/2012	170		P a g e
NC/CC/197/2012	171		P a g e
NC/CC/197/2012	172		P a g e
NC/CC/197/2012	173		P a g e
NC/CC/197/2012	174		P a g e

NC/CC/197/2012	175		P a g e
NC/CC/197/2012	176		P a g e
NC/CC/197/2012	177		P a g e
NC/CC/197/2012	178		P a g e
NC/CC/197/2012	179		P a g e
NC/CC/197/2012	180		P a g e
NC/CC/197/2012	181		P a g e
NC/CC/197/2012	182		P a g e
NC/CC/197/2012	183		P a g e
NC/CC/197/2012	184		P a g e
NC/CC/197/2012	185		P a g e
NC/CC/197/2012	186		P a g e

102. The surveyor Mr. Bhatawadekar tendered an Interim Report on 08.11.2010, which is extracted herein under:

NC/CC/197/2012			187 P a g e
NC/CC/197/2012	188		P a g e
NC/CC/197/2012	189		P a g e
NC/CC/197/2012	190		P a g e
NC/CC/197/2012	191		P a g e
NC/CC/197/2012	192		P a g e
NC/CC/197/2012	193		P a g e
NC/CC/197/2012	194		P a g e
NC/CC/197/2012	195		P a g e
NC/CC/197/2012	196		P a g e
NC/CC/197/2012	197		P a g e
NC/CC/197/2012	198		P a g e
NC/CC/197/2012	199		P a g e
NC/CC/197/2012	200		P a g e
NC/CC/197/2012	201		P a g e
NC/CC/197/2012	202		P a g e
NC/CC/197/2012	203		P a g e
NC/CC/197/2012	204		P a g e
NC/CC/197/2012	205		P a g e
NC/CC/197/2012	206		P a g e
NC/CC/197/2012	207		P a g e
NC/CC/197/2012	208		P a g e
NC/CC/197/2012	209		P a g e
NC/CC/197/2012	210		P a g e
NC/CC/197/2012	211		P a g e
NC/CC/197/2012	212		P a g e
NC/CC/197/2012	213		P a g e

103. The final report was tendered by him on 16.05.2011, which is also extracted hereinunder:

NC/CC/197/2012			214 P a g e
NC/CC/197/2012	215		P a g e
NC/CC/197/2012	216		P a g e
NC/CC/197/2012	217		P a g e
NC/CC/197/2012	218		P a g e
NC/CC/197/2012	219		P a g e

NC/CC/197/2012	220		P a g e
NC/CC/197/2012	221		P a g e
NC/CC/197/2012	222		P a g e
NC/CC/197/2012	223		P a g e
NC/CC/197/2012	224		P a g e
NC/CC/197/2012	225		P a g e
NC/CC/197/2012	226		P a g e
NC/CC/197/2012	227		P a g e
NC/CC/197/2012	228		P a g e

104. The complainant had notified to the Insurance company through its various letters and also a legal notice that there has been no withholding of any information and, to the contrary, the replacement of the rotor was well known, with all the mails that have been transacted between the broker, the officials of the Opposite Party No. 1, as well as with the complainant referred to above. Correspondence further ensued through lawyers of the Insurance Co. and a reply dated 27.06.2011 was received by the complainant to which a response was sent. The complainant, on 12.07.2011, had explained every aspect, and a copy of the same is extracted hereinunder:

NC/CC/197/2012			229 P a g e
NC/CC/197/2012	230		P a g e
NC/CC/197/2012	231		P a g e
NC/CC/197/2012	232		P a g e
NC/CC/197/2012	233		P a g e
NC/CC/197/2012	234		P a g e
NC/CC/197/2012	235		P a g e
NC/CC/197/2012	236		P a g e
NC/CC/197/2012	237		P a g e

105. On 07.10.2011, the complainant received an intimation from the insurance company that they were not satisfied with any such explanation and it was a reiteration of the earlier facts. The communication dated 07.10.2011 is extracted herein under:

NC/CC/197/2012 238 | P a g e

106. The complainant responded to the same through the letter dated 24.11.2011, which is extracted hereinunder:

107. The insurance company once again, through letter dated 11.01.2012, intimated the complainant that there was no correct disclosure about the NC/CC/197/2012 239 | P a g e swapping of the rotor, and the surveyor's final report dated 16.05.2011 was being attached with this letter. The communication dated 11.01.2012 is extracted herein under:

NC/CC/197/2012			240 P a g e
NC/CC/197/2012	241		P a g e

It is thereafter that the claim was repudiated by the Insurance Company on 26.03.2012 already extracted hereinabove.

108. We may at the outset dispel any doubts about the powers of this Commission to entertain any material or evidence on record. Even though the Consumer Protection Act, 1986 has been repealed yet the Consumer Protection Act, 2019 also provides for almost the same procedures with certain improvements with regard to the powers of the Commission to receive evidence and pass orders in relation to production of documents. Section 13(4) of the Consumer Protection Act, 1986 is extracted herein under:

"(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:--

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed."

109. It provides for reception of evidence on affidavits but it also empowers the Commission for the discovery and production of any document or other material object "producible as evidence". The same provisions have now been incorporated under Section 38(9) of the Consumer Protection Act, 2019 and NC/CC/197/2012 242 | P a g e are pari materia to the provisions of the old Act. Thus, the procedure of the Commission which is summary in nature is empowered to receive the said material on record. We may clear this doubt on the part of the learned Counsel for Opposite Party No.-1 that in the instant case the material was allowed to be introduced by a specific order dated 08.01.2018 which is extracted herein under:

"By IA No. 10360 and 10361 of 2017, complainant is seeking to file on record additional documents, namely, copy of attachment to mails dated 05.01.2009 (ex.CW-1/14) as also copy of erection all risk policy issued by the opposite party dated 16.01.2009 & 19.02.2009 and also to lead additional evidence to prove the documents. OP No.1 despite of opportunity given failed to file response to the application.

Counsel for OP no.2 states that OP no.2 has no objection if the application is allowed.

Heard. Documents sought to be placed on record are additional documents, which are relevant for just adjudication of the case. Therefore, applications are allowed subject to cost of Rs.1.00 lakh to be deposited by the complainant with Consumer Legal Aid Account-NCDC within four weeks. After payment of cost, complainant to file additional evidence to prove the above additional documents. List on 25.05.2018."

110. We shall refer to the mails that have been filed on record and the affidavits hereinafter while analysing the arguments advanced on this issue but for the time being we hold that we are justified in proceeding to entertain the said material on record which definitely throws light on the nature of the controversy which is necessary for the adjudication of the present controversy. Mr. Agrawal had urged that had that been filed along with the Evidence NC/CC/197/2012 243 | Page affidavit, he would have contested the same or raised any arguments and therefore this Commission should not entertain the said mails that have been introduced as evidence. We are unable to agree with this submission inasmuch as pointed out above, the said material has been taken on record and they are mails communicating information by no strangers but by the parties themselves inasmuch as the mails sent by Opposite Party No.-2 to the Opposite Party No.-1 and its contents cannot be overlooked by us.

111. The other objection of Mr. Agrawal is with regard to the internal communications between the Complainant and its parent Company deciding to swap the rotor. Mr. Agrawal submits that this decision which has been communicated swiftly between the Complainant and their parent Company at Dubai is uncreditworthy but such communications are not even marked to the Insurance Company. He therefore submits that these communications regarding the decision to swap the rotor is no evidence to infer that the Insurance Company had any knowledge about the swapping. He therefore submits that the Surveyor was fully justified in commenting upon this process of swapping of the rotor which had never been intimated to the Insurance Company either expressly or impliedly, either formally or informally. He therefore submits that such communications cannot be taken into account for deciding the present controversy as they do not count as evidence.

112. In this regard we will deal with these communications while proceeding to decide the merits of the matter hereinafter but suffice it to say that the said communications are in relation to the same subject matter of the rotor being replaced at Guntur after having been brought from the Rithwik Power Plant at NC/CC/197/2012 244 | Page Khammam for which marine policies and erection policies had been taken. Thus, this subject matter of a spare rotor moved for installation at Guntur remains the same and hence to say that the said evidence should not be even looked into may not be correct.

113. The first issue which needs to be clarified is the objection taken by Mr. Agrawal, learned counsel for the Insurance Company to the internal mails and documents of the complainant with its parent company and the exchange of mails and communications between the Broker and the complainant. It is urged that such communications do not have any evidentiary value and they should not be treated as either relevant or admissible in respect of the dispute raised about the Insurance Company having knowledge of the swapping of the Rotor at any stage prior to the issuance of the

policy.

114. We may point out that the Insurance Company in its evidence has not filed any proposal or declaration that may have been filled up or tendered by the complainant. We say this because the Machinery Breakdown policy as well as the Loss of Profit policy that has been filed on record, and remains undisputed, opens with a declaration "whereas the insured named in the schedule hereto by a proposal and declaration, which shall be the basis of this contract, has applied to the Iffco Tokio General Insurance Company Limited for the insurance hereinafter and has paid the premium as consideration for such insurance in respect of accident or damage occurring during the period of insurance." A perusal of the said declaration would indicate as if there is a proposal and a declaration which shall be the basis of the contract.

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115. The terminology used in the machinery loss of profit policy is "whereas the insured named in the schedule hereto has made to Iffco Tokio General Insurance Company Limited a written proposal by completing a proposal-cum-questionnaire which together with any other statements made in writing by the insured for the purpose of this policy is deemed to be incorporated herein." This declaration talks of a written proposal - cum - questionnaire and other statements. We have not been able to gather any such written proposal form or questionnaire nor has the Insurance Company filed the same on record. To the contrary learned counsel for the Insurance Company has urged that there is no proposal form

116. In the circumstances there is no other possible view that can be taken except that the policies were negotiated through the Broker, namely, the opposite party no. 2 after finalizing the premium and the Insurance Company has failed to produce any document to witness either a proposal form or a declaration or any other statement in support of the said policies. Consequently, the only probable conclusion that can be construed is that all the proposals were communicated and negotiated through the opposite party no. 2, the Broker and the policies were purchased on the basis of the intimations and communications made through the Broker.

117. It is also clear that the complainant did not directly apply for any such policy.

118. The opposite party no. 2 in their reply have stated that they are an independent brokerage company that had solicited business from the complainant and its group companies, and had placed the business with the NC/CC/197/2012 246 | Page opposite party no. 1 where it played an active role in negotiations of the policy. Paragraph 10 of the reply filed by the opposite party no. 2 is extracted herein under:

"10. That in reference to the contents of para 10 of the complaint refer to purchase of various policies from the opposite party through the answering respondent. The answering respondent did play active role in negotiation of the policy. It is humbly submitted that keeping in view the complexities of the nature of the installation in the turbine. Complainant also took part in negotiations of policies from ITGI. The

purpose of the complainant doing so was only to be open and transparent with the Insurer and to be able to provide them all technical details of turbine."

119. The contentions raised by the complainant regarding prior intimation and sharing of the knowledge of the shifting of the spare Rotor of Rithwik Power Project to the complainant has been admitted in paragraph 14 of the reply of the opposite party no. 2 which is extracted herein under:

"14. That the contents of para 14 of the complaint refer to prior intimation and knowledge of shift of spare rotor from Rithwik Power Projects Ltd to the complainant and filed annexure C7 are admitted as true. It is humbly submitted by the answering respondent that the shift of spare rotor from RPPL to the complainant was kept informed to the opposite party no.1 by both the answering respondent and complainant and both were in regular touch with the opposite party no.1 for arranging policies for shifting and erecting the spare rotor of RPPL at complainant. In this regard a series of mails were exchanged between the complainant, answering respondent and the opposite party no. 1 for arranging policies. It is humbly submitted that the officials of the opposite party no.1 clearly mentioned in their mails that after fitment of rotor at complainant they will send their surveyor/technical engineer to check and certify the fitment of the rotor and working of plant for 10 days NC/CC/197/2012 247 | P a g e under observation. Thereafter, the period of 10 days negotiated down to 7 days of initial operation of turbine. In this connection a series of mails were exchanged between the complainant, answering respondent and opposite party. Accordingly after having thorough pre inspection and observing the functioning of the plant for 7 days, the opposite party no.1 issued MBD and MLOP policies to the complainant. Printout of the series of mails exchanged between the complainant, answering respondent and the opposite party no.1 are marked and Annexed herewith as ANNEXURE R1. It may be noted that in case of MBD Policy, coverage always commences from day one. Only because of the knowledge of changes made in turbine, ITGI inserted a waiting period in MBD Policy. Further the pre-inspection, which is rarely done for MBD Policy, is carried out at client's premises. Only because of knowledge of the installation of rotor of another turbine ITGI chose to arrange inspection at Turbo Machinery to satisfy themselves about the installation and performance of turbine. The terms offered by ITGI even with a waiting period had clear remarks that their quote was subject to satisfying survey report. ITGI issued policy only after their own appointed surveyor submitted report to them directly."

120. Further in paragraph 15 it has been stated that the opposite party no. 2 was in regular touch with the opposite party no. 1 for arranging of the policies including the marine transit policies as well as the erection policies. In paragraph 17 it has been asserted as follows:

"17. That the contents of para 17 of the complaint are true and correct and the answering respondent only arranged the MBD and MLOP policies from the opposite party no.1 after having a lot of discussions and series of mails."

121. The opposite party no. 2, Broker further in paragraph 20 has stated as follows:

NC/CC/197/2012 248 | P a g e "20. That in reply to the contents of this para it is humbly submitted that since from the beginning the opposite party no.1 was having the knowledge of using spare rotor of Rithwik Power projects Ltd at the Complainant and in this regard the opposite party No.1 issued a transit policy for covering the transport of rotor from RPPL to the Complainant and further issued policies covering installation thereof."

122. The opposite party no. 2, Broker in paragraph 23 has admitted the emails filed as annexure C-15 to the complaint.

123. While responding to the grounds, the Broker in ground no. III, has stated as follows:

"(iii) That in reply to the ground (iii) of the complaint it is most respectfully submitted by the answering respondent that a series of mails were exchanged between the complainant, answering respondent and the opposite party no.1 for issuance of policies and since from the beginning the opposite party No.1 was well aware of the use of RPPL spare rotor at complainant plant and accordingly the opposite party No.1 gave the quotation for Erection All Risk Policy (EAR Policy) through Mr. B. Girish Babu for the erection and commissioning of Satyamaharshi Power Corporation Limited Turbine wherein the insurance premium charges of Rs.3.20 per thousand rupees was quoted (Rs.2.70 / Rs.1000 for normal machine + the Rs.0.50/Rs.1000 additional for Second hand machine) on equipment total sum assured value of Rs.1.40 Crores The additional Rs.0.50 premium was quoted knowing that it was a second hand machine.

Accordingly EAR insurance Policy payment was made by the Satyamaharshi on 19th February 2009 through HSBC cashier order :662853)."

124. The said reply of the opposite party no. 2, Broker is supported by the affidavit of Mr. Tushar Thakker, Director and the CEO of the opposite party no. 2, M/s. Peraj Insurance Brokers Pvt. Ltd. The annexures filed with the reply NC/CC/197/2012 249 | P a g e contains the mails between the opposite party no. 2, the complainant and the opposite party no. 1.

125. Thus in the absence of any proposal or written request the aforesaid communications and the affidavit of the Broker have to be considered as the basic source of acquisition of the policies because the policies have been issued by the opposite party no. 1 and the claim has also been repudiated in relation to the same policies.

126. The documents which have been placed before us and have been filed, coupled with the affidavit of the Broker who has for sure negotiated the said policies, our conclusion hereinabove regarding the absence of any proposal form or written document stands confirmed to safely construe that the acquisition of all the policies through the Broker remains undisputed. The communications and mails from the Broker to the complainant and the opposite party no. 1

therefore cannot be doubted.

127. The next question is as to the relevancy and the admissibility of the documents which have been brought on record and have also been taken on record particularly the documents that were allowed to be taken on record vide order dated 08.01.2018. We may point out that under the provisions of Section 13 (4) of the Consumer Protection Act, 1986 which was applicable when the complaint was filed and even under the new Act, namely, the Consumer Protection Act 2019, Section 38 (a) makes provisions empowering the Commission to order discovery and production of any document or any other material object and to receive evidence on affidavits. Thus, strict rules of evidence have not been applied but the powers given to the Commission are NC/CC/197/2012 250 | Page as that are vested in a civil court. The procedure is summary and consequently the documents which have already arrived are in consonance with the provisions of the Act. We may point out that this procedure provided under the Act has the traits of an inquisitorial jurisdiction as well. Nonetheless, the rules of natural justice have to be observed even though not codified as in the CPC or in the Evidence Act. In the instance case the documents have been permitted and the affidavits have been filed in support of the said documents. To our mind this amounts to full compliance of the provisions of law and is in conformity with the summary procedure that is followed by the Commission for deciding disputes. It is also jurisprudentially acknowledged that the provisions of the Civil Procedure Code, the Criminal Procedure Code and the Evidence Act are broadly codified principles of natural justice and they have to be observed in the pursuit of searching out the truth for arriving at a correct conclusion.

128. There is one more important issue which deserves to be mentioned, namely, the negotiations of the policy through the opposite party no. 2 as narrated in the affidavit of the opposite party no. 2 that has not been controverted or rebutted by the Insurance Company. The documents and mails supported by the pleadings in the reply of the opposite party no. 2 therefore can neither be overlooked nor ignored as the contentions raised on behalf of the complainant is, that it is these documents that will lead to the inference that the opposite party no. 1 had knowledge about the swapping of the Rotor of Rithwik and installed in the turbine of the complainant.

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129. As to how knowledge can be inferred, the facts of this case reveal that the complainant on the one hand has not placed any document to establish that they had informed the Insurance Company directly in writing about the swapping of the Rotor. All communications which are on record do not spell out any written document or request by the complainant directly for issuing the MBD policy regarding the turbine that had a replaced Rotor. As noted above there is no proposal form The complainant has therefore made an effort to demonstrate through the mails and the communications as well as the affidavits on record to urge that this chain of communications inter se between the parties particularly between the Broker and the Insurer is sufficient to establish that the Insurance Company was fully aware about the swapping of the Rotor in the turbine of the complainant and it is with this knowledge of the replacement that the MBD and MLOP policies were issued on 10.03.2009.

130. On the other hand the stand taken by the Insurance Company is that there is not even an iota of recital in any of these communications to establish that the complainant had informed the fact of replacement and swapping of the Rotor to the Insurance Company. Learned counsel for the Insurance Company, Mr. Agrawal has therefore also emphasized that internal communications between the complainant and its parent company regarding the decision to swap the Rotor, or the mails dispatched by the opposite party no. 2 to the Insurance Company, do not establish any such information or knowledge to the Insurance Company about the swapping by the complainant.

131. To understand this contest it would be appropriate to appreciate the fine distinctions of various terminologies that may be required for an assessment NC/CC/197/2012 252 | Page of the Epistemology (the science which investigates knowledge) of the subject, as suggested by the complainant in their concise statement of chronological facts along with their convenience compilation dated 04.12.2023.

132. This involves a probe of some sort as to how knowledge can be acquired. The word knowledge in ordinary parlance means the perception of a fact or its recognition or acknowledgement. It is not exactly synonymous with information, intimation, awareness or familiarity or acquaintance that contribute towards knowledge. Thus knowledge of a fact can be acquired through these methods and it can be distant knowledge or a remote information. A knowledge of a fact or about a fact can be partial or complete and it can be either actual or constructive. A knowledge of a fact to a person can also be implied or can be attributed on plausible interferences which of course would be dependent on the nature of the communications, the mode and method of communications. It would be evident from the facts and the analysis hereinbefore and hereinafter that the parties arrived at the terms of the contract of Insurance through the communications with the broker in the present case.

133. It is in this background that we have to ascertain as to whether the communications as alleged could be construed or inferred as of any knowledge to the opposite party no. 1 about the swapping and replacement of the Rithwik Rotor in the turbine of the complainant prior to the issuance of the policy on 10.03.2009. Since this is the first segment of the argument on behalf NC/CC/197/2012 253 | Page of the complainant that has been vehemently contested by the opposite party no. 1, we may proceed to deal with the same.

134. As noted above there is no direct written intimation by the complainant to the Insurance Company about the swapping of the Rotor. However, the communications are through the opposite party no. 2, who is admittedly the Broker and who has initiated and negotiated the policies.

135. Before we deal with the actual evidence, we may also delve into the issue of the role of the Broker and its conduct on which submissions have been advanced. The contention of the learned counsel for the complainant is that in view of the provisions of the Brokers Regulations, 2002, the opposite party no. 2 acted as a clear bridge to negotiate the policies that is confirmed as per the mails that are on record.

136. Mr. Basu has advanced his submissions contending that the brokers clearly work in tandem with the Insurance Company and therefore there are certain obligations cast on them which establish that they are a bridge between the insurer and the insured. He has provided us with the IRDAI (Insurance Brokers) Regulations, 2002 as well as 2018 Regulations. We will refer to the provisions pointed out by Mr. Basu to appreciate this argument. The definition of an insurance broker under 2002 Regulations that was in force at the time when the claim was raised is Regulation 2 (i). The functions under the said Regulations have been separately described of an insurance broker, of a direct broker and of a composite broker.

137. A perusal of Regulation 3(h), (i) (j) describe the obligations of a broker. Further the remuneration payable to a broker is contained in Regulation 19.

NC/CC/197/2012 254 | Page The said payment of remuneration is by the Insurance Company and according to the said remuneration the settlement of accounts of such payment has to be done on a monthly basis. The said Regulation also contains schedules and other instructions. Schedule III of the Regulations defines the code of conduct to be observed by a broker. The same is extracted herein under:

"SCHEDULE III INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
(Insurance Brokers) Regulations, 2002 CODE OF CONDUCT [see regulation 21]

1. Every insurance broker shall follow recognised standards of professional conduct and discharge his functions in the interest of the policyholders.
2. Conduct in matters relating to clients relationship-- Every insurance broker shall:
 - (a) conduct its dealings with clients with utmost good faith and integrity at all times;
 - (b) act with care and diligence;
 - (c) ensure that the client understands his relationship with the broker and on whose behalf the broker is acting;
 - (d) treat all information supplied by the prospective clients as completely confidential to themselves and to the insurer(s) to which the business is being offered;
 - (e) take appropriate steps to maintain the security of confidential documents in their possession;
 - (f) hold specific authority of client to develop terms;
 - (g) understand the type of client it is dealing with and the extent of the client's awareness of risk and insurance;

(h) obtain written mandate from client to represent the client to the insurer and communicate the grant of a cover to the client after effecting insurance;

(i) obtain written mandate from client to represent the client to the insurer/reinsurer;

and confirm cover to the insurer after effecting re-insurance, and submit relevant reinsurance acceptance and placement slips;

(j) avoid conflict of interest.

3. Conduct in matters relating to Sales practices-- Every insurance broker shall: --

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(a) confirm that it is a member of the Insurance Brokers Association of India or such a body of brokers as approved by the Authority which has a memorandum of understanding with the Authority;

(b) confirm that he does not employ agents or canvassers to bring in business;

(c) identify itself and explain as soon as possible the degree of choice in the products that are on offer;

(d) ensure that the client understands the type of service it can offer;

(e) ensure that the policy proposed is suitable to the needs of the prospective client;

(f) give advice only on those matters in which it is knowledgeable and seek or recommend other specialist for advice when necessary;

(g) not make inaccurate or unfair criticisms of any insurer or any member of the Insurance Brokers Association of India or member of such body of brokers as approved by the Authority;

(h) explain why a policy or policies are proposed and provide comparisons in terms of price, cover or service where there is a choice of products;

(i) state the period of cover for which the quotation remains valid if the proposed cover is not effected immediately;

(j) explain when and how the premium is payable and how such premium is to be collected, where another party is financing all or part of the premium, full details shall be given to the client including any obligations that the client may owe to that party; and

(k) explain the procedures to follow in the event of a loss.

4. Conduct in relation to furnishing of information -- Every insurance broker shall: --

(a) ensure that the consequences of non-disclosure and inaccuracies are pointed out to the prospective client;

(b) avoid influencing the prospective client and make it clear that all the answers or statements given are the latter's -own responsibility. Ask the client to carefully check details of information given in the documents and request the client to make true, fair and complete disclosure where it believes that the client has not done so and in case further disclosure is not forthcoming it should consider declining to act further;

(c) explain to the client the importance of disclosing all subsequent changes that might affect the insurance throughout the duration of the policy; and

(d) disclose on behalf of its client all material facts within its knowledge and give a fair presentation of the risk.

5. Conduct in relation to explanation of insurance contract -- Every insurance broker shall:

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(a) provide the list of insurer(s) participating under the insurance contract and advise any subsequent changes thereafter;

(b) explain all the essential provisions of the cover afforded by the policy recommended by him so that, as far as possible, the prospective client understands what is being purchased;

(c) quote terms exactly as provided by insurer;

(d) draw attention to any warranty imposed under the policy, major or unusual restrictions, exclusions under the policy and explain how the contract may be cancelled;

(e) provide the client with prompt written confirmation that insurance has been effected. If the final policy wording is not included with this confirmation, the same shall be forwarded as soon as possible;

(f) notify changes to the terms and conditions of any insurance contract and give reasonable notice before any changes take effect;

(g) advise its clients of any insurance proposed on their behalf which will be effected with an insurer outside India, where permitted, and, if appropriate, of the possible risks involved; and

6. Conduct in relation to renewal of policies -- Every insurance broker shall:--

(a) ensure that its client is aware of the expiry date of the insurance even if it chooses not to offer further cover to the client;

(b) ensure that renewal notices contain a warning about the duty of disclosure including the necessity to advise changes affecting the policy, which have occurred since the policy inception or the last renewal date;

(c) ensure that renewal notices contain a requirement for keeping a record (including copies of letters) of all information supplied to the insurer for the purpose of renewal of the contract;

(d) ensure that the client receives the insurer's renewal invitation well in time before the expiry date.

7. Conduct in relation to claim by client-- Every insurance broker shall: --

(a) explain to its clients their obligation to notify claims promptly and to disclose all material facts and advise subsequent developments as soon as possible;

(b) request the client to make true, fair and complete disclosure where it believes that the client has not done so. If further disclosure is not forthcoming it shall consider declining to act further for the client;

(c) give prompt advice to the client of any requirements concerning the claim;

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(d) forward any information received from the client regarding a claim or an incident that may give rise to a claim without delay, and in any event within three working days;

(e) advise the client without delay of the insurer's decision or otherwise of a claim; and give all reasonable assistance to the client in pursuing his claim. Provided that the insurance broker shall not take up recovery assignment on a policy contract which has not been serviced through him or should not work as a claims consultant for a policy which has not been serviced through him.

8. Conduct in relation to receipt of complaints -- Every insurance broker shall:--

(a) ensure that letters of instruction, policies and renewal documents contain details of complaints handling procedures;

(b) accept complaints either by phone or in writing;

(c) acknowledge a complaint within fourteen days from the receipt of correspondence, advise the member of staff who will be dealing with the complaint and the timetable for dealing with it;

(d) ensure that response letters are sent and inform the complainant of what he may do if he is unhappy with the response;

(e) ensure that complaints are dealt with at a suitably senior level;

(f) have in place a system for recording and monitoring complaints.

9. Conduct in relation to documentation -- Every insurance broker shall:--

(a) ensure that any documents issued comply with all statutory or regulatory requirements from time to time in force;

(b) send policy documentation without avoidable delay,

(c) make available, with policy documentation, advice that the documentation shall be read carefully and retained by the client;

(d) not withhold documentation from its clients without their consent, unless adequate and justifiable reasons are disclosed in writing and without delay to the client. Where documentation is withheld, the client must still receive full details of the insurance contract;

(e) acknowledge receipt of all monies received in connection with an insurance policy;

(f) ensure that their reply is sent promptly or use its best endeavours to obtain a prompt reply to all correspondence;

(g) ensure that all written terms and conditions are fair in substance and set out, clearly and in plain language, client's rights and responsibilities; and

(h) subject to the payment of any monies owed to it, make available to any new insurance broker instructed by the client all documentation to which the client is NC/CC/197/2012 258 | Page entitled and which is necessary for the new insurance broker to act on behalf of the client.

10. Conduct in matters relating to advertising -- Every insurance broker shall conform to the relevant provisions of the Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000, and :--

- (a) ensure that statements made are not misleading or extravagant;
- (b) where appropriate, distinguish between contractual benefits which the insurance policy is bound to provide and non-contractual benefits which may be provided;
- (c) ensure that advertisements shall not be restricted to the policies of one insurer, except where the reasons for such restriction are fully explained with the prior approval of that insurer;
- (d) ensure that advertisements contain nothing which is in breach of the law nor omit anything which the law requires;
- (e) ensure that advertisement does not encourage or condone defiance or breach of the law;
- (f) ensure that advertisements contain nothing which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence or to cause disharmony;
- (g) ensure that advertisements are not so framed as to abuse the trust of clients or exploit their lack of experience or knowledge;
- (h) ensure that all descriptions, claims and comparisons, which relate to matters of objectively ascertainable fact shall be capable of substantiation.

11. Conduct in matters relating receipt of remuneration-- Every insurance broker shall:--

- (a) disclose whether in addition to the remuneration prescribed under these regulations, he proposes to charge the client, and if so in what manner;
- (b) advise the client in writing of the insurance premium and any fees or charges separately and the purpose of any related services;
- (c) if requested by a client, disclose the amount of remuneration or other remuneration it receives as a result of effecting insurance for that client.

This will include any payment received as a result of securing on behalf of the client any service additional to the arrangement of the contract of insurance; and NC/CC/197/2012 259 | Page

(d) advise its clients, prior to effecting the insurance, of their intention to make any deductions from the amount of claim collected for a client, where this is a recognised practice for the type of insurance concerned."

138. A perusal of clause 2, Clause 3, Clause 4, Clause 5 and Clause 7 read together clearly indicates that the broker has to maintain the accuracies regarding disclosure and also explain the consequences of non-disclosure. The broker is also obliged to disclose everything on behalf of its client that may be necessary to maintain transparency in the dealings. A perusal of these regulations and the code of conduct therefore does indicate the important role of a broker who is not just a negotiator of the policy but also travels upto the settlement of claims and correct disclosure of information including material facts that are within its knowledge. The role of the broker therefore cannot be whittled down with an argument that he does not act as an agent of the Insurance Company. The broker is a statutory licensed facilitator whose conduct is regulated through the regulations and which enjoins the broker with a duty to communicate effectively in respect of any policy negotiated between an insured and an insurer. A Broker is the main link and therefore any evidence adduced or deposition made assumes great significance.

139. The mails sent in this case by the Opposite Party No.-2 Broker to the Insurance Company are therefore in consonance with the conduct as prescribed under the Regulations. The affidavit of the OP No. 2 supports the stand of the complainant. We therefore do not find anything adverse to infer that the Broker has exceeded its duty or authority in sending the mails to the NC/CC/197/2012 260 | P a g e Opposite Party No.-1 regarding the settlement of the premium of the policy, its revision and the subject matter as indicated in the said communications. This is material information the communication whereof cannot be overlooked unless it is established that the mails are fake or have been generated. We have been unable to find any such material except for the oral submissions of the learned Counsel for the Opposite Party No.-1. The said mails have also been substantiated by the evidence of the Opposite Party No.-2 who has put in appearance and has filed the same alongwith an affidavit. Mr. Agrawal urged that Opposite Party No.-2 was hand in gloves with the Complainant and therefore the said material should be discarded. We are unable to accept this contention for all the reasons herein above to conclude that the conduct of the Opposite Party No.-2 in producing this material is well within their obligations that has been discharged keeping in view the duties imposed on it under the Regulations referred to above.

140. This has been contested by Mr. Agrawal urging that a Broker is not an agent of the opposite party no. 1. There is no doubt that the opposite party no. 2 itself in the reply affidavit has stated that they acted independently even though regulated through regulations, but they do not act as agents of Insurance Company and rather facilitate services to their clients. The regulations itself imply that a Broker shall not act as an agent. We therefore find that the opposite party no. 2 is not an agent of the opposite party no. 1, but at the same time it remains undisputed that all the policies were negotiated by the opposite party no. 2 with the opposite party no. 1 for the NC/CC/197/2012 261 | P a g e benefit of the complainant. The broker has been the main channel of communication and a conduit of all the informations about the subject matter.

141. While doing so the obligations cast on the Broker under the 2002 Regulations provide that the Broker shall communicate all relevant and material information and shall continue to do so even while facilitating any claim by an insured. The regulations therefore quoted above are not an empty formality, and by way of a statute, require the performance of obligations by the Broker in a particular manner to ensure transparency and fairness in the negotiations of insurance and its

claims. In our considered opinion such a conduct that is obligated upon a Broker certainly qualify him as an indispensable and responsible bridge between the insured and the insurer. The Insurance Company has nowhere disputed the negotiations of the policies through the opposite party no. 2 and therefore even if the opposite party no. 2 was not the agent of the Insurance Company, it was undoubted by the main facilitator and the direct link between the complainant and the Insurance Company while negotiating and finalizing the contract of insurance. The role of the Broker therefore cannot be diluted so as to discard his participation and role played by communicating between the complainant, and on his behalf, with the opposite party no. 1 Insurance Company. Vice versa the information tendered by the Insurance Company including the procedure to be followed and formalities including payment of premium by the complainant for acquiring a policy is clearly spelt out. It is these communications as available in the present case and also supported by the OP No. 2 which are the exact expressions of interest and acceptance that led NC/CC/197/2012 262 | P a g e to the issuance of the policies by the Insurance Company. The connect is therefore clearly perceivable in the background that there is no other proposal form or document in writing.

142. The only inference, and a legally sustainable inference, that can be drawn from the conduct of both the parties with the involvement of the Broker and the facts discussed above is that the acquisition of all the policies after issuance was an outcome of the direct involvement of the Broker as a bridge between the complainant and the opposite party no. 1 through the communications referred to hereinabove. The insurance contract was a direct outcome of this exercise by the broker.

143. The reason for discussing the communications and the mails assume importance in the background that even though the Machinery Breakdown and the Loss of Profits Policies which are subject matter of this complaint do recite a "proposal" and a "declaration" yet there is no such document and the Insurance Company has not produced either the proposal or the declaration. Not only this, the proposals and declarations of the Marine Transit and Erection Policies have not been produced by the Insurance Company. This burden was clearly on the Insurance Company in order to establish as to whether there was any incorrect declaration by the complainant or any suppression of material fact.

144. Mr. Basu contended that the Opposite Party No.-1/ Insurance Company has failed to produce any document which may amount to a proposal or even any alternatives which may remotely indicate any material fact had been suppressed by the Complainant or material information had not been NC/CC/197/2012 263 | P a g e tendered to the Insurance Company. For this he has invited the attention of the Bench to the notification dated 26.04.2002 Insurance Regulatory and Development Authority (Protection of Policyholders interest) Regulations, 2002. We are referring to the said regulations as the same appears to have been in force at the relevant time even though these regulations have been later on re-introduced and modified.

145. Mr. Basu has pointed out that there has to be a proposal for insurance under Regulation 4 thereof but in the instant case it is also admitted by the learned Counsel for the Opposite Party No.-1 that there is no proposal form in respect of the machinery breakdown or loss of profit policy issued on 10.03.2009. Mr. Basu therefore submits that where a proposal form is not used then there should be a recording of information either obtained orally or in writing and get it confirmed within 15 days

from the proposal. He has emphasised that the onus of proof shall rest with the insurer in respect of any such information not so recorded, if any dispute is raised with regard to suppression of material information. We find it expedient and necessary to quote Regulation 4 for appreciating this argument:

4. Proposal for insurance (1) Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.

NC/CC/197/2012 264 | P a g e (2) Forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognised under the Constitution of India.

(3) In filling the form of proposal, the prospect is to be guided by the provisions of Section 45 of the Act. Any proposal form seeking information for grant of life cover may prominently state therein the requirements of Section 45 of the Act. (4) Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover.

(5) Wherever the benefit of nomination is available to the proposer, in terms of the Act or the conditions of policy, the insurer shall draw the attention of the proposer to it and encourage the prospect to avail the facility. (6) Proposals shall be processed by the insurer with speed and efficiency and all decisions thereof shall be communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposals by the insurer.

146. We find the submissions of Mr. Basu to have force inasmuch as once it is agreed that there is no formal or informal proposal form on record, the question of construing any suppression of any material or relevant fact will have to be proved by the Insurance Company on whom the burden rests in terms of regulation 4 (quoted herein above). Mr. Basu is correct in his contention that had there been any form asking questions and responses, the same could have very well reflected upon the allegations but in the absence of any such form or any document the argument of suppression cannot withstand the scrutiny of the aforesaid regulations.

147. He has also produced a copy of a material damage special perils policy of the Opposite Party No.-1 Company as an illustration to urge that said policy NC/CC/197/2012 265 | P a g e contains informations sought and to be recorded and then the general conditions so as to attract the authority of the Insurance Company to avoid a policy. He submits that there is no such provision under the present policy nor is there any proposal form or any other information which may reflect

even remotely that the Insurance Company had called for any information from the Complainant before issuance of the policy on 10.03.2009 and that had been suppressed. He therefore submits that in the absence of any such material the allegation of suppression of material information at the time of inception of policy is not only misplaced but is not even available under the terms and conditions of the policy as applicable in the present controversy. Apart from this, the Insurance Company itself has committed breach of the 2002 Regulations referred to above and therefore in the absence of any such proof of suppression the Insurance Company has failed to discharge its burden. Consequently the argument and the reason given in the letter of repudiation on ground of suppression of material fact is clearly unsubstantiated and untenable hence deserves the rejection.

148. The question as to what is material information has been explained by the Apex Court in the case of *Mahakali Sujatha v. Future Generali India Life Insurance Co. Ltd.*, (2024) 8 SCC 712. In paragraph 37 all the basic rule for making a proposal for insurance and disclosure has been summarised which is as follows:

"37. The basic rules to be observed in making a proposal for insurance may be summarised as follows:

37.1. A fair and reasonable construction must be put upon the language of the question which is asked, and the answer given will be similarly NC/CC/197/2012 266 | P a g e construed. This involves close attention to the language used in either case, as the question may be so framed that an unqualified answer amounts to an assertion by the proposer that he has knowledge of the facts and that the knowledge is being imparted. However, provided these canons are observed, accuracy in all matters of substance will suffice and misstatements or omissions in trifling and insubstantial respects will be ignored.

37.2. Carelessness is no excuse, unless the error is so obvious that no one could be regarded as misled. If the proposer puts "no" when he means "yes" it will not avail him to say it was a slip of the pen; the answer is plainly the reverse of the truth.

37.3. An answer which is literally accurate, so far as it extends, will not suffice if it is misleading by reason of what is not stated. It may be quite accurate for the proposer to state that he has made a claim previously on an insurance company, but the answer is untrue if in fact he has made more than one.

37.4. Where the space for an answer is left blank, leaving the question unanswered, the reasonable inference may be that there is nothing to enter as an answer. If in fact there is something to enter as an answer, the insurers are misled in that their reasonable inference is belied. It will then be a matter of construction whether this is a mere non-disclosure, the proposer having made no positive statement at all, or whether in substance he is to be regarded as having asserted that there is in fact nothing to state. 37.5. Where an answer is unsatisfactory, as being on the face of it incomplete or inconsistent the insurers may, as reasonable men, be regarded as put

on inquiry, so that if they issue a policy without any further enquiry they are assumed to have waived any further information.

However, having regard to the inference mentioned in sub-para 37.4 above, the mere leaving of a blank space will not normally be regarded as sufficient to put the insurers on inquiry.

37.6. A proposer may find it convenient to bracket together two or more questions and give a composite answer. There is no objection to his doing so, provided the insurers are given adequate and accurate information on all points covered by the questions.

37.7. Any answer given, however accurate and honest at the time it was written down, must be corrected if, up to the time of acceptance of the NC/CC/197/2012 267 | P a g e proposal, any event or circumstance supervenes to make it inaccurate or misleading.

149. A perusal of the ratio also indicates as to how an inference should be drawn if there is a blank space left for an answer against any question. Paragraph 37.4 explains the same.

150. In the instant case, there is no proposal form or any such questionnaire from the Insurance Company to the complainant. To the contrary, the communications entered into through the Broker do not indicate any doubt about the status of repairs or any enquiries relating thereto. The complainant in its communication to the Broker and the Broker in turn to the Insurance Company seem to have been moving in tandem about the repairs and the commissioning of the complainant's Turbine and to remove doubts the Insurance Company itself appointed Mr. Markandeyulu as the Risk Inspector. He also did not raise any about or make any queries about the status of the rotor, presumably because the defective rotor of the complainant's Turbine had already been discarded as per the report of TMEI and the spare rotor from Rithwik was planned to be installed through repairs to recommission the plant Turbine, and this is how it was done.

151. We agree with the submissions of Mr. Basu inasmuch as there is no material to demonstrate that any wrong answer was given by the Complainant or wrong information was tendered at the time of acquiring the policy on 10.03.2009. There is no condition about suppression or non-disclosure at the pre-inception stage that could have been invoked by the Insurance Co. to NC/CC/197/2012 268 | P a g e repudiate the claim. The Insurance Co. therefore could not have invoked such a condition to repudiate the policy.

152. Coming to the issue of burden of proof the same judgment explains the enunciation of law as to what is a burden of proof and on whom does lie the onus in view of the principle of the Indian Evidence Act. In the instant case, the complainant has provided the material for demonstrating that the Insurance Company and its officials through the broker had been informed about the movement, the repair of the turbine with swapping of the spare rotor to make the complainant's turbine functional and in fact the turbine ran with the spare rotor and was commissioned satisfactorily. The technical report from TMEI and M/s. Cobham indicate that there were no defect in the rotor. The complainant has brought on record these facts as also the fact of the successful running of the turbine for four and a half months after the acquisition of the policy on 10.03.2009.

In our opinion, the burden thereafter lay on the Insurance Company to rebut the same as the complainant had discharged their burden, and the onus stood shifted on the Insurance Company to refute the said circumstances.

153. We have already analyzed the evidence and keeping in view the evidence of the opposite party no. 2 broker, coupled with all the communications, the Insurance Company has failed to dislodge the circumstances that prove the successful commissioning of the turbine with the spare rotor.

154. In a subsequent damage to the turbine after four and a half months, that too in the background that the rotor has not been found to be defective, NC/CC/197/2012 269 | Page neither the surveyor has examined this aspect on the basis of the aforesaid material in correct perspective nor has the Insurance Company been able to dislodge this perception. Consequently, applying the ratio of the said decisions, the complainant has satisfied the tests laid down therein whereas the Insurance Company has failed to meet the said threshold of proving its stand by cogent evidence.

155. The question therefore is as to whether the communications and mails prior to the acquisition of the MBD and MLOP policies are material evidence and whether they can be admitted or can conclusions be drawn on the same about the intention of the parties.

156. To appreciate the sequence and chronology of events the following dates and the documents in reference thereto, which have already been extracted hereinabove, needs to be chronologically mentioned:

Date Description
14.11.2008 Letter from the complainant to the parent company Velcan Energy India, Bangalore informing about the damaged rotor of the complainant and suggestions for repairs with a request to shift the turbine rotor kept as spare in the Rithwik Power Plant at Khammam
10.12.2008 Mail from the complainant to the broker about obtaining spare rotor from Rithwik and fitting it at the turbine of the complainant's plant in reference to the MBD and MLOP Policy. The mail suggests that the spare rotor from the Rithwik would be fitted and accordingly the policy would commence from the date of operation with a one week or 10 day testing period.
10.12.2018 Mail from the broker to the complainant about discussing the above with Iffco Tokio, the insurer. It refers to a risk inspection to be carried out by the Engineer appointed by the surveyor and when the rotor is installed the risk engineer will visit for its commissioning, whereafter the turbine can be made operational.

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11.12.2008 Mail from the broker to the complainant regarding swapping of the Rithwik rotor in the complainant's turbine with a further information that the Insurance Company had provided details of the surveyor who will have to be contacted, namely, Bhasker Kumar.

12.12.2008. Broker's mail to the complainant informing about the discussions with Iffco and recommending to start as per the requirement of the plant and process the policy as well. Other conditions regarding the terms of policy were suggested.
12.12.2008 A comparison was made of the rotors, that of the complainant and the other spare rotor from Rithwik by M/s. TMEI, Hyderabad.

12.12.2008 The complainant wrote to the broker about the fitment of the spare rotor of Rithwik and the discussion with the insurance people in this regard. Other references for processing the MBD and MLOP Policy were also made in reference to the subject that was Rithwik spare rotor to be installed at the complainant's plant.

15.12.2008 Communication of Insurance Company official Ms. Shaina Taneja to the broker regarding MBD coverage insurance policy for the complainant's plant with an information that it shall be issued only after pre-inspection to be carried out by Mr. Markendeyulu, who was requested to carry out pre- inspection at the time of commissioning and before the plant became operational.

20.12.2008 Instructions from the Bangalore office (as referred of the Insurance Co. to in the report dated 11.03.2009) to Mr. Markendeyulu to carry out risk inspection. 30.12.2008 Mail of Ms. Shaina Taneja to the broker indicating the revised quote for the MBD policy for the complainant's turbine and information about the MLOP policy being also finalised.

30.12.2008 Tentative quote for the machinery breakdown policy 01.01.2009 Mail from M/s. Puja Jaju (Insurance Company official) to broker intimating revised premium quotation for the MBD policy of the complainant with suggestions with regard to the time excess clauses in the MLOP. 05.01.2009 Complainant's erection policy 16.01.2009 Erection policy for Rithwik 27.01.2009 Broker wrote to the Insurance Company for extension of the transit policies addressed to Puja Jaju and with a copy to one Mr. Sharma. Specifically mentioning about the "movement" of the "Rithwik rotor" to Guntur at the NC/CC/197/2012 271 | P a g e complainant's plant.

28.01.2009 Mail from the Insurance Company to broker giving options in respect of the period of extension as referred to in the mail dated 27.01.2009. 28.01.2009 Email from the broker to the complainant informing about the quotation received from the Insurance Company.

17.02.2009 Compatibility Technical Report from TMEI certifying that the speed test has been conducted whereby the spare rotor could be installed at the complainant's plant.

18.02.2009 Letter of Velcan India to Velcan France for taking decision to shift the spare rotor of Rithwik to the turbine rotor of the complainant. 19.02.2009 Erection policy taken in the name of Rithwik, but payment of entire premium was made by the complainant in respect of the spare rotor of Rithwik. 19.02.2009 Decision of M/s. Velcan France at Dubai approving the request for the swapping of the rotor.

04.03.2009 Commissioning of the complainant's turbine with the pre-inspection by the to Risk engineer, Mr. Markendeyulu.

10.03.2009 10.03.2009 MBD and MLOP Policy issued.

11.03.2009 Risk engineer Markendeyulu releases his verification and certification of the Commissioning and operation of the complainant's turbine by Guntur. 22.07.2009 Breakdown of the turbine after more than 4 months.

157. We find that the contest raised by the learned counsel for the Insurance Company has to be rejected for the reason that the communications undoubtedly directly disclose the fact of all the policies being negotiated through the Broker with a positive indication and intimation of the replacement and swapping of the Rotor. For this we may refer to the mails dated 10.12.2018 quoted above coupled with the mail dated 11.12.2008 and 12.12.2008 which indicates that these communications between the complainant and the opposite party no. 2 was clearly with regard to the swapping and replacement of the Rotor. The comparison whereof had already NC/CC/197/2012 272 | P a g e been made by TMEI and held to be identical in its report dated 12.12.2008, thus there was a clear understanding and information about the request for the MBD policy being made and the premium being finalized regarding the turbine to be installed at the complainant's plant with the replaced and swapped Rotor. Apart from this the opposite party no. 2 in all these communications has indicated that the discussions were categorically held with the Insurance Company on this very issue for the utilization of the swapped Rotor in the turbine of the complainant. As a matter of fact the mail dated 12.12.2008, specifically recites the sending of the spare Rotor and it being fit for being installed and then its discussion with the Insurance Company. The mail further recites that as per discussion with the Insurance Company they would be sending an engineer to visit after it is fitted into the turbine, and based on the report of such an engineer, that the Insurance Company will issue the insurance policy. It also recites that there would be some period also prescribed for testing.

158. What is more clinching in our opinion is the mail from Shaina Taneja, the official of the Insurance Company addressed to the Broker on 15.12.2008. There is no doubt that the subject of the said mail is directly about the renewal of the Satyamaharishi Machinery Breakdown Policy and its coverage. This is also clear from the recitals of the said letter, but what is more revealing is that it shall be subject to pre-inspection of the plant and the quote of the premium would be subject to any revision based on such pre-inspection. The mail also recites that this was being communicated as per the discussions over NC/CC/197/2012 273 | P a g e telecom. We may point out that had there been no such communication there was no occasion for Shaina Taneja to have sent this mail to the Broker.

159. The aforesaid communication therefore positively indicates the communications having been made and the issuance of the policy subject to a pre-inspection of the plant. It is this, which was spelt out in the mail of the opposite party no. 2 to the complainant on 12.12.2008, that a discussion had been held with the Insurance Company who will be sending an engineer after the Rotor from Rithwik fits into the turbine. It is therefore legitimate to infer that Shaina Taneja was well aware of the status of the turbine to be repaired by fitting and replacement of the Rotor from Rithwik that was to be subjected to pre-inspection before the issuance of a policy.

160. There is one argument which deserves to be dealt with at this stage namely, that Shaina Taneja is the same person who had been negotiating the other policies with regard to the marine transit and the erection of the machinery. The mail dated 30.12.2008 regarding the revised quote for MBD and MLOP also refers to the names of Pujja Jaju and Girish Babu who are also officials of the Insurance Company. There is no doubt that all the policies appear to have been negotiated through the same officials and therefore it would not be incorrect to infer that the same officials dealing with the transit, the erection and the issuance of the MBD and MLOP policies were aware about the status of

the turbine that was to be insured with a replaced Rotor from Rithwik.

161. Coming to the decision in the case of Mahaveer Sharma Vs. Exide Life Insurance Co. Ltd., 2025 SCC OnLine SC 435, we find that in the NC/CC/197/2012 274 | P a g e present case the very successful commissioning of the turbine between 4.03.2009 to 10.03.2009 in the presence of the Risk engineer of the Insurance Company Mr. Markendeyulu is sufficient indication of the fact that the said fact was available to the Insurance Company, which prudently relying on the same, extended the benefit of MBD and MLOP policies. We may observe that in this context that the argument about the relevance of pre-inspection gains importance for which reliance has been placed by the learned counsel on the decision of the Apex Court in the case of Canara Bank Vs. United India Insurance Co. Ltd. (2020) 3 SCC 455, para 39. Even though the said case was with regard to the value of the stocks where it was observed that a prudent Insurance Company before issuing the policy must or at least should have ascertained the value of the nature of the stocks where the insured sum was rupees thirty crores. It was observed that the Insurance Company therein was one of the largest nationalised Insurance Company and therefore it was presumed that the policy must have been issued only after evaluating the stocks.

162. In the instant case, the insurance is of a very heavy amount and is not an insurance coverage which may be described as an ordinary run of the mill case. This was a Machinery Breakdown Policy for a turbine in a power generation plant and the Insurance Company was well aware about the magnitude of the insurance coverage involved. Not only this, the Insurance Company through its officials had been negotiating with the broker in respect of the policies right from the beginning including the transit policies, the erection policies and finally the MBD and MLOP policies. Having glanced NC/CC/197/2012 275 | P a g e through the sum insured in these policies, it has to be presumed that the Insurance Company was aware of the nature of the insurance coverage that was being sought in respect of the commissioning of the complainant's plant where repairs had been undertaken on account of its damaged rotor. The repair and installation of the rotor of the complainant's turbine and the movement of the rotor for getting it tested was obviously for the purpose of installing a workable and functional turbine in the complainant's plant. The Insurance Company will therefore be presumed to have acted prudently and diligently while proceeding to issue the MBD and MLOP policies on 10.03.2009 on the report of Mr. Markendeyulu whereupon it was commissioned and was operational. All this supports the argument of the complainant that the turbine was installed and the policy was issued after a due diligence exercise. It was upon being satisfied with the functioning of the turbine that the policies were issued. There is therefore every reason to presume that the repairs of the turbine have been effectively carried out with the installation of a non-defective rotor that ran the turbine for four and a half months and was ultimately found to be not defective by TMEI or by M/s. Cobham, the technical experts. As noted above no contrary report of any technical expert has been produced by the Insurance Company to hold that the rotor was defective. The suppression therefore as alleged after the plant had been commissioned successfully, gets eclipsed, and becomes immaterial. Learned counsel for the complainant therefore is justified in relying on the Apex Court decision in the case of Bhagwani Bai Vs. Life Insurance Corporation of India, Jabalpur, 1983 SCC OnLine MP 10, in as much as NC/CC/197/2012 276 | P a g e there is no fraudulent intention established given the circumstances and the facts of the present case.

163.

164. At this stage there is yet another argument that needs to be dealt with as advanced and contested vehemently by Mr. Agrawal on behalf of the Insurance Company. For this he had laid the foundation that the Rithwik Rotor was sent under an independent and an exclusive marine transit policy with its destination from Khammam, Andhra Pradesh to Hyderabad for its assessment by TMEI. The transit policy was back and forth and therefore the Rotor from the Rithwik power plant had no other journey apart from this. Mr. Agrawal therefore urged that there cannot be any presumption of knowledge of the Rithwik Rotor traveling to Guntur at the plant of the complainant without there being any transit policy and to attribute knowledge to the Insurance Company. Correspondingly it is also argued that the defective Rotor of the complainant had also been sent to Hyderabad under a specific marine policy for its transportation from Guntur to Hyderabad and back. Thus, there were two separate transit policies with no indication about the Rithwik Rotor being replaced or swapped and then transported to Guntur. He submits that there was no such transit policy sought for the Rithwik Rotor, and therefore any knowledge about this replacement and installation at Guntur was not available or conveyed to the Insurance Company in any form at that stage. Mr. Agrawal has vehemently urged that it was through the internal communications only and exclusively between the complainant and its parent company that they on their own might have decided to swap the Rotor. He has contested this NC/CC/197/2012 277 | P a g e evidence including the communications dated 18.02.2009, 19.02.2009 and 20.02.2009 and he submits that this was never sent or communicated in any form to the Insurance Company, and therefore cannot be believed as it all happened in a couple of days that too even through a resolution in Dubai passed by the Board of Directors. He therefore submits that this pure internal arrangement was nowhere communicated to the Insurance Company, and in fact in the absence of any such decision to swap prior to that, the communication of Shaina Taneja dated 15.12.2008 cannot be construed to be based on this information of swapping. He has vehemently urged that the swapping was always subject to any approval, and it is for this reason that even though the request is alleged to have been made on 14.11.2008 by the complainant to its parent company. It was actually finalized between 18th and 20th February, 2009. No such decision of swapping had been intimated to the Insurance Company and therefore to impute knowledge about the swapping to Shaina Taneja on 15.12.2008 would be without any basis in the background that the decision to swap itself was taken much later on 19.02.2009.

165. This argument of Mr. Agrawal is attractive and needs a deliberation. It is correct that the swapping could not have taken place unless there was an approval of the parent company in terms of the letter dated 14.11.2008, but this cannot be construed to mean that the negotiations for the acquisition of the MBD and MLOP policies had not taken place. The technological report was obtained only on 12.12.2008 from TMEI stating that the comparative status of both the Rotors was identical. Mr. Markandeyulu, who carried out the pre-inspection, has in his report dated 11.03.2009 clearly mentioned that he NC/CC/197/2012 278 | P a g e on the direction and instruction of the Insurance Co. dated 20.12.2018. Thus the Insurance Co. was actively pursuing the processing of the MBD, MLOP policy since December, 2008.

166. It is thereafter that the issue of erection of the machinery arose and the erection policies were acquired one on the 16.01.2009 and the other on 19.02.2009. An extension was sought keeping in view the fact that the compatibility test of the two Rotors had not yet been finalized by TMEI certifying it to be appropriate for being installed in the turbine of the complainant and become functional. Simultaneously the mails and communications for the MBD and MLOP policies were being exchanged for the Turbine of the complainant. Thus, this process was also on and after the technical report was finalized, that the erection policies were acquired on 16.01.2009 and 17.02.2009 followed by the MBD and MLOP policies on 10.03.2009.

167. It is in this background that the Machinery Breakdown Policy was being negotiated for which the mail communications had been made on 27.01.2009 and 28.01.2009. These communications were therefore in the context of a Turbine which was to be made functional at Guntur whose Rotor had developed a crack and it required another Rotor to make it functional. It should not be lost sight of the fact that the Rotor of the turbine of the complainant had been declared to be not feasible after it was examined by TMEI and it is only thereafter that the exercise of replacement of the Rotor began with the arrival of the Rotor from Rithwik Plant for measuring its compatibility by way of a comparison by TMEI at Hyderabad. It is not the case of the Insurance NC/CC/197/2012 279 | Page Company that the defective Rotor of the complainant had been utilized once again in the complainant's turbine. It is therefore appropriate to infer that these negotiations were on simultaneously and the Insurance Company had offered to negotiate the Machinery Breakdown Policy after carrying out a pre- inspection. The mail dated 15.12.2008 in our opinion is therefore a testimony to this development of the repair of the turbine of the complainant by replacing it with the Rotor from Rithwik in order to make it functional once again for which pre-inspection had been proposed by the Insurance Company through the Broker and stands confirmed by the mail dated 15.12.2008. As noted above, the Inspector appointed by the Insurance Co. has clearly stated in his report that he was instructed on 20.12.2008.

168. We may point out that the Insurance Company has not filed any affidavit of Shaina Taneja or Girish Babu or Puja Jaju whose names appear in the mails to dispute these facts or contentions nor their evidence has been adduced for denying the contents of the mails dated 15.12.2008, 17.01.2009 or 28.01.2009. This in our opinion is an additional reason to confirm that the intimation with regard to the swapping of the Rotor and it being replaced had been made the basis of the negotiations for the Machinery Breakdown Policy by the opposite party no. 1 through the negotiations made by the opposite party no. 2, Broker.

169. We may now consider the arguments raised on behalf of the OP by Mr. Agrawal regarding the two Marine Transit Policies and the two Erection Policies. Mr. Agrawal has urged that neither were these policies taken with the information of the swapping of the rotor nor do they in any way intend to NC/CC/197/2012 280 | Page convey even remotely that the Rithwik spare rotor was intended to be installed at the complainant's plant in Guntur. For this, he points out that when the defective rotor of the complainant plant was sent to Hyderabad for evaluation and repairs, the Marine Transit Policy was taken on 03.10.2008 when there was not even a speculation about the swapping. The said Transit Policy was therefore clearly for the rotor at the complainant's plant to be sent from Guntur to Hyderabad and back. The said contention of Mr. Agrawal is correct, in as much as, the

transit was initially for one month commencing from 03.10.2008 and was later on extended. The said policy describes the subject matter of the insured as "second hand equipment". The said rotor arrived at Hyderabad for its evaluation and the TMEI gave its report that it can be utilized with 90% efficiency after replacing the cracked disk. The said report has already been quoted above. Consequently, this Marine Policy does not in any way give any indication about the swapping of the rotor with that of the spare rotor from Rithwik power plant at Khammam.

170. Then comes the dispatch of the Rithwik rotor from Khammam to TMEI, Hyderabad for which the policy was issued on 28.11.2008. It is here that we have now to refer to the letter dated 14.11.2008 extracted hereinabove sent by the complainant to its parent company. The letter indicates that the recommendation for utilising the rotor of the complainant after getting it repaired to operate it at 90% was not considered economically feasible. The letter then adds that for the quick restart of the power plant a request was made to shift a similar capacity Turbine rotor kept at spare at the Rithwik power plant at Khammam. It may be pointed out that this rotor at Khammam NC/CC/197/2012 281 | P a g e had become spare which was a 11 stage rotor similar to that of the complainant's rotor and had been brought down from the Turbine at Khammam. The said plant was already equipped with a 20 stage rotor as a result whereof the Rithwik 11 stage rotor became spare. It is this Rithwik rotor that was dispatched under the Marine Transit Policy dated 28.11.2008. A perusal of this transit policy describes the subject matter as second hand equipment (Turbine). The transit journey under the said policy was from Khammam to Hyderabad and back. The said policy nowhere indicated of it being diverted to Guntur. It is for this reason that Mr. Agrawal submits that the Rithwik rotor was not at all under any insurance coverage for being transported to Guntur.

171. Mr. Agrawal submits that the Erection Policy taken by the Rithwik Power Plant on 16.01.2009 categorically discloses the site of erection at Khammam and not at Guntur. The period of insurance also indicated is from 16.01.2009 to 15.03.2009 and (including one month's testing). Mr. Agrawal has urged that even this Erection Policy nowhere indicates that the Rithwik rotor was to be installed at Guntur and to the contrary the site of Erection is clearly mentioned at Khammam. Thus, this document cannot be also construed to communicate any intention of the Rithwik spare rotor for which this Erection Policy was taken on 16.01.2009 to be an information of swapping. Mr. Agrawal may be correct to that extent, but there is a turning point immediately thereafter. The extension for the Marine Transit Policies was sought for both the rotors, one which had been sent by the complainant from Guntur and was defective and NC/CC/197/2012 282 | P a g e the other rotor from Rithwik that was sent for estimation and evaluation to Hyderabad from Khammam.

172. The Broker on 27.01.2009 dispatched a mail to Pooja Jaju, an official of the OP Insurance Company with a copy of the same to Ms. Shaina Taneja, whose participation in the negotiations on behalf of the Insurance Company as it's official has already been indicated above. This mail dated 27.01.2009 that was sent to the Insurance Company refers to the two Marine Transit Policies for which extension was sought and after the policy numbers, the bracketed portion in the mail recites "RPPL Spare Rotor moving to SMPCL" and for the Marine Transit Policy of the complainant, it recites "SMPCL Original Rotor". On a careful perusal of this communication, the Insurance Company was clearly intimated about the "intended movement" of the Rithwik Rotor to the complainant's plant. The Insurance company was thus informed and had knowledge of the spare

rotor from Rithwik being sent to the complainant's plant.

173. Mr. Agrawal submitted that this cannot be read out of context and is a parenthesis, in as much as, it only relates to the extension of the Marine Transit Policy and nothing more. He also submits that the bracketed portion uses the word "movement" and not repair or replacement. He therefore submits that even assuming for the sake of arguments that the spare rotor of Rithwik was intended to be moved, there was neither any request for issuance of a Marine Transit Policy for the Rithwik rotor from Hyderabad to Guntur. He further submits that this can nowhere lead to any speculation about the intention to swap the rotor, in as much as, even if the internal communication NC/CC/197/2012 283 | P a g e between the complainant and its parent company as well as the decisions dated 18th, 19th and 20th of February, 2009 are taken into account, then too they are of no avail, in as much as, there was no decision to swap the rotor on 27.01.2009. Consequently, no such inference can be drawn that the Insurance Company was put to notice about the actual swapping and installation of the Rithwik rotor at the complainant's plant.

174. We may point out as already stated earlier that the complainant had not themselves issued any direct communication to the Insurance Company about this intention to swap the rotor. However, the question is as to whether this communication dated 27.01.2009 does amount to a communication in this regard. We find that the bracketed portion of the communication referred to above, which is being described as a parenthesis by the learned counsel for the OP, amounts to an explanation and extended information by the Broker to the Insurance Company about the rotor from Rithwik being sent to Guntur. The Broker was thus acting in consonance with the conduct which it is obliged to perform under the 2002 Regulations referred to above for communicating information transparently, so as to inform the Insurance Company and make it aware about the movement of the rotor. Mr. Agrawal is correct in his submission that even assuming that the information was given to the Insurance Company, in our opinion, does give an indication of the intended movement of the spare rotor of Rithwik to Guntur, but it does not categorically recite that the movement was for replacement, repair or swapping it with the complainant's rotor at Guntur. Mr. Markandeyulu in his report dated NC/CC/197/2012 284 | P a g e 11.03.2009 has referred to the commissioning of the turbine after carrying out "repairs" which demonstrates that he was aware of the replacement.

175. Learned counsel for the Insurance Co. has relied on the decision of the Apex Court in the case of Dozco India Private Limited Vs. Doosan Infracore Company Limited, (2011) 6 SCC 179, paragraph 15 and 19, where emphasis was laid on the construction of the bracketed portion of the articles of agreement. It was held that the bracketed portion did not govern the main recital in a manner so as to override or give a different meaning altogether. The object of a bracket used in a recital was also explained through the decision in the case of Furest Day Lawson Limited Vs. Jindal Exports Limited, (2011) 8 SCC 333. Paragraph 44 to 52 of the said decision was read out by the learned counsel to urge that the information communicated through the mails is not a full disclosure nor can the said information amount to a disclosure of an information of the replacement and installation of the spare rotor. While referring to the bracketed portions in the mail, learned counsel has urged that even otherwise the disclosure is regarding an information of some movement and not swapping of the rotor by replacing it at the complainant's plant.

176. We may first point out that the bracketed portion is an additional piece of information to the effect that the fact of movement recited in the bracketed portions clearly indicates that the rotor of Rithwik was to be sent to the complainant's plant. Learned counsel has urged that that this disclosure was only with regard to the transit policy. We are unable to accept the same, in as much as, this communication was also with regard to the commissioning of NC/CC/197/2012 285 | Page the complainant's turbine to be followed by the issuance of the MBD and MLOP policies and the recitals are clear disclosures of the same movement. The movement was not for some random transfer, but was a transfer of the spare rotor of Rithwik to the complainant's plant and therefore this communication is in every probability a communication with regard to the MBD and MLOP policies. It is therefore not a mere illustration of transit, but it is a clear expression of the transfer of the spare rotor for the repair of the complainant's turbine with the said spare rotor. We therefore do not find these judgments on parenthesis in any way relevant to discount the meaning conveyed about transmission of the knowledge of the shifting and installation of the spare rotor at the complainant's plant.

177. Nonetheless, the argument of Mr. Basu that there cannot be any other possible inference seems to be probable and to us also it appears that the mentioning about the movement of the spare rotor may not have been an exact expression of the intention of swapping of the Rithwik rotor in the complainant's plant but it was definitely a fact made known to the Insurance Company and its inspector during pre-inspection familiarising it with the intended movement of the spare rotor to Guntur and its installation. To this extent, the information about the spare rotor being sent to Guntur appears to have been passed on to the Insurance Company officials while seeking extension of the Marine Transit Policies.

178. This has to be viewed in the background that the negotiations for the Machinery Breakdown Policy and the Loss of Profits Insurance Policy was being communicated between the complainant and the Broker regarding the NC/CC/197/2012 286 | Page Turbine repaired with the replaced rotor as is evident from the mail dated 12.12.2008 and which stands reflected in the mail of the Insurance Company official Ms. Shaina Taneja dispatched on 15.12.2008 already quoted above. The said mail in turn also informs the Broker that it was subject to pre- inspection of the plant for which Mr. Markandeyulu was deputed for the said purpose. Mr. Markandeyulu accordingly moved in on the instructions received by him from the Insurance Co. on 20.12.2008 followed by the commissioning of the Turbine at Guntur between 04.03.2009 and 10.03.2009.

179. We may point out that there is no indication that the defective rotor of the complainant plant, which had been declared to be defective and was assessed as not feasible, had been sought to be repaired or was actually repaired to be reinstalled at Guntur. To the contrary, the option of obtaining the rotor from other sources had been explored by the complainant and as referred to above, it was the spare rotor of Rithwik power plant that was the option for which these communications had been made. Accordingly the communication dated 27.01.2009 by the Broker to both the officials of the Insurance Company reflects and connects the information of the running of the plant subject to pre-inspection after repairs and installation of the spare rotor. This, in our opinion, was intended to get an inspection carried out after the Turbine of the complainant at Guntur was refitted and installed with the spare rotor of Rithwik. There is no material to indicate

that the complainant's defective rotor was to be reinstated after repairs.

180. It is in this context that we have to view the contest put forth by the respective parties on the engagement of and the report given by Mr. NC/CC/197/2012 287 | P a g e Markandeyulu, the Engineer who was called upon to carry out the pre- inspection under the communication dated 15.12.2008 dispatched by Ms. Shaina Taneja to the Broker and the instructions dated 20.12.2008. Simultaneously, the communications that followed on 30.12.2008 from Ms. Shaina Taneja to the Broker and with the copy of the same to Ms. Pooja Jaju also reflect the tentative quotes and the revised quotes meant for the Machinery Breakdown Policy for the plant at Guntur after inspection. The said communication dated 30.12.2008 also adds credibility to the fact of the information about swapping being intended to be carried out at Guntur for which the Machinery Breakdown Policy was being negotiated.

181. At this juncture, we may once again reiterate that even though there are internal communications but the decisions to swap the rotor had already commenced with the requested by the complainant to Velcan India on 14.11.2008 whereafter the decision was taken on 19.01.2009 and the comparative evaluation of both the rotors as well as the compatibility of the Rithwik rotor to be replaced at Guntur had been carried out by TMEI, Hyderabad certifying that the said rotor was duly tested and was approved for being installed at Guntur Turbine plant.

182. Another link which needs to be mentioned before we discuss the participation of Mr. Markandeyulu is the second Erection Policy dated 19.02.2009 which was taken by the Rithwik power plant for its rotor. Mr. Agrawal urged that this Erection Policy for the Rithwik rotor was consciously taken by them even though the Erection Policy dated 16.01.2009 existed and was valid till 15.03.2009. This argument of Mr. Agrawal is correct that the NC/CC/197/2012 288 | P a g e policy dated 16.01.2009 was also taken by Rithwik for its rotor for the period 16.01.2009 to 15.03.2009 at Khammam including a one month testing period. This second erection policy once again taken by Rithwik power with a recital that the site of Erection would be Khammam and not Guntur does support the argument of Mr. Agrawal for the policy reflects the Erection of the Rithwik spare rotor at Khammam and not at Guntur and therefore this document also does not indicate any such transfer or swapping of the Rithwik rotor at the complainant's plant at Guntur. The argument has been countered by Mr. Basu, learned senior counsel for the complainant that firstly there appears to be some error or incorrect description regarding the site of Erection of the spare rotor of Rithwik at Khammam. He submits that the said policy seems to have been issued on the same format as till that time it is the Rithwik plant which had an insurable interest in the spare rotor, but in fact the said Erection Policy was intended for the installation of the Rithwik rotor at Guntur at the complainant's plant. For this he has pressed into service the voucher journal of the parent company indicating that the premium payment of the said Erection policy was not made by the Rithwik plant, and to the contrary, the entire payment was made by the complainant through a Demand Draft on behalf of the complainant. A copy of the said journal voucher and the photocopy of the cheque issued by the complainant for the premium has been relied on by Mr. Basu, learned senior counsel for the complainant.

183. Once again we have to mention that this policy was negotiated through the same officials of the company and the OP company has issued the said policy after receiving the premium from the complainant. There is therefore NC/CC/197/2012 289 | P a g e some reason to believe that it was the complainant that was pursuing the installation of the spare rotor from Rithwik or else there was no reason for it to make any payment of premium if it is to be installed at the Rithwik plant at Khammam. It is therefore reasonable to believe that the payment of the premium was made in the background of the said spare rotor being utilized at Guntur. This also counts for an insurable interest of the complainant.

184. It may be further pointed out that the instructions to Mr. Markandeyulu was not to carry out any inspection at Khammam for the erection of the spare rotor at the Rithwik power plant. The negotiations of the Machinery Breakdown Policy and Loss of Profits Policy was not for the Rithwik power plant at Khammam, but was clearly intended and was being actually negotiated for the Turbine plant at Guntur of the complainant.

185. Consequently, Mr. Markandeyulu was obligated and enjoined to carry out the inspection upon the said exercise being undertaken at Guntur at the power plant of the complainant. The report of Mr. Markandeyulu dated 11.03.2009 is for the site at Guntur and on the instructions dated 20.12.2008. There is no other material either discussed by the Surveyor nor any material brought forth by the Insurance Company either through pleadings or affidavits to demonstrate that Mr. Markandeyulu had been called upon to carryout any inspection regarding the spare rotor of Rithwik at Khammam.

186. The inspection was clearly meant to precede the Machinery Breakdown Policy and the Loss of Profits Policy for the power plant of the complainant at Guntur and not for the Rithwik power plant. With this background, we now proceed to evaluate the report of Mr. Markandeyulu dated 11.03.2009.

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187. It may be pointed out that Mr. Markandeyulu had been instructed to carry out the inspection which he did pursuant to the instructions dated 20.12.2008. The aforesaid instructions were issued by the Office at Bangalore and which clearly coincides with the previous communication of Ms. Shaina Taneja dated 15.12.2008 whereby the Broker, OP-2 had been intimated of the deputation of Mr. Markandeyulu for a pre-inspection in order to finalize the revised quotes for the Machinery Breakdown Policy and the Loss of Profits Policy. This also stands confirmed with the next mail dated 30.12.2008. Thus, Mr. Markandeyulu was clearly acting on the instructions of the Insurance Company and he carried out the inspection at the time of commissioning on four days that continued till 10.03.2009. The Machinery Breakdown Policy was issued immediately thereupon on 10.03.2009 itself and the report of Mr. Markandeyulu which was dispatched the next day on 11.03.2009 contains the heading "Pre-insurance Inspection Report". The said report has already been extracted hereinabove.

188. A perusal of the said report would indicate that the instructions were to visit the complainant's power plant at Guntur and not to Khammam. The defect in the rotor has been referred to in paragraph-5 which is based on the discussions with the officials of the complainant. In para-6 of clause-2, he refers to the fact of "after carrying out repairs, trial run was given and the plant was put into operation on 10.03.2009". He acknowledges that he had made four visits to the plant to observe its stage-wise balancing / alignment. Mr. Markandeyulu has nowhere indicated that the Turbine had been repaired with its old rotor. In clause 10, he recommends that the proposed power plant was NC/CC/197/2012 291 | P a g e fit for insurance to be covered under the Marine Insurance Policy. He has supplemented his report with the timings recorded by him and the running of the plant in the normal conditions. The words "after carrying out repairs" does not refer to the repair of the original rotor of the complainant and to our mind, it refers to the repairs undertaken in the Turbine to make it functional which was not possible without the spare rotor having been successfully installed as there was no other rotor that could have possibly run the Turbine.

189. Mr. Agrawal suggested that there is no indication as to what happened to the original defective rotor and therefore no such presumption can be raised. To our mind, a presumption has to be pragmatic and cannot be based just on any doubt. As already stated earlier, it is not the case of the Insurance Company that the old rotor of the complainant or any rotor had been installed for running the Turbine at Guntur. Mr. Markandeyulu in his report also does not say so. The argument of Mr. Agrawal is that there is no indication in the said report that Mr. Markandeyulu was ever informed about the swapping or the replacement and had it been done, he would have mentioned it in his report.

190. We may at this stage once again state that this doubt and the cloud of suspicion which is sought to be spun around the spare rotor seems to be unfounded and had it been so, the Insurance Company ought to have firmly come-up with the direct evidence of Ms. Shaina Taneja or Ms. Pooja Jaju or for that matter of Mr. Markandeyulu himself whose affidavit could have been filed to clarify this as to whether he had any doubts regarding the repair of the Turbine with the spare rotor of Rithwik. The Insurance Company has not NC/CC/197/2012 292 | P a g e discharged this burden and the doubt created through the oral arguments therefore cannot be appreciated. The pre-inspection report is clearly with regard to the entire exercise which was undertaken to reinstall the Turbine and for making it functional for which it is only the spare rotor of Rithwik that has been in all probability utilized and was the subject matter of pre-inspection for four days by Mr. Markandeyulu. It is not worth believing that Mr. Markandeyulu had not been informed about this spare rotor, in as much as, the repair was only with regard to the defective rotor of the Turbine and was the main object and subject of repair. It will not be appropriate to presume that Mr. Markandeyulu was not at all informed about the replaced rotor and that it had only been moved to Guntur without being installed in the Turbine. There was no other purpose of the movement of the rotor to Guntur except for it being installed and tested to make the Turbine at Guntur function.

191. Mr. Agrawal has made his best efforts to cast doubts on the evidence on record and to its admissibility, but in our opinion, the communications and the circumstances step by step constitute the link of this entire chain where the complainant's case seems to be highly probable regarding the replacement of the Rithwik rotor at Guntur about which the Insurance Company officials and its

Inspector / Surveyor were well aware of.

192. We find it a bit surprising that the Surveyor has not delved into such chronological details, but at the same time, it might also be possible that the Surveyor did not have access to all this material as urged by Mr. Agrawal. However, it was the obligation of the Surveyor to have enquired into these NC/CC/197/2012 293 | P a g e circumstances from the Broker as well and could have also checked-up with the Insurance Company.

193. We may further point out that the surveyor has not discharged his obligations of making a further a full and complete enquiry and has satisfied himself by arriving at the conclusion that the Marine policy for transportation or the Erection policy do not amount to any full and frank disclosure of the material fact. The discussions made hereinabove and hereinafter as analyzed by us are clear pointers about the Insurance Company having been communicated the disclosure of the swapping of the rotor from Rithwik to the complainant's plant. We have discussed this in detail. The Surveyor has taken this to be a critical fact which according to him if had been disclosed to the Insurance Company, a conscious decision might have been taken for not extending the issuance of the policy to the complainant. The Surveyor has also laid stress that the original equipment manufacturers namely M/s. Siemens & Co. ought to have been consulted. The evidence that have been discussed by us does indicate that there was some reluctance with regard to the participation of the original equipment manufacturers, but there is no evidence led by the Insurance Company to question or suspect the expertise of M/s. TMEI, Hyderabad, who had conducted the pre-installation comparison and compatibility test on the basis whereof, the spare rotor of M/s. Rithwik came to be installed in the complainant's turbine at Guntur. The Insurance Company could not question the competence and expertise of M/s. TMEI or the technical reports tendered by it. The Surveyor has also not been able to find any fault with the technical report in respect of the compatibility of the NC/CC/197/2012 294 | P a g e spare rotor by any material to the contrary nor has the Insurance Company place any such material on record to rebut the same. The technical reports therefore remain unimpeached and are credit worthy evidence in support of the complainant. In fact the said reports of TMEI in sum and substance had not been disagreed to and had rather been approved when the technical opinion of M/s. Cobham was obtained by the Surveyor himself. As noted, there was no difficulty in the rotor when the turbine was commissioned on 10.03.2009 and kept on running for more than four months. Thus, all the doubts of the Surveyor have been expressed omitting to consider these aspects which have been analyzed by us. The Surveyor's report was also questioned by the complainant by urging that the initial survey was conducted by two class "C" surveyors, who were not competent and duly qualified to conduct a survey of this category. There were no answer to the same by the Surveyor in his report and as a matter of fact, there is no satisfactory answer to this challenge by the Insurance Company as well. It is no doubt correct that Mr. Bhatawadekar, the Surveyor who had tendered his report is a duly qualified class-A Surveyor and therefore we are not entering into this aspect any further, but the Surveyor as well as the Insurance Company, to our mind have not adverted to the fact relating to the information about the swapping of the rotor that has been reasoned out by us by referring to the relevant documents as produced before us. The report of the Surveyor therefore on this issue cannot be treated as credit worthy for having omitted relevant facts and making a proper enquiry relating to the issue in question.

194. At this juncture, it would be appropriate to point out the observations of the Surveyor which is incorporated in the concluding part of this report. Even though, we have extracted the Surveyors report, it would be appropriate to reproduce the said operative part which is as follows:

In our opinion, the above act of Insured of Interchanging the rotors without the OEM's experts confirmation and then not disclosing the fact to Insurers could be considered as material Non disclosure of facts.

While we say this, the Insurers may also need to check if their underwriting practices and the questionnaire (proposal form) for getting full and vital underwriting Information is foolproof for such an eventuality, where the technical underwriting demands are critical and warrant & expect enhanced knowledge about the machinery being Insured.

Considering all the facts and probable shortcomings from all sides we leave it to Insurers to decide as regards the admissibility of the claim and its extent.

195. The surveyor while recording his doubts has clearly called upon the Insurance Company to verify all facts through its own resources after making enquiries regarding the issues raised. This clearly indicates that the Insurance Company had not made full disclosures to the surveyor about its communications regarding this subject matter. The doctrine of uberrimae fidei applies to the Insurance Company as well. Apart from this the surveyor also on having assessed and analyzed the material before it should have also pursued the enquiry with the Insurance Company and not left it to the Insurance Company to decide for itself or doubt facts later on. There does not seem to be any exercise undertaken by the Insurance Company as suggested by the surveyor. Under these circumstances the authenticity of the mails exchanged between the broker and the Insurance Company, in the absence NC/CC/197/2012 296 | Page of any evidence to the contrary, can be presumed to be authentic and it stands corroborated by the Affidavit of the broker, the opposite party no. 2.

196. A perusal of the observations of the surveyor quoted above leaves no room for doubt that the Surveyor has doubted the interchanging of the rotors without the opinion of the Original Equipment Manufacturer's confirmation. This observation does not seem to be well founded in the background that the Original Equipment Manufacturers had been contacted by the complainant ultimately on the insistence of the Surveyor as already noted in the communications quoted above, whereafter the TMEI was entrusted with the job of comparison and compatibility. The report of TMEI was sent by the Surveyor himself to M/s. Cobham, U.K. and the report of TMEI was confirmed by M/s. Cobham. The said report is already extracted hereinabove. We therefore find that the observation made by the Surveyor about the insured not having obtained the confirmation from the Original Equipment Manufacturer is misplaced, in as much as, the TMEI compatibility report has nowhere been doubted as incorrect and to the contrary has already been confirmed by the agency deployed by the Surveyor to examine the same, namely M/s Cobham, U.K. No defect has been found in the rotor that has been

held to be in working condition. No evidence to contradict the technical reports has been brought forth by the Insurance Company so as to construe that the spare rotor of Rithwik was defective. It is not understood as to why the Surveyor has omitted to mention this aspect while commenting upon the confirmation from the Original Equipment Manufacturer. Apart from this after the repair and installation the Turbine at Guntur ran for four months without any defect and hence to raise a doubt about confirmation does not seem to be justified.

197. The second part of the observation is about non-disclosure of the fact to the insurers to treat it as material non-disclosure regarding the swapping or replacement of the Rithwik rotor at Guntur. This observation has been made without any assessment of this entire communication which led to the issuance of the Machinery Breakdown Policy and then its pre-inspection by Mr. Markandeyulu as already discussed above. It is not understood as to why the Surveyor did not seek any clarification from Mr. Markandeyulu whose pre-inspection report dated 11.03.2009 was very much available. The Surveyors report therefore omits to take into account the said factors even though he has remotely mentioned about the Risk Engineer who was sent for the inspection of the plant. He has however made an observation that this fact of swapping was not revealed either to the insurer or to the Risk Engineer. We do not find any material to at least draw this inference for all the reasons hereinabove and so far as the Risk Engineer Mr. Markandeyulu is concerned, there is no indication of any enquiry being made by the Surveyor from Mr. Markandeyulu whose presence had been noted by him. To the contrary, it has been stated by the Surveyor that the Original Equipment Manufacturer M/s. Siemens were not involved in the reassembling or the recommissioning of the plant at Guntur which commenced at 04.03.2009 and finally the same was made functional with effect from 10.03.2009. The interim report also filed by the Surveyor did indicate the inspection by the Risk Engineer and had cast a doubt about no information having been given either to the insurer or to the Risk Engineer.

NC/CC/197/2012 298 | Page Once again we do not find any effort made by Mr. Bhatawadekar, the Surveyor to find out from Mr. Markandeyulu about this change or any communication with him. There is no such clarification obtained and as noted above, the Insurance Company has not filed the affidavit of Mr. Markandeyulu to state that he was uninformed about the said swapping.

198. Mr. Agrawal, learned counsel for the Insurance Company has urged that had this information been given to Mr. Markandeyulu, he would have mentioned it, but the same was neither disclosed nor was there any material to indicate that it was conveyed to Mr. Markandeyulu that there was a swapping of the rotor. We have already indicated above the background in which Mr. Markandeyulu was sent for pre-inspection and it is not the case of the Insurance Company that the same defective rotor had been installed when all the circumstances taken together indicate the exercise undertaken for the reinstatement of the rotor to make the turbine functional once again with the spare rotor from Rithwik power plant. Merely because a doubt or a cloud of suspicion has been created through the arguments of Mr. Agrawal, in spite of the fact that the complainant had not given any direct information to the Insurance Company, the information given through the Broker and the mails dispatched by the Insurance Company officials as discussed above clearly make out a case of preponderance of probabilities heavily weighing in favour of the complainants that they had actually installed the spare rotor of Rithwik at Guntur with information to the Insurance Company in the

manner as discussed above.

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199. Mr. Agrawal had also contended that there is no evidence of the spare rotor being transported to Guntur, in as much as, there is no Marine Transit Policy to establish the same. To that extent, Mr. Agrawal may be correct, but the evidence and the circumstances discussed hereinabove, cannot be overlooked or discarded on this argument, so long as the fact remains that the power plant was made functional not with any other repair or any other rotor, but only through the exercise that had been explained by the complainant. The Insurance Company has not been able to dislodge the probability of the installation of the spare Rithwik rotor at Guntur and consequently for all the reasons stated hereinabove, we have arrived at the conclusion that the complainant has been able to prove its contentions.

200. With the aforesaid discussions and conclusions we hold that the Insurance Company and its officials were negotiating the Machinery Breakdown Policy and Material Loss of Profit Policy dated 10.03.2009. It was negotiated with the knowledge of the replacement of the Rithwik Rotor in the turbine of the complainant at Guntur which stood established not only from the communications discussed hereinabove but also by the pre-inspection by the Risk engineer Mr. Markandeyulu. The knowledge about the swapping of the rotor was available and it is after the spare rotor had been installed that the turbine was commissioned which stood insured by the OP. The rotor had been swapped with express and clear decisions having been taken by the parent company and also its release by M/s. Rithwik for being utilized by the complainant. The rotor therefore stood transferred by Rithwik to the NC/CC/197/2012 300 | Page complainant and was installed in the turbine for which the MBD and MLOP policies were issued on 10.03.2009.

201. The complainant therefore had an insurable interest in the entire machinery including the spare rotor. It has also been found by the technical experts namely, M/s. TMEI and M/s. Cobham that the spare rotor of Rithwik installed in the turbine of the complainant was not defective and that it had no defects when the turbine was examined on 10.03.2009 and ran successfully for about four months.

202. The terms and conditions of the policy particularly clause 2.4 (b) provides for repudiation only in respect of a claim if it is found to be fraudulent or any false declaration is made in support of the claim. There is no other clause for denying a claim on the ground of non-disclosure of any material fact at the stage of pre-inception of the policy or filling up of the proposal form. In fact there is no proposal form in the present case, nor any such false declaration was made before the policy was taken by the complainant that can be construed to be a non-disclosure. Thus the policy does not prescribe any such condition for repudiation of the claim. The repudiation is therefore unsustainable.

203. Accordingly the repudiation dated 26.03.2012 is invalid, the claim is clearly indemnifiable and we therefore hold that the Insurance Company is liable to reimburse and indemnify the loss. We have also considered the contentions raised by Mr. Basu, learned senior counsel for the complainant

on the quantum and we find that the surveyor appointed by the complainant, namely, M/s. Rank Surveyors have assessed the loss to the tune of NC/CC/197/2012 301 | P a g e Rs.3,05,65,535/- as against the claim of the complainant of Rs.4,08,60,259/-. In this background even though the surveyor appointed by the Insurance Company has assessed a higher amount of Rs. 3,37,66,160/- for the machinery breakdown, yet in view of the report of M/s. Rank Surveyors as relied on by the complainant, it would be appropriate to finally award a sum of Rs.3,05,63,535/-, which is the amount of loss assessed by the surveyor appointed by the complainant. We accordingly allow the same. The amount of Rs. 3,05,65,535/- shall be payable to the complainant together with 6% interest from the date of the repudiation, i.e. 26.03.2012 within 3 months from today. In default, the rate of interest shall stand enhanced to 9%.

204. Next comes the claim of the complainant regarding the loss of profit under the MLOP Policy. We may point out that M/s. Rank Associates, the surveyor privately appointed by the complainant have indicated admissibility of the claim, but the same has not been assessed by the surveyor appointed by the Insurance Company. It is apparent that since the surveyor of the Insurance Company had recommended repudiation for the Machinery Breakdown policy as being not admissible, the consequential loss of profit under the MLOP policy has also not been assessed. Since the repudiation of the Machinery Breakdown Policy has been declared to be invalid as recorded hereinabove, the Insurance Company has to undertake a fresh exercise to assess the loss of profit in the background that machinery breakdown claim has been allowed by us. The same therefore has to be processed by the Insurance Company for an evaluation of any loss of profit. For this we direct that the Insurance Company to place all the material before the surveyor for NC/CC/197/2012 302 | P a g e an assessment in respect of the loss of profit, if any, on the basis of the documents that are already available on record and it shall be open to the surveyor to call for any such information from the complainant that may be necessary for the purpose of appropriate assessment in respect of the loss of profit claimed by the complainant within a period of not later than six months from today. The final decision to be taken in this regard shall be communicated to the complainant accordingly. The complaint is therefore allowed on the above terms.

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(A.P SAHI, J) PRESIDENT

(BHARATKUMAR PANDYA)
MEMBER

Monika/Manvi/Pramod/Brahmpal/Pankaj/Pramod