NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 165 OF 2003

1. PATANJALI FOODS LTD.
301, MAHAKOSH HOUSE,7/5, SOUTH TUKOGANJ
NATH MANDIR ROAD
INDORE-452001 .....Complainant(s)

Versus

1. ORIENTAL INSURANCE CO. LTD.
DIVISIONAL OFFICE NO. 4, THROUGH, DIVISIONAL MANAGER
KANCHAN SAGAR , A.B. ROAD, NEW PALASIA
INDORE (M.P.) .....Opp.Party(s)

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BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI,PRESIDENT

FOR THE COMPLAINANT : MR. ASHISH DHOLAKIA, SR. ADVOCATE
MS. NEHA GUPTA, ADVOCATE
MR. KARAN JAIN, ADVOCATE
MR. RISHABH PANT, ADVOCATE
MR. ARPIT KUMAR SINGH, ADVOCATE

FOR THE OPP. PARTY : MR. ABHISHEK GOLA, ADVOCATE
MR. ANSHUL KUMAR, ADVOCATE

Dated : 01 January 2024

ORDER

1. These two original petitions have been instituted alleging deficiency on the part of the Oriental Insurance Co. Ld., in not having satisfied the entire claim of the complainant regarding losses suffered in a fire that occurred in the night of 24/25.12.2000. It is the contention of the claimants that the Insurance Company proceeded to get the incident surveyed and then obtained

assessments luxuriously thereby delaying the process of indemnifying the loss. The ad-hoc method and the delay resulted in prolonged harassment by the Insurance Company as a consequence whereof the present complaints have been filed.

2. The complaints were instituted originally by M/s Ruchi Soya Industries Ltd., which company underwent insolvency proceedings before the National Company Law Tribunal, Mumbai. A resolution plan was drawn up and the company was taken over by M/s Patanjali Foods Limited who were, under the orders of this Commission, substituted in place of the original complainants. When the matter previously commenced for consideration an Order was passed on 14.08.2023 to the following effect:-

> We have heard learned counsel for the parties. We find from the pleadings that prima facie the claims made by the complainant stood satisfied to the extent for the payments that were tendered by the insurance company but the complaint was being continued on account of certain alleged shortcomings in the payments as well as relief in respect of delayed payment of the insured amount along with interest.
>
> The case took a peculiar turn in between when M/s. Ruchi Soya Industries Limited was facing some investigation along with the Insurance Company in respect of this transaction on a complaint by a private person alleging an under hand dealing in respect of the claim of insured amount.
>
> Learned counsel for the insurance company however disputes this and also said that to their knowledge nothing progressed before the Central Bureau of Investigation. But they would like to confirm their information as to whether there has been a closure report or an FIR or even a charge sheet or any further developments in respect of the allegations of the complaint otherwise made and has been referred to in the pleadings.
>
> It is then been pointed out by the learned counsel for the complainant that the complainant-company was taken over by M/s. Patanjali foods Ltd., who has now been entered in the array of parties that has been allowed by this Commission.
>
> It is urged that in the proceedings adopted during the takeover, there is a possibility of some arrangement/ explanation having been mentioned in respect of this insurance transaction amount and therefore they would like to seek final instructions in this regard so as to assist this Commission further in the matter.
>
> We think it appropriate to adjourn the case for a future date in order to enable the learned counsel for the parties to ascertain the aforesaid fact and confirm their instructions to enable this Commission to proceed further.
>
> List on 25.10.2023.

3. The reason for passing of the said Order was that there was some allegations regarding the transaction of indemnification under some cloud. The complaint was before the Central

Bureau of Investigation and hence it was thought proper to obtain instructions in this regard. The case was listed on 25.10.2023 and 05.12.2023 whereafter an Order was passed on 08.12.2023 to the following effect:-

> Heard learned counsel for the parties.
>
> This is a matter of the year 2003.
>
> In view of what had transpired on the previous occasions and had been indicated in the orders dated 14.08.2023 and 25.10.2023, let an affidavit be filed in order to bring on record as to whether any criminal proceedings or otherwise are pending in any Court of law with regard to the subject matter in the complaints.
>
> The resolution plan under the orders of NCLT, which permitted the present complainant to take over M/s Ruchi Soya Industries Ltd., may also be placed in a sealed cover as requested by the learned Senior Counsel appearing on behalf of the complainant to enable the Commission to proceed in the matter.
>
> List on 15.12.2023 at 2.00 p.m.

4. The matter was finally heard on 15.12.2023 on which date learned senior counsel for the complainants tendered a resolution plan that was approved by NCLT, Mumbai Bench. The resolution plan was submitted in a sealed cover. That was perused and what appeared from the document and is relevant for the present controversy, is paragraph 21.7 which is extracted hereinunder:-

> 21.7 Right to Receivables
>
> Nothing in this Resolution Plan shall affect the rights of the Corporate Debtor to recover any amounts due to the Corporate Debtor from any third party including any Related Parties of the Corporate Debtor and there shall be no set off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability discharged, satisfied or extinguished pursuant to this Resolution Plan.

5. In terms of the information sought regarding the criminal case an affidavit dated 13.12.2023 has been filed which recites as under:-

> AFFIDAVIT IN COMPLIANCE OF ORDER DATED 08.12.2023 PASSED BY THIS HON'BLE COMMISSION
>
> I, Vinay Kumar S/o Sh. Jai Singh, aged about 40 years, Authorised Representative of the Complainant company having office at A-105, Aastha Bhawan, Sector-5, Noida, Uttar Pradesh at present in Delhi do hereby solemnly affirm and state as under:

1. That 1 am the Authorised Representative of the Complainant Company and am duly authorized to sign and affirm this affidavit and as such competent to sign and affirm the same.

2. I hereby state to the best of my knowledge that there are no criminal proceedings or investigation pending before any court of law or enforcement agency with respect to the subject matter of the present complaint.

6. Thus the queries raised were satisfied whereafter the hearing concluded on 15.12.2023.

7. The two complaints arise out of the same incident of fire and the loss caused related to two sets of different Insurance policies. The first claim in OP No. 165 of 2023 is with regard to a Marine-Cum-Erection of Risks Insurance Policy regarding the plant and machinery for the expansion of the Refinery, Vanaspati Plant and Boiler house to be erected inside the plant site and adjacent to the refinery and packing section at Indore. The loss caused in the fire was assessed and admitted by the Insurance Company. In the said complaint a sum of Rs. 91,38,337/- being the balance amount of the claim was sought as relief, as a sum of Rs. 90,00,000/- against the total assessed loss of Rs.1,81,38,337/- had already been paid in advance on account basis by the Insurance Company. In addition to the balance amount, interest on the amount of Rs. 90,00,000/- which had already been paid was claimed for the period from 25.12.2000 to 20.11.2001. Interest on the balance amount of Rs. 91,38,337/- was also claimed from 25.12.2000 till the date of the payment. In addition thereto compensation for harassment and costs were also claimed.

8. This complaint was instituted on 22.07.2003 as per the stamp of this Commission on the complaint.

9. The second complaint no. 166 of 2003 is with regard to the claim of the loss suffered due to the same fire incident in respect of the existing buildings, machinery and the stocks as well as the stock in progress that was destroyed in the fire and for which four fire insurance policies had been issued by the opposite party Insurance Company. This second complaint is, therefore, in respect of the other risks which were covered under Fire Insurance policies.

10. It may be pointed out that in regard to both the claims Mr. M. Kasliwal, of Indore was deputed by the insurance company for preliminary survey and later on M/s Mehta Padamsey Pvt. Ltd., New Delhi were deputed to conduct the survey.

11. Subsequently, M/s Mehta Padamsey and M/s S.P. Goyal were deputed for a joint survey and assessment. The Insurance Company also got a separate loss assessment report from M/s Soni & Co.

12. The joint final survey report was submitted on 13.06.2002 and by M/s Soni & Co. on 27.12.2003. According to the loss assessed the complainant was entitled to receive Rs.1,81,38,337/- for the risk and loss caused under the Marine-Cum-Erection Policy. As against this claim a sum of Rs. 90,00,000/- was paid as "on account basis" and the same was finally settled for Rs.1,81,38,337; the balance whereof was not paid hence complaint No. 165 of 2003 was instituted. It is during the pendency of the said complaint that the balance amount of Rs.91,38,337/- was paid on 04.12.2004 and a discharge voucher was tendered by the complainant which the opposite party states to be a full and final settlement of the claim. The fact of having received the said amount is not disputed but the contention of the complainant is that issuance of the discharge voucher does not absolve the opposite party from making payment of interest on the said amount which was admittedly paid after almost four years of the incident. The receipt of the said amount on 06.12.2004, its encashment and being credited to the account of the complainant is not disputed. Thus the claim is for the interest component as indicated above.

13. Similarly, with regard to original petition no. 166 of 2003 it is alleged that the complainant, even though disappointed, were under the expectation that the reduced amount of Rs.5,48,01,740/- would be settled but the same was not given effect to in its entirety. It is relevant to record that against this claim also two sums, one of Rs.1,50,00,000/- and the other of Rs. 1,00,00,000/- was paid by the insurance company "on account" basis and thus out of the total claim of Rs. 5,48,01,740/- a sum of Rs. 2,50,00,000/- had been paid on 02.01.2002 and 09.01.2002. After a huge delay the balance amount of Rs.2,79,96,336/- is admitted to have been received on 29.01.2004.

14. In this claim petition also the very same relief has been prayed for interest on the amount of Rs.2,50,00,000/- for the period referred to in the prayer clause and the interest on the balance amount which was paid in 2004 referred to hereinabove together with compensation and costs.

15. Thus, from the afore-said narration the facts which are undisputed are: that the loss came to be assessed through a joint final survey report by the surveyors, yet the insurance company ventured upon a loss re-assessment by appointing M/s Soni & Co. who gave a report on 27.12.2003.

16. The dispute raised in both these complaints is about the undue delay caused in the submission of the report and for this learned counsel for the complainant has relied on the IRDA (Protection of Policy Holders' Interest) Regulations, 2002. Learned counsel has invited the attention of the bench to clause 9 of the said Regulations indicating the procedure in respect of a general insurance policy to be followed by the insurance company for responding to the intimation of loss and then also to the furnishing of the claim within a stipulated time. It is pointed out that according to the said provisions the time-frame given to a surveyor to communicate is findings is within 30 days and in no case the surveyor shall take more than 6 months from the date of his appointment to furnish his report. Learned counsel submitted that the incident was of December 2000 and the joint final survey report was submitted on 30.06.2002 in spite of the fact that the complainant had intimated and furnished all relevant documents to the surveyors. The matter was further delayed by the insurance company by again

appointing another surveyor for the loss re-assessment M/s Soni & Co. which tendered its report on 27.12.2003. Thus the IRDA Regulations have been violated and, therefore, the insurance company is liable to be saddled with the liability of interest as claimed by the complainants.

17. It is also contended that even assuming though not admitting that there was some hurdle in the queries of the claim due to some investigation before the CBI the same was not an impediment in the submission of the survey report. It has further been submitted that the signing of the discharge voucher does not amount to surrender or waiver of the claim because it was in a close proximity of the signing of the discharge voucher, dated 22.01.2004 and 04.02.2004 that a protest letter was sent by the complainants on 11.02.2004 itself. It was thus clear that the complainants even though had executed the discharge vouchers it was in compelling circumstances when the petitioner company was facing financial distress and, therefore, was under a compulsion to sign the discharge vouchers.

18. It has also been urged by learned counsel that no reasons have been given by the insurance company for having appointed M/s Soni & Co. as a second surveyor whose report dated 27.12.2003 was never given to the complainant and was tendered before this Commission through an application dated 02.01.2015. However, with regard to the quantification of the amount of loss, the evidence of M/s Soni & Co. which is in the shape of an affidavit does not indicate any substantial variance with the joint survey report. Hence the reduction which has been detailed in paragraph 19 of complaint of OP No. 166 of 2003 is not justified.

19. It is in this background that it is alleged that the complainants are entitled to the interest on the amounts referred to above and for the period as indicated therein till the date of actual payment as this amounts to deficiency in service by the Insurance Company.

20. Replying to the afore-said submissions, learned counsel for the opposite party Insurance Company has vehemently urged that once the discharge vouchers had been signed unequivocally and voluntarily on 22.01.2004 and 04.02.2004 respectively in respect of both the claims, no claim survives. Nor these complaints could be pursued as full and final settlement bereft of any future liability was arrived at and agreed upon by the original complainants with the Insurance Company. In this background the present complaints deserve to be dismissed as neither any fraud, coercion or misrepresentation has been established. Learned counsel for the complainant has invited the attention to the evidence by way of affidavit filed in OP No. 165 of 2003 where in the evidence affidavit of the complainant allegations have been made in paragraph 12 which is extracted hereinunder:-

> "12. That I say that the **discharge voucher** given to the Respondent in full and final settlement of the claim **was executed by the Complainant under compulsive circumstances and the same is not binding on the Complainant.** The Complainant had throughout protested the requirement of a full and final discharge but the Respondent insisted upon the same in breach of its obligations to act fairly and reasonably being a State within the meaning of Article 12 of the Constitution of India. The Respondent could not have insisted upon the execution of a so-called full and final discharge as a condition to release funds in discharge of a public function in the field of insurance. At the relevant

time, the State Agency enjoyed a monopoly in the field of insurance and the Respondent had no option but to take policies of insurance from such State entities as the Respondent. The full and final discharge was also invalid and nonest having been **obtained under economic duress and undue influence.**

21. The said deposition has been refuted by the insurance company in paragraph 8 and which is extracted hereinunder:-

> 8. I say that the affidavit of the Complainant, which has been filed subsequently on 12.04.2004, is incorrect and denied except with regard to the factual aspects of the cheque for Rs.91,38,337/-. **The letter dated 11.02.2004, purportedly being the protest letter, the contents of which as stated are incorrect and denied.** It is incorrect to suggest and **it is denied** that the discharge voucher executed by the Complainant towards full and final settlement of the claim **was executed under "compulsive circumstances". I submit that the discharge voucher was executed voluntarily by the Complainant. There was no pressure, coercion or undue influence exercised** by the Respondent upon the Complainant **to sign the said discharge voucher.** Even otherwise, the complaint and the affidavit is completely vague about the "compulsive circumstances" that the Complainant is referring to.

22. It has, therefore, been urged that in the absence of any evidence of any compulsion, pressure or coercion, there is no element of undue influence in the execution of the discharge vouchers. The letter of protest dated 11.02.2004 has been denied and it has been argued that there were no compulsive circumstances and the allegations are vague, bald and without any basis. Learned counsel for the Insurance Company has raised an argument that the said letter of protest was only an after-thought in order to support the complaints which were otherwise untenable. It is urged that the allegations in the complaint on this count are absent and it is only through the evidence by way of affidavit that this issue has been raised. It is contended that there is no material or any evidence of the remotest kind to establish that any undue influence, pressure or coercion had been exercised by the Insurance Company or its officials to compel the complainants to issue discharge vouchers. It is, therefore, submitted that it is a complete after-thought on the part of the complainants and is an ingenuity in order to support an otherwise invalid claim.

23. Coming to the issue of delay in the processing of the claim and the violation of IRDA Regulations, learned counsel for the insurance company has invited the attention of the Bench to the letter corresponded between the insurance company and the CBI dated 26.11.2002 and 01.01.2003 to contend that the delay was caused on account of all the files relating to the two losses having been taken by the Inspector CBI that were returned in November, 2002 and consequently, the CBI was intimated of the processing of the claim and release of the amount in favour of the complainant. The said letters dated 26.11.2002 and 01.05.2003 are extracted hereinunder:-

Date: 26/11/2022

C.B.I.

Char Imli

Bhopal

Dear Sir,

Re: Fire Claim No. IRO/IND-IV/CL/F/2002/003

Fire loss dtd. 25.12.2000

Insured M/s Ruchi Soya Industries Ltd.

Copies of above files were taken by Shri Manoj Kumar Inspector, CBI on 11.02.02, for which, an A/c payment had already been made by us.

Subsequently the files have been returned to us. Now we have received final survey report & other documents as also property reinstatement has been done. We are accordingly going ahead with the full & final settlement of the claim. This is for your information.

Thanking you,

Yours faithfully

Regional Manager

Dated 01/05/2003

C.B.I.

Char Imli

Bhopal

Dear Sir,

Re: Engg. Claim No. IROIND4/CL/E/2002/002

Loss due to Fire on 25.12.2000

Insured M/s Ruchi Soya Industries Ltd., Indore

This is further to our letter dated 26.11.02 in connection with claim under fire policies, in the incident of fire on 25.12.00 at above factory.

In the same incident, there was loss under engineering Policy No. 44/201/144014 which has been approved by competent authority.

We are releasing balance payment to the insured.

This is for your information.

Yours faithfully,

Regional Manager.

24. Learned counsel for the Insurance Company, therefore, contends that there was no delay in processing the claim and it was on account of the matter being investigated by the Central Bureau of Investigation and the documents retained by them which caused the delay. Learned counsel submits that these documents are on record and are admitted by the complainant and hence there was no delay despite IRDA Regulations as this was a situation which was beyond the control of the Insurance Company. Thus the said delay stands reasonably explained and hence no adverse inference can be drawn in view of the afore-said administrative hurdles that had delayed the processing of the complaint.

25. It is then urged that “on account” payments had already been made to the tune of Rs.2,40,00,000/- and Rs.90,00,000/- respectively in respect of both the claims on 21.11.2001, 02.01.2002 and 09.01.2002. It is urged that the original complainant firm had already been intimated about this on 15.07.2002. The letter whereof is on record as Annexure C-4 to the complaint No. 165 of 2003. It is, therefore, submitted that there was neither any delay nor any intention to delay the processing as the Insurance Company had already tendered Rs.3,40,00,000 in advance against the settlement of the claim, but the balance of the payments were impeded on account of the complaint that was being enquired into by the Central Bureau of Investigation.

26. It is further submitted that the discharge was unequivocal and the three circulars which have been relied on issued by IRDA were issued in 2015 and 2016 and hence they cannot be relied upon for the purpose of transactions that have taken place long ago.

27. In rejoinder, learned counsel for the complainant has urged that the said circulars clearly indicate what has been settled previously through judicial pronouncements clearly holding that the issuance of a discharge voucher does not act as estoppel in respect of the claims arising out of Insurance policies and it is this which has been reiterated in the circulars of 2016-16 that a discharge voucher cannot be used as estoppel against aggrieved policy-holders nor does it foreclose the rights of a policy-holder to claim higher compensation. Learned counsel also urged that the said circulars also emphasize that discharge vouchers should not be collected either under undue influence, coercion or threat.

28. The first issue that needs to be resolved is the main bone of contention as to what would be the impact of the discharge vouchers signed and issued by the complainants on 21.01.2004 and 04.02.2004 which is after filing of the present complaints.

29. The original complainant vide letter dated 14.06.2002 had accepted and confirmed receipt of the adjusted loss of Rs.1,81,38,337/- The letter is extracted hereinunder:-

June 14, 2002

M/s Mehta & Padamsey Surveyors Pvt. Ltd.,

7, Jantar Mantar Road,

New Delhi – 100 001.

AND

M/s S.P. Goel & Company,

L-2A, South Extension-II,

New Delhi – 100 049.

Dear Sirs,

Re: Loss due to fire on 25.12.2000 at our Plant – Claim under MCE Policy No. 151400/306/11/2001/44014.

We refer to our claim and to the final discussions held with your, and confirm that we are agreeable to the assessment / adjustment of our loss as under, subject to the terms and conditions of our policy.

Assessed Loss Rs.2,01,53,708/-

Adjusted Loss (After excess of Rs.20,15,371/) Rs. 1,81,38,337/-

Thanking you,

Yours faithfully,

For Ruchi Soya Industries Limited

Authorised Signatory

30. Similarly, in the case of the other claim in OP No. 166 of 2003 the assessment of Rs. 5,48,01,740/-was also consented to as is evident from paragraph 13 of the complaint which is extracted hereinudner:-

> 13. That subsequently, under pressure of the Respondent insurers, the surveyors reduced the assessment from Rs. 5,56,50,331/- (as in Ann.C-3) to **Rs. 5,48,01,740/-** (as in Annexure C-7). Since the complainants felt highly disappointed on the delay in settlement, **they consented to this reduced assessment also,** with a hope that now the settlement would be made without any delay. Even then, for no reasons given, the settlement has not yet been effected.

31. It would be apt to discuss the judgements which have been cited at the bar regarding the impact of a discharge voucher for full and final settlement, and as to whether the dispute after the issuance of the discharge voucher could be raised by the complainant or not. The decisions relied on by the learned counsel for the complainant commences with the Apex Court Judgement in the case of **United India Insurance Vs. Ajmer Singh Cotton & General Mills & Ors. (1999) 6 SCC 400.** The two questions out of the three posed by the Apex Court in the said case are as follows:-

1. Whether the insured is estopped from making any further claim from the insurer after accepting the insurance claim amount in full and final settlement of all the claims by executing the discharge voucher willingly and voluntarily without any protest or objections?

2. Whether inspite of the acceptance of the claim amount and execution of discharge voucher voluntarily, the insured is entitled to the grant of any interest?

32. The finding recorded by the Apex court is contained in paragraph six thereof which is extracted hereinunder:-

6. ...

If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, mis-representation, under influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief.

...

The mere execution of the discharge voucher and acceptance of the insurance claim would not estop the insured from making further claim from the insurer but only under the circumstances as noticed earlier.

...

33. The next decision as relied on by the learned counsel for the complainant is the judgement of the Apex Court in the case of **National Insurance Co. Ltd. Vs. Boghara Polyfab (P) Ltd. (2009) 1 SCC 267**. The Apex court in the said case considered the issue of unconditional acknowledgement of full and final settlement on the basis of accord and satisfaction of the claim. It was, however, also observed that if the party which has executed the document of discharge, alleges execution of the same on account of any fraud/coercion/undue influence **and is able to establish the same**, then such discharge can be rendered void. **If, however, discharge is otherwise valid and was an outcome of amicable settlement, then allowing the party to question the same would not be appropriate.** Thus, there has to be some material to show that the discharge document was executed under coercion or duress and evidence has to be led in this regard. While referring to the case of **Ajmer Singh Cotton & General Mills (Supra)** the Apex Court observed in paragraph 46 as follows:-

46. In several insurance claim cases arising under the Consumer Protection Act, 1986, this Court has held that if a complainant claimant satisfies the consumer forum that discharge vouchers were obtained by fraud, coercion, undue influence, etc., they should be ignored, but if they were found to be voluntary, the claimant will be bound by it resulting in rejection of complaint.

34. Two other judgements have been placed on record vide a compilation filed on 26.02.2021 namely **R.L. Kalathia and Company Vs. State of Gujarat, 2011 2 SCC 400** where the Apex Court while referring to two other Judgements including the Judgement in the case of **Boghara Polyfab Pvt. Ltd. (Supra)** came to the conclusion that if an aggrieved party is able to establish any claim on the basis of adequate material, such claim would not be barred merely by issuing a 'no dues certificate'. The other Judgement relied on is that of a learned Single Judge of the Delhi High Court in the case of **Pacific Garments P. Ltd. Vs. Oriental Insurance Co. Ltd., 196 (2013) Delhi Law Times 121** where again the same principles have been reiterated.

35. The latest judgement relied on by the learned counsel is in the case of **Biswajit Guha Vs. Branch Manager, New India Assurance Co. Ltd.** decided by this Commission in FA No. 835 of 2013 reported in **2022 SCC OnLine NCDRC 182.** This judgement takes into consideration the circulars that have been relied on by the learned counsel by the complainant and issued in 2015-16. Reliance has been placed on paragraph 15 of the said Order.

36. In the present case as would be evident from the findings recorded hereinafter, delay was being alleged on the part of the Insurance Company in finalizing the matter. Secondly, the contention of being forced into compulsive circumstances for issuing the discharge vouchers during the pendency of this complaint and thirdly financial duress has also been argued. In the opinion of this Commission none of these pleas are available to the complainant on the facts of the present case as would be evident from the reasons indicated hereinunder.

37. The discharge voucher dated 04.02.2004 in respect of the first claim is also admitted and so far as the discharge voucher in respect of the second claim is concerned the same is also admitted having been issued on 22.01.2004 which is on record.

38. There is one more aspect which needs to be mentioned that the complainants have admittedly received the "on account" advance payments of Rs.3,40,00,000/- in respect of both the claims on 21.11.2001, 02.01.2002 and 09.01.2002. These were prompt advances received by the complainant long before the filing of the complaint.

39. It is also evident that with the complaint made to the CBI by some private person, the files pertaining to the processing of the claims had been admittedly taken by the CBI and the vigilance department of the Insurance Company was also aware of the handling of these files that was also internally acknowledged in communication with the insurance company. A letter from the Vigilance Officer to the Chief Vigilance Officer dated 22.06.2003 also indicates that the matter was being enquired into by the CBI. Loss assessment in between through surveys were carried out but the delay in the survey report is seemingly because of the pendency of the CBI enquiry. Thus, it cannot be said that the Insurance Company was deliberately on its own delaying the matter in clearing the claim for the loss. This explanation appears to be plausible and thus it cannot be said that any armtwisting was being attempted by the Insurance Company for withholding the processing of the claim. As a matter of fact the amounts which were settled, for which the vouchers were issued by the complainants themselves as indicated above, there is no indication of any coercion or undue influence being exercised by the Insurance Company or its officials on account of any financial distress of the company. There is no averment or the

name of any official or agent of the Insurance Company to identify as to who actually had coerced the complainant and when. There is no evidence or pleading to that effect. A mere bald allegation as made is not even sufficient to raise a doubt much less establish the same. The allegations seem to be a desperate attempt to overcome the voluntary bargain of discharge. The letters and the final settlement vouchers issued by the complainants evidence that they were agreeable to the full and final settlement as per the survey reports tendered and which is indicated in their averments in the complaint. The plea of financial distress or economic duress also does not apepal to reason as "on account" advance payments of Rs. 3 crore 40 lacs had been made by Insurance Company to the complainant in 2001-2002 as noted hereinabove. The discharge vouchers were submitted during the pendency of the complaint and no amendment has been sought in the complaint for making allegations or substantiating it with any proof regarding exercise of undue influence by the Insurance Company. The only attempt which has been made in this regard by the complainant is through the averments contained in their evidence affidavit quoted hereinabove which has been clearly denied in the evidence affidavit of the opposite party. Thus, there is nothing on record to establish coercion, misrepresentation or undue influence on the part of the Insurance Company being exercised for obtaining the discharge vouchers. The discharge vouchers appear to have been signed voluntarily and it is only after five days thereafter and having received the amount that the protest was registered on 11.02.2004. This in the opinion of the Commission was a complete after-thought which could not be substantiated by any proof or material on record. In fact the complainant had entered into a negotiated bargain after having accepted the amounts paid in advance as referred to hereinabove. The bargain was finalized on the basis of the survey reports and was not objected to at that point of time. The filing of the complaint is also with regard to balance of the payment which was paid on 29.01.2004 and, therefore, the only dispute raised was with regard to payment of interest. This also stood concluded with the issuance of the discharge vouchers and was a final settlement during the pendency of this complaint. The discharge vouchers having been signed and the amount having been finally collected against full and final settlement of the claim, therefore, cannot be said to be either a deliberate delay or an act amounting to undue influence on the part of the insurance company or even otherwise calls for award of interest on the afore-said amounts. The entire circumstances taken as a whole, raises a preponderance of probability of the dispute being raised as an afterthought to reopen the voluntary bargain that had been finalized.

40. So far as the contention raised with regard to the second surveyor's report being obtained, is an argument which has been developed after the afore-said events had occurred resulting in the discharge of the claim during the pendency of the complaints. The argument is that there were no reasons for appointing a second surveyor. Having perused the three survey reports which are on record particularly the joint survey report and the report of the M/s Soni & Co., it is evident that the calculations have been made by M/s Soni & Co. and in effect there is hardly any variance in the amount of the loss assessed finally except for a minor reduction which was accepted by the complainants and the discharge voucher was issued thereafter. The said argument, therefore, cannot be entertained hence the claim petitions do not call for any expansion of relief as prayed for on the grounds so raised.

41. The complaints were filed in 2003. The discharge vouchers were signed and tendered on 22.01.2004 and 04.02.2004. This subsequent act of discharge, therefore, disentitles the claimants for any interest as claimed. There is, therefore, neither any proof or evidence of undue influence nor there is any element of deficiency in service or unfair trade practice on the part of the Insurance Company. Both the original petitions are accordingly dismissed.

.....J
A. P. SAHI
PRESIDENT