**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AT NEW DELHI**

**RESERVED ON: 29.07.2026**
**PRONOUNCED ON: 24.08.2026**

**CONSUMER COMPLAINT No. 543 of 2018**
**With**
**IA no.4714 of 2019 (Condonation of delay in filing reply)**

Jayaarun Spinning Mills Pvt. Ltd.
Registered office at 38-39-4-A
Great Cotton Road Pandalgudi,
Aruppkottai-626113
Tamil Nadu. ... Complainant

**Versus**

1 Oriental Insurance Co. Ltd.
Head Office Oriental House
A25/27 Asaf Ali Road New Delhi.

2 Oriental Insurance Co. Ltd.
Divisional Office 1st floor Loyala building
Salai road Dindigul -624001

3 Oriental Insurance Company Ltd.
Regional Office- Ramalinga Radiance
2ndfloor 78, TPK Road,
OppSai Baba Temple Andalpuram
Madurai-625003

4 Oriental Insurance company Ltd.,
E.C Natham, 270, SMS comlex-Firsr floor,
Kottampatti Main Road,
Natham, Dindigul -624401 ...Opposite Parties

**BEFORE:**
**HON'BLE AVM JONNALAGADDA RAJENDRA, AVSM, VSM (Retd) PRESIDING MEMBER**
**HONBLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER**

For the Complainant : Mr Rajul Shrivastava, Advocate (VC),
Mr K Krishna Kumar and Tejas Rai, Advocates
For the Opposite Parties: Mr. Pankaj Seth, Advocate

## JUDGMENT

**AVM JONNALAGADDA RAJENDRA, AVSM VSM (Retd)**

1. The present Consumer Complaint has been filed against the Opposite Parties (OPs) seeking the following:

> ***"1. A sum of Rs. 1,86,66,886/-) towards compensation; and***
> ***2. Pendente Lite Interest 18% per annum on the said amount of from the date of filing the complaint till its actual realization;***
> ***3. Any other or further relief as this Commission finds fit and proper in the circumstances of the case may also be awarded for which act of kindness the Complainant shall ever pray."***

2. Brief facts, as per the complaint are that Complainant No.1 had obtained a Standard Fire and Special Perils Policy No.090400/11/13/11/000000213 from the OP Insurance Company for the period 05.02.2014 to 04.02.2015, covering cotton stocks in the form of pressed bales for Rs.10,00,00,000. The insured stocks belonged to Complainant Nos.2 and 3, namely Sri Parameshwari Spinning Mills Pvt. Ltd. and Jayavelu Spinning Mills Pvt. Ltd. The policy was renewed in February 2015 at the instance of OP-2 and 4 under Policy No.454892/11/2015/30 for the period 04.02.2015 to 03.02.2016 with the same sum assured. On 08.05.2015 at about 7:45 PM, heavy rain with thunder and lightning occurred at the complainants' factory/godown, which struck the premises causing a fire that damaged cotton stocks of Complainant Nos. 2 and 3. The incident was reported to the Fire Brigade, Police and ICICI Bank as well as OPs-2 and 4 on 09.05.2015. Thereafter, Complainant No.1 lodged an insurance claim on 19.06.2015 for Rs.1,12,32,970. The OP insurer appointed Mr. VVS Subramanian as preliminary surveyor and thereafter J.B. Boda Insurance Surveyors and Loss Assessors Pvt. Ltd. as final surveyor to ascertain the claim. The OP also constituted a salvage disposal committee comprising the surveyor, OP-3 and Complainant No.1. The surveyor assessed the loss

at Rs.1,02,47,896. Despite completion of the survey, the claim remained pending for about a year. Upon enquiry, the complainants were informed vide email dated 13.05.2016 that the complaint had been registered. During subsequent visit to OP-1 on 21–22.06.2016, the complainants were orally informed that the claim had been repudiated, though no written communication was issued, prompting an email dated 27.06.2016 reiterating the claim. Vide email dated 16.08.2016, the Divisional Manager conveyed observations of the controlling office that dead or slow-moving stock had not been excluded in the assessment, goods held in trust were not covered under the policy, no official document established lightning as the cause of loss, and discrepancies existed in certain invoices as regards destination of goods. These were replied to the OP in detail by a Director of Complainant No.2 on 24.08.2016. Later, on 06.01.2017, the claim was repudiated on the grounds that the stocks of Complainant Nos. 2 and 3 were not covered under the policy, there was no evidence to establish loss due to lightning, and the "goods held in trust" clause had not been opted for. The complainants, vide email dated 29.03.2017 and representation dated 14.09.2017, disputed the repudiation and reiterated their claim with supporting documents. OP-3, vide letter dated 10.10.2017, again objected for want of Electricity Department confirmation of lightning. The complainants responded that all relevant records, including FIR, Fire Brigade Report, Final Investigation Report, VAO Certificate, Meteorological Report and newspaper reports, already established lightning as the cause of loss, and that no electricity-related document could exist as the premises were not electrified. The claim of the complainant was, however, repudiated. Alleging deficiency in service on the part of the OPs in repudiating the insurance claim, the complainants filed the present consumer complaint.

3. Upon notice, OPs filed their written version raising preliminary objections to the maintainability of the complaint, contending that Complainant No.1 had obtained Fire Insurance Policy No.454892/11/2015/30 in its own name for cotton and pressed bales stored at its premises, while the damaged goods admittedly did not belong to it. Thus, Complainant No.1 had no insurable interest and was not entitled for any claim under the policy. Complainants No.2 and 3 were neither insured nor policyholders and thus had no locus standi, privity of contract or insurable interest to maintain the complaint or claim deficiency in service and they cannot enforce any rights under the policy. The dispute involved complex issues of ownership and insurable interest requiring detailed evidence and cross-examination. It was denied that the policy covered goods held in trust for Complainants No.2 and 3, as no such endorsement existed, and contended that the matter was fit for Civil Court adjudication due to serious disputes on title and coverage. The material facts were suppressed, as Complainant No.1 had no independent basis to insure goods of Complainants No.2 and 3, rendering the complaint not maintainable. Any loss claimed by Complainants No.2 and 3 was not covered under the policy issued solely in favour of Complainant No.1. It was contended that prior insurance of goods with another insurer was irrelevant, as the present policy was not a renewal and did not include any such risk. Payment of premium by Complainant No.2 on 03.02.2015 was inconsequential, as it did not create any rights under a policy issued to another person. OPs denied reliance on the proposal form and letters dated 03.02.2015, alleging they were fabricated and created as an afterthought. The omission regarding the stocks of Complainants No.2 and 3 was not due to underwriting error. The policy was with Complainant No.1 and ICICI Bank for over two months prior to loss, with no objection on coverage.

4. On merits, the OPs disputed incident of lightning and consequent fire. It was contended that there was no satisfactory proof that lightning had struck the insured premises or that any consequent fire had occurred. It was contended that although certain documents had been furnished by the complainants during the claim process, the claim was rejected on grounds independent thereof, and the insurer was entitled to call for any additional documents considered necessary during the claim process. It was reiterated that the policy was not a renewal of any earlier policy issued by United India Insurance Company, asserting that Complainant No.1 and ICICI Bank were aware of the policy terms and raised no objection regarding exclusion of Complainants No.2 and 3's goods until after the incident dated 08.05.2015. Accordingly, the OP denied liability for the claimed amount of Rs.1,86,66,886/- or any other sum and maintained that the claim was validly repudiated.

5. The complainant filed its evidence on affidavit and relied on the Certificate dated 22.12.2015 by the Company Secretary (Exhibit-C1); Letter dated 25.01.2014 by ICICI Bank containing terms and conditions (Exhibit-C2); Insurance Policy dated 05.02.2014 with United India Insurance Company Ltd. (Exhibit-C3); proposal form and previous Insurance policy taken with United India Insurance Co. covering the entire stock of M/s Sri Parameswari Spinning Mills Pvt. Ltd. and M/s Jayavelu Spinning Mills Pvt. Ltd. (Exhibit-C4); letter dated 03.02.2015 by M/s Sri Parameswari Spinning Mills Pvt. Ltd. procured with cheque for payment of premium (Exhibit-C5); Policy No.454892/11/2015/30 (Exhibit-C6); copy to OP-4 of complainant No.1 letter dated 09.05.2015 (Exhibit-C7); FIR (Exhibit-C8); Observation Mahazar and section 161(3) CrPC. Statement (Exhibit-C9); Final Investigation Report (Exhibit-C10); Fire Brigade Report (Exhibit-C11); copy of the Village Administration Officer Certificate (Exhibit-C12); Meteorological Report (Exhibit-C13);

Newspaper Cutting (Exhibit-C14); Claim form dated 19.06.2015 (Exhibit-C15); preliminary survey report dated 10.05.2015 (Exhibit-C16); main/final Surveyor Report dated 14.07.2015 (Exhibit-C17); emails of 13.05.2016 (Exhibit-C18); emails dated 24.05.2016 and 28.05.2016 (Exhibit-C19); email dated 27.06.2016 (Exhibit-C20); email dated 16.08.2016 by OP-2 (Exhibit-C21); Letter dated 24.08.2016 from M/s Sri Parameswari Spinning Mills Pvt. Ltd. procured (Exhibit-C22); claim repudiation letter dated 06.01.2017 (Exhibit-C23); email of 29.03.2017 by the Complainant to OP (Exhibit-C24); representation of 14.09.2017 by Complainant to OP (Exhibit-C25); letter again repudiating the claim of 10.10.2017 (Exhibit-C26); letter of 23.10.2017 by Complainant No.1 to OP (Exhibit-C27); and policy terms and conditions (Exhibit-C28).

6. OPs filed their evidence by way of affidavit and reiterated the contentions made in the written statement.

7. The learned counsel for the Complainant argued that the firm of the Complainant is in the business of operating cotton spinning mills, having two sister concerns, namely, M/s. Shri Parameshwari Spinning Mills Pvt. Ltd; and M/s. Jayavelu Spinning Mills Pvt. Ltd. All the three firms have common promoters. The godown owned by complainant No.1 was utilised for storing cotton bales manufactured by the other two sister concerns as well. Credit facilities were availed from ICICI Bank, Madurai, against the stocks lying in the said godown and, in compliance with the bank's requirements, the stocks were insured under a Standard Fire & Special Perils Policy. The policy covering period from 05.02.2014 to 04.02.2015 was renewed on the Complainant's request vide letter dated 03.02.2015, wherein it was expressly disclosed that the stocks stored in the godown belonged to M/s. Shri Parameshwari Spinning Mills Pvt Ltd and M/s Jayavelu Spinning Mills Pvt. Ltd. It was contended that the proposal form issued by the insurer for the renewed policy

period from 04.02.2015 to 03.02.2016 also specifically recorded that the goods stored in the godown belonged to the said sister concerns. It was argued that the insurer was fully aware, at the inception of the contract itself, that the insured premises contained goods belonging to third parties. The premium was accepted without objection, and the policy was issued in the name of the Complainant. On the night of 08.05.2015, a fire broke out in the insured godown due to thunder and lightning, destroying the stored cotton bales, and the incident was promptly reported to the police, Fire Service Department, insurer, and financing bank. It was asserted that the police investigation, witness statements, final report before the Magistrate, Fire Service Certificate, and Village Administrative Officer's certificate all consistently confirmed that the fire was caused by thunders and lightning. Reliance was placed upon the surveyor's reports. It was asserted that the preliminary survey report also attributed the cause of loss to thunder and lightning, while the final survey report assessed the net loss at Rs.1,02,47,896. Particular emphasis was placed upon the surveyor's observation that the cotton bales damaged belonged to M/s. Shri Parameshwari Spinning Mills Pvt. Ltd. and M/s. Jayavelu Spinning Mills Pvt. Ltd. and that the insured had disclosed this fact to the insurer through the proposal form and the accompanying letter while requesting renewal of the policy. As per the surveyor, the omission to incorporate an endorsement relating to the "Goods Held in Trust" in the policy appeared to be inadvertent and the insurer was required to examine the matter from its own records. It was also pointed out that the insurer itself constituted a salvage disposal committee along with the Complainant, thereby acknowledging the occurrence of the insured loss. It was argued that despite the material on record, the insurer repudiated the claim vide letter dated 06.01.2017 on the sole ground that the damaged goods were "Goods Held in Trust" and thus outside the policy, which was wholly unjustified. It was further

argued that the relationship between the Complainant and its sister concerns was that of bailee and bailor, not trustee and beneficiary, and that the goods were stored in the ordinary course of business and hypothecated to ICICI Bank. Hence, the OP insurer could not invoke the "Goods Held in Trust" exclusion, particularly in disregard of the Agreed Bank Clause recognising bank's interest in the insured stocks. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Canara Bank v. United India Insurance Co. Ltd.***, (2020) 3 SCC 455, to argue that the insurer is liable to indemnify losses even in respect of third-party interests where goods are hypothecated to a bank, and that a prudent insurer, having issued a policy after full disclosure, cannot later repudiate liability on the ground of ownership being with third parties, particularly when it failed to verify the same or incorporate the endorsement sought. This decision recognises that the term "consumer" under Section 2(d) of the Act,2019 includes beneficiaries of the service, and therefore, even if the cotton bales belonged to the sister concerns, they remained beneficiaries of the insurance cover, and the insurer could not deny liability merely on the ground that the goods were not owned by the named insured. The insurer was required to assess the loss as on the date of fire, in terms of the policy. He further relied on ***Manmohan Nanda v. United India Assurance Co. Ltd.***, (2022) 4 SCC 582, and ***Vikram Greentech India Ltd. v. New India Assurance Co. Ltd.***, (2009) 5 SCC 599, to argue that insurance policies must receive a purposive interpretation, exclusion clauses are to be strictly construed, and where two interpretations are possible, the one in favour of the insured should prevail. He asserted that, having issued the policy with full knowledge that the stocks belonged to the sister concerns, the insurer could not subsequently invoke the exclusion of the "Goods Held in Trust" on a technical ground to repudiate a valid claim. The claim repudiation was arbitrary, contrary to the policy and settled law.

8. On the other hand, the learned counsel for OPs, contended that the insurance policy was issued exclusively in favour of Complainant No.1 for the property situated at 53, 54 and 55, Railway Station Road, Kulasekarankottai, Vadipatti, Madurai, under Policy No.454892/11/ 2015/30 for the period 04.02.2015 to 03.02.2016. However, the loss claimed related to fully pressed cotton bales admittedly belonging to Complainants No.2 and 3. Since Complainant No.1 neither owned the damaged goods nor had any insurable interest therein, no liability could arise under the policy and the complaint was liable to be dismissed. he asserted that Complainants No.2 and 3 were not policyholders or beneficiaries and they have no privity of contract with the insurer. They had no enforceable rights or locus standi to file the complaint or allege deficiency in service. In fact the complaint is bad for misjoinder of parties. He further submitted that the matter raised complex disputed questions of fact requiring detailed evidence and cross-examination, and thus should be tried by a Civil Court instead. It was argued that complainant No.1 suppressed material facts, as it had no business necessity to store goods of complainants No.2 and 3, the policy did not cover "Goods Held in Trust," and the alleged sister-concern relationship with common accounts was unsubstantiated by evidence. It was further argued that although the surveyor assessed the loss and revised the net payable amount to Rs.99,97,536 without prejudice, the same could not create liability in the absence of a valid insurable interest in the damaged property. Referring to the repudiation letter dated 06.01.2017 and the insurer's clarification dated 10.10.2017, the learned counsel argued that the claim was rightly rejected as the policy covered only the stocks of Complainant No.1 in the insured premises, whereas the damaged goods admittedly belonged to Complainants No.2 and 3, with no loss shown to Complainant No.1's stock and no "goods held in trust" clause extending coverage to third-party goods. It was asserted that the

alleged cause of fire due to lightning was unsubstantiated by any official confirmation from the Electricity Department or other competent authority, and in terms of Condition No. 6 of the policy, the insured's failure to prove the origin and cause of loss disentitled the complainants from indemnity. There was no error or omission on the part of the underwriting officials in issuing the policy, and that the exclusion of goods belonging to Complainants No.2 and 3 was not due to any inadvertence but because the renewal policy for 2015–2016 did not extend cover to such goods, even if they had been insured with another insurer earlier. It was further argued that mere payment of premium by Complainant No.2 could not enlarge the scope of the contract beyond its express terms. It was further alleged that the genuineness of the proposal form and the letter dated 03.02.2015 were fabricated to set up a false claim, and that the policy remained with Complainant No.1 and its banker for over two months prior to the incident without any objection being raised regarding its terms, thereby negating any allegation of negligence or omission on the part of OPs. Complainants No.2 and 3, not being insured under the policy, had no right to claim merely based on the ownership of goods. He disputed the claim that the fire was caused by lightning, arguing that the complainants' evidence, including statements of security guards and reliance on the lightning arrestor, was insufficient to prove the insured peril. He submitted that even the surveyor's report, though generally relevant, neither established the insurable interest nor conclusively demonstrated that the loss resulted from lightning. He asserted that the complainants were not entitled to any claim amount, the survey and repudiation were in accordance with policy terms without any deficiency in service, and the complaint was liable to be dismissed with costs. He relied upon ***New India Assurance Co. Ltd. v. B.N. Sainani,*** (1997) 6 SCC 383, and ***Contship Container Lines Ltd. v. D.K. Lall & Ors.***, Civil Appeal No. 3245 of 2005.

9. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

10. Regarding the objection with respect to complicated question of fact, firstly there is no complicated of fact involved in this case. Moreover, this Commission is competent to decide the complicated questions of fact in view of the judgment of Supreme Court in ***CCI Chambers Coop. HSG. Society Ltd. v. Development Credit Bank Ltd.***, ***Appeal (Civil) 7228 of 2001***.

11. Before proceeding further, it is to be noted that this Commission vide order dated 08.02.2022, deleted Complainant Nos.2 and 3 from the array of parties. Relevant part of the said order is reproduced as under:

> ***"In the present case, there is nothing on record to show that the Complainant Nos.2 and 3 have any insurance policy issued in their name by the Opposite Party/Oriental Insurance Company Ltd. for the fire risk.***
>
> ***In view of the forgoing discussion, I am of the considered opinion that the Complainants No.2 and 3 are not entitled to file the present Complaint claiming insurance against the Policy No.454892/11/2015/30 as it was issued by the Oriental Insurance Company Ltd. in favour of the Complainant No.1 only.***
>
> ***Thus, the names of the Complainant Nos.2 and 3 are directed to be deleted from the array of the Parties."***

12. The principal question which arises for consideration in this case is whether the repudiation of the complainants' claim by the OP insurer vide letter dated 06.01.2017 is sustainable either under the terms of the Standard Fire and Special Perils Policy No.454892/11/2015/30 dated 03.02.2015. The repudiation is founded principally on four grounds, namely, (i) The cotton bales damaged in the fire admittedly belonged to

M/s Sri Parameswari Spinning Mills Pvt. Ltd. and M/s Jayavelu Spinning Mills Pvt. Ltd. and not to the insured, M/s Jayaarun Spinning Mills Pvt. Ltd.; (ii) The policy issued in favour of Complainant No.1 did not contain any "Goods Held in Trust" clause extending coverage to stocks belonging to third parties; (iii) The complainants failed to establish that the fire was caused by lightning, an insured peril under the policy; and (iv) In the absence of such proof and contractual coverage, the insurer incurred no liability under the policy. The validity of the repudiation is, therefore, to be examined in the light of the pleadings, documentary evidence and the terms of the insurance contract.

13. It is the case of the complainants that the claim repudiation was arbitrary and unsupported by record as the OP insurer was informed prior to issuance of the policy that the cotton stored in the godown belonged to M/s Sri Parameswari Spinning Mills Pvt. Ltd. and M/s Jayavelu Spinning Mills Pvt. Ltd., as disclosed in the proposal form and the letter dated 03.02.2015. It was argued that, having accepted the proposal, premium, and issued the policy with full knowledge of the risk, the insurer was estopped from repudiating the claim on the ground of ownership or absence of a "Goods Held in Trust" clause.

14. Per contra, the case of the OP insurer is that the insurance policy in question constituted the entire contract between the parties and did not include any endorsement related to "Goods Held in Trust". It was contended that the policy was issued solely in favour of Complainant No.1 and covered only its own property. Since the damaged cotton belonged to Complainants No.2 and 3, the loss was outside the policy coverage. It was further argued that there was no reliable evidence to prove that the fire was caused by lightning, and therefore the repudiation was justified.

15. These rival submissions raise three questions that need consideration: (i) Whether Complainant had an insurable interest in the damaged stocks despite not being their owner? (ii) Whether the insurer had prior knowledge that the stocks belonged to the said sister concerns, and the effect of issuing the policy without a Goods Held in Trust clause? (iii) Whether the complainants have proved, on a balance of probabilities, that the fire was caused by an insured peril?

16. Regarding the first question whether the Complainant had an insurable interest in the damaged stocks despite not being their owner, we are of the considered view that the OP insurer had wrongly equated ownership with insurable interest. It is well settled that ownership is not the sole test of insurable interest. A person who stands in such legal or commercial relationship with the subject matter of insurance that he would suffer pecuniary loss upon its destruction possesses sufficient insurable interest to obtain insurance protection in respect of the same. The foundation of insurable interest lies in exposure to financial prejudice and not merely in legal title. It is undisputed that the cotton bales were stored in the godown of Complainant No.1 under its custody pursuant to the banking arrangement with ICICI Bank through Arya Collateral Warehousing Services Pvt. Ltd. The policy also contains an Agreed Bank Clause in favour of ICICI Bank, reflecting this arrangement. The insurer does not dispute either the storage of the goods in the insured premises or Complainant No.1's custody at the time of the incident. Since any damage/destruction of the stock could expose Complainant No.1 to civil and commercial liability, mere fact that legal ownership vested in sister concerns, which was already notified, does not negate its insurable interest. The complainant has produced a letter dated 03.02.2015 addressed to the insurer requesting issuance of a Fire and Burglary Policy in respect of cotton bales stored in the

Vadipatti godown. The letter expressly stated that those stocks in the godown belonged to M/s Sri Parameswari Spinning Mills Pvt. Ltd. and M/s Jayavelu Spinning Mills Pvt. Ltd. and were valued at approximately Rs.10.00 crores. The proposal form submitted contemporaneously also records that the cotton bales kept in the insured premises belonged to the aforesaid two companies. These documents are of considerable evidentiary value since they were prepared before the issuance of the policy and constitute due disclosures made during the underwriting process itself. The insurer's allegation that the proposal form and covering letter were fabricated is unsupported by any evidence. In the absence of such material, a mere plea of fabrication cannot dislodge specific and undisputed documentary records. It is also pertinent to note that both the Preliminary Survey Report dated 10.05.2015 and Final Survey Report dated 14.07.2015 note that the damaged stocks belonged to the sister concerns and record the insured's claim that this was disclosed at the proposal stage. This consistency supports the complainants' version. In view of the above, we find that the complainants have adequately established that, prior to issuance of the policy itself, the insurer was specifically informed that the cotton bales in question belonged to M/s Sri Parameswari Spinning Mills Pvt. Ltd. and M/s Jayavelu Spinning Mills Pvt. Ltd. The judgments in the case of ***B.N. Sainani*** *(supra)* and ***D.K. Lall & Ors.*** *(supra)* relied on by the OP are of no help for the reasons stated hereinabove. Moreover, these judgments relate to marine insurance and not applicable to the facts of this case.

17. As regards the next question, the OP's principal defence is that the policy contains no "Goods Held in Trust" clause and thus liability cannot extend to third-party stocks, as an insurance contract must be strictly construed. While this principle is settled, the policy Schedule only describes the insured property as "Stock - Cotton Fully Pressed

Bales" without restricting ownership to Complainant No.1, and it is undisputed that no such exclusionary clause exists. The real question, therefore, is not the absence of such endorsement, but whether the insurer can, in the facts of the case, rely upon it after issuing the policy with prior knowledge of the nature and composition of the risk proposed for cover. Insurance contracts are based on the principle of utmost good faith, which is mutual. The proposer must disclose all material facts, and the insurer must assess the risk during the underwriting process. Once the insurer, with full knowledge of such facts, accepts the proposal, premium and issues the policy without objection, it cannot later rescind the liability on grounds that should have been addressed at inception. To hold it otherwise would permit acceptance of premium well knowing the risk followed by unjust avoidance of liability. Further, the final survey report dated 14.07.2015, submitted by JB Boda Insurance Surveyors & Loss Assessors Pvt Ltd proceeded on the admitted footing that the stocks belonged to the sister concerns. The report specifically notes that the insured had disclosed this position at the proposal stage and in the forwarding letter dated 03.02.2015, and therefore records that ***"the insured had already informed that the stocks stored at the premises belonged to its sister concerns and were held in trust/for and on behalf of group entities."*** Instead of recommending repudiation, the surveyor further observes that the insurer should verify its underwriting file to ascertain whether "Goods Held in Trust cover was intended to be included but was inadvertently not incorporated in the final policy schedule." Had the surveyor been of the view that absence of such endorsement necessarily defeated the claim, nothing prevented him from recording such a categorical conclusion. Significantly, he refrained from doing so. On the contrary, the report proceeds to assess the loss in detail and quantifies the same at about Rs.1.02 crore. It expressly recorded that "no evidence of fraud, suppression or

misrepresentation was noticed during the course of survey" and further states that "no breach of warranties or material policy conditions was observed at the site inspection stage, except the issue of interpretation of the Goods Held in Trust clause, which requires examination at the underwriting level." The surveyor's contemporaneous assessment, particularly his decision to quantify the loss while mentioning the issue of only contractual interpretation, considerably weakens the OP's stand that repudiation was the only legally permissible course. The OP relies on the principle that courts cannot rewrite an insurance contract, which is well settled. However, it is equally settled that an insurer cannot rely on the policy terms while ignoring the disclosures made at the proposal stage, which form the basis of the contract. This is not a case of seeking to expand coverage after the loss; rather, the complainants contend that the nature of the insured goods was fully disclosed to the OP before the issue of policy itself and accepted without reservation. The distinction is material. Another significant circumstance is that the OP has not repudiated the policy on the ground of misrepresentation or suppression under General Condition No.1. Had ownership of the stocks been concealed, the insurer could have invoked utmost good faith to avoid the policy. Instead, it accepts that the goods belonged to the sister concerns but contends that the policy did not cover them. This inconsistent stand weakens the repudiation, as the insurer cannot admit disclosure of facts and yet deny liability on the basis that the contract failed to reflect those very facts. Therefore, we are unable to accept the contention that the absence of "Goods Held in Trust" clause, by itself, defeats the claim. In the present case, prior disclosure of ownership stood established and the OP issued the policy after accepting premium without objection or seeking clarification. The allegation of fabrication failed, and even the surveyor did not treat the omission as a breach. The insurer, therefore, cannot rely on this ground to repudiate the claim.

18. The role, relevance and evidentiary value of a surveyor's report have been authoritatively stated by the Hon'ble Supreme Court ***in Sri Venkateshwara Syndicate v. Oriental Insurance Company Limited (2009) 8 SCC 507***, wherein it was held that surveyor reports, being statutorily mandated, are required to be accorded due weight and cannot be lightly disregarded unless shown to suffer from inherent defects, arbitrariness or perversity. The Hon'ble Supreme Court has further observed as under:

> ***"22. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors.***

***There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor."***

19. This legal position has been reiterated by the Hon'ble Supreme Court in **Khatema Fibres Ltd. v. New India Assurance Company Ltd. (2021 SCC OnLine SC 818)**, wherein it has been held that:

"32. It is true that even ***any inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or which has been undertaken to be performed pursuant to a contract***, will fall within the definition of the expression 'deficiency'. But to come within the said parameter, the appellant should be able to establish (i) either that the Surveyor did not comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as specified by the regulations made under the Act, in terms of Section 64UM(1A) of the Insurance Act, 1938, as it stood then; or (ii) that the insurer acted arbitrarily in rejecting the whole or a part of the Surveyor's Report in exercise of the discretion available under the Proviso to section 64UM(2) of the Insurance Act, 1938.

...

37. Two things flow out of the above discussion, They are ***(i)*** that the surveyor is governed by a code of conduct, the breach of which may give raise to an allegation of deficiency in service; and ***(ii)*** that the discretion vested in the insurer to reject the report of the surveyor in whole or in part, cannot be exercised arbitrarily or whimsically and that if so done, there could be an allegation of deficiency in service.

38. A Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor's report to forensic examination of its anatomy, just as a civil court could do. ***Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop***."

20. In ***National Insurance Co. Ltd. v. M/s Hareshwar Enterprises Pvt Ltd & Ors (Civil Appeal No. 7033 of 2009 dated 18.08.2021; 2021 SCC OnLine SC 628)***, the Hon'ble Supreme Court has held:

> ***"17.....Therefore, in the facts and circumstances herein the surveyors report was submitted as the natural process, the conclusion reached therein is more plausible and reliable rather than the investigation report keeping in view the manner in which the insurer had proceeded in the matter. Hence, the reliance placed on the surveyor's report by the NCDRC without giving credence to the investigation report in the facts and circumstances of the instant case cannot be faulted. In that view, the conclusion reached on this aspect by the NCDRC does not call for interference."***
>
> ***"18. ... Having considered this aspect, the rate of interest to be awarded in normal circumstance should be commensurate so as to enable the claimant for such benefit for the delayed payment. There is no specific reason for which the NCDRC has thought it fit to award interest at 12% per annum. Therefore, the normal bank rate or thereabout would justify the grant the grant of interest at 9% per annum. Accordingly, the amount as ordered by the NCDRC shall be payable with interest at 9% per annum instead of 12% per annum. To that extent, the order shall stand modified..."***

21. The next question which requires consideration is whether the complainants succeeded in establishing that the fire was caused by lightning, an insured peril under the Standard Fire and Special Perils Policy. It is the contention of the OP that the complainant has failed to produce any reliable scientific or official evidence establishing the occurrence of lightning at the insured premises. Particular emphasis has been laid upon the absence of any certificate from the Electricity Department or any meteorological record specifically certifying the occurrence of lightning over Vadipatti on the relevant date. According to the insurer, in the absence of such evidence, the complainants have failed to discharge the burden cast upon them. At the outset, it must be noticed that the policy expressly covers "Fire" and "Lightning" as independent insured perils. There is no dispute that if proved that the

fire was caused by lightning, the loss would fall within the scope of the policy. The controversy is confined only to whether the cause of the fire has been satisfactorily established. In civil proceedings, the burden upon a claimant is not to establish his case beyond all reasonable doubt. The issue is required to be determined on the touchstone of preponderance of probabilities by evaluating the cumulative effect of the entire evidence available on record. Direct scientific proof of every circumstance is seldom available in cases involving accidental fires. Consequently, we need to examine whether the contemporaneous documentary evidence, viewed as a whole, reasonably supports the complainants' version.

22. In the present case, the FIR dated 18.05.2015 recorded that during the night there was heavy rain accompanied by thunder and lightning and, thereafter, fire was noticed in the cotton godown. The occurrence of the fire itself has never been disputed by the insurer. The significance of the FIR lies not in treating it as conclusive proof of the cause of the fire, but in demonstrating that the complainants consistently attributed the incident to lightning from the very inception, and not as an explanation subsequently made out to support the insurance claim. The Village Administrative Officer's report and the police investigation also form part of the record. These documents indicate that heavy rain accompanied by thunder had occurred in the locality on the relevant night and that the fire was considered to have originated on account of lightning. Significantly, no material has been produced by the insurer to show that the investigating authorities suspected arson, negligence, spontaneous combustion or any other intervening cause. The contemporaneous public records, therefore, substantially corroborate the complainant's version. The insurer has strongly relied upon the absence of a certificate from the India

Meteorological Department specifically certifying the occurrence of lightning at Vadipatti. We have carefully examined the communication dated 30.09.2016 issued by the India Meteorological Department, Regional Meteorological Centre, Chennai. The same records that rainfall measuring 27.6 mm was registered at Madurai Airport between 08.30 hours on 08.05.2015 and 08.30 hours on 09.05.2015. More importantly, the Meteorological Department expressly states that since no climatological observatory exists at or around Vadipatti, it is not possible to furnish details regarding whether any thunderstorm occurred over that particular location. This document, therefore, neither confirms nor rules out the occurrence of lightning. On the contrary, it explains why no such specific certification could be issued. In our view, the OP wrongly relied on the absence of a lightning certificate while ignoring the Meteorological Department's clarification that no observatory exists at the site and such data cannot be provided. The complainants cannot be penalised for not producing evidence that is impossible to obtain, and the absence of such a certificate cannot be held against them.

23. The insurer contended that no certificate from the Electricity Department has been produced to prove lightning. We find no merit in this submission also. General Condition No. 6 of the policy requires the insured to furnish documents and information relating to the cause of loss as reasonably required by the insurer, but it does not mandate proof of lightning only through an Electricity Department certificate. Insurance contracts must be interpreted as written, and courts cannot add evidentiary requirements not stipulated in the policy. Moreover, as discussed above, the OP insurer's own survey reports are the most significant evidence. The preliminary survey, conducted immediately after the incident, recorded heavy rain with lightning and thunder, a subsequent power failure, and smoke emanating from the godown

before the fire spread to the cotton bales. The final survey, based on police records, the Village Administrative Officer's report, and the physical condition and burn pattern of the premises, found that cotton bales near the windows of Godown No.2 were first affected and that the circumstances were consistent with a possible lightning strike, concluding that the loss was accidental in nature. Significantly, the surveyor did not attribute the fire to negligence, electrical short circuit, wilful act, or fraud etc., nor did he suggest fabrication, exaggeration, or dispute the occurrence of lightning; instead, after a detailed investigation, he accepted the incident as accidental.

24. It is well settled that though a surveyor's report is not conclusive, it is a significant piece of evidence deserving due weight unless shown to suffer from patent infirmity or displaced by stronger material. In the present case, the insurer neither produced any expert or independent technical report contradicting its own surveyor nor placed any material to support its bare assertion that lightning was not established, and repudiation resting on mere conjecture cannot be sustained in the face of consistent contemporaneous evidence. The FIR, police and Village Administrative Officer's reports, the Meteorological Department communication and both the preliminary and final survey reports collectively established that the fire was caused by lightning accompanied by heavy rain on the intervening night of 08.05.2015 and 09.05.2015, and the insurer has failed to show any credible alternative cause or any infirmity in the surveyor's findings.

25. In view of the foregoing and after due consideration of the entire facts and circumstances of the case we hold that the grounds assigned in the repudiation letter dated 06.01.2017 cannot be sustained and such action constitutes deficiency in service on the part of the OP insurer.

26. Consequently, CC No. 543 of 2018 is partly allowed with the following directions.

## ORDER

**A. The Opposite Party - Insurer is directed to pay Rs.1,02,47,896 to the complainant along with simple interest @ 8% p.a. from 08.11.2015 (period commencing from six months after the date of reporting the incident) till the date of final payment. This payment shall be made within a period of 60 days from the date of this order. In the event of default, the interest liability of Opposite Party shall be @ of 10% p.a. for such delayed period.**

**B. Considering the facts and circumstances of the case, the opposite party is directed to pay the complainant Rs.50,000 as cost of litigation.**

24. All pending Applications, if any, also stand disposed of accordingly.

**Sd/-**

**.....**

**( AVM J. RAJENDRA, AVSM VSM, Retd.)**
**PRESIDING MEMBER**

**Sd/-**

**.....**

**( ANOOP KUMAR MENDIRATTA, J. )**
**MEMBER**

CAV/Hitaishee