

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 3331 OF 2017

1. MUTHOOT FINANCE LIMITED

.....Complainant(s)

Versus

1. UNITED INDIA INSURANCE COMPANY LIMITED

Divisional office no.2 Joys Building, Near Padma Junction,

M.G. Road,

ERNAKULAM-682035

.....Opp.Party(s)

BEFORE:

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

FOR THE COMPLAINANT : MR. KURIAKOSE VARGHESE, ADVOCATE

MR. AKSHAT GOGNA, ADVOCATE

MS. ISHA GHAI, ADVOCATE

MR. SUNIL BARTHWAL, AR

FOR THE OPP. PARTY : MR. HARSH KUMAR, ADVOCATE

MR. ANUJ KUMAR, ADVOCATE

Dated : 02 April 2024

ORDER

1. This complaint has been instituted alleging deficiency in service on the part of the Opposite Party/Insurance Company by repudiating the claim of the complainant on account of the loss suffered in a burglary incident that took place in the premises of the Complainant in the intervening night of 1st/2nd February, 2014 at their Zaheerabad Branch, Andhra Pradesh. The complainant is predominantly engaged in the business of rendering loan facilities with provisions for securing loans against gold ornaments. The trade is duly authorized under the relevant Rules and Regulations governing the business. In order to secure its assets including the gold ornaments and jewellery pledged by the borrowers against the loans availed by them, an insurance policy was availed off from the Opposite Party/Insurance Company.

2. The Policy is not in dispute which is a Special Contingency Insurance Policy, the validity whereof was from 12.01.2014 to 11.01.2015. The incident is alleged to have taken place in the intervening night of 1st/2nd February, 2014, which the complainant precisely alleges to have occurred at about 1.54 A.M. on 02.02.2014. The burglary/theft was committed in the branch premises situate on the First Floor of the address given in the Complaint situated in Subhash Ganj, on NH Road-65, Zaheerabad, Medak District, Andhra Pradesh.

3. The complainant alleges that about 75,577 gms. of gold ornaments and a cash of Rs.14,42,109/- was stolen by cutting open the window grills/strong room and inside grills by

using gas cutters after disconnecting the electricity of the premises.

4. The intimation was sent promptly to the Opposite Party/Insurance Company on 03.02.2014 and a claim was lodged with them on 11.02.2014. The F.I.R. at the concerned Police Station was also lodged promptly on 03.02.2014 and after verification of stocks and documents, the complainant also dispatched a detail of the property that was burgled. It was clarified that there were packets of gold with a particular weight and it was stated that there were 4269 packets of gold belonging to various customers, who had availed loans from the complainant. On the approximation of weight, it was also stated that the gross weight was 75.577 kg and net weight of 65.562 kg that was stolen, apart from the cash of Rs.14,42,109/-.

5. It may be pointed out that the Police investigated the said incident and after making arrests and recovery, submitted a detailed charge-sheet on 30.06.2015, which is on record.

6. The Insurance Company also appointed its Surveyor, who tendered his detail final survey and assessment report after conducting the survey on 06.02.2014. The same is also on record. After having noticed the entire incident and surveyed the premises, the surveyor recorded his opinion as follows:-

“ABOUT THE PREMISES WHERE THE DAMAGE OCCURRED:

The premises where the loss occurred are located on the first floor of the commercial complex facing the main road. The entry in to the insured office premises is from the stair case which was located adjoining to the side road. The name board of the insured is facing the main road of the city. After reaching the first floor the stair case leads to an open lobby where in there are three rooms. The insured premises are the extreme portion.

Abetting the portion of the insured branch there is another staircase which leads to the open area adjoining to the commercial building. Behind this building there is open play ground and the school. This stair case is not being used by any one. The window which was broke open is abetting the unused stair case.

Once we enter the premises of the insured there is open lobby and on the left side the cabin of the branch manager and the passage to the staff to lead to their seats. The office staff chairs are placed behind the "L" shaped counters. The entry to the customers to the office staff area is restricted. The strong room of the premises is

behind the branch manager room and staff seating area. There is passage behind the branch manager cabin where in the window which was broke opened exists.

*The main door of the insured premises has the collapsible iron grill supported by the iron rolling shutters with locking system. **These shutters are connected to the alarm system, which blows off once the rolling shutters are tampered.** The culprit did not tamper the collapsible iron door. But he cut off the power supply to the burglary alarm system. Due to this the burglary alarm did not blow. **By this the insured has adhered to the condition.***

*The insured has an agreement with outside agency to provide watch and ward to the insured premises. **This watch and ward facility was provided only during the office hours.** There is no provision for the watch and ward during the nights and holidays. The copy of the agreement entered with the outside agency is obtained and enclosed with his report. However the insurer may look in to the aspect of sufficiency of the provision of the watch and ward.*

*The insured premise is covered by **recorded CCTV surveillance** cameras. There are total seven cameras. These are connected the DVD recorder. **Out of these, three cameras are recently added. These were not yet functional.** Other four cameras are functional and the recording is made. **The cameras installed are operated all thought 24 hours.** The video is recorded and has the sufficient storage. It is observed that **these cameras are not night aided cameras.** Hence the images captured during nights are not visible properly. **However the insured has adhered to the condition to the policy by providing the CCTV cameras.***

*The insured has the strong room to the branch. This safe strong room door was provided by the renowned supplier Godrej. **Hence the insured has adhered to the provision of providing the strong room as well.***

*The culprits after entering the premises cut of the power supply to the burglar alarms from inside and cut off the recording of the CC cameras footage. In the process of the disconnecting the image transmission **the culprits were captured in one of the cameras, even though they are not clear.***

The culprits using the welder cutting machine cut open the door of the Godrej safe. It is visible in the photographs taken.

ABOUT THE COVERAGE & SUFFICIENCY OF SUM INSURED

The loss incurred to the insured due to the burglary is covered by the policy held by the insured, as there is forceful entry in to the premises by cutting open the window grill. Further the strong room door was cut open and broke open the steel Almirah located in the strong room. The value claimed by the insured in the letter dated 11.02.2014 is Rs.24,44,10,591/-.

*Further on the review of the premises it is found that the special conditions laid in the policy about the presence of the watch and ward is available during the office hours. The insured premise is covered by the CCTV surveillance cameras installations. The insured premises has the strong room provision. The insured also has the **burglary alarm system.**” The insured maintains the book so accounts and the inventory of the golden jewelry on the computer system.”*

7. After having received the said surveyor report, the Insurance Company vide letter dated 16.08.2016, repudiated the claim. The contents whereof are extracted herein below:-

“Sub:- Repudiation of claim under Special Contingency Policy No. 100200/46/13/39/00000973

Ref:- Claim under Special Contingency Policy No. 100200/46/13/39/00000973 issued to M/s. Muthoot Finance Ltd, Corporate office, Ernakulam.

Your kind attention is invited to the subject matter and to the reference cited above. The claim preferred by you, under the above referred policy, for the loss in connection with the burglary incident happened on the intervening night of 1st and 2nd February 2014 at your Branch at Zaheerabad, Andhra Pradesh has been considered in detail by the competent Authority.

You are well aware that the Special Contingency Insurance Policy issued to you for the risk coverage is subject to the fulfillment of the conditions stipulated in the policy schedule and as per terms and conditions of the policy.

*The aforesaid Special Contingency policy was issued for the risk coverage in the locations specified (specified branches of M/s. Muthoot Finance Ltd) in the schedule subject to the fulfillment of the conditions specifically endorsed in the schedule. While processing the claim submitted by M/s. Muthoot Finance Ltd. and on consideration of the records available in the claim file **it is evident that you have not complied with the special condition of having 24 hour watchman in the Zaheerabad Branch.** The concerned branch was having the watchman **only during the office working hours i.e. from 08.45 hrs to 18.00 hrs, six days a week.** The agreement dated 01/01/2014 executed between M/s. Muthoot Finance Ltd, Corporate office, Muthoot Tower, Banerjee Road, Cochin and M/s. United Security Services, 2nd Floor, S-5, Sai Apartment Beside Ayyappa Temple, Chital, Hyderabad-500 054, Andhra Pradesh furnished by you also proves the same.*

*During the operation of the aforesaid Contingent Policy i.e. from 12/01/2014 to 11/01/2015, the insurance company undertook the risk cover in the specific locations/Branches of M/s. Muthoot Finance Ltd subject to the **condition of having 24 hours watchman in the policy covered Branches.** Your branch where the incident reportedly occurred viz Zaheerabad Branch **did not have 24 hrs watchman and also no watchman on Sundays/holidays.** It has come out in the police investigation that the burglary attempts were carried out on **1st and 2nd night of February 2014 (i.e, Saturdays and Sunday)** and that the strong room could be opened only the attempt made on the night of 2nd February 2014.*

*In the above referred policy, during the insurance cover period, the insurance company **did not undertake the risk of coverage in the specified location (branches of M/s. Muthoot Finance Ltd.) without having a watchman on guard for 24 hrs.** While renewing the policy for subsequent year, M/s. Muthoot Finance Ltd, **had requested for waiving/excluding the condition of having 24 hours watchman in the specified branches in order to cover the risk and the insurance company for the subsequent year issued the policy undertaking the risk coverage in the specified locations waiving the condition of having 24 hour watchman on payment of extra premium.** The insured having not complied with the specific condition of having 24 hours watchman **in Zaheerabad** branch for covering the risk in the said location, the insurance company shall not be liable to pay the claim under the policy. The quantification of the claim of loss put forth by the insured is not dealt with as the insurance company is not admitting the liability.*

As the insured failed to comply with terms and conditions of the above referred Special Contingency Insurance Policy, the claim submitted by you stands repudiated and is closed.”

8. Aggrieved, the complainant moved a representation demanding a recall of the said repudiation and to indemnify the claim. The Insurance Company stood by its repudiation. Hence, the present complaint has been filed alleging that there was no violation of any of the terms and conditions of the policy, and the security as envisaged under the Policy, was duly observed hence there was no valid ground to repudiate the claim.

9. Learned Counsel for the Complainant alleged that the Policy condition of having a watchman all the 24 hours is not a pre-condition and was only an added security facility, which the Complainant was observing by having a watchman during office hours. Learned Counsel submits that this was clearly intended by the parties as there was a permanent 24-hour facility of a burglar alarm and CCTV coverage as well as all other ancillary measures meant for the strong room and the entire premises. The conclusion drawn by the insurance company about the breach of the condition of having a 24-hour watchman facility was neither intended nor was it meant as understood by the insurance company and the Complainant.

10. Learned Counsel submits that this stands clarified, as subsequently the insurance company itself has issued a memo on 04.01.2017, whereby the presence of a 24-hour exclusive watchmen has been introduced as a condition. The said mail is extracted herein under:-

Subject: Warranties to be applied on Spl Contingency policy in linewith Bankers Ind Policy with immediate effect.

Sir,

*In view of the high incidence of Burglary claims under SCP in line with Bankers Indemnity policy issued to M/s Muthoot Finance Ltd. and M/s Muthoot Fincorp Ltd, **our Head office has asked us to include the following warranties under both their policies with immediate effect:-***

"This policy is subject to the following warranties:-

1) CCTV cameras should be installed in the Branch and should be in working condition in the event of any loss.

2) Cash & Gold secured in Strongrooms as per RBI standards.

3) Presence of 24 hour exclusive _watchman for the Branch.

4) Burglar alarm should be installed in the Branch and should be in working condition in the event of any loss."

11. Learned Counsel submits that this subsequent clarification by the Opposite Party, therefore, confirms the arguments advanced that the policy condition in the present case did not mean a round the clock watchman for 24 hours. The submission is that the security should be 24 hours and which was observed by the Complainant and has also been indicated by the Surveyor in the report. Learned Counsel, therefore, submitted that in view of all the precautions taken by the complainant which is more than substantial compliance of the terms and conditions of the policy, there was no occasion to repudiate the claim on the said ground.

12. He has then cited the following decisions to contend that the terms and conditions of the policy have to be read in the context of the wordings used coupled with the intention of covering the risk under the policy. He has laid special stress on the ratio of the order of this Commission in the case of **Aviraj Gems V/s New India Assurance Company Ltd.** 2019 SCC OnLine NCDRC 350 and has also produced a copy of the order of the Hon'ble Supreme Court dated 18.07.2023 indicating that even though the said order has been challenged, there is no stay in Civil Appeal No. 8886/2019. He has then also relied on a two-Member Bench decision of this Commission in the case of **National Insurance Company Ltd. V/s M/s Padmawathi Jewellers**, (2007) 3 CPJ 368 (NC), to contend that in view of the said decision the contents of the Policy should be construed so as to sub-serve the principle purpose of the coverage under the policy. He has also invited the attention of the Bench to the order passed by this Commission in **M/s Muthoot Finance Limited V/s M/s Reliance General Insurance Company Ltd. & Anr.** 2016 SCC OnLine NCDRC 466, to urge that in this case also police had performed its duty and recovered the lost property, which has also been construed to the advantage of the insured as in the instant case, the police has cracked the case and made substantial recovery.

13. He also urged that the words of the policy should be read in a way to the advantage of the insured in as much as there is no fundamental breach to repudiate the claim and terminate the coverage. He submits that the terms of the policy should be harmoniously read in favour of the Complainant. The judgments relied on are marked below:-

S. NO	CASES	PARAS	PAGE NO.
1.	<i>Canara Bank vs. M/s. United India Insurance Co. Ltd. & Ors., Civil Appeal No. 1042/2020</i>	22	1-23
2	<i>United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal (2004) 8 SCC 644</i>	19,13, 14,17	24-32
3	<i>Manjeet Singh v. National Insurance Company Limited (2018) 2 SCC 108</i>	5,6	33-36
4	<i>B.V. Nagaraju v. Oriental Insurance Co. Ltd. (1996) 4 SCC 647</i>	7,8	37-41
5	<i>Aviraj Gems v. New India Assurance Company Ltd. 2019 SCC OnLine NCDRC 350</i>	17	42-45
6	<i>National Insurance Company Ltd. v. M/s Padmavathi Jewellers 2007 SCC OnLine NCDRC 54</i>	16	46-49
7	<i>New India Insurance Co. Ltd. v. Panchsheel Jewellers 2012 SCC OnLine NCDRC 858</i>	8	50-52
8	<i>Parasram & Party v. The New India Insurance Co. Ltd. & Ors. 2011 SCC OnLine NCDRC 307</i>	11	53-56
9	<i>United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton & General Mills & Ors. (1999) 6 SCC 400</i>	4,5	57-60
10	<i>M/s. Muthoot Finance Limited vs. M/s. Reliance General Insurance Company Limited & Anr., 2016 SCC OnLine NCDRC 46</i>	6	61-63
11	<i>Reliance General Insurance Co. Ltd. v. Muthoot Finance Ltd. Civil Appeal No. 2662/2016</i>		64-65
12	<i>United Insurance Company Limited vs. M/s. Orient Treasures Private Limited, Civil Appeal No. 2140/2007</i>	22, 32, 37, 40, 50	66-97
13	<i>Suraj Mal Oil Mills (P) Ltd. vs. United India Insurance Co. Ltd. (2010) 10 SCC 567</i>	23, 26	98- 107

14	General Assurance Society Ltd. vs. Chandumull Jain & Anr. 1966 (3) SCR 500	11, 20	108- 122
15	Gurshinder Singh vs. Shriram General Insurance Co. Ltd. & Anr. Civil Appeal No. 653/2020	9, 10, 11, 14, 16,	123- 137
16	Kamlesh vs. Shriram General Insurance Company Ltd. Civil Appeal No. 8796/2019	9	138- 145
17	Ghaziabad Development Authority v. Union of India (2000) 6 SCC 113	6, 7, 10	146- 153
18	Winsome Yarns Ltd. v. ICICI Lombard General Insurance Co. Ltd. & Ors. FA 1748 of 2017		154-160
19	Muthoot Finance Limited v. New India Assurance Co. Ltd. CC No. 2118 of 2016		161-165
20	Muthoot Finance Limited v. New India Assurance Co. Ltd. CC No. 73 of 2018		166-171
21	Haris Marine Products v. Export Credit Guarantee Corporation (Ecgc) Limited 2022 SCC OnLine SC 509	26-29	172-181
22	Shree Ambica Medical Stores & Ors. v. The Surat People's Co-operative Bank Limited & Ors. C.A. No. 562 of 2020	20	182-197

14. Learned Counsel for the Insurance Company/Opposite Party has vehemently opposed the complaint and has urged that the policy categorically records a pre-condition of watch and ward by a watchman 24 hours round the clock. He submits that the terms of the policy cannot be split so as to segregate the 24 hours requirement in respect of a watchman. He submits that there is neither any ambiguity nor any un-clarity in the terms of the policy. He also contends that the subsequent mail dated 04.01.2017 is just an expression of clarity about the already existing terms about which there is no confusion. The clarification, therefore, does not convey a different intent as in the main policy of the complainant.

15. It is, therefore, urged that the breach is clearly established as the premises admittedly did not have a watchman during the night hours or on Saturdays and Sundays when the

burglary was committed. In view of this admitted position, the complaint deserves to be dismissed.

16. Having heard learned Counsel for the Parties and perused the records. The main contention appears to be on the issue of the Complainant having not adhered to the condition of providing a 24-hour watch and ward facility.

17. To understand the intention of the terminology used in the policy, the same is extracted hereinunder for ready reference. A perusal of the said description would demonstrate that the coverage was ***“Subject to Clause : SUBJECT TO 24 hrs CCTV CAMERA, WATCHMAN, BURGLAR ALIM AND STRONG ROOM IN ALL INSURED’S PREMISES COVERED, CENTRALISED SYSTEM OF MAINTAINING RECORDS BY THE CLIENT SHOULD ALSO HOLD BRANCHWISE/CUSTOMERWISE DETAILS OF PLEDGED.”***

18. Learned Counsel for the Complainant has vehemently urged that the phrase 24-hour reflects on the facility of CCTV Camera and cannot be construed to control or govern the word “Watchman”. The submission therefore is that there is no intention mandating the presence of a watchman for 24-hours. To support this submission, learned Counsel has relied on the judgment cited by him referred to above particularly the judgment in the case of *Aviraj Gems (Supra)*. The submission is that the facts of this case are similar to the said decision where also the issue of deployment of a watchman was involved and it was held that watchmen guarded the entire premises therein taking their turns in the same building. It is then submitted by the learned Counsel with reference to the case of *M/s Padmawathi Jewellers (Supra)* to contend that if there is some vagueness in the terms, interpretation should be made to fulfill the purpose of the insurance and to ensure that it is not frustrated.

19. He then contends that in this case the police have made recoveries and it is established that the culprits had committed burglary and substantial recovery was made.

20. It may be pointed out that in the case of *Aviraj Gems (Supra)* the offence of burglary was allegedly committed by three Nepali boys who were employed by the Complainant to cater services by supplying tea and water and to carry out sanitary facilities in the premises. The Commission came to the conclusion that their employees had not committed the offence but they were accomplices as well. It was also found by the surveyor that the watchman was deployed at the ground floor and not on the third floor where the Jewellery Shop was being run. Nonetheless it was held that watchmen were residing in the premises in the basement and sufficient precaution had been taken to keep the entire premises secured. It was therefore construed that the arrangement of security was sufficiently complied with.

21. The aforesaid decision cannot come to the aid of the complainant inasmuch as in the present case, the burglary took place on the intervening night of 1st and 2nd February 2014 which was a Saturday and Sunday. Thus, the incident took place on holidays when the Complainant's Branch was closed. It is evident from the report tendered by the surveyor which has not been disputed by the Complainant that there were no watchmen deployed on Saturdays and Sundays (Holidays). This is fortified by the investigation of the surveyor who has referred to the contract with the security agency that supplies guards to the complainant.

The agreement is only for providing security of watchman during office hours only. Thus on facts there is no similarity with the case of *Aviraj Gems (Supra)*.

22. The contention raised that the police had clearly recovered the stolen property to a substantial extent and therefore the premises was secured is an argument which cannot be countenanced inasmuch as there is no evidence, nor is it the case of the complainant that police were personally guarding the premises of the Complainant's Branch or were present at the Branch at the time when the burglary was committed. The police are supposed to protect and prevent through their regular beats and patrolling which is a public safety activity and is not a term of security under the policy. A recovery made by the police after nabbing the culprits is not a substitute of security deployed for precaution. This argument therefore is unsustainable and has to be rejected.

23. There is no logical connect with the compliance of deputing a watchman for 24 hours round the clock under the policy with the investigation and arrest of the burglars by the police as a consequence of burglary. The contract of insurance with a condition of deploying a watchman for 24 hours is an exclusive bilateral arrangement, hence there is no rationale to read into it the expected or supposed presence of police also as a security measure under the policy. The police performs a sovereign function of maintaining law and order and does not work under a contract of insurance.

24. The terms of the policy, in the opinion of this Commission, is neither ambiguous nor capable of any other meaning because the phraseology used in the policy as extracted hereinabove clarifies the words used therein for and security with the timing of 24 hours without exception. The said terminology implies and envisages a watch and ward deployment which means a continuous watch by a regular guard by day and night. The vigilance and careful attention spell out a dutiful presence of a sentinel ensuring surveillance of the premises that does not admit of any exception restricting it to office hours only. The word "24-hour" means day and night and there is no exclusion for holidays in the policy.

25. The contention that watchmen were deployed during office hours with burglar alarms and CCTV Camera in place is no supplement for a watchman whose presence is necessary round the clock that cannot be dispensed with.

26. The Complainant admittedly is in the business of extending loans against gold ornaments. The substantial storage of gold ornaments within the premises therefore undoubtedly requires a continuous vigilance whether it is during office hours or beyond the same. The premise during working hours is otherwise also being looked after with employees, customers and even the public passersby when there is a far lesser scope of an attempt of burglary. The premises may be susceptible to a dacoity during daytime also but the night hours are perceived as more dangerous. It is therefore highly probable that a burglary would be committed during night hours or on a holiday when the premises is closed. This is what appears to have happened in the present case as the burglary was committed on the intervening night of a Saturday/Sunday. The presence of a watchman would have made a world of difference. In the present case where the burglars had disconnected the electricity, disabling the CCTV Camera and the burglar alarm. Had a watchman been on the round, there was a probability of his coming into action and taking steps to prevent the burglary or raise an alarm. It is quite possible that the burglars were in possession of this information that

there was no night guard deployed during night hours and on holidays, especially on the intervening night. The absence of the watchman was therefore in all probability an open bait for the burglars. This lapse on the part of the Branch therefore cannot be condoned which is established on record.

27. Learned Counsel for the Complainant submitted that subsequently, the insurance company itself clarified through its memo dated 04.01.2017 requiring the presence of 24-hours exclusive watchman for the Branch. In my considered opinion, this cannot be read as a clarification to convey that the previous policy did not intend a watchman for 24-hours. As already explained above, the policy clearly specifies the presence of a 24-hour watchman. All the three components of CCTV Camera, Watchman and Burglar Alarm are supposed to be and clearly intended to be in place and in force 24 hours with no exception or distinction of office hours, night hours or holidays. Otherwise also, the phrase 24-hour is not a synonym for office hours. It is a clear description of day and night guard without any exception for holidays.

28. The issue as to whether the contra preferentem rule can be applied has witnessed certain decisions pronounced by the Apex Court in the case of ***National Insurance Company Vs. Chief Electoral Officer & Ors. (2023) 6 SCC 441***. The following observations were made:

“27. We would first like to elucidate the principles on which a claim under any insurance policy is examined. It is trite to say that the terms of the insurance policy are to be strictly construed.

28. The insurance contracts are in the nature of special class of contracts having distinctive features such as utmost good faith, insurable interest, indemnity subrogation, contribution and proximate cause which are common to all types of insurances. Each class of insurance also has individual features of its own. The law governing insurance contracts is thus to be studied in three parts, namely, (1) general characteristics of insurance contracts, as contracts; (2) special characteristics of insurance contracts, as contracts of insurance, and (3) individual characteristics of each class of insurance.

29. Now turning to some of the judicial pronouncements, wherein it has been opined that the words used in a contract of insurance must be given paramount importance and it is not open for the court to add, delete or substitute any words [Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd]. Insurance contracts are in the nature where exceptions cannot be made on ground of equity and the courts ought not to interfere with the terms of an insurance agreement [Export Credit Guarantee Corpn. (India) Ltd. v. Garg Sons International].

30. *This Court in Vikram Greentech (I) Ltd. v. New India Assurance Co. Ltd. reiterated that the insured cannot claim anything more than what is covered by the insurance policy. The terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely. The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the Insurance Company must also be read strictly.*

31. *In several other judgments, this Court has held that the insurance contract must be read as a whole and every attempt should be made to harmonise the terms thereof, keeping in mind that the rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon.”*

29. Referring to the same judgment, the Apex Court in another case of ***Bajaj Allianz General Ins. Co. Ltd. Vs. Mukul Aggarwal and Ors. (2024) 2 SCC 344*** observed in para 17 as follows:

“17. As far as the interpretation of an insurance policy is concerned, in National Insurance Co. Ltd. v. Chief Electoral Officer, this Court reiterated that an insured cannot claim anything more than what is covered by the insurance policy. The terms of the contract have to be construed strictly without altering the nature of the contract. Moreover, the clauses of an insurance policy must be read as they are. The terms of the insurance policy, which determine the liability of the insurance company, must be read strictly. This Court also held that the rule of contra proferentem is not applicable to a commercial contract like a contract of insurance. The rule of contra proferentem contemplates that if any clause in the contract is ambiguous, it must be interpreted against the party that introduced it. For the contract of insurance, the applicability of the said concept is ruled out. The reason is that the insurance contract is bilateral and mutually agreed upon, like any other commercial contract.”

30. A perusal of the ratio of said judgment would indicate that since an insurance contract is bilateral and mutually agreed upon like any other commercial contract, then the rule of contra proferentem would not apply.

31. It appears that this issue had been considered by a Constitution Bench way back in 1996 in the case of ***General Assurance society Ltd. Vs. Chandmull Jain 1996 Vol-III SCR pg.500*** where in para 11, the Apex Court has held as under:-

"In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e. good faith on the part of the assured and the contract is likely to be construed contra proferentem that is

against the company in case of ambiguity of doubt... (1) interpreting documents relating to a contract of insurance, the duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not make it themselves."

32. Relying on the said constitution Bench judgment, a three Member Bench in the case of ***Haris Marine Products Vs. Export Credit Guarantee Corporation Ltd. reported in 2022 SCC OnLine SC 509***, after having noted the aforesaid ratio of the decision of the Constitution Bench quoted above, went on to consider other decisions holding that if there is any ambiguity about a term, and there is a possibility of two interpretations, then one beneficial to the insured should be applied as the rule of contra proferentem protects the insured from the vagaries of any unfavourable interpretation of an ambiguous term. Consequently, it was held that the said rule can be pressed into service. Para 27 to 29 of the said judgment is extracted hereinunder:

*"27. While the court ultimately denied insurer's liability, it laid down the manner in which ambiguities were to be interpreted. Since then, a catena of judgments has upheld this approach. In **United India Insurance Co. Ltd. v. Pushpalaya Printersia**, a Division Bench of this Court was confronted with interpreting the term 'impact' in an insurance policy for protection against damage caused to the insured building. Interpreting the term to include damage caused by strong vibrations by heavy vehicles without 'direct' impact, this Court held:*

"The only point that arises for consideration is whether the word "impact" contained in clause 5 of the insurance policy covers the damage caused to the building and machinery due to driving of the bulldozer on the road close to the building... (1) it is also settled position in law that if there is any ambiguity or a term is capable of two possible interpretations, one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event.... Where the words of a document are ambiguous, they shall be construed against the party who prepared the document. This rule applies to contracts of insurance and clause 5 of the insurance policy even after reading the entire policy in the present case should be construed against the insurer"

(emphasis supplied).

28. Similarly, in ***Sushilaben Indravadan Gandhi v. New India Assurance Company Ltd.***, this Court charted the evolution of the rule of contra

proferentem, and relied inter alia on its explanation as provided under Halsbury's Laws of England:

"Contra proferentem rule. Where there is ambiguity in the policy the court will apply the contra proferentem rule. Where a policy is produced by the insurers, it is their business to see that precision and clarity are attained and, if they fail to do so, the ambiguity will be resolved by adopting the construction favourable to the insured. Similarly, as regards language which emanates from the insured, such as the language used in answer to questions in the proposal or in a slip, a construction favourable to the insurers will prevail if the insured has created any ambiguity. This rule, however, only becomes operative where the words are truly ambiguous; it is a rule for resolving ambiguity and it cannot be invoked with a view to creating a doubt. Therefore, where the words used are free from ambiguity in the sense that, fairly and reasonably construed, they admit of only one meaning, the rule has no application.

29. The rule of contra proferentem thus protects the insured from the vagaries of an unfavourable interpretation of an ambiguous term to which it did not agree. The rule assumes special significance in standard form insurance policies, called contract d' adhesion or boilerplate contracts, in which the insured has little to no countervailing bargaining power. This consideration is highlighted in the facts of this case, since the risks that ECGC is mandated to cover is its business, and other insurers rarely foray into the field.

30. A plain reading of the policy in question demonstrates that it was taken to protect against failure of the foreign buyer in paying the Indian exporter for goods exported. It was not a policy taken to cover in-transit insurance, and the cause of action triggering the claim arose much later, i.e., on 14.02.2013, well within the coverage of the policy. While interpreting insurance contracts, the risks sought to be covered must also be kept in mind. In Peacock Plywood (P) Ltd. v. Oriental Insurance Co. Ltd. while determining the validity of an insurance policy for a stranded ship, a Division Bench of this Court, noting that none of conditions in the termination clause were triggered, held:

"When the termination of the contract of insurance has actually taken place, is essentially a question of fact. An insurance policy is to be construed in its entirety. A marine insurance policy does not come to an end only because the ship became stranded at a port"

33. The ratio of the aforesaid judgments on the facts of the present case support the contention of the Insurance Company as this Commission does not find any ambiguity in the terms of the policy involved herein.

34. The absence of the watchman on the intervening night and no deployment on holidays was therefore a clear breach of the policy by the Complainant that is established on record. Consequently, there is no scope of reading or interpreting the said clause in any other way. If there is a breach, on account of the lapse of the Complainant, then this lapse militates against the purpose of the policy only on account of the lapse on the part of the Complainant. The absence of the watchman is an express breach of the condition of policy by the complainant which is it's own voluntary contribution. The subsequent memo dated 04.01.2017 only manifests that was existing in the policy. The condition of the presence of a watchman was clearly intended in the policy, hence the issuance of the letter dated 04.01.2017 does not demonstrate any unclarity in the policy.

35. In the absence of any ambiguity, the question of applying the contra proferentem rule does not arise and therefore the claim was rightly repudiated by the Insurance Company. The Complainant therefore has failed to establish deficiency in service and hence, deserves to be dismissed. The Complaint is accordingly rejected.

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A. P. SAHI
PRESIDENT