NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 308 OF 2013

1. M/s HCC-CPPL JV,
Plot No. 6, Kavuri Hills, Phase-I, Jubilee Hills,
HYDERABAD - 500033. .....Complainant(s)

Versus

1. M/s ICICI LOMBARD GENERAL INSURANCE COMPANY LTD. & ANR.,
Through its Director, ICICI Lombard House, 414, Veer Savarkar Marg, Near Sidhi Vinayak Temple, Prabhadevi,
MUMBAI - 400025.
2. M/s ICICI Lombard General Insurance Company Ltd.,
Through its Director, Osmana Plaza, 6-3-352/1, 3rd & 4th Floor, Road No. 1, Banjara Hills,
HYDERABAD. .....Opp.Party(s)

BEFORE:
HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Complainant : Ms. Anubha Agrawal, Advocate
Mr. Tadimalla Bhaskar Gowtham, Advocate

For the Opp.Party : Mr. Katta Laxmi Prasad, Advocate

Dated : 03 May 2023

ORDER

1. The present Consumer Complaint has been filed under Section 12 of the Consumer Protection Act, 1986 (for short “the Act”) by M/s HCC-CPPL JV (hereinafter referred to as the Complainant Company) against Opposite Party, i.e., ICICI Lombard General Insurance Co. Ltd. (hereinafter referred to as Opposite Party Insurance Company).

2. The brief facts of the case are that the Complainant Company is specialized in Canal Earthworks, Hydro Based Projects and Tunneling Projects. Government of Andhra Pradesh awarded a contract to the Complainant for executing the Vellgonda Tunnel Irrigation Project. The contract was awarded to the Complainant for â‚¹7,35,21,00,000/- and Agreement with the State Government was entered into on 21.06.2007. The contract value included the cost, transportation, storage, assembling,

erection, commissioning and operation of Tunnel Boring Machine till the end of the completion of the Project. In response to quotations invited from various Insurance Companies to cover the Project under Contractor's All Risk (CAR) Insurance Policy, the Opposite Party Insurance Company offered an All Risk Insurance Policy for the total cost of Project for â,¹7,35,21,00,000/- for a premium of â,¹2,03,00,000/-, which was accepted by the Complainant Company. Accordingly, the Complainant Company obtained an Policy bearing No. 5004/00001335 dated 21.07.2007 valid from 03.07.2007 to 02.07.2012 i.e. for a period of 60 months, from the Opposite Party Insurance Company after paying the entire premium of â,¹2,03,00,000/- to the Opposite Party Insurance Company. In terms of the Agreement dated 21.06.2007 entered between the Complainant and the Government of Andhra Pradesh, the Policy was lodged with the Irrigation Department. Later on one more set of Policy document bearing No. 5004/00003692 was received by the Complainant mentioning sum insured as â,¹311.72 crores and total premium was shown spread into 18 instalments amounting to â,¹2.47 Crore. It was assumed by the Complainant that this was an annexure to the main Policy, i.e., 5004/00001335, which was lodged with the Irrigation Department.

3. The Project was going on smoothly from 2007 till 2011 except minor problems but unfortunately, on 06.06.2011, head of the tunnel under construction collapsed due to geographical accident resulting into damage to the Tunnel Boring Machine (TBM) and loss to Insured Contract Works. Immediately the Complainant intimated the said loss to the Opposite Party Insurance Company and lodged a claim of â,¹35.70 crores. The Opposite Party Insurance Company appointed M/s. Cunningham Lindsay International Pvt. Ltd., as Surveyor to assess the loss.

4. After survey, the Surveyor expressed in one of its communication that the loss was not due to accident and is not payable as per terms of the Policy. During the discussion with Surveyor it was revealed that the Surveyor has been assessing the loss in reference to Policy No. 5004/00003692 issued for sum insured as â,¹311.72 crores, whereas the Complainant has lodged the claim in respect of Policy bearing No. 5004/00001335 for total sum insured of â,¹735.21 Crore. Accordingly, the discrepancies were brought to the knowledge of the Opposite Party Insurance Company. Consequently, vide email dated 04.04.2012, the Opposite Party Insurance Company advised the Surveyor to assess the liability and quantum of claim under the main Policy, i.e., 5004/00001335. The Surveyor vide its Final Report dated 19.01.2013 recommended repudiation of the claim of the Complainant on the ground that no unforeseen physical loss or damage had occurred to the insured property. Based on the Surveyor's Report, the Opposite Party Insurance Company repudiated the claim of the Complainant vide letter dated 31.01.2013 communicating that there has been no indemnifiable loss and the claim is not admissible under the Policy. Vide letter dated 12.02.2013, the Complainant requested the Opposite Party Insurance Company to clarify the correct policy issued by them to cover the subject insurance and informed them about appointment of Independent Surveyor by the Complainant for assessing the loss. The Opposite Party Insurance Company vide letter dated 27.02.2013 reiterated that the Policy No. 5004/00003692 is valid policy as per their records and Policy No. 5004/00001335 does not exist in their record. Vide letter dated 01.05.2013 the Complainant drew attention of the Opposite Party Insurance Company to its Email dated 04.04.2012 wherein it was confirmed that the insurance claim would be assessed under the Policy No. 5004/00001335. But the Opposite Party Insurance Company maintained their earlier stand and reiterated that the Policy No. 5004/00003692 is valid policy as per their records and Policy No. 5004/00001335 does not exist in their record. It was averred by the Complainant that as per IRDA guidelines, claims

under the Insurance Policy issued by Indian Insurers should be surveyed by an Indian Surveyor licensed by IRDA, but Opposite Party Insurance Company appointed M/s. Cunningham Lindsay International Pvt. Ltd. a surveyor which is the sister company of one of its Partner, Lombard. Therefore, in the present circumstances the Surveyor's approach could be far from being impartial and fair. Accordingly, the Complainant appointed an Independent Surveyor, i.e., M/s. Mehta & Padamsey Surveyors Private Limited, Chennai to assess the loss, who confirmed that the Complainant's claim is well within the scope of the Policy. The Complainant Company requested the Opposite Party Insurance Company to reconsider its decision and pass its legitimate claim but the Opposite Party Insurance Company did not reconsider the case and maintained that the Claim is not payable in terms of the Policy.

5. Alleging deficiency in service and unfair trade practice on the part of the Opposite Party Insurance Company for issuing two policies in respect of one Project and repudiating the legitimate claim, the Complainant Company has filed the present Complaint seeking following reliefs:-

"a) Allow the Complaint in terms of the submissions made above and award a total compensation of â‚¹18.66 Crores (Rupees Eighteen Crores Sixty Six Lacs only) along with future interest @24 % per annum;

b) Damage towards mental agony and harassment that the Complaint was subjected to by the conduct of the Respondent Company;

c) Litigation Cost â‚¹50,000/- (Rupees Fifty Thousand Only); and

d) Pass such other and further order(s) as this Hon'ble Forum may deem fit and proper in the facts and circumstances of the case."

6. The Opposite Party Insurance Company contested the Complaint by filing the Written Statement inter alia, denying the contents of the Complaint and raising the Preliminary Objections that; (i) the Complaint filed by the Complainant is not maintainable as the Complainant Company does not fall within the definition of 'Consumer' (ii) the dispute involved in the present case would require a detailed examination and leading of evidence which is not possible in summary proceedings of the Consumer Fora and hence, the parties are required to be relegated to a Civil Court. On merits, it was stated that they have repudiated the claim of the Complainant Company on the basis of the Surveyor Report, wherein it was recommended that no cause of action for any liability has arisen under the terms and condition of the Contractor's All Risk Insurance Policy (CAR), they concluded that there has been no indemnifiable loss and the claim was not maintainable under the Policy and closed the Claim of the Complainant as 'no claim' in their record. It was submitted that there was no deficiency in service on their part and it was prayed that the Consumer Complaint be dismissed.

7. The Complainant filed their Rejoinder denying all the rival contentions raised by the Insurance Company in its Reply and reiterating the averments made in the Complaint.

8. Ms. Anubha Agrawal, learned Counsel appearing on behalf of the Complainant submitted thatthis Commission had the jurisdiction to entertain the present complaint under the Consumer Protection Act. It was reiterated that the Complainant had approached the Opposite Party Insurance Company for issuance of Policy for â‚¹735.21 crores only and filled in the required Proposal Form for the said amount, however, a second Policy for lesser amount (â‚¹311.72 crores) was issued without the concurrence or knowledge of the Complainant. M/s Cunningham Lindsey international (Pt.) Ltd. was neither independent nor impartial as it was the sister Company of Fairfax Financial Holdings Limited which had a substantial interest in Lombard Insurance which had covered the Project and it was due to this hidden arrangement, the genuine claim of the Complainant was rejected. It was further submitted that as per Insurance Regulatory & Development Authority (IRDA) guidelines the Insured was entitled to seek the services of an independent Surveyor under Section 64 UM of the Insurance Act, 1938 and under Chapter IV Regulations 13 (2) (ix). Accordingly, the Complainant appointed an independent and IRDA Licensed Surveyor namely M/s Mehta & Padamsey Surveyors Private limited, Chennai, who conducted a survey at the site and confirmed that the Complainant's claim was well within the scope of company. It was prayed that the Consumer Complaint be allowed.

9. Per contra Mr. Katta Laxmi Prasad, learned Counsel for the Opposite Party Insurance Company submitted that Complainant suppressed and misrepresented the Policy document taken from M/s. United India Insurance Company in respect of the same contract and also suppressed the fact that the claim made by the complainant to M/s. United India Insurance Company Ltd. had been repudiated and further that the said repudiation was admitted and not challenged. It was further submitted that was submitted that M/s. Cunningham Lindsey International (P) Ltd. was neither a subsidiary nor a joint venture of the insurance company, but an independent Surveyor firm duly licensed by the Authority for the purpose. It was submitted that the survey report M/s. Mehta and Padamsey filed on behalf of the Complainant was an after-thought document, which failed to establish the important dates like appointment of surveyor and date of inspection, moreover, it failed to challenge the observations of the Survey Report filed by the Opposite Party Insurance Company. It was further submitted that Opposite Party had issued Contractors All Risk Insurance Policy Nos. 5004/0003692 to the Complainant and no other Policy as alleged. It was submitted that the concept of Main Policy and Sub Policy as introduced by the Complainant i.e. Main Policy bearing No.5004/0001335 claimed to have been issued was not borne by record. Further, the claim of the Complainant was also examined by the Surveyor under the other Policy bearing No.5004/0001335. However, as per the Surveyor Report, the claim was in-admissible under the policy issued by the company i.e. bearing No.5004/0003692 or as claimed under an alleged Policy bearing No.5004/0001335. It was also submitted that the Complainant had categorically differentiated between TBM and the Insured Contract Works, thereby reinforcing the Surveyor's finding that the TBM was not an insured property under the policy issued by the Opposite party. Even if it was presumed that TBM was an insured property under the current CAR policy, loss or damage to contractor's machinery due to mechanical breakdowns was excluded under the CAR policy. It was further contended that there was no deficiency in service on their part and prayed that the Consumer Complaint be dismissed.

10. We have heard Ms. Anunbha Agrawal, learned Counsel for the Complainant Company, Mr. Katta Laxmi Prasad, learned Counsel for the Opposite Party Insurance Company and perused the Complaint, Written Statement, the documents filed by the respective Parties and have given a thoughtful consideration to the various pleas raised by them.

11. The contention of the Opposite Party that the present Complaint is not maintainable since the Complainant does not fall within the definition of 'Consumer',is rejected in view of the Judgment passed by this Commission in Harsolia Motors vs. National Insurance Co. Ltd. I, (2005) CPJ 27 (NC) and affirmed by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Harsolia Motors and Ors. (Civil Appeal No(s). 5352-5353 of 2007, decided on 13.04.2023 wherein it has been held that:-

"37. Applying the above principles to the present case, what needs to be determined is whether the insurance service has a close and direct nexus with the profit generating activity and whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. The fact that the insured is a commercial enterprise is unrelated to the determination of whether the insurance policy shall be counted as a commercial purpose within the purview of Section 2(1)(d) of the Act.

……

39. Applying the aforesaid test, two things are culled out; (i) whether the goods are purchased for resale or for commercial purpose; or (ii) whether the services are availed for any commercial purpose. The two-fold classification is commercial purpose and noncommercial purpose. If the goods are purchased for resale or for commercial purpose, then such consumer would be excluded from the coverage of the Act, 1986. For example, if a manufacturer who is producing product A, for such production he may be required to purchase articles which may be raw material, then purchase of such articles would be for commercial purpose. As against this, if the same manufacturer purchases a refrigerator, television or air-conditioner for his use at his residence or even for his office has no direct or indirect nexus to generate profits, it cannot be held to be for commercial purpose and for aforestated reason he is qualified to approach the Consumer Forum under the Act, 1986.

40. Similarly, a hospital which hires services of a medical practitioner, it would be a commercial purpose, but if a person avails such services for his ailment, it would be held to be a non-commercial purpose. Taking a wide meaning of the words "for any commercial purpose", it would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit. Profit is the main aim of commercial purpose, but in a case where goods purchased or services hired is an activity, which is not directly intended to generate profit, it would not be a commercial purpose."

12. Since the insurance policy is taken for reimbursement or for indemnity of the loss which may be suffered on account of insured perils, the services of the insurer cannot be said to have been hired or availed for a commercial purpose. Therefore, we are of the considered view that the Complainant Company is a 'Consumer' as defined under Section 2(1)(d) of the Act.

13. The next objection raised by the Opposite Party Insurance Company that the Complaint is required to be relegated to the Civil Court to decide the complicated questions of law involved in the present case, is rejected in view of the law laid down by the Hon'ble Supreme Court in the case of Dr. J.J. Merchant and Ors. Vs. Shrinath Chaturvedi – 2002 (6) SCC 635 wherein it has been held that the procedure prescribed under the Act for disposal of the Complaint is adequate to decide cases involving complicated questions of law and the facts.

14. The learned Counsel for the Complainant relied upon "The Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000" issued by Insurance Regulatory and Development Authority (IRDA) which deals with the duties and responsibilities of a surveyor and loss assessor. Regulation 13(2)(i) and (ix) reads as under:-

"13 The Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000

13 -

(1) A surveyor and loss assessor shall, for a major part of the working time, investigate, manage, quantify, validate and deal with losses (whether insured or not) arising from any contingency, and report thereon, and carry out the work with competence, objectivity and professional integrity by strictly adhering to the code of conduct expected of such surveyor and loss assessor.

(2) The following, shall, inter alia, be the duties and responsibilities of a surveyor and loss assessor:-

(i) declaring whether he has any interest in the subject-matter in question or whether it pertains to any of his relatives, business partners or through material shareholding. Explanation .-For the purpose of this clause 'relatives' shall mean any of the relatives as mentioned in Schedule 1A to the Companies Act, 1956;

.....

(ix) surveying and assessing the loss on behalf of insurer or insured;"

15. Relying upon the above Regulations, it was contended that the Surveyor appointed by the Opposite Party Insurance Company, i.e., M/s. Cunningham Lindsey International (Pvt.) Ltd., is neither independent nor impartial since M/s. Cunningham Lindsey International (Pvt.) Ltd. is the sister concern of Fairfax Financial Holdings Limited, which has substantial interest in Lombard Insurance, therefore, the appointment of M/s. Cunningham Lindsey International (Pvt.) Ltd. is in violation of Regulation 13(2) (i) of the Regulations 2000. However, the said allegation was denied by the Opposite Party Insurance Company.

16. So far as the contention of the Opposite Party Insurance Company that they closed the claim of the Complainant relying on the Surveyor Report, is concerned, it may be observed that M/s. Cunningham Lindsey International (Pvt.) Ltd.,Surveyor appointed by the Opposite Party Insurance Company, after conducting survey of the site recommended as under:-

"We had conveyed to HCC our view points on issue of liability under policy and also raised various issues related to incident, fact finding on insured's monetary claim submitted and our contention for policy coverage related to TBM vide our letters in particular dated 4th April 2012 and 14th June 2012. Important issues were as under:-

1. Following the incident of encountering loose muck, soil and water, no damage was found to have taken place to constructed part of the project work, i.e. tunnel work completed till the date of incident hence no repair was envisaged. The subject matter of insurance under the instant policy covers '..physical loss or damage to the insured property.'

2. The existence of varied soil condition and possibility of such occurrences was known to HCC and as a result HCC were advised to continue tunnel boring in suspected location with additional care and caution. HCC JV Partner had similar experiences earlier also, which needs to be addressed by contractor as their normal and foreseable project risks. In our opinion, these kind of difficulties in such projects and with these site conditions were already anticipated and ought to be taken care or by Contractors in their project construction methodology, design and costing.

3. The claim initially submitted included cost of two By Pass tunnel and on verification, no such By pass tunnel work was found to have been carried out. In the revised claim bill submitted, HCC has not related any item of their claim to any damage to contract work as no description of damage item or quantity are given. Hence, the claim is considered to be unrelated to any damage to contact work. Certain items which ought not to be claimed are also appearing in the claim bill leading to exaggeration of the claim bill.

4. TBM is a part of contractor's plant and machinery and is intended to be used for construction of the Project. TBM including other such machines, though intended for carrying out the project work, do

not form part of project, though their usage cost may be inbuilt in the overall contract value. CAR policy on the other hand is intended to cover only the project works unless explicitly extending the coverage for contractor's machinery / equipments. Though HCC contended that sum insured in the policy was inclusive of the TBM, none of the policies (provided by insured and insurer) are mentioning specific coverage for TBM.

5. From the circumstantial evidence, we have concluded earlier that damages seen in the TBM were caused during normal operation after TBM experienced loose muck / clay. Even if it is presumed that TBM was an insured property under the current CAR Policy, loss or damage to contractor's machinery due to mechanical breakdowns is excluded under CAR Policy.

It is important to note that HCC had taken a specific insurance for TBM under CPM Policy with United India General Insurance Co. Ltd. and also lodged a claim under the said policy. We had requested for details of their claim proceeding with United India, but till date no information is provided. This fact being material information, we fail to understand why insured is not providing this information.

On the basis of above, we conclude that there was no damage to the property insured under the CAR Policy. We also opine that subject TBM is not covered under the CAR Policy. However, even if TBM was covered under CAR Policy, the circumstances of the damage to TBM falls under the exclusion of CAR Policy.

17. M/s Mehta & Padamsey Surveyors Private Limited, Surveyors, were appointed by the Complainant Company / Insured to survey and assess the loss, which is permitted as per Guidelines issued by IRDA. Accordingly, Survey Report filed by M/s. Mehta &Padamsey Surveyors Private Limited cannot be simply brushed aside for the reason that they had been appointed by the Complainant Company/Insured. M/s. Mehta & Padamsey Surveyors Private Limited, after conducting the detailed survey at the site concluded that the Complainant's Claim is well within the scope of the Opposite Party Company by observing as under:-

"32. The Policy specifies the basis of loss settlement under memo 4 as under:-

Memo 4 – BASIS OF LOSS SETTLEMENT –

In the event of any loss or damage the basis of any settlement under this Policy shall be –

a) in the case of damage which can be repaired the 'cost of repairs necessary to restore the

property to their condition immediately before the occurrence of the damage" less salvage, or

b) in the case of a total loss – the actual value of the property immediately before the occurrence of the loss less salvage;

however, only to the extent the cost claimed has to be borne by the Insured and to the extent they are included in the Sum Insured and provided always that the provisions and conditions have been complied with.

All damages, which can be repaired, shall be repaired, but if the cost of repairing any damage equals or exceeds the value of the property immediately before the occurrence of the damage, the settlement shall be made on the basis provided for in (b) above.

The cost of any provisional repairs will be borne by the Company if such repairs constitute part of the final repairs and do not increase the total repair expenses.

The cost of any alterations, additions and/or improvements shall not be recoverable under this Policy.

33. In the above case, the problems in the tunnel attributable to one or more of a series of geological surprises – which does not figure as exclusion either under general exclusion or under exclusions specified under section I – was attended by the applicants by various means, some of which were not successful initially.

34. As such only what could be termed necessary repairs out of the claims submitted alone – in our considered view – would qualify for a claim under the policy.

35. In our view, the situations shows that the tunnel boring machine was trapped in an extreme situation whilst on the run warranting immediate and extensive attention. We would consider the situation as one of an accident involving the same.

36. It is a fact that following the collapse of a large chunk of over burden due to geological strata the TBM was immobilised and warranted immediate attention and repairs in the form of

access to the stalled area'

cleaning and servicing,

restoration of operations

37. While considering the cost of repairs, we could only the cost incurred in necessary repairs and not the cost as incurred over the entire period.

38. The scope of necessary repairs was a matter of serious discussions between ourselves and the applicants.

39. We reproduced before the applicants, the meaning of necessary repairs as shown in Blacks Law Dictionary Page 1058, Eighth Edition published by Thomson West, USA

Necessary Repair:- An improvement to property that is both needed to prevent deterioration and proper under the circumstances.

40. While it is true that without this expenditure (incurred directly for Restoration of the TBM involved in the claim) the TBM could not have been restored to operations and it is part of necessary repairs, such costs incurred which did not in any manner benefit the operability of the machine of such costs which could not be considered entirely towards the activities could not be considered under necessary repairs in full or part as the case may be.

41. In the claim under question, in respect of the expenses relating to the restoration and servicing of the tunnel boring machine such expenses would be identified specifically to action on what a reasonable person of normal prudence would resort in such a situation.

42. In an extreme situation, involving a very costly item declared for insurance which was also the hear of the Project. It is our considered submission that the applicants did take all reasonable steps within their powers to minimise the loss and save the machine. But for these actions involving due diligence in the matter of approaching the repairs the damage to the machine would have been total resulting in abandonment of the TBM.

43. We reproduce the claim as preferred in the statement marked shown in page 22 of the Annexure

to this report. Pages 1 to 21 are detailed tabulation of the same in page 22 of the Annexure:

Sl. No.	Particulars	Gross claim value of Amount (Rupees)	Revised Claim submitted (Rupees)
1	Power consumption	1,94,06,973.46	1,94,06,973.46
2	Staff Salaries	2,40,96,368.00	2,40,96,368.00
3	Expatriate Salaries (Robbins)	1,14,35,303.00	1,14,35,303.00
4	Local Purchase/ Material Consumed from Stock	2,16,64,212.69	2,20,64,726.61
5	Oil & Lubricants	22,19,816.55	22,19,816.55
5.1	HSD used for Locomotives		8,66,106.00
6	Imported Material	2,82,30,844.00	2,82,30,844.00
7	Imported Equipment & Other Accessories	4,00,06,756.00	4,00,06,756.00
8	Thrust Cylinders and Accessories	1,08,40,167.70	1,08,40,167.70
9	Articulation Cylinders	55,00,000.00	-
10	Consultancy Charges to Self Experts	19,35,38,752.00	2,51,55,545.64
	Total Expenditure	35,69,39,193.40	18,43,22,606.96

44. We give below our analysis of the same and our assessment as under:

Item 1 :This relates to power consumption and power requires to be maintained for other activities as well. The applicants in their submissions stated that the power consumption between June and December 2011 was essentially towards repairs only. We regretted our inability to consider the same in full. After deliberations, we have considered 50% of the active power consumption in the tunnel towards repair works as shown in Annexure 1 and the balance has been excluded.

Item 2: This relates to the salaries for maintaining the sites and head office. This is a fixed expenditure which would be incurred whether or not the activities proceeded and the same as shown in Annexure 2 was therefore excluded in full.

Item 3: The services of Robbins were hired for operation of the tunnel and during the period of repairs no operation could be carried out and their costs were channelized into repair activities. Hence this cost has

been considered as part of the repairs under Annexure 3.

Item 4: This consisted of two sections procurements from outside and consumption from stores identified in Annexure 4.1 and 4.2 respectively, No supports were let in for the items in 4.2 though such items were required in repairs and we have therefore excluded items claimed under Annexure 4.2

Item 5: Diesel usage for locomotive: The access to the site is through a rail line drawn by a locomotive. No access to the site was possible without using this. However on the lines of power consumption have limited the assessment on diesel at 50% onIy and treated that the balance for were used other activities.

Item 6: The procurements from Innotek were entirely for the saving operations and restoration off site. Hence these were considered in full as a necessary repair cost.

Item 7: While it is true that several equipment and auxiliaries were procured for carrying out the repairs, the one drill as well as the BJM pumps which were more than half the cost of the total value were available after the repairs ad these could be put to other use as required at a later stage indifferent location. The cost of these were excluded from our assessment.

Item 8: The auxiliary Thrust cylinders were procured for repair and restoration of the TBM and this was therefore treated as a necessary expenditure.

Item 9: The cost paid to Seli of Italy necessarily relating to repairs have been considered in this grouping for the purpose of the claim. The services of Seli were further retained by the applicants and as such the expenses beyond the repairs have been excluded by us. Against â,¹2,51,55,546/- claimed we have considered â,¹1,82,48,300/- and we have excluded â,¹69,07,246 being the Feb 2012 bill raised we after completion of repairs and restarting of operations.

45. In terms of the same the gross loss was assessed at â,¹10,17,52,907/-.

46. The salvage would be limited to the scrap of the dismantled parts of the TBM. The rest of the expenses are inputs for holding the tunnel and saving the machine only. We have considered an amount of â,¹5,00,000/ towards scrap from these which is fair and reasonable.

47. Adequacy of sum insured: This is being preferred under an EPC contract with no escalation. This would mean that the costs do not undergo any revision during the period of the contract except as agreed between the contracting parties. As there was no such agreement during the period from the time of commencement of the policy till the date of loss, we consider the sum insured to be adequate.

48. Excess: The applicants would have to bear an excess of 5% of the claim amount as excess for each and every claim under the policy and hence our working of the net claim would be as follows:

Loss Assessed as per Summary	â,¹10,12,52,908/-
Less : Excess at 5%	â,¹50,62,645/-
Amount for which claim could be lodged	â,¹9,61,90,263/-”

18. There are two competitive Surveyors’ Reports available on record – one filed by the Complainant Company and the other filed by the Opposite Party Insurance Company. After having gone through both the Surveyors’ Reports, we are of the considered view that the Report filed by M/s. Mehta & Padamsey Private Limited, appears to be more authentic which is based on rightful appreciation of the terms and conditions mentioned in the Policy as well as material available on record. We are in full agreement with the observation and the assessment made by the M/s. Mehta & Padamsey Private Limited, Surveyor, which had assessed the claimed loss at â,¹9,61,90,263/-. Consequently, the Complainant company is entitled for â,¹9,61,90,263/- towards loss claim under Contractor’s All Risk (CAR) Policy issued by the Opposite Party Insurance Company.

19. For the reasons stated hereinabove and respectfully following the principles laid down by the Hon’ble Supreme Court in Judgments quoted above, we are of the considered view that deficiency in service on the part of the Opposite Party Insurance Company is writ large while repudiating the rightful claim of the Complainant. Consequently, the present Consumer Complaint is partly allowed and the Opposite Party Insurance Company is directed to settle the claim of the Complainant Company by paying a sum of â,¹9,61,90,263/- (Rupees Nine Crore Sixty One Lakh Ninety Thousand Two Hundred Sixty Three only) alongwith interest @9% p.a. from the date of lodging of the claim till realisation within 8 weeks from today, failing which the interest of interest will increase from 9% p.a. to 12% p.a. The Opposite Party Insurance Company is also directed to pay â,¹50,000/- towards cost of litigation to the Complainant.

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R.K. AGRAWAL

PRESIDENT

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DR. S.M. KANTIKAR
MEMBER