

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SOUTH MUMBAI**

CONSUMER COMPLAINT NO. DC/AB1/482/CC/96/2021

M/s. Sigrid Ospitalita and Entertainment LLP

Popularly known as "1 Above"

Having its office at 1502,

Chaitya Tower CHS Ltd., ShivdasChapsi

Marg, Mazgaon, Mumbai - 400 010

Also at

M/s Sigrid Ospitalita and Entertainment LLP

3rd Floor, Lower Level, Trade House, Kamal Mill,

Lower Parel, Mumbai - 400 013

.....Complainant(s)

Versus

1. Shriram General Insurance Company Limited

E-8 EPIP, RIICO Industrial Area,

Sitapura, Jaipur, Rajasthan-302022

1 and 2 ground floor, heritage plaza, Telli Gali,

Cross Lane, Andheri East,

Mumbai-400069.

2. Grovalue Insurance Brokers Pvt Ltd.

03, Enterprises Centre, off Nehru Road,

Near Domestic Airport, Vile Parle- East

Mumbai-400099, India.

.....Respondent(s)

BEFORE:

HON'BLE MR. PRADIP G. KADU INCHARGE , PRESIDENT

HON'BLE MRS. PRATIBHA R. PATIL , MEMBER

HON'BLE MRS. GAURI M. KAPSE , MEMBER

FOR THE APPELLANT:	ADV. KIRAN JAIN & CO.
FOR THE RESPONDENT NO. 1:	ADV. S. R. SINGH & CO.
	ADV. AGRAWAL / GHANSHYAM
PATIL	
FOR THE RESPONDENT NO. 2:	EX-PARTY

DATED: 23/09/2026

J U D G M E N T

(Decided on 23/09/2026)

SMT. G. M. KAPSE, MEMBER

1. This is an action under Section 35 of Consumer Protection Act 2019; the briefly stated case is as follows:
2. The Complainant, a Limited Liability Partnership engaged in the business of running a bar and restaurant at Kamala Mills, Lower Parel, Mumbai.
3. The Complainant was operating a bar and restaurant at One Above, Kamala Trade House, 2nd Floor including Open Terrace, Kamala Mills, Lower Parel, Mumbai. It relies upon various licences, permissions, approvals and NOCs issued by MCGM, Fire Department, FDA and other authorities to contend that its business was lawful and compliant with applicable requirements.
4. The Complainant purchased a Business Protector Policy from Opposite Party No.1 through Opposite Party No.2, an insurance broker, on 25.07.2017, bearing Policy No. 215032/48/18/000146. The Fire and Special Perils cover was for Rs.3 Crores. The total premium paid was Rs.1,00,295/-. The policy also contained several other covers including burglary, money insurance, plate glass, machinery breakdown, electronic equipment, fidelity guarantee and public liability.
5. According to the Complainant, a risk inspection was conducted by the insurer's Risk Engineer before/after issuance of the policy. The Complainant contends that the insurer was therefore fully aware of the nature, layout and condition of the premises. It alleges that despite repeated requests, the Risk Survey Report was not supplied to it.
6. A fire occurred at the insured premises on 29.12.2017 at about 00:27 hours. The Complainant asserts that the fire originated in the adjoining Mojo's Restaurant/Bar and spread towards its premises because of wind velocity and

flying embers. According to the Complainant, the fire caused extensive damage to its property, fixed assets and cash.

7. The Complainant lodged a claim of Rs.5,67,25,045/-. A surveyor, Bhatawadekar Insurance Surveyors & Loss Assessors Pvt. Ltd., was appointed by the Opposite Parties and submitted survey reports dated 26.07.2018 and 12.02.2019. The Opposite Party No.1 repudiated the claim by letter dated 12.03.2019. The reasons allegedly included:
 - i. non-production/non-disclosure of requisite NOCs and licenc
 - ii. alleged non-disclosure of material facts;
 - iii. alleged increase of risk in terms of Condition 18(a);
 - iv. alleged failure to provide requisite documents;
 - v. presence of a temporary monsoon shed made of bamboo / tarpaulin/ cloth and other combustible material;
 - vi. alleged violations relating to the insured premises and its use.
8. The Complainant contends that all requisite licences, approvals and NOCs were available and that the insurer had conducted a pre-insurance risk inspection. It further submits that there was no material alteration of the premises and that the temporary shed did not cause the fire.
9. According to the Complainant, the fire originated from the adjoining Mojo's Restaurant and thereafter spread to its premises.
10. The Complainant relies upon the Fire Brigade Report and contends that the probable origin of the fire was "flying embers" from lighted charcoal/ sigree at the adjoining Mojo's Bistro, which came into contact with combustible material. It disputes the reliance placed by the Opposite Parties upon the alleged deficiencies in the building's fixed fire-fighting system.
11. The Complainant disputes the applicability of Condition 18(a), contending that the presence of a temporary monsoon shed cannot by itself constitute a material alteration resulting in an increased risk. It submits that the shed did not cause the fire and that the Opposite Parties have failed to establish any causal connection between the shed and the occurrence of the fire.
12. The Complainant also disputes the allegation concerning hookah usage. It claims that only herbal hookah was being served and that it did not require a separate licence. It further contends that the charcoal used was coconut-shell charcoal ignited through an electric burner and that it could not have caused the flying embers referred to in the Fire Brigade Report.

13. The Complainant challenges the survey report as biased, arbitrary and unreliable, alleging that the surveyor failed to properly inspect the premises and assess the actual loss. It relies upon the Insurance Surveyors and Loss Assessors Regulations and the requirement of impartiality of a surveyor.
14. The Complainant relies upon the terms of the insurance policy, the principle of indemnity in insurance contracts, the decision in *Castellain v. Preston*, and the provisions relating to communication of policy warranties, exclusions and conditions. It contends that the repudiation amounts to deficiency in service and unfair trade practice.
15. Thus, the Complainant has been constrained to file present complaint, against Opposite Party, with following payers:
 - a. To pay Rs.5,67,25,045/- towards the insurance claim along with 24% p.a. interest from 12.03.2019 till realization;
 - b. To pay compensation of Rs.50,00,000/- towards mental agony and harassment;
 - c. To pay litigation costs and counsel fees of Rs.5,50,000/-;
16. The Complainant has placed reliance on true copies of the documents which is at page no.39 to 128 of the record.
17. The Opposite party has filed written version wherein it has denied all the allegations levelled in the complaint; the following are the main defences:
 - a. It is the contention of Opposite Party No.1 that the dispute is essentially a commercial dispute and is required to be adjudicated by the competent Commercial Court. It submits that the insurance claim was duly attended to, processed and ultimately rejected after assigning detailed reasons. Therefore, according to Opposite Party No.1, there is no deficiency in service giving rise to a consumer dispute.
 - b. The Complainant has suppressed material facts with mala fide intention in order to substantiate an otherwise untenable insurance claim.
 - c. The risk and/or location had been materially altered, thereby substantially enhancing the risk beyond what was contemplated under the insurance policy. Consequently, no benefit under the policy was payable.
 - d. Opposite Party No.1 has alternatively contended that the policy covered the "open terrace" and not a "covered terrace"

and, therefore, property situated in or relating to the covered terrace was outside the scope of the insured risk.

- e. It is further alleged that the risk of fire was substantially enhanced because of the temporary monsoon shed made of bamboo sticks, tarpaulin and cloth, which were highly combustible. According to Opposite Party No.1, the shed caught fire from flying embers and contributed substantially to the rapid spread of the fire.
- f. It is also alleged that the Complainant had illegally/unauthorisedly used the covered terrace for storing and serving liquor, beer kegs and other alcoholic beverages, thereby increasing the fire risk.
- g. Opposite Party No.1 further alleges breach of several terms, conditions and express warranties contained in the policy. It contends that express warranties in an insurance contract are required to be strictly complied with, irrespective of whether the particular breach was relevant to the occurrence of the insured peril.
- h. Opposite Party No.1 disputes the Complainant's assertion that it possessed all necessary licences, approvals and NOCs. It alleges that there were gross violations of the permissions relied upon by the Complainant and that such violations enhanced the risk of loss. Opposite Party No.1 further points out that the policy was obtained through Opposite Party No.2, the insurance broking company. According to Opposite Party No.1, Opposite Party No.2 acted for and on behalf of the Complainant both before and after issuance of the policy. It is therefore contended that the broker was acting as the Complainant's agent and ought to have been properly involved in the proceedings.
- i. The policy was issued pursuant to the proposal submitted by the Complainant/broker. It relies upon the terms, conditions and warranties of the insurance policy, contending that the policy constitutes a binding contract between the parties. According to Opposite Party No.1, the Complainant cannot claim any benefit beyond the coverage specifically provided under the policy. It is further contended that coverage is available only if the insured risk occurs at the "risk location" as defined under the policy. Opposite Party No.1 specifically

maintains that the policy covered an open terrace, whereas the Complainant's claim concerns a terrace which had been covered by the temporary shed. Consequently, it submits that loss occurring in the covered/enclosed terrace was not within the defined risk location and was therefore not payable.

- j. Opposite Party No.1 specifically denies the Complainant's allegation that the premises had undergone a detailed pre-insurance risk inspection or that any clearance of the risk had been granted by Mr. Praful. It explains that, as recorded in its letter dated 24.12.2019, Mr. Praful visited the premises on or about 03.08.2017 between 3:30 p.m. and 4:00 p.m. According to Opposite Party No.1, the visit was conducted after issuance of the insurance policy and did not constitute a detailed risk assessment. It is alleged that Mr. Praful was not even permitted to take photographs of the premises. Opposite Party No.1 therefore disputes that the inspection constituted an acceptance or approval of all the features and activities subsequently found at the premises. It also denies the Complainant's contention that the storage area, roof and ambience of the premises remained exactly the same as on the date of the fire.
- k. Opposite Party No.1 denies the Complainant's version regarding the circumstances in which the fire spread from Mojo's Restaurant to the Complainant's premises. It also denies the allegation that the Complainant suffered the loss as claimed. It consequently denies that the alleged loss falls within the coverage provided under the insurance policy.
- l. Opposite Party No.1 denies that the Complainant fully cooperated with the surveyor or supplied all documents sought from it. It points out that when the surveyor first visited the premises, none of the partners of the Complainant was present. According to Opposite Party No.1, the surveyors were consequently required to rely upon press reports and information furnished by employees of the Complainant while initially ascertaining the cause of the fire.
- m. Opposite Party No.1 denies that the surveyors failed to visit the premises after the fire. It further denies that the surveyors merely relied upon the preliminary Fire Brigade Report without conducting their own assessment. It submits that the

reports prepared by the Fire Brigade and other competent authorities were vital documents showing the condition of the premises immediately after the incident. According to Opposite Party No.1, those reports disclosed several violations of fire-safety norms which aggravated the fire and resulting damage. It strongly denies the Complainant's allegations of corruption or collusion between the landlord and BMC/Fire Brigade officials and states that it is not concerned with alleged illegalities committed by the landlord.

- n. Opposite Party No.1 states that the temporary monsoon shed was erected by the Complainant for the monsoon season. It contends that the shed ought to have been removed after the monsoon season; but continued to remain in existence even in December 2017, when the fire occurred. According to Opposite Party No.1, the continued existence of the shed transformed it from a temporary seasonal arrangement into a structure which materially altered the insured risk. It states that the shed was made from bamboo, tarpaulin and other combustible materials. The Opposite Party relies heavily upon the survey reports in support of its case.
- o. Opposite Party No.1 states that the surveyors prepared:
 - i. Preliminary Survey Report dated 30.12.2017;
 - ii. Second Status Report dated 19.02.2018; and
 - iii. Final Survey Report dated 12.02.2019.
 - iv. The surveyor assessed/recorded the alleged claim under the broad heads of:
 - 1. Material Damage - approximately Rs.3.5 Crores; and
 - 2. Business Interruption - approximately Rs.1 Crore.
- p. However, the surveyor advised the insurer to consider alleged breaches of warranties relating to: the fire-fighting facility not being ready/operational; and the roof of the restaurant being made of flammable material. The surveyor also recommended that a legal notice be issued to the insured regarding possible non-admissibility of the claim.
- q. Opposite Party No.1 states that the Complainant ultimately submitted various licences and documents in the first week of June 2018. The surveyors scrutinised the documents and raised observations and queries through their letter dated 26.07.2018. According to the surveyor's observations relied

upon by Opposite Party No.1, the liquor licence permitted a 331 sq. ft. permit room with a 53.9 sq. ft. bar, situated within the RCC structure. The Opposite Party contends that the licence therefore permitted liquor service and storage only within the enclosed RCC area. However, according to the surveyor, numerous liquor bottles and a full-fledged bar were found on the open terrace. The liquor storage room shown in the approved plan was also allegedly situated within the enclosed area, whereas during the survey the liquor storage was allegedly found near the entrance on the open terrace. Opposite Party No.1 therefore contends that the storage and serving of liquor on the open terrace was contrary to the permissions and increased the risk to the insurer. The surveyor found the FSSAI licence, Shops and Establishments certificate, provisional registration certificate, certificate of incorporation and certificate of registration to be in order. However, the surveyor allegedly found that the MCGM Eating House permission covered only 156.97 sq. metres, corresponding to the enclosed RCC area. Dining tables were allegedly found on the open terrace, which according to the surveyor was inconsistent with the permitted area. The MCGM Change of User approval was also allegedly incomplete, as only one page was supplied and the subsequent pages/approved plan were not produced. The surveyor therefore concluded that the change-of-user permission did not clearly approve an open terrace restaurant/bar.

- r. Opposite Party No.1 acknowledges that the Fire Brigade had issued an NOC concerning the use of the open-to-sky terrace for serving food, subject to compliance with specified fire-safety conditions.

According to the surveyor, those conditions included:

- keeping the terrace entrance/exit open;
 - keeping the entrance/exit unobstructed;
 - using non-combustible flooring;
 - using non-inflammable furniture; and
 - complying with other fire-safety requirements.
- However, Opposite Party No.1 stresses that the Fire Brigade NOC itself was not an approval to use the terrace as such, since such

use was also subject to approval from the Building Proposal Department.

- s. Opposite Party No.1 states that the only document produced regarding the temporary monsoon shed was an invoice for a shed for the period Opposite Party No.1 has opposed the complaint at the threshold and contended that the complaint is misconceived, misleading and does not disclose any real cause of action against it. On this ground, it has sought rejection of the complaint in limine.
- t. It is the contention of Opposite Party No.1 that the dispute is essentially a commercial dispute and is required to be adjudicated by the competent Commercial Court. It submits that the insurance claim was duly attended to, processed and ultimately rejected after assigning detailed reasons. Therefore, according to Opposite Party No.1, there is no deficiency in service giving rise to a consumer dispute.
- u. Opposite Party No.1 has alleged that the Complainant has suppressed material facts with mala fide intention in order to substantiate an otherwise untenable insurance claim.
- v. It is further contended that the risk and/or location had been materially altered, thereby substantially enhancing the risk beyond what was contemplated under the insurance policy. Consequently, no benefit under the policy was payable.
- w. Opposite Party No.1 has alternatively contended that the policy covered the “open terrace” and not a “covered terrace” and, therefore, property situated in or relating to the covered terrace was outside the scope of the insured risk.
- x. It is further alleged that the risk of fire was substantially enhanced because of the temporary monsoon shed made of bamboo sticks, tarpaulin and cloth, which were highly combustible. According to Opposite Party No.1, the shed caught fire from flying embers and contributed substantially to the rapid spread of the fire.
- y. It is also alleged that the Complainant had illegally/unauthorisedly used the covered terrace for storing and serving liquor, beer kegs and other alcoholic beverages, thereby increasing the fire risk.
- z. Opposite Party No.1 further alleges breach of several terms, conditions and express warranties contained in the policy. It

contends that express warranties in an insurance contract are required to be strictly complied with, irrespective of whether the particular breach was relevant to the occurrence of the insured peril.

- aa. Opposite Party No.1 disputes the Complainant's assertion that it possessed all necessary licences, approvals and NOCs. It alleges that there were gross violations of the permissions relied upon by the Complainant and that such violations enhanced the risk of loss. Opposite Party No.1 further points out that the policy was obtained through Opposite Party No.2, the insurance broking company. According to Opposite Party No.1, Opposite Party No.2 acted for and on behalf of the Complainant both before and after issuance of the policy. It is therefore contended that the broker was acting as the Complainant's agent and ought to have been properly involved in the proceedings.
- bb. With respect to paragraphs 7(i) to 7(iv), Opposite Party No.1 submits that the policy was issued pursuant to the proposal submitted by the Complainant/broker. It relies upon the terms, conditions and warranties of the insurance policy, contending that the policy constitutes a binding contract between the parties. According to Opposite Party No.1, the Complainant cannot claim any benefit beyond the coverage specifically provided under the policy. It is further contended that coverage is available only if the insured risk occurs at the "risk location" as defined under the policy. Opposite Party No.1 specifically maintains that the policy covered an open terrace, whereas the Complainant's claim concerns a terrace which had been covered by the temporary shed. Consequently, it submits that loss occurring in the covered/enclosed terrace was not within the defined risk location and was therefore not payable.
- cc. Opposite Party No.1 specifically denies the Complainant's allegation that the premises had undergone a detailed pre-insurance risk inspection or that any clearance of the risk had been granted by Mr. Praful. It explains that, as recorded in its letter dated 24.12.2019, Mr. Praful visited the premises on or about 03.08.2017 between 3:30 p.m. and 4:00 p.m. According to Opposite Party No.1, the visit was conducted after issuance of the insurance policy and did not constitute a detailed risk

assessment. It is alleged that Mr. Praful was not even permitted to take photographs of the premises. Opposite Party No.1 therefore disputes that the inspection constituted an acceptance or approval of all the features and activities subsequently found at the premises. It also denies the Complainant's contention that the storage area, roof and ambience of the premises remained exactly the same as on the date of the fire.

- dd. Opposite Party No.1 denies the Complainant's version regarding the circumstances in which the fire spread from Mojo's Restaurant to the Complainant's premises. It also denies the allegation that the Complainant suffered the loss as claimed. It consequently denies that the alleged loss falls within the coverage provided under the insurance policy.
- ee. Opposite Party No.1 denies that the Complainant fully cooperated with the surveyor or supplied all documents sought from it. It points out that when the surveyor first visited the premises, none of the partners of the Complainant was present. According to Opposite Party No.1, the surveyors were consequently required to rely upon press reports and information furnished by employees of the Complainant while initially ascertaining the cause of the fire. Opposite Party No.1 denies that the surveyors failed to visit the premises after the fire. It further denies that the surveyors merely relied upon the preliminary Fire Brigade Report without conducting their own assessment. It submits that the reports prepared by the Fire Brigade and other competent authorities were vital documents showing the condition of the premises immediately after the incident. According to Opposite Party No.1, those reports disclosed several violations of fire-safety norms which aggravated the fire and resulting damage. It strongly denies the Complainant's allegations of corruption or collusion between the landlord and BMC/Fire Brigade officials and states that it is not concerned with alleged illegalities committed by the landlord.
- ff. Opposite Party No.1 states that the temporary monsoon shed was erected by the Complainant for the monsoon season. It contends that the shed ought to have been removed after the monsoon season but continued to remain in existence even in

December 2017, when the fire occurred. According to Opposite Party No.1, the continued existence of the shed transformed it from a temporary seasonal arrangement into a structure which materially altered the insured risk. It states that the shed was made from bamboo, tarpaulin and other combustible materials. The Opposite Party relies heavily upon the survey reports in support of its case.

- gg. Survey reports relied upon by Opposite Party No.1. Opposite Party No.1 states that the surveyors prepared: Preliminary Survey Report dated 30.12.2017; Second Status Report dated 19.02.2018; and Final Survey Report dated 12.02.2019.
- hh. The surveyor assessed/recorded the alleged claim under the broad heads of: Material Damage-approximately Rs.3.5 Crores; and Business Interruption-approximately Rs.1 Crore
- ii. ii. However, the surveyor advised the insurer to consider alleged breaches of warranties relating to: the fire-fighting facility not being ready/operational; and the roof of the restaurant being made of flammable material.
- jj. The surveyor also recommended that a legal notice be issued to the insured regarding possible non-admissibility of the claim.
- kk. Opposite Party No.1 states that the Complainant ultimately submitted various licences and documents in the first week of June 2018. The surveyors scrutinised the documents and raised observations and queries through their letter dated 26.07.2018.
- ll. According to the surveyor's observations relied upon by Opposite Party No.1, the liquor licence permitted a 331 sq. ft. permit room with a 53.9 sq. ft. bar, situated within the RCC structure. The Opposite Party contends that the licence therefore permitted liquor service and storage only within the enclosed RCC area. However, according to the surveyor, numerous liquor bottles and a full-fledged bar were found on the open terrace. The liquor storage room shown in the approved plan was also allegedly situated within the enclosed area, whereas during the survey the liquor storage was allegedly found near the entrance on the open terrace. Opposite Party No.1 therefore contends that the storage and serving of liquor on the open terrace was contrary to the permissions and increased the risk to the insurer.

- mm. The surveyor found the FSSAI licence, Shops and Establishments certificate, provisional registration certificate, certificate of incorporation and certificate of registration to be in order. However, the surveyor allegedly found that the MCGM Eating House permission covered only 156.97 sq. metres, corresponding to the enclosed RCC area. Dining tables were allegedly found on the open terrace, which according to the surveyor was inconsistent with the permitted area. The MCGM Change of User approval was also allegedly incomplete, as only one page was supplied and the subsequent pages/approved plan were not produced. The surveyor therefore concluded that the change-of-user permission did not clearly approve an open terrace restaurant/bar.
- nn. Opposite Party No.1 acknowledges that the Fire Brigade had issued an NOC concerning the use of the open-to-sky terrace for serving food, subject to compliance with specified fire-safety conditions.
- oo. According to the surveyor, those conditions included:
 - i. keeping the terrace entrance/exit open;
 - ii. keeping the entrance/exit unobstructed;
 - iii. using non-combustible flooring;
 - iv. using non-inflammable furniture; and
 - v. complying with other fire-safety requirements.
- pp. However, Opposite Party No.1 stresses that the Fire Brigade NOC itself was not an approval to use the terrace as such, since such use was also subject to approval from the Building Proposal Department.
- qq. Opposite Party No.1 states that the only document produced regarding the temporary monsoon shed was an invoice for a shed for the period June 2017 to 15.10.2017. No permission for continuing the shed beyond the monsoon period or for covering the open terrace was allegedly produced. According to Opposite Party No.1, the shed remained in use on 29.12.2017, i.e. long after the monsoon period. It was made of highly combustible materials such as tarpaulin and bamboo and was characterised by the surveyor as a “kutchha construction.” Opposite Party No.1 relies upon the policy warranty requiring the building to be of pucca construction with cemented floor, RCC/brick wall and roof of GI sheet/AC

sheet/RCC. It therefore contends that the temporary shed was in breach of the express policy warranty.

- rr. Opposite Party No.1 further relies upon the surveyor's observation that the approved liquor plan restricted the liquor storage, bar counter and permit room to the RCC structure. However, a separate bar counter and substantial stock of liquor were allegedly found on the open terrace. The surveyor allegedly observed that the open terrace was also being used for liquor storage and food storage.
- ss. Opposite Party No.1 contends that such use was contrary to the permissions and significantly enhanced the fire risk. It further relies upon the Fire Investigation Report, which allegedly referred to burning liquor bottles, tins/cans and beer kegs as contributing factors in the spread of fire.
- tt. Opposite Party No.1 also relies upon the surveyor's observation that the smoking-zone permit covered approximately 200 sq. ft., whereas hookah apparatuses were allegedly found throughout the terrace. It therefore contends that the use of hookah throughout the terrace was contrary to the permitted area. According to Opposite Party No.1, carrying out such activity beneath the combustible bamboo/tarpaulin shed further enhanced the risk of fire and triggered Condition 18(a). Opposite Party No.1 specifically disputes the Complainant's contention that the hookah was "herbal" and therefore not a fire hazard. It further alleges that the Complainant and its partners had faced prosecution under various penal provisions in relation to the alleged violations.
- uu. Opposite Party No.1 relies upon the Fire Investigation Report stating that the fixed fire-fighting system of the building was not in working condition. According to Opposite Party No.1, this constituted a breach of the express policy warranty requiring the fire protection system at the insured premises to be available and operational at all times during the policy period. It rejects the Complainant's attempt to attribute responsibility for the non-functional system to the landlord. According to Opposite Party No.1, the Complainant was itself responsible for complying with the policy warranty.
- vv. Opposite Party No.1 contends that the existence of the combustible temporary shed constituted a material

alteration/act whereby the risk was increased, thereby triggering Condition 18(a).

ww. It further contends that:

- i. storing liquor on the terrace;
- ii. serving liquor on the terrace;
- iii. storing beer and other alcoholic beverages;
- iv. using hookah under the combustible shed; and
- v. using the terrace contrary to the permissions independently or cumulatively enhanced the risk.

xx. Opposite Party No.1 submits that the insurance cover ceased to operate under Condition 18(a) because the Complainant had made material alterations and thereby increased the insured risk. It disputes that such alteration must be the direct cause of the fire and maintains that the condition applies to an increase in risk. It further submits that the temporary shed constituted a kutchha construction in breach of the express warranty requiring pucca construction and specified roofing material, and that such breach rendered the claim inadmissible irrespective of whether it directly caused the fire.

yy. Opposite Party No.1 also relies upon the role of Opposite Party No.2, the insurance broker, and submits that the policy was concluded after the Complainant had received advice from the broker and discussions had taken place with the insurer's underwriters. According to it, any incorrect description or coverage ought to have been rectified by obtaining an amendment or endorsement before the policy was accepted.

zz. It further submits that the claim was not arbitrarily or abruptly repudiated. The repudiation dated 12.03.2019 was based upon the policy terms, survey reports, Fire Brigade reports, permissions, licences, warranties, the condition of the premises and the alleged increase in risk. The Opposite Party also states that the Complainant's subsequent reply did not adequately address the grounds of repudiation.

aaa. Lastly, Opposite Party No.1 denies that the survey report was prepared without inspection or that the surveyor acted as its employee or agent. It maintains that the surveyors were reputed and experienced professionals who gave an independent and fair assessment, and that the mere fact that the report was adverse to the Complainant does not establish bias

or arbitrariness.

bbb. The Opposite party no.1 has placed reliance on true copies of the documents which is at page no.149 to 248 of the record.

18. The OP no.2 duly served with the notice, but absented; hence ex-parte order came to be passed on 25/10/2021 against them.
19. Both parties filed their respective affidavits of evidence and written arguments, along with additional written arguments. The Complainant was afforded an opportunity of being heard on the final arguments; however, the Complainant remained absent. Therefore, the arguments advanced by the Opposite Party were heard.
20. Thus, on the rival contentions of the parties, following points arise for determination on which we record findings with the reasons given below:

Sr.no.	Points	Findings
1.	Whether the Complainant proves that Opposite Party No.1 committed deficiency in service by repudiating the insurance claim vide letter dated 12.03.2019?	No
2.	Whether the Complainant proves that the repudiation on the grounds of breach of Condition No.18(a) and the policy warranties relating to pucca construction and operational fire-protection system is unjustified?	No...
3.	Whether the Complainant proves that it is entitled to the insurance claim of Rs.5,67,25,045/-, together with interest, compensation and litigation costs?	No...
4.	What Order?	As per final order...

Reasoning

21. The Complainant has sought indemnification for the loss allegedly suffered on account of the fire which occurred on 29.12.2017 at its restaurant "1Above", situated at Kamala Mills, Lower Parel, Mumbai. The Complainant

had obtained Business Protector Policy No.215032/48/18/000146 from Opposite Party No.1 for the period from 05.07.2017 to 04.07.2018. The policy describes the risk location as “No.1, Above Kamala Trade House, 2nd Floor including Open Terrace, Kamala Mills, Lower Parel, Mumbai”.

22. It is not in dispute that the fire occurred on 29.12.2017 and that the Complainant lodged an insurance claim. Opposite Party No.1 repudiated the claim vide letter dated 12.03.2019. Therefore, the principal question for consideration is whether the repudiation was justified in view of the terms and conditions of the policy and the oral and documentary evidence produced on record.

23. From the repudiation letter dated 12.03.2019, it is evident that the claim was repudiated principally on the following grounds:

- a. The address in the policy and proposal was mentioned as “2nd
- b. Floor including Open Terrace”, whereas, according to the approval plans, the Complainant’s own documents, liquor licence, MCGM documents, Fire Investigation Report and site observations, the restaurant was situated at the 3rd Floor lower level. The insurer treated this discrepancy as material non-disclosure.
- c. No conclusive MCGM or other approval had been produced authorising the use of the open terrace for serving food, liquor, hookah or smoking activities.
- d. The open terrace was covered by a temporary monsoon shed made of combustible materials such as bamboo, tarpaulin and cloth. The insurer treated such construction as a material alteration whereby the risk was increased and consequently invoked Condition No.18(a) of the policy. The insurer also treated the same as a breach of the warranty relating to pucca construction.
- e. The insurer relied upon the use of the open terrace for storage and serving of liquor, despite the liquor licence allegedly restricting the bar, permit room and liquor storage to the RCC structure. The presence of liquor stock on the terrace, together with the combustible shed, was treated as an increased fire risk and a breach of Condition No.18(a) i.e. “Cover under this policy shall cease to attach: (a) if the Insured shall cause or suffer any material alteration to be made in the premises or anything to be done whereby the risk is increased.”
- f. The insurer relied upon the presence of hookah apparatuses throughout the terrace, whereas the smoking-zone permission was

stated to be restricted to 200 sq. ft. The insurer considered the operation of hookah under the combustible bamboo/tarpaulin shed as an additional circumstance increasing the risk.

- g. The insurer relied upon the Fire Investigation Report recording that the fixed fire-fighting system was not in working condition. This was treated as a breach of the policy warranty requiring the fire-protection system at the insured premises to be available and operational.

24. Thus, the repudiation was not based merely upon the occurrence of the fire. It was based upon the insurer's case that the condition and use of the insured premises had materially increased the risk and that the express conditions and warranties of the policy had not been complied with.
25. The Complainant has disputed the aforesaid grounds. According to the Complainant, the fire originated in the adjoining restaurant, namely Mojo's Bistro, and thereafter spread to its restaurant. It is therefore submitted that the occurrence was attributable to a third party and that there was no fault on the part of the Complainant.
26. The Complainant has further submitted that the description of the premises as "2nd Floor" was merely a nomenclature or typographical discrepancy. According to the Complainant, the lift serving the premises had only Level 1 and Level 2 buttons and, therefore, the premises was described as the 2nd Floor. It is submitted that there was only one restaurant known as "1Above" at the said location and that the insurer's officials had inspected the same premises before issuing the policy.
27. The Complainant has also relied upon the inspection allegedly carried out by the insurer's risk engineer and submitted that the insurer had inspected the construction, layout and fire-fighting arrangements before accepting the risk. It is therefore argued that the insurer could not subsequently rely upon the same circumstances for repudiating the claim.
28. With regard to the terrace, the Complainant has relied upon various permissions and licences and has maintained that it had obtained the approvals required for conducting its business. It has denied that the temporary structure amounted to a material alteration or that Condition No.18(a) was attracted. The Complainant has stated that it had taken the premises on rent and had not itself constructed or altered the structure.
29. The Complainant has further argued that the policy did not specifically exclude the open terrace and that the insurer could not introduce an exclusion which was not contained in the policy. The Complainant has also relied upon the Fire Brigade report regarding the origin of the fire and upon the acquittal

orders passed in the criminal proceedings.

30. Opposite Party No.1 has denied any deficiency in service and has maintained that the claim was repudiated after consideration of the policy terms, Surveyor's Report, Fire Investigation material and other documentary evidence. Its principal case is that the condition and use of the insured premises materially increased the insured risk and amounted to breach of the relevant policy conditions and warranties.
31. Opposite Party No.1 has specifically relied upon the temporary terrace structure made of bamboo, tarpaulin and other combustible materials. It has also relied upon the alleged use of the terrace for storage and serving of liquor, hookah-related activities, and the alleged non-operational condition of the fixed fire-fighting system. According to Opposite Party No.1, these circumstances attracted Condition No.18(a) and the relevant warranties of the policy.
32. Opposite Party No.1 has further disputed the Complainant's assertion regarding a detailed pre-insurance inspection. According to it, the visit of its Risk Engineer did not constitute an approval or acceptance of all the features and activities subsequently found at the premises. It has also relied upon the Surveyor's Reports, Fire Brigade and Fire Investigation material, permissions and licences, and the condition of the premises at the time of the incident.
33. After considering the oral and documentary evidence on record, along with the Surveyor's Report dated 12.02.2019, the policy documents, Fire Investigation material and Government-appointed Committee Report, it is necessary to examine whether the grounds relied upon by Opposite Party No.1 are supported by the evidence.
34. The Surveyor's Report is an important document in the present case. The Surveyor examined the relevant policy conditions, regulatory permissions, construction and use of the terrace, fire-protection arrangements and circumstances surrounding the fire. The Surveyor specifically noticed the temporary bamboo/tarpaulin shed, the presence of liquor on the terrace, hookah activities and the alleged non-functioning of the fixed fire-fighting system.
35. The Surveyor further examined the permissions produced by the insured and noticed discrepancies between the approved areas and the actual use of the open terrace. The Surveyor recorded that the liquor licence and related permissions contemplated the bar, permit room and liquor storage within the RCC area, whereas liquor stock and bar facilities were found on the open terrace.
36. The Fire Brigade NOC relied upon by the Complainant has also been

considered. The Surveyor observed that permission for use of the open terrace for serving food could not, by itself, be treated as approval for all activities allegedly carried on there, particularly liquor storage, bar operations and hookah activities. Therefore, the existence of such NOC does not, by itself, establish compliance with all the contractual conditions and warranties of the insurance policy.

37. The evidence regarding the temporary terrace structure is particularly relevant. The Surveyor recorded that the terrace was covered with bamboo, tarpaulin and other combustible material. The Surveyor treated the continued existence and use of such structure as a circumstance which altered the nature of the premises and increased the fire risk, thereby attracting Condition No.18(a) and the warranty relating to pucca construction.
38. The aforesaid finding receives support from the Fire Investigation material, which refers to the presence of bamboo, tarpaulin, synthetic cloth, curtains and other combustible articles and records that the fire spread rapidly through such materials.
39. The Government-appointed Committee Report is also relevant documentary evidence. The Committee recorded that the fire originated from flying embers from hookah being served in the adjoining Mojo's Bistro Restaurant. At the same time, the Committee specifically recorded that the unauthorised covering of the open terrace of 1Above with highly flammable material caught fire from the common-wall side and that the fire spread rapidly throughout the terrace.
40. The Committee further recorded unauthorised use of terrace areas and failure to take adequate fire-safety precautions and noticed apparent violations relating to change in activity and construction beyond the approved permissions. These observations are relevant to the actual condition of the premises at the time of the incident.
41. The Committee Report, however, cannot be treated as a final adjudication of the contractual liability of the Complainant under the insurance policy. The observations relating to criminal responsibility, departmental action or regulatory accountability have to be considered in their proper context. Nevertheless, the report constitutes contemporaneous official material and, when read with the Surveyor's Report and Fire Investigation material, corroborates the existence of the combustible terrace covering and the rapid spread of fire through such material.
42. The Complainant has placed considerable reliance upon the fact that the initial fire originated from the adjoining premises. That fact is not being disregarded. However, the source of initial ignition and the question whether

the insured premises were maintained in conformity with the contractual conditions and warranties are distinct issues.

43. Condition No.18(a) specifically provides that the cover shall cease to attach if the insured causes or suffers any material alteration to be made in the premises or anything to be done whereby the risk is increased. Therefore, even if the initial ignition was caused by flying embers from the adjoining premises, it is necessary to examine whether the condition of the insured premises constituted an increase in the insured risk.
44. In the present case, the Surveyor's Report, Fire Investigation material and Government-appointed Committee Report, read together, support the finding that the terrace was covered with highly combustible material and that such material facilitated the rapid spread of the fire. Therefore, the mere fact that the initial ignition occurred outside the Complainant's premises does not, by itself, establish compliance with Condition No.18(a).
45. The insurer has also relied upon the warranty relating to the operational condition of the fire-protection system. The repudiation letter specifically refers to the Fire Investigation Report recording that the fixed fire-fighting system was not in working condition.
46. The Complainant has relied upon the Fire Brigade NOC and other certificates and has submitted that the premises had been inspected. However, the existence of an earlier certificate or NOC does not, by itself, establish that the fixed fire-fighting system was operational at the time of the fire. The relevant evidence concerning its condition at the time of the incident is the Fire Investigation material relied upon by the insurer.
47. The Complainant has not produced sufficient independent technical evidence to satisfactorily displace the aforesaid finding. Therefore, the allegation regarding breach of the fire-protection warranty cannot be held to be wholly unsupported.
48. The Complainant has also relied upon the alleged inspection carried out by the insurer's Risk Engineer before acceptance of the proposal. It is submitted that, having inspected the premises, the insurer had accepted the risk with knowledge of its condition.
49. The said submission requires consideration. However, mere inspection of the premises, in the absence of an express endorsement or waiver modifying the relevant policy conditions or warranties, does not by itself establish that the insurer had agreed to cover a subsequent material alteration or increased risk. The evidence on record does not establish any specific written waiver of Condition No.18(a) or of the relevant warranties. Therefore, the plea of waiver or acquiescence cannot be accepted merely on the basis of the alleged

inspection.

50. The Complainant has produced various permissions and licences and submits that its activities were duly authorised. Those documents have been considered. However, the issue is not merely whether the Complainant possessed licences for carrying on restaurant activities. The relevant question is whether the actual extent and manner of use of the open terrace, including the construction thereon, liquor storage/bar activity and hookah activity, corresponded with the permissions and complied with the express conditions and warranties of the insurance policy.
51. The Surveyor examined the relevant permissions and recorded discrepancies between the approved areas and the actual use of the terrace. The Government-appointed Committee also recorded apparent unauthorised construction and use of terrace areas. Thus, the production of general licences and permissions does not, by itself, establish compliance with the specific contractual conditions and warranties relied upon by the insurer.
52. The Complainant has relied upon the acquittal orders passed in the criminal proceedings. However, the acquittal in criminal proceedings does not, by itself, determine the contractual liability of the insurer under the insurance policy. The present dispute concerns the contractual obligations of the parties and has to be decided on the oral and documentary evidence produced before this Commission. Therefore, the acquittal orders cannot, by themselves, displace the documentary evidence concerning the condition of the insured premises.
53. The floor-description discrepancy also requires consideration. The policy specifically refers to the “2nd Floor including Open Terrace”, whereas other documents relied upon by the insurer describe the premises as being on the 3rd Floor lower level. However, when considered in isolation, this discrepancy may not be sufficient to establish that the fire occurred at a wholly uninsured premises, particularly because the policy itself specifically refers to the open terrace. Therefore, this ground alone is not sufficient to sustain the repudiation.
54. The repudiation, however, cannot be examined on the floor-description discrepancy alone. The remaining grounds are supported by the evidence on record. The Surveyor’s Report records the combustible temporary terrace structure, the use of the terrace for liquor and hookah-related activities and the non-operational fire-protection system. The Fire Investigation material supports the existence of combustible material and the rapid spread of fire. The Government-appointed Committee Report independently records the unauthorised covering of the 1Above terrace with highly flammable material

and the rapid spread of fire through the same.

55. Though the Surveyor's Report is not conclusive, but it is a relevant piece of documentary evidence and has to be appreciated along with the other material on record. In the present case, the Surveyor's conclusions are not founded upon a solitary circumstance but upon the policy terms, inspection material, regulatory documents, Fire Investigation material and the condition and use of the premises.
56. The Complainant has disputed the conclusions of the Surveyor but has not produced equally cogent independent technical evidence establishing that the temporary combustible structure was not present at the time of the incident, that the fixed fire-protection system was operational at the relevant time, or that the actual use of the terrace fully corresponded with the permissions relied upon by the Complainant.
57. Therefore, upon an overall appreciation of the oral and documentary evidence, it is found that the repudiation was not based upon a solitary or unsupported ground. The evidence supports the finding that the condition and use of the premises involved material circumstances relating to the combustible terrace structure, increased fire risk and the condition of the fire-protection system, which were relevant to the express conditions and warranties of the policy.
58. It is also relevant that the repudiation letter dated 12.03.2019 specifically referred to the relevant policy provisions and stated the grounds upon which the claim was repudiated. The Complainant has therefore failed to establish that the repudiation was arbitrary, without reasons or contrary to the terms of the policy.
59. In view of the foregoing discussion, the Complainant has failed to prove that Opposite Party No.1 committed deficiency in service by repudiating the insurance claim. The Complainant has also failed to establish that the repudiation on the grounds of breach of Condition No.18(a) and the relevant policy warranties was unjustified.
60. Consequently, the Complainant has failed to establish its entitlement to the insurance claim of Rs.5,67,25,045/-. In view of the finding that the claim itself was not payable under the policy, the Complainant is also not entitled to interest on the said amount.
61. The Complainant has further claimed compensation of Rs.50,00,000/- towards mental agony and harassment and litigation costs of Rs.5,50,000/-. Since no deficiency in service is established against Opposite Party No.1 in repudiating the claim in accordance with the policy terms and the evidence on record, the Complainant is not entitled to compensation or litigation costs.

Accordingly, Point Nos.1 to 3 is answered in the Negative. Hence, we have answered the findings on all the points accordingly and proceed to pass following order.

FINAL ORDER

1. The Consumer Case no.96/2021 is hereby dismissed without costs.
2. The copy of order be sent to both the parties free of costs.

Sd/-

**PRADEEP G. KADU
INCHARGE PRESIDENT**

Sd/-

**PRATIBHA R. PATIL
MEMBER**

Sd/-

**GAURI M. KAPSE
MEMBER**