IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AT NEW DELHI

NC/CC/454/2013
WITH
NC/IA/7958/2026 (ADJOURNMENT)

M/s. Goldstar Diamond Pvt. Ltd. … Complainant

Versus

M/s. Life Insurance Corporation of India Ltd. & Ors. … Opp. Parties

BEFORE:
HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

Appeared at the time of arguments:

For Complainant : Mr. Ashish Mohan, Senior Advocate
with Mr. Vikas Mehta, Advocate
Mr. Ankit Vashisht, Advocate
Mr. Prashant Ghelawi, Advocate
Mr. Vaishnav Kumar, Advocate
Mr. Madhurendra Kumar, Advocate
Mr. Bhavesh Shah, C.A. of Complainant

For Opp. Parties – 1 & 3 : Ms. Manali Singhal, Senior Advocate
with Mr. Santosh Sachin, Advocate
Mr. Deepak Singh Rawat, Advocate for OPs-1 & 3

For the Opp. Party - 2 : Ex-parte vide order dated 03.07.2018

Pronounced on: 16th November 2026

ORDER

JUSTICE A.P. SAHI, PRESIDENT

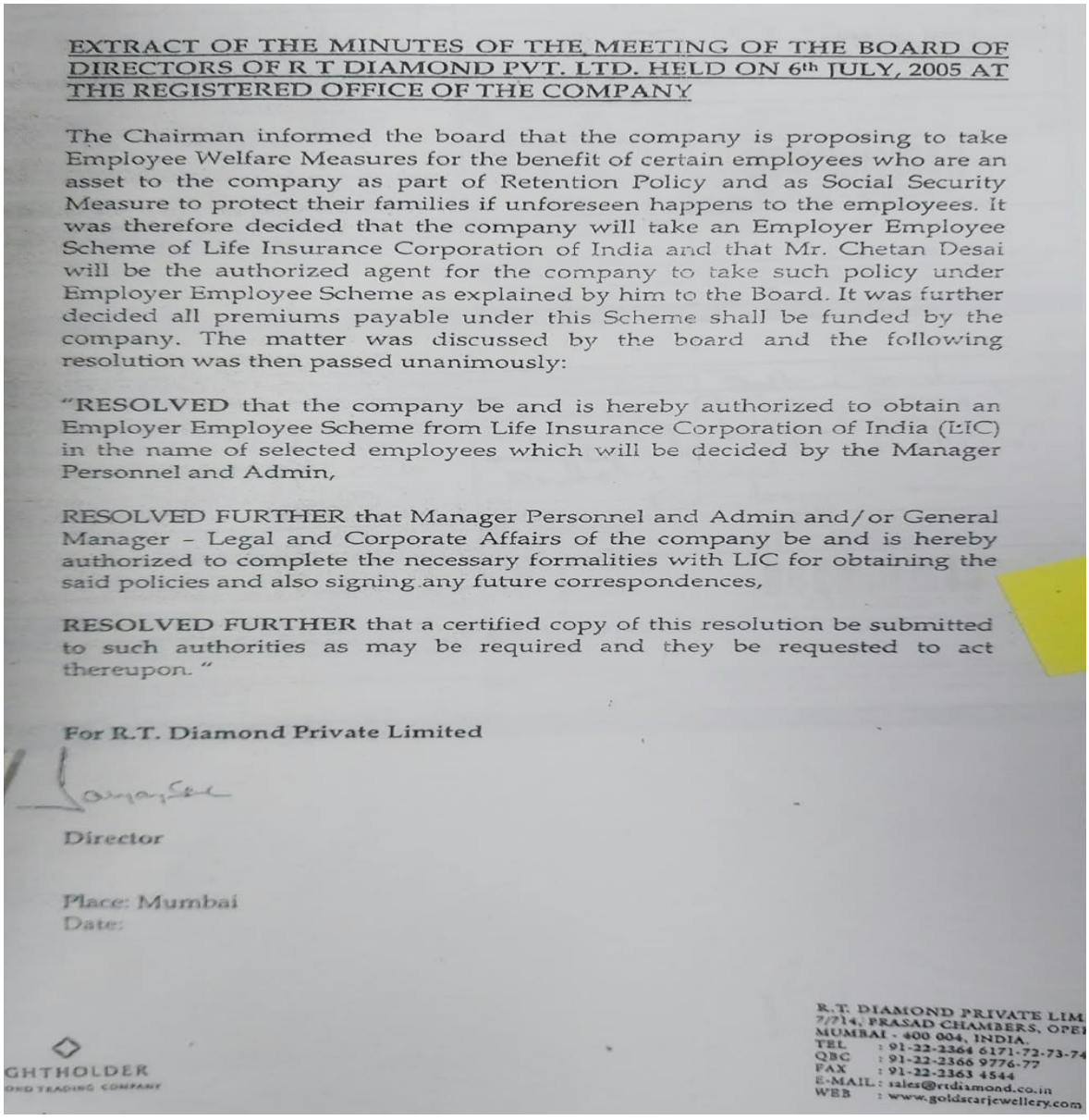
1. The complainant is a private limited company that has come up alleging deficiency against the OPs-1 and 3 Life Insurance Company for having diverted and misutilised the advance renewal premiums paid for which no request had been made by the complainant and in fact the premiums paid by

the complainant were misinvested. It is alleged that this was an outcome of the misrepresentation and fraud committed by the OP-2 Mr. Chetan Desai, who was the agent of the Life Insurance Corporation OP Nos. 1 & 3, through whom the transactions were negotiated by the complainant for the renewal of their existing policies that had been acquired by the complainant Company while discharging its corporate social responsibility. The complainant was approached by the OP-2 agent representing that the Life Insurance Corporation has a novel scheme for the employees that was better than the policies provided by other Insurance Companies. Consequently, the policies were acquired under the scheme known as “Employer-Employee Scheme”. The scheme was unique as it also offered some tax exemption and there were benefits which were informed to the complainant by the OP-2 as follows:

- *The Complainant could claim tax exemption under the scheme as Premium paid by the Company will qualify as eligible business expense U/s/17 (2) (V) Income Tax Act, premium paid by the Complainant Company shall be treated as perquisite in the hands of the employee.*
- *Each employee will have insurance coverage of Rs.2,00,000/- to Rs. 3,00,000/- for duration of 20-25 years. Based on age, the total coverage will be covered under 8-10 policies between Rs.30000 50000/- each.*
- *The ownership of the policies will vest with the Company as a proposer and the employee shall be the Insurer and after payment of 3 to 5 years premium, all the policies shall be assigned in the name of the Complainant Company.*
- *The Complainant would receive survival benefit every five years, if no death claims are received by the O.P.No.1*
- *If no death claim is received by O.P.No.1 then at the end of the maturity of policy the Complainant Company will receive the sum insured along with bonus.*

- *If the death occurs or any untoward incident occurs, the employee and/or his family shall receive the benefit under the policy and the Insured amount shall be paid to the Complainant Company and the same shall be handed over to the family of the employee.*

2. According to the complainant, the Company passed a resolution authorising the acquisition of the policy on 06.07.2005. A copy of the Board resolution is extracted hereinunder:



EXTRACT OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF R T DIAMOND PVT. LTD. HELD ON 6th JULY, 2005 AT THE REGISTERED OFFICE OF THE COMPANY

The Chairman informed the board that the company is proposing to take Employee Welfare Measures for the benefit of certain employees who are an asset to the company as part of Retention Policy and as Social Security Measure to protect their families if unforeseen happens to the employees. It was therefore decided that the company will take an Employer Employee Scheme of Life Insurance Corporation of India and that Mr. Chetan Desai will be the authorized agent for the company to take such policy under Employer Employee Scheme as explained by him to the Board. It was further decided all premiums payable under this Scheme shall be funded by the company. The matter was discussed by the board and the following resolution was then passed unanimously:

"RESOLVED that the company be and is hereby authorized to obtain an Employer Employee Scheme from Life Insurance Corporation of India (LIC) in the name of selected employees which will be decided by the Manager Personnel and Admin,

RESOLVED FURTHER that Manager Personnel and Admin and/or General Manager – Legal and Corporate Affairs of the company be and is hereby authorized to complete the necessary formalities with LIC for obtaining the said policies and also signing any future correspondences,

RESOLVED FURTHER that a certified copy of this resolution be submitted to such authorities as may be required and they be requested to act thereupon."

For R.T. Diamond Private Limited

Director

Place: Mumbai
Date:

GHTHOLDER
DED TRADING COMPANY

R.T. DIAMOND PRIVATE LIM
7/714, PRASAD CHAMBERS, OPE
MUMBAI - 400 004, INDIA.
TEL : 91-22-2364 6171-72-73-74
QBC : 91-22-2366 9776-77
FAX : 91-22-2363 4544
E-MAIL : sales@rtdiamond.co.in
WEB : www.goldscarjewellery.com

3. The complainant further states that the OP-2 Mr. Chetan Desai undertook the formalities of the collection of the signatures and also the

premium from the complainant and a sum of Rs. 86,28,820/- was paid as premium by the complainant Company to the OP-1 through the OP-2 agent. The premium was for the period of 2005 – 2006 and 2006 – 2007.

4. It is further stated that in about July, 2007, the OP-2 approached the complainant for payment of post advance renewal premiums in respect of the policies that had been acquired and several benefits were explained for making “advance renewal premium payments”. This included tax benefits, the option of loans on the paid value, and on maturity, receipt of handsome amounts along with the principal. The complainant faithfully relying on Mr. Chetan Desai, the OP-2 resolved for making such payments and passed a resolution on 07.08.2007 to the said effect. The resolution is extracted hereinunder:

ANNEXURE 4

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LD STAR DIAMOND PVT. LTD.
4, Prasad Chambers, Opera House, Mumbai 400 004, India.
Tel. : +91 22 6730 0000 Fax : +91 22 6730 0003 Web : www.goldstarjewellery.com

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED IN THE BOARD OF DIRECTORS MEETING OF GOLD STAR DIAMOND PRIVATE LIMITED HELD ON 7TH AUGUST 2007 AT THE REGISTERED OFFICE OF THE COMPANY

The Chairman informed the Board that the company has taken various policies under Employer Employee scheme and the agent Mr. Chetan Desai has advised the company for making advance payment of premium on the policies under Employer Employee Scheme. Mr.Chetan Desai has explained that advance payment of premiums made will earn extra bonus and policies will be entitled to loan over and above the stipulated as per rules.

After discussion the Board approved the same and the following resolution was then passed:

"RESOLVED that on the advice of LIC Agent Mr. Chetan Desai for the advance payment of premium of various policies under Employer Employee scheme to be done for earning extra bonus and for entitlement of loan on the policies under Employer Employee Scheme.

RESOLVED FURTHER that Mr. Sanjay Shah, Director of the company be and is hereby authorized to complete the formalities and do all such acts, matters, things and deeds as are necessary to give effect to the aforesaid resolution."

Certified true copy

For Gold Star Diamond Private Limited

Director / Authorized Signatory

Place: Mumbai
Date: 14th June 2012

TRUE COPY

used under license from DTC

5. The complainant states that in furtherance thereof payment of Rs. 7,90,69,030/- as “post advance renewal premium was made through cheques”. These cheques were issued in the name of Life Insurance Corporation, but were handed over to the OP-2 for its presentation.

6. All the cheques according to the complainant were cleared and the amount credited to the account of the Life Insurance Corporation. The details of the cheques have been referred to in the complaint. The complainant alleges that to their utter surprise during the meeting with the representatives and the senior officers of LIC, it was informed that the receipts which were issued that were captioned as “certificate of payments”, were forged and false as there was no practice or procedure for issuing statement of receipts by the Life Insurance Corporation. Despite repeated requests by Complainant for individual premium receipts, instead of issuing individual receipts for premium paid, OP No. 2 handed over consolidated statements for each financial year from 2008-09, 2009-10 & 2010-11. Significantly, the statements bore signatures of Branch Manager of OP No. 1 on letterhead. The three certificates that have been filed along with the complaint are extracted hereinunder:

ANNEXURE 8

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LIC

Life Insurance Corporation of India
Branch No 910
Satellite Electric Bldg, Zoo Floor

Ref:- 910/Sales/ 31 Date :- 17-6-09

/ To Whomsoever it may concern /

This is to certify that M/s. Gold Star Diamond Pvt Ltd remitted an amount of Rs 1,36,71,300/- (Rupees One Crore Thirty Six Lacs Seventy One Thousand Three hundred) towards premium/s due 01-4-2008 to 31-3-2009 under his life insurance policy/ies details of which are given below:-

Sr No.	Policy No.	Premium Amount	Due month/s of premium/s

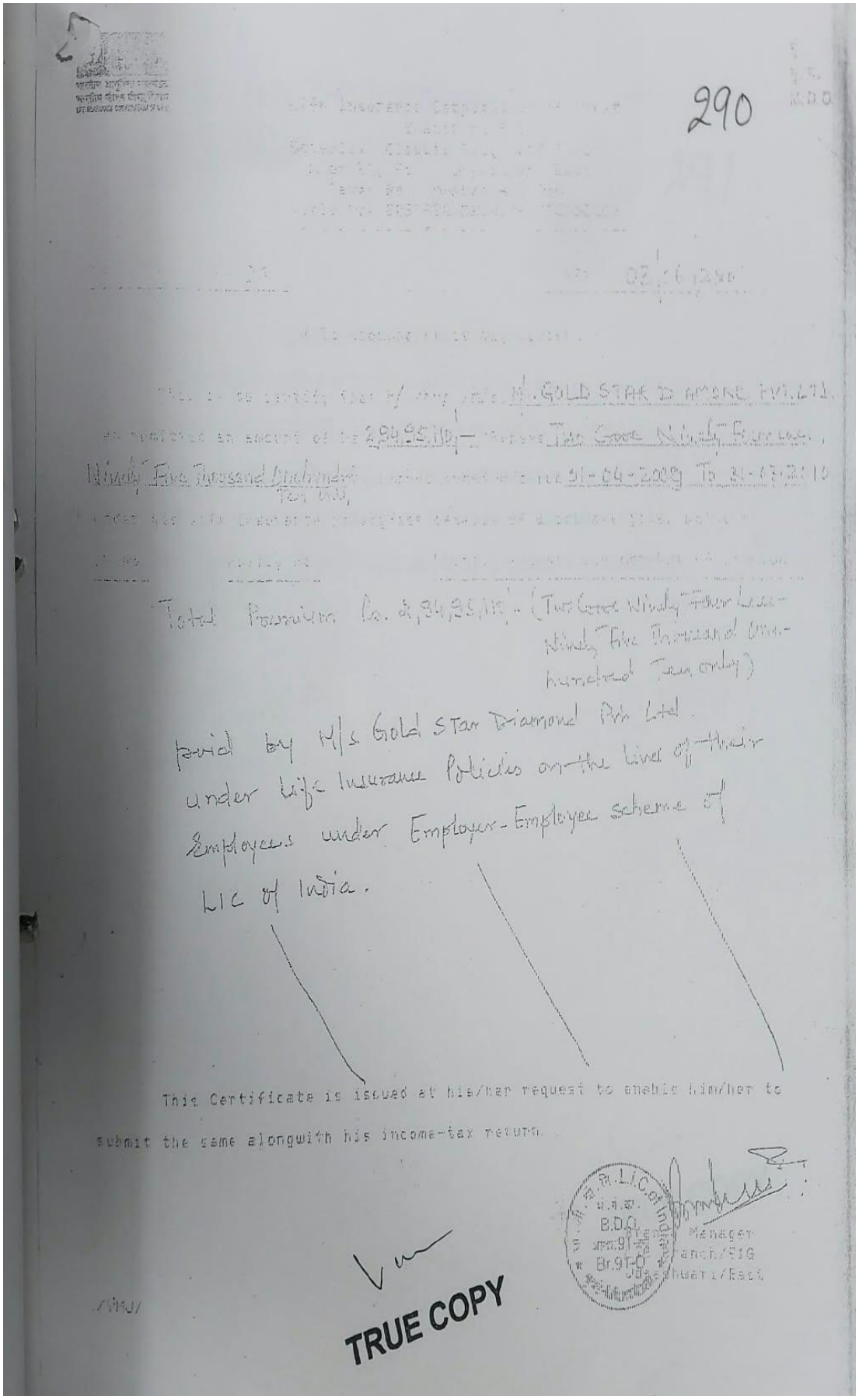
This is to certify that an amount of Rs. 1,36,71,300/- (One crore Thirty Six lacs Seventy One thousand Three hundred) has been received from M/s. Gold Star Diamond Pvt. Ltd. towards premium under Life Insurance policies on the lives of their employees under Employer-Employee Scheme of LIC of India for the period of 2008-2009.

This Certificate is issued at his/her request to enable him/her to submit the same alongwith his income-tax return.

Branch Manager
LIC Branch/910
Jogeshwari/East

/VM3/

TRUE COPY



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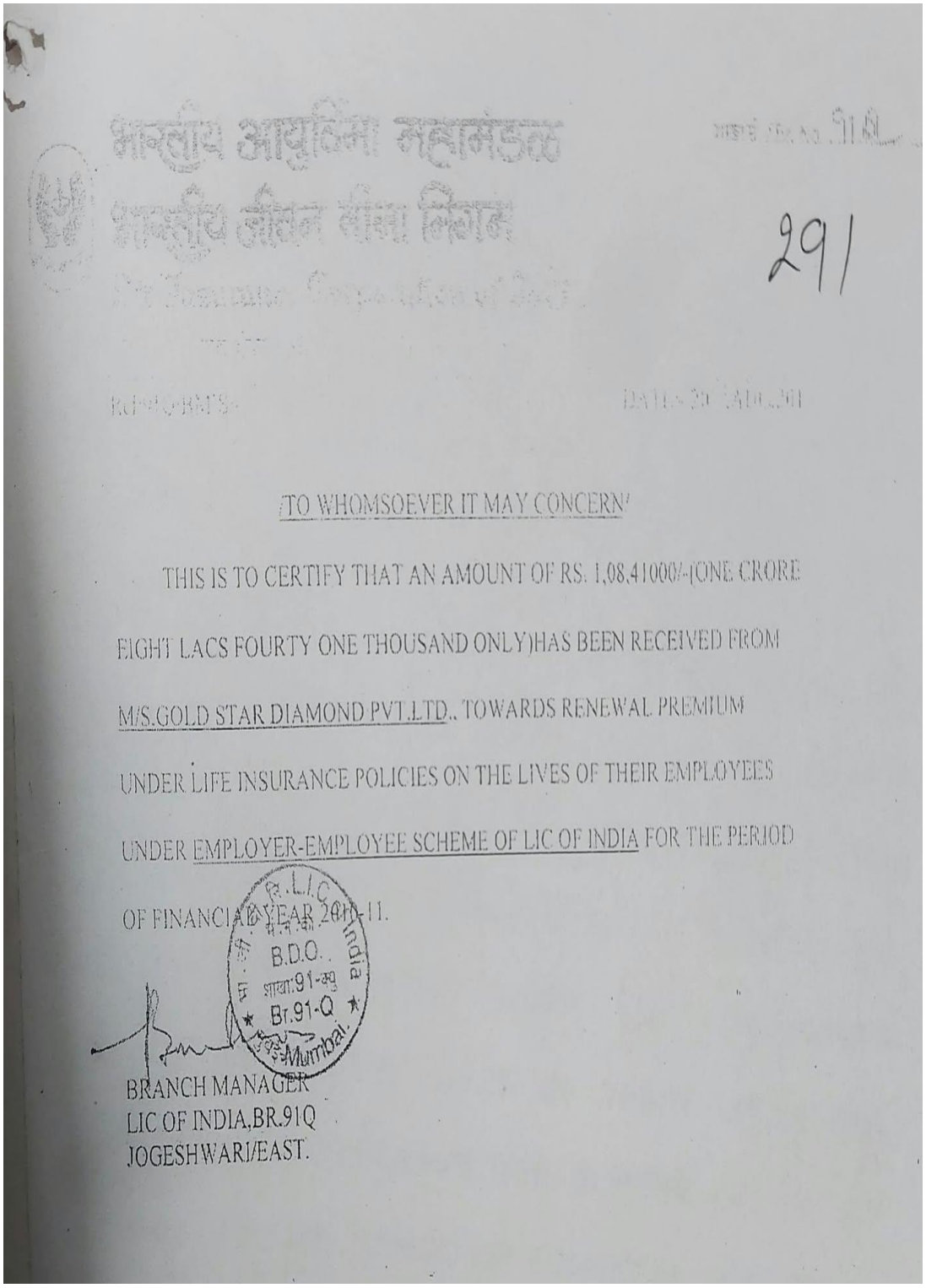
Total Premium Rs. 2,34,95,110/- (Two Crore Thirty Four Lac Ninety Five Thousand One hundred Ten only)

paid by M/s Gold Star Diamond Pvt Ltd. under Life Insurance Policies on the life of their Employees under Employer-Employee scheme of LIC of India.

This Certificate is issued at his/her request to enable him/her to submit the same alongwith his income-tax return.

Manager
Branch/SIO

TRUE COPY



भारतीय आयुर्विमा महामंडळ

भारतीय जीवन बीमा निगम

291

Ref:91Q/BM/S/ DATE:- 20 AUG 201

/TO WHOMSOEVER IT MAY CONCERN/

THIS IS TO CERTIFY THAT AN AMOUNT OF RS. 1,08,41000/-(ONE CRORE EIGHT LACS FOURTY ONE THOUSAND ONLY)HAS BEEN RECEIVED FROM M/S.GOLD STAR DIAMOND PVT.LTD., TOWARDS RENEWAL PREMIUM UNDER LIFE INSURANCE POLICIES ON THE LIVES OF THEIR EMPLOYEES UNDER EMPLOYER-EMPLOYEE SCHEME OF LIC OF INDIA FOR THE PERIOD OF FINANCIAL YEAR 2010-11.

भा.जी.बी.नि. L.I.C. of India B.D.O. शाखा:91-क्यु Br.91-Q Mumbai

BRANCH MANAGER
LIC OF INDIA,BR.91Q
JOGESHWARI/EAST.

These certificates / receipts have been denied by the Life Insurance Corporation and it is alleged that they were forged by Mr. Chetan Desai, the OP-2.

7. Certain transactions in connection therewith had taken place with the handing over of the cheques to the OP-2 stating that the amount had been received towards survival benefits under the scheme, but it was found that the said amounts had been obtained by the OP-2 by raising loans against the Keyman policy of the Director of the Company and certain signatures had been obtained by false representation. The complainant has alleged that such unauthorised transactions permitted by the LIC were clearly deficiency in service, but according to the complainant when all these transactions surfaced on account of the manipulation of the OP-2, the complainant wrote a letter to the Life Insurance Corporation for intervention and it was discovered that instead of renewing the policies that were acquired between 2005-2007, fresh policies had been issued in the name of the complainant and a clear fraud was played.

8. One of the false representations made by OP No. 2 was that the ownership of the policies in the form of survival benefits would vest in the Complainant. However, when the cheques towards the survival benefits were issued, not only were the said cheques drawn in the names of individual employees, but OP No. 2 also retained the cheques until they became stale, without delivering the same to the Complainant. Another representation made by OP No. 2 was that the policies were assignable in favour of the Complainant. Despite repeated assurances given by OP No. 2 and other officers of OP No. 1 for over two years regarding the assignment of the 5,715 policies, it was not done. It was only at that stage that in a meeting held on

April, 2012 with the Senior Branch Manager that the Complainant was informed, for the first time, that the policies were incapable of being assigned, as the Complainant had been issued policies under Form 300 (Proposal for Insurance of Own Life) instead of Form 340 (Proposal for Insurance for the Life of Another). The Complainant was also informed, for the first time, that most policies procured between 2005 and 2007 had lapsed for non-payment of renewal premiums, despite the Complainant having issued cheques in favour of OP No. 1 in a timely manner.

9. Accordingly, the complainant filed a formal complaint / protest before the Life Insurance Corporation on 15.05.2012. The Corporation, on receiving the complaint appointed a Committee to investigate the complaint made by the complainant. The Life Insurance Corporation on having carried out the said investigations was informed through the report dated 22.06.2012 that a largescale manipulation and fraud was observed, the kingpin whereof was Mr. Chetan Desai, the agent, OP-2 herein and procedural lapses were also observed on the part of the Senior Branch Manager, Branch 91(Q). The report dated 22.06.2012 is extracted hereinunder:

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LIC
भारतीय जीवन बीमा निगम
LIFE INSURANCE CORPORATION OF INDIA

Mumbai Division-III: New India building, 1st Floor, S.V. Road, Santacruz (W), Mumbai- 400058

To

22 06.2012

The Sr. Divisional Manager,
LIC of India,
MDO III.
Mumbai .

Respected Sir,

Re: Investigation Report to investigate in respect of the complaint received from Sanjay.S.Shah , Managing Director Goldstar Diamond Pvt Ltd against Sri. Chetan Desai Agent code no.151922 and in action on the part of Sr.Branch Manager Branch 91Q.

This has reference to the letter Ref : MDO III/P&IR Dated 21.05.2012 appointing us to investigate in to the complaint received from Sanjay.S.Shah, Managing Director Goldstar Diamond Pvt Ltd against Sri. Chetan Desai Agent code no. 151922 and in action on the part of Sr.Branch Manager Branch, 91Q.

On persuing the complaint dated 15.05.2012 of the Company Goldstar Diamond Pvt Ltd Co. along with the Annexures and based on the documents verified at the Branch and the inputs given by the IT Dept we have carried out the investigation as follows:

We visited the Branch 91Q on 29.5.2012 30.5.12 and 1.6.2012 and scrutinized the documents .

In respect of the complaint para 1 regarding the estimated loss of Rs 3 Crores suffered by the company.

Our Observations:

(i) We found that out of the total amount of Rs. 8,45,77,850/- we could trace that Rs.5,48,45,770 was accounted towards Renewal Premium and Rs. 2,66,69,515/- adjusted towards proposal deposit (out of which Rs.9,45,000/- proposals under different agency) and Rs 6,00,000/- under loan repayment and Rs.24,62,565 is not traceable at present.

(ii) On further verification, we found that most of the collections were first accounted under Merchant Invoice and later accounted at the branch. We went to trace one of the proposal deposit and found that an amount of Rs.6,73,280/- for which 7 BOCs were created and adjusted as follows:

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BOC NO	Amount(Rs.)	No of policies adjusted	Name	Type of Insurance
4730	519207.00	326	Gold star Pvt Ltd	EMPLOYER-EMPLOYEE
4731	37804.00	14	Sri .Kadambari	Individual Assurance
4732	35000.00	1	Gold Star Pvt Ltd	EMPLOYER-EMPLOYEE
4733	30000.00	68	B.J. Shah	Individual Assurance
4734	35000.00	9	4-Y.N.Shah 5- M.N.Shah	Individual Assurance
4735	15369.00	3	V.D.Periera	Refunded
4736	900.00	1	R.A.Parab	Individual Assurance
TOTAL	6,73,280.00	422		

(iii) We also found that the proposals were completed to individuals as mentioned above which were not under Employer-Employee scheme.

In another case we found that 3 policies were completed under 3 individuals in Single premium

S.J.Vora 894413699 Rs.500000/	BOCNO. 13439/29.03.2010(Docket in DO custody)It was found that the policy was issued without any Underwriting decision under P/T-801-08, SA-625000
B.J.Shah 893014584 Rs.500000/	BOC NO.4733/28.10.2005 (Docket in EDMS)
R.K.Sabarwal894422743 Rs.550000/	BOC NO.4522/31.08.2010 (Docket in DO custody)It was found that the policy was issued without any Underwriting decision underP/T-191-10,SA-30000/-Single Premium,Same day Top up of Rs.520000/-given.

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In respect of the complaint point no 1, 2 3 & 4(Page no 1 to 6) regarding that the Company had purchased 5700 -5800 policies under Plan 91 (Jan Raksha Plan)and Plan 174(Bima Gold) between August 2005 and March 2007 covering approximately around 700 employees under the Employer Employee Scheme.

Our observations:

The policies were canvassed under Employer Employee Scheme with Goldstar Diamond Pvt Ltd Co.,and its employees since 2005 onwards, under the agency of Shri Chetan Desai. It is observed that the Form No 300 was used and in majority of the cases were completed at the Branch Level as the Sum assured was Rs 50000/- and less under Plan 91 (Jan Raksha Plan) , 174 (Bima Gold) etc., under Non medical, no KYC was in operation and in majority of the cases the address was mentioned as that of the Employer and the age proof was given as per the Employer records. Since the Employer Employee Scheme policies were issued from the year 2005 onwards in the Branch the Board Resolution, Employer Employee Addendum and other papers related to the Employer Employee Scheme were not traceable in the Branch. However, it is observed that the Employer-Employee Questionnaire along with three year's Company's turnover details have been submitted as detailed below:

Year	Date of Resolution	Employer/Employee requirements
2007-2008	7th July 2007	E/E Quest dated 27.03.2008 along with list of 7400 employees
2009-2010	15th June 2009	List of 7187 employees vide letter dated 15.07.2009 from the Company
2010-2011	27th Sept 2010	E/E Questionnaire dated 15.7.2010 and list of 7187 employees vide letter dated 27.9.2010

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Approximately Sri Chetan Desai has completed (from the data extracted from IT-MDOIII) the following Policies in the different Financial Years:-

Year	No. of policies Under Goldstar Diamond Pvt Ltd Co. /R.T.Diamond Pvt Ltd	Total No. of Policies completed under his Agency Code 151922
2005-2006	2214	3400
2006-2007	5912	6588
2007-2008	5913	5971
2008-2009	5448	5497
2009-2010	44064	44109
2010-2011	4501	4645
Total	68052	70210

In respect of the complaint point no 19, 20 21& 22 (Page no12,13 & 14) regarding that the Company 's contention regarding Assignment of Policies and 261 SB cheques. The Company was not aware and was misguided to fill Form No 300 instead of Form No 340

Our observations:

Even though the company has, in their complaint, vide their letter dated 17.1.2012(Annexure G of the Complaint) mentioned that 1300 plus were handed over and 3700 policies are due for Assignment and further vide letter dated 27.1.2012 (Annexure I of the complaint) that balance policies of 4672 for assignment are submitted, we find that the B.O. has received the original policies along with the Form of Assignment and Notice of Assignment from the GoldStar Diamond Pvt Ltd Co., for assigning in the name of the Company to the tune of 1319 cases. The same have been taken in to Division's custody on 30.5.2012. The assignments have not been effected as the policies are in lapsed condition and the correspondence done by the BO with the DO PS and CRM are annexed herewith (Annexure A). On verifying the signatures in Proposal and Assignment papers, there seem to be variations in signatures of Life Assured, which may be confirmed by an Expert.

It is observed from the list provided by the IT department that SB was due under 295 cases in the year 2009-10 ,out of which approximately 20 cases SB payment was settled and the cheques have been encashed by the policyholder and the balance is outstanding in stale account. Further, it is found that Manager (Claims) MDO III vide letter dated 24.07.2010 addressed to Sr.BM Branch 91Q (Annexure B) has inquired in to the pending stale cheques in A/ C code 111197(Claim settled but outstanding –SB) being 270 cases , under Plan 174 belongs to one Agency 151922 Sri Chetan Desai . In his letter he had questioned the Branch as to how all the cheques which were collected "By Hand" and

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...ly approved by the Branch-in-Charge were lying in Stale. The Sr.BM vide letter dated 30.08.2010 addressed to Sri Chetan Desai sent through Registered AD had called for his explanation within 7 days time for 261 cheques which had gone stale though collected "By Hand". However no response received from the Agent. The Company vide their letter dated 27.12.2011 have confirmed receiving the 261 SB cheques The Company has handed over these 261 cheques pertaining to Survival Benefit in the name of individual employees which are stale to the Branch office on 28.12.2011. They had demanded fresh cheque in the name of the Company which is not possible as the policies are not assigned. Branch has referred the same to Division, who in turn has sought Zonal Office confirmation (email dated 23.5.2012, and 1.6.2012) reply is still awaited.

As per the conditions of the policies under Employer-Employee scheme the proposals can be submitted in Form No 340 or in Form No.300.However the Company has submitted the proposals for all the cases in Form No300.

In respect of the complaint point no 17(Page no 11) regarding that the Company 's contention that they had received a cheque of Rs.2875000/-towards Survival Benefit from the Agent Sri.Chetan Desai which was later on found by the Company that the same was towards Loan from the Key Man policy of the Director Mr.Sanjay Shah

Our Observations :

In respect of the two policies viz, policy nos 893000685 and 893000686 on the life of the Key man, Mr. Sanjay Shah (P/T 167-25 S/A Rs.50; 00,000/-) the Branch Office had received the loan application on 27.09.2010. However, it is observed from the loan Dockets available with the BO that on 29.09.2010, Duplicate policies were issued and on the same day the loan cheques were prepared to the tune of Rs.1437250/- each, in the name of Mr Sanjay Shah.. However subsequently the same was cancelled and through Bank to Bank green voucher the cheques were drawn in the name of the Goldstar Diamond Pvt Ltd and the same were personally collected by Shri Chetan Desai (Agent). These Vouchers have been passed by the AO/ PS (S R No. 433128) and ratified by Sr. BM (Shri Magrumkhane). The said cheques were presented by the Agent to the Company informing that the same were towards Survival Benefit due under the policies. The policies have been scanned under EDMS and the original loan dockets are in the custody of the Division.

In respect of the complaint point no 10(Page no -8) regarding that the Company's contention that they had paid LIC premiums through Sri.Chetan Desai and they had received from LIC annual basis consolidated statement received through Sri Chetan Desai for the payment made under "Employer-Employee scheme"year wise and it was treated as annual statements against their payments towards Renewal Premium.

Our Observations:

The Company has given LIC the cheques (as per the Pg No.8 of complaint Annx B) under various dates and different amounts mentioning the same are towards the Renewal premium . However, they have not provided the List of the employees nor the policy nos under which the payments has been made. It is observed along with the complaint that the Premium certificates were issued by the Branch Office dated 17.06.2009 for an amount Rs.1,36,71,300/- in respect of Renewal Premium under Employer-Employee Scheme for the period 2008-09. dated 03.06.2010 for an amount

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Rs.2,94,95,110/- in respect of Renewal Premium under Employer-Employee Scheme for the period 01.04.2009 to 31.03.2010. and dated 20.08.2011 for an amount Rs.1,08,41,000, in respect of Renewal Premium under Employer-Employee Scheme for the period 2010-11. which are duly signed by the Branch Manager. However on the visit to the Branch Office on 29.5.2012 , the officials there were not able to trace the copy of the same at the Branch and it was orally conveyed by the current Sr.BM that the signatures do not match with those of the previous BMs .

Other Observations

(1) We could trace a copy of the letter dated 25.07.2010 wherein the GoldStar Diamond Pvt Ltd Co has acknowledged the policies of 45, 516 (Annexure C), which itself is an indication that the Company was aware that 45,516 policies were issued.

(2) We could trace from the New Business Department of the Branch Office that a total of 3578 original policies which were issued under plan 14 pertaining to the year 2010 are still lying in the Branch Office and are neither collected by the Agent, nor have those been dispatched till date. On verifying we found that there were no adverse remarks pointed out in Audit/Inspection, in respect of the underwriting of these proposals, adjustments, policy dispatch etc. However Queries have been raised in Audit regarding the first year lapsation % in the Audit 2010-11 , of Sri. Chetan Desai Agency Code 151922. and in Inspection 2009-10 one query raised was Hand delivery of policy documents without proper acknowledgement and authority letter not obtained in Form 3242A.

(3) The policies issued under the Employer Employee Scheme since 2005 are very voluminous and hence to check each and every aspect is not feasible. On scrutiny of the no of policies issued in the name of Gold star Diamond Company Pvt Ltd, (from the data provided by IT dept.) we find that a total of 68052 Policies were issued under Employer-Employee Insurance, the details of which are as under:-

Status	Narration	No.
41	Lapsed without paidupvalue	63564
21	Inforce	3891
82	Death claim paid	7
81	Surrender	6
31	Reduced paidup	581
85	Transferred to other DO	3
	Total	68052

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(4) From the Earning records of Sri Chetan Desai Agency Code 151922, it is found that the average commission of the agent Sri Chetan Desai per month is around Rs.1,15,000/- We found his earnings per year for the three years :

FINANCIAL YEAR	First Commission/bonus commission (Rs.)	TOTAL COMMISSION AMOUNT (Rs.)
2009-2010	52,58,743/-	70,39,567/-
2010-2011	48,29,093/-	56,58,900/-
2011-2012	4,65,519/-	10,07,095/-

(5) It is pertinent to mention that Shri Chetan Desai Agent has vide his letter dated 29.5.2012 addressed to Sr.BM has accepted his mistake and mentioned that it has happened due to his personal problems and he is extremely guilty and has requested to take a lenient view and not affect his agency. **(Annexure D)**

Overall Observations:

a. It is observed that the actual premium to be paid by the Company (Goldstar and RT Diamond Pvt Ltd) as per the data given by the IT department is given below as against the actual premium received from the Company upto September 2010

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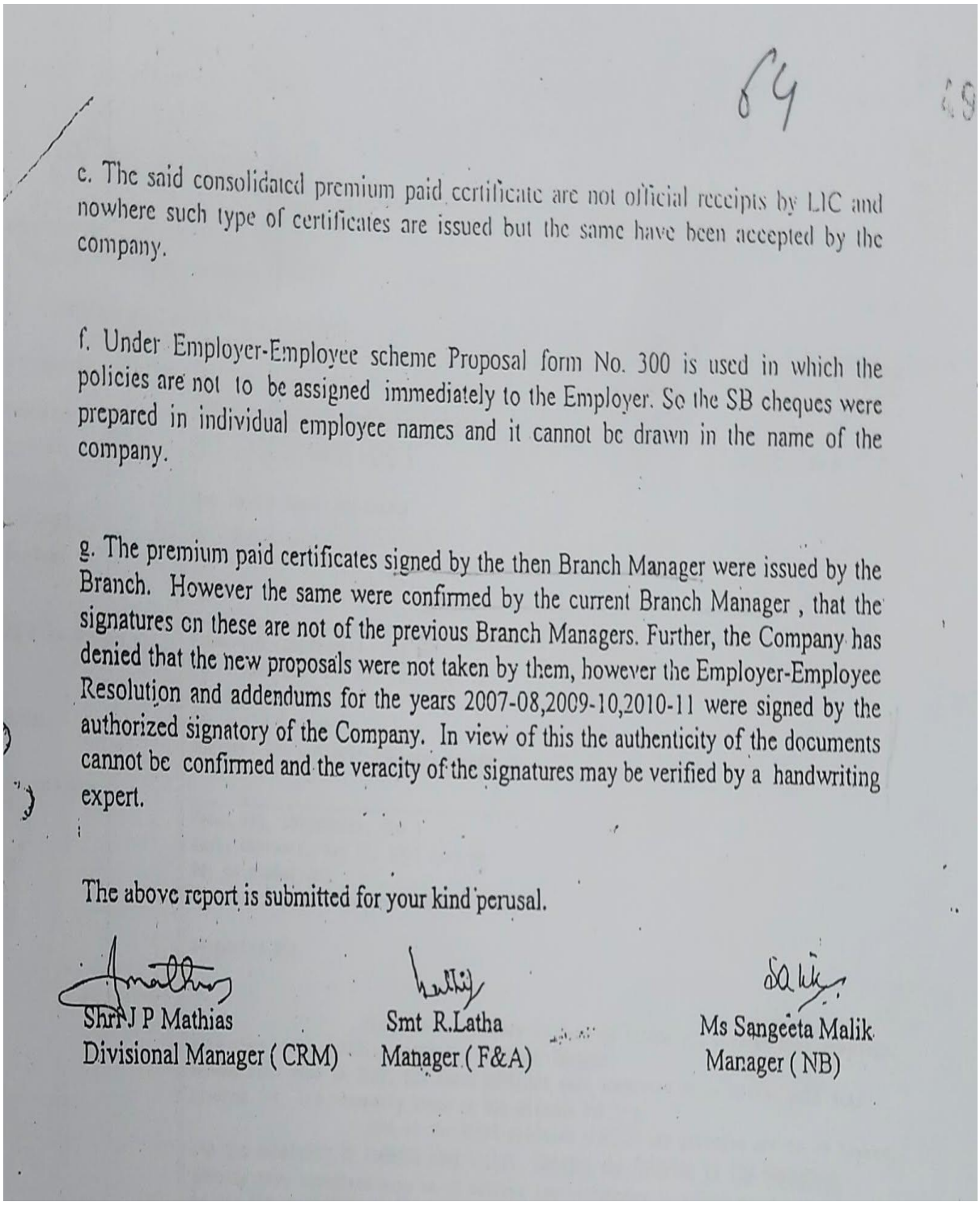
Year	No of Policies Fresh (Renewal)	Premium as per IT output (Rs.)Fresh (Renewal)	Total (Fresh + Renewal)	Actual premium paid as per Ann D of the complaint.
2005-2006	2214	2409634	24,09,634	36,22,845
2006-2007	5912(2214)	2906166 (4711509)	76,17,675	58,05,975
2007-2008	5913(8126)	1894069 (14173735)	1,60,67,804	1,42,41,620
2008-2009	5448(14039)	3204413 (21701611)	2,49,06,024	1,36,71,300
2009-2010	44064(19487)	31671913 (28615855)	6,02,87,773	2,94,95,110
2010-2011	4501(63551)	3187888 (94101336)	9,72,89,224	1,08,41,000

b. The Branch has completed the proposals in bulk without adhering to KYC norms etc. as per AML Guidelines with effect from 1.8.2006.It is observed that previous policy particulars were not mentioned in the proposals completed in majority of the cases e.g. under policy no.894217532 previous policy no 893009470 was not mentioned.

c. As per point no.17 pg no 11, of the compiaint the cheque of Rs.28,75,000/- was loan on Keyman Insurance where the loan papers were signed by Shri.Sanjay Shah. Hence the contention of the company that the same was received as Survival Benefit is questionable.

d. The contention of the Company that huge amounts were given to the agent without any valid receipts is questionable.



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e. The said consolidated premium paid certificate are not official receipts by LIC and nowhere such type of certificates are issued but the same have been accepted by the company.

f. Under Employer-Employee scheme Proposal form No. 300 is used in which the policies are not to be assigned immediately to the Employer. So the SB cheques were prepared in individual employee names and it cannot be drawn in the name of the company.

g. The premium paid certificates signed by the then Branch Manager were issued by the Branch. However the same were confirmed by the current Branch Manager , that the signatures on these are not of the previous Branch Managers. Further, the Company has denied that the new proposals were not taken by them, however the Employer-Employee Resolution and addendums for the years 2007-08,2009-10,2010-11 were signed by the authorized signatory of the Company. In view of this the authenticity of the documents cannot be confirmed and the veracity of the signatures may be verified by a handwriting expert.

The above report is submitted for your kind perusal.

Shri J P Mathias
Divisional Manager (CRM)

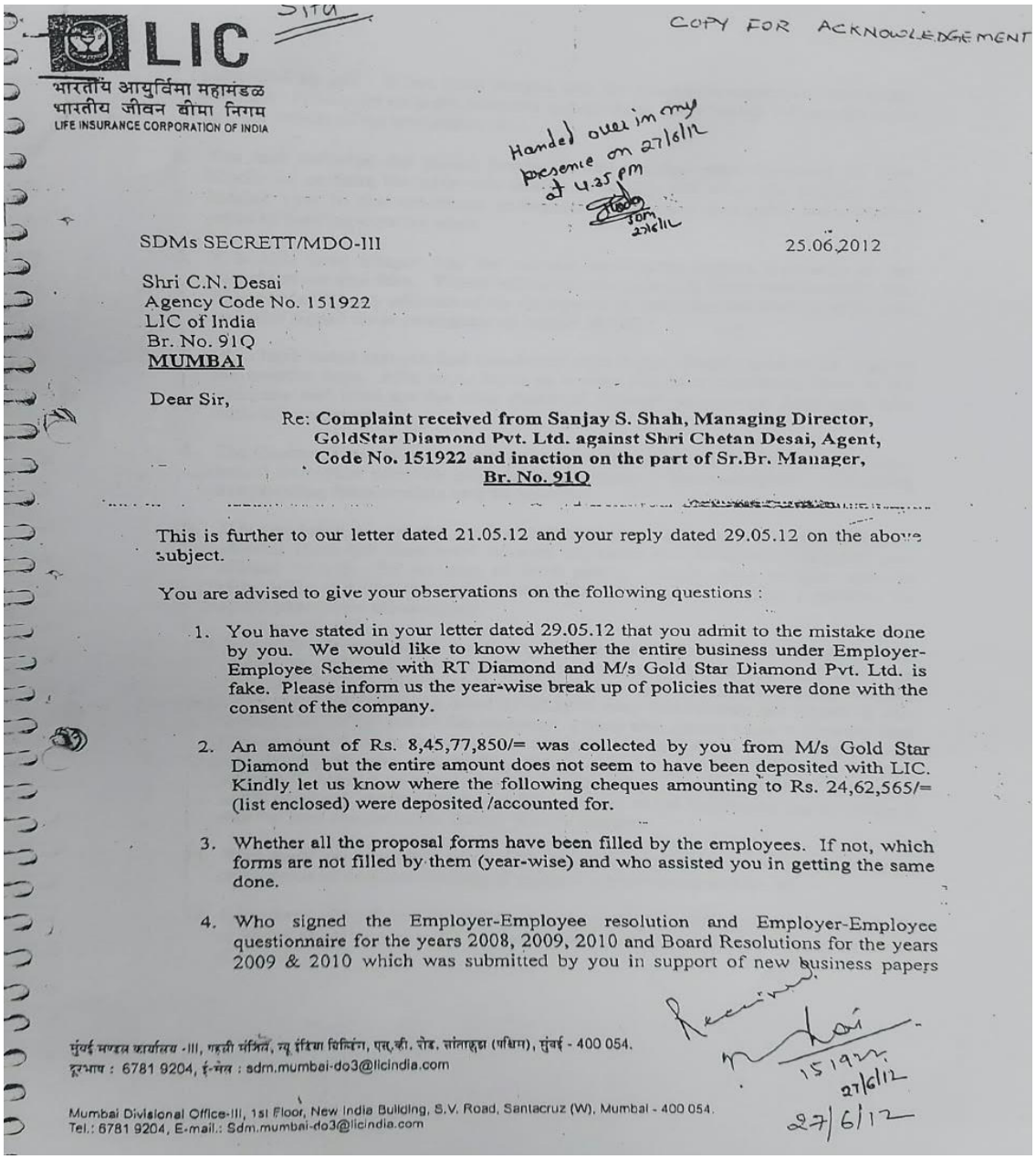
Smt R.Latha
Manager (F&A)

Ms Sangeeta Malik
Manager (NB)

10. It is mentioned that the policies were canvassed from 2005 under OP No. 2's agency on Form 300, mostly completed at the branch level, with no KYC under the non-medical scheme and the employer's address and records accepted as address and age proof. The board resolution, employer employee

addendum and related papers were untraceable at the branch. As per this Report, 68,052 policies were issued under employer-employee insurance. These findings, recorded in an inquiry conducted by OP No. 1 itself, point to serious deficiencies in supervision, verification and record-keeping at its branch.

11. The agent Mr. Desai was issued a notice by the LIC calling upon him to tender his reply. The said notice dated 25.06.2012 is extracted hereinunder:



LIC
भारतीय आयुर्विमा महामंडळ
भारतीय जीवन बीमा निगम
LIFE INSURANCE CORPORATION OF INDIA

SITU

COPY FOR ACKNOWLEDGEMENT

Handed over in my presence on 27/6/12 at 4.25 pm

SDMs SECRETT/MDO-III

25.06.2012

Shri C.N. Desai
Agency Code No. 151922
LIC of India
Br. No. 91Q
MUMBAI

Dear Sir,

Re: **Complaint received from Sanjay S. Shah, Managing Director, GoldStar Diamond Pvt. Ltd. against Shri Chetan Desai, Agent, Code No. 151922 and inaction on the part of Sr.Br. Manager, Br. No. 91Q**

This is further to our letter dated 21.05.12 and your reply dated 29.05.12 on the above subject.

You are advised to give your observations on the following questions :

1. You have stated in your letter dated 29.05.12 that you admit to the mistake done by you. We would like to know whether the entire business under Employer-Employee Scheme with RT Diamond and M/s Gold Star Diamond Pvt. Ltd. is fake. Please inform us the year-wise break up of policies that were done with the consent of the company.

2. An amount of Rs. 8,45,77,850/= was collected by you from M/s Gold Star Diamond but the entire amount does not seem to have been deposited with LIC. Kindly let us know where the following cheques amounting to Rs. 24,62,565/= (list enclosed) were deposited /accounted for.

3. Whether all the proposal forms have been filled by the employees. If not, which forms are not filled by them (year-wise) and who assisted you in getting the same done.

4. Who signed the Employer-Employee resolution and Employer-Employee questionnaire for the years 2008, 2009, 2010 and Board Resolutions for the years 2009 & 2010 which was submitted by you in support of new business papers

Received
151922
27/6/12
27/6/12

मुंबई मण्डल कार्यालय -III, गढ़ली मंजिल, न्यू इंडिया बिल्डिंग, एस.वी. रोड, सांताक्रुझ (पश्चिम), मुंबई - 400 054.
दूरभाष : 6781 9204, ई-मेल : sdm.mumbai-do3@licindia.com

Mumbai Divisional Office-III, 1st Floor, New India Building, S.V. Road, Santacruz (W), Mumbai - 400 054.
Tel.: 6781 9204, E-mail.: Sdm.mumbai-do3@licindia.com

submitted by you. It has been alleged that the Employer-Employee resolutions are fake. Kindly let us know who has signed these, from where did you get them and the details of the employees etc.

5. You had collected the policy bonds for the policies issued/procured by you. Kindly let us have the year-wise details as to how and when the policies were handed over to the concerned policyholders/company alongwith documentary proof of handing over the same.

6. It is also been alleged that the income certificates (copies enclosed) of the complaint are also fake. Please inform us who gave you these certificates/or was it demanded by any officials of the Company/ or was it handed over on your own and who signed these certificates on behalf of LIC.

7. You have stated that you had transferred your house. Kindly send us the copy of the transfer deed. Also let us know as to why you have transferred these to the company and what are the other financial dealings on personal front you have with this company.

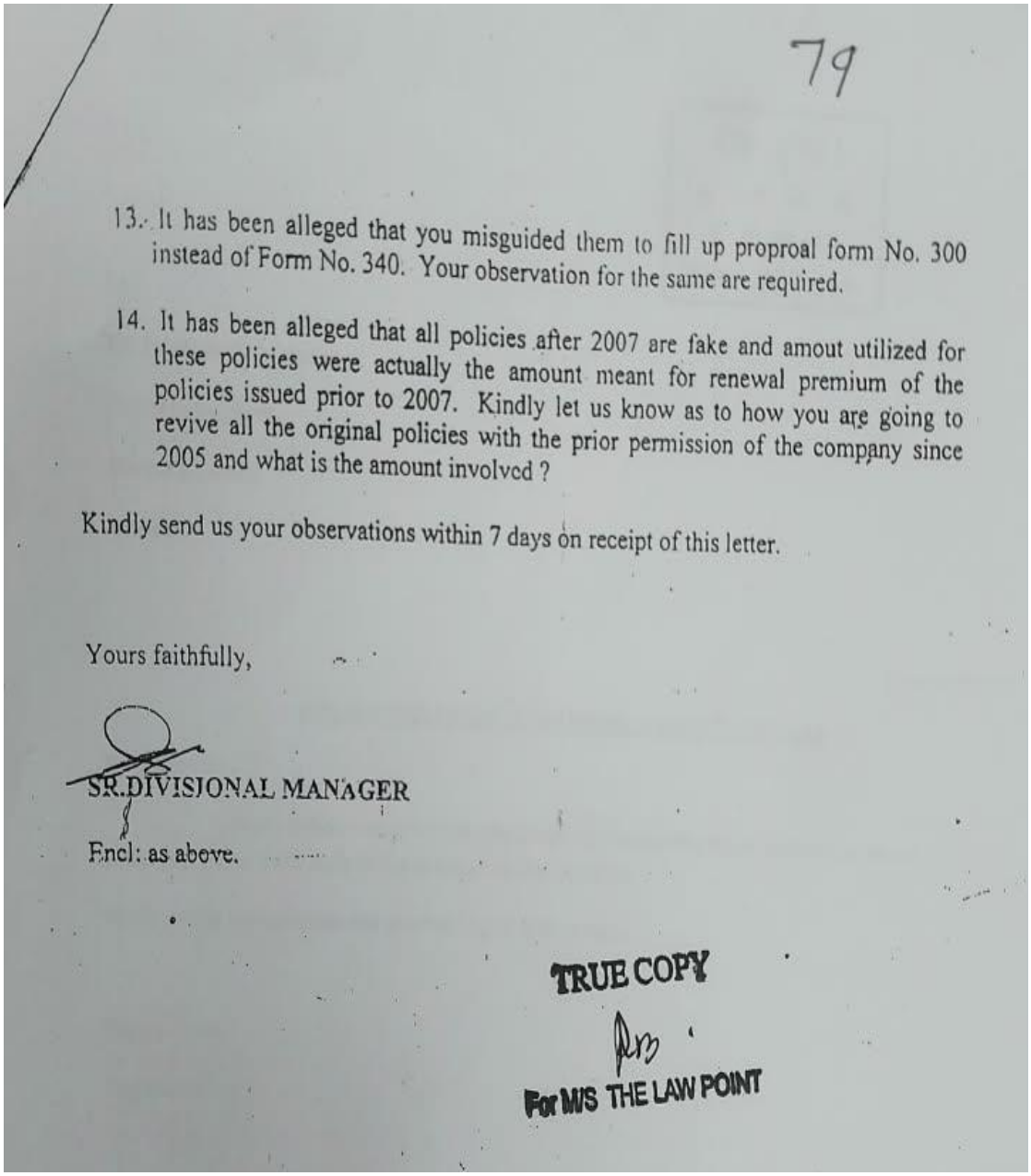
8. The Company was giving you cheques to be deposited in LIC. Were any receipts issued from your premium point to the Company ? The mode/proof of handing over/sending these receipts may be provided.

9. It is also being alleged that you had collected excess premiums from the company advising them that these were advance payments and the amount collected was utilized by you for issuance of fresh policy. Kindly give us your specific observation and also the total amount collected by you as advance premiums for all the years from the company.

10. It has also been pointed out that the company received a loan cheque of Rs. 19,59,500/- in March 2010 in addition to the loan cheque of Rs. 28,75,000/- on the policy of Mr. Sanjay S. Shah under Pol.Nos. 893000685/686. Kindly confirm whether the 2 loan forms dated 27.09.2010 were fraudulently got signed by Mr. Sanjay Shah as alleged by the company. Please also inform us as to how the loan cheque was issued in favour of the company instead of Mr. Sanjay Shah. Who was the person who was dealing with you on behalf of the company for LIC policies ? Also let us know why you handed over the cheque for Rs. 28,75,000/- to the company stating that it was SB payment of the employees but in reality it was the loan cheque in Mr. Sanjay Shah's policies.

11. Was there any occasion when LIC officials accompanied you at the time of procuration of business/handing of policies/any servicing matters etc.

12. It has been alleged that 261 SB cheques were kept in your possession. Kindly let us know as to why you did not hand over the same to the policyholders of the company.



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13. It has been alleged that you misguided them to fill up proproal form No. 300 instead of Form No. 340. Your observation for the same are required.

14. It has been alleged that all policies after 2007 are fake and amout utilized for these policies were actually the amount meant for renewal premium of the policies issued prior to 2007. Kindly let us know as to how you are going to revive all the original policies with the prior permission of the company since 2005 and what is the amount involved ?

Kindly send us your observations within 7 days on receipt of this letter.

Yours faithfully,

SR.DIVISIONAL MANAGER

Encl: as above.

TRUE COPY

For M/S THE LAW POINT

12. On receipt of this letter, Mr. Desai sent his reply on 23.07.2012, admitting that he was guilty and responsible for all the manipulations alleged and that he should be given an opportunity to correct his mistake. The reply given by Mr. Desai is extracted hereinunder:

To,

The Sr.Branch Manager,

L.I.C of India, Branch-91Q,

Jogeshwari (east),

Mumbai

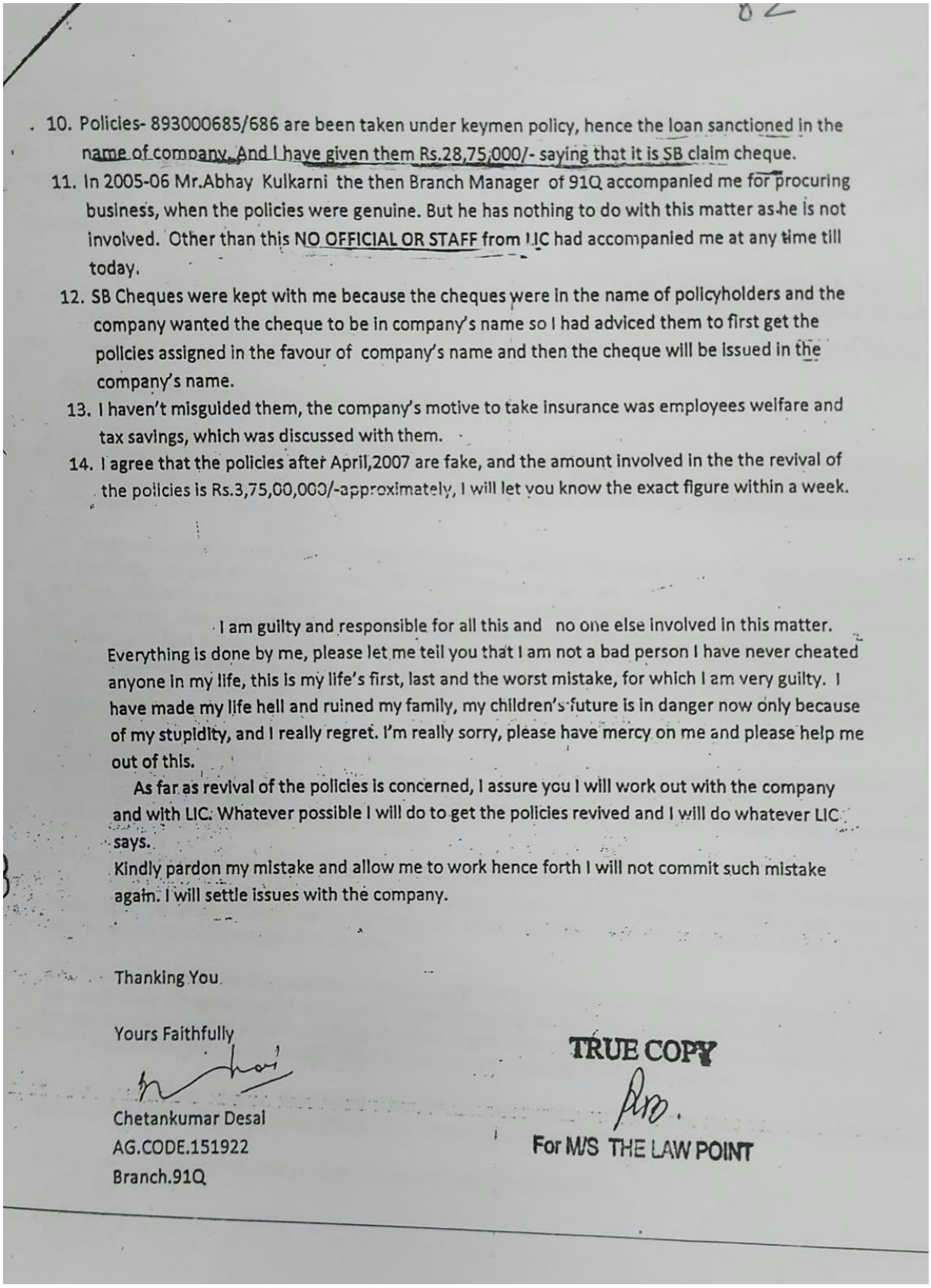
Date: 23/07/12

SUB: EXPLANATION TO THE LETTER RECEIVED ON 26TH JULY 2012

Respected Sir,

Following are the answers to the question asked in the letter received on the above mentioned date:

1. No, the entire business under employer –employees is not fake, financial year 2005-2006, 2006-2007 and april 2007 are genuine business.
2. I collected Rs.7.77 CR/- from the company, and entire amount had been deposited in LIC, and Rs.24,62,565/- which is included in the above mentioned amount is utilized under the agencies, Preeti Desai, AG.CODE.1548901, Tejas Desai and Anjana Mehta,AG.CODE.3188144 Br.91Q, for F.P and renewal for which they are not responsible it was deposited without knowledge
3. Proposal forms in 2005-2006 and 2006-2007 were signed by employees and I took their signs on 4 additional forms, intending to split the sum insured and also the employees wanted to take personal policies.
4. I signed the company's resolution in 2008-09 and 2009-10.
5. Policies taken after April 2007, were not handed- over to the company. But 8000to 9000 approx policies are not ready not printed by BO till today.
6. I provided the IT certificate to the company because when I had asked in the branch to issue a certificate to the company, I was denied saying that it is very difficult to get certificate for so many policies as so many accounts or ledger had to check.
7. I have transferred my house in the company's name as a recovery amount. I haven't yet received the transfer deed.
8. The premium cheques received from company were deposited at my premium point, but had not printed the receipts because there were so many receipts and I thought it is better to give IT Certificate at the end of the year.
9. I have never collected any excess amount from the company. I had advised them that in order to reduce the premium paying term, they will have to pay extra premium but this advice was never considered by them.



10. Policies- 893000685/686 are been taken under keymen policy, hence the loan sanctioned in the name of company. And I have given them Rs.28,75,000/- saying that it is SB claim cheque.
11. In 2005-06 Mr.Abhay Kulkarni the then Branch Manager of 91Q accompanied me for procuring business, when the policies were genuine. But he has nothing to do with this matter as he is not involved. Other than this NO OFFICIAL OR STAFF from LIC had accompanied me at any time till today.
12. SB Cheques were kept with me because the cheques were in the name of policyholders and the company wanted the cheque to be in company's name so I had adviced them to first get the policies assigned in the favour of company's name and then the cheque will be issued in the company's name.
13. I haven't misguided them, the company's motive to take insurance was employees welfare and tax savings, which was discussed with them.
14. I agree that the policies after April,2007 are fake, and the amount involved in the the revival of the policies is Rs.3,75,00,000/-approximately, I will let you know the exact figure within a week.

I am guilty and responsible for all this and no one else involved in this matter. Everything is done by me, please let me tell you that I am not a bad person I have never cheated anyone in my life, this is my life's first, last and the worst mistake, for which I am very guilty. I have made my life hell and ruined my family, my children's future is in danger now only because of my stupidity, and I really regret. I'm really sorry, please have mercy on me and please help me out of this.

As far as revival of the policies is concerned, I assure you I will work out with the company and with LIC. Whatever possible I will do to get the policies revived and I will do whatever LIC says.

Kindly pardon my mistake and allow me to work hence forth I will not commit such mistake again. I will settle issues with the company.

Thanking You.

Yours Faithfully

Chetankumar Desai
AG.CODE.151922
Branch.91Q

TRUE COPY

For M/S THE LAW POINT

13. In his letter dated 23.07.2012 addressed to OP No. 1, OP No. 2 made material admissions concerning his conduct. He admitted to having collected a

sum of Rs. 7.77 crore from the Complainant and stated that the same was deposited with OP no. 1. He further admitted to having forged documents, including the Complainant's Board Resolutions for the financial years 2008-2009 and 2009-2010. He further admitted that policies taken after April, 2007 were not handed over to the Complainant and in fact, 8000-9000 policies had not been printed by the branch office till then. Furthermore, the premium receipts for the policies had not been printed as there were so many policies. The survival benefit cheques were available with him because the Claimant had wanted the same in their name. He admitted that the policies after April, 2007 were fake.

14. The Corporation sent another letter to Mr. Desai on 06.08.2012 calling upon him to give further explanation with a reminder on 24.08.2012. The queries raised in the letter dated 06.08.2012 are as follows:

Ex-K

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Acknowledgement copy

मु. वि.
मु. मं.
M. D.

भारतीय आयुर्विमा महामंडळ
भारतीय जीवन बीमा निगम
INSURANCE CORPORATION OF INDIA

Ref: MDO-II/P&IR

06.08.2012
Handed over in my presence on 9/8/12 at 2.15 pm

Received letter on 09/8/12 Time - 14.15 pm

15/9/12

Shri.C.N.Desai,
Agency Code No: 151922
L.I.C.of India,
Br. No. 91Q
Mumbai.

Dear Sir,

Re: Complaint received from Shri. Sanjay S.Shah,MD,Gold Star Diamond Pvt.Ltd.against Shri.Chetan Desai,Agent, Code No: 151922 and inaction on the part of Sr.Br.Manager, Br.91Q

This has reference to your letter dated 23.07.2012 received by us in reply to our letter dated 25.06.2012 on the above subject.

You are advised to give your further observations on the following points:

1) You have mentioned in your reply that some of the amount received by you were deposited in the Agencies of Preeti Desai, Tejes Desai and Anjana Mehta. Let us have the details of the various agencies- viz. Agents Name, Code No., Branch Office, name of Division, your relationship with the Agent and the amounts deposited under each Agent.

2) You have stated in your letter dated 23.07.2012 that policies taken after April 2007 have not been handed over to the Company and that approximately 8000-9000 policies have not been printed by branch till date. However, we have received a confirmation from the branch that only 3368 policies pertaining to 2010-2011 are pending to be issued and that they do not have any policy bond pending for dispatch under agency code no: 0151922. Besides, you had submitted copy of letter dated 25.07.2010 (copy enclosed) to the Branch Office which is an acknowledgement from the Company of having received 45,156 policies under Employer-Employee Scheme. Please comment on the authenticity of this letter and also explain as to where these policy bonds are and what has happened to them.

3) You have not answered completely the queries raised by us in our letter dated 25.06.2012 at point no.10. Please clarify how company has received a loan cheque of Rs.19,59,500/- in addition to Rs.28,75,000/- on the policies of Shri.Sanjay S.Shah under policy nos.893000685/686. Were the signatures on this loan application form fraudulently taken as alleged by the Company?

4) You have stated in your above letter that the policies after April 2007 are fake and that the amount involved in the Revival of the policies is Rs.3,75,00,000/- approximately and that you would confirm the exact figure in a weeks time. Till date, i.e.even after a fortnight, we have not received the details from you. Please give us the exact date by which you can confirm the details.

5) You have stated that the proposal forms in 2005-2006 and 2006-2007 were signed by the employees and that you took their signatures on 4 additional forms intending to split the sum insured and that the employees also wanted to take personal policies. Kindly confirm if you have utilized these additional proposal forms to submit at the branch for the period after April 2007 which you are claiming to be fake policies.

6) Kindly confirm whether the Board Resolutions and Employeer-Employee Questionnaires pertaining to the period 2005-2006, 2006-2007 and 2007-2008 were submitted to the Branch Office.

Kindly send us your observations within 7 days of receipt of this letter.

Yours faithfully,

Sr.Divisional Manager

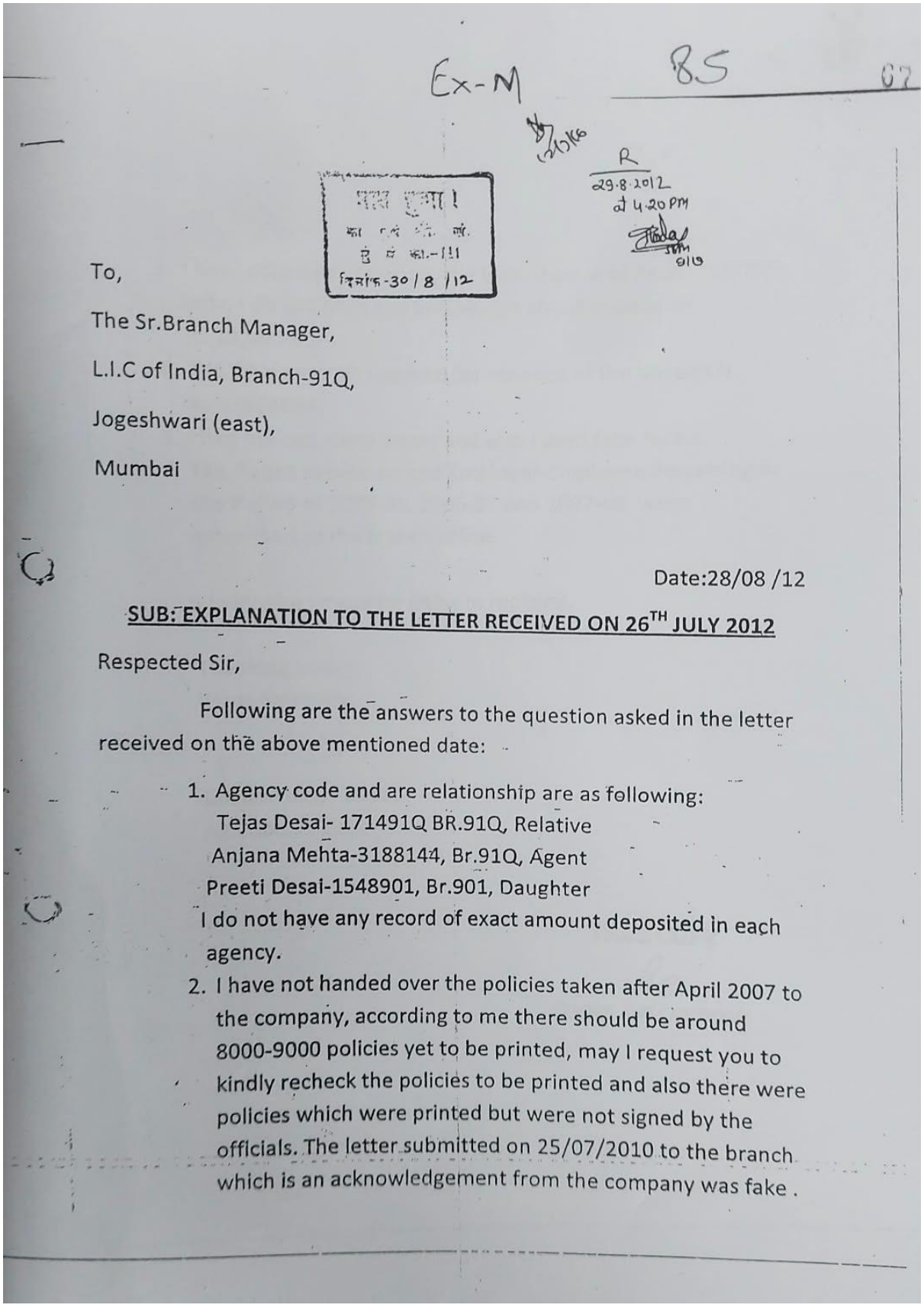
Encl: as above
cc: Sr.Branch Manager, Br.91Q: with a request to hand over the Original letter to the Agent under proper acknowledgement and send the acknowledged copy back to us for our record.

TRUE COPY

For M/S THE LAW POINT

17242

15. The reply given by Mr. Desai on 28.08.2012 is as follows:



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R
29.8.2012
at 4.20 PM

To,

The Sr.Branch Manager,

L.I.C of India, Branch-91Q,

Jogeshwari (east),

Mumbai

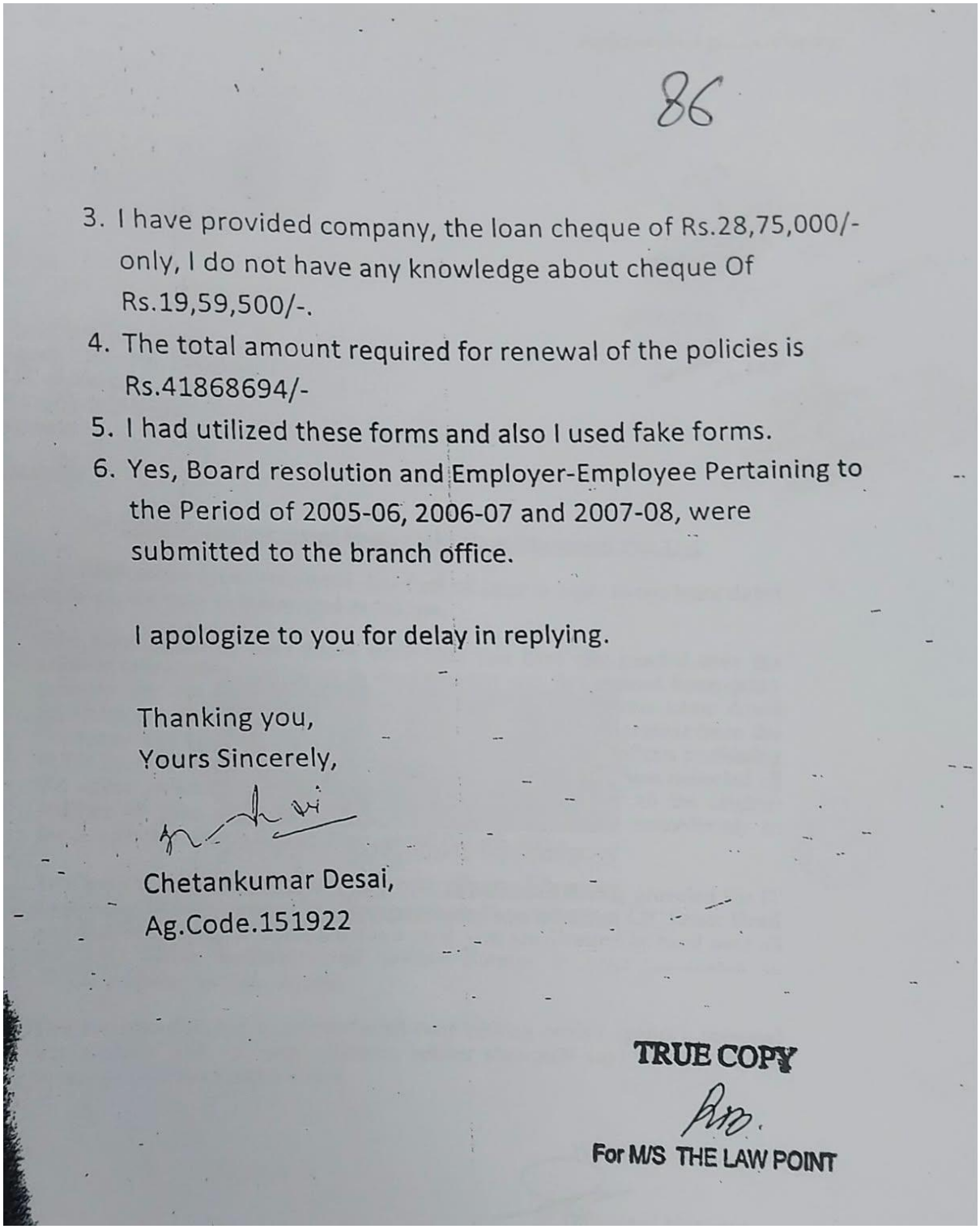
Date:28/08 /12

SUB: EXPLANATION TO THE LETTER RECEIVED ON 26TH JULY 2012

Respected Sir,

Following are the answers to the question asked in the letter received on the above mentioned date:

1. Agency code and are relationship are as following:
   Tejas Desai- 171491Q BR.91Q, Relative
   Anjana Mehta-3188144, Br.91Q, Agent
   Preeti Desai-1548901, Br.901, Daughter
   I do not have any record of exact amount deposited in each agency.
2. I have not handed over the policies taken after April 2007 to the company, according to me there should be around 8000-9000 policies yet to be printed, may I request you to kindly recheck the policies to be printed and also there were policies which were printed but were not signed by the officials. The letter submitted on 25/07/2010 to the branch which is an acknowledgement from the company was fake .



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3. I have provided company, the loan cheque of Rs.28,75,000/- only, I do not have any knowledge about cheque Of Rs.19,59,500/-.
4. The total amount required for renewal of the policies is Rs.41868694/-
5. I had utilized these forms and also I used fake forms.
6. Yes, Board resolution and Employer-Employee Pertaining to the Period of 2005-06, 2006-07 and 2007-08, were submitted to the branch office.

I apologize to you for delay in replying.

Thanking you,
Yours Sincerely,

Chetankumar Desai,
Ag.Code.151922

TRUE COPY

For M/S THE LAW POINT

16. The OP no. 1 stated that he had not handed over the policies after April, 2007 to the Complainant and that 8000-9000 policies were not even printed or signed by the LIC office. He further stated that the letter dated 25.07.2010

submitted by him to the branch which was an acknowledgement from the Complainant was a fake. He stated that he had used fake forms.

17. It may be pointed out that apart from the reply given by Mr. Desai admitting his mistakes, he also tendered a notary affidavit dated 30.07.2012 which is in the shape of an “Admission cum Declaration”. The same is extracted hereinunder:

ANNEXURE 18

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NOTARY B. K. ASHOK MUMBAI REGD. NO. 4381 GOVERNMENT OF INDIA

महाराष्ट्र MAHARASHTRA

GB 598540

011354

Chetan Desai

Andheri (E)

Admission cum Declaration

I, Mr. Chetankumar Naginbhai Desai, residing at 104, Green land Apartment, J.B Nagar, Andheri (East), Mumbai - 400 059, do hereby solemnly state and affirm on oath as under:

1. That, I am appointed as a agent for LIC of India having no. 151922 with Jogeshwari 91Q branch since August 1987.

2. That, as a LIC Agent, I have explained and taken policies of Gold Star Diamond Pvt. Ltd (Formerly known as R. T. Diamond Pvt. Ltd), a. Keymann policies for promoters & b. Employer Employee policy namely i. Janraksha and ii. Bima Gold.

TRUE COPY

Contd....2

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3. That the policy scheme was explained by me as under:
   i. this scheme will benefit the Employer on long term
   ii. This scheme will benefit the Employee in unforeseen event during the employment.
   iii. At the time of maturity, the premium and the bonus will be paid to the employer if no claims are made.
   iv. After a payment of premium of 5 years, all the policies will be assigned on the Employer.

4. That, I had open new policies of this company employees under above scheme till Mar 2007 with an approx policies of 6800 of which I had handover 5700 policies to company.

5. That, all initial premium for taking fresh policies of 6800 policies during period of 2004 to 2007 and subsequent renewal premium of the same were paid by the company by cheque in favour of LIC of India alongwith covering letter to me and I have acknowledge the receipt for the deposit of said payment in LIC office. All the premium / renewal payment receipts of LIC for the period 2005 to 2011 were in my custody. I have never handover to the company in spite of their repeated reminders for individual premium receipt for each cheque paid towards renewal for the aforesaid policies of LIC and convinced the company that, on yearly basis a consolidated statement of premiums paid receipt from LIC will be obtained and handed over. Accordingly at the end every financial year from 2005 I have submitted a consolidated statement till Mar 2011.

6. Further, during the period July 2007, I have explained promoters to shorten the insurance period with an option of paying advance premium and explain the benefit of getting extra bonus, obtain higher value of loan than the prescribed guidelines. And accordingly company has paid the cheque.

7. Although I have received the cheque for the period of 2008- 11 for the renewal of 6800 policies taken before 2007, but I have wrongly applied such payments for taking fresh policies without the knowledge of the company in order to get higher commission benefits from LIC of India and I have forged the signature of the company and given fake documents to LIC of India to take out fresh policies.

TRUE COPY

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8. That, when company insisted in 2010 to assign the policies in favour of company, I have kept them in dark and misguided on many occasions stating that the software is not working in LIC, ensured that all the visits to the Office and enquires made with respect to Employer Employee Scheme happened in my physical presence to ensure they receive positive response to avoid scope of doubt. Further, I have made them to meet the Marketing Manager and also submitted to LIC 91 Q Branch approx 1300 policies for assignment which are in the custody of the branch and assured rest policies will be submitted in phase manner.

9. That, I submitted a cheque of Rs.28,75,000.00 in Sept 2010 to the company , stating that, said amount was received towards survival benefit under Employer Employee Scheme which was rather obtained as a loan against keymen policy of the promoter Mr.Sanjay Shah. The Survival Benefit Cheques of total 261 of individual employees received by me in 2009 on behalf of the company, the same have been handed over in December 2011.

10. That, because of the above said acts and fraud done by me; the company has incurred a loss of Rs.5.21 Crore (Rupees Five Crore Twenty One Lacs). The company has remitted to LIC towards Employer Employee Scheme Rs.7.76 Crores (Rupees Seven Crore Seventy Six Lacs) and only Rs.2.55 Crores (Rupees Two Crore Fifty Five Lacs) were paid in the Employer Employer Scheme policies obtained by the company till Mar 2007 on 5699 policies.

11. That, further I declare that no one from the company was involved neither helped in what so ever manner to do this fraud and was solely involved. I have committed this fraud in view of personal problems.

12. That, based on my details admission as said above, I would plea to the company to with draw the complaint made to LIC on 15th May 2012 and I declare and undertake to the company following activities to protect their losses :

    i) that, as on date, 8000-9000 policies which taken in the name of the company have so far not received from LIC of India and on which I have also not got commission from LIC of India and they are under cooling off period. Approx Rs.50 to 60 Lacs will be recovered from LIC against the

TRUE COPY

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aforesaid no.of policies which have not been processed / printed till date under cooling off period and paid to company.

ii) that, approx 1100 policies obtained till Mar 2007 of Rs.68,00,000.00 which have not been handover to company, duplicate will be obtained and handover.

iii) that, as per the scheme explained to the company, I will assign all the policies in favour of Gold Star Diamond Pvt. Ltd.

iv) that, whatever loss company has incurred along with interest which company has to pay on delay payment of premium on genuine policy taken due to my act of omission, fraudulent activity payable to LIC of India for reviving the actual policy taken by the company shall be my responsibility to compensate the company and I will pay the entire amount to the company from my earning commission from LIC of India and that I will open separate bank account in joint name with company's representative wherein my LIC Commission cheque will get deposited till I clear my entire liabilities.

13. That, I further declare that I am willing to co-operate and admit the above said facts in front of investigating officers of LIC and whom so ever concern.

Whatever stated above is true and correct to best of my knowledge and free of pressure and any coercion.

Solemnly affirmed on the 30th day of July 2012 at Mumbai.

Identified by me.

left hand thumb

DEPONENT

BEFORE ME

Witness:

30/7/12

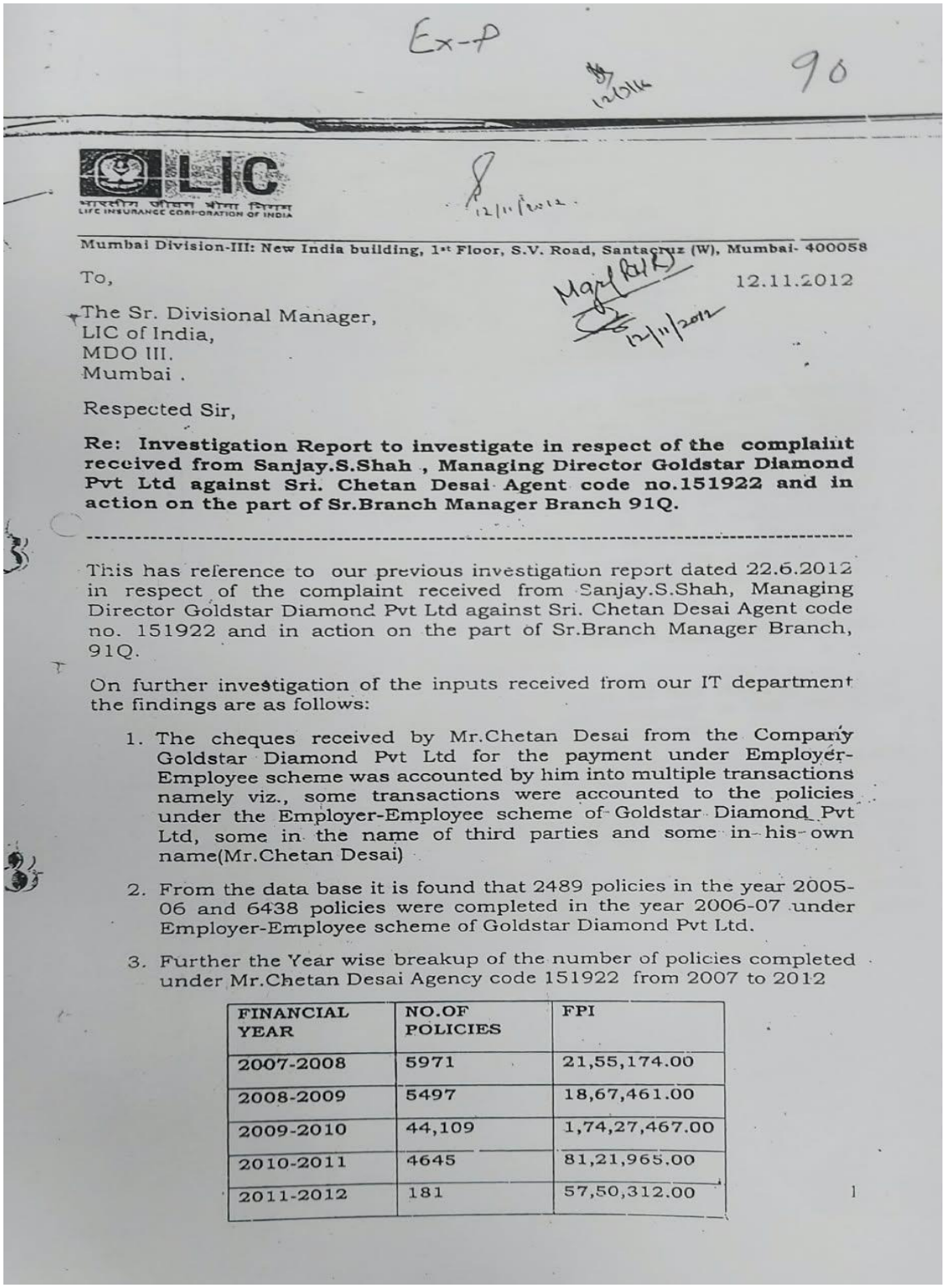
B. K. ASHOK
Notary Govt. of India
503/I, Birdra Rose,
Mahakali Road,
Mumbai - 400 093.
Regn. No. 4361

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

Sr. No. 696

TRUE COPY

18. Further queries were again raised through the letter dated 25.09.2012 and a reminder and thereafter the Committee which had tendered its report on 22.06.2012 submitted another report on 12.11.2012 which is extracted hereinunder:



Ex-P

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LIC
भारतीय जीवन बीमा निगम
LIFE INSURANCE CORPORATION OF INDIA

Mumbai Division-III: New India building, 1st Floor, S.V. Road, Santacruz (W), Mumbai- 400058

To,

12.11.2012

The Sr. Divisional Manager,
LIC of India,
MDO III.
Mumbai .

Respected Sir,

Re: Investigation Report to investigate in respect of the complaint received from Sanjay.S.Shah , Managing Director Goldstar Diamond Pvt Ltd against Sri. Chetan Desai Agent code no.151922 and in action on the part of Sr.Branch Manager Branch 91Q.

This has reference to our previous investigation report dated 22.6.2012 in respect of the complaint received from Sanjay.S.Shah, Managing Director Goldstar Diamond Pvt Ltd against Sri. Chetan Desai Agent code no. 151922 and in action on the part of Sr.Branch Manager Branch, 91Q.

On further investigation of the inputs received from our IT department the findings are as follows:

1. The cheques received by Mr.Chetan Desai from the Company Goldstar Diamond Pvt Ltd for the payment under Employer-Employee scheme was accounted by him into multiple transactions namely viz., some transactions were accounted to the policies under the Employer-Employee scheme of Goldstar Diamond Pvt Ltd, some in the name of third parties and some in his own name(Mr.Chetan Desai)
2. From the data base it is found that 2489 policies in the year 2005-06 and 6438 policies were completed in the year 2006-07 under Employer-Employee scheme of Goldstar Diamond Pvt Ltd.
3. Further the Year wise breakup of the number of policies completed under Mr.Chetan Desai Agency code 151922 from 2007 to 2012

FINANCIAL YEAR	NO.OF POLICIES	FPI
2007-2008	5971	21,55,174.00
2008-2009	5497	18,67,461.00
2009-2010	44,109	1,74,27,467.00
2010-2011	4645	81,21,965.00
2011-2012	181	57,50,312.00

4. Out of the above Table it is observed that 3169 policies have been completed under other Agency Code as follows:

NAME OF AGENT	AG.CODE NO.	NO.OF POLICIES
MRS.PAULOMI DESAI	0166191Q	1589
MR.TEJAS DESAI	0171491Q	1048
MRS.ANJANA K.MEHTA	0182591Q	532
		3169

5. It is observed that the cheques of the Company paid towards Renewal Premium were accounted viz.,towards Renewal Premium of the Gold star Diamond Pvt Ltd Employer-Employee genuine policies ,and also towards policies of Gold Star Pvt Ltd not pertaining to 2005-06 and 2007-08 (which are said to be genuine by the Company) and towards third party and also towards the loan repayment of Mr.Chetan Desai himself. **It is inferred from this that the payment received by Mr.Chetan Desai from various third party policy holders must be in cash for their premiums which had been accounted vide the Company's cheques.**

6. **The appropriation of the cheques received from the Company is as follows: (As per Annexure A)**

7. During the course of our investigation we had received a list of additional 5 cheques paid by the Company to the extent of Rs.3919000/- which was also taken into account.

8. Inspite of our best efforts still an amount of Rs. 2173565/- Is not traceable in the data base in our MDOIII.

9. It is observed that some refunds have been done from the cheques received from the Company. On further verification we find that some cheques were drawn in the name of Goldstar Diamond Pvt ltd some in the name of third party and out which some refund cheques have become stale and for some stale cheques fresh cheques have been issued favouring LIC of India. Sample of some cases are as follows:

ChequeNo.	Date	Amount	Favouring	Remarks
483884	30.05.2007	122136/-	RT.Diamond	Recycled
753262	19.07.2007	64731/-	RT.Diamond	Recycled
827549	30.09.2006	145229/-	Goldstar	Recycled
1582	03.12.2008	244000/-	A.K.Khimani	Third party – encashed on 22.12.2008
1583	03.12.2008	244000/-	A.K.Khimani	Third party – encashed on 16.01.2009
1584	03.12.2008	11000/-	A.K.Khimani	Third party – encashed on 22.12.2008
727812	22.11.2005	1029/-	Kadambari	Company Employee- encashed on 09.12.2005
827336	05.09.2006	546/-	Bhavesh Shah	Cheque stale
2449	18.03.2009	3685/-	Goldstar	Cheque stale
2448	18.03.2009	1689/-	Goldstar	Cheque stale
2765	12.05.2009	493/-	Goldstar	Cheque stale-Fresh chq issued on 23.12.2009 in favour of LIC of India.
4207	11.12.2009	269/-	Goldstar	Cheque stale-Fresh chq issued on 23.12.2009 in favour of LIC of India.

It is observed from the above that there was procedural deviations at the Branch Office as the cheques were of Goldstar Diamond Pvt Ltd but it has been diverted towards third party, towards fresh proposals and some cheques even though they have become stale fresh cheques have been issued in favour of LIC of India.

During our investigation we came across a case wherein the cheque was of Gold star Pvt Ltd but the amount was diverted towards the proposal of Shri.A.K.Khimani vide BOC No6906,6907,6904 dated

3.12.2008 totaling to Rs.499000/- . However the proposals could not be completed due to medical impersonation and then the amount was refunded to Mr.Khimani. It is inferred from this that the amount might have been collected from Mr.Khimani by Mr.Chetan Desai by **cash** and it was accounted through the cheque of Goldstar Diamond Pvt Ltd.

10. Mr. Chetan Desai has received the Commission to the tune of approximately Rs.8361315.41 under First Premium Commission and Bonus commission and approximately Rs.85,94,306.49 towards FYR Commisssion and Renewal Commisssion .

11. It is found from the data base that out of the 8927 policies issued in 2005-06 and 2006-07 only approximately 4197 policies are Inforce and remaining 4730 are in lapsed condition.

12. In respect of our earlier Investigation report dated 22.06.2012 in our Overall Observations point (a), it is inferred that Mr.Chetan Desai was in the habit of collecting excess amount more than the actual premium and was informing the Company that the same is towards Advance premium, but the same was being diverted to New Business policies.

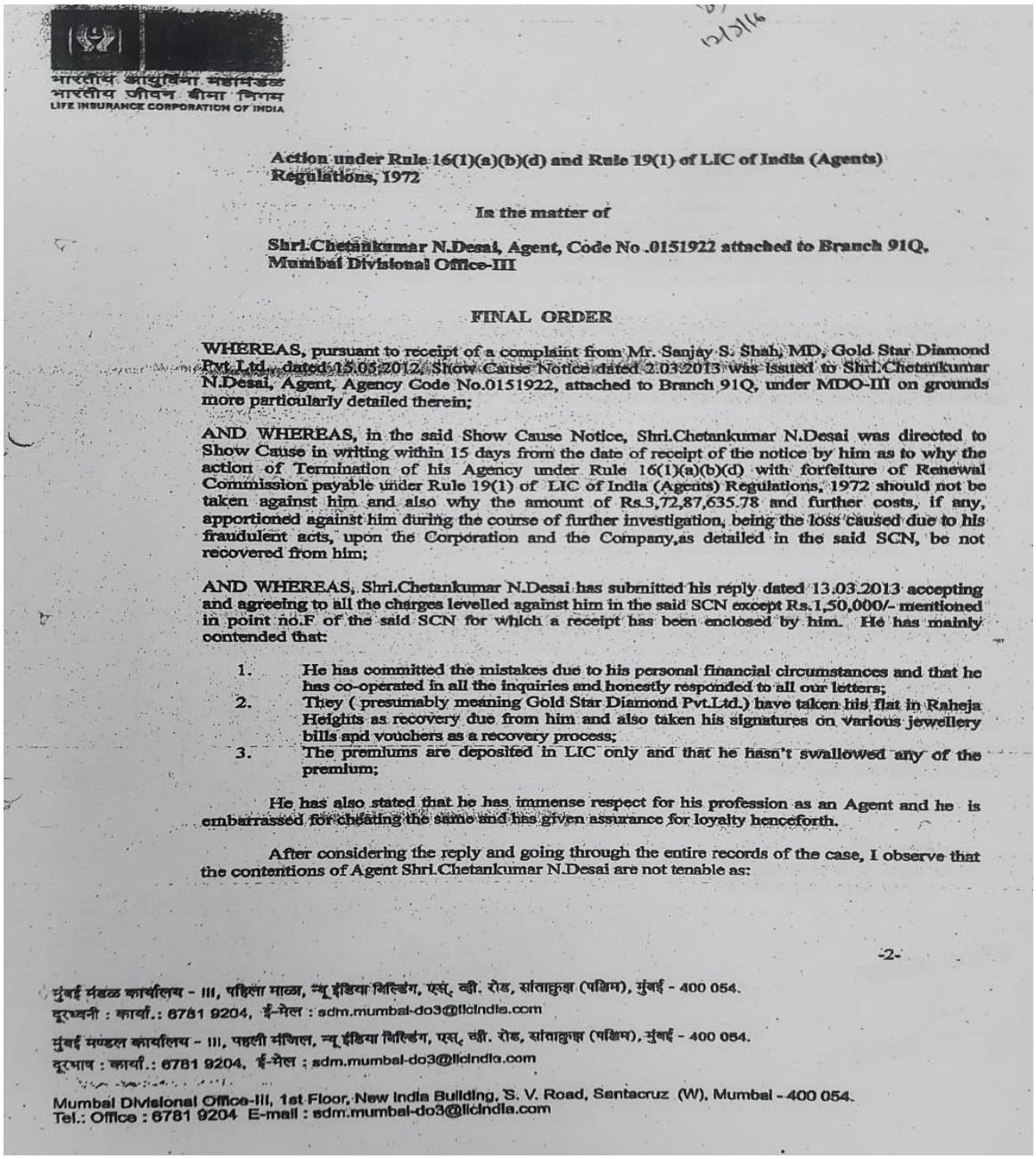
13. While going through the data pertaining to the 6368 policies of Goldstar where the policy numbers were not matched with (2005-06 & 2007-08) in some cases it is seen that originally the policies were issued with address of Goldstar Diamond Pvt Ltd under Employer-Employee scheme at the proposal stage. However subsequently the actual address of the policy holder has been incorporated. Some of such policies are in the name of Mr.Kadambari,(General Manager HR of the Company)Mr.Bhavesh Shah (Chartered Accountant) and the policies are still in force.

This is our overall analysis of the Investigation and we are submitting herewith Annexure A and the Excel files on which our Investigation Report is based for your kind perusal.

Shri J P Mathias	Smt R.Latha	Ms Sangeeta Malik
Divisional Manager (CRM)	Manager (F&A)	Manager (NB)

Encl: Annexure A and the Excel files

19. With the aforesaid information and reports, a Show Cause Notice was given by the Life Insurance Corporation to Mr. Chetan Desai calling upon him to give his response for taking further action in accordance with the Life Insurance Corporation of India Agents Regulations 1972. Mr. Desai gave his reply to the said notices referring to the earlier communications and accepting his mistake. After receipt of the said reply, the agency of Mr. Desai was terminated vide an order dated 31.05.2014 which is extracted hereinunder:



भारतीय आयुर्विमा महामंडळ
भारतीय जीवन बीमा निगम
LIFE INSURANCE CORPORATION OF INDIA

Action under Rule 16(1)(a)(b)(d) and Rule 19(1) of LIC of India (Agents) Regulations, 1972

In the matter of

Shri.Chetankumar N.Desai, Agent, Code No .0151922 attached to Branch 91Q, Mumbai Divisional Office-III

FINAL ORDER

WHEREAS, pursuant to receipt of a complaint from Mr. Sanjay S. Shah, MD, Gold Star Diamond Pvt.Ltd., dated 15.05.2012, Show Cause Notice dated 2.03.2013 was issued to Shri.Chetankumar N.Desai, Agent, Agency Code No.0151922, attached to Branch 91Q, under MDO-III on grounds more particularly detailed therein;

AND WHEREAS, in the said Show Cause Notice, Shri.Chetankumar N.Desai was directed to Show Cause in writing within 15 days from the date of receipt of the notice by him as to why the action of Termination of his Agency under Rule 16(1)(a)(b)(d) with forfeiture of Renewal Commission payable under Rule 19(1) of LIC of India (Agents) Regulations, 1972 should not be taken against him and also why the amount of Rs.3,72,87,635.78 and further costs, if any, apportioned against him during the course of further investigation, being the loss caused due to his fraudulent acts, upon the Corporation and the Company,as detailed in the said SCN, be not recovered from him;

AND WHEREAS, Shri.Chetankumar N.Desai has submitted his reply dated 13.03.2013 accepting and agreeing to all the charges levelled against him in the said SCN except Rs.1,50,000/- mentioned in point no.F of the said SCN for which a receipt has been enclosed by him. He has mainly contended that:

1. **He has committed the mistakes due to his personal financial circumstances and that he has co-operated in all the inquiries and honestly responded to all our letters;**
2. **They (presumably meaning Gold Star Diamond Pvt.Ltd.) have taken his flat in Raheja Heights as recovery due from him and also taken his signatures on various jewellery bills and vouchers as a recovery process;**
3. **The premiums are deposited in LIC only and that he hasn't swallowed any of the premium;**

He has also stated that he has immense respect for his profession as an Agent and he is embarrassed for cheating the same and has given assurance for loyalty henceforth.

After considering the reply and going through the entire records of the case, I observe that the contentions of Agent Shri.Chetankumar N.Desai are not tenable as:

-2-

मुंबई मंडळ कार्यालय - III, पहिला माळा, न्यू इंडिया बिल्डिंग, एस्. व्ही. रोड, सांताक्रुझ (पश्चिम), मुंबई - 400 054.
दूरध्वनी : कार्या.: 6781 9204, ई-मेल : sdm.mumbai-do3@licindia.com
मुंबई मण्डल कार्यालय - III, पहली मंजिल, न्यू इंडिया बिल्डिंग, एस्. व्ही. रोड, सांताक्रुझ (पश्चिम), मुंबई - 400 054.
दूरभाष : कार्या.: 6781 9204, ई-मेल : sdm.mumbai-do3@licindia.com
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Tel.: Office : 6781 9204 E-mail : sdm.mumbai-do3@licindia.com

(11)

भारतीय जीवन बीमा निगम
LIFE INSURANCE CORPORATION OF INDIA

1. The Agent is the primary underwriter and is the direct link between the Insurer and the Insured. He shall, under no circumstances, accept risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever. By misusing the funds given by the Company on behalf of its employees, whatever may be the compelling financial circumstances, Shri.Chetankumar N.Desai has betrayed the trust reposed in him by the Corporation. His act has resulted in lapsation of genuine policies. The funds have also been misused by introducing fake policies and deriving huge personal gains in the form of First Premium Commission and other allied benefits. He has thus committed breach of Rules 8(2) (b), 8(3)(c) and 8(4) of the LIC of India (Agents) Regulations, 1972.

2. The amounts recovered from him, in the form of flat and other things, by the Company are a result of his own wrong doings and the Corporation is in no way responsible for the same;

3. His contention that the premiums are deposited in LIC only does not absolve him from the responsibility of utilizing the funds rightfully and by his misdeeds he has let down the name of the Corporation which had held him in high esteem.

As regards the amount of Rs.1,50,000/- for which a receipt has been enclosed by him, the amount of Rs.4,99,565.00 (inclusive of Rs.1,50,000/-) has been shown in Point No.F of the SCN only as one of the manner in which the funds of the Company have been utilized.

Shri.Chetankumar N.Desai has thus failed in his duties as an Agent and by his fraudulent acts committed breach of Rules 8(2)(b), 8(3)(c) and 8(4) of the LIC of India (Agents) Regulations, 1972 and acted in a manner prejudicial to the interest of the Corporation and its policyholders.

Having considered the records of the matter, the reply of the agent and gravity of the misconduct, I have come to the conclusion that the penalty of Termination of Agency with Forfeiture of Renewal Commission and the recovery of Rs.3,72,87,635.78 from Shri.Chetankumar N.Desai as proposed in the Show Cause Notice is commensurate with the gravity of fraudulent acts and misconduct committed by the Agent Shri.Chetankumar N.Desai.

Therefore, I, the Competent Authority, hereby order that the aforesaid Agency of Shri.Chetankumar N.Desai, Agency Code No.0151922 be and is hereby Terminated with Forfeiture of Renewal Commission under Rules 16 (1)(a)(b)(d) and 19(1) of the LIC of India (Agents) Regulations,1972 with immediate effect.

I, further order that an amount of Rs.3,72,87,635.78/-,be recovered from Shri.Chetankumar N.Desai, Agency Code No.0151922, Branch 91Q, MDO-III Mumbai.

Dated at Mumbai, this 31st day of May 2014.

Sr. Divisional Manager
(Competent Authority)

Shri.Chetankumar N.Desai,
Agent, Agency Code No.0151922,
LIC of India,
Branch No.91Q,
Jogeshwari (East) , Mumbai.

TRUE COPY
For M/S THE LAW POINT

मुंबई मंडळ कार्यालय - III, पहिला माळा, न्यू इंडिया बिल्डिंग, एस. व्ही. रोड, सांताक्रुझ (पश्चिम), मुंबई - 400 054.
दूरध्वनी : कार्या.: 6781 9204, ई-मेल : sdm.mumbai-do3@licindia.com

मुंबई मण्डल कार्यालय - III, पहली मंजिल, न्यू इंडिया बिल्डिंग, एस. व्ही. रोड, सांताक्रुझ (पश्चिम), मुंबई - 400 054.
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20. Apart from the aforesaid proceedings a criminal case was lodged through FIR No. 264/2013 dated 05.09.2013. The criminal case has proceeded with a charge sheet being filed and is still pending consideration before the Court of competent jurisdiction.

21. The Life Insurance Corporation further proceeded to file Original Suit No. 266/2017 which was initially instituted before the High Court of Bombay, but later on with the change of pecuniary jurisdiction, the same is now before the Bombay City Civil Court and has been renumbered as Suit No. 2492/2024, Life Insurance Corporation vs. (1) Chetan Kumar N. Desai & (2) M/s. Goldstar Diamond Pvt. Ltd. A certified copy of the plaint of the said Suit has been filed and the Life Insurance Corporation therein has narrated all the proceedings undertaken against Mr. Chetan Desai as also the criminal case including before the Economic Offences Wing through their letter dated 22.02.2013 that came to be registered as CR No. 81/2013 under Section 465, 467, 468, 471, 420, 120(6) of IPC. The Civil Suit seeks recovery of a sum of Rs. 3,72,87,635.78p of Commission paid from Mr. Chetan Desai together with interest thereon thereby enhancing the amount to Rs. 4,66,09,544.73 stated to be the commission unlawfully earned by Mr. Desai.

22. We may point out that the allegations made in the Civil Suit are against Mr. Chetan Desai even though the complainant has also been made a defendant in the said Suit. The allegations are of fraud being committed by Mr. Chetan Desai and misappropriation of commission, but the plaint does not make any allegation of conspiracy or connivance against the complainant. The

complaint made by the complainant to the Life Insurance Corporation and the enquiry conducted pursuant thereto by the Life Insurance Corporation referred to above have been admitted in the said plaint.

23. It is with these allegations that the present complaint was filed alleging deficiency in service against the OPs for having misutilised and diverted the premium paid for renewal. Mr. Chetan Desai has been arrayed as OP-2 who was represented through some counsel Mr. Mubashir Mushtaq as is evident from the ordersheet dated 23.11.2016, but later on no one appeared on his behalf and therefore vide order dated 03.07.2018 he was proceeded *ex-parte.* The order dated 03.07.2018 is extracted hereinunder:

> *Opposite Party No.2 duly stands served through his wife. None is present on his behalf. The said Opposite Party is proceeded against ex parte.*
>
> *Evidence by way of affidavit be filed by Opposite Party No.1 & 3 within four weeks from today with an advance copy to Counsel for the Complainant.*
>
> *List the case for final disposal on 05.10.2018.*

24. Notices were again dispatched to the said counsel for appearing in the matter vide order dated 11.10.2021, but no one appeared, whereafter the matter remained pending. The Covid intervened and then the complaint was taken up and the hearing commenced on 24.05.2024 followed by the contentions that were raised on behalf of the Life Insurance Corporation on 23.09.2024 and 18.12.2024.

25. The Life Insurance Corporation raised two preliminary objections namely that the complainant was not a consumer as defined under Consumer Protection Act, 1986 and that the case involved disputed questions of fact that

were being tried in a criminal case and in a Civil Suit as such, the present complaint should not be entertained as these facts cannot be investigated in the exercise of summary jurisdiction of this Commission. The matter was heard and a detail order came to be passed on 15.01.2025 rejecting the preliminary objections and directed the parties to proceed with the final hearing of the matter. The order passed on 15.01.2025 is extracted hereinunder:

> ***Two preliminary objections*** *have been taken by Ms. Manali Singhal, Advocate on behalf of the Opposite Party Life Insurance Corporation, inter alia, contending that the* ***Complainant Company is not a consumer*** *and, therefore, the Complaint is not maintainable.*
>
> ***The second major ground*** *taken is that the Complaint is founded on allegations of fraud which requires investigation on facts to be dealt with supported by evidence, and* ***such contentions can only be resolved by approaching a court of competent jurisdiction*** *empowered to deal with such complicated questions of facts for adjudication on the nature of controversy as presently involved. She submits that a criminal case is already pending based on the same nature of allegations and facts that have been pleaded in the present Complaint and hence, the present Complaint should not be entertained or even assuming though not admitting that it can be entertained, the same should be deferred till any such findings are available from the court dealing with the fraud alleged.*
>
> *She then submits that not only this, the Opposite Parties have already filed a civil suit against the Opposite Party No.2 who was an agent, against whom the fraud is alleged, and is an accused in the criminal case. The civil suit is founded also on the same very facts seeking recovery of the amount of commission realized by Opposite Party No.2 through the fraudulent transactions that are subject matter of the present case which is pending before the Bombay City Civil Court after having been transferred from the Bombay High Court due to the change in pecuniary jurisdiction where also the very same issues on evidence with regard to the fraud alleged by the Complainants are pending trial.*

Consequently for the aforesaid reasons and the complex nature of allegations made, the fraud as alleged has to be established before a competent court. There is no scope of a consumer dispute being raised in a summary jurisdiction by alleging deficiency against the Opposite Parties so as to maintain this Complaint. For all these reasons, the Complaint deserves to be dismissed and is not entertainable.

Responding to the preliminary objections, Mr. Vikas Mehta, learned Counsel for the Complainant, urged that the objections are untenable for the simple reason that the Life Insurance Corporation itself had proceeded to launch a criminal complaint before the Economic Offences Wing at Mumbai alleging the fraud as narrated in the Complaint having been committed by the Opposite Party No.2 but the said Complaint was returned by the Economic Offences Wing stating that the aggrieved beneficiaries ought to have come forward. It is, thereafter, that the criminal case as well as prosecution was launched by the Complainant Company and it is the officials of the Complainant Company who have been appearing as witnesses in the criminal case in support of the said allegations.

The Life Insurance Corporation itself has conducted its own investigation and reported the fraud against the Opposite Party No.2 and as informed by the learned Counsel for the Life Insurance Corporation, a civil suit has been instituted by the Corporation against the accused Opposite Party No.2 for realizing and recovery of the defrauded amount that was realized by the Opposite Party No.2 in the shape of a commission. The submission is that this fraudulent exercise through which the premiums paid by the Complainant were negotiated and manipulated has practically been accepted by the Corporation and the entire defrauded amount that was received as premium in fake names or otherwise were supported by policies issued by the Life Insurance Corporation.

The existence of the policies and ***the receipt of the premium by the Insurance Corporation has not been denied and this amount which is in several Crores is lying with the Life Insurance Corporation*** *which it has failed to repay to the Complainants. Mr. Mehta has urged that if* ***the said premium amounts paid by the Complainants were received for which the alleged fake policies were manipulated by Opposite Party No.2****, as stated by Life Insurance Corporation, then* ***in that event the entire amount of premium invested by the Complainant has to be refunded and cannot be retained by the Opposite Parties*** *which is self-evident and*

axiomatic, confirming deficiency on the part of the Life Insurance Corporation.

The ***services have been rendered in the insurance sector and a Complaint is maintainable*** *for deficiency on account of* ***refusal to indemnify or refund as has been recently*** *ruled by Apex Court and is no longer res integra as held in the case* ***National Insurance Co. Ltd. Vs. Harsolia Motors & Ors. (2023) 8 SCC 362****. It is, therefore, urged that services as defined under the Consumer Protection Act, 1986 were rendered by the Opposite Party Life Insurance Corporation and having failed to refund the entire premium amount which has admittedly been received for and behalf of the Complainants, the same cannot be retained by the Opposite Parties for no valid reason. Resultantly the Complaint is maintainable. On the admitted facts of the case as emerging from the pleadings of the parties the Complainant Company which had taken the policy and paid premium to the Opposite Party Corporation, through the Opposite Party No.2, is a consumer as defined under the Consumer Protection Act, 1986 and is entitled to the reliefs prayed for.*

Coming to the issue of the Complaint not to be entertained as it involves complex questions of facts, Mr. Mehta submits that this is a frivolous plea taken by the Insurance Corporation once again after 11 years of filing of the Complaint even though it has been raised in the written version, but the same is futile in the wake of the documents regarding the civil suit and the criminal case which have been brought on record by the Opposite Parties themselves. For the sake of arguments, even though he has invited the attention of the Bench to several facts but he points out that the ***Opposite Party No.2*** *who is the defendant in the suit filed by the Opposite Party No.1, is alleged to have* ***admitted his default through written letters*** *that have been narrated in the Complaint in the suit filed by the Opposite Party No.1 itself. He, therefore, submits that so far as the Opposite Party No.1 is concerned, this admission in the Complaint is sufficient to establish that* ***the Corporation is proceeding against the admitted fraud and manipulation of the opposite party no.2 and, therefore, so far as the Opposite Party No.1 is concerned they cannot take a plea of any complex questions or facts involved*** *in the present case so as to denude this Commission of its jurisdiction which the Counsel for the Opposite Party No.1 has described to be summary in nature and not available for the adjudication of the present controversy. Mr. Mehta submits that* ***there are no complicated questions***

to be determined as only deficiency in service of realizing premium resulting in the issuance of fake policies for refund is to be determined in the background where admittedly the manipulation in the policies is not denied by the Insurance Company itself.

The matter had been heard on earlier occasions and it was finally heard on 18.12.2024 when the following order was passed:

" Heard learned counsel for the parties.

Ms. Manali Singhal, learned counsel for the Life Insurance Corporation of India has raised ***two preliminary objections. The first*** *is that since this case involves disputed questions of fact that is being tried in a criminal case and a civil suit also having been instituted, with regard to which facts have been brought on record through the affidavits dated 28.11.2024 and 29.11.2024 therefore the present complaint should be dismissed or alternatively can be pursued after their conclusion.* ***The second objection*** *raised by her is that the complainant is not a consumer as defined under the Consumer Protection Act, 1986 and therefore the complaint does not deserve to be entertained. Arguments were elaborated by her with the aid of written submissions that have been responded to by the learned counsel for the complainant.*

Put up for orders on 15.01.2025 on these two preliminary objections."

It may be noted that the facts and the issues raised were also noted in the order passed while dealing with the dispute on 24.05.2024 which is extracted hereunder:

*"**The complainant is a company engaged in the business of export and import as well as polishing of rough diamonds carrying its business from its establishments in Mumbai and Surat. In order to facilitate and comply with the provisions of Labour laws and Gratuity Act, a social welfare insurance scheme as a corporate social responsibility was undertaken by the complainant. This was to protect the families of the employees in case of any unforeseen events and accordingly insurance policies from the opposite party no.1 with its Branch opposite party no.3 were acquired by the complainant company through its agent the opposite party no.2 Mr. Chetan Desai**. While acquiring these policies the complainant was informed that it could claim tax exemptions, each of the employees would have an insurance coverage of Rs.2.00 Lakhs to Rs.3.00 Lakhs for 20 to 25 years based on their age, the ownership of the policies would vest with the company as a proposer and shall be assigned in its name. The complainant was assured*

to receive survival benefits every five years if no death claims are received and at the end with the maturity of the policy the company would also receive the sum assured along with bonus. Other terms and conditions were also offered, and relying on the representations of the opposite party no.2, the company resolved to procure the insurance policies from the opposite party Life Insurance Corporation of India.

Learned Senior Counsel for the complainant Mr. Pachnanda opened his arguments by contending that the opposite party no.2 collected cheques and then negotiated the policies with the details of payments that were received by him and also represented for ***payments of post annual renewal premiums that were paid when demanded by the opposite party no.2 between April 2007 to July 2010. A sum of Rs.7,90,69,030/- was paid. All cheques were cleared and credited to the account of the insurer****.*

It was later on discovered that the ***opposite party no.2 raised a loan on the Key Man policy of the promoter i.e. the Director of the complainant*** *company and* ***signatures were obtained on the loan form from Mr. Sanjay Shah by giving a false representation*** *that the loan form was for obtaining loan from the employee employer scheme. These facts have been stated in the complaint to urge that this led to* ***a claim of interest made by the opposite party no.1 on the loan to the tune of Rs.6,94,684/- which according to the complainant is unjustified and was a deficiency on the part of the Life Insurance Corporation of India****. Further deficiencies were alleged with regard to the collection of 261 cheques. The complainant witnessed certain irregularities and then the complainant learnt about the fraud played by the opposite party no.2 which, the complainant alleges, was known to the opposite parties no. 1 and 3 causing huge losses to the complainant as it was learnt that* ***all the policies had lapsed and the amount had been virtually misappropriated by the opposite party no.2 through dubious methods.***

It is in this background that the learned counsel for the complainant urged that the deficiencies were evident on account of the negligence of the opposite parties no. 1 and 3 in not taking appropriate steps to secure the interest of the complainant and therefore this complaint came to be filed in 2013.

It has also been informed that an FIR was also lodged and a criminal case registered at the instance of Life Insurance Corporation of India against the opposite party no.2 making him the sole accused which ***criminal case no.4700456 of 2014 is pending trial before the Chief Metropolitan Magistrate, Esplanade Court, Mumbai****.*

Learned counsel for the complainant urged that not only this, during the pendency of this complaint itself the Life Insurance Corporation of India has filed a suit for recovery being ***O.S. No. 266 of 2017*** *where the opposite party no.1 is the plaintiff, the opposite party no.2 is the defendant no.1 and the complainant is the defendant no.2. Paragraphs 2, 3 and 9 of the suit coupled with the relief clause have been pointed out to urge that* ***no relief has been claimed against the complainant****, even though they are defendant no.2 in the suit, and the only relief prayed for recovery is against the defendant no.1 in the suit who is the opposite party no.2 herein. Learned counsel urged that in para-6 of the suit it has been stated by none else than the opposite party no.1 that the defendant no.1 in the suit Mr. Desai while replying to the letter issued by the Life Insurance Corporation has admitted his guilt and therefore the fact that the opposite party no.2 had duped the complainant acting as an agent of the opposite party no.1 remains undisputed.*

He therefore submits that the deficiency is clearly made out against the opposite parties no. 1 and 3 and their agent opposite party no.2, hence, the complaint deserves to be allowed.

*Learned counsel for the opposite parties no. 1 and 3/****Life Insurance Corporation of India at this stage has raised a preliminary objection with regard to the maintainability of the complaint*** *alleging that the complainant is not a 'consumer' and none of the policyholders namely the employees have come-forward to seek any claim. It is further submitted that a long time after the said allegations of the irregularities committed by the opposite party no.2 were witnessed by the complainant,* ***but no voice was raised even though the deficiencies alleged are of several years ago****. It is therefore submitted that there* ***might by a possibility of the complainant company having contributed towards this fraud which was being practised by the opposite party no.2 and the possibility thereof cannot be ruled out****, hence, the complaint is not maintainable as this raises severely disputed questions of facts that can only be gone into either in a civil suit or in the proceedings pending before the criminal court.*

Learned counsel for the Life Insurance Corporation of India who has joined online urges that at every step the complainant has alleged fraud and the facts pertaining thereto, which involve complicated questions of fact, were also noticed by the Life Insurance Corporation of India that set up an internal investigation. The said investigation was carried out by a Three Member Team of Senior Managers who submitted their report to the Divisional Manager on ***22.06.2012 where a preliminary factual assessment of the appropriation of huge amounts without receipts was***

pointed out and the authenticity of the documents was doubted. *This report is already on record and it is urged that thereafter the* ***criminal case was launched*** *and a civil suit for recovery has been filed. It is submitted by the learned counsel for the Life Insurance Corporation that the complainant company did not take any steps and curiously did not lodge any FIR inspite of the fact that fraud was alleged by them. The complaint therefore should not be entertained and should be dismissed.*

However, she sought further time to assist the Bench on these preliminary arguments and in view of the prayer made, let the case be listed on 23.09.2024 as agreed between the parties at 2.00 p.m.

Learned counsel for the parties are also requested to assist the Bench with authorities, including that in the case of ***Bhagwanji D. Patel and Anr. Vs. Chairman & Managing Director, Indian Bank and Ors. 2011 SCC OnLine NCDRC 215; Chairman and Managing Director, City Union Bank Ltd. and Anr. Vs. R. Chandramohan (2023) 7 SCC 775 and the decision of the Apex Court in the case of Leelawati Devi Vs. District Cooperative Bank Ltd. (Civil Appeal No. 6564 of 2023)***. *Learned counsel can also refer to the orders passed by this Bench in the case of* ***Madan P. Dullaramani & Ors. Vs. Union Bank of India (Consumer Complaint*** *No. 116 of 2003) decided on* ***08.05.2024****."*

It was also noted by this Commission that the Opposite Party No.2 was directed to be proceeded ex parte after issuance of notice vide order dated 03.07.2018. Ms. Manali Singhal, Advocate has appeared for Opposite Party No.1 and the Opposite Party No.3 who is the Senior Branch Manager of the Corporation of Jogeshari Branch Mumbai.

The filing of the documents was necessitated on account of preliminary objections raised and orders were passed on 23.09.2024 to the following effect:

"Heard learned counsel for the parties. The matter had been adjourned on 24.05.2024 calling upon the learned counsel to advance their submissions in the wake of the facts that were noted on that date as also the legal position emerging from the decisions referred to in the said order.

Learned counsel for the OP-Life Insurance Corporation submits that she has received ***a copy of the FIR*** *which is in Marathi and had been lodged by the complainant themselves. It is also stated at the Bar that the* ***Life Insurance Corporation had also probably instituted some FIR and*** *there are criminal proceedings in respect thereof.*

Learned counsel may verify the status of any such proceedings pending as well as the documents in relation thereto and file it alongwith an

affidavit. Learned counsel for the Complainant may also do the same in order to place on record the documents pertaining to the criminal case, if any, arising out of the said incident.

The affidavits be filed within 6 weeks. Learned counsel for the parties may also file those documents regarding the civil suit which is pending in order to complete the pleadings.

Let it be done within 6 weeks and the affidavits be exchanged between the parties by the next date fixed.

List the matter on 18.12.2024."

It is in response thereto that the compilations along with ***IA No.17158 of 2024 has been filed on 28.11.2024 vide diary No.39162. IA No.17213 of 2024 has been filed on 29.11.2024 through diary No.39298. Thus, these two compilations filed by respective parties have been taken on record*** *to appreciate the contentions raised in respect of the facts related to the criminal case as well as civil case on the basis whereof the preliminary objections have been taken by the learned Counsel for the Opposite Parties No. 1 and 3. Even though there is a commonality to some extent in documents filed by both the parties, the respective affidavits filed on their behalf disclose that* ***broadly the criminal case pertains to the same proceeding that was lodged with the Economic Offenses Wing and was registered as FIR No.264 of 2013 dated 05.09.2013 and the charge sheet relating to the same dated 27/28.05.2014*** *also indicates that it relates to the same criminal case.*

The civil suit for recovery filed by the opposite party no.1 being ***Suit No.266 of 2017 before the Bombay High Court has been transferred to Bombay Civil City Court due to the change in pecuniary jurisdiction and has been renumbered as Suit No.2492 of 2024****. The written statement filed by the Complainant, who is also a defendant in the said suit, has been filed along with compilation moved on behalf of the Complainant. The pleadings in the said suit have been brought on record by the learned Counsel for the Opposite Party as well. The Suit was remitted to the Bombay City Civil Court from the Bombay High Court vide order dated 29.01.2024 which order has also been placed on record.*

With the aforesaid documents on record and the contentions raised, the ***question is as to whether the Complainant Company can be said to fall within the definition of word "Consumer" and thereby a***

"Complainant". *A Complainant is defined under Section 2 (b) of the Consumer Protection Act, 1986 as follows:*

> ***2. xxxxxxxxx***
>
> *(b)* ***"complainant" means—***
>
> *(i)* ***a consumer****; or*
>
> *(ii) any voluntary consumer association registered under the Companies Act, 1956 (1of 1956)or under any other law for the time being in force; or*
>
> *(iii) the Central Government or any State Government,*
>
> *(iv) one or more consumers, where there are numerous consum¬ers having the same interest;*
>
> *(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;*

The nature of the policies that were taken from the Opposite Party Insurance Corporation has been described as a statutory requirement for the benefit of employees under the Corporate Social Responsibilities of Companies. These are described as Key Man policies and the Complainant is also entitled to tax benefits thereon. The details of the nature of the policy have been described in paragraphs 2 and 3 of the Complaint. All the policies have been negotiated through Opposite Party No.2 as an agent of the Opposite Party No.1. The details of the payments made for the relevant years that have been collected by the Opposite Party No.2 and deposited with the Opposite Party No.1 for the year 2005-2006 and 2006-2007 have been detailed in Para 4.

After the said deposits, the Complainant Company was surprised when neither the policies nor a receipt acknowledging the amount paid towards the premium were received by the Complainant and the same was intimated to the Opposite Party No.2. ***The Opposite Party No.2 is alleged to have approached the Complainant for paying post advance renewal premiums in July-August 2007 for the transactions that were undertaken between the period April 2007 to July 2007 during which a sum of ₹7,90,69,030/- by way of post advanced renewal premiums were paid by cheque and covering letters that were handed over to the Opposite Party No.2****.*

All the cheques were cleared and the ***Opposite Party No.2 gave a consolidated statement for the payments made towards the premium under the Employer Employee Scheme. It was later discovered that the aforesaid statements of account were false****. The circumstances in which the Company was negotiating through the Opposite Party No.2 have been*

explained in the Complaint but on discovery of this lapse and the fraudulent practice of the Opposite Party No.2 who was acting on behalf of the Opposite Party No.1, the Complaint was made to the Corporation on 15.05.2012. Communications were entered into and vide letter dated 04.06.2012, it was informed to the Complainant that the vigilance department of the Opposite Party No.1 had formed a team to look into the matter.

For further identifying the nature of this lapse, ***the Complainant moved applications under the Right to Information Act and*** *one of the applications* ***was rejected against which*** *an appeal was preferred where vide order dated 23.08.2012 an* ***information was given that since the investigation in the matter was under process by the officers of the Opposite Party No.1, an opportunity will be given to the Complainant to inspect the documents*** *and take copies thereof. Another application was moved on 01.07.2013 which was* ***rejected by the Opposite Party No.2 on the*** *ground that* ***since the matter was sub Judice, therefore, the information could not be provided****.*

So far as is Opposite Party No.2 is concerned, inspite of service of notice has not appeared till date to answer this Complaint and has been proceeded ex parte in the year 2018 itself. It is, therefore, prima facie evident that the allegations in the Complaint remained uncontroverted by Opposite Party No.2 whereas Opposite Party No.1 is pursuing the civil suit and is well aware about the criminal case pending in this matter. The investigation in the criminal case has revealed that a large number of policies have been obtained in fake names which have been detailed in the Complaint and these facts pertaining to the criminal case have not been disputed so far.

Apart from the criminal case, a perusal of the criminal complaint that had been lodged by the Opposite Party No.1 before the CBI on 22.02.2013 has been brought on record by the learned Counsel for the Complainant where the fact of issuance of cheques by the Complainant that had been issued directly to the Opposite Party No.2, and the entire premium paid certificates have now found to be fake which the Opposite Party No.1 has admitted. They have, however, stated that ***the Complainant Company kept paying such huge amounts of commission to the agents for such a long period is questionable****, but on investigation the said facts have been found which was based on an internal investigation carried out by them. This complaint dated 22.02.2013 also indicates that the Complainant*

Company has been defrauded on account of the acts of the Opposite Party No.2 but the fact remains that the ***Complainant Company has been deprived of the benefits accruing to its employees as well as to itself as fake renewals are also admitted by the Insurance Corporation coupled with the fact that all the*** *cheques issued by the Complainant for premium have been encashed and realized by Opposite Party No.1.*

Apart from this, a copy of the plaint of the civil suit filed by the Corporation referred to above has been received and this also narrates that it constituted a committee to investigate and submit a report in this regard. In para 6 of the plaint of the suit, the Life Insurance Corporation has narrated that the Opposite Party No.2 who is the defendant No.1 in the Suit has admitted his guilt and requested the plaintiff to take a lenient view. The said paragraph is extracted hereinunder:

> *"6. The Plaintiff vide its letter dated 25.05.2012 addressed to Defendant No.1, directed him not to solicit or procure new life insurance business until further order. The Plaintiff has also forwarded a complete set of complaint of Defendant No.2 along with said letter dated 25.05.2012 and called upon Defendant No.1 to give his say on the said complaint within seven days from the receipt of the said letter dated 25.05.2012. Annexed hereto and marked Exhibit "E" is a copy of the said letter dated 25.05.2012. The Defendant No.1 has replied to the said letter dated 25.05.2012 by his letter dated 29.05.2012 inter alia admitting his guilt and requested the Plaintiff to take lenient view and not to affect his agency. Annexed hereto and marked Exhibit "F" is a copy of the said letter dated 29.05.2012."*

The very next paragraph of the Complaint has disclosed the report dated 22.06.2012 on an investigation carried out by the vigilance department of Opposite Party No.1 Corporation. The said report observes the facts pertaining to the investigation which indicates the shady nature of transactions in which the Opposite Party No.2 Mr. Chetan Desai indulged into.

Apart from this, it would also be apt to quote certain more paragraphs of the pleadings in the Civil Suit No. 266 of 2017 filed by the Life Insurance Corporation where the Corporation itself has detailed the circumstances in which it acted on these allegations and has sought recovery from the opposite party no.2. These averments leave no room for doubt that the Corporation itself is confirmed and convinced of these facts pertaining to the fraud committed by the opposite party no.2 and therefore ***in order to***

ascertain deficiency in the present complaint, such of these facts which are practically admitted to the Corporation, do not require an investigation or finding from any other court as it is an admission by the Corporation in the suit filed by it. These facts therefore cannot be said to be facts that have been disputed by the Corporation, and consequently this Commission cannot be prevented from proceeding to take notice of the same and then proceed with the alleged deficiency and examine the same. The Commission would not be investigating into facts which are already accepted by the Corporation which may or may not have an impact on the deficiency alleged but prima facie these facts are not disputed by the Corporation. *The relevant paragraphs of the plaint are paragraphs 10, 11, 12, 14 and 16 that are extracted hereunder:-*

> *"10. Since Defendant No.1 has failed to give his observations as required, the Plaintiff vide its letter dated 24.08.2012 called upon him to submit his reply within four days from the date of receipt of the said letter. Annexed hereto and marked Exhibit "L" is a copy of the said letter dated 24.08.2012.* ***Thereafter, Defendant No.1 by his letter dated 28.08.2012 gave his reply and categorically admitted that he had used fake forms.*** *Annexed hereto and marked Exhibit "M" is a copy of the said letter dated 28.08.2012. The Plaintiff thereafter vide its letter dated 25.09.2012, called upon the Defendant No.1 to handover all original policies including the policies of Defendant No.2 to Mr. S.D. Hadas, Sr. Br. Manager, Branch 91-Q. Defendant No.1 was also called upon to handover LIC office stationery, rubber stamp as well as visiting cards, personal letter heads with LIC logo/emblem. Annexed hereto and marked Exhibit "N" is a copy of the said letter dated 25.09.2012. The said letter was duly received by Defendant No.1 on 04.10.2012, however he failed to reply the same…*
>
> *11. Thereafter,* ***the Committee has submitted its Further Investigation Report dated 12.11.2012*** *in respect of the Complaint dated 15.05.2012,* ***holding that Defendant No.1 was in the habit of collecting amount in excess to the actual premium and was informing Defendant No.2 that the same is towards advance premium, however, the same was diverted to new business policies.*** *It was also observed that Defendant No.1 has received commission to the tune of approximately Rs. 83,61,315.41 under the first premium commission and bonus commission and approximately Rs. 85,94,306/- towards FYR commission and renewal commission. Annexed hereto and marked Exhibit "P" is a copy of the said further Investigation Report dated 12.11.2012.*

*12. The **Plaintiff had also lodged a Complaint with the Superintendent of Police, CBI**, Mumbai vide their letter dated **22.02.2013** on the basis of which **case No. PE 111/2013 was registered with EOW/Unit I/Mumbai Police. Now the same has been registered as CR No. 81 of 2013 under Section 465**, 467, 468, 471, 420, 120(6) of IPC. The Plaintiff craves liberty to refer to and rely upon the papers and proceedings in the said CR No. 81 of 2013.*

…

*14. **The Competent Authority**, after considering the complaint and the documents discussed herein above, **passed Final Order dated 31.05.2014 and came to the conclusion that the penalty of termination of agency with forfeiture of renewal commission and recovery of Rs. 3,72,87,635.78 from Defendant No.1 as proposed in the said Show Cause Notice dated 02.03.2013 was commensurate with the gravity of fraudulent acts and misconduct committed by Defendant No.1 and ordered the termination of the agency of Defendant No.1 and the forfeiture of renewal commission** under Rules 16(1)(a)(b)(d) and 19(1) of the LIC of India (Agents) Regulations, 1972 with immediate effect. It was also ordered that the amount of Rs. 3,72,87,635.78 be recovered from Defendant No.1. Annexed hereto and marked Exhibit "S" is a copy of Final Order dated 31.05.2014.*

…

*16. **The Plaintiff** therefore most respectfully **submits that Defendant No.1 by his fraudulent acts has caused loss of Rs. 3,72,87,635.78 to the Plaintiff Corporation** as more particularly stated hereinabove and hence is liable to pay the said amount of Rs. 3,72,87,635.78 with interest @ 12%p.a. from 31.05.2014 till the date of filing of the present Suit and further interest @ 12% per annum till the date of recovery of the said amount. The Defendant No.1 is, therefore, liable to pay Rs. 4,66,09,544.73/- (calculated with interest) as per particulars of claim along with further interest from the date of filing till the recovery of the said amount. Annexed hereto and marked Exhibit "U" is particulars of claim."*

It is evident that the premiums have been paid through cheques even though delivered to the Opposite Party No.2. It is in the background of these facts that the arguments of the learned Counsel for the parties have to be appreciated.

Learned Counsel for the Opposite Party No.1 and 3 Ms. Singhal has filed written submissions captioned as additional written submissions and has raised the issues as under:

A. ***Complainant is not a consumer*** *under the Consumer Protection Act, 1986;*

B. ***Complainant*** *regarding allegations of fraud, cheating, forgery etc.* ***cannot be adjudicated by this Commission in a summary procedure*** *under the Consumer Protection Act, 1986;*

C. ***Connivance between Complainant and Opposite Party-2***

D. ***No responsibility can be fixed on the principal if the agent act beyond its legal capacity/there can be no*** *vicarious liability on OP-1 the liability beyond the terms of agency;*

E. ***No deficiency of service on*** *part of OP-1 the LIC Of India.*

The judgments to which reference was made in the earlier hearing have been sought to be distinguished through a separate note thereafter to contend that the cases are distinguishable and, therefore, the nature of the fraud involved herein cannot be investigated in a summary jurisdiction of this Commission.

So far as the contention regarding the Complainant not being a consumer *and thereby not a Complainant* ***need not detain us longer****, inasmuch as, as noted above and narrated in the complaint, the nature of the service being coverage of the insurance policy for the benefit of the employees and in the interest of the Company as a Social Corporate Responsibility leaves no room for doubt that the Complainant Company is a consumer of the services rendered by the Insurance Company to indemnify the risk cover under the policies. The premium paid for the said policies is not to generate profits nor is it a business-to-business transaction. It is not commercial in purpose and is a consumer-to-business service.*

These aspects have to be viewed from the definition of the words 'consumer' [Section 2(1)(d)], 'service' [Section 2(1)(o)] and 'person' [Section 2(1)(m)] of the Consumer Protection Act, 1986. The Complainant is a Company that has paid premiums for acquiring a policy for indemnification in terms thereof. The taking of the said policy and its purpose is a benefit accruing to the workers of the Company in the event of any claim of risk coverage and is therefore clearly not a profit generating activity. The dominant purpose of the policy arises out of the social security responsibilities of the Company and for that an insurance coverage is taken for which premium is paid which also invites certain tax benefits. ***This is therefore a consumer-to-business activity with the Insurance***

Corporation and is not a commercial purpose activity to generate profits. This nature of *the transaction therefore is covered by the law enunciated by the Apex Court in the case of* ***National Insurance Co. Ltd. Vs. Harsolia Motors & Ors. (Supra)****. Reference may be made to paragraphs 32, 33, 34, 35 and 36.*

We are therefore of the opinion that the nature of the transaction involved herein entitles the Company to maintain a Consumer Complaint as it falls within the definition of the word 'consumer' as defined under the Consumer Protection Act, 1986 and referred to hereinabove.

The question as to whether a Company was intended to be excluded from the definition of the word 'consumer', was dealt with by the Apex Court in ***Karnataka Power Transmission Corporation and Anr. Vs. Ashok Iron Works Pvt. Ltd. (2009) 3 SCC 240*** *and has been referred to by the Apex Court in paragraph-38 of the decision in the case of* ***National Insurance Co. Ltd. Vs. Harsolia Motors & Ors. (Supra)****. The Apex Court again in* ***National Insurance Co. Ltd. Vs. Harsolia Motors & Ors. (Supra)*** *has dealt with the issue as to whether the insurance service had a close and direct nexus with the profit generating activity and whether the dominant intention or dominant purpose of the transaction was to facilitate some kind of profit generation for the insured or to the beneficiary. While deciding the said case the Apex Court had dealt with several connected appeals but while deciding the main civil appeal was dealing with a case regarding indemnification claim by M/s Harsolia Motors, a commercial entity, for a damage during Godhra riots on 28.02.2002 and the loss caused due to the said riots that broke out destroying the office showroom, garage and machinery of the complainant on account of the fire set up by the rioters. The question was as to whether the complainant was entitled to indemnification or not.* ***The order passed by this Commission holding that the complaint was maintainable was upheld and the enunciation was made on the facts of that case in paragraphs 43, 44, 45, 46 and 47 of the reported decision****.*

We find that the ratio thereof clearly applies herein and the complaint is very much maintainable keeping in view the nature of the services involved in the present case. The deficiency of the said services therefore needs to be examined.

It has been very lately held by the Hon'ble Supreme Court in ***Kozyflx Mattresses Private Limited vs. SBI General Insurance Company Limited & Anr., 2024 (7) SCC 140*** *that a Company is also a person and, therefore, can file a Complaint as consumer provided the subject matter is covered under the Consumer Protection Act, 1986.*

Consequently an insurance claim being a claim of indemnity, the law in this regard stands settled in the case of ***National Insurance Co. Ltd. Vs. Harsolia Motors & Ors. (Supra)*** *and therefore, a complaint for the nature of the refund claimed for the alleged deficient service rendered in our opinion is clearly maintainable.* ***The objections, therefore, raised by the learned Counsel cannot be sustained and are accordingly rejected.***

Coming to the other issue that there are complicated questions of fact *involved as narrated hereinabove,* ***the factum of fraud insofar as Opposite Party No.2 is concerned may be a question of criminal liability to be decided by the criminal court but so far as Life Insurance Corporation is concerned, it has also taken action, and it is not the defence of the Opposite Party No.1 that the alleged fraud is not established. The amount of premium has been received by the Insurance Company through cheques and as such deposit of premiums is not disputed but the issuance of fake policies or manipulation made by Opposite Party No.2 is not a disputed fact which dilutes the allegations of deficiencies that is yet to be considered and tried right in this Complaint. The issue, therefore, is whether there are any complicated facts which cannot be tried in the summary jurisdiction, can only be determined after the facts are assessed and the Complaint proceeds for hearing.***

As already noted above, this is not one of those cases where the questions of facts are such that may require an investigation to the extent of the complaint being thrown out on the basis of the allegations of fraud against the opposite party no.2 who has not turned up to contest this complaint or the allegations made herein. ***The Corporation has already made allegations against the opposite party no.2 which support the cause of the complainant as against the opposite party no.2. Thus, the contention of the learned counsel for the Corporation that the complaint should not be entertained as it involves disputed questions of facts is an argument to be noted for being rejected as the service provider herein, namely, the Life Insurance Corporation is itself coming***

out with the allegations against the opposite party no.2 which in no way are different from what has been alleged by the complainant.

The decisions relied on through the written submissions of the learned counsel for the opposite parties on that count are therefore not attracted on the facts of the present case. The attempt of the learned counsel to distinguish the cases that have been cited at the bar is therefore a futile effort to nonsuit the complainant. It is obvious that there would be different facts in different sets of cases. ***To our mind, the present complaint prima facie does not involve the investigation of any intricate or complicated questions of fact that has been made the basis of the allegations including the filing of the suit and the criminal complaint by the Corporation as discussed above.***

At this stage we do not find this to be a case to be thrown out at the threshold on the ground that it involves complicated questions or facts which cannot be tried in a summary jurisdiction. ***We are, therefore, not inclined to accept any of the preliminary objections which are hereby rejected****. The Complaint, therefore, is found to be entertainable and the same shall proceed for hearing on merits by the next date fixed for which learned Counsel for both the parties are at liberty to file their written submissions.*

The documents which have been filed through IA No.17158 and 17213 of 2024 are taken on record subject to any objections and appreciation that might be raised during the hearing of the case.

List for final hearing on 03.03.2025.

26. Thereafter, the complaint was heard on 03.03.2025 when the following submissions were noted:

Heard Mr. Pachnanda, learned Senior Counsel, assisted by Mr. Vikas Mehta, learned counsel for the complainant. It has been urged that the transaction in question that has resulted in the stated loss to the complainant company, according to the complainant, is clearly admitted, and therefore attributable to the deficiency on the part of the Life Insurance Corporation (LIC) and its officials, for which the learned counsel has taken us through various paragraphs of the Plaint of Original Suit No. 834 of 2016 filed by the LIC itself seeking to recover the amount, to which LIC claims to have been put to a loss on account of the fraudulent activities of Mr. Chetankumar N. Desai.

It is pointed out that the said Suit arrays the complainant as Defendant No.2 but there are neither any allegations against the complainant nor any relief prayed for and as such, admittedly the complainant being a policyholder and having paid the premiums, has been admitted to have been put to a loss by the LIC itself and which admission is evident not only from the pleadings of the Plaint but also the documents filed therewith.

A couple of documents have been placed and also read, including the ***internal report of the LIC dated 22.06.2012, where while concluding, the report indicates that the Branch dealing with the said policies had completed the proposals in bulk without adhering to KYC norms*** *etc.*

A similar reliance has been placed on the observations made on the second investigation ***report dated 12.11.2012 where it has been stated that there were procedural deviations at the Branch Office of the LIC and*** *consequently it is urged that these admissions and the evidence in relation thereto have been brought-forth by the opposite party/LIC itself, and consequently this amounts to a deficiency on their part, hence the loss suffered by the complainant company deserves to be indemnified as, apart from the aforesaid facts, it is also admitted by the LIC that all the amounts that were tendered by cheque have been admittedly received by the LIC.*

Learned counsel therefore submits that with the aforesaid evidence, the pleadings and the admissions on the part of the LIC itself, the deficiency is evident and hence the complaint deserves to be allowed.

Learned counsel for the LIC is yet to respond to these submissions.

The arguments could not conclude today on account of paucity of time.

Let the case be listed on 07.08.2025 at 2.00 p.m.

27. Learned counsel for the Life Insurance Corporation advanced her submissions on 19.12.2025 which is extracted hereinunder:

1. Advocate Ms. Manali Singhal commenced her arguments today on behalf of the Life Insurance Corporation contending that the complainant is not a consumer and it is a pure commercial activity undertaken by the complainant of investing money in the name of benefits to its employees, whereas the real beneficiary is the company itself. For this, she has invited the attention of the Bench to the letter of the complainant dated 28.12.2011 making a request with regard to the payments of the survival benefits in the

name of the company. The cheques which had been dispatched in the name of the beneficiaries were returned back by the company with a clear request for drawing the cheques in the name of the company. It is pointed out that this conduct of the company demonstrates the transactions which were sought to be negotiated by the company for its own commercial benefits. She has then invited the attention of the Bench to the letter dated 17.05.2012 sent by the Insurance Company to the complainant declining the request and also seeking clarifications. Her submission therefore is that the complainant is not a consumer and ***none of the policy holders have come forward complaining of any deficiency****.*

2. It is also pointed out by her that ***the OP-2, who acted as an agent realised the premiums from the complainant in the name of the renewal of the policies, but did not make any such payment to the Insurance Company and rather invested it in new policies****. This fraud committed by the OP-2 is subject matter of the criminal case and it is for this reason that the Insurance Company has filed a Suit for recovery against the OP-2. She has also read out the internal committee report to substantiate the said submission.*

3. She has then urged that the ***complainant has a close nexus and an unusual closeness with the OP-2****. To further the submission, it is urged that the complainant itself has brought on record the resolution dated 06.07.2005 filed at page 197 of the rejoinder affidavit to contend that the company passed a resolution in favour of the OP-2 who was acting as an Advisor to the company. They have also stated this in several paragraphs of the complaint that they had unflinching faith on the OP-2 and this stand is substantiated by the averments made in* ***paragraph 25 of the complaint****, where they themselves have* ***admitted of having handed over blank cheques to Mr. Chetan Desai without filling-up the details therein. This was not only a nexus, but a clear negligence on their part and therefore if the OP-2 obtained fresh policies in fake names, the same is a clear deficit on the part of the complainant*** *that cannot be attributed to the Insurance Company.*

4. She then submits that these large numbers of ***policies*** *were not taken for the benefit of any employees and* ***seems to have been an investment for*** *seeking tax benefits.*

5. She then contends that the ***complainant nowhere bothered to find out nor any due diligence was exercised by them to check out as to***

whether the OP-2 had been acting bonafidely in their interest by taking out policies *afresh which the complainant has described as Post Advance Renewal Premium dispatched by them. She submits that there is no such concept of* ***Post Advance Renewal Premium*** *and it is only when the renewal is due that premiums are received. She contends that the* ***coining of this terminology has been done deliberately by the complainant to cover up their own designs****.*

6. Thus, the ***faith that the complainant placed in the OP-2 was their own conduct in respect of such huge transactions for which the Insurance Corporation cannot be saddled with any liability****.*

7. The Insurance Corporation had, on coming to know of the said fraud, conducted an internal inquiry and then had also called on Mr. Chetan Desai to give an explanation. ***Mr. Chetan Desai confessed having committed this fraud in his letter dated 23.07.2012****. She has then pointed out to the letter sent by the Corporation on 27.11.2012 to the complainant in response to their complaint and queries were raised therein, to which a reply was given by the complainant on 03.01.2013. It is urged that the aforesaid communications clearly establish that* ***the complainant had itself indulged in the said activity along with the OP-2 and failed to give any satisfactory reply****.*

8. She then read out the investigation report dated 22.06.2012 and also pointed out towards paragraph 10 of the written statement filed on behalf of the Life Insurance Corporation.

9. In sum and substance, her arguments were that ***the complainant had indulged into an activity in close connect with the OP-2 and had sent their cheques against which policies had been issued by the Insurance*** *Corporation which the complainant now allege to be fake policies. It is urged that the Insurance Corporation had undertaken this exercise in accordance with the procedure established and therefore no deficiency exists.*

10. She has then re-emphasized again that this entire exercise in this complaint narrates an incident of fraud committed by the OP-2 which is subject matter of a criminal investigation, the trial whereof is still pending and therefore it cannot be a subject matter of enquiry by this Commission in this summary jurisdiction. She therefore submits that the complaint deserves to be dismissed.

11. In order to substantiate her submissions more comprehensively and in detail, she prays that the matter be taken up on some other date to enable her to assist the Commission with her arguments.

12. Since no time was left today at the end of the day, as agreed by the learned counsel for the parties, let it be listed on 29.04.2026 at 2.00pm.

28. The matter was adjourned on a couple of occasions thereafter and then came to be heard by us finally on 05.10.2026 when Ms. Manali Singhal, learned senior counsel for the Life Insurance Corporation concluded her submissions and the rejoinder was also given by Mr. Ashish Mohan, learned senior counsel for the complainant. Ms. Singhal urged that this complaint cannot be maintained by the Company, inasmuch as, the nature of the policy which is under an "employer – employee scheme" is for the benefit of the employees and no employee has come forward and as such this complaint is not maintainable. She urged that the criminal investigation and prosecution is on, and apart from this, the Civil Suit of the Life Insurance Corporation is also being tried where the complainant is also a defendant. She has reiterated her submissions that were raised during her preliminary submissions and also cited decisions on behalf of the Corporation. She has emphasized that the summary nature of the jurisdiction of this Commission is not equipped to try complicated questions of facts and allegations of fraud and forgery.

29. She further submits that any criminal act or fraud by Mr. Chetan Desai cannot be converted into a vicarious liability of the Life Insurance Corporation. It is urged by her that it is not understandable as to how Mr. Chetan Desai can act as an agent of the Corporation as well as of the complainant who claims to have appointed Mr. Desai to procure the policies.

30. She has then urged that the only address given in the policies is that of the complainant Company and all the policies that were issued that were negotiated through Mr. Chetan Desai are not fake policies. The policies were given on the basis of the list of employees tendered and the board resolution that has been filed by the Corporation in their reply. It is urged that the said board resolution and undertakings were tendered by Mr. Desai along with the said list and the premium against which the new policies had been issued relying on the representation of Mr. Chetan Desai. During the course of submissions, Ms. Singhal has also handed over additional written submissions and a compilation of documents on behalf of the Life Insurance Corporation, the index whereof is extracted hereinunder:

BEFORE THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

C.C. NO. 454 OF 2013

IN THE MATTER OF:

GOLDSTAR DIAMOND PRIVATE LIMITED ...COMPLAINANT

VERSUS

LIFE INSURANCE CORPORATION OF INDIA & ORS. ...RESPONDENTS

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1	Consumer Case No. 116 of 2003 – Shri Madan P. Dullaramani & Ors V. Union Bank of India & Ors.	14-16
2	(2023)7SCC775 – Chairman and Managing Director, City Union Bank Ltd. & Anr Vs. R Chandramohan	16-19
3	SLP (C) No. 12589/2021 – Leelawati Devi & Anr Vs District Cooperative Bank Ltd.	19-20
4	2011 SCC OnLine NCDRC 215 – Bhagwanji D. Patel & Anr Vs. The Chairman & Managing Director Indian Bank & Ors.	20-23

COUNSEL FOR OPPOSITE PARTIES 1 & 2 – MS. MANALI SINGHAL

31. She submits that the complainant alleges fraud on the OP-2, but so far as the Corporation is concerned, no request for renewal had been made and the policies issued between 2005-2007 had lapsed. There is no system of receiving post advance renewal premium nor has the Corporation either invited such premium nor has it approved or received such premium. A total denial of these allegations by the complainant has been made in the written statement filed on behalf of the Life Insurance Corporation.

32. She has emphasized that Mr. Chetan Desai is neither an agent nor did he have any authority to collect any premium on behalf of the Life Insurance Corporation, for which she has heavily relied on the decision of the Apex Court in the case of ***Harshad J. Shah & Anr. vs. LIC of India and Ors., (1997) 5 SCC 64***. She then contends that the LIC acted bonafidely and therefore no liability can be fixed on the Life Insurance Corporation as any criminal act of fraud or forgery by Mr. Chetan Desai was neither authorized by the Life Insurance Corporation nor was Mr. Chetan Desai ever given any authority for any of the unlawful acts committed by him. In fact, Mr. Chetan Desai cheated both, and the complainant was complacent by not even making any enquiry for years together. She therefore urges that the complainant ought to have been cautious while making such huge investments, and therefore it cannot be imagined that the complainant was not aware of these unlawful transactions by Mr. Desai. In effect, Ms. Singhal urged that the complainant seems to be in connivance with the OP-2 for ulterior motives.

33. She urged that there is no question of granting any relief to the complainant, inasmuch as, it is not only exaggerated and embellished, but is also based on certain premiums that were paid in respect of the policy that was genuinely acquired between 2005 to 2007. She therefore submits that the claim of reversal and refund of those premiums is absolutely preposterous and therefore any claim even in furtherance thereto is not tenable. She submits that all the policies which were issued and premiums paid lapsed, and therefore the premium paid for policies that were issued on the representation of Mr. Chetan Desai on behalf of the complainant cannot be refunded as claimed, even for the period subsequent to 2007. She therefore submits that there is no question of any refund of the amount claimed as the complainant has also been complacent or involved. The OPs- 1 & 3 have also been defrauded by Mr. Chetan Desai, who has walked away with a huge amount as commission, and that was made possible only because of the contribution of the complainant itself. Thus there is neither any direct nor any vicarious liability that can be saddled on the corporation for the acts and omissions of the complainant or the fraud and forgery of Mr. Chetan Desai.

34. She further submits that the complainants did not lodge any FIR, nor did they take any action against Mr. Chetan Desai, against whom they alleged fraud and forgery. In such circumstances, there is every reason to infer the connivance of the complainant with the OP-2.

35. In rejoinder, Mr. Mohan, learned senior counsel, has urged that in the present case, the investigation reports of the Corporation dated 22.06.2012

and 12.11.2012, are itself an admission on the part of the Corporation, which they cannot deny, as the said reports have not been contradicted by the Corporation. The said reports categorically record the manipulation of Mr. Chetan Desai, and over and above this, the serious lapses by the Branch Office No. 91(Q) where this transaction took place by not complying with KYC norms and other deviations as well are established. He submits criminal proceedings nowhere makes any allegations against the complainant and therefore the argument of any connivance of the complainant with Mr. Desai is unfounded and bereft of any evidence. The allegations of connivance in the written statement is therefore a clear afterthought and an improvement when no such allegations have been made either in the criminal case nor is there any evidence of any involvement of the complainant Company or its employees in the entire episode in any manner whatsoever. It is urged that in the absence of any such evidence, the oral argument of alleged connivance is a contention out of desperation.

36. Mr. Mohan then invited the attention of the Bench to the Suit filed on the Civil side. He contends that the question of the complainant of ought to having kept a watch is a misconceived argument, inasmuch as, the principle of Caveat Emptor does not apply in a contract of insurance which is based on the principle of *uberrimae fidei.* The complainant had faithfully and bonafidely, relying on the authorised agent of the Life Insurance Corporation, handed over the premium which in fact has all been admittedly credited into the account of the Life Insurance Corporation. He submits that no cheque was issued in the

name of Mr. Chetan Desai and all cheques of the premiums were issued in the name of the Life Insurance Corporation that have been encashed and are retained by the Life Insurance Corporation without issuing the desired renewal of the policies. The amounts realized have therefore been diverted and in fact been misutilised by the Life Insurance Corporation by either issuing new policies or illegally extending the benefits of loan without any authorization from the complainant, or letting the premium amounts being utilized for third parties.

37. It is urged that the fraud or manipulation committed by Mr. Chetan Desai are all on behalf of the Insurance Corporation, and therefore they are not only directly but also vicariously liable for such misappropriation. He has referred to Section 238 of the Indian Contract Act and has urged that there is no exception from liability if the entire transaction has been carried out in the due course of ordinary business, duly authorized by the principal. In the instant case, Mr. Chetan Desai had been dealing with the acquisition of the policies right from the year 2005 onwards, about which there is no dispute, and therefore he was authorized even to handle the premiums, which in fact were not retained by him but were deposited in the accounts of the Life Insurance Corporation. In the given circumstances, Mr. Chetan Desai, in the perception of the complainant, was acting in the course of the business of the Life Insurance Corporation, and therefore the judgment in the case of ***Harshad J. Shah & Anr. (supra)*** would not apply, as the facts of the said case were clearly distinguishable.

38. He has then drawn a distinction between the words “of” and “for” to urge that Mr. Chetan Desai had been authorized for the Company to take the policy, and he had not been authorized as an agent “of” the complainant. Thus, the contention of the Corporation that Mr. Desai was acting as an agent of the complainant is absolutely misplaced.

39. During the course of submissions, it was pointed out that if the argument of the learned counsel for the Insurance Corporation that the realization of premium was unauthorized, then the same is a self-defeating argument, and consequently accepting the same, the Life Insurance Corporation cannot retain any amount which is stated to have been received unauthorizedly through Mr. Chetan Desai and deposited in the account of the Life Insurance Corporation. He submits that on this argument alone, the complainant is entitled to the refund of entire amount, as, any premium if it has been received unauthorizedly, which is logical is liable for refund.

40. While concluding his submissions, it was pointed out to Mr. Mohan that the calculations made in paragraph 37 of the complaint do not reflect the correct figures, inasmuch as, the amounts collected for the period 2005 - 2007 cannot be made part of the claim. To this extent, Mr. Mohan urged that as against the prayer made, he would submit that the amount claimed at item no. (I) has to be moderated and the amount can be accordingly recalculated. The submissions concluded and orders were finally reserved by us on 05.10.2026.

41. This is a case where Mr. Chetan M. Desai, the OP-2 herein, is facing a criminal trial along with other accused where he has been charge-sheeted.

The trial is still pending, and at the same time, the OP Life Insurance Corporation, has also instituted a Civil Suit for recovery of the commission that was paid to Mr. Chetan Desai by the Life Insurance Corporation for the above transactions. The LIC, therefore, also alleges that the Corporation was deceived and cheated by Mr. Chetan Desai. This fact is corroborated by the internal reports of the Life Insurance Corporation dated 22.06.2012 and 12.11.2012. A perusal of the said reports, apart from the manipulations of Mr. Chetan M. Desai, records that in majority of the cases, the filling up of the forms was completed at the branch level and no KYC was in operation. In majority of the cases, the addresses were mentioned as that of the employer and the age proof was accepted as per the employer records. It was also observed that since the policies were issued from the year 2005 onwards, the Board's resolution of the complainant Company, the Employer-Employee addendum and other papers relating to the scheme were not traceable in the branch. The signatures on some of the policies had variations. The collection of cheques by hand was also commented upon. Other observations were also made, including about signatures of the Branch Manager not matching. There were certain original policies that had not been dispatched and were lying in the Branch office. Ultimately, the admission of the mistakes by Mr. Desai were noted and then observed that the Branch had completed the proposals of the policy in bulk without adhering to KYC norms. The particulars of the previous policies were not also mentioned and huge amounts being given to the agent without any valid receipt was also stated to be questionable. The report dated

12.11.2012 further reflects on the investigation that multiple transactions were accounted by Mr. Chetan Desai, some of which were in the name of third parties. Some of the cheques were also utilized for loan repayment of Mr. Chetan Desai himself and misutilized in respect of negotiations with third parties. It was observed that there were procedural deviations at the branch office as the cheques were of the complainant, but they were diverted towards third party deals, towards fresh proposals, and some cheques were utilized even though they had become stale and had been issued in favour of LIC.

42. By such manipulations, Mr. Chetan Desai had pocketed a huge commission, and it was also observed that out of 8,927 policies issued in 2005-2006 and 2006-2007, an approximate 4,197 policies were in force and the remaining 4,730 were in a lapsed state. Paragraph 12 of the said report refers to the diversion of the funds to new business policies, and an exhaustive report was submitted whereafter a Show Cause Notice was issued to Mr. Desai and finally his agency was terminated by the order dated 31.05.2014.

43. The termination of the agency of Mr. Chetan Desai therefore apparently confirms the fact that the Life Insurance Corporation itself found substance in the deceptive acts of Mr. Desai and simultaneously has also taken note of the lapses at the Branch, where deviations in procedure, including violating the KYC norms, has been prominently noted.

44. Thus the financial transaction by the complainant through Mr. Chetan Desai had taken place and the complainants had also resolved for negotiating

the policies through Mr. Chetan Desai. On the other hand, it is also evident that all the bills and instruments, including the cheques, had been tendered in favour of the Life Insurance Corporation that had received the premiums as tendered by the complainant company. Mr. Chetan Desai, out of such premium, has earned his commission, but has ultimately breached the good faith reposed in him by his acts and omissions that appear to be deceptive, whereby the complainants as well as the Corporation have been subjected to losses.

45. One of the contentions raised is about the nature of the agency of Mr. Chetan Desai, as the Life Insurance Corporation has alleged that Mr. Chetan Desai was acting for and at the behest of the complainant and that the Corporation had not authorized Mr. Desai to either collect any premium on its behalf or any authority to receive any premium on its behalf.

46. It is not disputed that Mr. Chetan Desai, had the license of an agent for long. This fact is also not disputed that his agency came to be terminated under the order of the Life Insurance Corporation dated 31.05.2014. The aforesaid powers were exercised by the Competent Authority, of the Life Insurance Corporation, under Rule 16 and Rule 19 of the LIC of India (Agents) Regulations, 1972. Mr. Desai was therefore an agent whose agency was regulated by statutory rules. Mr. Desai was therefore a licensed agent of the Life Insurance Corporation and was therefore authorised to conduct himself as an agency for acquiring business for the Life Insurance Corporation. The Corporation had allowed him to negotiate the business in good faith.

47. The complainant had also passed a Resolution resolving to act upon the advice of Mr. Chetan Desai, and the advance payment of premiums, as alleged by the complainants, was negotiated through him. Mr. Desai was therefore the bridge for all the transactions between the complainant and the LIC. In such circumstances, there can be no doubt that Mr. Desai had made available the premiums to LIC, the cheques whereof were issued by the complainants in the name of LIC, and these cheques have been credited in the account of the LIC. The Life Insurance Corporation therefore has acted on such proposals through this bridge of negotiation handled by Mr. Desai. Not only this, Mr. Desai had been handling this business of the acquisition of the policies since 2005, and therefore he was discharging his duties in the ordinary course of business of the Life Insurance Corporation for benefiting the complainant as well as the Life Insurance Corporation. The services therefore were being rendered by creating an insurable interest of the complainant under the policy, and Mr. Desai was acting as an agent.

48. The question is as to whether the premiums were collected for a lawful purpose or otherwise. From the facts on record, it is evident that the complainants maintain that their purpose was to pay advance renewal premium in respect of the existing policies. The purpose was therefore to retain the existing policies and continue them. On the other hand, the LIC maintains that the premiums were received, but were represented for a different purpose by Mr. Desai, who, on the basis of fake documents, obtained fresh policies which are genuine and are not fake. It is therefore evident that

the LIC also issued policies on payment of premium, and therefore the purpose, from the point of view of the LIC, was to cover risks on payment of premium by the complainant. However, the difference was that the complainant claims to have made the payments for renewal through advance premiums for the existing policies, whereas the LIC maintains that it was given to believe that the premium was offered for fresh policies as it had no system of receiving advance renewal premium. This handling of the acquisition of policies by Mr. Desai resulted in the actual issuance of fresh policies, which the complainant contends it had never intended to acquire.

49. In the above circumstances, the negotiations were in respect of the payment of premium and acquisition of policies, which is the ordinary course of business of the Life Insurance Corporation, and Mr. Desai, being a licensed agent, was authorized to negotiate the same. In this regard, it would be appropriate to quote Regulation 8 of the 1972 Regulations that have been framed in the exercise of powers vested in the LIC under Section 49 of the Life Insurance Corporation Act, 1956. Sub-regulation (3) and (4) of Regulation 8 are extracted herein under:

> *"(3) Every agent shall, with a view to conserving the business b already secured, maintain contact with all persons who have become policyholders of the Corporation through him and shall:*
> *(a) advise every policyholder to effect nomination or assignment in respect of his policy and offer necessary assistance in this behalf;*
> *(b)* ***endeavour to ensure that every instalment of premium is remitted by the policyholder to the Corporation within the period of grace;***
> ***(c) endeavour to prevent the lapsing of a policy or its conversion into a paid-up policy; and***

(d) render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid d down in relation to settlement of claims.

(4) ***Nothing contained in these regulations shall be deemed to confer any authority on an agent to collect any moneys or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner*** *whatsoever:*

Provided that ***an agent may be authorised by the Corporation to e collect and remit renewal premiums*** *under policies on such conditions as may be specified."*

50. A perusal of these Regulations indicates that no authority is conferred on the agent to collect any moneys or to accept any risk on behalf of the Corporation. Thus, Mr. Desai had no authority to collect any amount or accept any risk, whereas the complainants had handed over the cheques to Mr. Desai on the understanding that they were, advance renewal premiums, which could be negotiated under the proviso to sub-regulation (4) quoted hereinabove. Thus no fault can be attributed to the complainant, who may have acted in good faith for handing over the cheques, believing it to be an advance renewal premium, but the same was manipulated by Mr. Chetan Desai through his misrepresentations before the LIC that the premiums were meant for acquisition of fresh policies. Mr. Desai therefore had no authority to collect any money on behalf of the LIC for a fresh policy. What is peculiar in the present case is that acting deceptively, Mr. Desai succeeded in getting the premiums credited in the account of the Life Insurance Corporation and the LIC accepted the same. This is also evident that the cheques were not issued in the name of Mr. Desai and had been issued in favor of the Life Insurance

Corporation. The LIC has nowhere disputed the amounts tendered by the complainants towards premium that have been credited in their account. It is therefore the act of Mr. Desai that is stated to be unauthorized.

51. Learned counsel for the LIC has heavily relied on the decision in the case of ***Harshad J. Shah (supra)*** to urge that while interpreting Regulation 8 of the 1972 Regulations, it has been held that the agent had no authority to collect any premium and did not even have an apparent authority for the same. In that case, the provisions of Section 237 of the Indian Contract Act regarding "apparent authority" was considered. It is therefore urged that Mr. Desai had acted without authority, and not in the ordinary course of business and therefore the Corporation cannot be made liable for his unauthorised acts.

52. In the present case, learned counsel for the complainant has urged that the decision is distinguishable and would not apply on the facts of the present case, inasmuch as, Section 238 of the Indian Contract Act defines the liability of the principal, and therefore any act of Mr. Desai, who operated the agency under license from the LIC, would render the LIC liable as principal, as the business was being conducted in its ordinary course. The complainant had acted in good faith on the representation made by Mr. Desai, and the LIC, after having credited the huge premium to its accounts had never objected towards the purpose for which it had received the premium, nor did it communicate with the complainant. He submits that the complainant had no occasion to doubt it when Certificates of receipts had been issued, which are stated to have been forged by Mr. Desai. Mr. Mohan, learned senior counsel

for the complainant, urges that they had no reason to disbelieve the receipts or doubt the transactions, as certain interest was also paid to the complainant and the entire premium had been actually and admittedly credited to the accounts of the LIC.

53. In these circumstances and the facts discussed hereinabove, the breach of faith on the part of Mr. Chetan Desai is in respect of the same subject matter where, on the one hand, the complainant alleges to have been subjected to an unfair trade practice, as its premium money was misutilized, which is a deficiency, whereas on the other hand, the LIC maintains that it had acted bonafidely in good faith.

54. The Life Insurance Corporation has taken a stand that it is surprising that the complainant never made any inquiries in spite of having received the policies that were negotiated by Mr. Chetan Desai, raising any grievance of not having received the renewal, and kept quiet for long, having paid more than Rs. 7 Crores. The Insurance Company therefore doubts the acts of the complainant and has also made allegations of connivance in the reply filed before this Commission with Mr. Chetan Desai.

55. The connect of the complainant, Mr. Chetan Desai – the OP-2 and the Life Insurance Corporation – the OPs-1 and 3 is therefore clearly of a service provided as defined under Section 2(1)(o) of the Consumer Protection Act, 1986, which is extracted hereinunder:

> *(o) "service" means service of any description which is made available to potential [users and includes, but not limited to, the provision of] facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [housing construction,]*

entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

56. We may also examine the nature of the relationship of the LIC who is the principal and that of the OP-2, who is the agent of the LIC. When the transactions were undertaken by the OP-2 and the business of insurance was acquired for the Corporation, the OP-2 was acting as an agent and had induced the complainant to acquire the beneficial policies that were represented by him. The agent himself did not enter into a contract, but brought in touch the complainant who was a third party directly with the principal and as already discussed above, the entire premium was realized by the LIC and credited to its account. The agent was representing the principal in the course of the transaction even though the agent is alleged to have acted deceitfully in not negotiating the business as desired by the complainant for getting the policies renewed. At that material time, the agent had the express authority of acquiring business and the OP-2, communicated all documents including the cheques for the premium that were all drawn in the name of the LIC. The agent was therefore acting on behalf on behalf of the Insurance Company as it had been appointed as an agent by the Insurance Company itself. The OP-2 may have been authorised by the complainant to negotiate the policy, but the OP-2 was authorized in the capacity which was held by him as that of an agent of the LIC. Had the OP-2 not been an agent of the LIC, there was no reason for the complainant to have entrusted the task of obtaining the policies through him or having handed over the premium to be

deposited with the LIC. The intention was expressed in the resolution of the complainant to acquire policies through the OP-2 from the LIC and the OP-2 was representing and acting in his capacity of agent of the LIC, and not any independent status.

57. The transaction that concluded between the complainant and Mr. Chetan Desai, the agent, was for getting the policies renewed on payment of premium. If there was any unauthorized act or fraud played by Mr. Desai thereafter with a deception representing that the transaction was authorized, the same has to be looked into in the background that the premium had been credited in the account of the LIC which is in a way a ratification of the intention of the complainant to continue with the policies from the LIC. The LIC did not refund the premium nor did it return it back after it realised that Mr. Desai had committed some fraud. To the contrary, the amount still continues to be held and retained by the LIC and it is for this reason that the present complaint came to be filed complaining of unfair trade practice and deficiency of service.

58. The OP-2 was in the very business of the said transaction and in fact the agency of the OP-2 was coupled with interest that stands confirmed by the fact that he earned a huge commission running into several lakhs, the recovery whereof had been sought by the Corporation through the filing of the Suit and lodging of the criminal complaint. The Corporation therefore cannot absolve itself from responsibility by simply saying that they had not authorized Mr. Desai to act unlawfully. The fact remains that Mr. Desai did act

representing that he had authority to negotiate on behalf of the Corporation and there was every reason for the complainant to believe the same as Mr. Desai was running a duly constituted Insurance agency of the LIC. His agency was terminated long thereafter.

59. We therefore cannot segregate or divorce this relationship of principal and agent of the LIC with the OP-2, keeping in view the provisions of Section 182 of the Indian Contract Act, 1872. If the agent committed some fraud with the LIC, the Corporation by retaining the amount continues to ratify the said fraud and would therefore be liable directly as well as vicariously for the acts and omissions of the OP-2.

60. One of the contentions raised by the learned counsel for the LIC is that all the fresh policies have been issued and they are not fake. The premium paid for the said policies were for the duration that they had been acquired. The period of the policies had lapsed and with the lapse of the policies, there is no question of any refund of the premium paid by the complainant. It is also vehemently contended that the complainant was hand in gloves with the OP-2.

61. The aforesaid argument does not appeal to us for the reason that when the transaction was entered into, it was for a renewal as stated by the complainant and not for acquiring a fresh policy. The manipulation of Mr. Chetan Desai led to this situation, but Mr. Chetan Desai was acting as an agent of the Corporation. The complainant has nowhere authorized Mr. Desai to have acquired fresh policies. There is no material placed by the

Corporation, so as to reflect that the complainant had requested for the issuance of fresh policies. Mr. Desai had prepared some documents including receipts for receiving the premium, but the complainant nowhere seems to have requested for acquisition of fresh policies. The fact that the complainant was also deceived is admitted by the Corporation, but the fact also remains that the fresh policies were issued without following the KYC norms and by deviating from financial protocols and procedure. Learned counsel for the Corporation has been unable to dislodge this fact which is reflected in the investigation reports of the Corporation itself. The argument therefore of the Corporation as noted above deserves to be rejected as the complainant had bonafidely offered to continue the policies that took a different turn not because of the complainant, but because of the manipulation of Mr. Desai.

62. We have referred to the provisions of the 1986 Act as this is a complaint that was filed when the said Act was in force. Even otherwise the subject of insurance is covered and is *pari materia* with aforesaid provisions under Section 2(42) of the Consumer Protection Act, 2019. Both the parties intended for the rendering of insurance services where the complainant as a Company has filed this complaint as a consumer as defined under Section 2(1)(d)(ii) of the 1986 Act. The law on the subject pertaining to insurance services is no longer *res-integra* in the wake of the decision of this Commission as upheld by the Apex Court in the case of ***National Insurance Company Ltd. vs. Harsolia Motors & Ors. (supra)*** (paragraphs 32 to 36 of the report as already referred to in detail in our order dated 15.01.2025 extracted hereinabove). The

other decisions on the subject have also been referred to and we have already opined that the complaint was very much maintainable keeping in view the nature of the services involved in the present case. To that extent, we confirm our view already expressed in the above quoted order.

63. In addition thereto, we have already held that the complainant being a Company is also entitled to maintain a complaint which issue once again is no longer *res-integra* keeping in view the law enunciated by the Apex Court in the case of ***Kozyflx Mattresses Private Limited vs. SBI General Insurance Company Limited & Anr. (supra).*** Thus, we hold that the complainant Company is a consumer of the insurance services extended by the OPs-1 & 3 and the services rendered are amenable to the jurisdiction of this Commission on a dispute being raised under the provisions of the Consumer Protection Act, 1986. These objections that had been raised as preliminary objections have already been rejected by us in our order dated 15.01.2025 and there does not appear to be any appeal having been filed against the same nor is there any novel argument so as to differ from the same, as such the order dated 15.01.2025 stands confirmed.

64. The next question that needs to be addressed and was also noted in our order dated 15.01.2025 is about the objections of entertaining a claim based on disputed and complicated questions of fact in the summary jurisdiction exercised by this Commission under the 1986 Act. Even though, we have referred to it and rejected the preliminary objections at the stage of the preliminary hearing on 15.01.2025, yet we confirm our view on the basis of

the material on record and after having considered the final arguments on this issue. There are certain facts that cannot be treated as complicated in the background of the pleadings and admissions that are on record as discussed above. The first is that the receiving of the premium from the complainant and it being credited in the account of the Life Insurance Corporation that continues to be retained by the Corporation is not in dispute. It is only the contest about the purpose for which the premium is claimed by the complainant to be an advance renewal premium for the existing policies, whereas the Insurance Corporation claimed it to have been tendered for the acquisition of the new policies which are not fake.

65. The third dimension with regard to the status of the alleged laundering of the amounts by Mr. Chetan Desai, the OP-2 for acquiring the policies or diverting it for some loan or generating third party interest has emerged after the complaint was lodged by the complainant with the LIC and investigated by the Corporation itself. Consequently, the parking of the money for the purposes of insurance as intended by the complainant in the account of the Corporation is not in dispute and is therefore not a complicated question at all.

66. The other aspect is that the complainant also alleges misutilisation of its funds by diverting it for other purposes due to the intervening misrepresentation and fraud of Mr. Chetan Desai who was running the insurance agency of the LIC and the nature of the transactions resulting in the issuance of the policies and the diversion of funds. The complainant has maintained that it had never made any request for issuance of fresh policies or

authorized the diverting of its funds. On the other hand, the Life Insurance Corporation maintained that it has been discovered that Mr. Desai, the OP-2, through his misrepresentation and submission of fabricated documents, acted deceptively, whereas the Corporation had acted in good faith. Thus, the complainant and the corporation are both practically on the same page that on account of the misrepresentation, unlawful and alleged unauthorized acts and omissions of the OP-2, Mr. Chetan Desai, they have suffered losses. The fact that such unauthorized diversions, were made, is reported to be admitted by the OP-2, Mr. Chetan Desai, as per the pleadings of the parties, and in all probability confirmed by the stand of the Corporation, as per its two investigation reports dated 22.06.12 and 12.11.2012. Over and above this, the filing of the criminal case and then the filing of the Suit by the Life Insurance Corporation for recovery of the commission unlawfully earned by Mr. Desai, read with the averments contained in the said documents confirms the probability of the fake transactions that have caused loss both to the complainant and to the LIC. These facts, therefore, in our opinion, are not disputed between the complainant, at least to the extent of the conduct of Mr. Chetan Desai, and therefore such facts do not fall within the realm of complicated or disputed facts that may require adjudication by us and therefore the complaint can proceed on this foundational assumption, that the complainant on the one hand has suffered losses, maybe due to the unlawful acts and omissions of Mr. Desai also, and on the other hand, the Corporation must also have been deceived by Mr. Desai. Consequently, such facts,

coupled with the evidence on record, do not need any assessment on that count by us.

67. We may emphasize that the deviations by the Branch office by not following the KYC norms and other established procedures while issuing the policies at the behest of Mr. Chetan Desai is already indicated in the investigation report of the Corporation dated by 22.06.2012 read with the report dated 12.11.2012. This has been confirmed by the Corporation through its specific averments in the criminal case, as also in the plaint of the Suit No. 266 of 2017. We are therefore convinced that we have to accept the proposition by both the parties to the extent that they have suffered a loss due to the unlawful act and omissions of Mr. Chetan Desai which fact does not require further investigation by us.

68. There is one more reason for the same, namely that Mr. Chetan Desai has been impleaded as OP-2 and after having been served with a notice, had put in appearance through a counsel, but absented later on, as a result whereof he was proceeded *ex-parte* vide order dated 03.07.2018 and has not appeared thereafter nor has he been represented through any counsel. In the absence of any denial of the allegations against Mr. Chetan Desai either by the complainant or by the OP Corporation, therefore enables us to draw an inference that the allegations against the deceptive conduct of Mr. Desai remains undisputed, which does not require any investigation by us. The only area of assessment of facts would therefore be regarding the manner and method in which Mr. Desai negotiated the insurance coverage, on which the

complainant and the Corporation are contesting their respective stands. This being the limited area of enquiry in this Consumer Complaint and as to whether it resulted in any deficiency on the part of the Insurance Corporation or not, in our opinion, can be examined on the material available and we therefore accordingly proceed towards the said direction.

69. Having held as above, the objection taken by the Life Insurance Corporation that there are disputed questions of fact which cannot be gone into in the present complaint also deserves rejection. We may point out the legal position in this regard by referring to the following decisions that lay down that merely because there are disputed questions of facts involved, the same does not necessarily amount to a complicated or a complex question, disabling this Commission from exercising its summary jurisdiction for examination of such facts.

70. The issue was noticed by us with reference to two decisions of the Apex Court in ***F.A. No. 50 of 2014, V. Venkatamma vs. Bajaj Allianz General Insurance Co. Ltd. & Ors., decided on 07.07.2025***, wherein paragraphs 39 and 40, the following observations have been made:

> *39. It is in this context that the contention raised about the emergence of disputed questions of fact has to be looked into. In this regard, several judgments have been cited and we have also been able to lay our hands on some judgments being referred to hereinafter. One of the earliest judgments regarding the summary nature of jurisdiction of this Commission and the issue of dealing with complicated issues requiring evidence was considered by the Apex Court through a three Judges decision in the case of* ***Dr. J.J. Merchant Vs. Shrinath Chaturvedi (2002) 6 SCC 635.*** *After having considered the proposition, the Apex Court held that* ***it would be a wrong assumption that because cases under the Consumer Forum are tried summarily, justice***

cannot be done when some questions of fact are required to be dealt with*. To the contrary, while referring to the question and the provisions contained in the Consumer Protection Act, 1986 and other relevant provisions,* ***the Apex Court held that the Commission has powers vested in it to order discovery of production of documents and therefore, the Commission can proceed to delve into questions of facts*** *on the parameters and within the limitation prescribed under the Act. Since there are provisions for examination of witnesses and production of evidence,* ***it cannot be said as a matter of general rule that the Commission cannot make an inquiry into such facts regarding deficiency in services as that would be not in the scope of the legislation to non-suit a consumer when such questions of fact can be dealt with*** *appropriately by the consumer fora.*

40. This was followed by another judgment of the Apex Court in ***CCI Chambers Coop. Hsg. Society Ltd. Vs. Development Credit Bank Ltd. (2003) 7 SCC 233*** *where in paragraph-7, the Apex Court observed as follows:*

> *"7. In Indian Medical Assn. case this Court noticed the powers conferred on the several fora under the Act, the procedure applicable (including the exercise of some powers of the civil court under the Code of Civil Procedure having been made available to the fora under the Act) and held that the nature of averments made in the complaint is not by itself enough to arrive at a conclusion that the complaint raises such complicated questions as cannot be determined by NCDRC. It is only when the dispute arising for adjudication is such as would require recording of lengthy evidence not permissible within the scope of a summary enquiry that a forum under the Act may ask the complainant to approach the civil court. The fora made available under the Act are in addition to, and not in derogation of the provisions of any other law for the time being in force and the jurisdiction of the conventional courts over such matters as are now cognizable under the Act has not been taken away. A three-Judge Bench of this Court recently in Dr. J.J. Merchant case specifically dealt with the issue as to the guidelines which would determine the matter being appropriately dealt with by a forum under the Act or being left to be heard and decided by a civil court. This Court noticed that the fora under the Act are specifically empowered to follow such procedure which may not require more time or delay the proceedings. A forum under the Act is entitled, and would be justified, in evolving a procedure of its own and also by effectively controlling the proceedings so as to do away with the need of a detailed and complicated trial and arrive at a just decision of the case by resorting to the principles of natural justice and following the procedure consistent with the principles thereof, also making use of such of the powers of the civil court as are conferred on it. The decisive test is not the complicated nature of the questions of fact and law arising for decision. The anvil on which entertainability of a complaint by a forum under the Act is to be determined is whether the questions, though complicated they may be, are capable of being determined by summary enquiry i.e. by doing away with the need of a detailed and complicated method of recording evidence. It has to be remembered that the fora under the Act at every level are headed by experienced persons. The National Commission is headed by a person who is or has been a judge of the Supreme Court. The State Commission is headed by a person who is or has been a judge of a High Court. Each District Forum is headed by a person who is, or has been, or is qualified to be a District Judge. We do not think that mere complication either of facts or of law can be a ground for the denial of hearing by a forum under the Act. In*

Synco Industries cases this Court upheld the order of NCDRC holding the complaint before it not a fit case to be tried under the Act and allowing liberty to the complainant to approach the civil court because this Court agreed with the opinion formed by the Commission that "very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses". (SCC p. 2, para 3) The Court concluded that in any event it was "not an appropriate case to be heard and disposed of in a summary fashion".

71. There are decisions of the Apex Court cautioning against adjudication of cases involving disputed factual questions. The decision of the Apex Court in the case of ***Oriental Insurance Company Ltd. vs. Munimahesh Patel, (2006) 7 SCC 655***, is to the said effect, followed by the decision that has also been relied on by the LIC in the case of ***Chairman and Managing Director, City Union Bank Limited and another Vs. R. Chandramohan (2023) 7 SCC 775***. However, as discussed hereinabove, the facts of the present case present an exception, as the inquiry made by us in the present case is to the limited extent as explained above.

72. Learned counsel had tendered additional written submissions raising all the questions that have been argued and has also supplemented it with supplementary written submissions dated 08.10.2026. We have perused the same and we find that they are essentially the same arguments that have been explained in a different way. For example, the issue of KYC norms is sought to be explained through the procedural guidelines for KYC dated 12.10.2009, and the submissions make reference to Clause 4.1.1 (v). We have perused the entire guidelines and we find 4.1.1 as follows:

4.1.1 Know your customer (KYC):

Branches should make reasonable efforts to determine the true identity of all the customers.

v) ***Considering the hardship in complying with the KYC requirement by small value policy holders*** *and possible implications for spread of insurance into*

rural and low income sectors, especially micro-insurance, IRDA has decided to provide exemption up to a total annual premium of Rs. 10,000/- on life insurance policies held by a single individual from the requirement of recent photograph and proof of residence.

73. The reference to clause (v) is absolutely misplaced, inasmuch as, this case involves a peculiar type of policy under an employer – employee scheme with a massive transaction and cumulatively the premium runs in crores. We fail to understand as to how clause (v) would apply on the facts of the present case. To the contrary, the entire norms clearly indicate a strict observance of KYC norms as the said guidelines were introduced with a special thrust of such measures.

74. There is one more provision which needs to be mentioned specifically namely guideline 4.1.3 (i) and (ii) which are extracted hereinunder:

4.1.3 Risk profiling of the customer:

For proper risk assessment of the customers and to evolve suitable monitoring mechanism a risk matrix is proposed;

*i) AML guidelines require **customer** segmentation into **low and high risk**:*

Government servants, salaried, people from lower economic strata whose income is well defined- low risk.

*Politically Exposed Persons, NRIs, Trusts and **select businesses like jewellery merchants**, armaments manufacturers etc.- **high risk***

ii) Guidelines also require products to be segmented into risk categories:

Single premium products with premium greater than or equal to Rs. 5 Lakhs p.a. (including Top up premium) - high risk. Regular premium products with premium greater than or equal to Rs. 2 Lakhs p.a. with a high rate of return - high risk.

75. A perusal of the said guidelines indicate that select businesses like jewellery merchants have been categorised as High Risk Customers. In the instant case, admittedly the complainant is running his concern as a Diamond

Merchant at Bombay and Surat. Applying the same, we fail to understand as to how the said norms come to the aid of the Insurance Corporation. On the other hand it favours the stand taken by the Complainant. One more provision needs reference namely clause 4.1.8 which runs as follows:

> ***4.1.8 Responsibility of the Agents and Corporate Agents:***
>
> *1. Strict* ***compliance to KYC norms is mandatory by all the agents*** *and Corporate agents.*
>
> *2.* ***Agents*** *and Corporate Agents* ***who expose the Corporation to AML risks*** *on more than 2 occasions will be issued warning letter. However if the trend continues, prompt penal action will initiated against the concerned agent and which eventually will lead to termination of agency; details of the same will be sent to Principal Compliance Officer for onward transmission to IRDA.*
>
> *3.* ***Non-compliance of AML/KYC norms by the agents or Corporate Agents will attract punishment****/penalty or termination as the case maybe.*

76. This clearly mandates the agents and corporate agents on whom KYC norms is mandatory for strict compliance. Apart from this, there are internal audit control and monitoring cells with designated officers responsible to verify and evaluate compliance of KYC. Clause 4.5 refers to the same as follows which is extracted hereinunder:

> ***4.5 Verification process for evaluating compliance to KYC/AML norms***
>
> *Sales/Marketing Department officials are the* ***designated officers responsible for fulfilling the norms relating to KYC/AML at the proposal stage****. NB department officials under no circumstances to accept proposals violating KYC/AML norms.* ***Branch Manager to scrutinize the MIS generated and in case of any violation, initiate prompt action****. Higher offices should be intimated at the earliest. Punitive Action will be taken on the concerned by Personnel department, Central Office without any reference to ZO/DO/BO.*

77. This clearly enjoins the Branch Manager to take appropriate measures. It is thus evident that these guidelines were very much in vogue and therefore the same cannot be wished away by saying that the reports that were acquired by the Corporation itself on 22.06.2012 and 12.11.2012 are stray observations and meritless. To our mind, this argument raised on behalf of the LIC is an argument of desperation as there is no challenge raised to the correctness of the said reports nor have they been denied by the Corporation. Not following of the norms by the LIC officials is therefore a clear deficiency.

78. Apart from this, policy lapse notices do not seem to have been issued. The said supplementary written submissions at item no. 6 states that all premium lapse notices in bulk were sent by ordinary posts and no record of such posts is available with LIC. This is no valid explanation nor is there any evidence to that effect. All dispatches have to be recorded even if sent by ordinary post or for that matter under postal certificate. No such evidence is available according to the own submission of the LIC and therefore, the LIC had failed to communicate to the complainant about the lapse of the policies.

79. Applying the ratio of the above-mentioned decisions on the facts of the present case, we do not find any legal hurdle to detain us from proceeding further. The moot question that falls for consideration is as to whether the Life Insurance Corporation, acting at the behest of Mr. Chetan Desai, its agent, can be held liable, provided the services rendered are found to be deficient or the presence of an element of an unfair trade practice is visible. We have already discussed herein above and held that Mr. Desai was the agent of the

Life Insurance Corporation and the services regarding insurance had been negotiated through his representations or otherwise.

80. We may therefore examine the contribution of the Branch Office of the Life Insurance Corporation that in fact had actually negotiated the policies. The original policies that were acquired was through Mr. Desai between 2005 and 2007. The renewals that were sought in 2007 and the negotiations in 2008 were all through Mr. Desai and from the same Branch. A huge amount of premium to the tune of more than Rs. 7 Crores has been negotiated in respect of the acquisition of the policies and also the advance renewal premiums, as claimed by the complainants, to have been paid to the Insurance Corporation. The investigation details that have been disclosed in the report of the Corporation dated 22.06.2012 and 12.11.2012, has nowhere been disputed by the LIC, which records that the policies and their proposals were completed in bulk without adhering to the KYC norms. The report dated 12.11.2012 also records that there were procedural deviations and consequently the issuance of the new policies seems to have been processed deficiently. This may have been done on account of the active deception of Mr. Desai, but there is every good reason to infer that the branch officials who were dealing with the issuance of these new policies were doing it either deliberately or otherwise were negligent, as indicated in the above-mentioned reports. To this extent, there is no participation or any evidence of active involvement of the complainants, so as to blame them for any contributory negligence.

81. Admittedly, the said transactions were negotiated by Mr. Desai, who had been deceptively informing the complainants about the policies with some assurance and also prepared certificates or receipts regarding the deposit of the premium with the Life Insurance Corporation. The transactions which were heavy in nature were being settled through the active participation of Mr. Desai and therefore there is every reason to believe that the branch officials had accepted his requests while issuing the policies, coupled with the acceptance of the premium. In our opinion, the complainant was acting in good faith and had paid the premiums drawn in favour of the Life Insurance Corporation and therefore they had no reason to suspect the transactions at that stage or doubt its processing, but upon realizing the dubious acts and omissions of Mr. Desai, the complainants themselves raised this issue before the Life Insurance Corporation and it is thereupon that the Corporation got the investigations carried out.

82. The discovery of this deception resulting in the diversion of the funds was also coupled with investment in respect of third parties and also of loans that does not appear to be the intention of the complainants while offering the premiums. The investment of the premiums was therefore nowhere instructed by the complainants for any other purpose except renewals and therefore the responsibility lay on the Life Insurance Corporation to have taken due care in processing the same.

83. The acts and omissions of Mr. Desai are admitted by him and therefore he being the agent of the Corporation was liable, but at the same time the

Insurance Corporation, having retained the entire premium to its credit, has to be attributed as a vicarious liability on the Corporation on the given facts of the present case as discussed herein above. The Corporation therefore cannot escape its liability and in fact the loss suffered by the complainant in the manner aforesaid could not be disputed by the Corporation. The reply filed in this complaint by the Corporation expressing doubts of the connivance of the complainant is absolutely misplaced and is bereft of any evidence. We have already indicated above that no such plea of the connivance of the complainant was raised either in the criminal complaint lodged by the Corporation or in the Civil Suit which is still pending. This doubt has been expressed for the first time only through the pleadings before this Commission that have been refuted and we are therefore not inclined to accept any of these allegations as they do not appear to have any grain of truth in it. There is no evidence whatsoever, which shows that the Complainant and OP No. 2 were in collusion. Significantly, the averments in the recovery suit instituted by OP No. 1 itself before the Hon'ble High Court mentions that fraud was played upon Complainant by OP No. 2. Moreover, it is the Complainant which had filed the criminal complaint pursuant to which OP no. 2 was arrested.

84. With the aforesaid conclusions, the only inference that can be drawn is that the Corporation acted deficiently and it continued to act unfairly by retaining the premiums to the extent it was meant for the renewal of the earlier existing policies.

85. Having given our thoughtful consideration to the entire facts and circumstances of the present case, we therefore hold the Life Insurance Corporation to be deficient in its services by allowing the misutilization and the diversion of the premiums paid by the complainant to the extent it was meant for renewing the existing policies that was unfairly diverted for the issuance of new policies, causing loss to the complainant.

86. The claim of the complainant is for Rs. 8,84,97,850/-. This claim is based on the relief prayed for in respect of renewals between September 2005 to July 2007. This claim cannot be accepted in its entirety, inasmuch as, the policies taken between 2005 and 2007 are not in dispute. It is only the renewals that were sought and the advance premium paid, that can at best be claimed, which was diverted for issuance of fresh policies between 2007 to 2009. Mr. Mohan has also not been able to dispute this position.

87. In the given circumstances, it is only such amount that can at best be claimed by the complainant for refund as the fresh policies issued against such receipts were an outcome of the deficiency on the part of the Insurance Company in issuing the policies without following the KYC norms and with deviations and variations, as already indicated in the reports discussed above. This figure also gets reinforced from the facts stated in the Suit filed by the Life Insurance Corporation, where the commission realised by Mr. Chetan Desai has been referred to with reference to the premium paid by the complainant. Paragraph 11 of the plaint is extracted hereunder:

> *11. Thereafter, the Committee has submitted its Further Investigation Report dated 12.11.2012 in respect of the Complaint dated 15.05.2012, holding that*

Defendant No. 1 was in the habit of ***collecting amount in excess to the actual premium and was informing Defendant No. 2 that the same is towards advance premium****, however,* ***the same was diverted to new business policies****. It was also observed that Defendant No. 1 has received commission to the tune of approximately Rs. 83,61,315.41 under the first premium commission and bonus commission and approximately Rs. 85,94,306/- towards FYR commission and renewal commission. Annexed hereto and marked Exhibit "p" is a copy of the said further Investigation Report dated 12.11.2012.*

88. Apart from this, the Corporation issued a Show-Cause Notice to Mr. Desai for which the allegations made in paragraphs 13, 14, 15 and 16 of the plaint are as follows:

13. Thereafter, the Plaintiff issued Show Cause Notice dated 02.03.2013 against Defendant No. 1, directing him to show cause in writing within 15 days from the date of receipt of this notice as to why an amount of Rs.3,72,87,635.78 should not be recovered from him on account of total loss caused by his fraudulent acts as detailed above and as to ***why the action of termination of his agency with forfeiture of renewal commission payable*** *should not be taken against him. Annexed hereto and marked Exhibit "Q" is a copy of the said Show Cause Notice dated 02.03.2013.* ***The Defendant No. 1 vide his letter dated 13.03.2013 replied to the said Show Cause Notice and categorically admitted the fraud*** *committed by him. Annexed hereto and marked Exhibit "R" is a copy of said reply dated 13.03.2013.*

14. The Competent Authority, after considering the complaint and the documents discussed herein above, passed Final Order dated 31.05.2014 and came to the conclusion that the penalty of termination of agency with forfeiture of renewal commission and recovery of Rs. 3,72,87,635.78 from Defendant No. 1 as proposed in the said Show Cause Notice dated 02.03.2013 was commensurate with the gravity of fraudulent acts and misconduct committed by Defendant No. 1 and ordered the termination of the agency of Defendant No. 1 and the forfeiture of renewal commission under Rules 16(1)(a)(b)(d) and 19(1) of the LIC of India (Agents) Regulations, 1972 with immediate effect. It was also ordered that the amount of Rs. 3,72,87,635.78 be recovered from Defendant No. 1. Annexed hereto and marked Exhibit "S" is a copy of Final Order dated 31.05.2014.

15. It is, therefore, clear that the Plaintiff has suffered losses to the tune of Rs. 3,72,87,635.78/-. ***A detailed break-up of the losses suffered by the Plaintiff is annexed hereto and marked as Exhibit "T"****.*

16. The Plaintiff therefore most respectfully submits that Defendant No. 1 by his fraudulent acts has caused loss of Rs. 3,72,87,635.78 to the Plaintiff Corporation as more particularly stated hereinabove and hence is liable to pay the said amount of Rs. 3,72,87,635.78 with interest @ 12% p.a. from 31.05.2014 till the date of filing of the present Suit and further interest @ 12% per annum till the date of recovery of the said amount. The Defendant No. 1 is, therefore, liable to pay Rs. 4,66,09,544,73/-(calculated with interest) as per particulars of claim along with further interest from the date of filing till the recovery of the said amount. Annexed hereto and marked Exhibit "U" is particulars of claim.

89. What is evident from the aforesaid allegations and also the two reports dated 22.06.2012 and 12.11.2012 that the Corporation itself has referred to renewal premiums offered by the complainant. The details of the discovery of the renewal premiums have also been observed in the report dated 22.06.2012 with reference to the three receipts that were issued in the shape of Certificates, which are alleged to have been forged by Mr. Desai. The amount mentioned in these three Certificates, which have been filed on record and extracted hereinabove, are:

1,36,71,800/-

+ 2,84,95,110/-

+ 1,08,41,000/-

Total = **Rs. <u>5,30,07,910/-</u>**

90. Thus, we have been able to gather these figures from the pleadings on record, and therefore the claim of the complainant to the tune of Rs. 8,84,97,850/- is not substantiated.

91. Further, we find no justification for the claim of any other amount as compensation or such other relief as prayed for, except that the complainant would be entitled to costs of this litigation.

92. We therefore allow this complaint for the total amount of Rs. 5,30,07,910/-. Since this amount still continues to be retained by the OP Corporation without having extended any benefits and having utilized the same for issuance of policies that were never intended or acquired by the complainant for any benefit, an interest of 6% per annum on the said amount from the date of the filing of the complaint i.e. 27.12.2013 till the date of actual payment shall be available. The payment shall be made within three months from the date of this order, or else the rate of interest shall stand enhanced to 9% till the date of actual payment.

93. We see no reason to award a compensation of Rs. 10 Crores as claimed, but in view of the magnitude of the litigation and looking to the facts of the case, we award a sum of Rs. 1 lakh as costs of litigation. The complaint stands disposed of accordingly.

……
(A.P. SAHI, J)
PRESIDENT

……
(BHARATKUMAR PANDYA)
MEMBER

Pramod/VM/Court-1/CAV