

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

**RESERVED ON : 07/10/2025
JUDGMENT PRONOUNCED ON: 12/11/2025**

CONSUMER CASE NO. 269 OF 2012

With

IA/3210/2013, IA/6600/2013 (Directions, condonation of delay)

M.K. Aggarwal Hosiery (P) Ltd., C-234, Phase-VIII, Focal Point, Ludhiana.

.....Complainant

Versus

M/s New India Assurance Company Ltd., Divisional Office-III, 29 Atam Park, Dugri Road, Ludhiana.

And Registered Office at – New India Assurance Building, 87, M.G. Fort, Mumbai – 400001.Opposite Parties

BEFORE :

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

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

For the Complainant : Mr. Sumant De, Mr. Rohit Khurana, Ms. Simran Kaur, Advocates

For the Opposite Party : Mr. Aditya Kumar, Ms. Iva Nath, Advocates

ORDER

PER HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

1. Heard Mr. Sumant De, Advocate for the Complainant and Mr. Aditya Kumar, Advocate, for Opposite Party.

2. The complaint involves an insurance claim and accepting the liability, the part-claim amount of Rs.5,49,45,964/- has already been paid by the insurer and received by the complainant firm after executing the discharge voucher, allegedly under protest and allegedly while reserving their rights and liberty to recover the balance claim of Rs.2,59,25,364/- and compensation for delayed payment.

3. Brief facts of the case are that complainant firm, which is engaged in the business of manufacturing of synthetic knitted printed fabrics and blankets, purchased a Standard Fire & Special Peril Policy on 27.06.2008 from the OP insurer thereby insuring building, plant & machinery for the period from 27.06.2008 to 26.06.2009 at C 234 & D

338, Phase VIII, Focal Point, Ludhiana for a sum assured of Rs.10 crores. On 17.12.2008 another Floater Fire Policy was issued by OP on stocks of all kinds of cloths, yarn, packing material, raw material, semi-finished and finished goods, thread, chemicals and other goods issued in the name of the Complainant Company on the same address for a sum of Rs.4.5 crores. In the intervening night of 26/27.04.2009 a massive fire broke out at about 3.45 a.m. at complainant insured premises located at C 234, Phase VIII, Focal Point, Ludhiana, which was noticed by the security guard of the Complainant Company. The fire was only brought under control at about 2.00 p.m. on 27.04.2009 by the fire brigade. As per the fire brigade report, the fire was accidental. The Complainant accordingly intimated the OP insurer about the aforesaid fire, who appointed M/s Rohit Kumar & Co. as surveyor to investigate and assess the loss suffered by the Complainant and on 02.05.2009, the surveyor carried out the preliminary investigation and vide his letter dated 04.05.2009 asked for certain information from the Complainant, which were provided to him on 15.06.2009. A claim bill for Rs.8,08,71,327/- was raised by the complainant. On 06.07.2009, whereupon the complainant requested the insurer for release of the interim claim. OP insurer permitted the complainant to demolish the building and dispose of the salvage. A notice was published in the newspaper for disposal of salvage and auction of the salvage was conducted in the presence of the Surveyor Shri Rohit Singhla and a representative of the OP insurer and pursuant to that the OP insurer raised the bill for Rs.1,52,054/- for fee towards the disposal of salvage and net salvage value came as under:

Sale Value of salvage disposed off :	: Rs.2640000/-
Less : Salvage Disposal Bill Ref. No. 89/July/2009 dtd. 29.07.2009	: Rs.152054/- -----
Net Salvage Value	: Rs.2487946/-

4. In August, 2009, complainant again requested the OP insurer for early settlement of the claim and also provided requisite documents as desired by the surveyor vide their letter dated 06.10.2009. Even after writing several letters to the OP insurer, they did not even bother to settle their claim. On 21.03.2011 complainant again requested the Chairman of the OP insurer to settle the claim as early as possible because their

Banker i.e. Union Bank of India was in the process of declaring their account as Non-Performing Assets (NPA). However, despite the aforesaid request, OP failed to act and consequently on 01.04.2011 Complainant's Bank declared their account as NPA/default account. Inspite of this, as a great shock, complainant received a letter on 15.06.2011 from the OP insurer wherein they had approved the claim of Rs.5,49,45,964/- only against the complainant's claim of Rs.8,08,71,327/-. OP in its letter dated 15.06.2011 further directed the Complainant to submit certain documents including an Indemnity bond and affidavit of the Director of the Complainant Company along with the discharge voucher duly signed and counter signed by the banker. On protest by the complainant, OP insurer categorically informed them that even the payment of the admitted amount of Rs.5,49,45,964/- cannot be released unless the discharge voucher is signed without any comments or reservation and thereby the OP coerced the complainant to execute the discharge voucher on which the words "full & final settlement" was printed. Being aggrieved, complainant filed the present complaint before this Commission on 08.10.2012 and prayed for the following reliefs:

- (i) Award a sum of Rs.2,59,25,364/- on account of balance claim in favour of the Complainant with interest @ 24% per annum on the amount of Rs.2,59,25,364/- from the date of loss till its realization;
- (ii) Award additional interest @ 2 % per annum under regulation 9(5) of IRDA on Rs.2,59,25,364/- from the date of loss till the date of realization in favour of the Complainant;
- (iii) Award a sum of Rs.2,69,15,994/- on account of interest @ 24% per annum for delay on payment of sum of Rs.5,49,45,963/- from June 2009 till its payment i.e. 16.06.2011;
- (iv) award a sum of Rs.27,39,770/- as additional interest @ 2% per annum under Regulation 9(6) of IRDA for delay on payment of sum of Rs.5,49,45,963/- from June 2009 till, the date of realization of the said amount i.e. 15.06.2011;
- (v) Award a sum of Rs.2,50,00,000/- on account of loss of business, Rs.10,00,000/- as compensation on account of mental agony, torture and harassment

5. Letter dated 15.06.2011 (page 23) of the OP insurer settling the claim of the complainant is reproduced below:



THE NEW INDIA ASSURANCE CO LTD
DIVISIONAL OFFICE-III
29, ATAM PARK, DUGRI ROAD, LUDHIANA
TEL NO -0161-2493206, 2493883 FAX-2493850
E. MAIL-id360300@rediffmail.com

Annexure - C

June 15, 2011

M/S M.KAGGARWAL HOSIERY PVT LTD
LUDHIANA

DEAR SIR,

**Re: CLAIM UNDER POLICY NO 36030011081100000365 AND
360300110308/1300001099 DOL 27.4.2009.**

This has reference to the claim under the above said policies. The competent authority has approved the claim for Rs.5,50,07,530/- as full and final settlement subject to collection of reinstatement premium and other premium recovery. Keeping in the view the above the net payable amount is asunder;

1. Claim approved	Rs.5,50,07,530/-
Reinstatement of Sum Insured premium	Rs. 38942
Earthquake premium for stock policy	Rs. 16875
Service Tax on the above	Rs. 5750
Total recovery	Rs. 61567/-
Total Recovery	Rs. 61567/-
Net Payable claim amount	Rs.5,49,45,964/-

Keeping in view the above you are requested to submit us followings duly signed and countersigned by Bankers.

1. An indemnity bond and affidavit from Directors of your company as per format enclosed.
2. Discharge voucher duly signed and countersigned by Bankers

Please submit the above to enable us to issue the cheque.

Thanking you
Yours faithfully


SR DIVISIONAL MANAGER



6. The Opposite Party filed its written statement on 17.10.2013 but the same was not taken on record as OP filed the same after lapse of 90 days. Right of the OP to file written statement was closed vide this Commission's order dated 19.11.2013. OP insurer challenged the said order but the same was dismissed by Hon'ble Supreme Court vide SLP No. 3888 of 2017 dated 11.09.2023.

7. Operative portion of final survey and assessment report dated 16.09.2010 by M/s Rohit Kumar & Co. Surveyors & Loss Assessors is extracted below:

19.00 INSURED'S CLAIM :

Insured had submitted claim bill for Rs. 8,08,71,327/- towards loss to their property burnt/damaged during fire dated 27.04.2009.

20.00 ASSESSMENT & ADJUSTMENT OF LOSS :

20.01 Insured has lodged their claim on account of the following :

- a) Quotations of items of plant & machinery.
- b) Estimate of re-construction cost of Building.
- c) Loss of stocks comprising stocks-in-process, and finished goods etc..
- d) Expenses incurred for dismantling of machinery, architect fees, etc.

Remarks : All these claimed items are supported with quotations/relevant records etc.

20.02 For assessment of loss, we have adopted the following methodology :

- a) Basis of Quantity : As per physical inspection and/or verification & cross-tallying the same vis-à-vis Insured's documents & records.
- b) Basis of Rates : As the Insured's purchase invoices/ quotations and our random market verifications.
- c) CENVAT/VAT Credit : At the time of loss, excise duty/VAT was not applicable on products manufactured by the Insured, so the CENVAT/VAT/Service Tax Credit benefit was not available to Insured. Hence the CENVAT/VAT has not been deducted, during assessment of loss.

20.03 The details of assessment for different assets covered under the subject policies have been given in the following para :



20.04 For Stocks :

20.04.1 The loss had occurred to the fabric stocks-in-process, finished stocks etc. at the affected premises, whereas the stocks were covered under Floater Fire Policy insuring stocks at both C-234 & D-338 for sum insured of Rs. 4,50,00,000/-.

20.04.2 Almost all the stocks-in-process, finished stocks etc. were burnt/destroyed during fire at C-234, however all the raw materials, yarn stocks-in-process and semi/un-finished stocks kept inside the factory building at D-338 were saved/intact after fire, whose details are mentioned as per Annexure 'D-II', 'D-III' & 'D-IV' respectively and the Insured has claimed Rs. 3,37,17,913/- towards loss to aforesaid burnt/destroyed stocks.

20.04.3 The stocks burnt/destroyed during fire were computed by deducting the saved stocks after fire from the closing stocks as per modified Trading Account (refer para 16.01.5 above), which was the most reasonable method to compute the value of stocks destroyed in fire.

20.04.4 The deduction towards dead/storage damage stocks & other variations have been made @ 5%.

20.04.5 In view of the above, the assessment for stocks involved in fire, is computed as per Annexure 'D' for Rs. 3,09,17,753/-.

21.05 For Plant & Machinery :

21.05.1 The fire had caused extensive destruction of Plant & Machinery installed in Production Section of the affected premises at C-234 and almost all the plant & machinery involved in fire was physically verifiable.

21.05.2 The loss to plant and machinery have been claimed for Rs. 2,24,23,550/-, at cost of restoration of affected Machines. Since the claimed plant & machinery assets were covered on Reinstatement Value Basis, which actually has not been reinstated, so the assessment for plant & machinery has been carried out on Reinstatement Value Basis & Market Value Basis, which have been assessed on basis of their quotations and reasonable deductions towards improvements, depreciation etc. has been applied, keeping in view the nature & use of the relevant items.



21.05.3 Therefore, the loss has been computed on Reinstatement Value Basis & Market Value Basis for the burnt/damaged machinery as per Annexure 'B' for Rs. 1,84,31,794/- & Rs. 1,09,53,427/- respectively.

21.06 For Building :

21.06.1 The Factory Buildings structure at C-234 was extremely overheated due to very high temperatures generated during burning of polycster stocks and most of the main factory building structure had deformed/arched/deflected and wide cracks had developed in the walls, RCC roof, and flooring etc.. However the boundary wall & a few small structures outside the main building namely Guard Room and the water storage tank were intact.

21.06.2 As regards extent of damage to the building structure which has already been discussed in para 14.04.3, the Insured had engaged Testing & Consultancy Cell of Guru Nanak Dev Engineering College, Ludhiana, who had carried out Physical Inspection, Rebound Hammer Testing, Ultrasonic Frequency Testing and Concrete Core Testing of the damaged buildings and as per their Inspection Report No. GNDEC/TCC/H/R/419 dtd. 03.06.2009, the damaged buildings had to be demolished and the same has already been disposed off as salvage.

21.06.3 The loss to building has been claimed on basis of estimate for reconstruction of the affected building (excluding foundations) at C-234, for Rs. 2,25,80,100/-, which has been prepared by M/s Raheja Associates, Architects, Ludhiana, which has duly been considered due to the following :

a) The total building areas destroyed during fire were as under :

Floor & Type of Roof	Covered Area (Sft)
a) Ground floor with RCC roof	25740
b) 1st floor with RCC roof	21833
c) Ground floor with AC Sheet roof	5720

b) Even by taking only the RCC building area of 47673 sft., the average claimed cost of reconstruction was to less than Rs. 475/- per sft., which



was highly fair in comparison to the prevailing market rates and the same were duly taken for assessment.

20.06.4 The assessment for building has been done on the computed on Reinstatement Value Basis & Market Value Basis, after deducting the estimated value of saved structures & other variations and by applying reasonable depreciation on reconstruction cost (excluding foundations), which are given as per Annexure 'C' for Rs. 2,14,51,095/- & Rs. 1,71,60,876/- respectively. The average depreciation @ 20% has been applied on buildings by considering them to be built around year 1999 & yearly depreciation for 10 years @ 2% per annum.

20.06.5 Salvage :

Salvage value against different assets as discussed above in Para No. 18.00 has been deducted as per Annexure 'E'.

20.06.6 Underinsurance :

Underinsurance as computed in Para No. 17.00 above, has been applied.

20.06.7 Adhoc deduction Rs. 25,000/-, towards electrical item damage due to short circuit, prior to fire, has been made.

20.06.8 Deductible Franchise :

Policy excess Rs. 10,000/- as applicable under the policy, has been adjusted.

21.00 COMPUTATION OF LOSS :

Based on the above the adjustment of loss is worked out as per Annexure 'A' & 'A-I' and the net liability is computed as under :



21.01 On Reinstatement Value Basis :

Adjusted Loss as per Annexure 'A'	: Rs.	62736302
Less adhoc electrical damage due to short circuit, prior to fire	: Rs.	25000
	Rs.	62711302
Less policy excess	: Rs.	10000
	Rs.	62701302

21.02 On Market Value Basis:

Adjusted Loss as per Annexure 'A-1'	: Rs.	55042530
Less adhoc electrical damage due to short circuit, prior to fire	: Rs.	25000
	Rs.	55017530
Less policy excess	: Rs.	10000
	Rs.	55007530

22.00 APPORTIONMENT :

22.01 On Reinstatement Value Basis :

The details of apportionment of liability on the basis of sum insured under different policies held by the Insured are worked out as under :



8. We have heard the learned counsel for both parties and have carefully perused the material available on record, including the pleadings, documentary evidence,

surveyor's reports and evidence filed by the complainant. Written synopsis of arguments have been filed by both the parties.

9. Mr. Sumant De, on behalf of the complainant has drawn our attention to the fact that the liability has been accepted by the insurer and part-payment, under circumstantial duress of looming threat of the Bank declaring the loan/CC accounts as NPA due to unreasonably long delay in processing and settling the claim despite all timely compliances by the complainant, and monthly interest burden of nearly Rs. 7 lacs, which amounted to nearly Rs. one crores during the period, of Rs. 5,49,44,495/- was accepted on 16.06.2011, which was under protest. The unpaid amount of Rs.2.59,25,364/- with interest and further compensation, on account of damage suffered due to patently delayed settlement of claim in violation of the extant IRDA guidelines prescribing the timelines for claim settlement, has been claimed in this complaint. The statutory and IRDA circular violations by the Insurer and the surveyor have been outlined in para 9, 10 and 17-18 of the complaint. The claim amount, despite absolutely clean accounts and irrefutable evidence of loss suffered by the complainant, has been unreasonably, arbitrarily and baselessly reduced by the insurer as narrated in para 11-13 of the complaint. There is evident and established unfair trade practice and deficient service on the part of the insurer in delaying the claim settlement and in unduly and baselessly not indemnifying the whole quantum of loss suffered by the insured and duly supported by its accounts, regular books and information and evidence supplied from time to time to the surveyor. It is the primary contention of the complainant that insured property was under the lien against loan facility availed by them from Union Bank of India which mandated the insurance of the insured property in pursuance to which SFSP policy for Rs.10 crores and Floater Fire Policy for Rs.4.5 crores. The incident of fire was caused due to short circuit of electricity and there was no malicious or deliberate action behind the incident. This fact was even stated by the surveyor in his survey report at para 10.03 (page 27 of written submissions of OP), which observed that, "*We also visited Police Station, Focal Point, and met the concerned police officials who confirmed that their senior officials had also reached the fire site of the Insured and that there was no criminal evidence of malicious or deliberate cause of fire. Hence the fire was certainly unforeseen & accidental in nature and there was no pending*

investigation of any criminal case". It is an admitted fact that the loss suffered by the complainant falls within the ambit of the insurance policies taken by them and there was no breach of terms of the policy. As per the complainant, after appointing surveyor for preliminary investigation, OP insurer began to ask for documents in piecemeal which wasted the time of investigation and surveyor's report is as late as dated 16.09.2010 i.e. after more than one year of their appointment. This conduct of the surveyor is in violation of provisions of Insurance Act, 1938. Complainant's account was declared as NPA on 01.05.2011. Surveyor, even after calculation of loss suffered by the complainant, did not release the said amount of Rs.5,50,07,530/- in their favour, till complainant executed a Discharge Voucher and an indemnity bond. As per complainant, there was wrongful deduction on account of depreciation value, when almost all machines were brand new. In the year 2007-2009, new machinery were procured by the complainant and almost all the machinery in the affected premises were brand new at the time of incident.

10. As per complainant, stock records were properly maintained by them. Allegation of the OP insurer regarding the same holds no ground. Complainant totally disagree with the statement of OP insurer that deduction done by them was on account of non-maintenance of stock register. In fact, monthly stock statements were submitted to the Union Bank of India, who conducted frequent visits and physical inspection. The reports of inspection were recorded in the security registers and stock figures tallied the stock values declared in bank statements. The closing stocks were duly certified by the C.A. The stocks and fixed assets were even surveyed and explained by the Income Tax Department. Despite such meticulous accounting of stocks, the surveyor failed in making proper assessment of loss and this resulted in substantial losses to the complainant. Fact of the matter was that insured property of the complainant was heavily financed by the Bank and the complainant had an overbearing burden of interest liability to the tune of Rs.7 lakhs per month payable to the Bank.

11. Further, complainant has quoted the judgment of Hon'ble Supreme Court in the case of *New India Assurance Co. Ltd. Vs. Pradeep Kumar*, (2009) 7 SCC 787 wherein it has very clearly been stated that the surveyor's report is not the last and final word, "*....In other words although the assessment of loss by the approved surveyor is a*

pre-requisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured....". Surveyor's report states that the property worth Rs.10 crores was reduced to ashes. Yet it opined the settlement of claims to the tune of Rs.5,50,07,530/-. Being deficient in service, OP insurer shall be made liable to compensate the complainant for losses suffered by them.

12. On the other hand, it is the contention of Mr. Aditya Kumar on behalf of the OP insurer that the present consumer complaint is entirely misconceived and without merit and is liable to be dismissed with heavy cost. As per OP, the settlement of the claim has been made by them on the basis of assessment made by the surveyor. It is further submitted that complainants are themselves responsible for causing delay in settlement of the claim by submitting the required documents in piecemeal manner and not co-operating with the surveyor. On intimation of the incident of fire, a surveyor was immediately deputed by the OP insurer. The surveyor on the basis of documents furnished by the complainant and on inspection of the site of loss and overall facts and circumstances of the loss submitted their survey report without delay. The insured lodged a claim of Rs.8,08,71,327/- towards loss/damage sustained to stock, building, plant and machinery and the surveyor assessed the loss for Rs.5,50,07,530/- after deducting the salvage value which was already received by the complainant. The surveyor considered the loss of stock by taking into account the G.P. Ratio and the safe and saved stock, and that of building, plant and machinery on the basis of market value after applying reasonable depreciation, as the insured has not reinstated the building, plant and machinery though the insurance policy was on reinstatement basis which can be done within a period of 12 months from the date of loss. Since the insurance policy was on Reinstatement value basis, therefore the assessment of loss could not be finalized unless the final bill of restoration of affected building are filed. As the reinstatement was not done by the complainant, the surveyor did not get any response from the insured about reinstatement which caused delay in finalizing the report. The

complainants received the approved claim amount as full and final settlement of their claim and also executed the discharge voucher, affidavit and an indemnity bond in this regard. The complainant received the amount with their free consent as full and final settlement of their claim and they are not entitled for subsequently raising any grievance for any further amount as claimed for in the present complaint. It is the prayer of OP insurer that complaint of the complainant be dismissed with cost in their favour and against the complainant in the interest of justice.

13. OP insurer further averred that claim of the complainant was settled by them on the basis of assessment made by the surveyor but the same surveyor report dated 16.09.2010 has not been filed in the complaint file. Survey report is an important document and in the present case it is extremely detailed and exhaustive and all vital aspects of the matter had been duly taken care of in the same. OP has relied on the following judgments of Hon'ble Supreme Court in support of his contention:

- *United India Insurance Co. Ltd. Vs. Roshan Lal Oil Mills Ltd. (2000) 10 SCC 19.*
- *Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd. (2009) 8 SCC 507*
- *Khatema Fibres Ltd. Vs. New India Assurance Co. Ltd. (2023) 15 SCC 327*

14. It has firstly to be noted that the insurer has settled the claim to the extent of Rs. 5,49,45,963/- as against the total claim amount of Rs.8,08,71,327/- and the amount was accepted on 15.06.2011. The right of the OP insurer to file written version in the present complaint filed on 08.10.2012 stood closed vide this Commission's order dated 19.11.2013 as upheld by Supreme Court vide order dated 11.09.2023 by which the challenge of the insurer-OP to such closure was dismissed. The complaint, filed on 08.10.2012 while admitting the receipt of part-settlement/part amount of the claim of Rs.5,49,45,964/- (as against the claim bill of Rs.8,08,71,327-) on 15.06.2011, the complainant has stated that the insurance company wrongly withheld the amount of Rs.2,59,25,364/- resulting into deficiency in service. Along with the complaint, the complainant has filed the copies of various letters addressed to the surveyor/insurer, but the survey report despite making adverse allegations against the surveyor in para 17 to 19 of the complaint and despite having received the same on 02.03.2011 as pleaded in para 12 of the complaint, has not been filed by the complainant. Because the OP's right to file written version has been closed vide this Commission's order dated 19.11.2013,

subsequently upheld by the Supreme Court, the written version of the OP which, incidentally had annexed the survey report as Annexure-U, has not been taken on record. IA No. 3210 of 2013 was filed by the complainant on 13.05.2013 after this Commission passed the following order dated 29.10.2012:

" Counsel for the complainant has not filed the letter issued by the Insurance Company wherein the offer was made. He has also not filed the copy of the discharge voucher. Those documents be filed on 14.01.2013. If the complainant is not having the said documents he should file an affidavit stating that he does not possess such documents.

The matter is adjourned to 14.01.2013."

15. In the said IA, by way of an affidavit, it has been prayed by the complainant that the OP be directed to produce the communication of the OP insurer dated 15.06.2011 and the copy of the discharge voucher. While the same remained pending for decision, the insurance company filed the synopsis of its arguments on 24.02.2025 enclosing therewith the copy of not only the two documents as prayed for in the IA/3210/2013 but also re-filed the copy of the survey report dated 16.09.2010 duly serving the advance copy of such written arguments along with its enclosures on the counsel for the complainant. Subsequent thereto, the complainant has filed its written arguments on 30.05.2025 duly making elaborate reference to, and relying on part of the observations contained in, the survey report. We note that obtaining of a survey report as mandated under Section 64UM of the Insurance Act, 1938 is a *sine qua non* for the insurer before the payment towards claim-settlement in excess of Rs.20,000/- is made. It is a fact that an amount of Rs.5,49,45,964/- has been paid on 15.06.2011 implying thereby that the insurer has obtained before such date, report from the surveyor. The same was attempted to be filed in the written version which could not be taken on record. Apart from this, there is no objection/reservation also against the reference and reliance of the insurer in its written arguments filed by the complainant on 30.05.2025 after nearly 3 months from the receipt of the written arguments of the OP insurer. In view of the report of the surveyor being a statutory report, the primacy and evidentiary value of which has been legally well-settled, and in view of the fact that not only there is no objection or adverse comment to the same having been enclosed with the written arguments by the insurer, and also in view of the fact that the survey report also duly discloses the basis of assessment of loss made by him which assessment would be an effective and

indispensable assistance to us in adjudicating the controversy related to the quantification of the eligible indemnification, therefore, we take the documents, including the survey report, filed by the insurer along with the written arguments on record.

16. The sum assured, the claim made and the assessment made by the surveyor, is as under:

S.No.	Item	Sum assured (Rs.)	Claim amount(Rs.)	Amount assessed(Rs.)
1.	Building	1.5 crore	22580100/-	13171350/-
2.	P & M,etc.	4 crores	24323550/-	10953427/-
3.	Stocks	4.5 cores	33717913/-	30917753/-
	Total	10 crores	80871327/-	55007530/-

17. The perusal of the complaint and the evidences filed along with the complaint as also by way of affidavit, reveals that the details as called for from time to time by the surveyor have been furnished by the complainant. The fact remains that admittedly the amount of Rs.5,49,45,964/- was received on 15.06.2011 and a discharge voucher dated 16.06.2011 was jointly and duly signed by the complainant as also by the Union Bank of India. The fact also remains that the complaint has been filed on 08.10.2012 which is nearly 16 months after signing of the discharge voucher and after receipt of the substantial settlement amount of Rs.5,49,45,964/-. In the complaint in para 16, the complainant has attempted to portray a picture that the settlement amount on 16.06.2011 was accepted not only under protest but also for the reason that there was substantial delay in settlement of the insurance claim due to which the loan/CC accounts of the complainant were in the process of getting declared NPA. The complainant was also unduly and without any reason or fault on its part was incurring a monthly interest expenditure of Rs.7 lakhs. The complainant wanted the discharge voucher to be signed with the remark of "under protest" but the insurer categorically wanted the discharge voucher to be signed wholly unconditionally without which it was stated that the amount shall not be released. It is under these coercive circumstances and express coercion from the insurer that the discharge voucher was signed. In such circumstances as held by the Supreme Court in *United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton and General Mills (1999) 6 SCC 400* and by this Commission in *Indian Acrylic Ltd. Vs. National Insurance Co. Ltd. & Ors.* in C.C. No. 428 of 2002 decided on 25.09.2019, the mere signing of the discharge voucher cannot deprive the

complainant from pursuit of grievance before this Commission. On the other hand, Mr. Aditya Kumar, on behalf of the insurance company has vehemently opposed this contention and submitted that the factual contention of the "circumstantial coercion" or "coercion" from the insurer is wholly unsubstantiated. Moreover, the letter dated 16.06.2011, allegedly sent after the acceptance of amount of nearly 5.49 crores and after signing the unconditional discharge voucher, is the only communication regarding such alleged grievance, which was duly replied. However, the fact that the complaint was filed after a lapse of nearly 14 months after receipt of amount and signing of discharge voucher itself would show that there was no coercion as alleged, either circumstantial or otherwise, and that the complainant, in view of unconditional discharge, is not maintainable. We find *prima facie* merit in the argument on behalf of the insurer-OP. However, in view of the fact that there is no valid written version of the OP on record, and in view of the issue being a mixed question of fact and law, we proceed to consider the complaint on merits.

18. As per para 12 and 13 of the complaint, the copy of the survey report was provided to the complainant on 02.03.2011 and the complainant was shocked to see that surveyor had assessed the loss to the tune of Rs.5,50,07,530/- against the total loss of Rs.8,08,71,327/- and rejected the balance claim of Rs.2,58,63,797/-. Copy of the survey report was not filed alongwith the complaint. Perusal of the complaint, in the background of the observations and computation of loss in the Survey Report, reveals that no proper justification or calculation is given by the complainant which could give weightage to their averment and support the claim of Rs.8,08,71,327/- or validate and support the basic further indemnification of Rs.2,58,63,797/-. As submitted, assessment made by the surveyor was unblemished and all calculations were made correctly and assessment was not on reinstatement value basis but was on market value basis because voluntarily no reinstatement has been carried out by the complainant. OP insurer rightly indemnified the assessed loss to plant and machinery to the tune of Rs.1,09,53,427/-, for building to the tune of Rs.1,31,71,350/-, and for stocks to the tune of Rs.3,09,17,754/-. Therefore, finally, the total loss assessed by the surveyor was to the tune of Rs.5,50,42,530/-, and after making deductions on account of excess clause (Rs.10,000), reinstatement premium (Rs.96,567/-), and deduction on account of origin

of fire in some electrical panels (Rs.25,000/-), the total sum of Rs.5,49,45,963/- was approved as total loss and was paid to the complainant.

19. Mr. De on behalf of the complainant with regard to the quantification of the amount, has emphasized that the dispute is only with regard to the quantification as the liability has been accepted by the insurer. First and foremost it is submitted that the defence of the OP insurer has been struck off. It has further been contended that surveyor's report in para 14.02.01, has noted that "all stocks were completely annihilated". It has been contended that merely for the reason that the stock register has not been maintained, the damage to stock claimed on the basis of day to day regular accounts, duly supported by other contemporaneous records like bank statements and audited accounts, could not have been overlooked or rejected. Similarly, in para 14.01 of the FSR it has been noted that there has been extensive damage to the plant & machinery which further has been elaborated on page 30 of the report. With regard to building, it has been noted on page 32 of the report that the temperature rose to the extent of 600° C and that there were substantial cracks and it was anytime that the building would come down and further that the deterioration of the concrete starts at 450° C. Per contra Mr. Aditya Kumar supported the assessment of the surveyor and emphasized that the challenge raised by the complainant is vague and general and does not logically or with cogent reasoning show how the surveyor is wrong in his calculation. We, in this behalf, note that the Surveyor's report is well-founded, reasonable and is based on cogent material and methodology of assessment. Complainant has not been successful before us in establishing that the assessment of loss as arrived at in the survey report dated 16.09.2010 is erroneous or inaccurate in any way. Out of context picking up the observations of the Surveyor scattered across his report and pointing out alleged contradictions in the assessment or "deductions", without pointing out the error if any in assessment does not and cannot help the complainant because the report has to be read as a whole, including the basis of assessment which we find to be unassailed and unassailable. Since the insured was not maintaining any stock registers, so exact quantities of different stocks held at insured's premises prior to fire, could not be ascertained and this failure is squarely attributable to insured himself. It is stated by the complainant themselves in in their letter dated

13.08.2009 (page 63-65 of the complaint) that as it was not the practice of the company to maintain day to day stock register due to complexity of operations and this practice was being followed by the company since long, so updated stock for the year of incident could also not be provided and this fact was clearly brought out by the Auditor in the audit report of the company, copies of which were supplied to the insurer. This fact has been very clearly explained by the surveyor in Para 16.01.4 (b) of the Final Survey Report, wherein it was stated that since the Insured was not maintaining any stock register, so exact quantities of different stocks held at Insured's premises, prior to fire, could not be ascertained. Hence the assessment could not be made by taking into account raw material, processing expenses and the finished stock as was claimed without due substantiation, and therefore, the computation of loss was done by G.P. Ratio method only, which was the most acceptable methodology for calculating the stock position prior to fire and consequently the assessment of loss when stock register is not produced by the insured. Moreover, as per OP insurer, the stocks burnt/destroyed during fire were computed by deducting the saved stocks after fire from the closing stocks as per modified Trading Account (Para 16.01.5 of the survey report as reproduced above), which was the most reasonable method to compute the value of stocks destroyed in fire. Similarly, it is an admitted position that reinstatement has not been carried with regard to plant and machinery and therefore the assessment of loss was necessarily to be arrived at on the basis of market value which exercise would involve applying of depreciation at reasonable rate. We further note that the surveyor has discussed the loss and basis for plant & machinery in para 21.05 and on the basis of annexure B along with annexure B-I to B-VII attached with the survey report. Perusal of annexure B-II reveals that the surveyor has primarily adopted the quotations obtained and has applied the depreciation rates ranging between 75% to 10% on the basis of year of capitalization and arrived at gross assessed loss of Rs.1.96 crores and assessed loss after applying depreciation at Rs.1.21 crores. The indemnifiable loss after deducting the salvage has been arrived at Rs.1,09,53,427/- No tenable, logical or legal specific error has been pleaded or demonstrated before us in this assessment made by the Surveyor. During the course of argument it was contended that the rate of depreciation applied are arbitrary. We find that the surveyor is an expert and there

would always be an element of estimate which would be based on his expertise and experience. We also, however, find that the depreciation rates applied by him are neither arbitrary nor excessive and no particular alternative basis has also been suggested or averred by the complainant. The rates have been applied after considering the age of the machinery and no fault can be found therein also. We do not find any arbitrariness or unreasonableness in such rates and therefore, we find no reason to find fault in or interfere with the same. Similarly, for loss *qua* building, the surveyor has discussed the same in para 21.06 of his report and he has observed that the total area of the RCC building is 47673 sq. ft. The claimed cost of reconstruction of Rs.475 per sq. ft. has been applied and as per annexure C, the yearly depreciation of only 2% for 10 years has been applied to arrive at the loss of Rs.17160876/-. The assessed loss after applying the underinsurance of 16.96% and after deducting salvage of Rs.12.99 lakhs, the indemnifiable assessed loss has been arrived at Rs.1,31,71,350/-. Not only the basis as adopted by the surveyor is most reasonable, there is no particular and specific challenge to either the methodology or the quantification as arrived at by the surveyor. It is also not disputed that the construction area as taken by the surveyor is not proper or that the rate adopted is to be different. As a matter of fact, Mr. Aditya Kumar is right in submitting that even the salvage amount of Rs.2487946/-, which admittedly is received by the complainant, is also carelessly and baselessly claimed in this complaint without any substantiation. We, therefore, find no reason to interfere with the total reimbursable assessed loss as already reimbursed by the insurer on the basis of assessment made by the surveyor. While we agree with the contention of the complainant that the surveyor's report need not necessarily and always be the final word, however, at the same time, in our opinion, it would remain a substantive and final word unless serious and unacceptable errors, defects, unreasonableness and arbitrariness therein have been pointed out and established by the complainant. In the palpable absence of such attempt or evidence brought on record by the complainant, when and if the assessment of the Surveyor is accepted as a final word by the insurer, no error, infirmity or deficiency can be found in the action of the insurer in having acted upon such survey report.

20. The complainant has also alleged that the survey report is belated and the part-payment or alleged settlement is also belated in terms of Insurance Surveyors and Loss Assessors (Licensing Professional Requirements & Code of Conduct) Regulation, 2000. However, we note that as noted by the surveyor himself the insurer and the surveyor had to deal with some anonymous complaints regarding the nature of the claim. The insurers are the custodian of the public funds and no fault can be found if they are required to act cautiously, vigilantly and carefully, in view of the emergent circumstances beyond their control for which extra time may be required and taken in particular case by the Surveyor. We also note that the insurer called upon the surveyor to look into the allegations in the anonymous complaints. Still for the incident which took place on 26.04.2009, the payment of nearly Rs.5.5 crores was made in June, 2011. Therefore, while we accept the fundamental contention of Mr. De, that the delay in submission of FSR beyond 6 months and settlement of the claim beyond 1 month thereafter by the insurer are actions which are indeed in violation of the extant IRDA Regulations, and therefore deficiency in service, the same, in our considered opinion and after considering the facts of the case, would suitably be compensated by granting compensation in the form of simple interest at the rate of 9% for the delay beyond one month from the date of survey report.

21. In conclusion, we find no merit in the complaint except *qua* the delay in settlement beyond one month from the receipt of the Survey Report. The copy of survey report has not been filed by the complainant despite being in possession thereof. Confronted with release of indemnification amount of only Rs.5.5 crores, which allegedly was less than the total claim amount of Rs.8,08,71,327/- the complainant, after having signed the discharge voucher dated 16.06.2011 and accepting the "full and final settlement of the claim", has, after raising grievance by way of letter dated 16.06.2011, waited for nearly 14 months in filing this complaint. In the complaint, there is no specific challenge to the methodology adopted by the surveyor for arriving at his assessment. It is an admitted position that the complainant has not reinstated the building or P&M so as to be eligible for reimbursement on reinstatement basis. It is also an admitted position that the fundamental contemporaneous and direct evidence/record of the stocks just before the incidence, i.e. stock register for the affected site, is neither

maintained nor produced before the surveyor and consequently the surveyor was left with no option but to adopt next best alternative i.e. on the basis of "Modified Trading Account", as justified in para 15.10.3, para 20.04 and in Annexure D and D-I and after deducting the saved stock as minutely inventorized in Annexure D-II, D-III and D-IV and as detailed in Annexure D at page 69 of the written arguments filed by the OP insurer. Though there are general allegations in the complaint against the surveyor, there is no specific, categorical and pointed challenge to or specific objections against such detailed, reasonable and logical assessment methodology adopted by the surveyor. Similarly, with regard to P&M and building, we have already concluded, as discussed earlier, that the assessment of the surveyor is reasonable and well-founded and no interference is called for. The only deficiency which we find therefore is that though the settlement of the claim has been delayed beyond one month from the date of survey report, no *suo motu* interest in terms of the Policy Holders Protection Regulation has been awarded or paid by the insurer. We therefore, direct that the insurer shall pay (a) interest at the rate of 9% on the amount of Rs.5,49,45,964/- for the period 16.10.2010 to 15.06.2011, (b) litigation cost of Rs.50,000/-, within a period of two months from the date of this order, failing which, the rate of interest payable shall be enhanced to 12%.

22. In conclusion the complaint is partly allowed.

Sd/-

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(A.P. SAHI, J.)
PRESIDENT

Sd/-

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(BHARATKUMAR PANDYA)
MEMBER

aj/-