(2011) 09 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Liberty Leather And Footwear APPELLANT

Vs

ORIENTAL INSURANCE CO LTD RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : 2011 4 CPJ 462

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Final Decision : Complaint partly allowed.

Judgement

1. AGGRIEVED by the refusal of the opposite party-Insurance Company to indemnify for the loss occasioned to it due to fire in its factory on 20.5.1999, the complainant-M/s. Liberty Leather & Footwear has filed this complaint claiming a compensation of Rs. 46,58,571 along with interest @ 24% per annum and a sum of Rs. 10,00,000 (Rupees ten lacs) towards consolidated damages.

2. IN nut-shell the case of the complainant is that it is a reputed business firm engaged in the trade of manufacturing of PVC shoes and footwear for M/s. BATA India Ltd., one of the leading shoe chain in the country. It has its factory at premises No. B-150, Phase-I, Mayapuri, New Delhi. In order to safeguard its interest against the risk of fire etc., the complainant had obtained an Insurance cover from the Opposite Party-Insurance Company in the sum of Rs. 50,00,000 (Rupees fifty lacs) for the period 28.4.1999 to 27.4.2000 as per the details mentioned below after paying the due premium of Rs. 29,177: (1) On building complete in cluding all fittings for Rs. 20,00,000.00 (2) On raw material stock in-process, semi finished, Finished goods and other material of the insured, goods held in trust and/or joint account whilst lying and/or stores at the above factory occupied for manufacturing of PVC footwear and allied goods for Rs. 20,00,000.00 (3) On plant, machinery, tools dies etc. for Rs. 9,00,000.00 (4) On furniture fixture, fittings, electrical Installations Wirings, office equipments, etc. for Rs. 1,00,000.00

3. AS the luck would have it, on 20.5.1999 at about 8.00 p.m. fire broke out in the aforesaid factory of the complainant, and in order to control and extinguish

the fire, fire tenders were summoned at the spot, FIR was registered and intimation in regard to the said incident was passed on to the Opposite Party-Insurance Co. The Insurance Company deputed one spot surveyor namely Sh. M.K. Jain who visited the factory premises and inspected the loss on 24.5.1999. Afterwards, joint surveyors M/s. Vinod Sharma and M.K. Jain were appointed, who on a consideration of the relevant factors assessed the net loss at Rs. 2,91,220. It would appear that the complainant was not happy/satisfied with the assessment of loss made by the above named joint surveyors and therefore, they represented to the higher authorities of the opposite party-Insurance Company and the Insurance Company appointed another surveyor M/s. J.M. Lal Associates Consulting Engineers and Surveyors who vide their report dated 24.2.2000 assessed the net loss suffered by the complainant at Rs. 34.02,592. It would appear that the said assessment of loss made by J.M. Lal Associates was not acceptable to the Insurance Company and therefore, they appointed the third Surveyors-Bhadra and Co. Associates Pvt. Ltd., who once again assessed the total loss occasioned to the complainant due to fire at Rs. 2,85,000. On a detailed consideration of various factors and the material submitted by the complainant in order to support the extent of damage and the amount required for reinstatement of loss even the third Surveyors report was not acceptable to the Insurance Company. In view of the observations and findings recorded by the last Surveyor-Bhadra and Co in regard to certain fake and fraudulent documents having been produced by the complainant in support of their claim, the Insurance Company vide a communication dated 8.12.2000 repudiated the insurance claim of the complainant all together for the following reasons: "1. In the proposal form dated 26.4.1999 submitted to our Office at the time of taking insurance policy you had not disclosed the fact of a fire claim dated 23.4.1998 in your premises under the policy issued by M/s. United India. This tantamounts to non-disclosure of the "Material Facts" to the Company. 2. On receipt of advices from you regarding the said loss the joint surveyors, M/s. M.K. Jain and M/s. Vinod Sharma had visited your premises on 23rd and 24th May, 1999. The surveyors observed that there was an attempt on your part to exaggerate the claim to the maximum irrespective of the actual damages. In the fire was confined to the first floor of your premises where stocks were reportedly kept whereas you had tried to inflate the claim by claiming damages to the main production hall, packing room and entire ground floor as also basement which was not affected by fire at all. 3. You were advised by the Joint Surveyors to keep the damaged stocks separately in bags for inventorisation and should not be disposed off. You had with fraudulent intentions kept the waste/cutting in lower portions in each of the bags and kept few damaged shoes in upper portion so as to make it appear that bags are full of damaged shoes. 4. The entire stocks were deliberately mixed with rubber scrap in such a manner that exact quantity and description of the stocks could not be made. 5. You had disposed off the salvage in spite of clear cut instructions from the Joint Surveyors not to do so without receiving their permission which tantamounts to mala fide intentions on your part. 6. You had claimed replacement for number of items pertaining to plant and machinery as also cost of repairs amounting to Rs. 4.92 lacs. The said machinery at the time of 1st visit of surveyors were found to be in working order. You had also failed to show to the Joint Surveyors the parts replaced as also the bills of the repairers. 7. You had claimed damages to the Air Conditioner and carpets which were not in the affected area. 8. You had claimed damages to the 21.5 tonnes of PVC compound and as per your version the same had turned into ash. This reason is not acceptable keeping in view the huge quantity claimed by you as also this requires large storage space. 9. The damage to the building as claimed by you have been reported to us by surveyors that the same damages were claimed by you under United India policy and no repair was carried out after the first loss dated 23rd April, 1998. As such the loss to the building on account of the said fire is of very nominal value. 10. You had submitted the bills for repair of machinery which have been found to be fraudulent. 11. You have submitted two different balance sheets one to the Branch Office and the other to our Head Office. Keeping in view the above facts, you have violated Condition 1 and Condition 8 of the policy issued to you. We therefore regret our inability to accept your claim and same is repudiated."

According to the complainant the repudiation of the insurance claim is arbitrary and unjustified and therefore, after serving a legal notice on the insurance company, the complainant has filed the present complaint.

4. AFTER being noticed, the opposite party-Insurance Company has resisted the complaint by filing a written version inter alia raising preliminary objections in regard to the maintainability of the present complaint; the complaint being without any cause of action and the complaint involving blatant fraud/deliberate misrepresentation committed by the complainant, which aspects are beyond the purview of this Commission. In exercise of jurisdiction under the provisions of Consumer Protection Act, 1986, it is pleaded that any attempt on the part of the insured to defraud the insurer would absolve the insurer from its liability for insurance claim. On merits it is not disputed that an insurance policy in the sum of Rs. 50,00,000 was granted to the complainant having the coverage of building, plant and machinery, furniture, fittings electrical installations and raw material, stock in process etc., but it has been pleaded that at the time of taking this policy the complainant had concealed the material fact in regard to an earlier fire, which had taken place on 23.4.1938 (preceding year) when the complainant had taken insurance from M/s. United India Insurance Company Ltd., which insurance do not cover the building and therefore, the complainant could not seek indemnification of loss occasioned in respect of the building due to fire in March.1998. It is also not disputed that three surveyors one after the other were appointed but it is sought to be explained that it was for valid reasons inasmuch as the Insurance Company entertained grave doubts about the origin/cause of fire as also to the extent of loss in particular occasioned to the stock of raw material furnished and semi furnished goods, plant and machinery. The repudiation of the claim on the above ground is said to be justified.

5. IN the rejoinder the complainant has controverted the objections and pleadings raised in the written version of the Insurance Company and has largely relied the averments and allegations already made in the complaint.

6. TO substantiate its complaint, the complainant has largely relied upon various documents viz. three survey reports, the material produced by it before the surveyors in support of its insurance claim as also supporting affidavits of their witnesses namely, Krishan Lal Vij, Subhash Kr. Bothra and Kanak Kandar on the other hand the opposite party has also besides relied upon the reports of such surveyors and have filed the affidavit of the last surveyors, Bhadra and Company in support of their report. It is pertinent to note here that keeping in view the gamut of controversy surfaced in this complaint; this Commission vide an Order dated 4th September. 2001 appointed Mr. T.S. Narayana Swamy. former Professor of Structural Engineering, School of Town and Country Planning, New Delhi as the Local Commissioner to visit the property No B-150, Phase-I Mayapuri, New Delhi, the Factory premises of the complainant in order to assess the amount and damage caused to it by fire on 20.5.1999 with the directions to the Local Commissioner to take photographs and also to engage the services of any other technical hand to assist him. The local Commissioner was required to visit the property after giving due notices to the Counsel for the parties and he was required to submit his report. Pursuant to the said directions, the above named local Commissioner visited the factory premises of the complainant and after taking requisite assistance from certain other professionals/technical hands submitted his report dated 25.11.2002 along with photographs thereby assessing the estimated expenditure for the repairs to be carried out to the damaged portion of first floor, rear side of Property No. B-150. Maya Puri Industrial Area Phase-I, New Delhi due to the reported fire on 20.5.1999 at Rs. 5,89,500. Objections have been filed to the said report of the Local Commissioner on behalf of the Insurance Company

7. WE have carefully perused the entire evidence and material brought on record and have heard Mr. R.N. Sharma, Advocate, learned Counsel for the complainant and Mr. Santosh Paul and Ms. Mohita Bagati, Advocates, learned Counsel for the opposite party-Insurance Company at length and have given our thoughtful consideration to their submissions.

8. GOING by the reasons given by the Insurance Company in its repudiation letter (supra), the foremost question which needs to be considered is as to whether the fire which occurred at the factory of the complainant on 20.5.1999 was accidental or there are reasons to suspect that the said fire was a stage managed affair by the complainant in order to get undue enrichment. Although, it was suggested by the Counsel for the Insurance Company that as per their own case the complainant had failed to give out the exact cause of fire inasmuch as at one time it was suggested by the complainant that fire originated on account of electric short circuit or overheating of certain machine(s) which caused the fire and at the other time they have filed affidavit of an employee of

the complainant thereby deposing that the fire was occasioned due to a spark which had come from adjoining building where certain welding work was in progress having converged on the complainant''s factory. It is true that the complainant has not been able to pinpoint the exact cause of fire but at the same time nothing has been brought on record from the side of the Insurance Company to show or suggest that the fire to the premises was a handy work of the complainant or someone acting on his behalf. There exists several circumstances on record viz. several fire tenders had to be summoned, which took several hours to douse the fire and still smouldering continued in the factory premises and that certain workers working in the factory were injured and taken ill and had to be hospitalized for treatment are the factors which would leave no doubt in our mind that fire was in fact accidental and therefore loss occasioned due to fire is fully covered under the Insurance Policy taken by the complainant.

9. THE more important question, however, is as to what was the extent of loss suffered by the complainant due to the said fire and as to what extent the complainant would legitimately be indemnified. As noted above, the Insurance Company has repudiated the insurance claim of the complainant in its entirety mainly on the ground that the claim lodged by the complainant was fraudulent inasmuch as the complainant had submitted inflated/exaggerated claim disproportionate to the actual damage suffered by it and to support his claim he has filed material which is dubious/fake in nature, which act of the complainant would violate condition Nos. 1 and 8 of the terms and conditions of the policy. The contention put forth by the opposite party cannot be said to be devoid of merits all together, because the same are based on the facts and circumstances, findings and observations made by the surveyors. The Insurance Company is well within its rights to invoke Clauses 1 and 8 of the insurance policy so as to deny the claim of the complainant. Strictly speaking, therefore, the complainant has disentitled itself for indemnification of the loss suffered by it due to the said fire However, this Commission has been taking a view that even in such a situation, the complainant should not be non-suited in his claim altogether and he may be awarded the genuine insurance claim to the extent it has been able to establish, leaving out the claim, which can be said to be fraudulent or excessive We are also of the opinion that it would not be proper to non-suit the complainant all together on account of alleged violation of Clauses 1 and 8 of the terms and conditions of the policy having regard to the totality of the facts and circumstances of the present case.

10. WHAT is the amount which the claimant is entitled on the basis of the evidence and material produced on record is the ultimate question which remains to be answered. We have already noted that the first joint Surveyors M/s. Vinod Sharma and M.K. Jain has assessed the loss of Rs. 2,91,220 and the complainant represented against that and therefore another surveyor-J.M. Lal was appointed. Certain observations made by these Surveyors are relevant and we would like to recapitulate here. Observations made by the joint surveyors M/s. Vinod sharma and M.K. Jain & Co. in its report dated 29.10.1999 "In the absence of any

authentic evidence proving the cause of fire as well as based on our physical verification we are unable to mention the exact cause of fire. It cannot be said that fire occurred due to short circuit because there was no electric connection, no cables were there on the first floor of the premises from where the fire had originated. It cannot also be said firmly that some sparks from the welding work carried outside has caused fire because it is not possible that sparks can enter from such a height without causing fire on the ground floor. In view of the above observations, we are not in a position to comment upon the cause of fire. (C) Plant and Machinery Insured''s Claim: The insured claimed that the main machinery i.e. rotary and injection moulding machine also got damages besides loss to electrical fittings. The insured claimed replacement for number of items i.e. hydraulic motor, electronic control card, repair of hydraulic pump etc. The total cost of the repair, asked by the insured is Rs. 4,92,240. The insured asked for repair of all the machine, generators, pumps, compressors motors, etc. At the time of our survey visit we found that the entire machinery was working in order. The insured reported that entire repair work has already been carried out by the repairers since they cannot stop the factory. We asked the insured to show the replaced parts thereof along with the bills of the repairers, which they could not produce immediately. In reality, none of the machines has been affected/ damaged as the fire had not even entered into the production hall in the ground floor except few glasses from the roof side got broken due to heat and there may be some very minor water slippage. But this cannot affect the machinery in any manner. As such, there was no damage to the machines and insured had made a false claim on account of this. When we raised our query that why repair bills are not available, the insured submitted copy of Bill No. AAPL/TR/25/99-2000 dated 3.8.1999 for Rs. 2,77,665 of ASILINK Agencies Pvt. Ltd. The bill is raised after 2 and 1/2 months approx. This simply shows that bill has been managed by the insured as factory has been working immediately after fire. The parts claimed by insured were not damaged by fire in our opinion."

Observations made in the joint report of J.M. Lal associates dated 24.2.2000 "The Insured categorically refused to accept the Loss Assessment of M/s. Vinod Sharma and M.K. Jain and Co. and further refused to negotiate to arrive at an amicable settlement because of huge difference in the insured''s Claim and learned Surveyor''s Assessment. The insured further made several representations to the Senior Divisional Manager refusing categorically to even negotiate on the grounds of the Assessment of the learned Surveyors and threatened to Appeal to the Regional Office of the Under-writers and also to the redressal to the Consumer Court. 6.1 The fire dated 23.4.1998 as per the above referred survey report took place in the ground floor godown (hall) located at the rear side of the building and thereafter propagated to the floor on top of above referred ground floor godown. The said floor (first floor) was also being used as godown. The fire badly affected one portion of ground floor godown and entire first floor godown. Front portion of the building used as office and machine room were totally saved. 6.2 The subject fire on 20.5.1999 allegedly took place in the back side hall of Ist Floor as referred in previous para. The fire on 23.4.98 badly affected the first floor godown hall as stated in the survey report. The building and machinery were not covered by the then policy. 6.3 We have seen the photographs submitted by M/s. J.N. Sharma and Co. along with their survey report. Photographs depicted the photos of fire brigade men fighting the fire and loss of significant quantity of stock is visible in the photographs. The building of first floor godown hall suffered extensive damage. The damage are identical with the damages shown to us due to the purported subject fire on 20.5.1999. It appeared that no repairing was carried out since the previous fire, save and except the roof of staircase rooms on two sides. Earlier there were CGI sheet roofing. 6.4 Loss of stock shown in photographs taken by joint surveyors (First surveyors) of the subject case is not comparable with the earlier ones as regards volume. The joint surveyors also qualified their report. They have assessed the loss of stock for Rs. 2,10,450.00 as against claim of Rs. 19.49 lacs. 6.5 The building and machineries were not covered by the United India Insurance Co.''s Policy (6.8.97 to 5.8.98) under which fire occurred stock and stock in process was covered for Rs. 12.50 lacs only. Thereafter insured took another fire policy (cover note No. 531142) for the period 28.4.1998 to 27.4.1999 with M/s. United India Insurance Co. Ltd., same Divisional Office for Rs. 1.21 crores as under: Stock Rs. 50.00 lacs Machinery Rs. 20.00 lacs Building Rs. 50.00 lacs Furniture/ Fixture Rs. 1.00 lac The subject policy with the Oriental Insurance Co. Ltd., Mayapuri Branch was taken for Rs. 50.00 lacs only for period 26.4.1999 to 27.4.2000 (subject fire reportedly took place on 20.5.99) as under: Building Rs. 20.00 lacs Plant and Machinery Rs. 9.00 lacs Stock and stock in process Rs. 20.00 lacs Furniture and fixture Rs. 1.00 lacs Rs. 50.00 lacs. 6.6 In reply to item No. 13 of proposal form, whether they have ever sustained loss or damage by fire, the insured opted to remain silent, thereby they are guilty of material non-disclosure. 6.7 In audited account for 98-99 as submitted by insured to the previous surveyors connected with the subject claim and made available by your Branch office to us, the loss of stock due to fire on 23.4.98, repairing charges to building (if any) and settlement of claim by M/s. United India Insurance Co. Ltd., on 25.8.98 were not reflected. 6.8 We visited fire brigade headquarters for verifying the authenticity of copy of fire brigade report. The officials of concerned department confirmed this to be true and we also verified certain other particulars from their record e.g. cause of fire was shown as electrical short circuit which is not shown in the report issued by them to Insured. 6.9 On verification of some bills for machinery repair, it appeared that either bills were managed or manipulated and even bills with fake addresses have been provided by insured. 6.10 So far stock loss is concerned the 2nd Surveyor assessed loss on the basis of book stock and loss shown in records which should not be the only consideration. Whereas first surveyors (joint) assessed on the basis of physical verification with lot of qualifications. On our initial physical inspection and subsequent investigation claim for loss of stock appeared to be lacking in merit. The revelation of previous fire and non-disclosure by insured in proposal form as well as in audited final accounts has added new dimensions. 6.11 The

Divisional Manager of M/s. United India Insurance Co. Ltd., was appraised of the fact and was requested to keep the file in safe custody. Particularly photographs are very essential. The Divisional Manager on our request for providing us 2/3 photographs advised us to requisition the file through proper channel. In view of the above, the underwriter may like to consider setting aside their liability."

11. IT appears that the said assessment of the loss made by the surveyor M/s. J.M. Lal and Associates was not acceptable to the Insurance Company and, therefore, they appointed the third Surveyor M/s. Bhadra and Associates Pvt. Ltd. who vide a detailed report dated 14.6 2000 opined that the claim of the claimant was fraudulent by making the following observations and findings. Observations made in the report of M/s. Bhadra and Associates Pvt. Ltd. dated 14.8.2000 " 6.1 The fire dated 23.4.98 as per the above referred survey report took place in the ground floor godown (hall) located at the rear side of the building and thereafter propagated to the floor on top of above referred ground floor godown. The said floor (first floor) was also being used as godown. The fire badly affected one portion of ground floor godown and entire first floor godown. Front portion of the building used as office and machine room were totally saved. 6.2 The subject fire on 20.5.99 allegedly took place in the back side hall of first floor as referred in previous para. The fire on 23.4.98 badly affected the first floor godown hall as stated in the survey report. The building and machinery were not covered by the then policy. 6.3 We have seen the photographs submitted by M/s. J.N. Sharma and Co. along with their survey report. Photographs depicted the photos of fire brigade men fighting the fire and loss of significant quantity of stock is visible in the photographs. The building of first floor godown hall suffered extensive damage. The damages are identical with the damages shown to us due to the purported subject fire on 20.5.1999. It appeared that no repairing was carried out since the previous fire, save and except the roof of staircase rooms on two sides. Earlier there were CGI sheet roofing. 6.4 Loss of stock shown in photographs taken by joint surveyors (first Surveyors) of the subject case is not comparable with the earlier ones as regards volume. The joint surveyors also qualified their report. They have assessed the loss of stock for Rs. 2,10,450.00 as against claim of Rs. 19.49 lacs. 6.5 The building and machineries were not covered by the United India Insurance Co.''s Policy (6.8.97 to 5.8.98) under which fire occurred stock and stock in process was covered for Rs. 1.50 lacs only. Thereafter insured took another fire policy (cover note No. 531142) for the period 28.4.98 to 27.4.99 with M/s. United India Insurance Co. Ltd., same Divisional Office for Rs. 1.21 cores as under: Stock - Rs. 50.00 lacs Machinery - Rs. 20.00 lacs Building - Rs. 50.00 lacs Furniture/ Fixture - Rs. 1.00 lacs The subject policy with the Oriental Insurance Co. Ltd., Mayapuri Branch was taken for Rs. 50.00 lacs only for period 26.4.1999 to 27.4.2000 (subject fire reportedly took place on 20.5.99) as under: Building - Rs. 20.00 lacs Plant and Machinery - Rs. 9.00 lacs Stock and Stock in process - Rs. 20.00 lacs Furniture and Fixture - Rs. 1.00 lacs - Rs. 50.00 lacs 6.6 In reply to item No. 13 of proposal form, whether they have ever sustained loss or

damage by fire, the insured opted to remain silent, thereby they are guilty of material non-disclosure. 6.7 In audited account for 98-99 as submitted by insured to the previous surveyors connected with the subject claim and made available by your Branch office to us, the loss of stock due to fire on 23.4.1998, repairing charges to building (if any) and settlement of claim by M/s. United India Insurance Co. Ltd., on 25.8.1998 were not reflected. 6.8 We visited fire brigade headquarters for verifying the authenticity of copy of Fire brigade report. The officials of concerned department confirmed this to be true. And we also verified certain other particulars from their record e.g. cause of fire was shown as electrical short circuit which is not shown in the report issued by them to Insured. 6.9 On verification of some bills for machinery repair, it appeared that either bills were managed or manipulated and even bills with fake addresses have been provided by insured. 6.10 So far stock loss is concerned the 2nd Surveyor assessed loss on the basis of book stock and loss shown in records which should not be the only consideration. Whereas first surveyors (joint) assessed on the basis of physical verification with lot of qualification. On our initial physical inspection and subsequent investigation claim for loss of stock appeared to be lacking in merit. The revelation of previous fire and non-disclosure by insured and proposal form as well as in audited final accounts has added new dimensions. 6.11 The Divisional Manager of M/s. United Indian Insurance Co. Ltd., was appraised of the fact and was requested to keep the file in safe custody. Particularly photographs are very essential. The Divisional Manager on our request for providing us 2/3 photographs advised us to requisition the file through proper channel. In view of above, the underwriter may like to consider setting aside their liability. 15.1.5 We requested M/s. Liberty Leather and Footwear to give us 1 kg. of PVC compound on payment of due consideration to them to conduct the experiment to study the behaviour of the chemical when put to fire but Shri K.L. Vij, representative of the Insured, refused to give the same. 15.1.9 Finished Goods 02. We requested M/s. liberty Leather and Footwear to furnish the layout of storing and stacking of raw materials and finished goods allegedly kept inside the affected hall. 03. The diagram showing the layout submitted by the Insured is enclosed. In the said diagram the Insured has shown that all the cartons of shoes were stacked along the western wall of the hall. Burning of 26491 pairs of PVC shoes should have left substantial marks on the adjacent wall and the roof but there was no such appreciable marks. We thoroughly studied the photographs furnished by the joint surveyors which raised doubt that bulk of burnt shoes may not be pertaining to Bata whereas the entire claim rests with shoes manufactured for "Bata" only. We visited "Sandak" Division of M/s. Bata at Nazafgarh Road and showed the photographs to a Senior Officer and requested him to identify whether the damaged shoes pertained to shoes manufactured for "Bata" but the Officer could hardly identify few shoes meant for "Bata". It was also learnt from the said officer that colouring, trimming, packing and final storing of products related to Bata is normally done at the basement and hardly there can be any damage to the shoes meant for supply to them. The joint surveyors in their report have pointed out that most of the burnt shoes and Chappals were other than "Bata" branded shoes. 15.2 Plant and Machinery 15.2.1 The Insured preferred claim for Rs. 4,92,240.00 in this respect and following bills were furnished. There is disparity in between amount claimed and bills furnished. Bill No. and date Name of Party Particulars of the Bill Amount (Rs.) AAPL/TR/25/99- M/s. Asia Link Towards supply of spares 2,77,665.00 2000 dated 6.8.1999 for Automatic Injection Machine Model-LLF668 AAPL/LL/99-2000 M/s. Asia Link (1) Towards labour charges 1,50,000.00 dated 28.5.1999 for flushing of all Hydraulic valves and replacement of Oil Seals; (2) Repairing of Hydraulic Pump; (3) Complete relaying of electrical circuit and testing of machine 047 dated 25.5.1999 M/s. Sharma Labour charges towards 24,740.00 Electric Repairing repairing of motor and Contractors 692 (Challan Illegible Repairing of Pumps 4,000.00 No.) dated 25.5.1999 147 dated 24.5.1999 M/s. Amandeep Towards repairing of 12,000.00 Engineering Works Compressor 024 dateed 26.5.1999 M/s. Paradise Repairing charges of A.C. 35,770.00 Engineers Pvt. Generator Ltd. 147 dateed 22.5.1999 M/s. Balwant Spare Parts of Generator 2,420.00 Diesel Service 095626 date M/s. Leyland Spare parts of Generator 3,810.00 24.5.99 Syndicate (India) Total: 5,10,405.00 15.2.2 Besides, following two bills of M/s. Raman Electrical Company were also furnished. Bill No. and date-221 date 21.5.99 For Cable, Wire, Main Switches, changeover etc. Rs. 89,013.00 220 date 21.5.99 For electrical fittings-Light, Fan, etc. Rs. 44,135.00 15.2.3 The joint Surveyors had totally disallowed the claim for Plant and Machinery. Physical evidence of damages and damaged parts could not be made available by the Insured for their verification. All the machineries were found in running condition at the time of their first visit on 21.5.1999. According to the joint Surveyors such repairs cannot be conducted in such a short period. No bill also could be submitted by the Insured to them except proforma invoice submitted later on. Therefore, in the opinion of the joint surveyors loss on account of plant and machinery and electrical were totally false. 15.2.4 We also feel that circumstances were such that plant and machinery cannot be damaged to the extent claimed by the Insured. Plant and machinery were not affected by fire. Had the fire been a genuine one, there was possibility of machinery and the electrical fittings minor affected by the fire fighting water for which overhauling of the machinery would have been enough. Electrical Installations 15.2.5 Two bills of M/s. Raman Electricals Co., 218/5, Bhagirah Palace, Delhi-110006 were furnished by the Insured for the purchase of electrical items. The Invoice No. 221 dated 21.5.99 was for Rs. 89,013.00 and bill No. 220 dated 21.5.99 was for Rs. 44,135.00. We visited Bhagirah Palace for verification of the bills. There is no trace of such shop at Bhagirath Palace and no such number like 218/5 exists. The bills were shown to be paid by cheques. We apprehend that the cheques were hearer cheques only and cheques were issued in the name of the party and these being bearer cheques, the Insured was in a position to withdraw the money whereas the name of the supplier got incorporated in the statement issued by the bank for verification of the Surveyors. This can only be verified from Bank. We have no authority to verify the same. Registered letter sent by us to M/s. Raman Electricals Co. has been returned back to us as undelivered by

Postal Authority. 15.2.6 Similarly M/s. Sharma Electric Repairing and Contractors bill No. 047 dated 25.5.99 for Rs. 24,740 for rewinding of motor etc., was found to be fake. The address was shown as Gali No. 03, Subhash Nagar, Delhi-110027. No such address is there in Subhash Nagar. We visited the area and tried to locate the shop. This bill was similarly shown to be paid by cheque and the cheque number and the name of the party appeared in the bank statement. We apprehend that this was also a bearer cheque. The registered letter sent by us to the party has been returned by Postal Authority as undelivered. 15.2.7 We visited also the shop of M/s. Amandeep Engineering Works at 357/7, Bagh Kare Khan, Kishan Ganj, Old Rohtak Road, Delhi-7. Further our several visits we could not meet the proprietor Mr. Hazrur Singh. The Bill is for Rs. 12,000 for compressor repairing. The bill was paid by cash. The original bill could not be produced by the Insured. Mr. Hazrur Singh stated that a bill was raised by him for Rs. 1,200 and it cannot be for Rs. 12,000. He could not give the date of the bill and requested us to verify the original bill. He had shown that some of the handwritten figures in the bill is not in a handwriting of the person who prepared the bill. The Assistant who prepared the bill also confirmed the same. Mr. Hazrur Singh stated that he tried for finding out the copy of bill but he could not taken. He however, was not agreed to give in writing his observations referred above about the photocopy of the bills shown to him. 15.2.8 The Insured could not produce to us the original of another four bills namely: Sl. No. Party Bill No. /date Amount Remarks (a) M/s. Paradise Engg. 024 date 26.5.1999 Rs. 35,770.00 For repairing of AC Pvt. Ltd. generator said to be paid by cheque. (b) M/s. Balwant Diesel 147 date 22.5.1999 Rs. 2,420.00 Said to be paid by Service cash (c) M/s. Leyland 095626 date Rs. 3,807.00 -do- Syndicate India 24.5.1999 (d) Repairing charges for Ch. 0. 692/25 Rs. 4,000.00 -do- (Name of the Pump date 25.5.99 supplier is illegible) 15.2.9 (i) The major bills are, however, related to LIENFA Injection PVC molding machine. The Insured submitted one bill of M/s. Asialink -Bill No. AAPL/TR/25/99-2000 date 3.8.99 for Rs. 2,77,665 towards supply of hydraulic motor and other parts and another proforma invoice (Quotation) ref. AAPLLL/99-2000 date 28.5.99 for Rs. 1,50,000 towards service charges. The bill and service changes were shown to be paid by cheques. We visited several times to the office of M/s. Asialink Agencies Pvt. Ltd. At J-9/10, Rajouri Garden, New Delhi -110 027. The Managing Director verbally confirmed of having issued the bills and requested us to visit afterwards but during our number of subsequent visits we could not meet him. During our visit on 28.6.2000we were told by the staff that Managing Director had left for abroad. It is checked by the undersigned and by our Mr. K.C. Daskapur, Surveyor, of in absence of the Managing Director, from the computer screen of M/s. Asialink that gate pass for materials was issued only on 3.8.99 the date when bill was raised but the machines were found in operation by the joint surveyor during their visit on 24.5.1999. Hence, the bill appeared to be managed one. It may be noted that we were not provided by M/s. Asialink with any such copy of Gate Pass. The employees concerned (computer operator and store in charge) of Asia Link who had shown the gate pass did not want to pass on any information officially. (ii) The undersigned and Mr. Das Kapur again visited on 11.8.2000 after prior appointment with the Managing Director of M/s. Asia Link Agencies (P) Ltd. But the Managing Director after consultation with his store in charge (who earlier showed the Gage Pass on 28.6.2000) stated that they had no system issuing gate pass. He also refused to show the relevant records. (iii) The fact that Insured managed the bill afterwards from M/s. Asia Link Agencies (P) Ltd. is also evident from entries in Cash Book and General Ledger. The Insured tried on number of occasions to suppress the manipulation. The apparent anomalies existing in records finally made available to us are shown below: (a) Bill No. 25/99-2000 for supply of parts for Rs. 2,77,665 was dated 3rd August, 1999 but bill was posted in Cash Book (in page 50 A) on 28.5.1999. Machine were found in operation by the first surveyors on 24th May, 1999. (b) Estimate for repair and labour charges for Rs. 1.50 lacs was prepared/quoted by M/s. Asia Link Agencies (P) Ltd. on 28.5.1999 vide their ref. No. AAPL/LL/99-2000. But the Insured posted the said Estimate as Invoice in Cash Book (page 50 A) on 28th May, 1999. (c) Estimate of spare parts was quoted by M/s. Asia Link Agencies (P) Ltd., on 28.5.1999 at Rs. 2,59,500.00 (excluding tax) vide their Proforma Invoice ref. AAPL/LL/99-2000. (d) Account of M/s. Asia Link Agencies (P) Ltd., in General Ledger was credited on 28.5.99 for Rs. 2,77,665.00 and Rs. 1,50,000.00. (iv) It may be appreciated that when bill for parts was purported to be raised by the supplier on 3rd August, 1999, how the party''s account can be credited on 28.5.1999. Similarly when repairing and labour charges were quoted by the party on 28.5.1999, how on the basis of this estimate, account of the party can be credited on 28.5.1999. Though quotation for spares and labour charges were dated 28th May, 1999. Machines were found in operation by the surveyors on 24th May, 1999. Major repairing involving service and labour charges of Rs. 1.50 lacs is not also possible on the very day repairing charges were quoted. The insertion of Page 50 A in Cash Book also indicates that entries were manipulated, (v) The insured had shown payment in cash book page No. 108, dated 4.8.99 to Asia Link Agencies (P) Ltd., by cheques: Cheque No. 096977 Rs. 2,77,665 (for parts bill) Cheque No. 096978 Rs. 1,50,000 (for service charge) Cheque No. 096979 Rs. 2,59,000 (as per quotation for parts) Later on however, the insured passed a contra entry for cancelling the entry for payment of Rs. 2,59,000.00. (vi) Relevant copies of pages of cash book (page No. 50 A) and page 108) and Ledger Account (page No. 180) made available by insured''s representative under his signature dated 24.6.2000 are enclosed. Another photocopy of cash book page No. 108 obtained from the file handed over by Branch Office of the Oriental Insurance Co. Ltd., is also enclosed. Study of both sets of page No. 108 would reveal that cash book was changed afterwards when it was pointed out that payment for same parts was made twice on 4th August, itself, once against bill (including Tax) and another against estimate (including Tax). In genuine case of transactions commission of such type of mistake is unimaginable. (vii) Damaged parts could not be produced by the Insured. The insured stated that these were delivered to M/s. Asia Link Agencies (P) Ltd. But M/s. J.M. Lal Associates in their survey report (page 7) stated that he had discussions with

Managing Director of M/s. Asia Link in this regard. The relevant lines may be quoted from the survey report of M/s. J.M. Lal as under: "M/s. Asia Link are the exclusive suppliers for this particular type of machine in whole of India. They are also the sole agents for the supply of spares and repairs to be carried out on this particular type of machines. As discussed with their Managing Director, the import of the machines is against OGL and that the supply of parts is on the basis of the actual requirement of the customer which are replenished by the principals, on the return of the parts having been replaced exclusively on the machines supplied by the manufacturers." But the said Managing Director stated to us that damaged parts were in custody of the insured. 15.2.10. It may be pointed that AC generator set was mounted on frame which is 4" higher from the floor and air compressor was mounted on air cylinder at a level about 1.5 ft. height from the floor. These were installed inside cover porch outside PVC molding production hall on western side and cannot be affected by water accumulation of spraying of water. 15.2.11 Hence we are convinced that the claim related to plant and machinery and electrical fittings have no intrinsic value. Bills as discussed were fraudulently arranged by the Insured."

12. ON the strength of the above, observations and findings recorded by the surveyor-Bhadra and Associates, Mr. Paul has emphatically argued that the complainant is not entitled to any compensation whatsoever under any of the heads i.e. Building, Stock in process. Plant and Machinery or on Furniture/ fixtures/fittings, electrical installation etc. In our view also he cannot be said to be totally wrong in his submissions because the observations made by the last surveyors are based on a very thorough examination of the entire matter. The above named surveyor has taken great pains in making requisite investigations from different quarters before coming to the above conclusions Not only this, the report has castigated the observations, findings and conclusions recorded by the previous Surveyor J.M. Lal and Associates, who had assessed the loss of the complainant at Rs. 34,00,000.00. Although, an attempt was made on behalf of the complainant to assail the report of Bhadra and Associates but, in view of the categorical opinion given by this surveyor, we must reject those objections and in our opinion the report of the surveyor M/s. Bhadra and Associates can be relied and acted upon and can form sound basis atleast so far as it relates to assessment of loss for the reinstatement of plant and machinery and stock of raw material, finished and unfinished goods is concerned. However, the report so far as it relates to the damage to the building is concerned, the same requires examination. We say so because it is almost impossible to believe that the complainant had staked the claim for the loss of building, which was damaged in an earlier fire incident, which occurred on 23.4.1998. It is true that during that period the complainant had not taken any coverage for the building but the fact remains that after the expiry of the earlier policy, the complainant had taken insurance from the opposite party-Insurance Company having coverage for the building also for a sum of Rupees Twenty lacs. In our opinion the Insurance Company must have agreed to grant the coverage for the building after

satisfying itself that the building so damaged in earlier fire had been repaired and reinstated, else the Insurance Company would not have granted the coverage to the damaged/dilapidated building.

13. IN support of his contention that the loss/damage to the building as claimed by the complainant was the same which had already occurred in 1998, Mr. Paul has invited our attention to various photographs attached with the report of Bhadra and Associates and those attached with the report of the Local Commissioner, Mr. Narayana Swamy. It is true that some of these photographs show the similar damage to the concrete columns and beams but it is possible that similar damage would have been caused in the subsequent fire as well. We are therefore, of the opinion that even if the complainant cannot be compensated for the loss allegedly suffered by it to their plant and machinery and stocks of raw material and furnished goods etc., which the complainant has failed to establish or have laid on the strength of certain fake/fraudulent material, still they should not be denied their claim for the damage to the building. Bhadra and Associates had itself assessed the loss on account of damage to the building at Rs. 5,50,000 but after deduction on account of depreciation and under insurance, they assessed the net loss at Rs. 2,85,000 as under: "15.3 Building 15.3.1 Building was found by us in damaged condition. We have taken the help of an expert for evaluation of the loss. The loss was assessed by M/s. J.M. Lal and Associates at Rs. 17,03,470.00 which was adjusted to Rs. 10.00 lacs due to under insurance factor. 15.3.2 Our assessment in this respect is summarized below: 01. Location and Area affected due to fire : Mezzanine floor/area affected - 3663.12 sq. ft. 02. Items of the building affected (a) Roof slab along with beam of mezzanine floor : Area 2624.37 sq. ft. (b) Floor area corresponding to above : Area 2624.37 sq. ft. (c) Plaster of walls in the above hall : Area 7000.00 sq. ft. (d) Plaster of mumty and staircase : Area 1400.00 sq. ft. (e) Rooftop entire mezzanine floor : Area 2834.37 sq. ft. 03. Evaluation Item (02a) above is required to be strengthened By grunting2 inch thickness in CM (13) including Steel mesh @ Rs. 50.00/sq. ft. i.e. 2624.37 sq.ft. x Rs. 50.00 per sq. ft. : Rs. 1,31,218.50 Item (02 b) Flooring @ Rs. 50.00/Sq.ft. i.e. 2624.37 sq. ft. x Rs. 50.00 per sq. ft. : Rs. 1,31,218.50 Item (02c) Plaster of wall @ 8.00/sq. ft. i.e. 7000 sq. ft. x Rs. 8.00 per sq. ft. : Rs. 56,000.00 Item (02 d) Plaster of mumty and stair Case @ Rs. 10.00/sq. ft. i.e. 1400 sq. ft. x 10.00 per sq. ft. : Rs. 14:000.00 Item (02e) Rooftop @ Rs. 50.00/sq. ft. i.e. 2834.37 sq. ft. x Rs. 5.00 per sq. ft. : Rs. 1.41.718.00 Total : Rs. 474,155.50 Dismantling charges of plaster and Floor @Rs. 5.00/sq. ft. i.e. 11024.37 sq. ft. x Rs. 5.00 per sq. ft. :Rs. 55.121.85 White wash (Lump sum) :Rs. 25, 000.00 :Rs. 5.54,277.85 Say :Rs. 5,50,000.00 04. Deduction on account of depreciation - The affected portion was built in the year 1996-97 as per records mentioned in the report of M/s. J.M. Lal and Associates. It is reasonable to consider depreciation @ 2% p.a. for the type of construction of the building. Therefore, depreciated value of repair cost estimated above can be considered as - 0.96 x Rs. 5,50,000.00=Rs. 5,28,000.00 15.3.3 Total value of the property / Under Insurance: In this regard we find that

the total value of property worked out by M/s. J.M. Lal and Associates is very much in order. Compared to the above the insurance is for an amount of Rs. 20.00 lacs. Therefore depreciated repair cost is required to be adjusted as under: =Rs. 5,28,000.00 x Rs. 20,00,000.00 Rs. 37,13,000.00 =Rs. 2,84,406.14 say Rs. 2,85,000.00"

14. THE expert Local Commissioner has assessed the cost of repair/ reinstatement of the building at Rs. 5,89,000.00 in the following manner: Sl. No. Particulars Amount in Rupees (1) Dismantling of existing plaster on the walls at the First floor including disposal of malba 2599 sqft. @ Rs. 5 per sqft. 12,500.00 (2) Dismantling of loose plaster, loose concrete cover on the RCC ceiling on the First floor (slabs and beams) and cleaning the Surface with were brush, etc. 3200 sqft. @ Rs. 8 per sqft. 25,600.00 (3) Dismantling of existing cement concrete flooring of the First floor (Mezzanine floor) 2700 sqft. @ Rs. 8 per sqft. 21,600.00 (4) Dismantling of plaster and staircase area 1400 sqft. @ Rs. 5 per sqft. 7,000.00 (5) Repairs and strengthening by guriting with two inches thick cement mortar (1:3) including providing and fixing of steel mesh as required etc. complete as per standard specifications for First Floor roof ceiling, slabs and beams (the work to be carried out by specialized agencies) 3200 sqft @ Rs. 50 per sqft. 1,60,000.00 (6) Re-plastering of the RCC ceiling/beams after guniting with cement mortar (1:3) 3200 sqft. @ 10 per sq.ft. 32,000.00 (7) Providing and laying 40 mm thick cement concrete flooring at the First floor level including applying of cement slurry etc. complete 2700 sq.ft. @ Rs. 12 per sq.ft. 32,400.00 (8) Re-plastering of the walls with cement mortar (1:5) 2500 sqft @ Rs. 8 per sq.ft. 20,000.00 (9) Providing and laying plaster on Mumty and staircase 1400 sq.ft. @ 8 per sq.ft. 11,200.00 (10) Whitewashing of RCC ceiling/ slabs/beams after plastering 3200 sq.ft. @ 5 per sq.ft. 16,000.00 (11) Whitewashing on walls and Mumty an staircase areas 390 sq.ft. (a) Rs. 4 per sq.ft. 15,600.00 (12) Repairs and Rectification of roof-top over the Mezzanine floor and Mumty staircase including necessary water proofing 2900 sqft @ Rs. 40 per sq.ft. 1,16,000.00 (13) Repairs to be carried out to the RCC columns at the First floor (Mezzanine floor wherever spalling of concrete occurred including removal of loose plaster and concrete and adding additional steel and repair carried out by guniting or with epoxy mortar and re-plastering the surface including the whitewash, etc.) 25,000.00 (Lumpsum) (14) Relaying of electrical conduits along the walls by cutting chases and refilling the same (before plastering on wall is carried out) including necessary replacement of cables and wires, etc. 30,000.00 (Lumpsum) Total: 5,24,900.00 Add: 10% for contingencies 52,490.00 Total: 5,77,390.00 Add 5% for supervisory charges 11,870.00 Say Rs. 5,89,500.00 Rs. 5,89,500.00

15. THE Local Commissioner was appointed by the Commission and had vast experience to his credit and therefore we have no hesitation in accepting the assessment made by the said expert Local Commissioner. However, the important question is as to whether deduction on account of depreciation as made by Bhadra and Associates in their report could be validly made from this

amount of Rs. 5.89,500 00 In our opinion the answer would be in the negative because the assessment made by the Local Commissioner is only for repairs/ reinstatement of the building Besides, the Commissioner has observed that even after carrying out such repairs, the building may not gam the same strength as it had prior to the peril and construction of further floor may not be feasible/ advisable due to the weakening of the structure on account of fire. The amount assessed by the expert is only to reinstate the building and not to raise the new building after pulling down the existing one entitling Insurance Company to make any deduction towards depreciation. So far as deductions on account of under insurance is concerned, the Local Commissioner has not assessed the total value of the entire building and therefore, we must rely upon the total value of the building as assessed by the surveyor - Bhadra and Associates i.e. Rs. 37,13,000.00. Since the coverage for the building was for Rs. 20,00,000 only, applying the principle of under insurance, the payable amount comes as under: Rs. 5.89.500 xRs. 20,00,000=Rs. 3,17,533 Rs. 37.13.000

16. IN the result, the complaint is partly allowed and the opposite party-Insurance Company is directed to pay a sum of Rs. 3,17,533.00 along with interest @ payment. The amount shall be paid within a period of six weeks from the date of this order, failing which it shall carry interest @ 12% per annum from the date of default. In the peculiar facts and circumstances of the case we do not wish to make any order as to costs in this case. Complaint partly allowed.