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(2004) 10 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Protection Manufacturers Pvt Ltd — APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD — RESPONDENT

Date of Decision : 24-10-2004

Acts Referred:

Citation : 2005 4 CPJ 230 : 2006 1 CPC 426

Hon'ble Judges : M.B.SHAH , P.D.SHENOY J.

Judgement

1. IT is the say of the complainant, a Private Limited Company, that it has its registered office at Surya Nagar, Bhubaneshwar and factory at Ganga Pada, District Khurda, Orissa, which is a part of the Rajpath Group, the famous and reputed retailers, distributors and manufacturers of consumer durables in Orissa with a turnover exceeding Rs. 60 crores. The Group distributes the most reputed multinational and India brands like Sony, Onida, BPL, Electrolux, Kelvinator, Sumeet, Reliance Smart Cards, Titan, etc. It is in business for the last 35 years and has always insured the risk with the New India Assurance Co. Ltd. During the last 35 years it has only two claims with the Insurance Company -the first claim being the Super Cyclone which wrought havoc in the State of Orissa, and the other one is the instant fire claim which is still pending settlement since long.

2. IT is also stated that the complainant is, inter alia, carrying on the business of manufacturing and selling of plastic moulded air coolers under the brand name ''Patriot''. The basic new materials for manufacturing the air coolers are highly inflammable plastic based materials like polypropylene, etc. and the manufacturing unit was set up in early 1999, by taking financial assistance from State Bank of India to the tune of Rs. 2.40 crore. The complainant had taken a fire policy for the period 19.2.2000 to 18.2.2001, inter alia, against the risk of fire with extensions of FST, earthquake, etc. in respect of the following items: (i) Building Rs. 75 lakh (ii) Plant and Machinery Rs. 10 lakh (iii) Stocks and stock in process Rs. 200 lakh (iv) Transformer Rs. 0.5 lakh For this the complainant had paid Rs. 1,16,636 towards premium. During the currency of the policy, the insurance coverage was enhanced for which there is a specific endorsement

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(Ann. C -I). The complainant had also taken a separate ''Burglary and House Breaking Policy''.

3. ON 29th March, 2000 at about 8.45 a.m. there was a devastating fire in the factory of the complainant. That was noticed by the factory workers who had then assembled in front of the factory premises and were waiting for the factory to open. Fire Brigade was immediately informed. They reached at site at about 9.10 a.m. and started their operation at about 9.20 a.m. The fire was so devastating that it was flickering for the next 3 to 4 days and was completely extinguished on 4th April, 2000. Because of the devastating fire, complete factory premises got gutted including the roof, trusses, structures, plant and equipment, raw materials, work in process as well as finished and unfinished air coolers. With the best efforts of the staff 516 pieces of air coolers were pulled out through the gate of finished products godown and were saved.

4. AS the claim was not settled this complaint was filed on 13.2.2003 for a direction to the Insurance Company to pay compensation of Rs. 2,48,94,000 for the loss suffered by it with interest @ 18% per annum and to grant compensation of Rs. 10.00 lakh for delay in settlement of the claim and for causing mental agony and harassment to the complainant. Contentions of Insurance Company : It is the contention of the Insurance Co. that the complaint is misconceived, because: (i) no cause of action had arisen as the Insurance Company had repudiated the claim after due application of mind; (ii) complicated, intricate questions of facts arise, therefore, the complainant should be directed to approach the Civil Court; (iii) there is no inordinate delay in settlement of the claim; (iv) the reasons for repudiation of the claim have been explained in the letter dated 28th February, 2003; (v) the investigation revealed that the documents in support of the claim were manipulated and fabricated; (vii) the investigation of the case was ordered by the Head Office and the claim was monitored; (viii) as complainant having come to know that the Insurance Company had caught him on the wrong foot, he started making false and baseless allegations against the Regional Manager and also investigator; (ix) the report submitted by the joint surveyors was based on documents furnished by the complainant and they have not verified the correctness of the same. Brief Summary of the relevant events:

5. FOR appreciating the contentions we would refer to brief synopsis of the events which are as under: The complainant, M/s. Protection Manufacturers Pvt. Ltd., had two policies namely: 1. Fire Policy C -Ex -CW 1/1; and 2. Burglary and House Breaking Policy C, Ex. C 1/2. On 29.3.2000 at around 8.45 a.m. the fire accident occurred in the factory. It was a devastating fire and eight fire tenders started operation at around 9.20 a.m. which continued till 6.00 p.m. in the evening and the fire was completely extinguished only by 4th April, 2000 morning. On the same day the Police was informed about the fire accident. On the same day intimation was given to the Electricity Office and the Central Excise Authority; On the same day the Insurance Company was informed which had

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appointed surveyors, M/s. Asthana and Co., for spot survey. They conducted preliminary survey of the loss, as borne out from the Preliminary Report dated 3.4.2000. On 30th March, 2000, Mr. A. Asthana, Surveyor and S. Sahoo representative of Insurance Company took account of joint stock of burnt motors, air coolers, etc. Thereafter on 13th April, 2000 the Insurance Company appointed B. Joshi and Shri A. Asthana as Joint Surveyors for assessment of loss. They visited the spot and submitted the Status Report to the Insurance Company (Annexure R -2). The Fire Brigade Department issued a certificate on 17.5.2000 mentioning therein that the origin of fire is electrical short circuit (Ex. CW 1/4). On 10.7.2000 the Divisional Manager, National Insurance Co. Ltd. gave permission for reconstruction of the factory building. On 14th August, 2000 the Joint Surveyors completed their survey and submitted their Draft Assessment Report assessing the loss at Rs. 2.37 crore (Annexure R -3). For the aforesaid events there is no dispute. Dispute started thereafter. For the reasons best known to the Insurance Company and that too after a period of 7 months of the occurrence of the peril, by letter dated 30th October, 2000, its Regional Manager appointed M/s. J. Basheer and Associates Surveyors Pvt. Ltd., Mumbai as investigators to investigate the (i) cause of fire, and (ii) assessment of loss. On that basis, Shri J. Basheer, Chief Surveyor visited the factory on 14.11.2000 i.e., after 7 1/2 months from the date of the incident. On 21st December, 2000, the complainant wrote a letter to the Chairman -cum -Managing Director of the Insurance Company regarding delay in settlement of the insurance claim (CW. 1/8). Thereafter, on 30.4.2001 (CW. 1/9), the complainant wrote a letter to Mr. J. Basheer seeking clarification with regard to the telephonic discussion wherein the complainant was informed by Mr. Basheer that they would submit an ambiguous report so that no underwriter would make any payment to the complainant. The complainant, therefore, requested the investigator to be fair and just, while submitting their report and the same might be submitted at the earliest. It was also stated by the complainant that they would provide all the information asked for and in case any further information was required, there would be no hesitation in providing the same. On 14.5.2001 the complainant wrote a letter to the Head Office of the Insurance Company wherein it was stated that during the process of the assessment, again, after 13 months of the fire, a questionnaire on 26 points was handed over to them on 9.5.2001, and the same was replied by the complainant within 48 hours. It is also stated that before accepting the above reply of the complainant, Mr. J. Basheer had left for Chennai. Apart from other things, the complainant raised the following questions which were bothering them: ''(a) What are the surveyors doing for last 13 months? (b) Will the surveyors pay us the Interest Cost and Business Loss incurred by us for their casual approach? (c) Why are the surveyors playing funny games with us by calling us and then disappearing themselves? Please note that the similar thing had happened in the month of April, 2001 also when our Sri B.K. Pathak was in Mumbai for seven days and the Surveyors did not have time to meet him after specifically calling him. Please let us know why are we being harassed like this''. Subsequently. On 28.5.2001 M/s. J. Basheer and Associates submitted their

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report (R -4). They observed: ''On our enquiry/investigation with various concerned personnel and agencies, the probable cause of fire on 29.3.2000 at about 8.30 hrs. at the insureds factory premises at Bhatkuri, could reasonably be attributed to an act of arson by vested interests, for some pecuniary benefit''. Thereafter, finally they assessed the loss at Rs. 1,10,57,034. By letter dated 24th June, 2001 the Insurance Company called upon the Joint Surveyors to offer their comments on the investigators report. To this, after discussing each and every aspect, the Joint Surveyors replied by their report and finally they observed: ''25.16 We also wish to take a strong exception to the assessment of loss carried out by the investigators vide para 23 of their report. The assessment is non -scientific and based on false presumptions. What has braffled us in that the loss assessed at Rs. 1,10,57,034 by the investigators tallies with an assessment of Rs. 1,10,67,230 thrust upon us by the Regional Manager during our meeting with him during 15th/16th September, 2000. This cannot be construed to be a sheer coincidence. If this can be construed as a tendency of the Regional Manager in influencing the Surveyors/investigators to cut claims, it sets a bad precedence and the insurance industry will be a major sufferer in the long run. 25.17. In conclusion we have to state with an analogy that investigators have attempted to kill a cat disguising it a tiger. They have failed to measure upto the faith and responsibility reposed onto them by the insurers. 25.18. The loss in our opinion is accidental and would fall within the purview of the policy issued to and held by the insured, the possibility of an arson having been completely ruled out. 25.19. Assessment for the said loss is being done separately and a survey report jointly with Mr. A. Asthana and Co. is being submitted shortly.'' Thereafter, A. Asthana and Co. and Bhaskar Joshi, joint surveyors submitted final loss assessment report (Annexure R -6) assessing the loss at Rs. 2.26 crore. The report is exhaustive. Thereafter, Bhaskar Joshi made comments against J. Basheers investigation report dated 3.7.2001. On 13th August, 2001 the complainant wrote a letter to the Chairman -cum -Managing Director of the Insurance Company. Hence, the Insurance Company referred both the reports i.e., the reports of J. Basheer and Bhaskar Joshi to the former Chief Justice of India, Mr. Y.V. Chandrachud. Opinion of Justice Y.V. Chandrachud: On 21.11.2001, Justice Y.V. Chandrachud, gave his opinion. The relevant portion of the opinion is as under: ''3. A fire took place in the factory premises of the insured at about 8.30 a.m. on March 29, 2000, as a result of which the building, machinery and accessories, the stock and the transformer were destroyed to a very considerable extent. 4. Two reports were submitted to the Querist by experts as regards the cause of fire. The final assessment report was submitted to the Querist on August 10, 2001 by joint surveyors, Bhaskar Joshi, Mumbai, and A. Asthana and Co., Bhubaneshwar; and J. Basheer and Associates Surveyors Pvt. Ltd., who were appointed on October 30, 2000 as investigators by the Querist, had submitted their report on May 28, 2001. 5. According to the joint surveyors, M/s. Bhaskar Joshi and M/s. A. Asthana and Co., the probable cause of the fire could be ''short circuit'', while according to the investigators, M/s. J. Basheer and Associates, the cause of fire could reasonably be attributed to an act of arson by

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vested interests, for obtaining a pecuniary benefit.'' After considering the contents of both the reports, the learned Judge opined: ''7. I have perused the survey report and the investigators report fully. Having considered those reports, I am quite clear that the report of the investigator M/s. J. Basheer and Associates is unfounded and is, in a way of speaking, speculative. On the other hand, the report of the joint surveyors Bhaskar Joshi, Mumbai, and A. Asthana and Co. Bhubaneshwar, contains a careful analysis and assessment of the cause of fire and of the facts incidental to and attendant upon the event of fire''. We need not reproduce the detailed reasoning given in paragraph 7 above. Finally, the following comments of Mr. Joshi were approved in paragraph 15 of the opinion which are as under: ''15. At page 80, paragraph 25.17 of the comments, Mr. Joshi expressed his conclusion as follows - In conclusion, we have to state with an analogy that investigators have attempted to kill a car disguising it a tiger. They have failed to measure upto the faith and responsibility reposed onto them by the insurers. Thereafter, it was concluded as under: ''16. Taking into consideration all the facts and facets of the incident of fire, I have no doubt that the fire was accidental and cannot, by any reasonable norm or standard, be characterized as an act of arson''. This report is accepted by the Insurance Company and now it is not contended that fire was not accidental.

6. DESPITE the aforesaid opinion of Justice Y.V. Chandrachud, M/s. J. Basheer and Associates submitted further investigation report on 29.11.2001. To this on 27.8.2002 Mr. Bhaskar Joshi submitted his exhaustive report giving point -wise reply on (a) Bills of Condor Power Products P. Ltd.; (b) Transportation of Motors from Condor to Dawn to Gangapada. (c). Genuinity and existence of various vendors in question i.e., Dawn Industries, Vilbin Enterprises, Geeta Enterprises, Plastochem Industries, D.R. Plastics, B.T.M. Plastics, Greaves Limited, S.C.J. Plastics, L.G. Polymers, Reliance Industries Limited. In conclusion they, inter alia, observed: ''Conclusion: The documents and information detailed above are to be read in conjunction with our Survey/Investigation Report No. JBPL/083/2000 -01 dated 28.5.2001 and the Supplementary Report of even number dated 3.7.2001. If the underwriter so considers that the above information/documents are insufficient in deciding the matter, we would suggest that this claim be referred to Government Investigation Agency as it involved many outside parties over whom we have no jurisdiction. We also feel that the whole exercise is beyond the competence level of JB. They have only entangled themselves into a big mess by creating an air of suspicion and by creating mountains out of mole hills. 3. Our observations and comments: 3.01 We have verified insureds documents for the purpose of assessment of claim for which our methodology was simple. We were concerned only with the material lying in insureds premises, hence with the help of transport receipts, vendors invoices, way bills and 57F forms and central excise records we ascertained receipt of the material and insureds premises. It is proved beyond doubt that material sent through transporters has crossed various check posts and hence it can be concluded that it has reached insureds premises. We may dispel doubts raised during the discussions about the moulded

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components not reaching insureds factory and getting disposed of directly. This is a far fetched thought since the moulded components are tailor made to suit cooler designs of the insured and hence have no use of these to others. So no sane person would buy polymer granules at Delhi, get them moulded, pay heavy transport and sell them at Bhubaneshwar where there is no market for them. 3.02 Having ascertained the receipts we reconciled suppliers invoices and the quantities received as entered in financial accounting cum inventory package. 3.03 As a further step of verification we had called for insureds ledger accounts in suppliers accounts and reconciled the same with insureds accounts. The payments were found to be made through regular Banking transactions. 3.04 Similarly, we verified the sales and, therefore, the consumption of materials to ensure that consumption was debited into the inventory as per bill of materials of models produced. 3.05 Insured have a practice of returning defective motors and the end of season. We had verified all such returns to respective vendors in months of June to November 1999 and these quantities were subtracted from inventories. This dispels doubts raised by Shri R.P. Samal during the discussions of June 13, 2002 that insured preferred claim against defective motors and had raised objection on our basing assessment on the burnt motors counted by his own officer. 3.06 The resultant closing stock gave the picture of the stock held by insured as on the date of fire. 3.07 We have not taken any cognisance of polymer receipts by job workers directly since this had no bearing on the stocks held by insured in their premises. We were concerned about the actual receipts of moulded goods at insureds end. 3.08 JB have unnecessarily complicated the whole issue by going round and about casting incertitude and have provided nothing in turn. In fact their competence and understanding of the subject has been found waiting. They have wasted valuable time and money of insurers and all concerned by their so -called allegations for which they have failed miserably to produce any clinching evidences. In fact they have tried to hoodwink insurers by palming out half truths and lies. Their quoting rules (concerning excise, income -tax, octroi, company law, etc.) were half truths -which we have brought out at respective places. In fact, they ought to have consulted competent authorities or at least sought explanations from the parties concerned. 3.09 JB have spent least time with concerned parties namely the insured, the condor and the dawn. Had they taken time of to visit the premises of these parties most of the confusion created by them would have been resolved. 3.10 We had visited insureds factory on a number of occasions during the process of claim assessment and thereafter too during verification of JBs reports. We have once again visited insureds factory on 20th August, 2002 and have found a large inventory of gods details of which are available with us. We once again urge senior officials of insurers to verify the facts themselves by paying a visit to insureds premises because seeing is believing. One visit will dispel all doubts and clear the air of suspicion created by JB. We enclose herewith a CD ROM containing photographs taken by us during our last visit on 20th August, 2002. 3.11 As desired by insurers we have also verified the marketing pattern of insureds coolers for which we have obtained a complete printout of transactions

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of insured as well as their marketing partners for the period of 1st April, 1999 till 31st March, 2002. A summary of the same is attached to this report -Annexure ''insureds markets''. The detailed print out is available with us for inspection. 3.12 Apart from manufacture of coolers insured have diversified into manufacture of water heaters (a synergy to their business and have obtained certificate as per IS:8978 -1992). They are also into making plastic moulded chairs for Neelkamal plastics - a well known brand in this segment. Due to acquisition of moulding machines insured have freed themselves from dependency on Dawn Industries since the moulding can now be done in house. Photographs of the moulding machines as well as moulds can be seen in the CD. This will save time and cost making them more competitive in coolers market. Insured have also begun negotiations with Bajaj Electricals Ltd. for marketing Patriot Coolers by Bajaj. Thus, the whole process is turning a full circle. Earlier insured were marketing coolers of symphony and Usha whereas now insureds coolers are sought to be marketed by Bajaj. 3.13 Looking into these factors JBs allegations on insureds morals are found to be absolutely absurd and baseless. Their concluding remarks in their report dated 28th May, 2001 on the cause of loss could reasonably be attributed to an act of arson by vested interests, for some pecuniary benefit are unwarranted. Secondly, by pin pricking on minor issues JB had tried (in futility) to establish that the documents on which the claim was based were wrong. This is also proven wrong since they have seen the documents with coloured eyes. We have explained away all their findings and misgivings and doubts created by them have now been cleared. It is established beyond doubt that: The fire is accidental and no element of arson could be proved by JB. Materials dispatched from various vendors have arrived at insureds premises after passing through various check -posts as verified by us as well as JB themselves. The documents on which the claim is based are genuine and represent insureds normal business transactions. Hence, the methodology adopted by us in computing the claim has passed all tests whereas JBs investigation has been found to be full of holes. 3.14 We strongly feel that any further delay in settlement of insureds claim will only add to their hardships since their business is getting impaired. 3.15 It can be observed from this report that we were not required to lock into any fresh documents. Only the interpretations of the documents as done by JB are found coloured. When seen in proper light the facts have emerged clearly and the air of suspicion got cleared. 3.16 As an impartial entity it is our sacrosanct duty to bring forth to insurers that any further reference of this matter to JB would tantamount to further delays since they have not been able to establish anything so far. JB have been found lacking first in an impartial approach. Instead of fact finding they have gone round witch -hunting. By palming out lies and half truths, by misinterpretation of laws they have created an air of suspicion and have contributed immensely to the delay in settlement of this claim''.

There are other letters written by the complainant to the Chairman -cum - Managing Director, Manager of the Insurance Company, about the non -

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settlement of the claim and grievances against J. Basheer and Associates Surveyors Pvt. Ltd. Repudiation of Claim:

7. DESPITE this, by letter dated 20th February, 2003, the Insurance Company repudiated the claim not on the ground of arson or the fire was not accidental but on the ground that the claim was fraudulent and was based on false declaration. It was, inter alia, stated as under: (i) Certain bills/invoices produced in support of purchase of material were of the suppliers who were either not existing or not dealing with the products purported to have been supplied or do not have sales tax registration. Bills/invoices for significant amount produced in support of purchase of materials are tampered with or fabricated. (ii) Condor Power Product (P) Ltd. supplied motors at Dawn Industries, Delhi although the invoices were raised in the name of the complainants Company at Bhatkuri. (iii) Certain Bills/Invoices produced in support of purchase of material were tampered and fabricated. (iv) Huge Inventory of raw materials, semi -finished and finished goods have been shown at the end of every month commencing from April, 1999. (v) Unpaid amounts to the suppliers of the materials. Finally it was stated that: ''In view of the above, management has decided to repudiate your claim by invoking Condition No. 8 of the Fire Policy (c) issued and held by you, reading as under: If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy if the loss or damage be occasioned by the wilful act, or with the connivance of the insured, all benefits under this policy shall be forfeited. Please be notified that the Company reserves its right to defend the repudiation on any further grounds other than those mentioned above''.

Relevant Evidence:

8. FROM the aforesaid repudiation letter, the question arises for consideration is - even though the fire was accidental as accepted by the Insurance Company, whether it was justifiable for the Insurance Company to repudiate the claims despite clear report of the joint surveyors, A. Asthana and Co. and Bhaskar Joshi and in view of the opinion given by Mr. Justice Y.V. Chandrachud. For deciding this question we would first refer to the relevant part of the reports submitted in chronology: (a) Extracts from the report of preliminary survey dated 3.4.2000 conducted by A. Asthana and Co., Surveyors (Annexure R -1) - ''Sub: Status report of preliminary survey conducted against the claim (fire on 29.3.2000 at 8.30 a.m. to 1.30 p.m.) A/c. M/s. Protection Manufacturers Pvt. Ltd., Village Bhaskar, Khurda (Orissa)'' (1) ''The product of the aforesaid factory is moulded air cooler of different models. The insureds factory takes up only the assembly of the coolers. Capacity of production per day is 350 coolers and the shed has 3 division viz., (i) Raw materials section, (ii) Assembly section, and (iii) finished goods godown. The fire was first seen from the ventilators of the raw materials section at 8.30 a.m. (opening time of the factory is 8.45 a.m.). The ventilator through which the fire was seen first is just above the storage of the hay pads (a

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component of cooler). (2) The fire fighting station was intimated within five minutes of the incident and the first fire fighting vehicle reached at the spot at around 9.10 a.m. Subsequently 8 number of fire brigade vehicles arrived one by one. (3) Since the fire had initiated from the raw materials stores, some of the finished goods and semi -finished goods were recovered. (4) The fire propagated and spread over the entire factory. (5) The wall of the building cracked at several places. (6) All the tubular trusses and scaffolding got bent and were hanging at some places. (7) The building had A.C.C. sheet roofing. All the A.C.C. sheets broken into pieces. (8) 2 No. of compressor, all the pneumatic tools, packing machine, testing machines with chilling and buying machines were destroyed along with 7 Nos. of assembly benches. (9) Steel racks for storing raw materials were lying after getting melted. They were grouted on the floor and were prepared between August to October, 1999. (10) Entire records kept in the almirah along with one computer and its accessories were burnt to ashes. (11) All the furniture and fixtures got damaged. (12) The loss of the stock of raw materials could not be ascertained so far as many of the places are still inaccessible due to scattered racks and remains of fire are still alive in those places. (13) The following pump -kits and motors were found to have been destroyed in manufacturing section and finished product godown. The segregation of different models is a difficult job at this moment but the same is being worked out. - Manufacturing section : 1538 Nos. - Finished stock godown: 1146 sets. (14) 516 Nos. of finished and semi -finished goods could be recovered. (15) 261 Nos. of finished goods of various models were found in two godowns near the factory building. According to the insured, the billing for them has already been completed. However, an investigation is being carried out''. The Surveyor visited the site on 29th, 30th, 31st March and 1st April, 2000 as per the endorsement made in the above report dated 3rd April, 2000. (b) Extracts from the status report dated 13th April, 2000 of Bhaskar Joshi (Annexure R -2, P.5, Vol. 3) - ''4.12. The affected unit is divided into three sections as under - (a) Raw materials section: 35.75 m x 23.825 m (b) Production section : 35.75 m x 21.125 m (c) Finished goods section: 35.75 m x 11.750 m. 4.13 Insureds turnover of air coolers for the quarter ending 31st March, 2000 was reported as Rs. 1,10,60,950. ''5.0 Occurrence: The first fire service unit from Oatni reported at around 9.10 a.m. and started their operation at around 9.20 a.m. 8 to 10 Nos. of fire engines were engaged in extinguishing the fire from 9.20 a.m. to 6.00 p.m. on 29th March, 2000. The fire was so devastating that it was visible from several kilometres. Despite all the efforts by the fire services personnel, the fire was still flickering for next 3 -4 days and the fire brigade services were engaged again and again to douse the fire completely due to the presence of strong winds as well as highly combustible materials such as plastic, wood, wool, paper carton, card board boxes, etc. which were used in manufacturing of air coolers. the fire was completely extinguished on 4th April, 2000 evening''. ''7.00 Extent of loss and damage: 7.01 The entire stock of raw materials such as fan motors, swing motors, grills and other parts required for manufacture of air coolers lying in the raw materials storage section were totally gutted. Due to the affect of

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severe heat the motors had lumped together with the sections of steel storage racks. Insured would be required to cut the racks with oxy acetylene flame to segregate and count the damaged motors. 7.02 Similarly in the production section all the assembly tables are gutted. Partly lying therein under assembly have also been gutted. 7.03. A large number of coolers in the finished goods section are also damaged. Insured could recover few of them that have been stored in an isolated premises. Preliminary surveyors M/s. A. Asthana and Co. had visited insureds premises on the day of fire and have carried out a detailed account of those. 7.04. The factory building is very badly damaged. Due to the effect of intense heat the RC structure has developed cracks at various places. Brick walls have become weak and cracked. The A.C. sheet roof is completely damaged. The steel trusses and purlims are bent and deformed. 7.05. The loss is estimated to be in the region of around Rs. 2.5 crore. Issues without prejudice and subject to terms and conditions of the policy issued to and held by the insured reserving the right to alter/amend the report for unintended error, if any''. (c) The next joint report is Draft Assessment Report (Annexure R -3) dated 28th August, 2000, jointly prepared by A. Asthana and Co. and Bhaskar Joshi. The relevant part of the report is as under: ''2.04 Period : 19.2.2000 to 18.2.2001 2.05 Total sum insured : Rs. 2,85,50,000 2.06 Property insured : 1. Building Rs. 75,00,000 2. Machinery and Accessories Rs. 10,00,000 3. Stock and Stock in Process Rs. 2,00,00,000 4. Transformer Rs. 50,000 Total : Rs. 2,85,50,000 5.00 Occurrence: The occurrence as described to us by the Insured is as under: On 29.3.2000 at about 8.30 a.m. some of the factory workers who had assembled in front of the factory premises and waiting for factory to open, noticed smoke and flames coming out of the ventilator of raw materials store room. One of them immediately rushed to public Telephone booth situated at Jatni Chhak, which is about 1/2 km away from the factory and informed the Fire Brigade services at Jatni and Khurda and also informed the Managing Director of the factory Sri Pritish Gupta at his residence at Nayapan. ....The fire was completely extinguished on 4th April, 2000 evening. Because of the devastating fire accident, the complete factory premises is gutted including the roof, trusses, structures, plants and equipments, raw materials, work in process as well as finished products of air coolers. However, with the best possible efforts of Insureds staff and workers 516 pieces of air coolers were pulled out through the gate of finished product godown and were saved. All records and documents were completely burnt during the fire in the factory. The occurrence of the fire accident in the factory was also intimated to the police, Insurance authorities, Central Excise authorities and bankers on same day. The above authorities have come and inspected the factory site same day. 6.0 Cause: 6.01 The exact cause of fire is not known. However, it appears to be due to short circuit. 6.02 We had probed the matter further and could not find any specific cause of fire and hence feel that short circuit would be the probable cause. 6.03 The fire is accidental and hence the loss would fall under the purview of the policy. 7.00 Extent of loss and damage. 7.01 The entire stock of raw materials such as fan motors, swing motors, grills and other parts required for manufacture of air coolers lying in the

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raw material storage section were totally gutted. Due to the effect of severe heat the motors had lumped together with sections of steel storage racks. Insured were required to cut the racks with oxy acetylene flame to segregate and count the damaged motors. 7.02 Similarly in the production section all assembly tables were gutted. Partly assembled coolers lying therein under assembly were also gutted. 7.03 A large number of coolers in the finished goods sections were damaged. Insured could recover few of them that were stored in an isolated premises. M/s. A. Asthana and Co. had visited Insureds premises on the day of fire and had carried out a detailed count of these. 7.04 The factory building is very badly damaged. Due to effect of intense heat the RCC structure had developed cracks at various places. Brick walls had become weak and cracked. The A.C. sheet roof was completely damaged. The steel trusses and purlins were bent and deformed. 7.05 Insured were able to save 516 Nos. of coolers from the finished goods godown and the same were stored in a separate building subsequently. 7.06 The transformer installed in a separate enclosure adjacent to the factory was not affected. 8.01. The loss payable under the insurance policy in respect of building was assessed at Rs. 59,82,606. 8.02: The loss payable under the insurance policy in respect of Plant and Machinery was assessed at Rs. 7,23,966.92. ''8.03.1.11 We had carried out detailed checking of insureds system to ascertain its integrity. We found that when purchase invoices are entered, not only the vendors account would get credited but also all items purchased under the invoice would get added to inventories of respective items. 8.03.1.12 Similarly when a unit was produced all the components of the unit get subtracted from inventory of respective component as per bill of materials corresponding to the cooler model being produced. 8.03.1.13 We had verified integrity of this system by making some dummy entries and the results were found to be reliable. 8.03.1.14 Ledger entries of insureds accounts in vendors books were called for and the same when reconciled with insureds system produced corroborative results. 8.03.1.15 After thorough examination of insureds system and ascertaining its integrity we had relied upon the results obtained from it for our assessment. 8.03.1.16 Immediately after the fire, physical count of all items (although they were in very badly burnt state) was taken by M/s. A. Asthana and Co. The entire process was witnessed by insurers officials too. This formed a firm basis for the assessment. 8.03.1.17 We had also scrutinized insureds purchase invoices to ascertain unit cost of various components used for manufacture of coolers. Impact of central excise duty, Modvat credit, sales tax, etc. was accounted for while working out such unit costs. 8.03.1.18 After verification of all available records and detailed discussions with insureds officials the loss to stocks was assessed as per details given in ensuing paras.'' 8.03.2.9: The total value of Insureds stock was worked out at Rs. 1,85,17,912.05. 8.03.2.10: This value of stock is in corroboration with the average stock holding of Rs. 1,86,02,625. 8.03.2.11 The sum insured being Rs. 2,00,00,000 Insured were fully covered. Summary of Stock Loss - Sl. No. Description Value in Rs. 1. Finished Goods 15,21,417.82 2. Semi -finished Goods 16,00,687.22 3. Raw Materials 1,27,14,966.54 TOTAL LOSS TO STOCK 1,58,37,101.58 8.05 Modvat

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Reversal 8.05.1 Insured were carrying stock of components as narrated in the section Raw Materials para 8.03.3.3.3. above. Some of the raw materials attracted central excise duty and Insured had taken MODVAT (now CENVAT) credit of central excise duty paid on these. Central Excise Department as per their rules may insist for reversal of this credity in which case the said duty that is actually reversed and paid back to the department by the Insured would form part of their claim. 8.05.2 The Central Excise Duty amounting to Rs. 11,75,598.63, would be required to be reversed and has been quantified as per annexure ''Details of Central Excise Duty on Raw Materials'' attached herewith. 8.05.3 Insurers may keep this amount in abeyance and indemnify the Insured later for this amount on production of proof of Insured having reversed such duty for which Insured may be asked to produce a certificate from the Central Excise Department to this effect. 8.06. Summary of Loss Assessment - No. Description Value (in Rs.) 1. Building 59,82,606.00 2. Plant and Machinery 7,23,966.92 3. Stock 1,58,37,101.58 4. Element of Central Excise Duty reversible 11,75,598.63 Total Loss Assessed 2,37,19,273.12 Less: Deductible Excess under policy 10,000.00 LOSS PAYABLE UNDER POLICY 2,37,09,372.12 9.0 Notes - 9.01 An album containing photographs is forwarded herewith. 9.02 A copy each of fire brigade report and police Panchnama are attached herewith. 9.03 The cause of loss is accidental fire and the same falls within purview of the policy and hence the loss is indemnifiable under the policy issued to and held by the Insured. 9.04. No warranties appear to have been applied to the policy. All other terms and conditions of the policy have been found to be complied with at the time of survey. 9.05 The assessment has been accepted and agreed upon by the insured. Issued without prejudice and subject to terms and conditions of the policy issued to and held by the Insured reserving the right to alter/amend the report for unintended error, if any. (d) Final Assessment Report: In the final assessment report dated 10.8.2001 (Annexure R -6) by A. Asthana and Co. and Bhaskar Joshi, in the preface, it has been mentioned as under: ''0.01 During our first joint visit Insured were found to be concerned and a bit anxious and apprehensive about speedy settlement of their claim, in light of their earlier experience and market talks when we had reassured them (on behalf of us as well as the Insurers) that if they furnish all requisite data/documents it doesnt take long to settle a claim. 0.02 Insured had retrieved all necessary information from records with various agencies such as central excise, bank, etc. since their original documents were gutted in fire. However, purchase invoices and copies of sales invoices were available with them in their office and they set out to prepare their claim based on these documents. 0.03 We had scrutinized these documents, were in the process of finalizing the claim and had prepared our first draft report dated 14th August, 2000 which when Mr. A. Asthana took to the Regional Manager, the latter retained it and called us for discussions on the same. 0.04 We had visited the Regional Office on 15th/16th September, 2000 for discussions when the Regional Manager informed us that the assessment was exaggerated according to them and handed over to us their version of assessment amounting to Rs. 1,10,67,230 together with fresh set of

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documentary requirements as conformed to insurers by Mr. Bhaskar Joshi vide his letter dated 6th October, 2000. 0.05 We had, therefore, visited Insureds premises once again to obtain copies of these documents, although most of which were perused by us during our earlier visits. It is not customary to attach copies of documents verified by surveyors along with fire survey report however since it was insisted upon by the Regional Manager we had to follow suit. After discussing in detail and verifying the stock as well as damage to machinery, its valuation, they finally assessed the loss as under: ''8.06 Summary of Loss Assessment - No. Description Value in Rs. 1. Building 49,51,042.44 2. Plant and Machinery 7,77,599.79 3. Stock 1,69,17,538.00 Total Loss Assessed 2,26,46,180.23 Less: Deductible Excess under policy 10,000.00 Loss payable under Policy 2,26,36,180.23 9.0 Notes - 9.01 An album containing photographs is forwarded herewith. 9.02 A copy each of fire brigade report and police station diary extract are attached herewith. 9.03 No warranties appear to have been applied to the policy. All other terms and conditions of the policy have been found to be complied with at the time of survey. 9.04 The assessment has been accepted and agreed upon by the Insured as per contents of the acceptance letter provided by them, as attached herewith'' (e). Investigation Report dated 28.5.2001 by J. Basheer and Associates Surveyors Pvt. Ltd. They visited the factory on 7.11.2000 for the investigation for the cause and also to ascertain the loss sustained due to alleged fire on 29th March, 2000. After discussing various aspects they arrived at the conclusion: In view of the above and based on our enquiry/investigation with various concerned personal and agencies, the probable Cause of Fire on 29.3.2000 at about 0830 Hrs. at Insureds Factory premises at Bhatkuri, could reasonably be attributed to an act of Arson by vested interests, for some pecuniary benefit. Thereafter, they assessed the loss at Rs. 1,10,57,034 by their investigation report dated 28.5.2001 (Annexure R -4) as under'' ''Summary of Assessment of Loss A. Building Rs. 24,62,450 B. Machinery Rs. 6,63,030 C. Finished Goods Rs. 5,76,041 D. Semi -finished goods Rs. 8,32,155 E. Raw Materials Rs. 69,51,335 Total Rs. 83,59,531 LESS: Salvage @ 5% 4,17,977 Rs. 79,41,554 Rs. 1,10,67,034 Less: Excess Rs. 10,000 Total Rs. 1,10,57,034 NET AMOUNT OF LOSS: Rs. 1,10,57,034 (Rupees one crore ten lac fifty seven thousand thirty four only) Notes: 1. It has been observed from the audited accounts for the year ended on 31st March, 2000 that the Insured has declared Closing Stock of Raw Materials amounting to Rs. 35,31,340 as saved. On an inquiry, the Insured later on submitted a list, showing defective motors and other items lying with moulders. The underwriters may wish to deduct this amount from the assessment done by us, if they desired so (List enclosed at Annexure 38). 2. While working out the assessment, we have reduced the Modvat component wherever available. However, the insured is liable to refund Modvat actually availed on all raw materials which have not gone into production of finished goods, due to fire, besides on those raw materials, which also have gone into production of all finished goods, which were burnt out. The insured has already received a show -cause notice from the Excise Authorities, but the outcome thereof has not been informed to us by the insured. As and when this

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amount is determined by the Excise Authorities, that amount may be remitted by the Insurer directly to the Excise Authorities. 3. While working out the assessment of loss in Raw Materials section, we have treated the entire stock to be in a sound condition. However, it may be noted that the Insureds audited accounts for the year ended 31st March, 2000 are showing Rs. 194.88 lack worth of raw materials in hand as on 1st April, 1999. On further probing into previous periods figures, the following figures are revealed: (a) Value of Raw Materials stock taken over on 1st November, 1998 from the partnership converted into Private Limited Company Rs. 1,05,84,894 (b) Value of Raw Materials shown to have been purchased by the Insured during the period 1st November, 1998 to 31st March Rs. 1,57,50,329 Rs. 2,63,35,223 (c) Material actually consumed by the Insured during the period 1st November, 1998 to 31st March Rs. 68,47,090 (d) Closing Stocks of Raw Materials as on 31st March, 1999 Rs. 1,94,88,133 From the above analysis, two conclusions can be reached: (i) The value of the stocks taken over by the Insured was sufficient to see through the actual consumption upto 31st March, 1999, and hence there was no need to make fresh purchases totalling Rs. 1,57,50,329 during the year; or (ii) The raw materials taken over by the Insured were either not there or were defective, thereby compelling the Insured to make fresh purchases after taking over''. Findings: A. (a) Firstly, it is to be stated that after obtaining report from A. Asthana and Bhaskar Joshi, Joint Surveyors, there was n justifiable ground for the Insurance Company to appoint investigator and loss assessor. (b) A. Asthana, Surveyor was directed to visit the spot on the date of fire. He went there on 29th, 30th, 31st March and 1st April, 2000. It was a spot survey by the surveyor appointed by the Insurance Company. His preliminary survey report is exhaustive which reveals that the fire was devastating and had caused serious damage to the building, machinery and stocks. (c) Again, another surveyor, Bhaskar Joshi was asked to submit a status report. He submitted the status report on 13th April, 2000 which we have quoted above extensively, wherein it had been specifically mentioned that the fire was so devastating that it was visible from several kilometres. Despite all the efforts by the fire services personnel the fire was still flickering for next 3 to 4 days and the fire brigade services were engaged again and again to douse the fire completely due to the presence of strong winds as well as highly combustible materials such as plastic, wood, wool, paper carton, card board boxes, etc. which were used in manufacturing of air coolers. ''The fire was completely extinguished on 4th April, 2000 evening''. (d) Thereafter, Insurance Co. asked A. Asthana and Co., Surveyor and Bhaskar Joshi, Surveyor to submit a joint report. They also submitted the draft assessment report on 28th August, 2000, as stated above. That report is also exhaustive, wherein, it has been mentioned that (i) fire was completely extinguished on 4th April, 2004; (ii) the exact cause of fire was not known; however, it appears to be due to short circuit; (iii) the fire was accidental; and hence the loss would fall under the purview of the policy; (iv) thereafter, they had considered the extent of loss and damage and (v) finally they assessed the loss at Rs. 2,37,09,372.12. (e) Finally, after referring to the books of accounts, invoices and bills and collecting the

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information from other sources, the joint Surveyors had submitted final assessment report on 10th August, 2001 i.e., virtually after more than one year and four months from the date of fire. In the said report it was commented that they visited the Regional Office of the Insurance Company on 15th/16th September, 2000 for discussion and the Regional Manager informed that their assessment (draft assessment report dated 28th August, 2000) was exaggerated and he handed over the version of assessment of Insurance Company, amounting to Rs. 1,10,67,230 together with fresh set of documentary requirements as confirmed to insurers by Bhaskar Joshi vide his letter dated 6th October, 2000. They finally assessed the loss payable under the policy at Rs. 2,26,36,180.23. Along with the said report they sent an album containing photographs taken at the time of fire, a copy of the fire brigade report and Police Station diary. (f) Because of report by J. Basheer and Associates Surveyors Pvt. Ltd., as noted above, the Insurance Company obtained opinion of former Chief Justice Y.V. Chandrachud. In clear terms, after considering the joint surveyors report and the investigators report, Mr. Justice Y.V. Chandrachud arrived at the conclusion that the report of J. Basheer and Associates, Surveyors Pvt. Ltd. is unfounded and is in any way of speaking, speculative. As against this, the joint surveyor report contains a careful analysis and assessment of the cause of fire and of the facts incidental to an attendant upon the event of fire. He also agreed with the view expressed by Bhaskar Joshi that investigators had attempted to kill a cat disguising it as tiger and finally opined that there was no doubt that the fire was accidental and cannot, by any reasonable norm or standard, be characterized as an act of arson. Undisputedly, this report is accepted by the Insurance Company and the learned Counsel for the Insurance Company had stated that the Insurance Company accepted that the fire was accidental and could not be characterized as an act of arson. However, it is the contention of the Insurance Company that it had repudiated the claim by invoking condition No. 8 of the fire policy which provided to the effect that if the claim was fraudulent or if any false declaration was made in support thereof, the insurer has right to forfeit all the benefits under the policy. B. In our view, the stand taken in their repudiation letter is totally unjustified, because: (i) A. Asthana, Surveyor visited the spot during the fire, noted the facts in detail with regard to the damage caused to the building, machinery and stock, all the books of accounts and relevant documents were verified by the joint Surveyors. All the documents were re -verified at the time of preparation of the final report by the joint surveyors. Therefore, it would be difficult to justify the reason given in the repudiation letter. (ii) On 30th March, 2000 Mr. A. Asthana, Surveyor, and Mr. S. Sahoo, representative of the Insurance Company took the accounts of joint stock of burnt motors, air coolers, etc. For this purpose it would be worthwhile to reproduce the cross -examination of Shri Amit Biswas, Manager, New India Assurance Co., R.O. 1, New Delhi, who has stated, ''it is correct that the officer of the respondent company had signed the inventory of the goods recovered after the fire was extinguished. The inventory is at page 783, 784, 785 of Vol. III''. This admission clearly supports the version of A. Asthana, Surveyor that he

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visited the spot on various dated and took account of joint stock of burnt motors, air -coolers, etc. on 30th March, 2000 in the presence of S. Sahoo, representative of the Insurance Company. (iii) Mr. Amit Biswas in cross -examination has stated that they have never disputed the occurrence of fire and it is correct that the complainant has suffered the loss due to fire, approximately Rs. 1,00,00,000. This means that the officers of the Insurance Company were interested in paying Rs. 1,10,67,230 and, therefore, the method of assessment and reassessment of loss by Shri J. Basheer was undertaken for reasons best known to the officers of the Insurance Company. (iv) Even in the opinion of former CJI, Shri Y.V. Chandrachud, the report given by Shri J. Basheer was unfounded and speculative. He has agreed with the comments of Mr. Bhaskar Joshi to the effect that J. Basheer, failed to measure upto the faith and repeatedly verified a large number of documents and cross -checked it with various accounts and parties. Therefore, the reasons given for repudiating the claim are imaginary for the reasons best known to the officers of the Insurance Company. (v) Hence, in our view, there is no justifiable ground for not accepting the joint Surveyors report of Asthana and Bhaskar Joshi who have finally assessed the loss at Rs. 2,26,36,180.23. For this purpose, we would also first refer to the cross -examination of Mr. Amit Biswas in question and answer form, which is as under: Q. : Whether the comments/suggestions given by Shri Bhaskar Joshi on the reports of Shri J. Basheer were re -verified and if so by whom? Ans. : Mr. J. Basheer had re -verified the comments made by Bhaskar Joshi. No other independent agency was employed for the purpose as both the persons were independent Surveyors. I do not know which company was supplying the electricity. It is correct that the ground of arsoning is not mentioned in the repudiation letter. It is correct that at para 6 page 6 word arson has been used. This was at the initial stage prior to the opinion taken from Justice Y.V. Chandrachud. It is correct that Shri J. Basheer was appointed as investigator, Re -surveyor and for reassessment. Every comment of J. Basheer is not supported by documents. It is correct that whatever I have stated in my affidavit registered forged bills and other deficiency, etc. are not based on my personal investigations. They are based on the various reports of J. Basheer. It is incorrect to suggest that the claim was purposely repudiated as the complaint was filed before this Commission. It is incorrect to suggest that the claim was not paid because the officers of the Insurance company were demanding money from the complainant which was not paid and for that reason J. Basheer was appointed.

9. WITH regard to the assessment of loss it is an admitted fact that J. Basheer was himself not qualified to assess the loss as he was not a chartered accountant. For this purpose, it would be worthwhile to refer to the cross -examination of J. Basheer. He has admitted that he was having no qualification in commerce. But, had employed a chartered accountant. Undisputedly the chartered account was not examined by the Insurance Company nor by J. Bhasheer.

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10. FURTHER relevant cross -examination is as under: Q. : I suggest to you that in a trial balance closing stock is not shown and it is reflected only in balance sheet. Is it correct or not? Ans. : I will not be able to reply the aforesaid question exactly. It can be replied by my CA. Q. : What is the date of issue of Form Serial No. 54 of 57 F(4)? R : The date mentioned is 16th February, 2000 and is marked A at page 423. Q : Why did you mention the date 16th February, 2000 as date of issue at page 70 of your report on illegible documents? R: There was tremendous amount of pressure brought by the insured on the Insurance Company who had then asked me to submit my report without delay. Hence, whatever document was submitted by the insured at that stage the report was released. Q: After looking into the document at pages 941 and 942 of Volume IV do you still stand with your comments of challan No. 54 at page No. 70 of your first report. R: In the light of clear copies submitted it could be inferred that the date of issue of challan No. 54 is 3rd February, 2000 and not 16th February, 2000. But I will stand with my comments as the originals were not shown to me and difference in challan numbers in respect of bills as per the invoice number of the moulder. Q: Did you enquire from the excise department whether the petitioner has deposited the form No. 57F (4) particularly Challan No. 54? R: There was no form deposited to the central excise stating they were all burnt and they have only produced the extent of damage to the material based on insurance surveyors report estimate of the last raw material. Q: Did you verify from the office of custom and excise deptt. Regarding date of issue of Challan No. 54 of Form No. 57F (4)? R: These documents were not available with custom during our visit and, therefore, I did not verify those documents. I did not verify any document in the custom and excise department I only verified total MODVAT claim and the production of the petitioner. It is possible that a party in Delhi can supply goods to the jobber/moulder in Delhi against issuance of Form No. 57F (4). I have not gone into the aspect that who has supplied the raw material to the insured and their whereabouts. Whenever there is doubt of invoices the bills of the vendors we verify from the parties, which is reflected in our reports. I have not placed the ledger along with my report. I might have incorporated the extract of ledger in my report. I am unable to comment whether the MODVAT figure, which I have taken while assessing the gross profit ratio, was taken from the ledger provided by the insured. In this view of the matter, we hold that the report submitted by M/s. J. Basheer and Associates is totally unreliable. Quantum of damages:

The next question is what should be the assessment of loss suffered by the complainant. Once we arrive at conclusion that the report of M/s. J. Basheer and Associates, investigators, is not reliable and is tailormade, then it is required to be discarded as a whole. There is no reason not to accept the assessment made by the joint surveyors, Mr. A. Asthana and Mr. Bhaskar Joshi. However, to avoid any confusion, we would refer to the comments submitted by the complainant with regard to the assessment of loss by Mr. J. Basheer.

11. THE summary of loss assessed by A. Asthana and Bhaskar Joshi, joint Surveyor and J. Basheer and Associates, investigator is given hereunder:

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Particulars Assessment of loss made by joint surveyors Assessment of loss made by made by A. Asthana and Co. and Mr. Second Surveyor M/s. J. Basheer Bhaskar Joshi appointed under and Associates Surveyors Pvt. Section 64UM (2) (Rs.) Sub -section (3) Ltd. appointed in violation of Sub - of Section 64UM (Rs.) section (2) read with 1 2 3 Building 49,51,042 24,62,450 Plant and Machinery 7,77,600 6,63,030 Finished Goods 15,37,043 5,47,239 Semi -finished goods 14,44,286 7,90,547 Raw Material 1,39,36,208 66,03,768 2,26,46,179 1,10,67,034 Less : Policy excess 10,000 10,000 Total 2,26,36,179 1,10,57,034

12. FOR each and every item of under -assessment of loss by J. Basheer, the learned Counsel for the complainant has pointed out that it is unjustified: (a) Buildings -It is pointed out that J. Basheer visited for the first time the factory premises after 7 months and had seen the building which was reconstructed after obtaining permission from the Insurance Company. It is also pointed out that J. Basheer and Co. has arbitrarily fixed the low rate of Rs. 225 per sq. ft. without any documentary evidence or proof and again wrongly deducted 15% i.e., Rs. 7,06,925 towards plinth and foundation and, thereafter, there is a further deduction of 30%, i.e., a sum of Rs. 14,13,000 towards undamaged portion of loss. In our view, these comments are justified because once the building is damaged, even if some portion remained undamaged for reconstruction purposes, the entire building is required to be demolished and reconstructed. (b) Machinery: For machinery it is pointed out that the second surveyor has committed error in - (i) taking the cost of D.G. set at Rs. 1,91,266, whereas the cost of the complainant is Rs. 1,77,495; (ii) taking the value of work benches on which coolers are assembled forming nucleus of the activity and form machinery items; (iii) taking depreciation at 10% whereas the joint Surveyors have taken at 5% basing on the satisfaction derived with regard to the working life of the machinery. (c) Stocks: For stocks it is pointed out - (i) that the second Surveyor (J. Basheer and Associates) was inconsistent in his approach of making valuation on the basis of the bills/documents produced by the complainant; (ii) the fallacy of the second surveyor with regard to excise record having bearing on 512 coolers and stated that the presumption that 512 number of cyclone affected coolers were present is baseless; (iii) with regard to gross profit ratio in the following terms: ''Your computation of G.P. ratio is also incorrect since raw materials consumed are taken at net of Modvat whereas you have once again subtracted Rs. 42,11,858 as Modvat. This is a gross error making the very basis of your (J. Basheers) stock assessment absolutely wrong. Please inform the basis of taking the figure of Rs. 42,11,858; (iv) the presumption of the second Surveyor that only 200 coolers were present in the production area is baseless, as the flaws in computation of loss on semi -finished goods by second Surveyor are as under: (a) the second Surveyor has calculated the loss for 200 number of coolers instead of 1538 number of coolers found in joint stock verification; and (b) only the cost of motors have been given for the balance quantity of 1338 number of coolers. (v) (a) With regard to finished goods the second Surveyor while assessing the finished goods he has taken cost of raw material at 60%

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whereas as per Annexure 37 it was worked out to 44.4%; (b) the deduction of 512 number of coolers is wrong; (c) the cost of sales as worked out by second surveyor at 23.6% is wrong which is actually 11%. (vi) with regard to raw materials it is stated that the assessment of raw materials by the second surveyor is wrong as he was under wrong presumption that all the raw materials were present in exact proportion as per bill of materials, as there is no industry where this is so, because no manufacturer buys nuts, bolts, packing materials, plastic components, etc. exactly in portion to the main components. Moreover, mini coolers do not have pumps, as the second surveyor has allowed 1,626 pumps to mini coolers.

In our view the loss assessed by the Joint Surveyors, Mr. Asthana and Mr. Bhaskar Joshi, requires to be accepted, particularly in view of the fact that Mr. Asthana visited the spot immediately when the fire started. Similarly, Mr. Bhaskar Joshi also visited the spot on 13.4.2000. Thereafter, they submitted the status report, draft assessment report and final assessment report after verifying relevant books of accounts and documents. Interest:

13. THE next question is with regard to the rate of interest. The complainant has produced on record that it had taken loan from the State Bank of India, Bhubaneshwar. The Bank was charging interest at various rates from time -to - time as under: Period Interest rate Periodicity of in % interest application 1.1.2000 to 31.3.2000 15.30 Quarterly rests 1.4.2000 to 11.8.2000 16.75 -do - 12.8.2000 to 18.2.2001 17.50 -do - 19.2.2001 to 31.3.2002 15.00 -do - 1.4.2002 onwards 14.05 Monthly rests 1.12.2004 till date 10.25 -do -

14. IT is, therefore, contended that the Insurance Company should be directed to pay the interest accordingly. Considering the aforesaid fact, in our view, it would be just and reasonable to direct the Insurance Company to pay the amount of loss at the rate of 12% p.a. from 3 months after the date of the fire, i.e., 4th April 2000, i.e., from 1st July, 2000. At this stage, we would note that in case of M.K.J. Corporation v. M/s. United India Insurance Co. Ltd. and Others, II (1995) CPJ 112 (NC)=(1996) 6 SCC 428, the Apex Court has directed the Insurance Company to pay the amount with interest at rate of 12% p.a. by observing as under: ''We think that a reasonable time of two months would be justified for them to take a decision whether claim requires to be settled or rejected in accordance with the policy. Therefore, two months would be computed from 30.10.1990. Accordingly, we give the benefit of the time taken to decide the claim up to 31.12.1990. The appellant -insurer is liable to pay interest from 1.1.1991 till date of payment.'' Conclusions: (a) From the aforesaid evidence on record, in our view the report submitted by J. Basheer and Co. is totally unreliable and is tailor -made with regard to the loss suffered by the insured on the basis of the suggestion made by the Regional Office at Orissa. This aspect is specifically stated by A. Asthana and Bhaskar Joshi, Joint Surveyors, in their report which is quoted above. (b) We also agree with A. Asthana and Bhaskar Joshi to the effect that the whole exercise of J. Basheer was beyond their

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competence and they had only entangled themselves into a big mess by creating an air of suspicion and by creating mountains out of mole hills. They had verified all the documents for the purpose of assessment. They had also noted that the insured made payments through regular Banking transaction. They also noted that the allegation of J. Basheer on the insured morale was absolutely absurd and baseless. In their comments they stated that assessment of J. Basheer ''is non -scientific and based on false presumptions. What has baffled us in that the loss assessed at Rs. 1,10,57,034 by the investigators tallies with an assessment of Rs. 1,10,67,23 thrust upon us by the Regional Manager during our meeting with him during 15th/16th September, 2000. This cannot be construed to be a sheer co -incidence''. (c) Further, nothing is pointed out why the report prepared by Mr. A. Asthana who visited the spot during the fire continuously for 3 days and who had taken inventory in the presence of Mr. S. Sahoo, Officer of the Insurance Company is not reliable. (d) From the record it appears that when the Insurance Company was prepared to pay the amount as assessed by M/s. J. Basheer and Associates, hence, there was no justifiable ground for repudiating the claim in its entirety by giving unjustifiable reason that the complainant had given false declaration and has adopted fraudulent means or devices to obtain benefit under the policy. This is most relevant when the Insurance Company sought the opinion of Justice Y.V. Chandrachud and accepted that there was no arson. In such a situation, it cannot be said that the complainant used fraudulent means to obtain benefit under the policy as it cannot be held that loss or damage was occasioned by wilful act of the insured. (e) It appears that the complainant has offended the officers of the Insurance Company by writing various letters for settlement of the claim at the earliest. In our view, when the Company has suffered huge loss, it is not unusual for the Company to insist for early settlement and not to wait eternally. For settlement of a claim 3 months or 4 months may be reasonable. But, the Insurance Company is not justified in appointing the third Surveyor after a lapse of 7 months of the occurrence of the peril. As the insured failed to accept the suggested amount of Rs. 1 crore, the Insurance Company repudiated the claim as a whole. That stand also cannot be justified. In such cases the whole purpose of protection against the peril by taking insurance policy is frustrated. We hope that the Insurance Company would strictly follow the regulations framed by the Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulations, 2002, so that unjustified actions and delays can be avoided.

15. IN the result, the complaint is allowed. The New India Assurance Company is directed to pay Rs. 2,26,36,179 with interest at the rate of 12% p.a. from the date three months after the date of the occurrence of the fire, i.e., the interest shall be paid from 1st July, 2000 till its payment. As the stand taken by the Insurance Company in repudiating the claim is totally unjustified, we direct the Insurance Company to pay to the complainant Rs. 1 lakh towards compensation. It would be open to the Insurance Company to recover the said amount from the defaulting officers. Complaint allowed.

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