

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 712 OF 2018

1. M/S. ABHAY ISPAT (INDIA) PVT. LTD.
HEAD OFFICE AT: 308, PLATINUM JAWAHAR
ROAD, GHATKOPAR (E),
MUMBAI-400021

.....Complainant(s)

Versus

1. NATIONAL INSURANCE COMPANY LIMITED
REGD. OFFICE AT: 3, MIDDLETON STREET,
KOLKATA-700071

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER**

For the Complainant : Mr. Karan Mehra, Advocate
: Mr. Happy Malhotra, Advocate

For the Opp.Party : Mr. Amit Kumar Singh, Advocate
: Ms. K. Enatoli Sema, Advocate
: Ms. Chubalemla Chang, Advocate
: Mr. Tovikato Chumi, Advocate

Dated : 14 Nov 2022

ORDER

1. Heard Mr. Karan Mehra, Advocate, for the complainant and Mr. Amit Kumar Singh, Advocate, for the opposite party.

2. M/s. Abhay Ispat (India) Private Limited (the Insured) has filed above complaint for setting aside repudiation letter dated 07.12.2017 and directing National Insurance Company Limited (the Insurer) to pay (i) Rs.16223193/- along with interest @18% per annum from the date of loss till actual payment, towards the insurance claim; (iii) Rs.5/- lacs, as the compensation for mental agony and harassment; (iv) the cost of litigation and (iv) any other relief which is deemed fit and proper, in the facts and circumstances of the case.

3. The facts as stated in the complaint and emerged from the documents are as follows:-

(a) M/s. Abhay Ispat (India) Private Limited (the Insured) was a company, registered under the Companies Act, 1956 and engaged in the trade of galvanized steel coils and hot rolled plates. The Insured had a tie up with steel service centre at MIDC Taloja Navi Mumbai and warehouses at various places, including inter-alia at MIDC Taloja, Ahmedabad, Chennai, New Panvel etc.

(b) National Insurance Company Limited (the Insurer) was a public sector corporation and engaged in the business of providing different types of insurance services. The Insured obtained "Standard Fire and Special Perils Policy" No.240100/11/15/3300000133 for the period of 28.04.2015 to 27.04.2016, from the Insurer, for sum insured of Rs.70/- crores, on Stock of all kinds of Galvanizes Plain, Galvanized Corrugated, Cold Rolled Coils, Sheets etc. pertaining to Insured's trade, their own, in trust or on commission, lying at various locations as mentioned in the Policy. Present loss related to the location Sri Srinivasa Metal Industries, 3/136, Anna Salai, Andarkuppam, Dadapakkam, Chennai, Tamil Nadu, at Serial No.11 of the list.

(c) The Insured used to import/purchase Colour Coated Galvanized Steel Coil and store it at the location Sri Srinivasa Metal Industries, 3/136, Anna Salai, Andarkuppam, Dadapakkam, Chennai, Tamil Nadu, from where it is sold/supplied in market. Due to continuous heavy rain in Chennai, warehouse of Sri Srinivas Metal Industries, 3/136, Anna Salai, Andarkuppam, Dadapakkam, Chennai, Tamil Nadu was completely flooded with muddy water on 30.11.2015 at 20:00 hours. The flood water receded till 05.12.2015. The muddy water damaged Pre-painted Galvanized Steel Coil.

(d) The Insured informed the Insurer about incident of inundation at its warehouse and damaged caused by it on 07.12.2015 and preferred insurance claim of Rs.47500000/-. The Insurer appointed Professional Insurance Surveyors & Loss Assessors, Chennai as the surveyor. The surveyor inspected the warehouse on 11.12.2015, made inventory and took photographs. The Insured, with the permission of the surveyor shifted the goods from affected warehouse to another warehouse at 69, Annai Gangaammal Nagar, Ernavoor, Chennai from 13.12.2015. The surveyor, vide letter dated 15.12.2015, demanded the papers, for assessing loss. The Insured provided all the required documents on 18.12.2015. The surveyor, vide letter dated 26.12.2015, again demanded some more papers, which were supplied on 07.01.2016 and 12.03.2016.

(e) The surveyor vide email dated 02.03.2016, sought for formal permission of the Insured for auction of the damaged colour coated coils by inviting tenders and advertising it, as per CVC Guidelines, as the value of salvage was likely to be more than Rs.5/- lakhs. The Insured gave its approval vide email dated 16.03.2016. Due to inordinate delay in settlement of the claim, the Insured made representation before Grievance Redressal Cell on 21.05.2016. The Insured wrote a letter dated 24.05.2016, to the Insurer for updating the stage of settlement. The surveyor advertised for disposal of salvage inviting tenders on 10.06.2016 in Financial Express (All India) Editions and Dinamalar (Tamil), Chennai Edition and opened tenders on 25.06.2016 and accepted highest tender for Rs.61631747/-. The surveyor submitted his Final Survey Report on 27.07.2016, assessing the loss to Rs.16223193/-. The Insured gave an email dated 30.08.2016 for expediting the settlement, which was responded by the Insurer vide email dated 30.08.2016. The Insured again gave an emails dated 02.09.2016, 20.09.2016 and 12.10.2016 for settlement.

(f) After about 7 months of Final Survey Report, the Insurer appointed Shri R.K. Thennarasu as an Investigator and sought co-operation of the Insured vide email dated 09.02.2017. The Insured vide email dated 14.02.2017, demanded a copy of Final Survey Report. The Insurer, vide email dated 14.02.2017, again sought co-operation of the Insured with the Investigator. The Insured vide emails dated 24.04.2017 and 29.04.2017 to various higher officers of the Insurer, including Chief Managing Director, requested to intervene in the settlement of the claim, which was being illegally delayed by appointing an Investigator. The Insured wrote a letter dated 29.04.2017 to Minister of Finance, Government of India, informing harassment in illegal manner. Then a meeting was held on 22.05.2017, in which, it was resolved that instead of appointing an Investigator, the queries be made from the surveyor, in respect of any doubt. The Insured applied under Right to Information Act, 2005, on 02.05.2017, for supply of copies of Final Survey Report dated 27.07.2016 and Initial Loss Advice Letter dated 16.12.2015, which were denied vide letter dated 09.06.2017. The Insured applied to appellate authority for above papers on 27.06.2017. The Insured vide letter dated 10.08.2017, requested to release of 75% of the claim. The Insurer, vide letter dated 12.09.2017, repudiated the claim. The Insured made a representation to Deputy General Manager vide letter dated 02.10.2017, against repudiation of the claim, which was rejected on 07.12.2017. Then this complaint was filed on 20.03.2018, claiming deficiency in service.

4. The Insurer filed its written reply on 25.07.2018, and contested the case. The Insurer stated that as soon as the Insured gave information regarding loss, the Insurer appointed Professional Insurance Surveyors & Loss Assessors, Chennai, as the surveyor, for conducting survey and assessing loss. The surveyor gave an Initial Loss Advice Report dated 16.12.2015 but did not recommend for interim payment. The surveyor submitted Final Survey Report dated 27.07.2016. It was evident from Initial Loss Advice Report and Final Survey Report that the Insured could not factually establish the nature and extent of loss. The Insured claimed that 461 colour coated steel coils were damaged. The coils weighted to about 4 to 4.5 MTs. This needed to be segregated and exact weight ought to have been quantified. The Insurer vide email dated 28.09.2016 and letter dated 16.11.2016, asked the surveyor to explain the nature and extent of damage and also the test, conducted to ascertain the damage. The surveyor replied that the coils were totally/partially submerged in contaminated floodwater, which entered the coils and trapped in between the windings and coils, which resulted in rusting/peeling off the paint and in delamination. The colour coating was damaged beyond possibility of repair. The surveyor supplied the report of JSW Steel, in support of his above opinion. This opinion of surveyor was not acceptable inasmuch as not a single coil was opened for test or to form an opinion that the water had entered outer metallic plastic packaging of the coils. Not a single sample test was done and its photograph was taken by JSW Steel or the surveyor. The said report referred to colour coated sheets/coils and not galvanized colour coated steel coils as was the description of actual stock. According to the literature fitted as performance of paint coating on galvanized steel coil, the colour coating is provided in steel coils and two coats of paint is more popular on galvanized steel. Generally conversion coating of 2-4 microns is given in chemical section. First coat of primer epoxy is applied on top

and bottom side with 3-5 microns in a first roll coater. Second finished coat of either polyester, PVDF or plastisol is applied on top surface with 15-20 microns thickness and back coat of 9-10 pm in second roll coater. The JSW's brochure for galvanized steel shows the amount of Aluzinc their promising in their products, which again proves that 70 gms sq.mtr coating in the coils was adequate and as per market standards. So the contention of the surveyor that the top coat was only 15-16 pm and back coat of 7-9 pm only and Aluzinc coating was also 70 gms per sq.mtr, which is very thin and hence the contaminated water reacted with the PE and Aluzinc coating resulted in delamination and was observed by the surveyor through naked eyes, even in the inner windings does not stand tall as the coils were industry standards and in no way inferior. It was admitted that delamination was a very remote possibility. The brochure of JSW steel reveal that galvanized steel from JSW steel is corrosion resistant, eco-friendly, durable, lightweight and high in strength. During process of galvanizing, zinc reacts with steel and forms zinc-iron. These layers are bonded metallurgically to the base steel, with the relatively pure zinc on the outer surface to act as protective coat. It creates an impervious barrier on the steel, thus preventing it from coming in contact with moisture and preventing corrosion. The galvanization process protects the steel from corrosion and enables the sheet to achieve excellent adhesion and abrasion resistance. As per brochure of JSW steel, the damages as described by the Insured and the surveyor to the coils was a very remote possibility. In the absence of authentic test and analysis, the loss on the said stock of galvanized colour coated steel coils/pre-painted galvanized steel coils, was not proved. The surveyor admitted his inability to unwind each and every coil at the location. As per Initial Loss Advice Report, the Insured had shared the warehouse with Sri Srinivas Metal Industries, who was engaged in processing of steel coils. The Insurer took quotation from Sri Srinivas Metal Industries for the job work of unloading, de-coiling, cutting and loading on the truck at their location i.e. flood affected premises, from which it is proved that de-coiling could have been done at the risk location itself. Visual observation of the surveyor through naked eye to form opinion that the paints were peeling off and the coils were rusted was not sufficient. The surveyor observed that the bottom rack showed dust accumulation leaving top tool as unaffected. The observation of the surveyor that flood mark was visible up to 5 feet, is not proved from the photographs taken by the surveyor. The surveyor failed to assess the stock of Sri Srinivas Metal Industries, who was sharing the flood affected location. Although the surveyor noted that out of total 461 coils, the Insured had sold 187 coils but while assessing the loss, total 461 coils were taken into consideration. Remaining 274 damaged coils, approximate weight 1500 MTs, were put for tender as salvage disposal. Weight of 274 coils @4.5 MTs per coils come to 1233 Mts., while @4 MTs comes to 1096 MTs. Loss has been wrongly assessed on the basis of 1500 MTs. The Insured gave stock position at the flood affected location showing stock of 1799.41 MTs as on 30.11.2015, vide email dated 26.09.2016. Later on informed that stock of 1983.817 MTs at this place. The surveyor assessed the loss on the basis of 2020.73 MTs. These discrepancies had not been explained. The surveyor in his email dated 16.08.2017 admitted that he had wrongly included 187 coils in total loss, which had already been sold by the Insured. The Insured, vide letter dated 27.11.2015, asked for addition of the location i.e. Survey #617 plot #69, Annai Gangaimmal Nagar, Emavoor, Thiruvottiyar, Manali Expressway, Chennai-600019, in the policy, which was endorsed on 03.12.2015 with a waiting period of 45 days. The surveyor inspected second location on 11.12.2015 and did not find any stock at that place. The Insured could not give any explanation of the stock of the second location. This raises a suspicion in respect the presence of uninsured damaged stocks at the second location. The Insured transported the stock from affected location to second location without any information to the Insurer. The affected structure was ground floor + First floor and/or the cutting line. The surveyor did not make any observation in this respect nor the photographs taken by the surveyor depict it. The surveyor vide email dated 18.05.2016, sought for disposal of salvage. The Insurer vide email dated 25.05.2016, gave consent for disposal of salvage through e-tender as estimated value of salvage was more than Rs.5/- lakhs and not on 16.03.2016 as alleged. But the surveyor adopted the procedure for advertisement in newspapers for tender, allowing 15 days for inspection. Total 9 tenders were received. The tenders were opened on 25.06.2016. The surveyor sent the minutes of tender opening proceeding to the Insurer on 27.06.2016, allowing the Insured to retain the salvage at the rate of Rs.30500/- per MT while the highest price of tender was Rs.29500/- per MT. The surveyor took into account total 469 coils weighing 2020.713 MTs, for assessing loss. The surveyor caused unreasonable delay in disposal of salvage. In advertisement no details of exact product, exact quantity of the material was not given. The directors of the Insured namely Mr. Vinesh Mhta, Mr. Navin Mehta and M/s. Colour Shine Coated Private Ltd. were participated. EMD submitted by various participants were issued from the same branch of the bank and with sequential number. The instruments of tender for Easwari Traders and Veeram Corporation were purchased by the same persons. Signatures on the tender papers and minutes of meeting for M/s. Jenil Steel Pvt. Ltd. were of same person, who had signed the minutes for the Insured. From above facts, it is clear that the claim of the Insured was based

upon fabricated papers and Final Survey Report was collusive and is not based upon documentary evidence. After receiving Final Survey Report dated 27.07.2016, the papers were examined by the competent authority and it was found that the report was not based upon reliable documents. Then the Insurer appointed an Investigator and informed the Insured in this respect vide letter dated 02.01.2017, but the Insured did not permit him for investigation. Then in the meeting dated 22.05.2017, it was decided that the Insurer may clear the doubts from the surveyor. In pursuance thereof, the Insurer wrote letters to the surveyor and the Insured and after considering their reply, the claim was repudiated vide letter dated 07.12.2017. Delay has occurred as the matter has been complicated by the Insured and surveyor. There was no deficiency in service on the part of the Insurer.

5. The complainant filed rejoinder reply on 17.10.2018, in which, the facts stated in the complaint were reiterated. The complainant filed Affidavit of Evidence of Samir N. Mehta Mehta and documentary evidence. The opposite parties filed Affidavit of Evidence of Jaisurya Krishnan, Assistant Manager and documentary evidence. Both the parties have filed their written synopsis.

6. We have considered the arguments of the counsel for the parties and examined the record. The claim was repudiated vide letter dated 07.12.2017, on the grounds of misrepresentation, mis-description and non-disclosure of material particular, invoking the terms and conditions of General Condition of the Policy, in particular (i) the Insured falsely reported to the surveyor that de-coiling/unwinding facility was not available with it and the Insured was only trader of colour coated galvanized coils although the Insurer obtained quotation for de-coiling at the affected location. (ii) Lot of irregularities were found in invitation for sale of salvage. (iii) The Insured did not allow the Investigator for investigation and thus violated the terms and conditions.

7. The Insured narrated the incident to the surveyor as "Flood water entered its factory premises on 01.12.2015 at 20:00 hours and reached up to height of 5 feet. It receded on 02.12.2015 between 14:00 hours to 15:00 hours. There was water all around from 30.11.2015 to 05.12.2015." The Insured informed the Insurer about the loss vide letter dated 07.12.2015. The surveyor inspected flood affected location on 11.12.2015. The Insured shifted the damaged coils from flood affected location to another warehouse at 69, Annai Gangaammal Nagar, Ernavoor, Chennai from 13.12.2015. The Insurer stated that shifting was done without any information to the Insurer. The Insured has filed a copy of letter dated 12.12.2015 (Annexure-C/4 to the complaint), seeking permission of the surveyor for shifting the coils, stating that Sri Srinivas Metal Industries was mud flooring godown and the water was still logging at the ground, which will deteriorate/damage the coils. The surveyor vide letter dated 13.12.2015 granted permission, for shifting. As such it is not liable to be accepted that the shifting was done without any information.

8. The surveyor in Initial Loss Advice and Final Survey Report dated 27.07.2016, noted that total quantity of damaged coils as 461. Out of which, the Insured had sold 187 coils and 274 damaged coils weighing approximately 1500 MTs. remained. But the surveyor committed mistake in assessing the loss on the basis of 469 coils weighing 2020.713 MTs. When the Insurer pointed out this discrepancy in the survey report, then the surveyor vide email dated 16.08.2017, reassessed the loss to Rs.9640900/-. In this email, the surveyor has assessed average weight of 4.383 MTs per coil. This cannot be said to be misrepresentation on the part of the Insured.

9. The Insurer took plea that there was no reliable evidence to prove the damage to the coil except the visual observation of the surveyor that the paints were peeling of the coils. The surveyor in Initial Loss Advice report dated 16.12.2015 has mentioned that these coils could not be sold as a "first grade coil" in the market. Only on the basis of literature and presentation of the manufacturer, this observation is being rebutted by the Insurer. There is nothing on record that the Insurer wrote any letter to the surveyor to unwind each and every coil at the location and obtain separate chemical examination report in respect of damage of each coil. This ground is not a ground in repudiation letter. Supreme Court in **Galada Power and Telecommunication Ltd. Vs. United Insurance Company Ltd., (2016) 14 SCC 161** and **Saurashtra Chemical Ltd. Vs. National Insurance Company Limited, (2019) 19 SCC 70**, held that the ground, other than taken in repudiation letter, cannot be permitted to be raised before the Court.

10. The surveyor vide email dated 03.02.2016, sought permission of the Insurer for disposal of the salvage. The surveyor vide email dated 18.05.2016, informed that MSTC E-auction would be done by the Insurance Company. He had registered with MSTC and had to execute and agreement with them. He made query as to whether NIC was registered with MSTC? The

Insurer, vide email dated 24.05.2016, informed as “We have referred Fire & Engineering Claims Manual dt.06.12.2013 -Annexure-VI (Point no.6) clearly stating that for estimated salvage value of more than Rs.5 lacs, the surveyor should either go for press advertisement in national newspaper or MSTC e-tender on behalf of the Insured”. We may advise surveyor to go ahead with MSTC e-tender in the above case. The Insurer did not inform as to whether NIC was registered with MSTC as such as per Fire & Engineering Claims Manual dt.06.12.2013, auction was done through advertisement in national newspapers.

11. The Insurer took the ground that the Insured had not allowed the Investigator for investigation and thus violated the terms and conditions. In the meeting held on 22.05.2017, it was resolved that instead of appointing an Investigator, the queries be made from the surveyor, in respect of any doubt. As such at a subsequent stage, it could not be said that the Insured had not allowed the Investigator for investigation. In view of the aforesaid discussions it is proved that repudiation of the claim was not on valid grounds.

12. In the repudiation letter, it has been mentioned that lot of irregularities were found in respect of responses to your invitation for sale of salvage. In the written reply, the opposite party has stated in paragraph (xiii) that the advertisements tendering invitation did not depict the specific of the stock correctly as the exact product and exact quantity of the stock has not been mentioned. The Directors of tender participants M/s. Colour Shine Coated Pvt. Ltd. include Mr. Vinesh Mehta and Mr. Navin Mehta, who are also Directors of the Insured. The instrument submitted as “earnest money deposit” in tender proceeding by various participants were issued from the same branch of the bank and with sequential number. Easwari Traders and Veeram Corporation Instruments were purchased from TMB bank by the same person in tendering process. Signature of one of the tenderers namely, M/s. Jenil Steel Pvt. Ltd.in their meeting documenting their presence is the same as that of the signatory of the Insured in their excise cum delivery challan. On the basis of these facts, it has been stated that all the tenders were related to the Insured inasmuch the Directors were some of the papers, which were prepared for participants of the tenders were obtained by the same person. As such each of the tenderers were knowing the amount of tender and it is collusive tender proceeding. This fact also creates doubt due to reason that ultimately the Insured themselves have retained the salvage for token higher money of Rs.1000/- per metric tonne. The Director of the Insured informed the surveyor that flood water entered the factory premises on 01.12.2015 at 20 hours and receded on 02.12.2015 during 14 hours to 15 hours. Therefore, the goods remained under the water for about 19 hours only. Looking to the material i.e. factory made colour quoted galvanised steel coils it does not inspire confidence i.e. this material will be damaged reducing its value about 25% by simply being waited for 19 hours in water. In such circumstances, it is appropriate that the quantum of loss which has been assessed by the surveyor in his e-mail dated 16.08.2017 is liable to be reduced to 50% as such we assess the loss to Rs.4820450/- .

13. Regulation 9 of The Insurance Regulatory and Development Authority (Protection of Policyholder’s Interest) Regulations, 2002 directs the surveyors to submit their Survey Report within 30 days and in any case within 45 days, from the date of his appointment. The Insurer has been directed to settle the claim within 30 days of receipt of Surveyor’s report. In case of delay of more than six months in the settlement, the insurer shall be liable to pay interest at a rate which is 2 per cent, above the bank rate prevalent at the beginning of the financial year, in which the claim is reviewed by it.

In view of this statutory provision, the Insured is entitled to interest @ 9% per annum after six months of the loss.

ORDER

In the result, complaint is partly allowed. The opposite party is directed to pay Rs.4820450/- with interest @9% per annum from 01.06.2016 till the date of payment, as insurance claim, within a period of two months from the date of this judgement.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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DR. INDER JIT SINGH
MEMBER