

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

Reserved on : 25.08.2026
Pronounced on : 15.10.2026

CONSUMER COMPLAINT NO. 391 OF 2015

Sapphire Papers Mill (P) Ltd., Regd. Office : 3rd Floor, Leela Shri Building Subash Market, George Mohabert School Road, Siliguri, Pin – 734001, West Bengal.

And Works at:

National Highway-31, Jagannathpur, Bidhan Nagar, District Darjeeling (West Bengal), Rep. through its Director

.... Complainant

Versus

National Insurance Co. Ltd., Having its regd. Office at :

(i) 3, Middleton Street, Kolkata – 700071.

And also at:

(ii) Division No. XX,42/C J.L. Nehru Road, Jeevan Sudha Building (6th Floor), Kolkata – 700071

Through its Managing Director/ Duly Constituted Attorney.

.... Opposite Party

BEFORE:

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

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

For the Complainant : Mr. Vijay K. Jain, Advocate

For the Opposite Party : Mr. Jaladhar Das, Mr. Karthek Padmanabhan,
Advocates

ORDER

PER BHARATKUMAR PANDYA, MEMBER

1. The present complaint has been filed by the complainant – Sapphire Papers Mill (P) Ltd. against the opposite party insurance company alleging deficiency on their part by wrongfully and illegally denying the insurance claim. Brief facts of the case, as narrated by the complainant, are that the Complainant obtained a Standard Fire & Special Perils Policy (SFSP) covering plant and machinery, Stocks & General Stores & Chemicals of all kinds, and stock of raw materials and/or stock in progress and/or semi-finished and/or finished stocks, for the period 11.02.2011 to 10.02.2012, for an amount of Rs.16.32 crores. On 29.12.2011, due to electric short circuit, fire broke out in the factory premises of the complainant and OP insurer was intimated about the same on the very same day and the claim was also filed before the OP insurer. It was

huge fire causing extensive damage to stock, plant and machinery, shed and building, etc. and the fire brigade battled for hours to control the said fire. OP also immediately appointed the surveyor Mr. P.K. Chakraborti Surveyor & Loss Assessor to visit and survey the site. Preliminary survey report was submitted by the surveyor on 10.01.2012. The Complainant was constantly chasing the Surveyor appointed by the OP, who was raising queries and demanding documents and records. Each and every information, as sought by the surveyor, was duly supplied by the complainant. But it was only after lapse of over six months, that is, on 02.07.2012, surveyor submitted report, whereby even after admitting that insurance cover is to the tune of Rs.16.32 crores, surveyor admitted the claim only to the extent of Rs.43,43,887/-. Thereafter, on 25.10.2012, surveyor submitted Addendum Report whereby the assessment of loss was further reduced and assessed only to the extent of Rs.38,28,898/-. Being aggrieved with the settlement, complainant continuously approached the the OP insurer for his grievance about the settlement of claim and also pointed out the errors and omissions in the report of the Surveyor. When no other option was left, complainant was compelled to accept the settlement as indicated by the OP insurer. Complainant wrote various emails to the OP complaining about wrongful settlement of their claim but no response was ever received from their side. In these circumstances, complainant had no other option but to file the present consumer complaint on 15.05.2015 praying for following reliefs:

1. To award and grant a sum of Rs.1,40,83,029/-, being the balance amount of claim under the contract of Insurance for loss and damage suffered on account of accidental fire in the factory premises of the Complainant;
 2. To award and grant interest @ 18% per annum from the date of accidental fire being 29.12.2011 till the payment of the balance claim;
 3. To award and grant a sum of Rs. 10 lakhs towards compensation and damages for pain and agony, Rs.50 lakhs for deficiency in service and grant other costs of the present proceedings.
2. The complaint was resisted by the OP insurer by way of reply to the complaint filed on 08.02.2015. By way of written statement, OP insurer denied various allegations levelled by the complainant by stating that there was no deficiency in settling the claim of the complainant and the assessment made by the surveyor was based on facts of the case and the same does not suffer from any infirmity. As per the OP insurer, the present complaint shall be dismissed outrightly on the ground that the Complainant, after having received a sum of Rs. 38,28,898/- in full and final settlement, cannot subsequently in law raise any grievance of file consumer

complaint. The averment of the OP insurer is further justified by quoting judgement of the Hon'ble Supreme Court in the case of *United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton and General Mills* (1999) 6 SCC 400, wherein it is held as under:

"4. The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by mis-representation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, mis-representation, under Influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief."

2.1 It is further submitted by the OP insurer that the once the insured accepted a particular amount in full and final settlement of its claim, insured cease to be a 'Consumer' as per the Act and he is estopped from claiming any further amount from the insurance company. It is a settled law that a person cannot approbate and reprobate at the same time and once insured has made a choice between two course of conduct available to him he cannot resile. It is submitted that the settlement constitutes a binding contract between the parties and that complainant cannot claim further amount after remaining silent for almost 7½ months. It is also submitted that the present complaint is only an afterthought to have unlawful gain. Further, it is averred by the OP that when complainant unconditionally accepted a sum of Rs.38,28,898/- in full and final settlement of its Claim and in consonance with the consent letter and also executed discharge voucher after such acceptance, complainant cannot undertake further litigation by ignoring or overlooking the conditions of finality subject to which the benefits were extended to it under the settlement. Complainant cannot reject what is inconvenient and onerous while it accepts what is beneficial to its interest. Complainant therefore cannot and should not be permitted to change its mind after unequivocal acceptance of the amount. Moreover, the survey report prepared by the Surveyor, who is duly licensed by the Insurance Regulatory and Development Authority (IRDA) and is appointed in accordance with the provisions of Section 64UM Of the Insurance Act, 1938, is a very important and vital piece of evidence and should not be brushed aside lightly without any strong contrary evidence brought on record by the complainant. The Survey Report is a document containing the findings of an expert in the field of survey and assessment of loss suffered from the risk insured and all the deductions made in

assessment of loss are as per the report and are absolutely justified and hence complainant has no merits.

3. Order dated 19.05.2025 passed by this Commission recording the contentions is reproduced below:

"Heard Mr. Jain, learned counsel for the complainant, who has advanced his submissions contending that even though the opposite party/Insurance Company has proceeded to settle the claim on the signing of the discharge voucher by the complainant, according to Mr. Jain, this acceptance of the offer was under a compulsion, inasmuch as, the complainant had been suffering huge losses and the claim remained unsettled. There were certain bank debts on the complainant and therefore it was in these dire circumstances where the complainant was compelled to accept the offer made by the Insurance Company.

The contention therefore is that any settlement stated to have been accepted by the complainant in the background of the case does not amount to a voluntary acceptance of the entire claim and is therefore not a full and final settlement of the loss suffered that remains unindemnified by the Insurance Company.

On the other hand, learned counsel for the Insurance Company has vehemently urged that the aforesaid contention is incorrect, inasmuch as, the letter of acceptance after the intimation was given to the complainant categorically accepts the offer as full and final settlement without any protest. The submission therefore is that the acceptance letter alongwith the signed discharge voucher on 26.09.2014 finally settles the claim and therefore the complainant had no cause of action to question the quantum by moving this complaint on the ground that the payment had been received under protest.

We have prima facie perused the documents but since the case would require some extensive hearing and there is no time left today, let the matter be listed at 2.00 p.m. on 29.09.2025."

4. Relevant portion of survey report dated 02.07.2012 prepared by P.K. Chakraborti & Associates is reproduced below:

3.0 It is observed from your submitted documents that the total cost of procurements of materials of machinery items is about Rs. 74.05 Lacs against the claimed amount of Rs. 49.46 Lacs. As such, to justify your claim for damages, we may have to depend on your submitted photographs of affected machinery items, if no other basis is available to us.

4.0 We have received a claim for machinery items like Sheet cutter, Rewinder, Pop Reel, Guillotine, Broke Pulper, Dryer EOT Crane, FFF for finishing section. Please let us know the functions of the individual machinery items related to the affected finishing section of the paper mills. In our considered opinion the Dryer Machine is not in the vicinity of the finishing sections and as such, it should not be affected due to above fire event and no photographs of damages for the same is also received by us.

5.0 Please submit the Bills & Payment Receipts against the cost of news paper advertisements as well as challan confirming payment made to the fire service's dent."

6.5 The insured submitted the Process of manufacturing paper as per **Encl. No. 15.0** as below:

"As per our observation regarding the process of paper manufacturing, the pulp is converted into paper sheets and as those sheets are dried moving through the set of driers, the paper is rolled on the Tambour rolls. The rolls which are rolled with paper up to certain quantity of paper are one by one lifted and replaced by other empty rolls in continuous process on the machine by crane. Those rolls with paper are accumulated on the floor in front of machine waiting to be loaded on the cutter for sheeting or on the re-winder for reeling. The rolls thus cut into various sizes of sheets on the cutter or into reels of various sizes on the re-winder machine are taken by the finishers for weighing and packaging in case of reels and counting manually and then packaging in reams in case of sheets. The reams thus generated are then bundled by sewers.

So, the work in process/Stock in process consist of all quantum of such stocks which is Tambours rolls. Under cutting on the Cutter machine, under re-winding on re-winder machine and under manual counting and packaging of reams.

The quantity of WIP/SIP is taken as per stock register maintained by M/s Sapphire Paper Mill Pvt. Ltd. for WIP/SIP, which is true and fair and as per Cost Accounting Standard. The value of the same is arrived by taking the cost of Raw Materials and adding there on the cost of process i.e. Electricity and Labour cost, Cost of Running the machine and other expenses directly related to the production."

7.12 We addressed our mail dt. 25.05.2011 for clarification on the received documents as detailed below - Vide Encl. No. 28.0:

- * We are preparing your final Survey Report and assessment of loss. We require the following further clarifications/documents in regard to your submitted claim Bill.

1.0 Please submit the computations along with reference documents for both quantities and rates - whether submitted or not submitted - immediately against your

claim for Finished Goods - Rs. 56,58,750.00
Claim for WIP - Rs. 56,19,510.00

2.0 Please mail the soft copies of the detailed itemwise claimed items /quantities cost for machinery & Building items in excel format for our detailed assessment of loss with reference to your submitted Tax invoices /Bills/order copies etc

8. Basis of Assessment & Adjustment of loss:

8.1 The insured submitted their claim form duly filled in - vide Encl. No.31.0 - enclosing a claim bill of Rs. 1,79,11,638.16-vide Encl. No.32.0 - along with all supporting documents as per enclosures prefixed with "S" with the details of damages to the machinery & Building items and the cost of Repair and replacements of the same - vide Encl. No. 33.0 to 33.12.

8.2 Regarding the claim for loss of Finished goods, the insured submitted the excise records (RG-I) of Finished products - vide Encl. No. S-1 & S-2.0, the total stock certificate of Finished Products on the date of loss as issued by their Auditor - vide Encl. No. S-70.0 - which is also confirmed by the audited Balance Sheet as on date of loss vide Encl. No. S-73.0 submitted by the insured. Dimensional drawing of the insured for their factory complex - vide Encl. No. 30.0 - shows that the insured has two finished godowns, one attached with the finishing section of

the factory totally affected by the fire and another detached and isolated from the factory shed not affected by the fire.

- 8.3** *Due to the above fire in the finishing section of the insured and, the attached Finished product godown are observed totally affected as per the enclosed photographs. Since there was no separate stock records for the two finished product godowns - where the stock height are more or less same we have computed the quantum of F.Goods damaged on proportionate basis of the godown areas as computed in Annexure "A" of this report. For rate per MT. of the affected/damaged F.Goods, we have considered the rates from stock certificate as issued by the auditor on the date of loss - vide Encl. No. S-70.0. We have further cross checked the rate of closing stock of finished goods from the Tax Audit report submitted by the Auditor for the accounting year 2010-11 - vide Encl. No. S- 80.0 and the closing stock value - vide Encl. No. S-78.0 (Audited Balance Sheet for 2010-11) as = Rs. 4237035.00/206718.5 Kgs. = Rs. 20,500.00/MT. Since the computed rate at Rs. 20,180/-MT is less than claimed rate of Rs. 20,500.00/MT., we have considered the lower rate in our assessment of loss.*
- 8.4** *We have further considered 5% of the computed quantity of stocks in the attached godown which is affected/damaged due to the above fire as non-moving/ storage loss.*
- 8.5** *Regarding the claim for loss of stock-in-process, the insured submitted the WIP records of semi- finished goods vide Encl. No. S-5.0, the stock certificate of WIP on the date of loss as issued by their auditor vide Encl. No. S-70.0. But from the enclosed photographs snapped by us, it is observed that there were around 5 Tumbo Rolls retained by the insured/not disposed off. It is reported by the insured that the weight of each Tumbo Roll is 2.20 MT. on an average. As such we have deducted the cost of stocks for 5 nos of Tumbo rolls in our assessment of loss. For the average rate of affected/damaged stock-in -process per MT, we have considered the stock certificate on the date of loss for the quantity of WIP and its value at cost - vide Encl. No. S-70.0. The quantity of affected/damaged stock-in-process and its rate are computed in Annexure-"B". Since the computed rate at Rs. 19,580.00/MT. is more than the claimed rate at Rs.19,500.00/MT., we have considered the claimed rate as the basis of our assessment of loss.*

PLANT AND MACHINERY:

- 8.7** *Regarding the claim for Plant and Machinery, the insured submitted the list of machineries damaged in the fire affected finishing area as shown in layout map - vide Encl. No. 30.0 - Damages of different machinery - vide Encl. No. 29.0. On the basis of the inspection report the insured submitted item wise list of items claimed / repaired/replaced by the insured- vide Encl. No. 33.0 to 33.12 - their procurement details - vide Encl. Nos. S-15.0 to S-53.0. The damaged items and quantities are more or less observed in the photographs snapped in our presence by the insured after dismantling/ replacements. As such, the replaced items are considered in our assessment of loss excepting the Pallet Trucks claimed as total damaged. However, the components required for repairing of the Pallet Trucks are considered. During our last visit on 14.04.2012 we also verified the vicinity of the fire affected machinery as claimed by the insured. The motors of the Broke Pulper is excluded as per exclusion of the electrical clause of the issued Standard Fire and Special Perils Policy, since the fire originated from the location as confirmed by the insured - vide Encl. No. 29.0. As depreciation of 50% is considered for the period of their use since majority of the claimed items of machineries are limited life items. The damaged items have no commercial value in use. As such, we have considered the metallic salvage value @5% of their procurement value.*

STOCK

8.11 The insured submitted the value of stock in trade on the date of loss (28.12.2011) – vide Encl. No. S-70.0 – certified by their Auditor. As per that

The value of stock of Finished Goods	= Rs. 1,13,67,471.00
WIP	= Rs. 56,34,034.00
Packing Material	= Rs. 1,02,076.00
Stores & Spares	= Rs. 3,78,302.00
Total value of stock other than Raw Material	= Rs. 1,74,81,883.00

The covered value of stock of General Stores & Chemicals, Raw Materials and Finished Goods is Rs.30,00,000.00 as per policy schedule as per Annexure 1 – vide Encl. No 3.4. It is observed that Raw materials are covered under a different heading, we have considered this raw material as semi- finished goods which is also damaged in the above event. Since the value of stock in trade at Rs. 1,74,81,883.00 as above is more than the covered value at Rs. 30,00,000.00, underinsurance will be applicable to that extent of undercover while adjusting the above loss.

8.12 From the audited Balance sheet on the date of loss (28.12.2011), the gross block value of Plant & Machinery – vide Encl. No. S-74.0 – is Rs. 10,59,69,438.00 (P&M) + Rs. 61,594.00 (Machinery – Work shop) + Rs. 1,04,60,770.00 (Electrical Installation) = Rs. 11,64,91,902.00. Considering appreciation in value is equivalent to its depreciation, the present market value of Plant and Machinery will be Rs. 11,64,91,802.00. Since this value is less than the covered value at Rs. 12,15,00,000.00 – vide Encl. No. 3.1, no underinsurance will be applicable while adjusting the loss for Plant & Machinery items.

8.13 From the audited Balance sheet on the date of loss (28.12.2011) the Gross block value of factory building is Rs. 2,31,77,851.00 – vide Encl. No. S-74.0. Considering appreciation in value is equivalent to its depreciation, the present market value of factory building will be Rs. 2,31,77,851.00. Since this value less than the covered value at Rs. 2,35,00,000.00 (Vide Encl. No. 3.1) – Rs. 2,00,000.00 (Vide Encl. No. 3.4 for building of labour quarters) i.e., Rs. 2,33,00,000.00, no under insurance is applied while adjusting the loss on building.

9.0 Assessment and Adjustment of Loss:

Assessed Amount (Rs.)

Stocks :

Assessed value of Finished Goods of

171.06 MT @ 20,180.00/MT – as per Annexure “A” = Rs. 34,51,991.00

Value of WIP of 287.795 MT

@ Rs. 19,500.00/MT as per Annexure “B” = Rs. 56,12,003.00

Less: cost of retained

Semi finished goods as per Para No. 8.5

= 8.25 MT, @ Rs. 19500/-MT (-) Rs. 1,60,875.00

Assessed value of Semi-finished goods = Rs. 54,51,128.00

Therefore, Total cost of damaged Finished goods & Semi finished goods

= Rs. (34,51,991.00 + 54,51,128.00) = Rs. 89,03,119.00

Less : Salvage value of 334.929 MT.

@ Rs. 6000.00/MT.- vide Para No. 8.6 (-) Rs. 20,09,520.00

Rs. 68,93,599.00

Plant & Machinery :

Cost of replacement of damaged components of

1.0 Sheet Cutter	- Rs. 698524.00 - Vide Annexure "C"
2.0 Electrical	- Rs. 1122084.00 - Vide Annexure "D"
3.0 Rewinder	- Rs. 176335.00 - Vide Annexure "E"
4.0 Pop Reel	- Rs. 155476.00 - Vide Annexure "F"
5.0 Guillotine	- Rs. 6507.00 - Vide Annexure "G"
6.0 Broke Pulper	- Rs. 21162.00 - Vide Annexure "H"
7.0 Dryer	- Rs. 2400644.00 - Vide Annexure "I"
8.0 EOT Crane	- Rs. 25493.00 - Vide Annexure "J"
9.0 Finishing Section	- Rs. 32129.00 - Vide Annexure "K"
	<u>Rs. 4638354.00</u>

Less Depreciation

@ 50% as per para No. 8.7 (-)	<u>Rs. 2319177.00</u>
	Rs. 2319177.00

Less Salvage

@ 5% as per Para No. 8.7 (-)	<u>Rs. 115959.00</u>
	Rs. 2205218.00

Add labour charges as per

Para No. 8.8 and Annexure "I."	<u>Rs. 724719.00</u>
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Rs. 29,27,937.00

Building :

Cost of replacement of damaged

Items as per Annexure "K" Rs. 126175.00

Less Depreciation

@ 50% as per Para No. 8.9 (-)	<u>Rs. 63088.00</u>
	Rs. 63087.00

Less Salvage value as per Para No. 8.9 Nil

Rs. 63,087.00

Add: labour charges as per

Para No. 8.9 & Annexure "L"	<u>Rs. 50,470.00</u>
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Rs. 1,13,557.00

Assessed loss after depreciation & salvaging

Rs. 99,35,093.00

Adjustment of loss

1.0 Building

Since no underinsurance is applicable as per Para No. 8.13 of the S. Report
Therefore, Adjusted value of loss after applying average clause

= Rs. 1,13,557.00

2.0 Plant & Machinery

Since no under insurance is applicable as per Para No. 8.12
Therefore, Adjusted value of loss after applying average clause

= Rs. 29,27,937.00

3.0 F.Goods / Semi F. Goods /Spares

Since underinsurance is applicable as per Para No. 8.11 of S.Report,

Therefore Adjusted value of loss after applying average clause

= Rs. 68,93,599.00 x Rs.30,00,000.00/Rs. 1,74,81,883.00 = Rs. 11,82,985.00
Rs.42,24,479.00

Add: Debris removal @ 1% of Rs. 42,24,479.00

= as per Para no. 8.10 of the S.Report Rs. 42,245.00

Add: Fire Brigade charges as per Para No. 8.10 of S.Report Rs. 83,429.00

Add: Advertisement charges in Newspaper

as per Para No. 8.10 of S.Report Rs. 3,734.00

Rs.43,53,887.00

Less Policy Excess as per Para No. 8.14 of the S.Report (-) Rs. 10,000.00

Net Loss Assessed Rs.43,43,887.00

Letter dated 07.03.2014 offering an amount of Rs.38,28,898/- as full and final settlement by the insurance company and the "Annexure-1" to the policy which is in controversy and is referred in the discussion which follows, are reproduced below:



नेशनल इन्श्योरन्स कम्पनी लिमिटेड
(भारत सरकार का एक उपक्रम)
'National Insurance Company Limited'
(A Govt. Of India undertaking)

(69)

ANNEXURE 2

Our Ref: CRO-U/Tech/Fire Claim 2011/37.

Date: 07th March 2014.

To

M/s. Sapphire Papers Mill Pvt Ltd
NH-31, Jagannathpur, Bidhannagar, Darjeeling
Dist: Darjeeling (West Bengal)

Re: Review of Claims. Insured- M/s. Sapphire Papers Mill (P) Limited
Policy No- 101800/11/10/3300000679.
Claim No - 101800/11/11/33/900000016.
Date of Loss- 29th December 2011.

Dear Sir,

This is in reference to your request for review of aforesaid claim settlement.

In view of this our technical team had reviewed this file based on various points raised in your request letter and we found that our earlier settlement (full & final) of aforesaid claim for Rs.3828898.00 (Rupees thirty eight lacs twenty eight thousand eight hundred ninety eight only) is in order.

We once again request you to accept the claim voucher for Rs.3828898.00 (Rupees thirty eight lacs twenty eight thousand eight hundred ninety eight only) towards full & final settlement of aforesaid claim & please return this voucher with your signature, to enable us to make you payment for this amount


(Meera Bihari)
Regional Manager

ন্যাশনাল ইন্স্যুরেন্স কম্পানী লিমিটেড (ন্যাশনাল ইন্স্যুরেন্স কোম্পানী লিমিটেড)
 ৩০৮, ৪২/২, জি.এম. রোড, সিলিগুরি, (৬৮৬ নম্বর)
 কলকাতা - ৭০০ ০৭১, টেলিফোন : ২২৪৪ ৩৪৬/৩৪৭, ফ্যাক্স : ২২৪৪ ৩৪৬২
 ATTACHED TO AND FORMING PART OF POLICY NO : 101889/11/10/330800679

NATIONAL INSURANCE COMPANY LTD
 (Subsidiary of General Insurance Corporation of India)
 DIVISION NO. XX, 42/C, G.M. ROAD, SILIGURRI, 6TH FLOOR, KOLKATA - 700 071, Phone : 2244-346/347

Clauses Description :-
 1. Subject to Spontaneous Combustion Clause As Attached.
 2. Subject to Earthquake (Fire and Shock) Clause As Attached.

In witness whereof the undersigned being authorized by and on behalf of the Company, has/have herein to set his/their hand.

for and on behalf of
 National Insurance Company Limited
 Sole Constituted Attorney (s)

ATTACHED TO AND FORMING PART OF POLICY NO : 101889/11/10/330800679

The Subject Insured is/are as under:-

Prop No	Occ No	Description of Property	Sum Insured (In Rs)	Rate	Insured
1	1	Buildings/Plant	1,35,00,000	0	
1	1	BUILDING	1,35,00,000	0	
1	1	Plant/Machinery and Accessories	1,35,00,000	0	
1	1	Other Stocks	1,35,00,000	0	
STOCKS STOCKING PROCESS AS PER ANNEXURE - 1			1,35,00,000	0	
TOTAL POLICY SUM INSURED			1,35,00,000		

In witness whereof the undersigned being authorized by and on behalf of the Company, has/have herein to set his/their hand.

for and on behalf of
 National Insurance Company Limited
 Sole Constituted Attorney (s)

Letter dated 26.09.2014 accepting the offer of settlement by the complainant is reproduced below:

SAPPHIRE PAPERS MILL (P) LTD
 3rd Floor, Leelashri Building, Subhash Mar
 G.M Road, Siliguri-734001, Ph. No-0353-2431
 Email-info@sapphipapers.com, CIN No. U21099WB2004PTC101

ANINGXURE R-10
 Shri D. Dasgupta
 for n. a.
 29/9/14

Date: 26th Sept. 2014
 Place: Siliguri

To
 Mr. Dipankar Dasgupta
 Asstt. Manager (D)
 National Insurance Co. Ltd.,
 Division-XX, 42/C, J. L. Nehru Road,
 "Jeevan Sudha Building", 6th Floor,
 Kolkata: 700 071

Dear Sir,

Subject: Submission of Documents as required by you through mail dated 24th Sep. 2014.

This is with reference to your mail dated 24th September, 2014, with regards to our acceptance of claim, we are herewith sending you the following documents duly stamped and signed as required by you:

- 1) Discharge Voucher for Rs.38,28,609/-
- 2) Copy of PAN Card of "Sapphire Papers Mill Private Limited"
- 3) Memorandum and Articles of Association of our Company
- 4) Telephone bill for the month of August, 2014

It is requesting you to release our claim through RTGS as soon as possible.

Our RTGS Detail is:
 Sapphire Papers Mill Pvt. Ltd.
 State Bank of India
 SME Branch, Siliguri.
 A/c no.3080505511
 IFSC: SBIN 000 4126

Thanking you

For, Sapphire Papers Mill Pvt. Ltd.
SAPPHIRE PAPER MILL (P) LTD.
 Director
 Director

True copy

5. Mr. Jain for the complainant has reiterated the contentions and allegations as raised in the complaint. It is stated that the complaint cannot be resisted on the ground of consent letter or discharge voucher and reliance is placed on the precedents of *Baghora Polyfab (2009) 1 SCC 267* and *2024 SCCOnline NCDRC 2005*. Further, it is pointed out that even in the face of complete compliance by the complainant and the repeated requests, not only the surveyor delayed the survey report unreasonably, even after the receipt of the survey report, the insurance company unreasonably delayed the settlement and due payments which kept on increasing the financial distress faced by the insured. The belated offer of unjust settlement was accepted involuntarily and under financial distress, duress and coercion after much resistance and representations as even the portion of the otherwise due and eligible amount was valuable at the relevant time. There is complete absence of free consent. Similarly, the underinsurance and other deductions have been arbitrarily and wrongly applied by the surveyor by wrongly reading the policy terms/clauses and the coverage thereunder and by wrongly classifying the stock-in-process as finished goods when all stocks are duly and fully covered under the policy. With regard to the settlement and discharge voucher, the fundamental grounds of the complainant are that the discharge consent was under financial duress and coercion and hence being not voluntary, cannot come in the way of further challenging the palpably unjust, illegal and unsustainable assessment in the survey report arrived at after misinterpreting the policy coverage and by wrongly applying the under-insurance after wrongly classifying the damaged Stock-in-process. As against the claim of Rs.1.79 crores, the settlement offered and accepted under duress was only Rs.38.28 lakhs. Thus, palpably unjust settlement offered on the basis of a biased and apparently unjustified 'indemnifiable assessment' of loss only of nearly 25% of the claim, even after admitting the actual damage or loss of Rs.89.03 lakhs in stocks, Rs.46.38 lakhs in plant and machinery and Rs.1.26 lakhs in building, totalling to nearly 135 lacs, such indemnifiable loss for settlement was arrived wrongly and unreasonably only at Rs.43.43 lakhs, which was further reduced through addendum report to Rs.36.32 lakhs (page 64, 65 and 68 of the reply). It is further contended that the under-insurance is wrongly applied, by relying on an alleged annexure to the policy, which in the first instance is not all signed by the insured while making the proposal, and such annexure which otherwise is also vague and which is at palpable variance with the coverage which was earlier obtained under the previous policy which in fact displayed the true intent and purpose of obtaining the

insurance coverage thereunder, could not have been relied upon to create artificial difference between "Raw Material", "stock-in-progress" and "finished goods", so as to bring in the issue of under-insurance which in fact is not at all applicable in the facts of the present case. Mr. Jain has taken us through the policy coverage of the policy under reference and the previous policy with United India Assurance to bring home the point. Mr. Jain relied on the following decisions:

1. *M/s. Inventa Chemicals Ltd. vs. M/s. United India Insurance Co. Ltd.* 2004 NO 363 (NC)
2. *United India Insurance Co. Ltd. vs. Ajmer Singh Cotton and General Mills* (1999) 6 SCC 400
3. *M/s. Flowtex Products vs. M/s. United India Insurance Co. Ltd.* 2023 SCC online NCDRC 119
4. *New India Assurance Co. Ltd. & Ors. vs. Mudit Roadways* 2023 SCC Online SC 1532.

6. On the other hand, Mr. Das, for the insurance company firstly submitted that there is absolutely no evidence on record to establish that the acceptance of settlement by the complainant was with free consent. As a matter of fact, the offer made by the insurance company on 07.03.2014 was followed up with further two reminders on 27.05.2014 and 09.06.2014 after which, on 26.09.2014, the offer was accepted, implying completely volitional and thoughtful acceptance of settlement, amount and discharge by the insured. There is no element of duress, undue influence or any misrepresentation in OP's actions, and equally, no element of and any absence of or vitiation of the complainant's free and informed consent for discharging the OP. The complaint thereafter was filed as late as in June, 2015 after more than a year from the offer of settlement. Hence, in view such binding satisfaction, accord and discharge given with free consent, the complaint thereafter is not maintainable. Otherwise also, neither the survey report nor findings therein are established to be arbitrary or unfounded, nor can the report being a statutory and significant piece of evidence lightly be brushed aside or put to any forensic examination. It is categorically submitted with regard to the issue of under-insurance, that the same is absolutely correctly applied by the surveyor as per the coverage obtained by the insured as per the proposal form, read with annexure thereto, which formed part of the policy. The dispute with regard to such annexure to the proposal form not having been signed by the insurer is superfluously raised. The complete proposal form and the table of category-wise sum-assured and the premium charged by the OP has been placed on record at page 34-41 of the reply. As the said coverage was not disputed or corrected

by the complainant before the incident of fire during 10 months of its currency. The coverage of stock-in-process has rightly been categorised under the "stocks of finished goods" which has sum assured of only Rs. 30 lacs as against the admitted value at risk of nearly 113 lacs, and therefore, the under-insurance is rightly applied. Keeping in view the value at risk, no fault or error can be found. Surveyor's statutory report and assessment therein can not be lightly and without strong evidence of arbitrariness or apparent error therein be brushed aside or interfered with. Moreover, the complaint itself has been filed after a lapse of nearly 8 months from the acceptance of the settlement and nearly 15 months from the date of offer of settlement. Such settlement having been accepted with full consciousness and understanding of such action, there is no question of any duress or undue influence, etc. and therefore the complaint needs to be dismissed on that count. Reliance is placed on the following decisions:

1. *ONGC Mangalore Petrochemicals Ltd. Vs. ANS Constructions Ltd. & Anr. (2018) 3 SCC 373*
2. *M/s Kundan Rice Mills Ltd. Vs. United India Insurance Co. Ltd. 2015 SCC Online NCDRC 3559*
3. *New India Assurance Co. Ltd. Vs. Genus Power Infrastructure Ltd. (2015) 2 SCC 424*
4. *MJRJ Medichem Surgicals Vs. National Insurance Co. Ltd. in RP No. 1927 of 2013 decided on 22.01.2015*
5. *Delhi Development Authority Vs. R.S. Jindal & Anr. 2007(99) DRJ 90(DB)*
6. *Madhu Sankhla Vs. State Through CBI 2007 (99) DRJ 104*
7. *Garg Acrylics Ltd. Vs. United India Insurance Co. Ltd. 2014 SCC Online NCDRC 904*
8. *KN Resources Pvt. Ltd. Vs. Divisional Manager/Regional Manager, Oriental Insurance Co. Ltd. & Ors. 2019 SCC Online NCDRC 37*
9. *National Insurance Co. Ltd. Vs. Blanny C. D'souze in RP No. 3221 of 2008 decided on 02.02.2009*
10. *Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr. (2009) 8 SCC 507*
11. *New India Assurance Co. Ltd. Vs. shivalik Tube Pvt. Ltd. 2019 SCC Online NCDRC 1305*
12. *Mohan Lal Meena Vs. United India Insurance Co. Ltd. & Ors. in RP No. 1134 of 2020 decided on 27.01.2021*

7. We have carefully and minutely gone through and considered the material on record and have also carefully applied our mind to the rival contentions raised by Mr. Vijay K. Jain and Mr. Jaladhar Das during the course of hearing. There are two issues for our consideration: First is whether the consent for settlement and discharge granted to the insurer-OP and the consent for the same are at all vitiated due to coercion, undue influence or misrepresentation deployed by the OP insurer. If the answer is yes, then it would be required of us to consider the merits of the assessment as made by the surveyor so as to arrive at the correct amount of

assessable loss and consequent indemnification by the OP-insurer. After duly considering the rival contentions, we firstly note that as against the maximum permissible time period under IRDA Regulations of seven months (six months for submission of survey report plus one month thereafter for settlement), the settlement itself was offered on 07.03.2014 after a period of nearly 27 months from the incident of fire which took place on 29.12.2011. No justification for such delay is made out or discernible either from the survey report or from the reply to the complaint filed by the insurer. Moreover, it is also a fact that the complainant has obtained a total insurance under the policy to the tune of a large sum of Rs.16.32 crores as against which, the loss consequent to the fire claimed in the claim form, is only Rs.1.79 crores, and the claim, through settlement, is accepted to be *bona fide*. As against the claim of such loss, the settlement offered by the insurance company is only to the tune of Rs.38.28 lakhs. The settlement which was offered on 07.03.2014, even after two reminders on 27.05.2014 and 09.06.2014, was not accepted by the insured. Thereafter, when the claim was communicated to have been "closed" on 10.07.2014, the insured sent an intimation of acceptance of the aforesaid settlement by first writing a protest mail of helplessness and absence of proper consideration by the insurer of the issues raised by it dated 22.09.2014, and thereafter only signed and submitted the discharge voucher on 26.09.2014 and accepted the amount offered. In the meantime, the insured had also made detailed representation dated 24.07.2014 and it was clarified/explained therein that there is substantial unaddressed loss in the settlement which was offered and that there is no one who is listening positively to the insured's concerns. A meeting with the senior officers of the OP was also of no avail and hence the insured company had no option but to accept the settlement as offered. These documents are reproduced below and the PPT presentation that was made to the senior officers is also enclosed in the complaint from page 175 to 192. The relevant documents are as under:

Sapphire Papers Mill Co (P) Ltd.
NH-31, Jagannathpur, Bidhannagar, Darjeeling
Dist-Darjeeling (West Bengal)

Date: 10/07/2014

2014

Dear Sir,

Claim No-101800111133900000016
Date Of Loss- 29th December 2011

We refer to our Regional Office letter no CRO-L/Tech/FireClaim/2011/37, dt. 7/3/2014 followed by our letters dt. 27/5/2014 and 09/06/2014, but till date there is no response from your end by not submitting the claim voucher duly signed and stamped with your bank details for full and final settlement of the claim.

Under the above circumstances the only option left for us to close the claim at our end.

Therefore we are very sorry to inform you that we are treating the claim as closed and no further communications will be entertained in this respect.

(15)

From: "Sapphire Papers" <info@sapphirepapers.com>
To: "Nilesh.Das@nic.co.in">
Date: Mon, 22 Sep 2014 17:16
Subject: Acceptance Letter for our pending claim

ANNEXURE R-9

Dear Sir,

This has reference to our letter dated 22/7/2014 which you received on 30/7/2014 regarding our contentions in not accepting the calculations on basis of which you have arrived at the amount of final payments against our pending insurance claim with you.

We have followed up the matter with your honorable DGM Mr Pulin Bihari through our authorised representative Mr Aditya Maheshwari and your honorable RM Mr C S Das and there was verbal discussion regarding the matter on two occasions latest today only in your presence also.

Though we have presented our case in a very detailed manner and requested you to consider our case with a broader perspective in view of substantial unaddressed loss of the Company just on account of certain technicalities, you did not reply to us in writing, yet verbally you have categorically denied any possibility of enhancement of consideration amount in the requested review of the case.

In this situation we understand that there is none to hear our point of view hence we accept the amount calculated by you as full and final settlement.

Please release our payment immediately and oblige. We would be obliged if you could transfer the amount by RTGS before Pujas. Hope you will cooperate us and oblige.

Thanks and regards
For Sapphire Papers Mill Pvt. Ltd.
Sanjay Golecha, Director

8. The signing of the discharge voucher is an admitted position. There are allegations in para 23 to 25 of the complaint of coercive bargain, circumstantial compulsion, exercise of fraudulent and undue influence due to abnormal delay in settlement of the claim, unresponsiveness of the officers of the insurance company and running out of the time with regard to loans and advances from the financial institutions and consequent absence of any choice or free consent left with the complainant with regard to acceptance of the amount which came its way through offer of settlement. In view of the fact that there is undisputable delay of nearly 20 months *qua* the period available under the IRDA Protection of Policy Holders' Regulations, even in the offer of settlement itself, we are of the considered view that such delay itself is a factor and evidence which is materially relevant for deciding the issue of free-consent in discharge. Even after the addendum survey report was obtained as early as on 25.10.2012, for reasons which are wholly inexplicable, even the amount assessed by the surveyor was neither offered for settlement, nor the claim was repudiated till March-2014, and when offered, the insurer insisted for discharge before paying the claim amount as assessed. The insurer even issued, as a pre-condition for receiving even the assessed amount, two reminders for signing and

submitting the discharge voucher and thereafter, by letter dated 10.07.2014, rather than paying the amount, "closed the claim" which action itself can and should be considered nothing less than threat, duress and coercion vitiating the free consent in any subsequent acceptance of offer or settlement. The amount was accepted only after a letter/mail dated 22.09.2014 informing the insurer that despite the intervening persuasion and representations to highlight the inadequacy, erroneousness and unjustness of the offered sum and of dominant one-sidedness of the assessment made by the surveyor, and that "there is none to hear our point of view, hence we accept the amount calculated by you as full and final settlement", and only thereafter the requisite discharge was issued. The same was also thereafter followed up by email dated 17.04.2015 emphasizing that the amount was accepted under protest. These cumulative circumstances leave no doubt in our mind that the insurer has not only unduly delayed the settlement which has contributed to the financial distress of the insured, the insurer has also used the withholding of even the assessed amount as a tool to force or coerce the insured into granting the discharge as a pre-condition for disbursing even the assessed amount. We find no element of any free consent in the eventual acceptance of the amount by the insured and in the grant of discharge. As a matter of fact, notwithstanding the various representations and meetings, there is not even a single communication on record, excepting the survey report itself, to indicate any positive and bonafide consideration of the insured's counter-stand with regard to the amounts of assessment of damage/loss of stocks, plants and machinery and building. Thus, the acceptance of the amount and the discharge granted by the insured has neither any pre-discharge meaningful negotiations or discussions nor is there any "accord" or "satisfaction" on the part of the insured. The tendency of the insurers to make use of the opportunity or need for making the positive settlement by partly paying the claim amount, howsoever far below the claim amount, on the basis of the survey report or otherwise, has been deprecated and disapproved even by the Regulator IRDAI in their circulars dated 24.09.2015 and 07.06.2016. Moreover, the fact whether the discharge granted by the insured or the contracting party is representative of the free-consent and satisfaction duly arrived at after requisite negotiations or "satisfaction" of the parties, is always a question of fact and the discharge itself can never be the evidence of such accord and satisfaction, is so held in *Ajmer Singh Cotton*. The issue has also been considered in the case of *National*

Insurance Co. Ltd. Vs. Boghara Polyfab (P) Ltd. (2009) 1 SCC 267 and the following paras are instructive in this behalf:

"24. What is however clear is when a respondent contends that the dispute is not arbitrable on account of discharge of the contract under a settlement agreement or discharge voucher or no-claim certificate, and the claimant contends that it was obtained by fraud, coercion or undue influence, the issue will have to be decided either by the Chief Justice/his designate in the proceedings under Section 11 of the Act or by the Arbitral Tribunal as directed by the order under Section 11 of the Act. A claim for arbitration cannot be rejected merely or solely on the ground that a settlement agreement or discharge voucher had been executed by the claimant, if its validity is disputed by the claimant.

.....
.....

50. Let us consider what a civil court would have done in a case where the defendant puts forth the defence of accord and satisfaction on the basis of a full and final discharge voucher issued by the plaintiff, and the plaintiff alleges that it was obtained by fraud/coercion/undue influence and therefore not valid. It would consider the evidence as to whether there was any fraud, coercion or undue influence. If it found that there was none, it will accept the voucher as being in discharge of the contract and reject the claim without examining the claim on merits. On the other hand, if it found that the discharge voucher had been obtained by fraud/undue influence/coercion, it will ignore the same, examine whether the plaintiff had made out the claim on merits and decide the matter accordingly. The position will be the same even when there is a provision for arbitration.

51. The Chief Justice/his designate exercising jurisdiction under Section 11 of the Act will consider whether there was really accord and satisfaction or discharge of contract by performance. If the answer is in the affirmative, he will refuse to refer the dispute to arbitration. On the other hand, if the Chief Justice/his designate comes to the conclusion that the full and final settlement receipt or discharge voucher was the result of any fraud/coercion/undue influence, he will have to hold that there was no discharge of the contract and consequently, refer the dispute to arbitration. Alternatively, where the Chief Justice/his designate is satisfied prima facie that the discharge voucher was not issued voluntarily and the claimant was under some compulsion or coercion, and that the matter deserved detailed consideration, he may instead of deciding the issue himself, refer the matter to the Arbitral Tribunal with a specific direction that the said question should be decided in the first instance.

52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are:

(i) A claim is referred to a conciliation or a pre-litigation Lok Adalat. The parties negotiate and arrive at a settlement. The terms of settlement are drawn up and signed by both the parties and attested by the conciliator or the members of the Lok Adalat. After settlement by way of accord and satisfaction, there can be no reference to arbitration.

(ii) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no-claim certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for consideration. There cannot be any reference of any dispute to arbitration thereafter.

(iii) A contractor executes the work and claims payment of say rupees ten lakhs as due in terms of the contract. The employer admits the claim only for rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of rupees six lakhs

in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard-pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.

(iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The "accord" is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.

(v) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration."

9. In our considered opinion, the case of the complainant is squarely covered by the instances (iii) and (iv) as narrated in para 52. We therefore hold that the discharge voucher obtained by the insurer was not the outcome of the free will of the insured and was indeed obtained by cornering the insured into such discharge by exercising undue pressure and coercion and by unnecessarily withholding the assessed amount till the discharge was granted. Otherwise also, the wholly uncalled for and unexplained evident delay in the settlement of the claim when it was offered, in itself, is not only a deficiency in service but is also a major contributory factor for financial distress for the insured and unduly influencing its decision to sign the discharge voucher. We, therefore, proceed to examine the merit of the complaint.

10. The merit has mainly two components. Firstly, the coverage under the policy, i.e. to what extent the stocks of different nature are covered under the policy. The answer to this question would decide whether at all, and if yes, to what extent, the underinsurance for assessment of loss of stock is applicable. Second, the overall correctness of the assessment under the survey report. The rival perspectives have been aptly captured in the PPT presentation of the complainant which, and the two documents mainly determinative of the issue of under insurance are as under:

CONSIDERATION OF FINISHED GOODS & WIP AS UNDERINSURED

Our Stock is insured for
Raw material: 152 Lakhs
Finished Goods: 30 Lakhs
Total 182 Lakhs

It cover Stock & Stock In Progress as per "Annexure - 1 submitted by the Insured" mentioned in Policy Note

There are two Annexure - 1.
One Part of The policy and another as submitted by Insured

Our stock is insured for Rs. 182 lacs.

It covers both Stock and Stock in Progress as per the Policy Note mentioned in Annexure - 1 which forms part of Policy Note as written in the Policy Note.

Annexure - 1 submitted by Insured was not enclosed alongwith the Policy Note. Neither the proposal form was attached.

CONSIDERATION OF FINISHED GOODS & WIP AS UNDERINSURED

Annexure - 1 submitted by the Insured is considered as Prime basis.

Annexure - 1 submitted by the Insured is reproduced in Policy Note. Hence, Annexure - 1 submitted Insured has no further relevance.

The NICL is not able to present any signed Annexure - 1 submitted by the Insured.

Annexure - 1 submitted by Insured is part hand written and part typed document.

It is a clear proof that this document has been purported to be Annexure - 1 and has been handwritten as Annexure - 1.

CONSIDERATION OF FINISHED GOODS & WIP AS UNDERINSURED.

Annexure - 1 submitted by the Insured is considered as Prime basis.

Nomenclature of the two Annexures cannot be the same in the same policy note.

So,
Annexure - 1 of Policy Note

will override the

Annexure - 1 which is alleged to be submitted by the Insured

Policy Annexure-1

ANNEXURE -1

ATTACHED TO AND FORMING PART OF POLICY NO.101800/11/10/3300000679

The Sum (s) Insured Is/are as under:		Escl.	Escalation
Prop.No.	Occ. No. Description of Property	Sum Insured (In Rs) (z)	Premium (Rs.)
	Building(s) only	0	
	Building	2,35,00,000	0.00
	Plant/ Machinery And Accessories	12,15,00,00	0
	Other Stocks	0	0.00
	Stock & Stocking Process as per Annexure - 1	1,82,00,000	
Total Policy Sum Insured (In Rs.) :		16,32,00,000/-	

Proposal form with Annexure-1 to the proposal form (pg 36 of the reply):

22. Building wise values (Please include the Kuccha buildings also in this list and give individual values against such Buildings)

Description of Block	Amount in Rs.					Total	AGE (YRS)	HT (MTS)	CONSTRUCTION
	Building including Plinth	M & A	F & F and other equipments	SSP**	Property to be insured separately				
Building P&F									
Office									

AS per details attached

Impact damage due to Insured's own vehicle							
Spontaneous Combustion							
Omission to insure additions, alteration extension							
Earthquake							
Building wise values							
(Stocks Cluster Basis)							

Stock of coal & Raw Material 1,52,00,000/-

Boundary Wall, Shed, P&M, Accessories including electricals in the main factory 16,32,00,000/-

AS per details attached earlier

Annexure to Proposal Form (reply page 36):

M/S SAPPHIRE PAPERS MILL PRIVATE LIMITED

Description	Sum Insured
Building excluding P&F of the Main Factory including Boiler section	13000000
Building Excluding P&F of the DG set, Meter Room and Transformer	200000
Building excluding P&F of the Pulper Shed	1400000
Boundary Wall	1200000
Shed, P&M, Accessories including electricals in the main factory	11750000
Boiler Plant And Chimney (Rice Husk and Coal fired Boiler)	3000000
Effluent Treatment Plant	5000000
DG Set/Transformer/Meter Room Machineries & Equipments including shed	2500000
P&M & Accessories of the Pulper Shed	1000000
Stock of coal in open	200000
Stock - Stock of General stores and chemicals of all end description in premises owned or held in trust or on commission, or a joint account with others for which they are responsible & stock of raw materials and finished goods.	3000000
Raw Material - Waste Paper/Rice Husk/AKD/Caustic soda etc with spontaneous combustion	15000000
Building - on building of labour quarters located inside paper mill premises (excluding Plinth & Foundation)	200000
Total	163200000

10.1 It is the case of the surveyor and the insurer that the coverage as per the proposal form and annexure thereto as per page no. 34 to 40 of the written version,

was asked for, and was accordingly provided, and is covering the stock under three heads with sum assured as : (i) stock of coal in open for Rs.2 lakhs, (ii) stock of raw-material - waste paper/rice husk/AKD/caustic soda, etc. with spontaneous combustion Rs.150 lakhs, (iii) "stock"- of General stores Chemicals *and stock of raw-material and finished goods* Rs.30 lakhs. Based on this, the surveyor has firstly reasoned that because as per the annexure-1 enclosed with the proposal form, the raw-material is separately covered for Rs. 150 lacs, therefore finished goods and stock-in-process both are together covered only for Rs. 30 lacs, the total stock of which together found was Rs. 175 lacs and hence under-insurance would apply. The discussion and computation may be referred to:

8.11 The insured submitted the value of stock in trade on the date of loss (28.12.2011) – vide Encl. No. S-70.0 - certified by their Auditor. As per that	
The value of stock of Finished Goods	= Rs. 1,13,67,471.00
WIP	= Rs. 56,34,034.00
Packing Material	= Rs. 1,02,076.00
Stores & Spares	= <u>Rs. 3,78,302.00</u>
Total value of stock other than Raw Material	= Rs. 1,74,81,883.00

The covered value of stock of General Stores & Chemicals, Raw Materials and Finished Goods is Rs.30,00,000.00 as per policy schedule as per Annexure 1 – vide Encl. No 3.4. It is observed that Raw materials are covered under a different heading, we have considered this raw material as semi- finished goods which is also damaged in the above event. Since the value of stock in trade at Rs. 1,74,81,883.00 as above is more than the covered value at Rs. 30,00,000.00, underinsurance will be applicable to that extent of undercover while adjusting the above loss.

10.2 The insured had explained the error/unjustness in such view-point to urge that the total stock of the unit was intended to be covered jointly for Rs. 1.82 crores inclusive of raw-materials, stock-in-process and finished goods, which was so obtained also in the previous policy and has been so explained in the PPT presentation. Second, Annexure-1 to the policy also mentions such intent when it has recorded the total stock coverage of 1.82 crores as "stocks and stock-in-process Rs. 1,82,00,000", which stand is also supported by the comparison with the previously obtained coverage:

030300/11/09/11/00001179	On Stock of General Stores and Chemicals of all Kinds and descriptions in the Factory Premises – Own or held in Trust or on commission or on joint A/c with others for which they are responsible	30,00,000	Stock – Stock of General Stores and Chemicals of all end description in premises owned or held in trust or on commission, or a joint account with others for which they are responsible & stock of raw materials and finished goods	30,00,000
030300/11/0811/00001150	On Stock of Raw Materials (Mainly consisting of Waste Paper and Rice Husk etc.) &/or Stock In Process &/or Semi Finished &/or Finished Stocks whilst stored &/or contained &/or lying anywhere in the factory premises including storage in open sheds – Own or held in trust or on commission or on joint A/c with others for which they are responsible	1,50,00,000	Raw Material – Waste Paper/Rice Husk/AKD/Caustic Soda etc with Spontaneous combustion	1,50,00,000

It is further submitted that the alleged annexure allegedly forming part of the proposal form is not signed by the insured and hence cannot be relied upon, and even if relied upon, the artificial distinction between the raw-material and finished goods, when “raw-material” is admittedly covered under both the alleged categories covered for Rs. 150 lacs and Rs. 30 lacs, is artificial and stretched.

11. Having carefully considered the rival contentions and stand, we are of the considered opinion firstly that the annexure-1 as filed by the insurance company as part of the proposal form cannot be and need not be disbelieved or doubted. This is for two reasons. First, the proposal form submitted by the insured itself at page 34 to 40 of the reply clearly mentions on page 39 that while spontaneous combustion cover has been requested and obtained on the “stock of coal and raw-material” of Rs.152 lakhs, it also mentions that *as per the details attached*, the total coverage of Rs.16.32 crores is asked for to be provided. Similarly, on page 37 *qua* building also, the details are mentioned to be “*as per details attached*”. Having seen the annexure-1, *inter alia* detailing the coverage of stock for 150 lacs, 30 lacs and 2 lacs in light of the handwritten note about such annexure provided in the proposal form itself, the typed annexure has to be accepted as forming part of the policy. Otherwise also, the figure of Rs.152 lakhs coverage of stock of coal and raw-material for spontaneous combustion and overall coverage of Rs.16.32 crores as mentioned in the proposal form is completely matching with the typed annexure at page 36 and hence there does not appear any doubt to us in this behalf.

12. However, at the same time, we agree with the complainant that the stretched meaning put on this annexure by the surveyor for applying the under-insurance, in preference to Annexure-1 in the policy itself specifying coverage of “stocks and stock-in-process Rs. 1,82,00,000”, is still far-fetched, imaginary, made out and

arbitrary. The surveyor has applied the under-insurance on the ground that as per printed annexure 1 to annexure 1 to the policy, the cover for "finished goods", which, as per the surveyor, also includes Stock-in-Process, is only Rs. 30 lacs as against the value at risk found and claimed at Rs. 175 lacs of stocks, and therefore, underinsurance has rightly been applied. However, we are of the considered opinion that the surveyor's view, thought apparently not wholly unfounded, but is still an artificially stretched, unreasonable and superficial reading of the Annexure without properly appreciating the policy as a whole. The detailed study of the proposal form and page 41 including the request of the complainant for "cover for spontaneous combustion" for stock of Rs. 1.52 crores and the chart of premium calculation provided by the insurer at page 41 throw substantial light on the issue:

PREMIUM CALCULATION CHART			
Description	Sum Insured	Rate	Premium
Building excluding P&F of the Main Factory including Boiler section	13000000	0.55	7150
Building Excluding P&F of the DG set, Meter Room and Transformer	2000000	0.55	1100
Building excluding P&F of the Pulper Shed	14000000	0.55	7700
Boundary Wall	1200000	0.55	660
Shed, P&M, Accessories including electricals in the main factory	117500000	0.55	64625
Boiler Plant And Chimney (Rice Husk and Coal fired Boilers)	3000000	0.55	1650
Effluent Treatment Plant	5000000	0.55	2750
DG Set/Transformer/Meter Room Machinery & Equipments including shed	2500000	0.55	1375
P&M Accessories of the Pulper Shed	1000000	0.55	550
Stock of coal in open	200000	0.75	150
Stock - Stock of General stores and chemicals of all end description in premises owned or held in trust or on commission, or a joint account with others for which they are responsible & stock of raw materials and finished goods	3000000	0.55	1650
Raw Material - Waste Paper/Rice Husk/AXM/Course soda etc with spontaneous combustion	15000000	0.75	11250
Building - on building of labour quarters located inside paper mill premises (excluding Plinth & Foundation)	200000	0.6	120
Total	163200000		92810
Service Tax			92810
Total		11.30%	9559
102369			
If or non existence from the point of SIC exposure but as others are involved, we have taken the entire as category IV			
The plant is in working condition			
The policy was with U/I and expired on 29/08/2010			
It is without application of any F&A warranty			
It is waste paper based paper plant			
144			
		Paper and Cardboard Mills (including Laminates)	2.25

12.1. It can immediately be noted that the stock of "raw-material etc" of Rs. 150 lakhs and coal of Rs.2 lakhs is mentioned separately, not to differentiate them as a class of stocks, but because the same is *additionally* covered also for spontaneous combustion with higher premium of 0.75% of sum assured as against the "stock" of Rs.30 lakhs which is not *additionally* covered for spontaneous combustion and therefore, has been charged a lesser premium of 0.55%. Barring this difference of higher premium charged by the insurer and paid by the insured, there is no doubt that

the "stocks" together, raw-material, semi-processed and finished goods all, have neither any identifiable difference in their nature, nor in the risk, nor in rate of premium, and are intended as per the previous policy coverage and as per the "Annexure-1 to the Policy" to be covered for Rs. 182 lacs. Apart from this, the surveyor as also the insurer have not disputed and have rather accepted that the "stock in process" is very much covered under the policy notwithstanding that such coverage for stock-in-process is not so categorically mentioned by the complainant in annexure-1 on page 36 of the reply. Thus, the necessity of a purposive, meaningful and bona fide reading of the policy coverage of stocks is accepted and partially implemented by both the surveyor and the insurer in making the offer of the assessed amount including that for stock-in-process. On such purposive reading, we agree with the complainant that the stretched meaning put on this annexure by the surveyor for concluding first that the stock-in-process is to be part of "finished goods coverage" of Rs. 30 lacs and then applying the under-insurance, in preference to reading Annexure-1 in the policy itself specifying coverage of "stocks and stock-in-process Rs. 1,82,00,000", is far-fetched, imaginary, made out and arbitrary. A minute reading of coverage for the stock reveals that the coverage of 150 lakhs is for waste paper, etc. and the coverage of Rs.30 lakhs of "stock" also *includes* the stock of raw-material and finished goods. So, literal reading implies the coverage of "raw material" doubly under both the categories, implying that those categories are meant for spontaneous combustion and not for or coverage of stock for ordinary fire risk. We therefore fail to understand as to how when admittedly the raw-material and finished goods both are covered for a total coverage of Rs.180 lakhs and out of which stocks of raw-material to the extent of Rs.150 lakhs is *additionally* also covered for spontaneous combustion by paying extra premium, the distinction between firstly the raw-material and finished goods for *ordinary risk* (as opposed to spontaneous combustion risk) coverage, and secondly the distinction between stock of raw-material, stock in process and finished goods, for such *ordinary risk coverage*, could artificially be created by the insurer and the Surveyor, particularly when there is no difference in nature of risk or premium charged or chargeable between the three. When the starting point of raw-material and the end point of finished goods both are, in our opinion, equally covered, it is only a creative and biased thinking which can lead to a conclusion that stock in process is covered only under the heading "stock" and not under the heading "*raw-material, etc.*", when there is no distinction or difference in the nature of the risk or the composition of the

three stages of goods or the premium charged for coverage of raw-material or of finished goods. As such, in our considered opinion, all stages of stocks are covered equally and jointly upto Rs. 180 lacs for ordinary risk of fire, with additional cover of the loss due to spontaneous combustion only to the extent of Rs. 150 lacs. The distinction therefore attempted by the surveyor, in our opinion, might have been relevant had the claim occurred on account of the peril of spontaneous combustion, which is admittedly not the case. We therefore find no plausible and logical reason on strictly reading the policy and the printed annexure to the proposal form for the conclusion of the surveyor that the stock-in-process and the finished goods are covered under the policy only to the extent of Rs. 30 lacs. As a matter of fact, the complainant is also right that it is categorically mentioned in the policy itself that the coverage is for "paper mills covering building, plant and machinery, raw-material, semi-finished and finished goods as per annexure-1 submitted by the insured". The artificial and stretched distinction attempted to be drawn by the Surveyor between the raw-material, finished products on the one hand and Stock-in-process on the other hand for classifying the stock-in-process as "stocks" but not as "raw-material etc" is erroneous and not acceptable. The real intent of the parties and the overall coverage as mentioned in the policy of "paper mills covering building, plant and machinery, raw-material, semi-finished and finished goods as per annexure-1 submitted by the insured" as also the absence of any difference in the premium charged on both the categories of stock for ordinary risk coverage are also conveniently and wrongly ignored. The real intent in classification of stock in the proposal form was to have additional coverage of spontaneous combustion for only raw-material to the extent of Rs. 150 lacs, and not to classify the basic cover, has also been overlooked or twistedly read by the surveyor. Therefore, in our considered opinion and as per strictest possible reading of the policy as it stands, while considering the value at risk *qua* loss to stocks for any peril excepting the peril of fire due to spontaneous combustion, the coverage under the policy has to be read as stocks of all kinds for Rs. 180 lacs and for coal it is 2 lacs, and additionally, the stocks of raw-material are also covered upto Rs. 150 lacs for the peril of spontaneous combustion. As can be seen from para 8.11 of the survey report, the value at risk as far as the stocks of raw material, stock-in-process and the finished goods and stores and spares etc totals up only to 1.75 crores, which being less than the coverage of 1.8 crores for stocks, there can be no question of any under insurance. The addendum survey report, which more

strictly applied the under-insurance, would also be inconsequential. The complainant is right in this behalf that the under-insurance is wrongly applied.

13. Turning to the other aspects of computation of eligible amount for indemnification, we have carefully gone through the survey report, which must form the foundation of indemnification of loss as assessed subject of course to the merit of objection raised by the complainant. The table of difference as given by the insured (supra) has been perused by us in light of the observations and basis of assessment as discussed by the surveyor in para 8 and 9 in light of the contra-evidence placed on record by the insured. As such we find the values arrived and considered by the surveyor to be on sound footing, based on relevant material and is well-reasoned, excepting the step of under-insurance. The basis of the surveyor with regard to averaging of storage of finished goods in two godowns, one affected and one unaffected, which was adopted because the godown-wise record of the stocks stored therein was not made available and the record as produced indicated only the total, and not the godown-wise, stocks of finished good. No fault therefore can be found in logically concluding that each godown contained half the finished goods. Similarly, surveyor's action of adopting 5% deduction for slow moving items, or for applying depreciation of 50% or of applying salvage value etc are the steps of application of his expertise, experience towards his statutory duty, and unless such exercise is established or shown to be wholly arbitrary or wholly unreasoned, the same cannot and should not be interfered with. There is no plausible or cogent material also brought on record by the complainant to contend and positively bring out the higher values of the lost items compared to what is assessed by the surveyor.

14. In the circumstances, excepting the adjustment in the value of the indemnification with regard to underinsurance of stocks, no other adjustment to Surveyor's assessment is considered necessary. The complainant's eligible indemnification is tabulated as under on the basis of para 9 of the survey report after ignoring the step of under-insurance:

Head	Amount Rs.
Assessed loss	99,35,093
Debris Removal 1%	99,351
Fire Brigade	83,429
Advert. Charges	3,734
Less Policy excess	10,000

Net amount	1,01,11,607
Less Paid 24.09.2014	38,28,609
Balance payable	62,82,998

15. We therefore, finding deficiency on the part of the insurer in accepting the assessment in the survey report without due application of mind and without examining the validity or otherwise of the application of under-insurance as adopted by the surveyor in light of the policy coverage. We also find consequent deficiency in paying the claim at an amount far lower than what was due as per the policy coverage and policy. We therefore, partly allowing the complaint, direct that further amount of Rs. 62,82,998/- along with simple interest at 6% for the period 02.08.2012 (one month from the survey report) till the date of payment shall be paid by the OP-insurance company. The rate of interest shall stand enhance to 8% on the amount remaining unpaid on 15.01.2027 for the period after that date. The complainant shall also be eligible for costs of Rs.1 lac.

16. Complaint is partly allowed.

Sd/-

(A.P. SAHI, J.)
PRESIDENT

Sd/-

(BHARAT KUMAR PANDYA)
MEMBER

aj/