Date of pronouncement:- 13.08.2026

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

CONSUMER COMPLAINT NO.2669 OF 2018

M/s. TEEKAY Marines Pvt. Ltd.
Having its Corporate Office at
Plot No.58, Chandaka Industrial Estate,
KIIT Post Office,
Bhubaneswar - 751024, Odisha.
Rep. by its Managing Director
T.K. Narayanan ….. Complainant

Versus

1. M/s. SBI General Insurance Company Ltd.
"Natraj", Nos.101, 201, 301,
Junction of Western Express Highway &
Andheri-Kurla Road, Andheri (East),
Mumbai 400 069.
Represented by its General Manager-Commercial Claims.

2. M/S. STATE BANK OF INDIA,
Commercial Branch, 'IDCOL HOUSE',
Ashok Nagar, Bhubaneswar - 751009,
Odisha. Rep by its Dy. Gen. Manager. ..... Opp. Parties

BEFORE:
HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), PRESIDING MEMBER
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

Appearance at the time of arguments:-

For the Complainant Mr. G.B. Sabaridas, Advocate (VC)
Mr. Krishna Kumar R.S., Advocate.

For the Opposite Parties : Mr. D. Varadarajan, Advocate for OP-1
Mr. Chandrachur Bhattacharyya,
Advocate for OP-2.

JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

ORDER

1. Present complaint has been preferred by the complainant aggrieved against assessment of loss suffered by the complainant in an incident of fire in the premises on **14.06.2017**, whereby OP-1 (M/s SBI General Insurance Co. Ltd.) disallowed the claim towards non-performing/obsolete stock *vide* letter dated 27.06.2018 as under:-

> *"Dear Sir,*
>
> ***Re: Your Letter dtd 21/06/2018 addressed to the MD & CEO for release of balance amount Claim no. 387154.***
>
> *We have carefully examined contents of your captioned letter dtd 21/06/2018 and wish to inform you as under:*
>
> - *The basis and details of the assessment including different policy adjustments like salvage, non-performing stocks, compulsory deductibles etc. in terms of the Policy were duly and suitable explained to you by the concerned Surveyor.*
> - *You have granted your unequivocal consent to net assessment subject to further adjustments if any under the Policy.*
> - *We have conveyed our offer of settlement vide our e-mail dtd 27/06/18 for INR 7,47,03,088/- with further adjustment of INR 11,417/- towards Re-instatement Premium. The remittance details (earlier conveyed by our mail dtd 07/05/2018 are reproduced below:*

UTR no	*121965233*
Amount	*INR 7,46,91,671*
Bank Account transferred to	*30016517064*
Processing date	*04/05/2018*

- *There is no scope of any further revision of the claim amount already settled in full and final.*
- *We are closing the matter at our end.*

  Thanking you,"

2. Facts fall within a narrow compass. In brief, complainant is engaged in the business as processor & exporter of fish, prawn/shrimps, seafood and all types of marine products with the claimed annual export turnover of Rs.95 crores. As per the complainant, it was provided with the working capital credit facility by State Bank of India/OP-2 vide letter dated 21.04.2016 and further the credit facilities were renewed for a period of 03 years for Rs.14.80 crores, against hypothecation of stock of marine products, raw materials, finished stocks amongst other charges etc.

3. In compliance of the loan condition, complainant obtained a "Standard Fire & Special Perils Policy" in continuity for the years 2014-15, 2015-16 and 2016-17 (valid for the period 07.07.2016 to 06.07.2017). A premium of Rs.5,90,914/- was paid to OP-1 for the insurance policy in order to cover the marine products.

4. It is further the case of the complainant that heavy losses were suffered in a fire incident in the factory premises on 14.06.2017 at 10.45 p.m., due to electrical short circuit in the power cable of the deep freeze

cold storage plant. Consequently, finished products including raw material and packaging material were damaged as under:-

i)	Finished products	6,35,689 Kgs.	Rs.23,20,69,464/-
ii)	Raw material stocks	1,960 Kgs	Rs.7,75,200/-
iii)	Packing material stock		Rs.37,65,298/-
In all amounting to			Rs.23,66,09,962/-

5. Further, OP-1 was informed of the incident, whereupon the Insurance Company appointed "Proclaim Insurance Surveyors and Loss Assessors Private Limited" as Surveyor. The damage verification was conducted by the Surveyor from 15.06.2017 to 20.06.2017 and a claim form dated 14.07.2017 was submitted by the complainant. OP-2 Bank was also informed by the complainant vide letter dated 15.07.2017.

6. As per the directions of the Surveyor, unperished good stock weighing 1,58,221 kgs., worth Rs.4.9 crores was shifted to another private cold storage. Further, the salvage stock weighing 4,39,605 kgs. damaged due to fire was sold at Rs.50/- per kg. for consideration of Rs.2,19,80,250/-.

7. It is further the case of complainant that the Insurance Company/OP-1 while accepting the Final Report of the Surveyor dated 30.03.2018 only partially indemnified the loss to the extent of Rs.7,46,91,671/- on 04.05.2018 by fund transfer directly to the loan account of the complainant.

8. In the aforesaid background, complainant has preferred the present complaint aggrieved against the classification of substantive amount of stock of 2,36,357 kgs. as non-performing and thereby declining the indemnification of loss to the tune of Rs.8,62,86,173/- by OP-1. Complainant further claims that owing to financial constraints and under a pressure to pay the loan amount to the Bank, a discharge voucher dated 27.04.2018 was executed thereby accepting the assessment of claim for Rs.7,47,03,089/-. Complainant further assails the Final Report of the Surveyor on the ground that closing stocks were closely monitored by OP-2 Bank through independent Auditors/CAs and only a small portion of stocks was held between 06 months to 12 months.

9. Complainant accordingly seeks following reliefs:-

> *"a) Direct the 1st Opposite Party to reimburse to the Complainant the balance Insurance Claim a sum of* ***Rs.8,62,86,173/-*** *the Loss suffered due to fire accident which was declined by the 1st Opposite Party as loss on 'Non-performing' stock; and*
>
> *b) Direct the 1st Opposite Party to pay interest to the Complainant on the aforesaid amount of* ***Rs.8,62,86,173/-*** *at the rate of 18% from 27.04.2018 till the date of realization; and*
>
> *c) costs of the complaint;*
>
> *d) for such other Order or Orders as this Hon'ble Commission pleases deems fit and proper in the facts and circumstances of the case and thus render justice."*

10. The maintainability of the complaint is challenged on behalf of OP-1/Insurance Company in view of execution of unconditional discharge voucher executed by the complainant in full and final settlement between the parties. It was emphasized that the insured cannot be permitted to question the execution of “discharge voucher” after obtaining payment in pursuance of the same. It is further the stand of OP-1/Insurance Company that Surveyor was duly appointed under Section 64UM of the Insurance Act, 1938 on receiving intimation from the complainant regarding the fire incident in the premises. Further, an independent claim Investigator {M/s JSR Insurance Surveyors & Loss Assessors (JERSLA)} was appointed considering the enormity of the claim. OP-1 further submits that Survey Report was delayed on account of piecemeal information furnished by the complainant.

11. It is further the defence of OP-1 that Investigator highlighted the anomalous and manipulative practices adopted by the complainant in production, procurement, sale and storage of records. The documents are stated to have not been received from the complainant within deadline and were received by Investigator on 10.11.2017 which were incomplete. Further the findings of the Investigator were shared with the complainant on 27.01.2018. It is further averred on behalf of OP-1 that final Investigation Report was received from the Investigator on

22.02.2018 which was shared with the Surveyor. Further, based upon the same, Surveyor vide Final Report dated 30.03.2018 assessed the loss and classified the stock as “performing” and “non-performing” for the purpose of assessment of loss. The quantity of sound stock was assessed at 1,58,221 kgs. and the salvage stock of 4,39,605 kgs. valued at Rs.2,19,80,250/- had the following breakup:-

Performing stock	203248 kgs
Obsolete/non-performing stock	236357 kgs

OP-1 further submitted that obsolete/non-performing stocks referred in the inventory was rightly disallowed by the Surveyor as the same was at the end of its product lifecycle and had not been used or sold for a long period of time. Consequently, the same was not expected to be sold in near future and had to be written off as dead inventory.

12. OP-1 further stated that Immediate Loss Advice given by the Surveyor is an internal document submitted by him upon spot survey to make a tentative provision for the alleged loss in the books by way of an abundant caution. The said advice is based upon limited information available with the Surveyor at the relevant time on initial visit and the gross loss was subsequently assessed at Rs.17,50,83,398/- before

considering the adjustments like obsolescence, salvage, under insurance, if any, and policy excess. The discharge voucher is claimed to have been voluntarily executed by the complainant and not on account of any financial distress.

OP-1 further submitted that Surveyor took cognizance of the fact that complainant had not provided the inward and outward stock movement registers as well as variations were found in the audited records. Loss is further stated to have been quantified by the Surveyor after analysing the balance-sheets of the Insured for the last 03 years prior to the incident of fire.

13. Written version was not filed on record by OP-2/SBI being a proforma party.

14. In the rejoinder, complainant refuted the submissions made on behalf of OP-1 and reiterated and clarified the stand of the complainant.

15. In support of the claim, complainant led evidence of Shri T.K. Narayanan, Managing Director by way of affidavit. Reliance was further placed upon letter dated 21.04.2016 vide which Working Capital Credit Facility was provided by OP-2/SBI to complainant (Ex.A-3); policy dated 07.07.2014 (2014-15) for Rs.20 crores (Ex.A-1); policy dated 07.07.2015 (2015-16) for Rs.25 crores (Ex.A-2); policy valid from 07.07.2016 to 06.07.2017 for Rs.25 crores (Ex.A-6); fire station report and police

station report (Ex.A-15); Claim Form dated 14.07.2017 (Ex.A-8); letter dated 14.07.2017 vide which complainant furnished documents and materials to Surveyor (Ex.A-9); letter dated 15.07.2017 vide which complainant informed the updated status to OP-2 about shifting of good stock to another private cold storage (Ex.A-10); Final Report of the Surveyor (Ex.A-15); e-mail dated 07.05.2018 vide which OP-1 informed the complainant about transfer of Rs.7,46,91,671/- to the loan account of the complainant (Ex.A-18); e-mail dated 29.03.2018 vide which Surveyor sent a draft letter and called upon the complainant to issue a letter on the same lines on the Letterhead of the complainant to be predated 28.03.2018 addressed to the Surveyor, accepting the net adjusted loss at Rs.7,47,03,089/- (Ex.A-13); pre-dated letter dated 28.03.2018 (Ex.A-14); letters dated 20.09.2017, 30.09.2017, 08.11.2017, 11.11.2017, 20.02.2018, 19.03.2018, 26.03.2018 and e-mails dated 11.11.2017 and 26.02.2018 vide which complainant repeatedly reminded OP-1 to release part of the claim as immediate relief even before the submission of Final Report (Ex.A-21) (colly.); letter dated 21.06.2018 by complainant to OP-1 to reimburse the balance claim amount which was rejected by OP-1 vide reply dated 27.06.2018 (Ex.A-20); Stock & Receivable Audit Report dated 12.09.2016 (Ex.A-5); appointment of independent CAs/Auditors (Ex.A-4); stock statements submitted to OP-2 Bank for 3

months (Ex.A-7); discharge voucher dated 27.04.2018 (Ex.A-17); e-mail dated 09.05.2018, letter dated 15.05.2018 and 18.06.2018 vide which complainant requested for the copy of report of Investigator (Ex.A-23), (A-24) and (A-25) respectively; refusal of OP-1 to furnish the report of Investigator claiming it to be its "Exclusive and internal document" vide letters 17.05.2018 and 21.06.2018 (Ex.A-26 and A-27); complainant's objections to the allegations of the Investigator vide letter dated 06.02.2018 (Ex.A-28); e-mail dated 01.03.2018 vide which complainant protested about trespassing of Investigator into its premises without the authority of the complainant (Ex.A-29); a website article relied by OP-1 to buttress the contention that non-performing/obsolete inventory had no value (Ex.A-30); the document of Marine Products Exports Development Authority–MPEDA to the effect that the seafood is best for 24 months from the date of freezing (Ex.A-31) and stock audit dated 12.09.2016 of OP-2/SBI (Ex.A-4).

16. On the other hand, Insurance Company led evidence of Ms. Chynikca Modie, Executive–Compliance, Legal & Secretarial by way of affidavit. The Power of Attorney issued in her favour was exhibited as Ex.OP/1 and the Final Report of the Investigator as Ex.OP/2.

Submissions on behalf of the complainant

17. Learned counsel for the complainant reiterated the factual position and challenged the classification of stock by the Surveyor as "performing" or "non-performing", as an unfair trade practice. Reliance was further placed upon immediate loss advice dated 23.06.2017 given by the Surveyor to OP-1, suggesting the approximate loss of damage of Rs.16 crores. The gross total loss is also stated to have been assessed by the surveyor in the Final Report as Rs.17,50,83,398/- but wrongfully disallowed the claim/stock worth Rs.8,62,86,173/- as 'non-performing/obsolete stock'. He submitted that the incident of fire could not be disputed in any manner, since the complainant had been partially indemnified for the loss to the extent of Rs.7,46,91,671/-.

Learned counsel further contended that even before the submission of the Final Report dated 30.03.2018 by the surveyor to OP-1, intimation had been sent vide e-mail dated 29.03.2018 calling upon the complainant to issue a letter to the surveyor accepting the net adjusted loss at Rs.7,47,03,089/-. A letter dated 28.03.2018 is stated to have been accordingly issued under duress by the complainant acknowledging to receive the net adjusted loss to the extent of Rs.7,47,03,089/-. Learned counsel further pointed out that through correspondence dated 20.09.2017, 30.09.2017, 08.11.2017, 11.11.2017,

20.02.2018, 19.03.2018, 26.03.2018 and e-mails dated 11.11.2017 and 26.02.2018, complainant repeatedly reminded OP-1 to release part of the claim as immediate relief, before submission of Final Report by the surveyor owing to severe financial distress. The claim is stated to have been wrongly partly repudiated by OP-1 vide letter dated 27.06.2018. Learned counsel urged that stock of 2,36,357 kgs. valued at Rs.8,62,86,173/- by the Surveyor was wrongly disallowed as obsolete, contrary to the "Stock & Receivable Audit Report" dated 12.09.2016 by the Auditors of the OP-2 Bank wherein the ageing stock of 06 to 12 months for the period 01.04.2016 to 31.07.2016 was valued for Rs.159.33 lacs, which is much less than the value arrived at by Surveyor for Rs.8,62,86,173/-. He urged that as per the inventory movement of stock "First-in-First-Out" (FIFO), the old stock worth Rs.159.33 lacs got utilized/absorbed and moved out for export even before the fire accident that took place after a year on 14.06.2017 and virtually there was no old stock of more than 2 years. He emphasized that Surveyor completely ignored "First-in-First-out" principle while arriving at the value of old stock. He further argued that a monthly statement of production/export during the month, and stock held on the closing of each month was furnished to OP-2 Bank, based upon which, OP-2 permitted the complainant to utilize the credit facilities and, as such, the stock

statement given by the complainant could not be doubted. An outside independent Auditor/CA is also stated to have been appointed by OP-2 to verify the details of stock and no adverse observation was given by the Auditor.

The observation of the Surveyor alleging tempering of records and misrepresentation of physical stock was strongly disputed on behalf of the complainant. In support of the submissions, reliance was further placed by learned counsel on ***Oriental Insurance Co. Ltd. v. Dicitex Furnishing Ltd.,*** **(2020) 4 SCC 621;** ***Associated Construction v. Pawanhans Helicopters Ltd.*****, (2008) 16 SCC 128;** ***National Insurance Co. Ltd. v. Boghara Polyfab*****, (2009) 1 SCC 267;** ***Velugubanti Hari Babu v. Parvathini Narasimha Rao & Anr.*****, (2016) 14 SCC 126** and ***National Insurance Co. Ltd. v. Vasavi Traders,*** **(2008) CPJ 487 NC.**

Submissions on behalf of OP-1/Insurance Company

18. Learned counsel for OP-1 vehemently opposed the complaint and submitted that claim is frivolous and vexatious, defying the principles of indemnity. The claim is stated to have been accorded satisfaction in terms of the discharge voucher executed by the complainant without demur. He contended that complainant cannot be permitted to re-open the issue after having obtained the payment and giving an unqualified consent to the assessment of loss by the Surveyor.

19. Learned counsel for OP-1 further urged that complainant had adopted fraudulent means and devices in inflating the loss, coupled with non-production of records, production of fudged and manipulated records and also delayed submission of piecemeal records to the Surveyor. He pointed out that considering the volume of claim, OP-1 had also engaged an independent claim investigator M/s JSR Insurance Surveyors & Loss Assessors apart from appointing M/s Proclaim Insurance Surveyors & Loss Assessors Private Limited, which adversely commented on the documentation provided by the complainant. Further the Survey Report got delayed due to piecemeal documentary information furnished by the complainant. Learned counsel further argued that the admitted sound stock consisted of 158221 kgs., which was safe. The salvage stock of 439605 kgs. with realized value of Rs.2,19,80,250/- had the following break-up (i.e performing stock 203248 kgs. and obsolete/non-performing stock 236357 kgs.). Further, while arriving at the net loss payable the Surveyor had deduced a quantity of 203248 kgs. at Rs.50/- per kg., amounting to Rs.1,01,62,396/- under the head “performing stock”. He clarified that obsolete inventory/non-performing inventory i.e. at the end of the product lifecycle had not been used or sold for a long period of time, and as such, the same was not expected to be used in future and had to be

written down as “loss” for the company. He emphasized that obsolete inventory had to be written off in financial statements as per accepted accounting principles. Accordingly, he justified disallowing of compensation for non-performing stock of 2,36,357 kgs., which is valued at Rs.8,62,86,173/-.

Learned counsel for OP-1 further urged that Immediate Loss Advice at initial stage is an internal document for provisioning a tentative estimate and the same does not amount to admission of liability. He emphasized that the actual physical existence of stock is to be differentiated from the book stock and the complainant could not be permitted unjust enrichment by considering the claim for obsolete/non-performing stock.

20. In support of the submissions, reliance was further placed by the learned counsel for OP-1 on ***United India Insurance Co. Ltd. v. Sayona Colors Pvt. Ltd.,*** **C.A. No.6100 of 2024 decided by the Hon’ble Supreme Court on 17.03.2026;** ***BTC Industries Ltd. v. SBI Gen. ins. Co. Ltd.,*** **CC No.1180/2018 decided by this Commission on 16.01.2026;** ***M/s Life Style v. SBI Gen. Ins. Co. Ltd.,*** **FA No.582/2017 decided by this Commission on 19.01.2026** and ***Garg Acrylics Ltd. v. United India Insurance Co. Ltd*****., CC No.36/2014 decided by this Commission on 16.12.2014.**

21. Learned counsel for OP-2 contended that complaint against OP-2 is not maintainable, being a proforma party.

22. We have heard learned counsel for the parties and perused the record carefully.

At the outset, we may examine, if the complainant is estopped from filing the complaint having executed the discharge voucher, whereby the claim as assessed by the Surveyor was accepted, as vehemently pressed by learned counsel for OP-1/Insurance Company.

On the other hand, learned counsel for the complainant contended that mere execution of discharge voucher does not *per se* prevent the complainant from preferring the claim, since the discharge voucher/receipt had been executed under compelling circumstances and distress, in view of huge loss and financial stress faced by the complainant followed by repeated pressure by the banks to repay the loan.

23. We may observe that mere execution of a discharge voucher by way of full and final settlement cannot be a bar to file the consumer complaint when the validity of such discharge voucher being executed under coercion or undue influence is raised. The same needs to be examined in the light of the correspondence exchanged between the

parties, which led to the execution of discharge voucher by the complainant.

24. Hon'ble Apex Court in ***National Insurance Company Limited v. Boghara Polyfab Private Limited,*** **(2009) 1 SCC 267** held that procedure adopted by Insurance Company requiring the claimant to issue an undated receipt acknowledging receipt of sum smaller than his claim in full and final settlement as a condition for releasing an admitted lesser amount is unfair, irregular, illegal and requires to be deprecated.

Reference may further be made to ***Arabian Exports Private Limited v. National Insurance Company Limited,*** **(2025) 10 SCC 388,** wherein Hon'ble Apex Court noticed the distinction in claims where there is a bilateral negotiated settlement of pending disputes and the cases where full and final settlement vouchers are insisted upon and taken in printed format or otherwise as a condition precedent for release of admitted dues in context of arbitral disputes. Hon'ble Apex Court held that mere execution of full and final settlement receipt or a discharge voucher cannot be a bar to arbitration even when validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. Observations therein in paras 34 to 38 may be beneficially reproduced:-

"34. Nathani Steels [Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324] was explained by this Court in Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] . A two-Judge Bench of this Court noted that in Nathani Steels [Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324] this Court on examination of the facts of that case was satisfied that there were negotiations leading to voluntary settlement between the parties in all pending disputes. Thus, the contract was discharged by "accord and satisfaction".

35. The Bench in Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] , categorised such claims under two categories. In the first category there would be cases where there is bilateral negotiated settlement of pending disputes, such settlement having been reduced to writing either in the presence of witnesses or otherwise. Nathani Steels [Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324] falls in this category.

36. In the second category of cases, there would be "no-dues/claims certificate" or "full and final settlement discharge vouchers" insisted upon and taken, either in a printed format or otherwise, as a condition precedent for release of the admitted dues. In the latter group of cases, the disputes are arbitrable.

37. Mere execution of a full and final settlement receipt or a discharge voucher cannot be a bar to arbitration even when validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence.

38. The Bench in Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] , further distinguished Nathani Steels [Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324] by clarifying that the observations made that unless the settlement is set aside in proper proceedings, it would not be open to a party to the settlement to invoke arbitration was with reference to a plea of "mistake" taken by the claimant and not with

reference to allegations of fraud, undue influence or coercion. Further, the said decision was rendered in the context of the provisions of the Arbitration Act, 1940. The perspective of the 1996 Act is different from the Arbitration Act, 1940."

25. In the light of aforesaid legal position, we may notice that vide letter dated 19.03.2018 addressed by the complainant to the Surveyor, the complainant disagreed to the tentative working of the quantum of claim at Rs.689.82 lacs as against claim of Rs.1652 lacs. Complainant differed on the method of valuation of stocks adopted by the Assessor & Surveyor. The same was followed by communication dated 26.03.2018 whereby the complainant forwarded reply to points in response to mail dated 21.03.2018 by the Surveyor & Loss Assessors. It may further be noticed that vide communication dated 28.03.2018, complainant informed the Surveyor & Assessors having understood the assessment done by them and gave concurrence to the net adjusted loss assessed for Rs.7,47,03,089/- but without prejudice and admission of liability. The aforesaid correspondence clearly reflects that at no point of time the complainant wanted to give up objections to the assessment of loss made by the Surveyor at a reduced value.

The correspondence exchanged between the parties along with letter dated 27.04.2018 forwarded by the complainant requesting for release of amount of Rs.7,46,91,671/- and reserving the right for

balance claim amount and interest clearly establishes that the discharge voucher accepting the loss of assessment was under financial stress and undue influence as the Insurance Company adopts the practice of withholding the amount in the absence of discharge voucher being executed by the insured. The complainant was left with no option but to sign the discharge voucher under stress to seek some reprieve for payment of loan amount obtained from the Bank. We may observe that insurers are generally adopting instrument of discharge route as a means of estoppel against aggrieved policy holders when such policy holders approach Judicial Forum despite categorical circular dated 24th September, 2011 by Insurance Regulatory & Development Authority of India that execution of such vouchers does not foreclose the rights of policy holder to seek higher compensation. In the facts and circumstances, we are of the considered view that the discharge voucher was executed under financial stress and the complaint is maintainable.

26. Reverting back to the merits of the case, there is no dispute as to the cause of fire on 14.06.2017, which was occasioned due to electrical fault/short circuit of power cable of the deep freeze cold storage leading to fire in packaging material and stock stored in the cold storage areas. It is also admitted that assured amount towards the stock was

Rs.25,00,00,000/- (Rupees twenty five crores), which is covered under the insurance policy. Further, the damage to frozen stock of seafood is also admitted due to fire and sudden rise in temperature. The gross loss has been assessed by the Surveyor vide final Survey Report dated 30.03.2018 at Rs.17,50,83,398/- but compensation has not been awarded to the complainant for obsolete (non-performing) stock assessed at Rs.8,62,86,173/-. Further, after deducting the salvage of performing stock valued at Rs.1,01,62,396/-, the net loss has been assessed at Rs.7,86,34,833/- and, thereafter, net adjusted loss is arrived at Rs.7,47,03,089/-, after deducting the excess at 5% i.e. Rs.39,31,742/- in terms of the policy. The grievance of the complainant is against the deduction of amount of Rs.8,62,86,173/- by the Assessor considering it to be obsolete/non-performing stock.

27. It is well settled that the Surveyor's report is not the last and final word and is not that sacrosanct that it cannot be departed from. The Assessor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured as held in ***New India Assurance Company Ltd. v. Pradeep Kumar,*** **(2009) 7 SCC 787**.

28. In order to appreciate the stand taken on behalf of the parties, we may further reproduce the relevant portion of the Survey Report, whereby the loss of assessment has been made by Proclaim Insurance Surveyors & Loss Assessors Private Limited as under:-

17.1.1. Quantity:-

We did physical inventory at the site after the fire incident. Majorly stock of finished goods was lying at the site, which got affected due to fire. Apart from finished stock, a small quantity of Raw material and packing material was also found lying at the site, which came into the vicinity of fire.

- Quantity of raw material i.e. 1960 Kg, was found in line with the books and entire quantity was found affected by fire and considered as such.
- Entire packing material got affected by fire/heat/smoke and water.
- In respect of finished goods, the sound & salvaged stock were quantified for 158,221.00 Kg & 439,605.00 kg respectively. Remaining quantity of finished stock was found gutted by fire, at the site. It was not possible to quantify the same.

The Insured did not provide us the inward outward records, we therefore opted to assess the loss based on the statutory records of the Insured and past trend.

We obtained audited Balance Sheet of the Insured for the last 3 years and provisional Trading & Profit & loss account for the FY 2017-18 (till date of loss), as summarized below **(refer Annexure 7)**:

Trading and Profit & Loss Account

Description	2014-15	2015-16	2016-17	1.4.17 to 14.6.17	Description	2014-15	2015-16	2016-17	1.4.17 to 14.6.17
Opening Stock-FG	185,248,826	227,739,480	212,966,514	239,829,846	Revenue	967,867,192	497,740,263	424,463,818	161,431,489
Purchases	912,629,816	411,181,815	399,378,889	154,786,781					
Direct Cost				2,648,327	Closing Stock	227,739,480	212,966,514	239,829,846	236,609,962

Corporate Office: 718, JMD Megapolis, Sector 48, Sohna Road, Gurgaon, Haryana – 122018
Registered Office: D-21, Corporate Park, Second Floor, Sector 21, Dwarka, New Delhi-110075
Regional Offices: Delhi, Mumbai, Chennai, Kolkata,Ahmedabad
Licence No. 72389 valid upto 25.5.2020 www.proclaim.co.in
Branches: Ahmedabad •Aurangabad •Bangalore •Bhubaneswar •Bhopal •Chennai •Chandigarh •Delhi •Guwahati Hyderabad •Indore •Jaipur •Jammu •Jamshedpur •Kolkata •Kochi •Lucknow •Ludhiana •Mumbai •Madurai •Nagpur

Gross Profit	97,218,030	71,785,482	51,948,261	776,497					
Total	1,195,096,672	710,706,777	664,293,664	398,041,451	Total	1,195,096,672	710,706,777	664,293,664	398,041,451
GP Ratio	10.05%	14.42%	12.24%	0.48%					

Based on the above, we found the following glaring points in the books of accounts of the Insured:

- Trading and P&L account for the year of loss was displaying a GP ratio of mere 0.48% as against 10.05%, 14.42% and 12.24% in the last 3 FY's.
- Sales during the FY 2015-16 went down, almost at the half of the previous year sales but the stock was found maintained almost for the same amount as of last year.
- Sales figures were found declining further even in the next FY 2016-17, with an increased stock level.

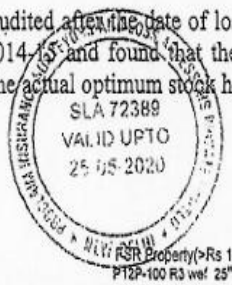
Based on the above facts, we drew the monthly stock holding of the Insured, as tabulated below:

Computation of Stock Holding Ratios					
Particulars	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**	**1.4.17 to 14.6.17**
Turnover (Yearly)	674,660,096	967,357,192	497,740,263	424,463,818	161,431,489
Turnover (Monthly)	56,221,675	80,613,099	41,478,355	35,371,985	65,356,878
Closing Stocks	185,248,826	227,739,480	212,966,514	239,829,846	236,609,962
Average Holding Period (In Months)	3.29	2.83	5.13	6.78	3.62
Adjusted Closing stock (considering monthly holding period of 3 months)			124,435,066		

Operating results were found rational during the FY 2014-15, when the sales hooked up compared to the previous year and stock holding optimized at 2.83 times of the monthly sales.

Thereafter sales was decreasing whereas stock holding was increasing to 5.13 in the FY 2015-16 and further 6.78 in the FY 2016-17, reflecting accumulation of nonperforming stock in the books. Further during the year of loss, monthly sales rose but the Insured was found managing the stock level at 3.62 with adjustment of GP ratio @ 0.48%.

We also found that the Balance Sheet for the FY 2016-17 was audited after the date of loss, hence we worked out the optimum stock holding based on the FY 2014-15 and found that the Insured should have maintained stock holding at 3 which is rounding of the actual optimum stock holding of 2.83 computed above.



Hence the Insured should have a closing stock of Rs 124,435,066 in the FY 2015-16. But since the Insured was having stock of Rs. 212,966,514 as on 31.03.2016, thus the Insured was having an excessive stock of Rs 88,531,448.

The Insured was found having such excessive stock during the FY 2016-17 & FY 2017-18 (till date of loss) considering GP ratio of 10.05% as earned during the FY 2014-15, as tabulated below.

Trading and Profit & Loss Account - Adjusted Ratios

Description	2014-15	2015-16	2016-17	1.4.17 to 14.6.17	Description	2014-15	2015-16	2016-17	1.4.17 to 14.6.17
Opening Stock	185,248,826	-	124,435,066	142,008,150	Revenue	967,357,192	497,740,263	424,483,818	161,431,489
Opening Stock (Non performing)		227,739,480	88,531,448	88,531,448					
Purchases	912,629,816	411,181,815	399,378,889	154,786,781					
Direct Cost				2,648,327	Closing Stock	-	124,435,066	142,008,150	154,235,405
					Closing Stock (Non performing)	227,739,480	88,531,448	88,531,448	88,531,448
Gross Profit	97,218,030	71,785,482	42,658,014	16,223,636					
Total	**1,195,096,672**	**710,706,777**	**655,003,416**	**404,198,343**	**Total**	**1,195,096,672**	**710,706,777**	**655,003,416**	**404,198,343**
GP Ratio	10.05%	14.42%	10.05%	10.05%					

Thus, from the above table, it is quite clear that the Insured was purchasing fresh material to sell the same in the market during the FY 2015-16 onwards and old stock was accumulating for the last 3 years, whereas the shelf life of the product is 2 years. Hence the Insured was having non-performing stock of Rs 88,531,448 as on the date of loss, out of the total stock of Rs 242,766,854.

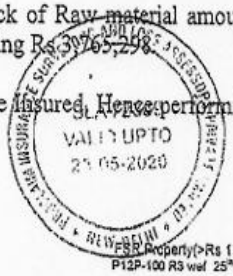
The Insured was however claiming stock of Rs 236,609,962, as on the date of loss, hence we applied the same ratio of performing and non performing stock on total stock of Rs 236,609,962, as tabulated below:

Pro-Rata Conversion of Stock as on the date of Loss

Particular	Book Stock	Converted Stock
Performing Stock	154,235,405	150,323,789
Non-Performing Stock	88,531,448	86,286,173
Total	**242,766,854**	**236,609,962**

Out of the stock of Rs 236,609,962, we duly identified the stock of Raw material amounting Rs 586,785 (1960 Kg x Rs 299.38/Kg) and packing material amounting Rs 3,765,298.

Both the stock items were found to be out of running stock of the Insured. Hence performing stock adjusted of finished goods as on the date of loss, is as below:



Total performing stock = Rs 150,323,789
Less: Packing Material = Rs 3,765,298
Less: Raw Material = Rs 586,785
Finished Goods (performing) = Rs 145,971,707

Quantitative summary of closing stock of finished goods (performing and nonperforming) @ Rs 365.067/Kg is as tabulated below:

Finished Goods	Amount (Rs)	Rate/Kg	Qty (Kg)
Performing	145,971,707	365.067	399,849
Nonperforming	86,286,173	365.067	236,357
Total			636,206

Out of the stock of finished goods lying at the site, as on the date of loss, 158,221 kg was shifted to other cold storages in the local area and 439,605 kg was disposed as salvage under an agreement, as already mentioned in our report.

In our assessment, saved stock of 158,221 kg has been considered as performing stock. We had discussion with the Insured on this aspect as well. The Insured represented that ratio of non-performing and performing be applied on this stock as well. We however deliberated with the Insured that this lot of stock remained within stipulated temperature at the time of incident and is stored in cold storage and hence cannot be treated as nonperforming.

Further, assuming uncountable damaged stock was out of performing stock, rendering complete stock of nonperforming finished goods out for salvage i.e. 236,357 Kg and balance 203,248 kg, out of performing stock.

Finished Goods (in Kg)					
	Rate @ 365.067				
Particulars	Total	Saved	Balance	Salvage	Remaining
Performing FG	399,849	158,221	241,628	203,248	38,380
Nonperforming FG	236,357	-	236,357	236,357	-
Total	636,206	158,221	477,985	439,605	38,380

17.1.2. Assessment:-

ASSESSMENT OF LOSS				
Particulars	Qty (kg)	Rate	Amount (Rs)	Remarks
Raw Material	1,960	299.380	586,785	
FG - Performing Stock	241,628	365.067	88,210,441	Salvaged and remaining stock (gutted stock) considered for assessment.
FG - Non Performing Stock	236,357	365.067	86,286,173	

SURVEYORS AND LOSS ASSESSORS ... VALID UPTO 25-05-2020

Packing Material			-	Not considered for assessment being not disclosed in the bank stock statement, submitted to the bankers.
Gross Loss Assessed			175,083,398	

17.1.4. Obsolescence

Old stock of finished goods i.e. 236,357 kg, considered as nonperforming/obsolete, amounting Rs 86,286,173, is deducted under this head.

17.1.5. Salvage

As mentioned earlier in the report, that 439,605 Kg of salvage of finished goods of sea food was disposed @ Rs. 50.00 per Kg & Rs. 21,980,250 was realized as salvage value.

The amount realized was inclusive of salvage of nonperforming stock of finished goods for 236,357 kg. Hence for assessment of loss, we only deducted the salvage realized for 203,248 kg of performing stock of finished goods @ Rs 50/kg, amounting Rs 10,162,396.

17.1.6. Adequacy of Insurance

Total value of stock assessed, as on the date of loss is amounting to Rs 236,609,962 (before deduction of value of Packing material stock and obsolete stock of finished goods).

Against sum insured of Rs 25 Cr, the Insured was found having adequate coverage, as on the date of loss.

17.1.7. Deductible

5% of the claim amount.

18.0. LOSS ADJUSTMENT

Particulars	Amount (Rs)
Gross Loss Assessed	175,083,398
Less: Obsolescence	86,286,173
Assessed Loss	88,797,226
Less: Salvage (Performing stock)	10,162,396
Net Assessed Loss	78,634,830
Less: Under Insurance	-
Adjusted Loss	78,634,830
Less: Excess @ 5%, subject to min Rs. 25,000	3,931,742
Net Adjusted Loss	74,703,089

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29. The report reveals that the Surveyor assessed the loss based on the statutory records of the insured and past trends, since the insured did not provide the inward-outward records. Further, the balance-sheet of the insured for the last three years and provisional Trading and Profit

& Loss Account for financial year 2017-18 (till date of loss) was considered for purpose of assessment. Based upon the same, the gross profit ratio for the year 2014-15 at 10.05%; 2015-16 at 14.42%; 2016-17 at 12.24% and from 01.04.2017 to 14.06.2017 (i.e. the date of loss) at 0.48% has been taken into consideration by the Assessor. The Assessors and Surveyors observed that the sales during the financial year 2015-16 went down, almost at the half of the previous year's sales but the stock was found maintained almost for the same amount of last year. Also, the sales figures were found declining further even in the next financial year 2016-17 with an increased stock level.

In the aforesaid background, the monthly stock holding of the insured was computed with average holding period of '3' (after rounding off the actual optimum holding of 2.83) as depicted in the Survey Report reproduced in preceding paragraphs. The Surveyor arrived at a categorical finding based on the Trading and Profit & Loss Account and computation of stock holding ratios that the insured should have a closing stock of Rs.12,44,35,066/- in the financial year 2015-16 but since the insured was having a stock of Rs.21,29,66,514/- on 31.03.2016, the excess stock was calculated at Rs.8,85,31,448/-. The Surveyor further observed that the insured had been purchasing fresh material during the financial year 2015-16 onwards and old stock was accumulating for the

last three years whereas the shelf life of the product is two years. In the aforesaid background, Surveyor assessed the non-performing stock valued at Rs.8,85,31,448/- as on the date of loss, out of total stock of Rs.24,27,66,854/-. Since the insured claimed the stock of Rs.23,66,09,962/- as on date of incident, hence, the performing and non-performing stock was calculated on total stock of Rs.23,66,09,962/- as claimed by the complainant.

30. We may further notice that during the course of submissions, vide order dated 21.05.2026, learned counsel for OP-1/Insurance Company was directed to clarify computation of stock holding ratios forming part of the Survey Report. The computation has been further reiterated and clarified by the Surveyor vide communication dated 24.05.2026 as under:-

> *"……*
>
> *3. At the outset, we state that we had prepared the Survey Report, as an independent statutory surveyor, appointed under section 64UM of the Insurance Act,* ***based on, and constrained by the limited records made available to us by the Insured, despite repeated requests, about which we have mentioned in detail in our Final Survey Report, and in addition, we considered the detailed Investigation Report, which also forms part of the case record.***
>
> *4. The Stock Holding Ratios as shown in the Table at page 20 of our Final Survey Report (page 123 of Case Volume) were worked out by us, based on the facts stated preceding thereto in the Report. Accordingly, we worked out the monthly stock holding as stated in*

the Table, from and for the Financial years 2313-14, 2014-15, 2015-16, 2016-17, and from 1-4-2017 to 14-6-2017 (i.e. till the date of fire accident).

5. We state that the computation of average holding period (in months) for the above respective years was done for each year separately on standalone basis, including for the period 1-4-2017 to 14-6-2017. Accordingly, the average holding period (in months) indicated as 3.29, 2.83, 5.13, 6.78 and 3.62 has been worked out as under:

The stock holding ratio is worked out based on the closing stock as per balance sheet divided by monthly turnover (derived from the yearly turnover of the company), as shown in the table on page 20 (in row three) closing stock of Rs.185248826 is divided by monthly turnover of Rs.56221675 = 3.29. In the subsequent years the stock holding ratio increase from 2.83 to 5.13, 6.78 and 3.62.

Since the during short period GP ratio was computed 0.48% with a closing stock, again to revert it a stock holding ratio of 3.62, and in view of the Insured not sharing the inward and outward records, based on the business economics, a stock holding ration of 3 was considered most optimum and hence the deemed performing stock operate the business of actual monthly turnover achieved during the year 2015-16 onwards was considered to work out the performing closing stock of Rs.124,435,066 from the actual monthly turnover of Rs.41,478,355

6. We further re-worked the closing stock by considering the established GP ratio of 10.05% as Rs.242,766,854, higher than the closing stock of Rs.236,609,962. And accordingly re-worked higher performing and non-performing, as per table on page no.21 of our FSR, being fair and reasonable to the Insured.

……..”

31. Admittedly, the Insurance Company has not repudiated the entire claim of the complainant but has partly admitted the loss to the extent of Rs.7,47,03,088/- as assessed by the Surveyor.

We do not find any impropriety in the conduct of the Surveyor in classifying the stock as “performing” and “non-performing” stock and further computing the value of “non-performing stock” based upon Profit & Loss Account statement of last three financial years and other records, which were made available. The final Survey Report is neither arbitrary, nor in violation of statutory provisions or professional standards. The assessment could have only been made on the basis of records made available to the Surveyor.

32. We are of the considered view that the contract of insurance is one for indemnity of the defined loss and not for enrichment. The report of the Surveyor declines the compensation in respect of the “non-performing stock”, since the stock had ceased to be commercially viable and, as such, had lost the commercial utility. We do not find any reasons to set aside the findings of the Surveyor, which provide sound reasons for assessment of obsolete stock and accordingly deducted an amount of Rs.8,62,86,173/- under the said head.

33. We may further observe that nothing turns in favour of the complainant merely on the basis of Immediate Loss Advice dated

23.06.2017 of Rs.16 crores given by the Surveyor initially, since the same is only a tentative figure given to the Insurance Company for purpose of provisioning the amount subject to final assessment. The same does not, in any manner, give a final finding as to the assessment of loss.

34. In ***Khatema Fibers Ltd. v. New India Assurance Company Ltd. & Anr.*** **(2023) 15 SCC 327,** Hon'ble Apex Court has emphasized that in the cases of this nature, the jurisdiction of the special forum constituted under the Consumer Protection Act, 1986 is limited. It was noticed that if the appellant (claimant therein) had gone to the Civil Court, they could have even summoned the Surveyor and cross-examined him on minute details but before the Consumer Forum. A consumer cannot succeed unless he establishes deficiency in service on the part of the service provider. Hon'be Apex Court further observed that Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the Surveyor's report to forensic examination of its anatomy just as a Civil Court could do. Further, once it is established that there is no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the Surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on *adhocism* or vitiated by

arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop.

We may beneficially reproduce the observations of Hon'ble Apex Court in para 32 to 38 in ***Khatema Fibers Ltd. v. New India Assurance Company Ltd. & Anr.*** (supra) for reference:-

> ***"32.*** *It is true that even any inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or which has been undertaken to be performed pursuant to a contract, will fall within the definition of the expression "deficiency". But to come within the said parameter, the appellant should be able to establish : (i) either that the Surveyor did not comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as specified by the regulations made under the Act, in terms of Section 64-UM(1-A) of the Insurance Act, 1938, as it stood then; or (ii) that the insurer acted arbitrarily in rejecting the whole or a part of the surveyor's report in exercise of the discretion available under the proviso to Section 64-UM(2) of the Insurance Act, 1938.*
>
> ***33.*** *Section 64-UM(2) of the Insurance Act, 1938, before its amendment by Act 5 of 2015, mandated that no claim equal to or exceeding a sum of rupees twenty thousand only shall be admitted for payment unless the insurer had obtained a report from an approved surveyor or loss assessor. [After amendment through Act 5 of 2015, what was sub-section (2) earlier, has become sub-section (4) with the modification that the words "twenty thousand rupees" have been substituted by the words "amount specified in the Regulations by the Authority".] This provision read as follows:*
>
> *"**64-UM. (2)** No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment)*

Act, 1968, shall, unless otherwise directed by the [Authority], be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessor")."

34. *But the proviso to sub-section (2) of Section 64-UM also recognised the right of the insurer to pay any amount different from the amount as assessed by the approved surveyor or loss assessor. The proviso reads as follows:*

"Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor."

35. *This is why the law is settled that the surveyor's report is not the last and final word. It has been held by this Court in several decisions, that the surveyor's report is not so sacrosanct as to be incapable of being departed from. A useful reference can be made in this regard to the decision of this Court in New India Assurance Co. Ltd. v. Pradeep Kumar [New India Assurance Co. Ltd. v. Pradeep Kumar, (2009) 7 SCC 787 : (2009) 3 SCC (Civ) 314] .*

36. *The Insurance Act, 1938 even while assigning an important role for the surveyor, casts an obligation on him under sub-section (1-A) of Section 64-UM [Now sub-section (2) of Section 64-UM after amendment under Act 5 of 2015] to comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as specified by the regulations made under the Act. This provision reads as follows:*

*"**64-UM. (1-A)** Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the regulations made by the Authority."*

37. *Two things flow out of the above discussion, They are : (i) that the surveyor is governed by a code of conduct, the breach of which may give rise to an allegation of deficiency in service; and (ii) that the discretion vested in the insurer to reject the report of the surveyor in*

whole or in part, cannot be exercised arbitrarily or whimsically and that if so done, there could be an allegation of deficiency in service.

38. *A consumer forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor's report to forensic examination of its anatomy, just as a civil court could do. Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop."*

35. For the foregoing reasons, we do not find any merits in the complaint and the same is accordingly dismissed. No order as to costs. Pending applications, if any, stand disposed of.

A copy of this Order be provided to the concerned parties, by the Registry.

Sd/-

…….....……..……..

(AVM J. RAJENDRA, AVSM VSM (RETD.)

PRESIDING MEMBER

Sd/-

.....……..……..

(ANOOP KUMAR MENDIRATTA, J)

MEMBER

ar/sd/B-4/reserved matter