

Date of pronouncement:- 23rd April, 2026

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

CONSUMER COMPLAINT NO. 1470 OF 2019

M/S SHRI HIRA INDUSTRIES
Through its Proprietor
Sh. Rajiv Ashokchand Sancheti
At its address:
Plot No. 14 & 15, MIDC,
Beed-431122, Maharashtra

..... Complainant

Versus

1. UNITED INDIA INSURANCE COMPANY LIMITED
Having its registered address at:
24, Whites Road, Royapettah,
Chennai, Tamil Nadu - 600014, India

2. STAR AGRIWAREHOUSING AND COLLATERAL
MANAGEMENT LIMITED
Having its registered address at:
601-604, A-wing, Bonanza Building,
Sahar Plaza, J.B. Nagar Metro Station,
J.B. Nagar, Andheri (E) Mumbai City,
Maharashtra - 400059, India

3. AXIS BANK LIMITED
Having its registered address at:
Trishul 3rd Floor, Opp. Samartheshwar Temple,
Law Garden Ellisbridge,
Ahmedabad, Gujarat 380006, India.

..... 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 : Ms. Ishita Singh, Mr. Rajiv Sancheti,
Ms. Sumbul Ismail and Ms. Khushi
Singhal, Advocates.

For the Opposite Parties : Mr. Animesh Sinha, Mr. Shubham
Budhiraja, Ms. Ishita P. Advocate for OP-1
Mr. Varun Shankar, Advocate for OP-2

JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

ORDER

1. Present complaint has been preferred by the complainant aggrieved against the repudiation of claim by OP-1 United India Insurance Company Ltd. vide letter dated 25.03.2019, in respect of loss of stock in a fire incident on 22.07.2018 amounting to Rs.3,89,86,650/- and seeks the following reliefs:-

“vi. Direct the Opposite Party(s), jointly or severally, to pay an amount of Rs.3,89,86,650/- (Rupees Three Crores Eighty Nine Lacs Eighty Six Thousand Six Hundred Fifty Only) towards the claim of the Complainant;

vii. Direct the Opposite Party(s), jointly or severally, to an interest at the rate of 18% per annum on the amount of the claim, with effect from the date of the accident, till the actual date of payment by the Opposite Party(s);

viii. Direct the Opposite Party(s), jointly or severally, to pay compensation of Rs.1,00,00,000/- (Rupees One Crore Only) to the Complainant for mental agony, harassment, discomfort and undue hardships caused to the Complainant as a result of the above acts and omissions on the part of the Opposite Party(s);

ix. *Direct the Opposite Party(s), jointly or severally, to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) to the Complainant towards litigation costs;*

x. *Any other and further relief in favor of the Complainants as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case. In brief, M/s Shree Hira Industries (complainant) is a small scale proprietary firm engaged in manufacturing of cottonseed oil and cotton cake from cotton seed as well as purchasing and selling of the cotton bales."*

2. In brief, in 2015, complainant availed a loan facility from OP-3 (Axis Bank Ltd.) for an amount of Rs.2,00,00,000/- (Rupees Two Crores Only), against pledge of cotton seeds and cotton oil cake. Further, in December, 2017 the loan amount was enhanced to Rs.3,00,00,000/- (Rupees Three Crores Only) by pledging of cotton bales and a Facility-cum-Pledge Agreement dated 18.12.2017 was entered for the said purpose. It may be noticed that a Collateral Management Agreement (CMA) dated 21.03.2008 was also executed between OP No.2 (Star Agriwarehousing and Collateral Management Ltd.) and OP No.3 Axis Bank Ltd. for the security of pledged collaterals, which provided that OP-2 is an independent Service Provider and not an Agent of OP-3. OP-2 had a supervisory role over the goods pledged with OP-3 including duty of inspection and taking inventory.

3. Further, complainant entered into a lease agreement dated 31.10.2017 for storage of pledged goods in a warehouse owned by one

Amit Kishore Pagariya (hereinafter referred to as the 'warehouse') situated at Plot No.33/1, Old No.104, New Survey No.29 (admeasuring 80x70 ft.), Agri Product Market Yart, Beed. After the lease deed was entered by the complainant with Amit Kishore Pagariya, he sub-leased the property to OP-2 vide agreement dated 31.10.2017, to facilitate the supervision of goods by OP-2, which manages the collaterals for OP-3 as per the Collateral Management Agreement dated 21.03.2008.

4. A Fire & Special Perils Policy was further obtained by the complainant from OP-1 for the period 30.04.2018 to 29.07.2018 with additional cover for earthquake, STFI cover and spontaneous combustion against premium of Rs.40,160/-.

5. A fire broke out in the premises on 22.07.2018 in between 2.30 a.m. to 3.00 a.m., which was initially noticed by the watchman at Agri Product Market Yart and informed the Fire Department as well as the owner of the premises. The operations of the fire brigade continued till the evening of 22.07.2018 and JCB had to be called for breaking side wall and shutter gates of the warehouse. FIR No.06 of 2018 dated 22.07.2018 was also registered by the police, as the fire was accidental in nature. On receiving the information, complainant also reached the spot and informed the insurance agent.

Further, Authorized Representative of OP-3 i.e. Axis Bank Ltd. also visited the premises on the date of incident. Thereafter, vide letter dated 26.07.2018, complainant informed OP-1 that despite all attempts of the complainant, the goods kept in the premises had been gutted in fire and a claim form was submitted by the complainant on 10.08.2018 assessing the loss to the tune of Rs.3,89,86,650/-.

6. Consequent upon information received by OP-1, Royal Associates was appointed as an Investigating & Detective Agency which drew sample of debris and forwarded the same for analysis to Spectro Analytical Labs Limited, Delhi. Vide report dated 30.11.2018, Spectro Analytical Laboratory Limited pointed out that out of 6 samples submitted by M/s Royal Associates, none was found to contain any hydrocarbons/extraneous ignitable liquids. Further, 4 out of the 6 cotton debris samples were found to contain 10% cotton grade, while the other 2 samples could not be determined. Also, samples of debris were forwarded for analysis by Mr. Navin Jain, Surveyor and Loss Assessor to Atlas Laboratory, Mumbai whereupon vide report dated 30.07.2018, they informed that no flammable material was detected in the samples of debris, on analysis. Mr. Navin Jain, Surveyor and Loss Assessor also sent the ash samples collected from the premises to ICAR Central Institute for Research & Cotton Technology, Mumbai for analysis of fibre

test, whereby they reported that "as both the samples appear to be burnt to different extents, it is not possible to take a representative sample for analysing ash content".

7. Based upon final report of the Surveyor dated 24.12.2018, OP-1 repudiated the claim of the complainant vide letter dated 25.03.2019 as under:-

"Dear Sirs,

Reg: Fire loss on 22/7/2018

Policy No. 2312011118P101254120

Claim No. 2312011118C050009001

Survey Report No. UII/F/4440/18/7

Investigation Report No. RA/UIIC/HO/CHENNAI/735/18

This refers to the fire loss which reportedly occurred in your godown at Survey no. 29 (old), plot no 33/1 (new) plot no 104, APMC Kurla road, Beed, Maharashtra-431122, to the stocks of cotton bales. On receipt of intimation, we had appointed an independent Surveyor and Investigator to ascertain the exact cause of loss, quality of cotton, occurrence of fire, quantity of stocks, etc. They carried out detailed survey and investigation and also sought forensic test. The respective reports are on our records.

After detailed study of the above reports, following points have been observed:

1. If the plot no. was changed in 2010, you should have taken policy coverage for plot no. 104, which you failed to do so.

2. Surveyor stated that the said 1800 bales, which are heavily pressed, cannot be gutted completely and converted into ashes within few hours, with continued fire fighting operations by fire brigades.

3. There was no electrical connection inside the godown. Therefore, the possibility of fire originating in the stored cotton bales due to short circuit is totally ruled out.

4. The possibility of the good quality cotton bales turning completely into ash with a little or no traces of burnt debris despite fire fighting operations is not possible.

5. Surveyor has observed that insured had not taken any insurance coverage for the stocks when the same got ginned and pressed at Venkatesh Ginning and pressing.

6. Transportation documents for the raw cotton not submitted to the surveyor, therefore the quantity of raw cotton transported is doubtful and not justified.

7. It was noted that 955.5 quintals of raw cotton was purchased and sent to M/s Venkatesh Ginning and Pressing after 3/11/17 from which cotton bales were to be made, but the charges for making of total 800 cotton bales were paid on 3/11/17 itself, which is not acceptable. The fact remains that the bill for the charges is dated 20/11/17 whereas insured has paid total 800 bales processing charges on 3/11/17 itself. Therefore, it creates a doubt on the genuinity of the claim.

8. Inquiry by the surveyor revealed that in each bale about 2 kg iron strips are used. Therefore for 400 nos. of bales about 800 kgs iron strips should have been used. But when the iron strips collected and

weighed, the weight of collected iron strips was found to be only of 15.70kgs. Surveyor was informed by the insured that people might have stolen the remaining iron strips. This information is not acceptable and therefore the presence of 400 nos. bales tied with iron strips is doubtful. The alleged theft of iron strips from the premises which was under security was not reported to the police authorities, particularly when the loss assessment and survey work was going on at the given time.

9. Inquiries revealed that the claimed rate for cotton bales is not a justified rate. In fact the rate of cotton, as per market inquiries, has also not increased at the time of loss. It appears that the bales were stored for speculative trading but there was no profit accruing. Also interest had to be paid. This also leads to doubt that the fire was caused intentionally.

10. As per the forensic report no. D180908041/D180908041-1 dated 30/11/2018 cotton bales which burnt were of waste cotton only, it was derived by tests in the samples ashes of burnt materials collected from the godown, the cotton percentage was only of 10%; hence it is evident that the material which had got burnt was waste materials. There might have a few bales of good quality also but as per the samples taken by the investigator, overall average quality for cotton percentage was only of about 10%.

Hence the fire in this case as per the opinion of surveyor is due to "Deliberate ignition and initiation of fire in waste quality of cotton bales present in the godown so as to fabricate a fire incident and thereby stage manage an accidental fire in the cotton stocks with an ulterior motive to make false claims". Investigators' report also supports this view.

As informed by the Star Agri supervisor that they had locked and sealed the fire affected godown after 7.45 p.m. on 21.7.18. But during the inspection by surveyors, they found that the windows which should have been closed from inside were in open condition towards outside.

11. At the time of preliminary survey by our officials at 7:45am, fire fighting operations were going on. The fire had reportedly occurred between 2:30am to 3:00am. Your representative informed the surveyor that the Police and Fire Brigade had reached between 3:00am to 3:30am. It means that Fire Brigade had reached within about 30 minutes and started fire fighting operations. This being the case, possibility of 1800 bales completely burning and turning into ashes, which are heavily pressed, within few hours is not possible with continued fire fighting operations by fire brigade.

12. Eye witnesses claimed that the fire was found all around the godown, which is not possible routinely, as when fire breaks out at one point, it spreads slowly to other parts, and it cannot spread all around immediately.

Thus your claim suffers from mis-representation, mis-description and non disclosure of material facts. In view of the above, your claim stands repudiated with reference to:

i) Policy condition no. 1 which states that

"This policy shall be voidable in the event of mis-representation, mis-description or non- disclosure of any material particular"
and

ii) And Policy condition no. 8 which states that

"If the claim in any respect fraudulent or if any false declaration be made or used in support thereof or if any fraudulent means

or devices are used by the Insured or any one acting on his behalf to obtain any benefit under the policy or if the loss or damage be occasioned by the willful act or with the connivance of the insured, all benefits under this policy shall be forfeited".

Thanking you,"

8. Aggrieved against repudiation of claim, present complaint has been preferred by the complainant seeking payment of Rs.3,89,86,650/- along with interest @ 18% p.a. with compensation and cost.

9. In the written version filed on behalf of United India Insurance Co. Ltd./OP-1, any deficiency in service is denied and the grounds for repudiation detailed vide letter dated 25.03.2019 are reiterated, as surmised in Investigator Report dated 12.12.2018 and Final Survey Report dated 24.12.2018. OP-1 further averred that 1800 bales of cotton could not have been burnt into ashes within few hours, considering the fact that fire-fighting operation had started within half an hour of the commencement of fire. The cause of occurrence of fire is further stated to be unclear as there was no electrical supply in the godown. It is pointed out that fire spread all over the godown, which is routinely not possible in case the fire breaks at one point and gradually spreads to other parts. Further, the sample of ashes of burnt material collected from the godown indicated 10% cotton grade, as per the forensic report received from Spectro Analytical Labs Limited, Delhi. As

such, the material burnt is stated to be largely constituting waste cotton. OP-1 further submitted that Surveyor concluded that fire was deliberately ignited after placing waste quality of cotton bales and same stands confirmed by the Investigator.

10. OP-1 further stated that enquiry by the Surveyor revealed that each bale of cotton is secured by about 2 k.g. of iron strips and for 400 bales of cotton stored in godown, about 800 k.g. of strips should have been used and recovered at the spot. However, the weight of the collected nails/iron strips was found to be merely weighing 15.70 k.g. The explanation of the complainant that the same had been probably stolen/picked from the debris was found to be unacceptable by the Surveyor. The claim was accordingly repudiated for breach of condition No.1 and 8 of the policy. Condition No.1 provides that the policy shall be **voidable** in the event of mis-representation, mis-description or non-disclosure of any material particular. Further condition No. 8 provides that if the claim is fraudulent or based on false declaration or if the loss or damage is occasioned by willful act or connivance of Insured, the benefits under the policy shall be forfeited. OP-1 further placed reliance upon report of Investigator, M/s Royal Associates dated 12.12.2018 and report of Atlas Laboratory, Mumbai and urged that there is no basis to

accept that the fire had been caused due to rubbing of "iron patti (strips)" tied with the bales of cotton as assumed in the Investigation Report.

11. OP-2 Star Agriwarehousing & Collateral Management Ltd. in the written version clarified that complainant had taken the godown on lease from one Mr. Amit Kishore Pagariya, in respect of which a Sub-Lease Agreement dated 31.10.2017 was entered between complainant and OP-2. Further, the duty of OP-2 was limited only for inspection of goods to determine the quality/quantity/specifications/parameters of goods and for locking and storage of same. The liability of OP-2 was only limited to acts of deliberate negligence. OP-2 further averred that as per Clause 9 of CMA complainant was liable to take insurance cover of goods against risks including fire and other allied perils. OP-2 further emphasized that as per police investigation report no negligence could be attributed to OP-2. A separate Standard Fire & Perils Policy is also stated to have been obtained by Mr. Amit Kishore Pagariya pursuant to which structural damages to the tune of Rs.20,00,631/- were awarded to Mr. Amit Kishore Pagariya. Any cause of action by the complainant against OP-2 was denied.

12. Axis Bank/OP-3 denied any deficiency in services and reiterated that the loan had been granted against pledge of cotton bales in respect of which OP-2 was appointed as Collateral Management Entity. OP-3 is

further stated to have first right over commodities for compensation, if any, granted to the complainant.

13. In the rejoinder filed on behalf of the complainant, the stand taken in the complaint was reiterated and repudiation of insurance claim was stated to be *mala fide*.

14. In support of his case, complainant led evidence by way of affidavit of Shri Rajiv Ashokchand, Proprietor of the complainant firm and exhibited copy of details available on the website of Ministry of Corporate Affairs about OP-1 as Ex.CW1/1; copy of details available on the website of Ministry of Corporate Affairs about OP-2 as Ex.CW1/2; copy of details available on the website of Ministry of Corporate Affairs about OP-3 as Ex.CW1/3; copy of Collateral Management Agreement dated 21.03.2008 entered between OP-2 and OP-3 as Ex.CW1/4; copy of Loan Sanction Letter dated 06.12.2017 as Ex.CW1/5; copy of Rent Agreement dated 31.10.2017 as Ex.CW1/6; copy of Account Statement Details dated 23.07.2018 issued by OP-3 along with receipts for purchase of cotton bales from November, 2017 to March, 2018 as Ex.CW1/7; copy of Proposal Form dated 24.04.2018 along with Standard Fire and Special Perils Policy as Ex.CW1/8; copy of FIR No. 6/2018, spot panchnama dated 23.07.2018 and Certificate from Fire Department dated 24.07.2018 along with English translation as

Ex.CW1/9 (colly); copy of Fire Survey Report dated 10.08.2018 along with the Claim Form as Ex.CW1/10; copy of letter dated 26.07.2018 as Ex.CW1/11; copy of communication between the Complainant and Mr. Navin Jain, Surveyor and Loss Assessor as Ex.CW1/12; copy of Report dated 30.11.2018 issued by Spectro Analytical Labs as Ex.CW1/13; copy of Report dated 30.07.2018 issued by Atlas Lab and reply to RTI filed by Complainant along with report of ICAR, Mumbai dated 20.08.2018 as Ex CW1/14; copy of Final Survey Report dated 24.12.2018 as Ex CW1/15; copy of repudiation letter dated 25.03.2019 as Ex.CW1/16; copy of research paper titled 'Self-extinguishing cotton fabric with minimal phosphorus deposition' authored by Ampornphan Siriviriyannun, Edgar A.O'Rear and Nantaya Yanumet published on 10.05.2008 as Ex.CW1/17; copy of images whereby it is evident that the iron strips melted as Ex.CW1/18; copy of e-mails dated 01.08.2018, 02.08.2018 & 06.08.2018 as Ex.CW1/19 and copy of Claim Settlement with respect to Fire Insurance Policy as Ex.CW1/20.

15. On the other hand, OP-1 led evidence by way of filing affidavit of Shri Gyan Prakash, Admn. Officer (L) of United India Insurance Co. Ltd. and reiterated the stand taken in the written statement.

16. OP-2 led evidence by way of affidavit of Prathamesh Sharad Dinde Authorized Signatory of the OP-2 and annexed copy of incorporation

certificate of OP-2 as Annx. A; copy of Board Resolution dated 15.03.2019 and the subsequent Letter of Authorization dated 02.01.2020 as Annx. B; copy of Collateral Management Agreement dated 21.03.2008 as Annx. C; copy of Sub-Lease Agreement dated 31.10.2017 as Annx. D; copy of storage receipts and test certificates as Annx. E; copy of the spot Panchnama dated 23.07.2018 prepared by the Police and the Status Report dated 24.08.2018 as Annx. F; copy of preliminary inspection report dated 10.08.2018 as Annx. G; copy of forensic report as Annx. H and copy of Letter No. 231201/Fire Claim/2018-19 vide which OP-1 accepted the claims of Mr. Pagariya as Annx. I.

17. OP-3 led evidence by way of affidavit of Ms. Riya Brahmachari (AR of OP-3 Bank) and exhibited copy of the Facility cum Pledge Agreement dated 18.12.2017 as Ex.OP2-1, copy of the power of attorney/board resolution vide which deponent was appointed to act on behalf of the OP-3 Bank as Ex.OP2-2.

18. Learned counsel for the complainant contends that since the quantity of bales of cotton were duly supervised by OP-2 including the quality, the claim could not have been repudiated by OP-1 relying upon the forensic reports which indicated the fibre content of cotton as 10% grade. He further submits that spot *panchnama* report dated 23.07.2018 prepared by police indicated the cause of fire as accidental and likely

caused due to rubbing of iron patti. As such, the cause of fire could not be doubted. He further emphasized that the intensity of fire was high and the fact that three fire brigades continued operations for more than 15 hours indicates the severity of fire. The burning of un-treated cotton fabric to ashes was stated to be a normal consequence dependent on intensity of fire. The assertion of OP-1 that 1800 bales cannot be completely gutted to ashes was stated to be unscientific and unrealistic assertion based upon assumptions. Reliance in this regard was placed upon research paper authored by Ampornphan Siriviriyannun, Edgar A. O'Rear published on 08.05.2008. Learned counsel further urged that the report filed by ICAR reflected that cotton grade from the debris (ash) cannot be ascertained. Learned counsel further contended that since the complainant had been authorised to remove the debris there is some possibility that iron strips mixed with the debris may have been removed or degenerated during fire. In support of the contentions, reliance was further placed upon ***New India Insurance Company Limited v. Luxra Enterprises Pvt. Ltd., (2019) 6 SCC 36; M/s Tanda Textiles and Processing Mills Pvt. Ltd. v. United India Insurance Co. Ltd.*** (Original Petition No.257 of 1998); ***M/s Flowtex Products v. M/s United India Insurance Co. Ltd., Consumer Complaint No.359 of 2013.***

19. *Per contra*, learned counsel for OP-1 placed reliance upon report of the preliminary Surveyor Mr. A.K. Kadam, Investigator M/s Royal Associates and final survey report submitted by Mr. Navin Jain. The preliminary survey is stated to have been carried on the date of loss itself i.e. 22.07.2018, while the Investigator submitted its report on 12.12.2018 and the Surveyor submitted the final survey report dated 24.12.2018. The claim is stated to have been repudiated vide letter dated 25.03.2019 on the grounds which are self-speaking. He reiterated that no credence could be placed upon the explanation that the fire had been caused due to rubbing of iron pattis in the absence of any cogent evidence on record. He argues that the nature and quality of cotton from ashes clearly reflects that the sample contained inferior grade cotton (10% cotton only) and consequently it is implicit that the burnt cotton was substantively waste material and a fraudulent claim had been raised. He further reiterates that burning of whole stock of cotton bales within a short period to ashes was not feasible and the windows of the godown which should have been normally locked were found open in the survey report. The spreading of the fire all around the godown was also stated to be suspicious. The quantity of stocks as claimed was also disputed as two k.g. iron strips were approximately used for tying each bale but the recovered iron strips for stock of 400 bales, merely weighed

15.70 kg. instead of 800 kg. He urges that mere absence of inflammables hydrocarbons in the debris cannot lead to the conclusion that the fire was accidental, since it spread on all sides of godown. He further emphasizes that there is no concrete evidence to contradict the assessment and findings of the Surveyor and the report of the Investigator.

20. In the written submissions filed on record, OP-2 claimed that the responsibility lay with the complainant to obtain adequate insurance qua the stored goods and no liability could be fixed on OP-2 for destruction of goods in accidental fire. He submitted that there is no provision in the Collateral Management Agreement for holding OP-2 liable towards the complainant in the absence of any negligence.

21. OP-3 Axis Bank Ltd. reiterated that no deficiency, lapse or misconduct is attributable to OP-2 in performance of its obligations. Further, in terms of clause 19(c) of the Agreement dated 23.03.2008, OP-2 was an independent service provider and was not acting as an agent of the Bank under the terms of the Agreement. Any deficiency in service on the part of the bank was denied relying upon *Laxmi Engineering Works v. P.S.G. Industrial Institute, (1995) 3 SCC 583*.

22. We have given considered though to the contentions raised and perused the record carefully.

Admittedly, the claim stands repudiated for breach of policy condition no.1 & 8 based upon specific points recorded vide repudiation letter dated 25.03.2019. The repudiation primarily places reliance upon the report of the preliminary Surveyor Mr. A.K. Kadam, Investigator, M/s Royal Associates followed with the final survey report submitted by Mr. Navin Jain dated 24.12.2018.

23. The standard upon which a Consumer Forum ought to examine a consumer complaint in insurance matters has been laid down by the Hon'ble Apex Court in ***Khatema Fibres Ltd. v. New India Assurance Company Ltd.***, Civil Appeal No.9050/2018 decided on 28.09.2021 in para 38 as under:-

“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.”

24. The observations of the Hon'ble Apex Court in ***Cement Corporation of India v. ICICI Lombard General Insurance Company Ltd.***, 2023 SCC OnLine SC 2821 in para 24 in the context of fire insurance policy may also be beneficially referred :-

"24. The principles governing "Fire Insurance" have been very succinctly laid down by this Court in the case of Orion Conmerx Pvt. Ltd. v. National insurance Co. Ltd., 2025 SCC OnLine SC 2309, wherein it was held that if there was a fire and something was on fire which ought not to be on fire and such a fire was not caused by the wilful act of the insured, then any loss attributable to fire would be covered under the policy. The relevant portions of the said judgment are reproduced herein under:

"...REASONING

PRINCIPLES GOVERNING 'FIRE INSURANCE'

"...32. Having heard learned counsel for the parties, this Court is of the view that fire insurance is a strategic tool for risk management, asset protection and economic resilience. Fire insurance policy does not prevent fire - but it cushions the financial impact when it occurs. Keeping in view the importance of the concept of fire insurance, it is important to outline the principles governing the same.

33. It is settled law that the contract of fire insurance is a contract to indemnify the Insured against loss by fire. The expression 'fire' signifies the cause of the loss and in order to determine whether in a particular case the loss is caused by fire, the following rules generally apply:—

a) There must be an actual fire; hence mere heating or fermentation will not be sufficient to render the insurers liable for loss occasioned thereby.

b) There must be something on fire which ought not to have been on fire.

c) There must be something in the nature of an accident, but a fire occasioned by the wilful act of a third person without the consent of the Insured, is to be regarded as accidental for the purpose of this rule. If these requisites are satisfied, any loss attributable to the fire, whether by actual burning or otherwise, is within the contract.

34. The object of the contract is to protect the Insured against loss occasioned by fire. The fire must be accidental. The dictionary meaning of the expression 'accidental' is a 'happening occurring

unexpectedly or by chance'. Consequently, damage from a deliberately set fire will not be covered. To carry out the investigation, therefore, beyond the cause of the loss and to cast upon the Insured the burden of establishing that the cause of the fire itself was covered by his contract, would largely defeat this object.

35. The cause of fire, however, becomes material where the circumstances of the case are open to suspicion, and seem to indicate that it would be contrary to the principle of good faith (doctrine of uberrima fides) inherent in the contract to permit the Insured to recover. Accordingly, the cause of fire becomes material in cases where the fire is occasioned not by negligence but by the wilful act of Insured himself or of someone acting with his privity or consent. In such a case, his conduct, coupled with the making of a claim, is a fraud upon the insurers and he cannot enforce his claim against them. (See: The Law Relating to Fire Insurance by A.W. Baker Welford and W.W. Otter-Barry Fourth Edition).

36. This Court in New India Assurance Company Limited v. Mudit Roadways, (2024) 3 SCC 193 has held, 'the precise cause of a fire, whether attributed to a short-circuit or any alternative factor, remains immaterial, provided the claimant is not the instigator of the fire'. The said judgment categorically holds that the precise cause of fire is immaterial provided the Insured is not the instigator of the fire. This judgment underscores the importance of insurers' duty to act in good faith and honour its commitment to the Insured.

37. Consequently, this Court is of the opinion that once it is established that the loss is due to fire and there is no allegation/finding of fraud or that the Insured is the instigator of the fire, the cause of fire is immaterial and it will have to be assumed and presumed that the fire is accidental and falls within the ambit and scope of fire policy..."

(Emphasis Supplied)"

25. At the outset, we may notice that the stand taken by OP-1 that the insured should have taken the policy coverage for the new plot no.104 which stood changed in 2010, is without any merits since the premises no. which is described by the old number and subsequently changed by the new number, is one and the same.

26. The Insurance Company has further raised doubts regarding origination of fire under suspicious circumstances since there was no electrical connection inside the godown and the possibility of cotton bales turning completely into ash with little or no traces of debris is not possible. Further, a doubt is expressed that 1800 bales could not be gutted and completely burnt with on-going fire fighting operations which commenced within short time.

However, it may be noticed that the aforesaid inferences of Surveyor are not supported by any cogent evidence which points out mischief at the end of complainant. It cannot be ignored that the final investigation report by the police points out the possibility of fire on account of friction between the iron strips resulting in sparks. There is no adverse finding regarding the role of complainant in igniting the fire or pointing to role of a third party. It also needs to be kept in perspective that on forensic examination no chemicals were found in the debris which could have corroborated the causation of fire to some external

agent/aid. In a massive severe fire, the destruction of cotton bales to ashes cannot be ruled out merely because the firefighting operations commenced within a short time. The nature of stock consisting of raw cotton and cotton bales itself being highly inflammable can lead to the destruction of entire stocks. Since the suspicion cast in this regard by the Insurance Company is only a presumption uncorroborated by any cogent evidence, we are unable to concur with the findings arrived at by the Surveyor that the entire stocks could not have been burnt in a severe fire. In the facts and circumstances, it may be difficult to pin-point the exact cause of fire but in any case the claim cannot be repudiated claiming to be under suspicious circumstances.

27. The Insurance Company has further raised doubt qua the transportation documents for the raw cotton and noted that 955.5 quintals of raw cotton was purchased and sent to M/s Venkatesh Ginning and Pressing after 03.11.2017 from which cotton bales were to be made but the charges for making total 800 cotton bales were paid on 03.11.2017 itself. We are of the considered view that merely because the processing charges for 800 bales were paid in advance on 03.11.2017 though the bill for charges was generated on 20.11.2017, cannot lead to a presumption that the transportation had not been made for ginning and processing. Admittedly, the records of transportation

from the godown were maintained by OP-2 (an independent agency appointed by the bank) to supervise the stocks and nothing has been brought on record to controvert the same. The advance payment of bills at times may be made in accordance with trade practice and dependent on relations between the parties but the same cannot lead to a presumption that the stocks were not forwarded for processing, if the transportation is supported by documents. It also needs to be kept in perspective that the maintenance of stocks at the godown in question was under supervision of OP-2, which had been engaged by the bank as an independent service provider for supervision of the hypothecated goods. No shortcoming of stocks was ever pointed out by OP-2 to OP-3 (bank). Neither any evidence has been led on record to controvert by records maintained that there was any shortfall in the stored stock.

28. The Insurance Company has further taken into account that for securing 400 bales about 800 kg. of strips should have been used but the strips collected and weighed by the Surveyor were found to weigh 15.7 kg. As such the presence of 400 bales tied with iron strips had been doubted.

It cannot be ignored that the complainant vide e-mail dated 01.08.2018 had sought permission for removal of debris due to pressure for removal of the same and to rule out theft. Further, the debris was

removed on 06.08.2018. The survey for collecting the iron strips/nails appears to have been taken up thereafter. In the facts and circumstances, there appears to be reasonable explanation of possibility of removal of iron strips with the debris as the same may have been partly degenerated in the fire.

For the foregoing reasons, we are unable to subscribe to the findings of the Surveyor that the fire was caused by deliberate ignition and the incident of fire was stage managed or fabricated. In view of above, there does not appear to be sound foundation for treating the violation of condition no.1 & 8 of the insurance policy, as claimed by Insurance Company.

29. Apart from opining on the cause of fire, the Surveyor estimated the loss of quantity of cotton in the final survey report as under:-

➤ **Qty of Cotton Bales Estimated by us**

The insured informed that the 400 nos. cotton bales were purchased by them from M/s. Jayshree Trading and these were tied with iron strips and all other bales were tied with plastic strips.

Our inquiries revealed that in each bales about 2 kg iron strips are used; then for 400 nos. bales about 800 kgs iron strips should have been used. But when we got the iron strips collected, after ashes cooled down, and got these strips weighed; then we could find weight of collected iron strips to be only of 15.70 kgs. Hence the bales which were purchased from M/s. Jayshree Trading was only 8 nos.

The balance 600 nos. purchased bales were tied with Plastic strips.

Hence total nos. of purchased bales works out to 608 nos.

Then as calculated in the above, 712 nos. bales were got made by them from M/s. Venkatesh Ginning.

Total nos. of bales thus works out to 1320 nos.

With average weight of bale of about 157 kgs., the weight of 1320 nos. cotton bales works out to 2072.40 quintals.

➤ **Quality of Cotton**

As revealed by the investigators' report; it was derived by tests in the samples ashes of burnt materials collected from the godown, the cotton percentage was only of 10%; hence it is evident that the material which had got burnt was waste materials. There might have a few bales of good quality also but as per the samples taken by the investigator; overall average quality for cotton percentage was only of about 10%.

That is the cotton bales which burnt were of waste cotton only.

➤ **Rate of Waste Cotton**

We inquired from the market and our market inquiries revealed that, the rate of waste cotton is of about @Rs.5000/- per quintals. This rate we are taking for loss assessment.

➤ **Assessment of Loss**

Keeping view the above findings, our assessment of loss works out as follows:-

S No.	Description	Amount of Loss claimed by insured	Amount of loss allowed by us
1	Loss to Cotton Bales	Rs.3,89,86,650/-	Rs.1,03,62,000/-
		(1800 nos. x Rs.21,659.25 per bale)	(1320 nos. bales X 1.57 quintals each bales = 2072.40 qtrs. X Rs.5,000/- per quintal)
2	Fire Fighting Expenses (Ref Annexure 45)		Rs.26,000/-
			Rs.1,03,88,000/-
		-24-	
3	Less: Salvage of 15.70 kgs. Steel strips @ Rs.20/ per kg.)	(-)	Rs.314/-
			Rs.1,03,87,686/-
4	Less: Excess under the Policy @ 5% (or as applicable under the policy)	(-)	Rs.5,19,384/-
5	Net Loss Assessed		Rs.98,68,302/-

30. Coming back to the assessment of the claim, it may be observed that the Surveyor based upon forensic report dated 30.11.2018 came to the conclusion that the cotton bales which were burnt consisted substantially of waste cotton, as the cotton grade was found in the sample tests to be only 10%, though there might have been few bales of good quality.

There is no plausible reason to doubt the sample results of the debris collected from the spot by accredited laboratories which point out the cotton grade as 10%. Consequently, the assessment of compensation arrived at by the Surveyor has a strong foundation. Even
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though the Surveyor's report is not a last and final word and departure can be made on showing contradictory evidence but the same cannot be subjected to forensic analysis. In the facts and circumstances, we are of the considered view that there is no concrete evidence to ignore the forensic analysis by accredited laboratories. The conclusions arrived at by the Surveyor appear to be reasonable and in accordance with the provisions of Section 64(UM) of the Insurance Act, 1938. The assessment of quantity of stocks and the quality of cotton stored in the godown relying upon forensic results cannot be said to be vitiated by arbitrariness or *ad hocism*. Reliance in this regard may be placed upon ***Khatema Fibres Ltd. v. New India Insurance Company Ltd.*** (supra).

31. For the foregoing reasons, the assessment of loss by the Surveyor assessing the stocks as waste cotton at the rate of Rs.5,000/- per quintal is equitable and there is a valid basis adopted by the Surveyor to assess the loss at Rs.98,68,302/-.

32. The repudiation of claim by Ops vide letter dated 25.03.2019 is accordingly unjustified. The complaint is partly allowed and the Insurance Company (OP-1) is directed to pay to the complainant sum of Rs.98,68,302/- as assessed by the Surveyor with interest @ 7% per annum from the date of survey report dated 24.12.2018 till realization. If the OP/Insurance Company fails to pay the amount within the stipulated

period of eight weeks, the balance amount shall be payable with enhanced rate of interest @ 9% per annum from the date of default till realization.

The amount realized shall be initially credited/adjusted towards payment of loan amount, if any due, to OP-3 Bank in the first instance as the stocks were pledged with the Bank. The balance amount shall be thereafter payable to the complainant. OP-1 is further liable to pay litigation cost of Rs.20,000/- (Rupees Twenty Thousand Only). Complaint is accordingly disposed of. Pending applications, if any, stand disposed of.

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

Sd/-

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

Sd/-

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(ANOOP KUMAR MENDIRATTA, J.)
MEMBER

ar/sd/B-4/reserved matter