



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 15th December, 2023

Pronounced on: 02nd March, 2024

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CS(COMM) 26/2018 & I.A. 12086/2019

SHARP MINT LTD.

..... Plaintiff

Through: Mr. Bhaskar Tiwari & Mr. Ramakant
Shukla, Advocates.

versus

ORIENTAL INSURANCE COMPANY LTD. Defendant

Through: Mr. Anant Prakash, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Suit for Recovery of Rs. 4,14,39,480/- has been filed on behalf of the plaintiff.
2. Briefly stated, the plaintiff is a Company incorporated under the Companies Act, 1956 having its registered Office at Sharp House, Plot No. 9, LSC, Gujranwala Town-I, Delhi-110009. It is engaged in manufacturing of natural menthols and its allied products and have its main manufacturing unit at F - 73, 74, 75 and 75 (A), 76 (B, C & D), Phase - I, Bhiwadi Industrial area, Alwar District, Rajasthan. The plaintiff Company was initially known as Laxmi Aromatics Private Limited and then changed its name to Sharp Aromatics India Private Limited and then to Sharp Aromatics India Limited. In September, 2008, Sharp Aromatics India Limited merged



with Sharp Menthol India Limited. The name of the plaintiff Company was changed from 25.11.2011, to Sharp Global Ltd. w.e.f. 17.09.2014, but was subsequently again changed to Sharp Mint Ltd.

3. The plaintiff/Company is a large producer of mint ingredients, including natural menthol and mint blends and has been accredited with ISO 9001: 2015 and ISO 22000 Certification and its products cater to various global industries.

4. The case of the plaintiff is that it had obtained *Standard Fire & Special Perils Insurance Policy* bearing policy No, 271400/11/2014/1160 from the defendant to cover risks against its *Building, Plant & Machinery and Stock* at F - 73, 74, 75 and 75 (A), 76 (B, C & D), Phase - I, Bhiwadi Industrial area, Alwar District, Rajasthan from 27.02.2014 to 26.02.2015. The Policy covered all the stocks of the Plaintiff Company up to Rs. 380 Crores.

5. Another Policy was from *M/s Universal Sompo General Insurance Co. Ltd*, to insure its Stocks up to Rs. 150Crores, at the aforesaid location.

6. The liability of the Defendant Company towards the loss of stock was 71.70% whereas the liability of Universal Sompo General Insurance Co. Ltd towards the loss of stocks was 28.30%.

7. It is submitted that there were fifteen Distillation Plants (P-01 to P-15) installed in the manufacturing unit of the Plaintiff/Company. Each Distillation Plant was constructed of SS-304 which divides into 10 sections with a total height of 44 meters. Each column is connected to a kettle at the bottom which in turn is connected to a film thermic heated through a heat exchanger. The top end of the column is connected to water cooled condenser, in order to condense and separate the products. The Columns are



filled with SS - 304 packing grids that provides sufficient residence time for the products having differential boiling points, for the purposes of separation.

8. It is submitted that on 21.04.2014 a fire took place in the factory premises which damaged the SS-304 column and SS-304 steel grids packing of the distillation plant P-01. The said Column and all its contents got burnt and contaminated resulting in losses in stock and plant. The Police and Fire Brigade were immediately intimated about the incident.

9. The defendant/ Insurance Company appointed *M/s R N Sharma & Co.* as the preliminary Surveyors who made a visit to the factory on 23.04.2014 and took photographs of the affected unit. Subsequently, the Defendant appointed *Mac Insurance Surveyors & Loss Assessors Private Limited* to survey the premises and to assess the loss. The Survey team visited the affected factory premises at F - 73, 74, 75 and 75 (A), 76 (B, C&D), Phase - 1, Industrial Area, Bhiwadi, District Alwar, Rajasthan, on 26.04.2014.

10. The other Insurance Company i.e., Universal Sompo General Insurance Company appointed *M/s S I B & Associates, Mumbai* as Surveyors to conduct the survey and assess the losses.

11. It is submitted that in the Survey conducted by *Mac Insurance Surveyors & Loss Assessors Private Limited*, plant P-01 and its columns were found to be damaged. The Surveyor examined the possibilities of the cause of fire, however, the probable cause of the fire was still under investigation. It was observed that the Columns were vacuum sealed and there was no possibility of ingress of air, which is essential for a fire to occur. The Surveyor required the plaintiff to dismantle the damaged plant in order to evaluate the damage or losses.



12. The plaintiff/Company lodged a total claim of Rs. 4,65,43,040 (Rupees Four Crores Sixty Five Lakhs Forty Three Thousand and Forty only), which was subsequently revised to Rs. 4,12,12,988 comprising of Rs 3,48,54,023 towards loss of stock. It is stated that since the stock has been insured with two insurers, the proportionate share of the defendant Company for loss of stock is 71.70% and their liability amounts to Rs. 2,49,90,334. Further, amount in the sum of Rs. 63,38,267 is claimed towards loss on account of damage caused to the Plant No. P-01 and Rs.20,699 towards expenses incurred for diffusing the fire. Thus, the total liability of the defendant company is Rs. 3,13,49,300 aside from interest for pre litigation period.

13. It is submitted that the plaintiff duly submitted all the requisite documents, despite which the defendant delayed the payment of the claim amount. The plaintiff has also furnished an independent opinion by *M/s Puri Crawford Insurance Surveyors & Loss Assessors India Private Limited* (hereinafter referred to as “Independent Surveyors”) on the root cause of the fire. The Report dated 23.09.2014 made by Mr. Srinivsasan, Chairman of the said Company, stated that the fractionation columns containing combustible material in the form of inflammable liquids and source of heat in the form of thermic fluid heater, cannot initiate the fire unless there is ingress of oxygen from the air. The cause of ingress of air was narrowed down to the failure of the Teflon gasket which usually cracks over a period of time. It is submitted that the aforesaid observation was supported by the fact that the fire was first noticed near the manhole cover and the shell of the Column.



14. Thereafter, M/s Mack Insurance Surveyors, the surveyor appointed by the defendant, issued its report dated 04.03.2015. It is submitted that the said Report wrongly assessed the loss of stock at Rs.1,79,35,047.00 out of which the proportionate amount of the defendant was determined as Rs. 1,28,59,090. It is further submitted that the Surveyor had also incorrectly assessed the Loss on Plant and Machinery at Rs. 24,97,238 without taking into consideration the fact that there was a loss of expenditure of Rs. 2,92,157 towards insulation and the heat Tracer. Moreover, the Surveyor had failed to provide the basis of their assessment.

15. It is submitted that the surveyor of the defendant had principally agreed on the findings of the *Independent Surveyor*, Mr. Srinivasan that ingress of air caused the fire and damage to the plant and stock, but wrongly came to the conclusion that **crude Mentha Oil ignited on its own and wrongly considered the loss of 5784.9 Kgs quantity of Mentha Oil processing in Plant P-01 as not covered under the Policy** on a wrong assumption that the loss of the stock was covered under one of the Exceptions to the Policy and the Defendant was not liable to indemnify against such loss.

16. It is further submitted that the Surveyor of the defendant failed to appreciate that the stock of Crude Mentha Oil was in its normal course of distillation/fractionation in an airtight vacuum plant and no fire could take place in the absence of oxygen. The Surveyor failed to appreciate that the damage to the Plant as well as to the Stocks, was not due to auto-ignition or self-combustion but due to ingress of oxygen, which took place in the Column due to crack of the Teflon gasket and/or rusting of manhole flange.



17. The defendant, vide e-mail dated 26.03.2015, informed the plaintiff that the Competent Authority has approved the net loss at Rs. 24,97,283 against the claim of Rs 3,13,49,300 lodged by the plaintiff. The plaintiff vide its email dated 10.04.2015 sought the defendant Company to provide bifurcation of the approved sum of Rs. 24,97,283. Since the plaintiff did not receive a reply, the plaintiff thereafter wrote multiple e-mails demanding the details of the approved amount.

18. **On 24.04.2015, the defendant communicated to the plaintiff that the former was not liable to indemnify for the *loss of Stocks* as the same fell under the *Exception provided in the Policy* and the plaintiff was held entitled only to the claim for *loss of Plant and Machinery* which had been assessed at Rs. 24,97,283.**

19. On receipt of the aforesaid communication, the plaintiff demanded a copy of the Survey Report; however, only an incomplete copy of the same was provided by the defendant vide e-mail dated 31.07.2015. After perusing the Survey Report, the plaintiff vide e-mail dated 09.03.2016 stated that the Assessment of Rs. 24,97,283 was unacceptable and thereby sought for a reconsideration by the defendant.

20. Since the defendants did not consider the requests of the plaintiff, it issued a Legal Notice dated 10.03.2017 asking the defendants to pay the sum of Rs.3,13,49,300 along with interest, within 15 days. The defendant gave the Reply dated 12.04.2017 wherein they reaffirmed their assessment of Rs. 24,97,283.

21. Hence, the present Suit has been filed for recovery of Rs. 3,13,49,300/- as the loss suffered due to the damage caused to the Stocks and Plant & Machinery, in addition to Rs. 1,00,90,180/- towards the interest



for the period 01.05.2015 (approximately one month after the Final Survey Report) till 05.12.2017 calculated at the rate of 12% per annum and *pendente lite* and future interest @ 12% per annum from the date of filing of the Suit till its realisation.

22. *The defendant was served on 28.02.2018, but it failed to file the Written Statement and the right to file the same was closed on 10.10.2018.*

23. The plaintiff examined *PW1 Dr. Kamal Kumar*, Vice-President of the plaintiff/Company who produced his Affidavit by way of Evidence Ex PW1/A. This witness was not cross-examined by the defendant.

24. *PW2 Mr. G Srinivasan*, the Chairman of M/s Puri Crawford Insurance Surveyors & Loss Assessors India Private Limited, had proved the independent Opinion/ Report Ex PW1/57. He was duly cross-examined on behalf of the defendant.

25. **It has been argued by the counsel for the plaintiff** that neither the defendant nor their Surveyor has alleged any negligence on the part of the plaintiff in its Plants. Considering the fact that a fire can only be caused by the ingress of air, the claim of the plaintiff cannot be rejected under the Exclusion clause under the *Standard Fire and Special Perils Policy* as the said Exception is not applicable to the facts at hand.

26. **Submissions heard and the record perused.**

27. Admittedly, the plaintiff had taken a Standard Fire & Special Perils Insurance Policy bearing Policy No. 271400/11/2014/1160Ex PW1/4 effective from 24.02.2014 to 26.02.2015 covering all their *Stocks, Plant and Machinery*, from the defendant/Insurance Company. The Stocks of the plaintiff were covered upto Rs. 380 crores. The Stocks have also been insured with another Company namely *Universal Sompo General Insurance*



Co. Ltd upto Rs. 150 crores. Therefore, the proportional liability of the defendant and Universal Sompo General Insurance Co. Ltd. admittedly, is 71.70% and 28.30% respectively.

28. It is also not under challenge that on 21.04.2014, fire broke in the factory of the plaintiff damaging lower portion of the SS - 304 Column and SS - 304 steel grids packing of Plant No. P-01. As a result, the contents within the Column were also burnt and contaminated. The Police and the Fire Department immediately informed and the Fire Department issued a Certificate dated 07.05.2014 Ex PW1/5.

29. Essentially, the plaintiff made the following Claims to the defendant Company:

- (i) Loss of Stocks – Rs.2,49,90,334.
- (ii) Loss of Plant & Machinery – **Rs. 63,38,267**
- (iii) Expenses for Fire Extinguishing- **Rs. 20,699**

Total- Rs.3,13,49,300.

30. A claim of Rs. 3,13,49,300 (aggregate of proportional loss incurred due to Loss of Stocks and the total loss to Plant & Machinery) has been made from the defendant in accordance to their proportionate share.

Claim for Loss of Stocks:

31. The defendant rejected the Claim for Loss of Stocks on the ground of it being covered under the *Exception Clause under the Policy*.

32. The ***Exception Clause*** in the Policy reads as under:

“Fire

Excluding destruction or damage caused to the property insured by



a) i) *Its own fermentation, natural heating or spontaneous combustion.*

ii) *It's undergoing any heating or drying process.*

b) *Burning of property insured by order of any Public Authority."*

33. In the present case, the Clause relied on by the defendant, excludes damage caused to the insured property due to its *auto -ignition while undergoing any heating or drying process.*

34. "**Auto-ignition temperature**" is defined in Blacks Law Dictionary as *the temperature that any combustible will ignite at without any help from an outside source.* The process of combustion takes place when a substance reacts with oxygen to generate heat. The Exclusion Clause exists as there is a greater risk of fire in the processing of combustible materials, which requires sufficient caution to be exercised in chemical plants.

35. It is not in dispute that defendant appointed initially *M/s R N Sharma & Co.* was appointed to conduct a Preliminary Survey after which *M/s Mac Insurance Surveyors & Loss Assessors Private Limited* was appointed as the Surveyor for the incident. The team of Surveyors visited the factory on 26.04.2014 and noted that Plant P-01 was damaged out of the 15 distillation Plants.

36. After the filing of the Claim by the plaintiff, the defendant sought opinion from the plaintiff as to why their Claim did not fall under the Exception. The Independent Surveyor namely, Puri Crawford Insurance Surveyors & Loss Assessors India Pvt. Ltd. was appointed by the plaintiff to find the root cause of Fire. It gave its detailed Report dated 23.09.2014 Ex. PW1/57 as under;



“ ...

4. ***The major raw material is Mentha Oil which is fractionally distilled to obtain various products and blends such as Alpha Pinene, Fenchene, Limolene, Cineole, Cis-3 Hexanol, Pentanol etc. The process adopted is to utilize the differential boiling points of products to separate them. The distillation results in separation of various products including water/moisture. The heating is provided by thermic fluid in falling film exchanger. The products and blends are all highly inflammable with Flash points less than 100°C and Boiling point in the range of 110°C to 230°C.***

5. *It was reported by the Insured that blend CIS Terpene was being enriched in the fractionation column on 21 April 2014 when at about 4.10 pm a fire was noticed in the first section of the column near manhole cover. Immediate efforts were taken to put out the fire by spraying water at the affected section of the column. It took about an hour to completely control and put out the fire.*

6. ***The fire had damaged the lower portion of the 55-304 column badly and 55-304 steel grid packing had totally melted. The contents were burnt and /or contaminated.***

7. *The fractionation column is constructed of 55- 304 in ten sections with total height of 44 Mtrs. At the bottom, the column is connected to Kettle which In turn is connected to falling film thermic fluid heated heat exchanger. The other end of the column is connected to water cooled condenser to condense and separate the product. The columns are filled with 55-304 packing grids that provide sufficient residence time for products having differential boiling points to separate. The column works under vacuum in closed circuit basis with total reflux arrangement.*



8. As most of the products and blends are highly inflammable with low flash point, the process is carried out under complete vacuum thereby removing presence of air in the column prior to commencement of the process. In view of this the drawing of feed is done under vacuum. Heating of the feed is done by constantly allowing the feed to fall as falling film in the thermic fluid heated exchange. The pumping is under flooded suction.

9. For any fire to occur we require presence of three important elements namely combustible material, source of heat and oxygen. The fractionation column contains combustible material in the form of inflammable liquids and source of heat in the form of thermic fluid heater. However, these two elements cannot initiate fire unless there is ingress of oxygen from air.

10. The circumstances of loss and melting of packing material and deformation 1st section of column indicates extensive fire in the 1st section of the column which can take place only if there is enough continuous source of oxygen to allow combustion. **The probable source of the ingress of oxygen can occur due to any one or combination of the following:**

- a. Improper vacuuming of the column prior to drawing of the feed.
- b. Leakage in the circulation pump of the feed
- c. Leakage in the falling film heat exchanger or kettle shell
- d. Leakage/cracking of column shell at higher section
- e. Accidental leakage of thermic fluid from heat exchanger due to failure of pipe
- f. Failure of Teflon gasket of manhole cover allowing ingress of air
- g. Rusting of manhole flange causing opening (s) for ingress of air



11. We have examined all the above possibilities and comment as under;

a. The possibility of fire on account of improper vacuuming of the column prior to drawing of the feed is unlikely as the column had already been under operation for more than 3 hours and about 200 Kgs of water had been distilled off.

b. Ingression of air through circulation pump is not feasible as the pump is working under flooded suction and is under continuous operation since the commencement of heating.

c. There was no damage observed in falling film heat exchanger or kettle shell subsequent to fire and therefore ingression of air through crack or damage in kettle or heat exchanger is ruled out.

d. Leakage /cracking of column at higher level are also ruled out as the fire was not noticed at higher section of the column and also there was no damage to them.

e. Accidental leakage of thermic fluid is also unlikely as contaminated fluid collected subsequent to fire from the kettle did not show presence of thermic fluid

12. Thus, the source of ingression of air is narrowed down to failure of Teflon gasket of manhole cover and/or rusting of manhole flange causing opening(s). It may be noted that Teflon gasket do crack over a period of time and crack can allow ingression of air into column as it is working under vacuum. Further the manhole cover including the side which is contact with Teflon gasket was found rusted and this can lead to opening for ingression of air. The above two possibility is fully supported by the fact that fire was first noticed near the manhole cover and the shell of the



column and SS packing grids were found badly melted/deformed.

13. The fire had therefore initiated on account of ignition of inflammable products under distillation at high temperature following the ingress of air into the column due to failure of gasket and/or opening caused by rusting of manhole flange. The products were all at high temperature range where they can easily ignite and continuously burn.

37. This Report of the Independent Surveyor Ex. PW1/57 was considered by the Surveyor of the defendant, M/s Mac Insurance Surveyors & Loss Assessors Private Limited, who in their Survey Report Ex PW1/58 essentially agreed with the findings of the Independent Surveyor Report but concluded as under:

“Cause of Fire:

During our initial visit to the insured affected plant, we met with their technical officials. They have informed us that probable cause of fire was under investigation. We on our part minutely examined all possibilities of the cause of fire, & found that the entire process is undertaken in a sealed unit. Though the material Inside (Mentha oil) is heated & has a flash point of 100° C & boiling point of 110° C to 230° C the column works under vacuum & there is no chance of ingress of air into the column which is essential for a fire to happen. Incident report states that the Insured's workers sighted a lot of smoke.

Any leakage of material from the column could have caught fire in itself as the flash point is 100° C while the material was boiling beyond this temperature. Hence the material does not require any outside source of fire & can burn by itself.



38. The report Ex. PW1/57 of the *Independent Surveyor* appointed by the plaintiff and the report Ex. PW1/58 of Surveyor of the Defendant, both agreed that the entire process takes place in sealed unit and even though Menthol is at Boiling point, no fire can take place inside the Sealed Column.

39. The Surveyor of the defendant having so concluded, arrived at a self-contradictory conclusion; viz ***“Any leakage of material from the column could have caught fire in itself as the flash point is 100° C while the material was boiling beyond this temperature. Hence the material does not require any outside source of fire & can burn by itself.”*** The Surveyor in the same sentence states ***“Any leakage of material from the column could have caught fire in itself”*** but later concludes ***“the material does not require any outside source of fire & can burn by itself”*** and came to the conclusion that this is a case of Auto Ignition that took place due to the plaintiffs *own heating process*.

40. The Defendant’s Surveyor, M/s Mac Insurance Surveyors & Loss Assessors Private Limited, vide their *Final Survey Report dated 04.03.2015 Ex. PW1/58* assessed the loss of stock at Rs. 1,79,35,047/- and proportionate share of the defendant at Rs. 1,28,59,090/- but finally rejected the Claim as covered by Exception Clause by holding that ***this is a case of auto ignition or self- combustion and there was no third source to ignite the fire. Hence, these are perils not covered under the policy or rather they are exception to the policy.***

41. What now warrants attention is whether the case of the plaintiff did fall in the Exception Clause.

42. The Independent Surveyor in its Report Ex. PW1/57 **had opined that a fire can occur only if three important elements are present i.e. a**



combustible material, source of heat and oxygen. The source of leakage had been explained in detail and had been concluded that *it is clear from the above that may be due to failure of gasket, the material leaked out which was already at boiling point and ignited on its own.* Similar is the conclusion in the Report Ex. PW1/58 of M/s Mac Insurance Surveyors & Loss Assessors Private Limited, that the distillation of crude Mentha Oil takes places within vacuum sealed columns, in which the possibility of combustion or fire would arise only when there is ingress of oxygen. Despite high temperatures during the processing of Mentha Oil, the substances being proceeded in the distillation column at different levels, do not undergo combustion for this very reason of there being a vacuum and no oxygen is present. The fire could occur only if there was a leakage. It is therefore, clear that the substance could not self-ignite, irrespective of the temperature, unless its reacted with oxygen.

43. It is therefore, held in the light of both the reports which are at ad idem that the Mentha Oil could have ignited from some leakage. It is not the heating process of Mentha Oil which could have generated fire, but it was because of the leakage of material and mixing with oxygen which caused the fire. **Thus, the fire in the instant case cannot be considered as a result of the plaintiff's own heating process and is not a case of Auto-ignition.** *The Exclusion Clause was not applicable to the facts in hand and the defendant wrongly rejected the Claim for Loss of Stock under the Standard Fire and Special Perils Policy.*

44. It is also pertinent to examine if there was any negligence of the insured in not servicing or replacing the vacuum seal gasket, in a timely manner and is consequently not entitled to Claims on account of Negligence.



45. The Apex Court in New India Assurance Co Ltd vs M/S Mudit Roadways, 2023 SCC OnLine SC 1532, observed that *“In the realm of risk and uncertainty, individuals and organisations seek solace in the bastion of insurance – a covenant forged on the bedrock of trust. Trust serves as the cornerstone, forming the essence of the insurer-insured relationship. The fundamental principle is that insurance is governed by the doctrine of uberrimae fidei – there must be complete good faith on the part of the insured. The heart & soul of an insurance contract lies in the protection it accords to those who wish to be insured by it. This understanding encapsulates the foundational belief that insurance accords protection & indemnification, preserving the sanctity of trust within its clauses. Effectively, the insurer assumes a fiduciary duty to act in good faith and honour their commitment. **This responsibility becomes particularly pronounced when the insured, in their actions, have not been negligent. In light of the vital role that trust plays in insurance contracts, it is important to ensure that the insurer adequately fulfils the duty that has been cast on it, by virtue of such a covenant.**”*

46. In the present case, not a word about the negligence on the part of the plaintiff, has been made by either the Surveyor of the defendant in its Final Survey Report, or the defendant in their Email dated 26.03.2015 Ex PW1/59 (vide which it approved the Claim amount to the extent of Rs. 24,97,284/-) or in the Reply to the Legal Notice dated 12.04.2017 Ex PW1/69. In fact, Final Survey Report clearly specifies that *no breach was observed* on the part of the plaintiff.

47. Moreover, the employees of the plaintiff had immediately noticed the fire and acted appropriately to prevent its spread. The statement of the



employee of the plaintiff narrating the incident of 21.04 2014 has been produced below:

“I Souradip Ghosh (Production Engineer. Distillation Section) S/o- Jaydip Ghosh on 21st April, 2014 when I was passing through the Control Room, lot of smoke was coming from the first floor which caught my eye & workers were running here & there, which thus made me to run towards the scene of incident & found out that a heavy fire was there in Plant P-01 in the first column. Everyone were in rush to take control over the fire with fire extinguisher. I ran through stairs & in the third floor, after breaking the side glass, I have tried to put off the fire by pouring pressurizes water through pipes & thereby to cool the column. Doing the same thing in the successive floors, by fire we took control over the fire & were successful to extinguish. After that, the drain valve of the kettle was opened to recover the material, which was taken in drum”

48. Thus, the plaintiff had taken immediate action to minimize the loss that could be suffered due to the fire. **Having concluded that there has been no negligence on the part of the plaintiff, it is held that the plaintiff is entitled to be indemnified for the losses suffered to Stock and Plant & Machinery.**

Value of Mentha Oil/ Stock lost in Fire:

49. Having concluded that the Plaintiff is entitled to the damages for Loss of Stock, the other aspect which needs consideration is the quantity of Stock lost and its value.

50. The distillation process takes place in Columns. Each Column consists of thirteen levels where the crude Mentha Oil undergoes a different



process at each level at varying temperatures and there is complete vacuum within the column.

51. The methodology of calculating the quantum of Stock loss, adopted by the defendant was not challenged by the plaintiff. The dispute is the rate at which the loss of Mentha Oil/ Stock was to be calculated. The value of 28% Cis Terpene (*the stock*) was calculated by the plaintiff as under:

Sl. No.	Particulars	Unit	Value
	Selling price of Cis 3 Hexanol of 98%	Kgs.	26000
	Less Profit @10%		2600
	Cost of Cis 3 Hexanol of 98%		23400
	If cost of 98% cis 3 hexanol is		26000
	So rate of 28% cis terpene cut is		7280
	Less:- Expenses & Others		1255
	Cost of Cis 3 Hexanol of 28%		6025

52. The Plaintiff had calculated the rate of 28% Cis Terpene using the price of 98% Cis 3 Hexanol i.e. Rs. 26,000. Invoices from November 2013 to May 2014 Ex. PW1/14 to Ex. PW-1/20 have been produced by the plaintiff wherein Cis 3 Hexanol has been priced between Rs. 20,000 and Rs. 27,000 to substantiate its loss of Stock.

53. The Invoice dated 02.04.2014 specifies the price of 98% Cis 3 Hexanol as Rs. 26,912.25 per Kg. Thereafter, invoice dated 16.04.2014 records the price as Rs. 22,888.5 per Kg.



54. The defendant did not take the average of the various invoices produced by the plaintiff but took the selling price of 98% Cis 3 Hexenol as Rs. 22,888.5 based on the last Invoice dated 16.04.2014 as the fire broke on 21.04.2014. However, the defendant subtracted the Average Gross Profit to arrive at the Cost for 98% Cis 3 Hexenol at Rs. 20,599.25.

55. Therefore, using the cost of 98% Cis 3 Hexenol i.e. Rs. 20,599.25, the cost of 28% Cis Terpene was arrived at Rs.4512.84 per Kg as under:

Description	Amount (Rs.)
If cost of 98% CIS 3 Hexanol	20599.43
So rate of 28% CIS Terepene out	5767.84
Less: Expences of others	1255
Cost of CIS 3 Hexanol of 28%	4512.84

56. There is no evidence if the Cis 3 Hexenol lost in fire was the same as was purchased through the Invoices produced by the plaintiff. Further, the cost of loss of stock has to be assessed as on the date of loss. The defendant has rightly calculated the value of loss of stock.

57. The total assessment of loss of stocks by the Surveyor of the defendant was Rs. 2,61,06,328.00/- from which *Under Insurance* of Rs. 81,71,280.66/- was deducted leaving a total amount adjusted to be paid to be Rs. 1,79,35,047.34/-. **The defendant's Surveyor had calculated their proportional share for loss for 5784.9 Kg of 28% Cis Terpene as Rs.1,28,59,090@ Rs. 20,599.25.** Pertinently, the stocks of the plaintiff have been insured for a sum of Rs.380,00,00,000. Thus, deduction of Rs. 5,858,654.06 towards *under insurance* becomes inapplicable and is wrongly



deducted from the due amount. Therefore, **the proportional share of the defendant Company deducting under insurance was assessed at Rs. 1,87,17,744.60/-, which is hereby awarded to the plaintiff.**

II. Claim for Loss of Plant:

58. The loss of Plant & Machinery was assessed by the Surveyor at Rs. 24,97,283/- vide its email dated 26.03.2015 Ex PW1/59, which was stated to be admissible under the Policy. It was also informed that the aforesaid amount would not be settled unless the plaintiff agreed to accept the loss computed by the defendant.

59. With respect to Loss of Plant and fire extinguishing expenses, the plaintiff had made a claim of Rs. 63,38,267/-. It was observed in the Final Survey Report that the plaintiff had replaced the damaged machinery for which the Invoices proving the replacement cost, had been provided.

60. The Surveyor of the defendant has taken into account all the invoices produced by the plaintiff while computing the losses to the Plant as under:



Sr. No	Description	Unit	Qty	Amount (Rs.)	Amount Deducted (Rs.)			Amount after deducting ED+VAT +Dismantle	Name of the party
					ED+VAT	Dismantling	Total		
1	SS 304 Column Dia- 800 mm, Length-4.4 Mtr	Nos.	1	186,994.00	28,494.00		28,494.00	158500	Reta Engineering Works
2	SS 304 CV Packing & Internals -	column	2	4,370,858.00	400,155.00		400,155.00	3970703	Yogi Structured Packing & Engg Pvt. Ltd.,
	Dia 750/800 mm			24,050.00	24,050.00		24,050.00	0	
3	Column Revamping Labour Exp.			133,544.00		50% 60214=30107	30,107.00	103437	Baba Mahakaleshwar Engg Fabricator
4	Insulation, Heat tracer			292,157.00	0	0	0		M.R Insulation
				37,138.00		50% of 1838=919	919.00	36219	Rewati Electronics Industries
5	Nut Bolt, Gasket, etc.			18,151.00			-	18151	Aasstha Engineers
				2,093.00			-	2093	Sri Sai Trading Co.
				2,093.00			-	2093	Sri Sai Trading Co.
6	Instrumentation			341,794.00	31,292.00		31,292.00	310502	Technisys Engg (P) Ltd.,
7	Structure Repairing			307,152.00		50% of 65700=32850	32,850.00	274302	Baba Mahakaleshwar Engg Fabricator
				294,003.00	13,953.00		13,953.00	280050	Ajay Traders
				146,152.00	6,927.00		6,927.00	139225	Ajay Traders
				3,299.00	157.00		157.00	3142	Ajay Traders
				107,384.00	5,084.00		5,084.00	102300	Ajay Traders
				71,405.00	3,379.00		3,379.00	68026	Ajay Traders
Total				6,338,267.00	513,491.00		577,367.00	5,468,743.00	
Less: Average depreciation @ 34.06%								1,862,653.87	
								3,606,089.13	
Less: Salvage at 15%								540,913.37	
Assessed Loss								3,065,175.76	
Less: under insurance @ 2.859%								87,633.38	
Total Adjusted Loss								2,977,542.39	



61. It may be observed that the defendant has deducted *the claim for VAT and Excise Duty*, for which there is no cogent basis. Further, the defendant has *reduced the dismantling charges and Heat Tracker charges* by 50% of the charges claimed. There is no basis for these deductions.

62. The Policy of the plaintiff is not subject to ***Underinsurance*** as the loss towards the Plant, machinery and accessories is covered upto Rs. 41,50,00,000 while the claim has been raised only for Rs. 63,38,267. Therefore, no underinsurance in the sum of Rs.87,633.38 could be deducted while calculating the loss.

63. The defendant has further deducted ***depreciation amount*** at 34.06% amounting to Rs. 18,62,653.87 was deducted. The Insurance Policy Ex.PW1/4 in its first paragraph provides “*the Company shall pay to the insured the value of the property at the time of happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof*”. This implies that there were three options with the defendant, viz. firstly to pay the value of the property at the time of damage, or *secondly* the amount of such damage or *thirdly* to reinstate or replace the property. Neither first nor third option has been exercised. The plaintiff has got the damaged facility restored for which details have been given, which are accepted by the defendant. In the circumstances, when this is the actual cost incurred by the plaintiff, there is no justification for Deduction of Rs.18,62,653.87 towards depreciation.

64. The defendant has calculated ***the salvage value*** of the scrap at 15% which came to Rs.5,40,913.37 which has been deducted from the Claim, which is held justified.



65. *Therefore, the plaintiff is entitled to a sum of Rs. 57,97,353.63 is held justified and payable towards loss of Plant and Machinery.*

III. Fire extinguishing expenses:

66. A claim of Rs. 20,699 was made by the plaintiff. This claim amount was allowed by the Surveyor after the deduction of VAT at Rs. 958 i.e. Rs. 19,741. It is held that, the plaintiff is entitled to the said amount of Rs. 20,699 as Fire Extinguishing expenses.

Conclusion:

67. The plaintiff is held entitled to the following Claims:

Loss of Stocks –	Rs. 1,87,17,744.60.
Loss of Plant & Machinery –	Rs.57,97,353.63.
Expenses for Fire Extinguishing --	Rs. 20,699.
Total-	Rs.2,45,35,797.20.

Interest:

68. The plaintiff has also claimed interest @ 12% p.a. However, considering the prevailing market rate, the interest is awarded @6% p.a. w.e.f. 01.05.2015 till the date of realization.

Relief:

69. The plaintiff/Company is, therefore, held entitled to the recovery of amount Rs.2,45,35,797.20 (Two Crore Forty-Five Lacs Thirty Five Thousand Seven Hundred Ninety Seven Rupees and Twenty Paise) along



with interest @ 6 % w.e.f. 01.05.2015 till the date of realization. Parties to bear their own costs.

70. The pending applications, if any, also stand disposed of.

71. Accordingly, the present suit is decreed in the above terms. The Decree Sheet be prepared accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 02, 2024

S.Sharma