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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. (Comm. Div.) No.213 of 2023

M/s.Sreemaan Palani Prabhakaran Agro Products Pvt. Ltd
Rep. by Managing Director
Mr. Thirupathi Raja
D7, Ambattur Real Estate
Chennai – 600 0058. ... Plaintiff

Vs.

1.M/s. United India Insurance Company Ltd.
Non-Motor Claims HUB-RO Chennai
Rep. By its Regional Manager
No.134, Sliingi Buildings,
Greams Road,
Chennai – 600 006.

2.M/s. United India Insurance Company Ltd.
Rep. by its Manager
73, C M T H Road, Ambattur,
Chennai – 600 053. ... Defendants

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Prayer: The suit filed under Order IV Rule 1 of the O.S. Rules & Order VII Rule 1 read with Section 7 of the Commercial Courts Act, 2015 praying to pass a judgment and decree against the Defendants:-

a) directing the defendant to pay to the plaintiff the sum of Rs.1,23,88,000/- as due insurance claim for the damage caused and which is covered under Fire & Special Perils Policy of the defendants bearing No.0120001120P100259164 for the period 10.04.2020 to 09.04.2021, with interest at 12% p.a from the date of plaint till the date of payment.

b) To pay the cost.

For Plaintiff : Mr.S.Umapathy
For Defendants : Set Ex-parte on 01.04.2024

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JUDGMENT

This suit is filed to direct the defendant to pay to the plaintiff a sum of Rs.1,23,88,000/- as due insurance claim for the damage caused and which is covered under Fire & Special Perils Policy of the defendants bearing No.0120001120P100259164 for the period 10.04.2020 to 09.04.2021, with interest at 12% p.a from the date of plaint till the date of payment and for the costs of the suit.

2. The averments made in the plaint is as follows;

(i) The plaintiff Company is carrying on business in the manufacturing of Ice Creams (AMIRTHA Brand) in its registered factory at D7, 3rd Street, Ambattur Industrial Estate, South Phase, for the past 20 years. The plant & machinery and the stock of raw material and finished goods and packing materials are stored in the factory premises. The plaintiff had insured the same under Standard Fire & Special Perils Policy with 2nd Defendant for the period 10.04.2020 to 09.04.2021 for a total

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value of Goods for a sum of Rs. 10,10,10,000/- (Rupees Ten Crores Ten Lakhs and Ten Thousand only) under Policy bearing No.0120001120P100259164 on expiry of the previous Policy bearing No. 0120001119P100576764. The risks covered under the Policy are the building: stocks(s)/contents(s) and the total Premium paid by the Plaintiff is Rs.1,67,470/-. The Policy cover are specifically and Premium paid;-

a) Deterioration of Stocks due to Power Failure - Rs.3,900/-
b) Deterioration stocks Temperature cold storage- Rs.15,600/-.

Further, on payment of additional premium of Rs.3,900/-+ Rs.15,600/- = Rs.19,500/-, the Policy covers destruction of/or damage to the property insured caused by change of temperature in consequence of failure of electric supply resulting in damage to the insured property.

(ii) On 15.05.2020, due to an electrical fluctuation in the Power station in Pillar No.1 D.7 S.S Transformer 500 KVA, which is main supply sources to the plaintiff's factory, an accident had occurred in the company

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premises and the stock of ice cream, raw material and certain machinries were severely affected. Consequently, the plaintiff on 16.05.2020, informed the Unit Manager, United India Insurance Company Ltd. about the accident and called upon for an assessment of the damage caused to the stock and the machinery as according to the plaintif, the value would be around Rs.1,00,00,000/- to Rs.1,50,00,000/- . This was also followed by E-mail dated 16.05.2020 at 8.06 p.m. The Insurance Surveyor & Loss Assessor in his E-mail dated 18.05.2020, has inferred as "we understand that on 15.05.2020, there was a power failure due to voltage fluctuation in the transformer which had resulted in damage to the electrical circuit of all 3 chiller rooms/units resulting in deterioration of the stock due to difference in temperature. We noticed that the chiller rooms/units were completely filled with stocks (ice cream) ready for delivery. It has also been noticed by the Surveyor that insurance had covered machinery and stocks. Further deterioration of stocks due to power failure and difference

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in temperature has been included as an add on coverage. The stock summary has also been taken as of 15.05.2020".

(iii) Since no further action was taken, the plaintiff by e-mail dated 12.08.2020, informed the 2nd defendant to take immediate action to settle the claim, for which the Surveyor by e-mail dated 15.08.2020, requested to answer the queries pertaining to the accident. The plaintiff forthwith replied to the same. However, the prolonged e-mail correspondence with the Surveyor and the Loss Assessor was of no avail and hence, on 22.09.2020, the plaintiff wrote a detailed letter seeking settlement of the claims. In fact, the accident occurred in the cold room which resulted in 100% loss of stock. However, there was no reply from the defendant and only the Surveyor replied by e-mail dated 28.09.2020 which did not even cover many of the queries raised by the plaintiff. Consequently, the plaintiff by e-mail dated 30.09.2020, called upon the defendant to adduce reason if its claim is being negatived. The plaintiff further called upon the

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defendant by Email dated 14.10.2020, seeking the defendant's reply to its letter dated 22.09.2020.

(iv) To the Plaintiff's surprise, the 1st defendant sent a letter dated 12.10.2020 by Registered Post, thereby negativing the claim on 2 grounds, namely;

> (a). There is no damage stated in the power station due to any of the insured peril and
>
> (b). There is no damage to cold storage machinery by reason of insured perils under the Standard Fire& Special Perils Policy.

This is alarming because the Policy has extended cover for deterioration of stocks in cold storage premises due to accidental power failure of electric supply and due to change in temperature arising out of loss or damage to the cold storage machinery in the insured premises. It is a matter of record that there was failure in power supply due to voltage fluctuation in the transformer Pillar No.1 D.7 S.S Transformer 500 KVA, which had resulted in damage to the electrical circuits of all 3 chiller rooms/units resulting in

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deterioration of stock due to difference in temperature. On inspection it was evident that the Chiller Rooms/units were completely filled with stocks (ice cream ready for delivery). The stocks valued at Rs.1,23,87,197.00/- as per Annexure sent. Therefore, by no stretch of imagination it can be contended that the Policy does not cover the aforesaid perils and that none of the perils covered by the Policy have occurred.

(v) Consequently, the 1st defendant's letter dated 12.10.2020, negativing the claim on the ground that it does not fall within the scope of cover under the Policy is ill founded. The attempt made by the Surveyor to bring the damage within the General Exclusion Clause contending that it is due to short circuiting is also unsustainable. The chiller Rooms/units were filled with stocks and because of power failure which resulted in fluctuation, the stocks deteriorated which is covered under the Policy. It is rather surprising that the intention of the Insurer seems to be to negative

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even a legitimate claim which can be noticed with open eyes and does not even require any investigation. The entire exercise adopted is with an intent to avoid the liability to compensate the loss suffered by the plaintiff, at any cost. The same constitutes breach of contract; deficiency in service and the plaintiff has been subjected to acute mental agony.

(vi) The defendants are duty bound to evaluate the damage caused and pay the plaintiff the damage suffered due to the power failure and which is covered under the Policy. The value of the damage is approximately valued at Rs.1,23,87,197.00/- and the said loss/damage suffered falls within the ambit and scope of the cover under the Fire & Special Perils Policy bearing No.01200011200100259164. Therefore, the plaintiff issued a notice dated 21.12.2020 to compensate the loss suffered due to fluctuation in power supply resulting in deterioration of stocks and damage to the machinery. The defendants vide Reply Notice dated 01.02.2021, has contended that the deterioration of stock was not caused

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by any insured risk as stated in the policy and consequently, the defendants are not liable to comply with the demand.

(vii) Due to Covid -19 situation and Lock down, plaintiff's business suffered heavy loss and it took some time for them to restore the business. Because of the said reason, the plaintiff could not take immediate steps to file a case against the defendants, however they filed present suit in time to claim due insurance amount.

(viii) As per the requirement of the Commercial Courts Act, 2015, the plaintiff had filed the Form 12A before the Tamil Nadu State Legal Services Authority, Chennai as Pre-Institution Mediation Case and the same was numbered as TNSLSA No. 132/PIMS/PIMS 04/2023. Even after receipt of Notice, the defendants had not chosen to settle the matter for mediation and thus the mediation process failed and it is closed as "Non Starter". Therefore, the present suit is filed.

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3. Since the defendants had not filed the written statement within the stipulated time, the defendants were set ex-parte by this Court on 01.04.2024.

4. In order to substantiate the claim of the plaintiff, one Thirupathi Raja, the Managing Director of the plaintiff company was examined as P.W.1 and he has reiterated the averments made in the plaint in his proof affidavit and marked 13 documents as Ex.P.1 to P.13 in which, Ex.P.1 is the printout of the Insurance Policy between the plaintiff and the 2nd defendant dated 10.04.2020, Ex.P2 is the photocopy of the letter of intimation between the plaintiff and the 2nd defendant dated 16.05.2020, Ex.P3 is the printout of the E-mail sent by the plaintiff to the 2nd defendant dated 16.05.2020, Ex.P4 is the printout of the E-mail sent by the surveyor of the 2nd defendant dated 18.05.2020, Ex.P5 is the printout of the E-mail sent by the plaintiff to the 2nd defendant dated 12.08.2020, Ex.P6 is the printout of the letter dated 22.09.2020 sent by the plaintiff to the 2nd defendant, Ex.P7

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is the printout of the E-mail sent by the plaintiff to the 2nd defendant dated 28.09.2020, Ex.P8 is the printout of the E-mail sent by the plaintiff to the 2nd defendant dated 30.09.2020, Ex.P9 is the original repudiation letter sent by the 1st defendant to the plaintiff dated 12.10.2020, Ex.P10 is the office copy of the lawyer's notice sent by the plaintiff to the 1st defendant dated 21.12.2020, Ex.P11 is the photocopy of the reply notice sent by the 1st defendant to the plaintiff's counsel dated 01.02.2021, Ex.P12 is the photocopy of the stock statement of the plaintiff as on 15.05.2020 and Ex.P13 is the original non starter report of Tamil Nadu State Legal Services Authority.

5. On a perusal of the averments made in the plaint and proof affidavit filed by P.W.1 and also the documentary evidence marked on the side of the plaintiff, this Court finds that the plaintiff has proved his claim. Therefore, the suit is decreed as prayed for with cost.

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List of witnesses examined on the side of the plaintiff – 1 witness

Thirupathi Raja – P.W.1

List of documents marked on the side of the plaintiff – 13 Documents

S. No.	Exhibits	Date	Description of documents
1	Ex.P.1	10.04.2020	The printout of the Insurance Policy between the plaintiff and the 2nd defendant.
2	Ex.P.2	16.05.2020	The photocopy of the letter of intimation between the plaintiff and the 2nd defendant
3	Ex.P.3	16.05.2020	The printout of the E-mail sent by the plaintiff to the 2nd defendant
4	Ex.P.4	18.05.2020	printout of the E-mail sent by the surveyor of the 2nd defendant
5	Ex.P.5	12.08.2020	The printout of the E-mail sent by the plaintiff to the 2nd defendant
6	Ex.P.6		The printout of a letter dated 22.09.2020
7	Ex.P.7	28.09.2020	The printout of the E-mail sent by the plaintiff to the 2nd defendant
8	Ex.P.8	30.09.2020	The printout of the E-mail sent by the plaintiff to the 2nd defendant.
9	Ex.P.9	12.10.2020	The original repudiation letter sent by the 1st defendant to the plaintiff
10	Ex.P.10	21.12.2020	The office copy of the lawyer's notice sent by the plaintiff to the 1st defendant
11	Ex.P.11	01.02.2021	The photocopy of the reply notice sent by the 1st defendant to the plaintiff's counsel
12	Ex.P.12		The photocopy of the stock statement of the plaintiff as on 15.05.2020
13	Ex.P.13		The original non starter report of Tamil Nadu State Legal Services Authority.

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List of witnesses examined on the side of the defendants - **Nil**

List of documents marked on the side of the defendants - **Nil**

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Index : Yes / No
Speaking Order : Yes / No
Neutral Case Citation : Yes/No
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P.VELMURUGAN. J.

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