IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2015

(Against the final judgment and order dated 24.02.2015 passed by the Hon’ble National Consumer Dispute Redressal Commission New Delhi in Consumer Case No. 21 of 2006)

IN THE MATTER OF:

M/s SUPER LABEL MFG. CO. ....APPELLANT

VERSUS

NEW INDIA ASSURANCE COMPANY LIMITED ....RESPONDENT

**P A P E R B O O K**

(FOR INDEX PLEASE SEE INSIDE)

**ADVOCATE FOR THE PETITIONER : M/S AP&J CHAMBERS**

**‘A’**

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**OFFICE REPORT ON LIMITATION**

1. The Appeal is /are within time.
2. The Appeal is barred by time and there is delay of Nil days in filing the same against final judgement and order dated 24.02.2015 and petition for condonation of days delay has been filed.
3. There is delay of days in refilling the Appeal and Appeal for condonation of delay in refilling has been filed.

BRANCH OFFICER

New Delhi

Dated: \_\_\_.03.2015

**SYNOPSIS**

The present civil appeal is being filed by the Appellant herein being aggrieved by the illegal and malafide denial of its valid claims under the Fire Insurance Policy by the Respondent, in complete contravention of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002, the expert technical reports of the Indian Institute of Technology Bombay, Powai and other documents and evidence available on record before the Hon’ble National Consumer Disputes Redressal Commission.

It is submitted that the Appellant has been maintaining proper insurance cover for its business assets for the last 29 years, of which for over 10 years the Appellant has been insured by the Respondent herein. However, now when the Appellant approached the Respondent for approval of its genuine and valid insurance claims in respect of a major fire incident at its premises, the Respondent has chosen to adopt fraudulent means to illegally reduce the claim amount of the Appellant from Rs. 2,26,61,376/- to Rs. 16,15,606/- by mischievously placing reliance on a report furnished by M/s Material Technology Development Centre, the findings of which are not only vague, inconclusive but also contradictory to the five concurring reports submitted by the Indian Institute of Technology Bombay, Powai, M/s Loss Prevention Association of India Ltd., Gallus Ferd Ruesch AG, Graphic Technologies Inc. and Shri. Subhash Chandra Baksi - an Insurance Surveyor and Loss Assessor, conclusively holding that the cause of loss to the machines was due to fire, heat, smoke, water and moisture resulting from the fire incident and efforts to extinguish it.

It is submitted that the Hon’ble National Commission erred in not upholding the valid claims of the Appellant on account of the deficiency in service rendered and unfair trade practice adopted by the Respondent which is evident from the following:

(a) The Respondent has malafidely accepted, admitted and relied upon the Surveyor’s report submitted after a lapse of over 12 months from the date of the untoward incident of fire in complete contravention of Regulation 9(2) of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 which mandates that the surveyor shall furnish his report in not more than 6 months from the date of his appointment;

(b) The Respondent has contrary to Regulation 9(5) of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002, which mandates that on receipt of the survey report the insurer shall within a period of 30 days offer a settlement of the claim to the insured, issued the voucher on only 16.05.2005 although the survey report was submitted on 28.03.2005 i.e., after a lapse of the abovementioned statutory prescribed period.

(c) Although fire was the efficient and active cause of damage to the Appellant’s printing machines, the Respondent rejected the valid claims of the Appellant by solely placing reliance on the opinion obtained from M/s Material Technology Development Centre/MTDC which opinion was in complete contradiction to the reports tendered by highly specialized expert bodies including IIT Powai, M/s Loss Prevention Association of India Ltd., Gallus Ferd Ruesch AG, Graphic Technologies Inc., and Shri. Subhash Chandra Baksi - an Insurance Surveyor and Loss Assessor;

(d) Although fire was the efficient and active cause of damage to the printing machines, the valid claims of the Appellant were rejected by the Hon’ble National Commission by placing reliance on Wikipedia articles, which are inconclusive and not authentic since the information can be entered therein by any person and is editable;

(e) The appointment of MTDC by the Respondent in essence amounted to appointing a second surveyor although the report of the first surveyor being M/s Prabha Associate was pending and hence no occasion for the appointment of the second surveyor arose in terms of the law laid down by this Hon’ble Court in the case of ***Sri Venkateswara Syndicate Vs. Oriental Insurance Company***, reported as (2009) 8 SCC 507;

(f) The appointment of M/s Material Technology Development Centre/MTDC, which is not an authorized loss assessing agency/licensed surveyor approved by IRDA to assess the damage by fire, by the Respondent only evidences that it did so to influence and get a favourable report to suit its estimation of loss of plant and machinery in the fire incident.

(g) Although the Surveyor had consistently accepted the claims of the Appellant including those for plant and machinery approving a sum of Rs. 1,81,35,810/-  and thereafter revising it upwards to Rs. 2,32,02,000/- and Rs. 2,26,61,376/- pursuant to its meeting with the engineers of the printing machines on 07.10.2004 holding that the cause of loss was due to fire, heat, smoke, water and moisture, the Respondent belatedly raised certain technical queries even before the submission of the Surveyor’s Report which queries were already adequately answered by the engineers of the printing machines and without any justification used it to influence the final report submitted by the Surveyor drastically reducing the approved claim to Rs. 16,15,606/- on frivolous grounds;

(h) Although the Surveyor was in receipt of the reports submitted by the Loss Prevention Association of India Ltd., the Report dated 17.04.2004 submitted by Graphic Technologies Inc. being the engineers of Aquaflex printing machines manufactured by Aquaflex Canada and the report dated 06.10.2004 submitted by Gallus being the manufacturers of Gallus printing machines, the Surveyor only submitted its Report on 23.03.2005 to the Respondent thereby clearly evidencing deficiency in service and unfair trade practice on the part of the Respondents and its Surveyors;

(i) Although the Surveyor had finally agreed and approved the claim of the Appellant for a sum of Rs. 2,26,61,376/- on 07.10.2004, it waited to for a period of over 5 months to submit its report to the Respondent on frivolous grounds only to drastically reduce the claim of the Appellant to Rs. 16,15,606/- rejecting the major claim items being plant and machinery squarely covered within the terms of the fire policy;

(j) The fire insurance policy procured by the Appellants indicated the clear intention of the parties was to cover plant and machinery, however the Respondent maliciously and malafidely with a view to avoid its liability under the fire policy got MTDC to give a report to suit its stand and got its findings incorporated in the Surveyor’s Report so as to avoid payment of the claim for Aquaflex and Gallus Plant and Machinery by making use of the exclusions in the fire policy;

(k) The ambiguous and vague findings in the MTDC Report stood completely negated by the Report submitted by the Indian Institute of Technology Bombay, Powai on 12.07.2006 which categorically recorded that the simulation done by the authors in the MTDC Report cannot be considered as replicating the conditions to which the metallic parts were exposed during the fire and after the fire had been extinguished and hence held that it is indeed improbable and impossible that the 7 conditions listed in the MTDC Report did not exist at the time of the fire incident.

(l) In view of the Quality Certificates issued by Expo India Agencies, Lupin Limited Mandideep, L’Oreal, Dr Reddy’s, Wockhardt, Sandvik, Siemens etc. which state that the output of the machine prior to the incident was 100% as per the required standards, it only goes to reason that if there were any prior corrosion on the rollers prior to the fire incident, then and in such event there would not be any production much less quality production;

(m) Shri. Subhash Chandra Baksi, an Insurance Surveyor and Loss Assessor, who had tendered his evidence before the Hon’ble National Commission as Prosecution Witness No. 1 on the basis of his report dated 08.08.2007, categorically stated that the conditions after the extinguishing of fire at the Appellant’s premise were 100% conducive to extremely fast rusting/corrosion of equipments. However, failure to cross examine Shri. Subhash Chandra Baksi to test the veracity of his statements before outrightly rejecting his technical submissions clearly demonstrates that the Impugned Order deserves to be set aside as being illegal and void;

(n) The Surveyor had itself vide. its letter dated 19.08.2004 approved and recommended an “On Account” payment of Rs. 30 lakh to be made to the Appellant, however the Respondent not only failed to make an such payment to the Appellant but also reduced the final approved claim to Rs. 16,15,606/- which is almost half of the interim payment approved by the Surveyor;

(o) The Surveyor had agreed to the fact that since the Appellant’s machineries could neither be repaired by them nor could they offer any salvage value, therefore the Appellant would sign a discharge for disposal of the damaged machinery as salvage so its machineries could be taken over on “*As is Where is*” basis and accordingly the Surveyor had himself forwarded the advertisement to be published in main English newspapers along with the tender documents for disposal of “*Fire/Water affected Printing Press Machinery*” including the Gallus, Aquaflex, Plate Mounting printing machines clearly stating that the said machines were affected by fire and water.

In view of the aforesaid, the Impugned Order passed by the Hon’ble National Commission deserves to be set aside as being illegal and void.

**LIST OF DATES**

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| --- | --- |
| 1976 | That the Appellant is a partnership firm duly registered in the year 1976 under the provisions of the Indian Partnership Act, 1932. The Appellant is one of the leading manufacturer and exporter of Self Adhesive Labels in the country. It supplies labels to the leading pharmaceutical companies including Wockhardt, Dr. Reddy’s Lab, Johnson & Johnson, Loreal, to name few amongst others.  The labels manufactured by the Appellant are used on many of the exportable item where quality has to be of international standard and that is why highly sophisticated costly imported machinery is required.  The Appellants were located in an Industrial Co-operative Society in Mumbai which has got various industrial Galas engaged in multiple trades. The Appellant was occupying three Galas bearing No. 250 (2nd Floor), 342 (3rd Floor) and 343 (3rd Floor). |
| 1993 &  1998 | That the Appellant has always been pioneering new technology in India & updating technology to international standards. Accordingly, in the year 1993, the Appellant imported “Aquaflex” which was a Canada 4 Colour Flexo printing machine for Rs. 50 lakh (approx.) and was the first entry in the Indian market. Likewise, in the year 1998, the Appellant imported “Gallus – Arsoma” which is a 6 colour full U.V. Press for Rs. 2 crore (approx.) and was also the first one to use it in the Indian market. |
| .... | The Appellant has been maintaining proper insurance cover for its business assets for the last 29 years, of which for over 10 years the Appellant has been insured by the Respondent herein. |
| 16.10.2002 | Insurance Regulatory and Development Authority (“**IRDA**”) notified the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 (“**IRDA 2002 Regulation**”)*.* Regulation 9 of the IRDA 2002 Regulation categorically provides that the surveyor shall furnish his report in not more than 6 months from the date of his appointment and that thereafter within a period of 30 days the insurer shall offer a settlement of the claim to the insured. and is as under:  *“****9.******Claim procedure in respect of a general insurance policy.***   1. *….* 2. *Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.”* 3. *…* 4. *….*   *5. On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.”* |
| 2003-2004 | That as was done in the previous years, the Appellant in the year 2003-2004 procured the Standard Fire and Special Perils Policy from the Respondent covering the following risks:  (i) Policy No. 112500/11/03/00214 – Covering Stocks (Insuring Rs. 25 Lakh);  (ii) Policy No. 112500/11/03/01160 – Covering Stocks (Insuring Rs. 25 Lakh);  (iii) Policy No. 112500/11/03/01161 – Covering Building (Insuring Rs. 3.30 Lakh);  (iv) Policy No. 112500/11/03/01161 – Covering Plant & Machinery (Insuring Rs. 2.82 Crore).  (hereinafter collectively referred to as the “**Fire Policy**”)  Therefore, the Appellant was covered for a total sum of Rs. 3,35,30,000/- valid from 15.05.2003 to 30.08.2004 under the Fire Policy.  It is noteworthy that the Terms and Conditions to the Fire Policy issued by the Respondent provides that the Respondent  “.....*the Company* *shall pay to the insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof:*  *I. Fire:*  *Excluding destruction or damage caused to the property insured by*   1. *(i) its own fermentation, natural heating or spontaneous combustion;*   *(ii) its undergoing any heating or drying process.*  *(b) burning of property insured by order if any Public Authority.”*  Further, the General Conditions of the Fire Policy stipulate as under:  *“ ....*  *On the happening of loss or damage to any of the property insured by this policy, the Company may*   1. *enter and take and keep possession of the building or premises where the loss or damage has happened.* 2. *take possession of or require to be delivered to it any property of the Insured in the building or on the premises at the time of the loss or damage.* 3. *keep possession of any such property and examine, sort, arrange, remove or otherwise deal with the same.* 4. *sell any such property or dispose of the same for account of whom it may concern.”* |
| 28.02.2004 | That there was a sudden fire in the Appellant’s factory premises at Gala No. 250 at about 7:50 a.m. due to short circuit in electrical wiring. That the Fire Brigade arrived at the site at around 8:15 a.m. and used 2 small and 2 high pressure water jets for extinguishing the fire till 10:30 am, thereby resulting in all machines in the premises being doused in water.  Due to the sudden fire, total production facilities of the Appellant were destroyed resulting in loss of production and revenue. |
| 28.02.2004 &  29.02.2004 | That the Respondent was promptly informed about the breakout of fire at the Appellant’s premises on 28.02.2004. Thereafter, the Respondent immediately appointed M/s Prabha Associates, Consultant, Surveyors & Valuer (“**Prabha Associates**”/ “**Surveyor**”) to carry out the survey at the Appellant’s premises. That in terms of the reference, Prabha Associates/Surveyor carried out the survey at the premises of the Appellant Company on several occasions. |
| 01.03.2004 | That Prabha Associates vide its letter dated 01.03.2004 *inter alia* requested the Appellant to:  “*take immediate steps of applying chemicals to prevent corrosion/further damage to Plant & Machinery and proper precautions to minimise the loss”.*  That in furtherance of the instructions of Prabha Associates to clean the machines to increase the salvage value, the Appellant undertook the job of cleaning the machines. |
| 01.03.2004 | The Loss Prevention Association of India Ltd. (“**LPA**”) was informed by the Respondent about the untoward incident of fire at the Appellant’s premise and was directed to undertake an investigation on the following issues:  (a) Probable cause/causes of initiation of fire;  (b) Suggestion on remedial measures to minimise recurrences of such incident in future.  It is noteworthy that in furtherance of the abovementioned reference, the Respondent had informed LPA that the estimated loss in this particular incident would be more than Rs. 1 crore.  That the LPA visited the site on 12.03.2004 and based on information available at the site and the discussions held including physical observation vide its report (“**LPA Investigation Report**”) came to a categorical finding that *inter alia* “*Aquaflex and Gallus Rotascreen Printing machines were found partly damaged due to heat, smoke and fire fighting water*”. |
| 12.03.2004 | That in compliance with Prabha Associates’ letter dated 01.03.2004, the Appellant submitted its claim to the Respondent for the loss of Rs. 267 lakh (Rs. 2.67 crore) for Plant & Machinery and estimated loss of stock of Rs. 35 lakh and loss of Rs. 0.75 lakh for Building in the Fire Insurance Claim Form along with the necessary documents. By way of the said letter, the Appellant also requested the Respondent for release of some amount on adhoc basis/interim basis to enable them to restart their unit at the earliest since the aforesaid untoward incident of fire had totally crippled the financial condition of the Appellant. |
| 17.04.2004 | That an inspection was carried out at the Appellant’s premise of the Aquaflex colour printing machines manufactured by Aquaflex Canada by their service engineers in India being Graphic Technologies Inc. (“**GTI**”), Delhi, on 02.03.2004. Thereafter, GTI submitted its report on the Aquaflex printing machines on 17.04.2004 (“**Aquaflex Inspection Report**”), whereby it was categorically stated that there was extensive damage to the Aquaflex machine in the unfortunate recent fire in the Appellant’s premises. Further, the said Aquaflex Inspection Report unambiguously stated that given the existing situation the cost of repairing the machine may well exceed reasonable limits and GTI may not be able to guarantee optimum printing quality in spite of the repairs as the metal deformation on the main frame cannot be reverted. |
| ..... | That thereafter, the Appellant had detailed discussions with the Surveyor of the Respondent, Prabha Associates, who repeatedly assured the Appellant of prompt action on their claim. Further, the Appellant also regularly followed up with the officers of the Respondent and addressed several letters to them placing on record the numerous problems faced by the Appellant due to the delay on the part of the Respondent in making payment of the interim relief as well as final claim which the Appellant was sorely in need of. However, the Respondent and Prabha Associates/Surveyor deliberately and malafidely failed to settle the claims of the Appellant, flouting the IRDA regulations mandating that the surveyor shall communicate its findings to the insurer within 30 days of his appointment. |
| 01.07.2004 | That the Appellant had throughout co-operated with Prabha Associates/Surveyor to complete the process of assessment of its losses at the earliest to ensure speedy settlement of its claim. That the Appellant vide. its letter dated 01.07.2004 while forwarding the test results from Incowax who had analyzed the inks, reiterated its request for release of adhoc payments in view of the weak financial condition of the Appellant resulting from the untoward incident of fire. |
| 11.07.2004 | That the Appellant vide. its letter dated 11.07.2004 once again pressed upon the Surveyor the urgent need for release of adhoc payment to the Appellant in view of the severe financial setback suffered by the Appellant due to the untoward incident of fire and also there being no immediate possibility of final settlement of its claims despite the lapse of over several months from the date of untoward incident. |
| August 2004 | That the Appellant appointed M/s TTK Consultants to co-ordinate with the Surveyor for settlement of the Appellant’s insurance claims. |
| 19.08.2004 | That the Surveyor vide. its letter dated 19.08.2004 informed the Appellant *inter alia* that in view of the repeated requests of the Appellant for an “On Account” payment, it is recommending an “On Account” payment of Rs. 30 lakh to be made to the Appellant since the extent of the Appellant’s losses have yet not been established. |
| 25.08.2004 | That during a meeting held between the Appellant and the Surveyor, it was agreed that since the Appellant’s machineries could neither be repaired by them nor could they offer any salvage value, therefore the Appellant would sign a discharge for disposal of the damaged machinery as salvage so its machineries could be taken over on “*As is Where is*” basis. Accordingly, the Surveyor gave a draft format to the Appellant in his own handwriting stating the contents for making the aforesaid discharge for disposal of damaged machineries as salvage. |
| 26.08.2004 | That the Appellant in furtherance of the agreed understanding with the Surveyor, vide its letter dated 26.08.2004, reiterated the contents of the handwritten format provided by the Surveyor whereby it requested that its machineries should be taken over on “*As is Where is*” basis since the Appellant can neither get them repaired nor can it offer any salvage value. Further, vide the said letter the Appellant categorically reiterated the fact that the life of its machineries under consideration was 15 years keeping in view their usage. |
| 03.09.2004 | That the Surveyor accepted the Appellant ‘s proposal made vide letter dated 26.08.2004 and accordingly forwarded the advertisement to be published in main English newspapers along with the tender documents for disposal of “*Fire/Water affected Printing Press Machinery*” including the Gallus, Aquaflex, Plate Mounting printing machines. |
| 06.09.2004 | That M/s Prabha Associates/Surveyor appointed by the Respondent finally assessed the loss and admitted that the losses incurred by the Appellant was to the tune of Rs. 1,81,35,810 (Rupees one Crore Eighty One Lakh Thirty Five Thousand Eight Hundred and Ten Only) under the following heads:  a) Gallus Printing Machine: Rs. 1,60,24,246/-;  b) Aquaflex: Rs. 14,46,614/-;  c) Plate Mounting Machine: Rs. 2,75,000/-;  d) Chiller, A.C., El. Cabling: Rs. 3,89,950/-  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Rs. 1,81,35,810/-  It is noteworthy that the said email from the Surveyor categorically recorded the Loss Assessment as “Final”. Further, vide the said email the Surveyor requested the Appellant’s consultant to take the Appellant’s acceptance to finalize the said report. It is noteworthy that the only documents marked as pending in the said letter pertained to Octoroi payments. |
| 13.09.2004 | That the Appellant being dissatisfied with the loss assessment of the Surveyor since the losses were assessed way below the actual losses incurred by the Complainant, addressed several letters to the Surveyor and also had several meetings and discussion including one on 08.09.2004. That accordingly, the Surveyor agreed to upwardly revise the loss assessment of the Appellant to Rs. 2,32,02,000/- which was recorded by the Appellant vide. its letter dated 13.09.2004. |
| 04.10.2004 | That although the Surveyor had conducted inspection at the Appellant’s site several times and was in possession of the Aquaflex Inspection Report, it after a delay of over seven months from the date of the untoward incident on 25.09.2004 required that the engineer of the foreign manufacturer of Gallus printing machines be called from Switzerland for assisting them in inspection and for submitting the report.  That in spite of the prohibitive costs involved and only with a view to completing all formalities at the earliest so that its claim could be settled at the earliest, the Appellant arranged for the visit of the engineer of the Gallus and informed the Surveyor about the said visit on 05.10.2004. Further, the Appellant had also informed the Surveyor over phone that as the Surveyor was in touch with the Respondents on a day to day basis he should bring the Respondent’s officials also on 05.10.2004. |
| 05.10.2004 &  06.10.2004 | That a joint inspection of the printing machines was carried out by Gallus’ engineer in the presence of the Surveyor, Appellant and Gallus’ representative in India being Heidelberg at the Appellant’s premise. Thereafter, an Inspection Report along with a technical report was prepared and submitted by Gallus’ engineer on 06.10.2004 (“**Gallus** **Inspection Report**”). It is noteworthy that vide the said Gallus Inspection Report, Gallus’ engineer assessed the physical damages and also gave his technical comments on the status of the press categorically recording that the press was extensively damaged as a result of fire and that the press cannot be overhauled, repaired at the site. The findings of the Gallus’ engineer are as under:  *“1. The press is extensively damaged as a result of fire.*  *2. The press cannot be overhauled/repaired at the site.*  *3. In my opinion all the parts observed damaged, and all the parts that are damaged, however cannot be inspected unless dismantled, need to be replaced for making the press operational. However, pre accident printing quality levels cannot be assured.*  *4. In case any parts are not in stick and have to be made specifically, they will be very expensive.*  *5. The machine cannot be switched on the as is condition.*  *6. In order to attempt a <switch on>, the press and the press electrical/electronics has to undergo safety tests as well as insulation tests confirming CE safety norms, checks for the same can only be at the manufacturing facility, at M/s Gallus CH.”*  That the Complainant had paid a sum of Rs. 4,86,665/- for the visit of the engineer from Gallus and it was based on a clear understanding that the Respondent would bear the entire cost of such visit. |
| 07.10.2004 | That the Surveyor after two days of joint inspection of the machinery with the Gallus engineers from Switzerland, Heidelberg India engineers and the Appellant agreed to the claim amount of Rs. 2,26,61,376/-. It is noteworthy that pursuant to the Appellant’s meeting with the Surveyor on 07.10.2004, the Appellant vide its letter of even date recorded the mutual understanding of the Surveyor and the Appellant, whereby it was agreed that the claim amount payable to the Appellant under the policy was Rs. 2,26,61,376/-. |
| 29.10.2004 | That after a lapse of over seven months from the date of the untoward incident of fire by which time the Respondent should have finally decided the Appellants claim and when the Surveyor was about to submit its report approving a sum of Rs. 2,26,61,376/- as claim amount payable to the Appellant under the policy, the Respondent intentionally and malafidely vide its letter dated 29.10.2004 informed the Appellant that their executives wanted to visit the Appellant’s premises where the fire took place and see the fire affected property. It is noteworthy that the said request for inspection was made by the Respondent although its executives had visited the site with the LPA officers and after three concurring opinions being the LPA Investigation Report, Aqaflex Investigation Report and the Gallus Investigation Report were furnished to the Respondent after inspection and the Surveyor was about to submit its report approving a sum of Rs. 2,26,61,376/- as claim amount payable to the Appellant under the policy. |
| 05.01.2005 | That despite a joint inspection of the Appellant’s premises and the machineries on 05.10.2005 and 06.10.2005 by the Surveyor along with Gallus’ engineer and Heidelberg’s representatives and the subsequent Gallus Investigation Report dated 06.10.2005, the Surveyor belatedly raised certain queries in relation to non assurance of print precision and print parameters by Gallus and M/s Heidelberg upon repair and also why repairs could not be carried out in India and also insisted upon a repair quotation for repairs of the machinery. Therefore, on such specific request, M/s Heidelberg submitted its Technical Report on the abovementioned specific queries (“**Second Gallus Machine Report**”) along with repair quotation totalling to a sum of Euro 422,450/- (approximately Rs. 2.40 crore) for all the parts of the machinery which were required to be repaired/replaced on 05.01.2005. M/s Heidelberg made the abovementioned submissions with the clear cut rider and condition that pre-accident accuracy could not be guaranteed. |
| 06.01.2005 | That the Appellant being completely shocked and taken aback by the malafide and belated queries of the Surveyor inquiring as to how “*without opening and checking the machine the Gallus Engineer has come to the conclusion*” that the Gallus machine is without repairs, responded to the said queries vide its letter dated 06.01.2005. The Appellant vide the said letter confronted the Surveyor clearly recording that if he had any such doubt he should have raised it at the time of joint inspection on 05.10.2004 and 06.10.2004 and should have at that point of time in the presence of the manufacturer’s engineers insisted on dismantling the machine and checking each part. However, the Appellant requested the Surveyor to inform that about which parts he wanted to be elaborated on the damages due to water, fire and other technical aspects. |
| 06.01.2005 | That after a lapse of over ten months the Respondent retained M/s Material Technology Development Centre (“**MTDC**”) to inspect the machines, to gauge the extent of corrosion and to conduct tests as deemed necessary to evaluate the corrosion resulting out of the fire and its extinguishing at the Appellant’s premise. It is noteworthy that MTDC’s appointment was malafide and malicious since MTDC is not an authorized loss assessing agency/licensed Surveyor approved by IRDA to assess the damage by fire. Further, MTDC’s appointment by the Respondent who will be unofficially doing the job of a second surveyor was contrary to the judicial precedents since the first surveyor, M/s Prabha Associates, appointed some ten months back had already prepared its report. |
| 12.01.2005 | That the Appellant was further shocked to receive the letter from the Respondent dated 10.01.2005 in terms of which the Respondent tried to reopen certain technical issues although M/s Prabha Associates/Surveyor appointed by the Respondent had satisfied itself of the same. It is noteworthy that the Appellant responded to the Respondent’s letter dated 10.01.2005, vide its letter dated 12.01.2005. The Appellant vide its response categorically stated that it was evident that the cause of loss was due to fire, heat, smoke, water and moisture. Further, the Appellant also stated that the basic principle of seeking the surveyor’s assessment was completely given a go by and instead metallurgical tests were demanded at the end of almost 11 months after the incident. However, in all bona fide the Appellant allowed the Respondent to send their appointed engineer to handle the equipments as they finds fit with the only request that the Respondent settle the Appellant’s loss at the earliest in view of the mounting losses being faced by the Appellant. |
| 10.02.2005 | That MTDC submitted its report to the Respondent on the evaluation of corrosion in printing machinery rollers (“**MTDC Report**”). It is noteworthy that the said MTDC Report was based on the “*visual assessment*” of the following: Gala layout and machines therein, evaluation of feasibility of the damage phenomenon (Thermal), major material of construction in the machine, theory of conduct and the engineering and designs concepts of material science. Further, MTDC had carried out/analyzed corrosion behaviour neither on actual rollers used in the Appellant’s machines nor on fresh ink sample. But instead they used mild steel structural metal hence the said MTDC Report could not be conclusively relied upon for determining the rate of time/time to rusting for highly specialized machines used by the Appellant. It is submitted that MTDC concluded in its Report that it could not confirm significant amount of rusting within 4-5 hours because of fire and its extinguishing as valid, hence clearly demonstrating the findings in the said Report to be vague and inconclusive. |
| 22.02.2005 | Dr. S.N. Malhotra, Professor, Department of Metallurgical Engineering & Materials Science, Indian Institute of Technology Bombay, Powai’s submitted his report with the Appellant after conducting a site survey on 09.02.2005, categorically concluding that the causes of damage were fire, smoke, heat and water. |
| 28.03.2005 | That the Surveyor after a lapse of over 12 months and in complete contravention of the IRDA 2002 Regulation mandating the surveyor to furnish the report in not more than six months from the date of his appointment, submitted its Report with the Respondent on 28.03.2005 (“**Surveyor’s Report**”). It is noteworthy that the observations in the Surveyor’s Report are completely opposite to its conclusion. In this regard the following clauses may be noted from the Surveyor’s Report:  *“3.06 High quality and accuracy level is maintained as customers are of very high repute and the application of self adhesive labels is very sharp by automatic machine. This……These labels are used on many of the exportable items where quality has to be of the international standard and that is why highly sophisticated costly imported machinery are required”*  *“4.06 Water was sprayed all over the place, which caused more damage than the fire itself.”*  *“5.06 Aquaflex Printing Press located below the cables found affected with water.”*  *“5.07(a) Gallus Printing Machine water damaged.*  *(b) Spengler machine water affected.*  *(c) A.V. Flexo plate muonter water affected.”*  *“5.18 Outwardly exposed parts of critical machines and accessories affected due to water rusted.”*  *“6.0 PROBABLE CAUSE:-*  *Apparently source of fire appears to be short circuit of power cables running parallel to long wall resulting in damage to insured’s property.*  *In order to extinguish the fire, Fire Brigade used water jets thereby spraying water on all the machines located in the premises.*  *Loss is admissible under the terms and conditions of the policy.”*  It is noteworthy that despite the aforesaid observations and the Probable Cause, the Surveyor interpreting and MTDC’s Report to mean that rusting cannot occur within 4-5 hours and relying on the same concluded that the damages to the Galus and Aquaflex printing machines did not fall within the purview of the policy and hence rejected the valid claims of the Appellant in respect of the same. |
| 16.05.2005 | That to the utter shock and surprise of the Appellant, the Respondent vide its voucher dated 16.05.2005 approved the claim of the Appellants for a paltry and meagre sum of Rs. 16,15,606/- (Rupees Sixteen Lakh Fifteen Thousand Six Hundred and Six Only) in full and final payment of the entire claim of the Appellant, against the claimed amount of more than Rs.2.5 crore by the Appellant. |
| 13.06.2005 | That the Appellant being completely shocked with the paltry sum offered by the Respondent in full and final settlement of the claims objected to the unilateral manner in which the claim was determined by the Respondent’s and protested against the issue of the above mentioned voucher of Rs. 16,15,606/-. However, in view of the precarious financial position of the Appellant, it accepted the voucher without prejudice to its rights and contentions in law and accepted the sum of Rs. 16,15,606/- under protest as part payment against the Appellant total claim of Rs. 2.5 crore. |
| 05.07.2005 | The Respondent malafidely and with a view to further perpetuate fraud upon the Appellant vide its letter dated 05.07.2005 informed the Appellant that since the Appellant had marked the settlement voucher as accepted without prejudice and under protest they would be unable to release even that amount against the settlement intimation voucher. |
| 31.01.2006 | That the Appellant being aggrieved by the deficiency in service and unfair trade practice on the part of the Respondent filed a consumer complaint bearing CC No. 21 of 2006 before the Hon’ble National Consumer Disputes Redressal Forum. |
| 18.05.2006 | That the Respondent filed its Reply Affidavit in C.C. No. 21 of 2006 before the Hon’ble National Commission putting forth erroneous submissions to controvert the allegations of deficiency in service and unfair trade practice on its part. |
| 12.07.2006 | That in view of the ambiguous and vague findings in the MTDC Report, the Appellant approached the Indian Institute of Technology Bombay, Powai on 20.06.2006 for its expert technical opinion on the MTDC Report. Accordingly, Professor Dr. S.N. Malhotra, Department of Metallurgical Engineering & Material Sciences studied the MTDC Report and categorically stated vide its Report dated 12.07.2006 that the results and conclusions of the MTDC Report are highly flawed even if they their simulation was to be accepted (“**IIT Powai Report 2**”). Further, the IIT Powai Report 2 states that the simulation done by the authors in the MTDC Report cannot be considered as replicating the conditions to which the metallic parts were exposed during the fire and after the fire had been extinguished. It is noteworthy that the MTDC Report lists 7 conditions for the corrosion to occur. However, they do not point out as to which of those seven conditions did not exist or would not have existed and interestingly the stipulated conditions have not been arrived at from their simulation experiments. After a detailed independent inquiry into the issue, the IIT Powai Report 2 came to a finding that not only the 7 conditions listed by the MTDC Report exist at the time of the incident, but that it is indeed improbable and impossible that the said conditions did not exist at the time of the incident for the reasons recorded therein.  The said IIT Powai Report 2 also clearly observes that in view of the Quality Certificates issued by Expo India Agencies, Lupin Limited Mandideep, L’Oreal, Dr Reddy’s, Wockhardt, Sandvik, Siemens etc. which state that the output of the machine prior to the incident was 100% as per the required standards. It only goes to reason that if there were any prior corrosion on the rollers prior to the fire incident, then and in such event there would not be any production much less quality production. Further, the said IIT Powai Report 2 contains several annexures including extracts from several authoritative books, extracts from the operating manual of the said machines as well as quality certificates issued by the customers of the Appellant to substantiate its findings. |
| 07.08.2006 | That Gallus being the manufacturers of Gallus printing machine again vide. its letter dated 07.08.2006 categorically stated that the break out of fire was the only cause of damage to the machinery and the damage is beyond repair. |
| August 2006 | That the Appellant filed its Affidavit in Rejoinder in response to the Reply dated 17.05.2006 filed by the Respondent. |
| 06.12.2006 | That the Respondent led its evidence by way of an affidavit before the Hon’ble National Commission in C.C. No. 21 of 2006. |
| 08.08.2007 | That the Appellant appointed one Shri. Subhash Chandra Baksi, an Insurance Surveyor and Loss Assessor in order to assess whether the machines damaged in the untoward fire incident could be repaired in India, whether such repairs will indemnify the insured and also whether such repairs can be done at a cost of Rs. 16 lakh. Shri. Subhash submitted his final report on 08.08.2007 (“**Subhash Report**”) whereby it was categorically stated that the conditions after the extinguishing of fire were 100% conducive to extremely fast rusting/corrosion of equipments. Further, the Subhash Report concluded that the machines are virtually to be treated as total loss since repairs are indicated to involve a greater cost than the original supply. |
| 23.10.2007 | That the Surveyor/Prabha Associates led its evidence by way of an affidavit before the Hon’ble National Commission in C.C. No. 21 of 2006. |
| 02.02.2008 | That Shri. Subhash Chandra Baksi led its evidence by way of an affidavit as Prosection Witness No. 1 before the Hon’ble National Commission in C.C. No. 21 of 2006. |
| 17.07.2009 | That Mr. Bharat Mehta, Partner of the Appellant tendered his evidence before the Hon’ble Commission as P.W.2. |
| 24.02.2015 | That the Hon’ble National Consumer Disputes Commission erroneously dismissed the Consumer Complaint bearing C.C. No. 21 of 2006 filed by the Appellant (**IMPUGNED ORDER**).  It is noteworthy that the Hon’ble Commission has erroneously rejected the allegations of deficiency in service and unfair trade practice against the Respondent by erroneously placing reliance on the MTDC Report and corroborating it with a Wikipedia article in complete disregard of the reports submitted by technical experts on the matter including the LPA Investigation Report, Aquaflex Inspection Report, Gallus Inspection Report, IIT Powai Reports 1 and 2 and the Subhash Report.  Further, the Hon’ble Commission erred in not noticing that since the M/s Prabha Associate/Sueryor’s Report was submitted after a lapse of over 12 months in complete contravention of the IRDA 2002 Regulation mandating an outer limit of six months and the Respondent was responsible for influencing the said Survey Report, it amounted to deficiency in service and unfair trade practice on the part of the Respondent, making them liable to the Appellants for the claims made in the consumer complaint (**IMPUGNED ORDER**). |
| 23.03.2015 | Hence, the present Civil Appeal. |

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2015

(Against the final judgment and order dated 24.02.2015 passed by the Hon’ble National Consumer Dispute Redressal Commission New Delhi in Consumer Case No. 21 of 2006)

WITH PRAYER FOR INTERIM RELIEF

POSITION OF PARTIES BEFORE

THE NATIONAL THIS HON’BLE

COMMISSION COURT

CONSUMER CASE NO.21 OF 2006

IN THE MATTER OF :-

M/s SUPER LABEL MFG. CO.

Plot No. A-258, T.T.C.

Industrial Area

M.I.D.C, Mahape

Navi Mumbai - 400001 Complainant Appellant

Versus

NEW INDIA ASSURANCE COMPANY LIMITED

87, M.G. Road, Fort

Mumbai - 400001 Opposite Party Respondent

**APPEAL UNDER SECTION 23 OF THE CONSUMR PROTECTION ACT, 1986 AGAINST THE FINAL JUDGMENT AND ORDER DATED 24.02.2015 PASSED BY THE HON’BLE NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION NEW DELHI IN CONSUMER CASE NO. 21 OF 2006**

TO,

THE HON’BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE

HON’BLE SUPEREME COURT OF INDIA

THIS HUMBLE APPEAL OF THE APPELLANT ABOVENAMED

**MOST RESPECTFULLY SHOWETH**

1. That the above Appeal is being filed by the Appellant abovenamed against the final judgement and order dated 24.02.2015 passed by the Hon’ble National Consumer Dispute Redressal Commission New Delhi in Consumer Case no. 21 of 2006, whereby the Hon’ble Commission has erred in rejecting the valid insurance claim of the Appellant and upholding the Respondent’s decision to pay only a sum of Rs. 16.19 lakh with interest to the Appellant as against the earlier approved sum of Rs. 2,26,61,376/- despite clear evidence of deficiency in service and unfair trade practice adopted by the Respondent.
2. That the Appellant submits that no other appeal or petition has been filed by the Appellant against the Impugned Order.
3. **QUESTIONS OF LAW**

The following questions of law of general public importance arise in the above Appeal:

1. Whether the provisions of Regulation 9(2) of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 which mandates that the surveyor shall furnish his report in not more than 6 months from the date of his appointment ought to be followed strictly and whether the Hon’ble National Commission erred in not holding the Respondent liable for deficiency in service and unfair trade practice although the Respondent has malafidely accepted, admitted and relied upon the Surveyor’s report submitted after a lapse of over 12 months from the date of the untoward incident of fire in complete contravention of the said Regulation?
2. Whether the provisions of Regulation 9(5) of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 which mandates that on receipt of the survey report the insurer shall within a period of 30 days offer a settlement of the claim to the insured ought to be strictly adhered to and whether the Hon’ble National Commission erred in not holding the Respondent liable for deficiency in service and unfair trade practice although the Respondent has issued the voucher on only 16.05.2005 although the survey report was submitted on 28.03.2005 i.e., after lapse of the abovementioned statutory prescribed period?
3. Whether the Hon’ble National Commission acted in consonance with principles of equity, justice, good conscience and fair play while rejecting the claim of the Appellant although fire was the active cause of damage to the printing machines by solely placing reliance on the opinion obtained from M/s Material Technology Development Centre/MTDC on technical issues which opinion was in complete contradiction to the reports tendered by highly specialized expert bodies including M/s Loss Prevention Association of India Ltd., Gallus Ferd Ruesch AG, Graphic Technologies Inc., at the instance of the Surveyor appointed by the Respondent and also IIT Powai and Shri. Subhash Chandra Baksi - an Insurance Surveyor and Loss Assessor appointed by the Appellant on his own volition, without recording reasons for rejecting the same?
4. Whether reliance can be placed solely on Wikipedia articles, which are inconclusive and not authenticsince the information can be entered therein by any person and is editableopenly and whether the Hon’ble National Commission erred in rejecting the claims of the Appellant although fire was the active cause of damage to the printing machinesby opining on technical issues placing reliance on such articles?
5. Whether the law laid down by this Hon’ble Court in the case of Sri Venkateswara Syndicate Vs. Oriental Insurance Company, reported in(2009) 8 SCC 507, whereby it was categorically held that although there is no prohibition in the Insurance Act for appointment of second surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first surveyor and the need to appoint second surveyor was followed in the instant case and whether the Hon’ble National Commission erred in not noticing that the appointment of MTDC by the Respondent in essence amounted to appointing a second surveyor although the report of the first surveyor being M/s Prabha Associate was pending and hence no occasion for the appointment of the second surveyor arose?
6. Whether the Hon’ble National Commission erred in not holding the Respondent is liable for deficiency in service and unfair trade practice since the appointment of M/s Material Technology Development Centre/MTDC, which is not an authorized loss assessing agency/licensed surveyor approved by IRDA to assess the damage by fire, by the Respondent only evidences that it did so to influence and get a favourable report to suit its estimation of loss of plant and machinery in the fire incident, is illegal and shatters the confidence and trust of the people on the very purpose of insurance?
7. Whether the Hon’ble National Commission erred in not noticing that although the Surveyor had consistently accepted the claims of the Appellant including those for plant and machinery approving a sum of Rs.1,81,35,810/- and thereafter revising it upwards to Rs. 2,32,02,000/- and Rs. 2,26,61,376/- pursuant to its meeting with the engineers of the printing machines on 07.10.2004 holding that the cause of loss was due to fire, heat, smoke, water and moisture, the Respondent belatedly raised certain technical queries even before the submission of the Surveyor’s Report which queries were already adequately answered by the engineers of the printing machines and without any justification used it to influence the final report submitted by the Surveyor drastically reducing the approved claim to Rs. 16,15,606/- on frivolous grounds?
8. Whether the Hon’ble National Commission erred in not noticing that although the Surveyor was in receipt of the reports submitted by the Loss Prevention Association of India Ltd., the Report dated 17.04.2004 submitted by Graphic Technologies Inc. being the engineers of Aquaflex printing machines manufactured by Aquaflex Canada and the report dated 06.10.2004 submitted by Gallus being the manufacturers of Gallus printing machines, the Surveyor only submitted its Report on 23.03.2005 to the Respondent thereby clearly evidencing deficiency in service and unfair trade practice on the part of the Respondents and its Surveyors?
9. Whether the Hon’ble National Commission erred in not noticing that although the Surveyor had finally agreed and approved the claim of the Appellant for a sum of Rs. 2,26,61,376/- on 07.10.2004, it waited to for a period of over 5 months to submit its report to the Respondent on frivolous grounds only to drastically reduce the claim of the Appellant to Rs. 16,15,606/- rejecting the major claim items being plant and machinery squarely covered within the terms of the fire policy?
10. Whether the Hon’ble National Commission erred in not noticing that the fire insurance policy procured by the Appellants indicated the clear intention of the parties was to cover plant and machinery, however the Respondent maliciously and malafidely with a view to avoid its liability under the fire policy got MTDC to give a report to suit its stand and got its findings incorporated in the Surveyor’s Report so as to avoid payment of the claim for Aquaflex and Gallus Plant and Machinery by making use of the exclusions in the fire policy?
11. Whether the Hon’bleNational Commission erred in not noticing that the ambiguous and vague findings in the MTDC Report stood completely negated by the Report submitted by the Indian Institute of Technology Bombay, Powai on 12.07.2006 which categorically recorded that the simulation done by the authors in the MTDC Report cannot be considered as replicating the conditions to which the metallic parts were exposed during the fire and after the fire had been extinguished and hence held that it is indeed improbable and impossible that the 7 conditions listed in the MTDC Report did not exist at the time of the fire incident?
12. Whether the Hon’bleNational Commission erred in not noticing thatin view of the Quality Certificates issued by Expo India Agencies, Lupin Limited Mandideep, L’Oreal, Dr Reddy’s, Wockhardt, Sandvik, Siemens etc. which state that the output of the machine prior to the incident was 100% as per the required standards, it only goes to reason that if there were any prior corrosion on the rollers prior to the fire incident, then and in such event there would not be any production much less quality production?
13. Whether the Hon’bleNational Commission erred in not noticing thatShri. Subhash Chandra Baksi, an Insurance Surveyor and Loss Assessor, who had tendered his evidence before the Hon’ble National Commission as Prosecution Witness No. 1on the basis of his report dated 08.08.2007, categorically stated that the conditions after the extinguishing of fire at the Appellant’s premise were 100% conducive to extremely fast rusting/corrosion of equipments. However, failure to cross examine Shri. Subhash Chandra Baksi to test the veracity of his statements before outrightly rejecting his technical submissions clearly demonstrates that the Impugned Order deserves to be set aside as being illegal and void?
14. Whether the Hon’bleNational Commission erred in not noticing thatthe Surveyor had itself vide. its letter dated 19.08.2004 approved and recommended an “On Account” payment of Rs. 30 lakh to be made to the Appellant, however the Respondent not only failed to make an such payment to the Appellant but also reduced the final approved claim to Rs. 16,15,606/- which is almost half of the interim payment approved by the Surveyor?
15. Whether the Hon’ble National Commission erred in not noticing that the Surveyor had agreed to the fact that since the Appellant’s machineries could neither be repaired by them nor could they offer any salvage value, therefore the Appellant would sign a discharge for disposal of the damaged machinery as salvage so its machineries could be taken over on “As is Where is” basis and accordingly the Surveyor had himself forwarded the advertisement to be published in main English newspapers along with the tender documents for disposal of “Fire/Water affected Printing Press Machinery” including the Gallus, Aquaflex, Plate Mounting printing machines clearly stating that the said machines were affected by fire and water?
16. Whether the Hon’ble National Commission erred in allowing interest at the rate of 9% per annum only from the date of filing of the complaint and not from the date of denial by the Respondent to pay the amount indicated in settlement intimation voucherevidencing the prejudice being caused to the Appellant on account of deficiency in service and unfair trade practice adopted by the Respondent?
17. The brief facts leading to filing of the above Appeal are as follows:

A. That the Appellant is a partnership firm duly registered in the year 1976 under the provisions of the Indian Partnership Act, 1932. The Appellant is one of the leading manufacturer and exporter of Self Adhesive Labels in the country. It supplies labels to the leading pharmaceutical companies including Wockhardt, Dr. Reddy’s Lab, Johnson & Johnson, Loreal, to name few amongst others.

The labels manufactured by the Appellant are used on many of the exportable item where quality has to be of international standard and that is why highly sophisticated costly imported machinery is required.

The Appellants were located in an Industrial Co-operative Society in Mumbai which has got various industrial Galas engaged in multiple trades. The Appellant was occupying three Galas bearing No. 250 (2nd Floor), 342 (3rd Floor) and 343 (3rd Floor).

B. That the Appellant has always been pioneering new technology in India & updating technology to international standards. Accordingly, in the year 1993, the Appellant imported “Aquaflex” which was a Canada 4 Colour Flexo printing machine for Rs. 50 lakh (approx.) and was the first entry in the Indian market. Likewise, in the year 1998, the Appellant imported “Gallus – Arsoma” which is a 6 colour full U.V. Press for Rs. 2 crore (approx.) and was also the first one to use it in the Indian market.

C. That the Appellant has been maintaining proper insurance cover for its business assets for the last 29 years, of which for over 10 years the Appellant has been insured by the Respondent herein.

D. That on 16.10.2002, the Insurance Regulatory and Development Authority (“**IRDA**”) notified the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 (“**IRDA 2002 Regulation**”)*.* Regulation 9 of the IRDA 2002 Regulation categorically provides that the surveyor shall furnish his report in not more than 6 months from the date of his appointment and that thereafter within a period of 30 days the insurer shall offer a settlement of the claim to the insured. and is as under:

*“****9.******Claim procedure in respect of a general insurance policy.***

1. *….*
2. *Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.”*
3. *…*
4. *….*

*5. On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.”*

True copy of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 is annexed herewith and marked as **ANNEXURE –P/1** (Pgs To ).

E. That as was done in the previous years, the Appellant in the year 2003-2004 procured the Standard Fire and Special Perils Policy from the Respondent covering the following risks:

(i) Policy No. 112500/11/03/00214 – Covering Stocks (Insuring Rs. 25 Lakh);

(ii)Policy No. 112500/11/03/01160 – Covering Stocks (Insuring Rs. 25 Lakh);

(iii)Policy No. 112500/11/03/01161 – Covering Building (Insuring Rs. 3.30 Lakh);

(iv)Policy No. 112500/11/03/01161 – Covering Plant & Machinery (Insuring Rs. 2.82 Crore).

(hereinafter collectively referred to as the “**Fire Policy**”)

Therefore, the Appellant was covered for a total sum of Rs. 3,35,30,000/- valid from 15.05.2003 to 30.08.2004 under the Fire Policy.

It is noteworthy that the Terms and Conditions to the Fire Policy issued by the Respondent provides that the Respondent

“.....*the Company* *shall pay to the insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof:*

*I. Fire:*

*Excluding destruction or damage caused to the property insured by*

1. *(i) its own fermentation, natural heating or spontaneous combustion;*

*(ii) its undergoing any heating or drying process.*

1. *burning of property insured by order if any Public Authority.”*

Further, the General Conditions of the Fire Policy stipulate as under:

*“ ....*

*On the happening of loss or damage to any of the property insured by this policy, the Company may*

1. *enter and take and keep possession of the building or premises where the loss or damage has happened.*
2. *take possession of or require to be delivered to it any property of the Insured in the building or on the premises at the time of the loss or damage.*
3. *keep possession of any such property and examine, sort, arrange, remove or otherwise deal with the same.*
4. *sell any such property or dispose of the same for account of whom it may concern.”*

True copy of the Policy Nos. 112500/11/03/00214, 112500/11/03/01160 and 112500/11/03/01161 and the Terms and Conditions of the Standard Fire and Special Perils Policy are annexed herewith and marked as **ANNEXURE –P/2 (Pgs To ), ANNEXURE –P/3 (Pgs To ), ANNEXURE –P/4 (Pgs To ) and ANNEXURE –P/5 (Pgs To ) respectively.**

F. That on 28.02.2004, there was a sudden fire in the Appellant’s factory premises at Gala No. 250 at about 7:50 a.m. due to short circuit in electrical wiring. That the Fire Brigade arrived at the site at around 8:15 a.m. and used 2 small and 2 high pressure water jets for extinguishing the fire till 10:30 am, thereby resulting in all machines in the premises being doused in water.

Due to the sudden fire, total production facilities of the Appellant were destroyed resulting in loss of production and revenue. True copies of the photographs of the printing machines before and after the incident of fire at the Appellant’s premises are annexed herewith and marked as **ANNEXURE –P/6 (Pgs To ).**

G. That the Respondent was promptly informed about the breakout of fire at the Appellant’s premises on 28.02.2004. Thereafter, the Respondent immediately appointed M/s Prabha Associates, Consultant, Surveyors & Valuer (“**Prabha Associates**”/ “**Surveyor**”) to carry out the survey at the Appellant’s premises. That in terms of the reference, Prabha Associates/Surveyor carried out the survey at the premises of the Appellant Company on several occasions.

H. That Prabha Associates vide its letter dated 01.03.2004 *inter alia* requested the Appellant to:

“*take immediate steps of applying chemicals to prevent corrosion/further damage to Plant & Machinery and proper precautions to minimise the loss”*

That in furtherance of the instructions of Prabha Associates to clean the machines to increase the salvage value, the Appellant undertook the job of cleaning the machines. True copy of the letter dated 01.03.2004 from M/s Prabha Associates to the Appellant is annexed herewith and marked as **ANNEXURE-P/7 (Pgs To ).**

I. The Loss Prevention Association of India Ltd. (“**LPA**”) was informed by the Respondent about the untoward incident of fire at the Appellant’s premise and was directed to undertake an investigation on the following issues:

(a) Probable cause/causes of initiation of fire;

(b) Suggestion on remedial measures to minimise recurrences of such incident in future.

It is noteworthy that in furtherance of the abovementioned reference, the Respondent had informed LPA that the estimated loss in this particular incident would be more than Rs. 1 crore.

That the LPA visited the site on 12.03.2004 and based on information available at the site and the discussions held including physical observation vide its report (“**LPA Investigation Report**”) came to a categorical finding that *inter alia* “*Aquaflex and Gallus Rotascreen Printing machines were found partly damaged due to heat, smoke and fire fighting water*”. True copy of the Investigation Report prepared by the Loss Prevention Association of India Ltd. in relation to the Appellant is annexed herewith and marked as **ANNEXURE-P/8 (Pgs To**  **).**

J. That in compliance with Prabha Associates’ letter dated 01.03.2004, the Appellant submitted its claim to the Respondent vide. its letter dated 12.03.2004 for the loss of Rs. 267 lakh (Rs. 2.67 crore) for Plant & Machinery and estimated loss of stock of Rs. 35 lakh and loss of Rs. 0.75 lakh for Building in the Fire Insurance Claim Form along with the necessary documents. By way of the said letter, the Appellant also requested the Respondent for release of some amount on adhoc basis/interim basis to enable them to restart their unit at the earliest since the aforesaid untoward incident of fire had totally crippled the financial condition of the Appellant. True copy of the letter dated 12.03.2004 of the Appellant to the Respondent is annexed herewith and marked as **ANNEXURE-P/9 (Pgs To ).**

K. That on 17.04.2004, an inspection was carried out at the Appellant’s premise of the Aquaflex colour printing machines manufactured by Aquaflex Canada by their service engineers in India being Graphic Technologies Inc. (“**GTI**”), Delhi, on 02.03.2004. Thereafter, GTI submitted its report on the Aquaflex printing machines on 17.04.2004 (“**Aquaflex Inspection Report**”), whereby it was categorically stated that there was extensive damage to the Aquaflex machine in the unfortunate recent fire in the Appellant’s premises. Further, the said Aquaflex Inspection Report unambiguously stated that given the existing situation the cost of repairing the machine may well exceed reasonable limits and GTI may not be able to guarantee optimum printing quality in spite of the repairs as the metal deformation on the main frame cannot be reverted. True copy of the Inspection Report dated 17.04.2004 submitted Graphic Technologies Inc. on the damage caused to Aquaflex colour printing machine in the untoward incident of fire at the Appellant’s premises is annexed herewith and marked as **ANNEXURE-P/10 (Pgs To ).**

L. That thereafter, the Appellant had detailed discussions with the Surveyor of the Respondent, Prabha Associates, who repeatedly assured the Appellant of prompt action on their claim. Further, the Appellant also regularly followed up with the officers of the Respondent and addressed several letters to them placing on record the numerous problems faced by the Appellant due to the delay on the part of the Respondent in making payment of the interim relief as well as final claim which the Appellant was sorely in need of. However, the Respondent and Prabha Associates/Surveyor deliberately and malafidely failed to settle the claims of the Appellant, flouting the IRDA regulations mandating that the surveyor shall communicate its findings to the insurer within 30 days of his appointment.

M. That the Appellant had throughout co-operated with Prabha Associates/Surveyor to complete the process of assessment of its losses at the earliest to ensure speedy settlement of its claim. That the Appellant vide. its letter dated 01.07.2004 while forwarding the test results from Incowax who had analyzed the inks, reiterated its request for release of adhoc payments in view of the weak financial condition of the Appellant resulting from the untoward incident of fire. True copy of the letter dated 01.7.2004 of the Appellant to M/s Prabha Associates is annexed herewith and marked as **ANNEXURE-P/11 (Pgs To ).**

N. That the Appellant vide. its letter dated 11.07.2004 once again pressed upon the Surveyor the urgent need for release of adhoc payment to the Appellant in view of the severe financial setback suffered by the Appellant due to the untoward incident of fire and also there being no immediate possibility of final settlement of its claims despite the lapse of over several months from the date of untoward incident. True copy of the letter dated 11.07.2004 of the Appellant to M/s Prabha Associates is annexed herewith and marked as **ANNEXURE-P/12 (Pgs To ).**

O. That in August 2004, the Appellant appointed M/s TTK Consultants to co-ordinate with the Surveyor for settlement of the Appellant’s insurance claims.

P. That the Surveyor vide. its letter dated 19.08.2004 informed the Appellant *inter alia* that in view of the repeated requests of the Appellant for an “On Account” payment, it is recommending an “On Account” payment of Rs. 30 lakh to be made to the Appellant since the extent of the Appellant’s losses have yet not been established. True copy of the letter dated 19.08.2004 of M/s Prabha Associates to the Appellant is annexed herewith and marked as **ANNEXURE-P/13 (Pgs To ).**

Q. That during a meeting held on 25.08.2004, between the Appellant and the Surveyor, it was agreed that since the Appellant’s machineries could neither be repaired by them nor could they offer any salvage value, therefore the Appellant would sign a discharge for disposal of the damaged machinery as salvage so its machineries could be taken over on “*As is Where is*” basis. Accordingly, the Surveyor gave a draft format to the Appellant in his own handwriting stating the contents for making the aforesaid discharge for disposal of damaged machineries as salvage. True copy of the handwritten draft provided by M/s Prabha Associates/Surveyor to the Appellant is annexed herewith and marked as **ANNEXURE-P/14 (Pgs To ).**

R. That the Appellant in furtherance of the agreed understanding with the Surveyor, vide its letter dated 26.08.2004, reiterated the contents of the handwritten format provided by the Surveyor whereby it requested that its machineries should be taken over on “*As is Where is*” basis since the Appellant can neither get them repaired nor can it offer any salvage value. Further, vide the said letter the Appellant categorically reiterated the fact that the life of its machineries under consideration was 15 years keeping in view their usage. True copy of the letter dated 26.08.2004 of the Appellant to M/s Prabha Associates/Surveyor is annexed herewith and marked as **ANNEXURE-P/15 (Pgs To ).**

S. That on 03.09.2004, the Surveyor accepted the Appellant ‘s proposal made vide letter dated 26.08.2004 and accordingly forwarded the advertisement to be published in main English newspapers along with the tender documents for disposal of “*Fire/Water affected Printing Press Machinery*” including the Gallus, Aquaflex, Plate Mounting printing machines. True copy of the letter date 03.09.2004 issued by M/s Prabha Associated/Surveyor to the Appellant along with the advertisement and the tender documents is annexed herewith and marked as **ANNEXURE-P/16 (Pgs To ).**

T. That M/s Prabha Associates/Surveyor appointed by the Respondent finally assessed the loss and vide. its email dated 06.09.2004 admitted that the losses incurred by the Appellant was to the tune of Rs. 1,81,35,810 (Rupees one Crore Eighty One Lakh Thirty Five Thousand Eight Hundred and Ten Only) under the following heads:

a) Gallus Printing Machine: Rs. 1,60,24,246/-;

b) Aquaflex: Rs. 14,46,614/-;

c) Plate Mounting Machine: Rs. 2,75,000/-;

d) Chiller, A.C., El. Cabling: Rs. 3,89,950/-

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Rs. 1,81,35,810/-

It is noteworthy that the said email from the Surveyor categorically recorded the Loss Assessment as “Final”. Further, vide the said email the Surveyor requested the Appellant’s consultant to take the Appellant’s acceptance to finalize the said report. It is noteworthy that the only documents marked as pending in the said letter pertained to Octoroi payments. True copy of the email dated 06.09.2004 originating from M/s Prabha Associates/Surveyor and addressed to the Appellant’s consultant being M/s TTK Consultants is annexed herewith and marked as **ANNEXURE-P/17 (Pgs To ).**

U. That the Appellant being dissatisfied with the loss assessment of the Surveyor since the losses were assessed way below the actual losses incurred by the Complainant, addressed several letters to the Surveyor and also had several meetings and discussion including one on 08.09.2004. That accordingly, the Surveyor agreed to upwardly revise the loss assessment of the Appellant to Rs. 2,32,02,000/- which was recorded by the Appellant vide. its letter dated 13.09.2004. True copy of the letter dated 13.09.2004 of the Appellant to M/s Prabha Associates/Surveyor upwardly revising the loss assessment of the Appellant is annexed herewith and marked as **ANNEXURE-P/18 (Pgs To ).**

V. That although the Surveyor had conducted inspection at the Appellant’s site several times and was in possession of the Aquaflex Inspection Report, it after a delay of over seven months from the date of the untoward incident on 25.09.2004 required that the engineer of the foreign manufacturer of Gallus printing machines be called from Switzerland for assisting them in inspection and for submitting the report.

That in spite of the prohibitive costs involved and only with a view to completing all formalities at the earliest so that its claim could be settled at the earliest, the Appellant arranged for the visit of the engineer of the Gallus and informed the Surveyor about the said visit on 05.10.2004. Further, the Appellant had also informed the Surveyor over phone that as the Surveyor was in touch with the Respondents on a day to day basis he should bring the Respondent’s officials also on 05.10.2004. True copy of the letter dated 04.10.2004 of the Appellant to the Surveyor informing about the visit of the Gallu’s engineer is annexed herewith and marked as ANN**EXURE-P/19 (Pgs To ).**

W. That on 05.10.2004, a joint inspection of the printing machines was carried out by Gallus’ engineer in the presence of the Surveyor, Appellant and Gallus’ representative in India being Heidelberg at the Appellant’s premise. Thereafter, an Inspection Report along with a technical report was prepared and submitted by Gallus’ engineer on 06.10.2004 (“**Gallus** **Inspection Report**”). It is noteworthy that vide the said Gallus Inspection Report, Gallus’ engineer assessed the physical damages and also gave his technical comments on the status of the press categorically recording that the press was extensively damaged as a result of fire and that the press cannot be overhauled, repaired at the site. The findings of the Gallus’ engineer are as under:

*“1. The press is extensively damaged as a result of fire.*

*2. The press cannot be overhauled/repaired at the site.*

*3. In my opinion all the parts observed damaged, and all the parts that are damaged, however cannot be inspected unless dismantled, need to be replaced for making the press operational. However, pre accident printing quality levels cannot be assured.*

*4. In case any parts are not in stick and have to be made specifically, they will be very expensive.*

*5. The machine cannot be switched on the as is condition.*

*6. In order to attempt a <switch on>, the press and the press electrical/electronics has to undergo safety tests as well as insulation tests confirming CE safety norms, checks for the same can only be at the manufacturing facility, at M/s Gallus CH.”*

True copy of the Gallus Inspection Report along with the Technical Report submitted by Gallus’ engineer on 06.10.2005 is annexed herewith and marked as **ANNEXURE-P/20 (Pgs To ).**

That the Complainant had paid a sum of Rs. 4,86,665/- for the visit of the engineer from Gallus and it was based on a clear understanding that the Respondent would bear the entire cost of such visit. True copy of the invoice raised by the Gallus for its engineer’s visit to India and the inspection at the Appellant’s premise is annexed herewith and marked as **ANNEXURE-P/21 (Pgs To ).**

X. That n 07.10.2004, the Surveyor after two days of joint inspection of the machinery with the Gallus engineers from Switzerland, Heidelberg India engineers and the Appellant agreed to the claim amount of Rs. 2,26,61,376/-. It is noteworthy that pursuant to the Appellant’s meeting with the Surveyor on 07.10.2004, the Appellant vide its letter of even date recorded the mutual understanding of the Surveyor and the Appellant, whereby it was agreed that the claim amount payable to the Appellant under the policy was Rs. 2,26,61,376/-. True copy of the letter dated 07.10.2004 of the Appellant to the Surveyor recording the agreed claim amount to be Rs. 2,26,61,376/- is annexed herewith and marked as **ANNEXURE-P/22 (Pgs To ).**

Y. That after a lapse of over seven months from the date of the untoward incident of fire by which time the Respondent should have finally decided the Appellants claim and when the Surveyor was about to submit its report approving a sum of Rs. 2,26,61,376/- as claim amount payable to the Appellant under the policy, the Respondent intentionally and malafidely vide its letter dated 29.10.2004 informed the Appellant that their executives wanted to visit the Appellant’s premises where the fire took place and see the fire affected property. It is noteworthy that the said request for inspection was made by the Respondent although its executives had visited the site with the LPA officers and after three concurring opinions being the LPA Investigation Report, Aqaflex Investigation Report and the Gallus Investigation Report were furnished to the Respondent after inspection and the Surveyor was about to submit its report approving a sum of Rs. 2,26,61,376/- as claim amount payable to the Appellant under the policy.

Z. That despite a joint inspection of the Appellant’s premises and the machineries on 05.10.2005 and 06.10.2005 by the Surveyor along with Gallus’ engineer and Heidelberg’s representatives and the subsequent Gallus Investigation Report dated 06.10.2005, the Surveyor belatedly on 05.01.2005 raised certain queries in relation to non assurance of print precision and print parameters by Gallus and M/s Heidelberg upon repair and also why repairs could not be carried out in India and also insisted upon a repair quotation for repairs of the machinery. Therefore, on such specific request, M/s Heidelberg submitted its Technical Report on the abovementioned specific queries (“**Second Gallus Machine Report**”) along with repair quotation totalling to a sum of Euro 422,450/- (approximately Rs. 2.40 crore) for all the parts of the machinery which were required to be repaired/replaced on 05.01.2005. M/s Heidelberg made the abovementioned submissions with the clear cut rider and condition that pre-accident accuracy could not be guaranteed. True copy of the Technical Report/ Second Gallus Machine Report answering the Surveyor’s specific queries dated 05.01.2005 along with the quotation for spares submitted by M/s Heidelberg for the Appellant’s Gallus printing machine dated 05.01.2005 are annexed herewith and marked as **ANNEXURE-P/23 (Pgs To ) and ANNEXURE-P/24 (Pgs To ) respectively.**

AA. That the Appellant being completely shocked and taken aback by the malafide and belated queries of the Surveyor inquiring as to how “*without opening and checking the machine the Gallus Engineer has come to the conclusion*” that the Gallus machine is without repairs, responded to the said queries vide its letter dated 06.01.2005. The Appellant vide the said letter confronted the Surveyor clearly recording that if he had any such doubt he should have raised it at the time of joint inspection on 05.10.2004 and 06.10.2004 and should have at that point of time in the presence of the manufacturer’s engineers insisted on dismantling the machine and checking each part. However, the Appellant requested the Surveyor to inform that about which parts he wanted to be elaborated on the damages due to water, fire and other technical aspects. True copy of the letter dated 06.01.2005 of the Appellant to the Surveyor is annexed herewith and marked as **ANNEXURE-P/25 (Pgs To ).**

AB. That after a lapse of over ten months the Respondent on 06.01.2005 retained M/s Material Technology Development Centre (“**MTDC**”) to inspect the machines, to gauge the extent of corrosion and to conduct tests as deemed necessary to evaluate the corrosion resulting out of the fire and its extinguishing at the Appellant’s premise. It is noteworthy that MTDC’s appointment was malafide and malicious since MTDC is not an authorized loss assessing agency/licensed Surveyor approved by IRDA to assess the damage by fire. Further, MTDC’s appointment by the Respondent who will be unofficially doing the job of a second surveyor was contrary to the judicial precedents since the first surveyor, M/s Prabha Associates, appointed some ten months back had already prepared its report.

AC. That the Appellant was further shocked to receive the letter from the Respondent dated 10.01.2005 in terms of which the Respondent tried to reopen certain technical issues although M/s Prabha Associates/Surveyor appointed by the Respondent had satisfied itself of the same. It is noteworthy that the Appellant responded to the Respondent’s letter dated 10.01.2005, vide its letter dated 12.01.2005. The Appellant vide its response categorically stated that it was evident that the cause of loss was due to fire, heat, smoke, water and moisture. Further, the Appellant also stated that the basic principle of seeking the surveyor’s assessment was completely given a go by and instead metallurgical tests were demanded at the end of almost 11 months after the incident. However, in all bona fide the Appellant allowed the Respondent to send their appointed engineer to handle the equipments as they finds fit with the only request that the Respondent settle the Appellant’s loss at the earliest in view of the mounting losses being faced by the Appellant. True copy of the letter dated 12.01.2005 of the Appellant to the Respondent is annexed herewith and marked as **ANNEXURE-P/26 (Pgs To ).**

AD. That on 10.02.2005, MTDC submitted its report to the Respondent on the evaluation of corrosion in printing machinery rollers (“**MTDC Report**”). It is noteworthy that the said MTDC Report was based on the “*visual assessment*” of the following: Gala layout and machines therein, evaluation of feasibility of the damage phenomenon (Thermal), major material of construction in the machine, theory of conduct and the engineering and designs concepts of material science. Further, MTDC had carried out/analyzed corrosion behaviour neither on actual rollers used in the Appellant’s machines nor on fresh ink sample. But instead they used mild steel structural metal hence the said MTDC Report could not be conclusively relied upon for determining the rate of time/time to rusting for highly specialized machines used by the Appellant. It is submitted that MTDC concluded in its Report that it could not confirm significant amount of rusting within 4-5 hours because of fire and its extinguishing as valid, hence clearly demonstrating the findings in the said Report to be vague and inconclusive. True copy of the Report dated 10.02.2005 submitted by M/s Material Technology Development Centre is annexed herewith and marked as **ANNEXURE-P/27 (Pgs To ).**

AE. That on 22.02.2005, Dr. S.N. Malhotra, Professor, Department of Metallurgical Engineering & Materials Science, Indian Institute of Technology Bombay, Powai’s submitted his report with the Appellant after conducting a site survey on 09.02.2005, categorically concluding that the causes of damage were fire, smoke, heat and water.

AF. That the Surveyor after a lapse of over 12 months and in complete contravention of the IRDA 2002 Regulation mandating the surveyor to furnish the report in not more than six months from the date of his appointment, submitted its Report with the Respondent on 28.03.2005 (“**Surveyor’s Report**”). It is noteworthy that the observations in the Surveyor’s Report are completely opposite to its conclusion. In this regard the following clauses may be noted from the Surveyor’s Report:

*“3.06 High quality and accuracy level is maintained as customers are of very high repute and the application of self adhesive labels is very sharp by automatic machine. This……These labels are used on many of the exportable items where quality has to be of the international standard and that is why highly sophisticated costly imported machinery are required”*

*“4.06 Water was sprayed all over the place, which caused more damage than the fire itself.”*

*“5.06 Aquaflex Printing Press located below the cables found affected with water.”*

*“5.07 (a) Gallus Printing Machine water damaged.*

*(b) Spengler machine water affected.*

*(c) A.V. Flexo plate muonter water affected.”*

*“5.18 Outwardly exposed parts of critical machines and accessories affected due to water rusted.”*

*“6.0 PROBABLE CAUSE:-*

*Apparently source of fire appears to be short circuit of power cables running parallel to long wall resulting in damage to insured’s property.*

*In order to extinguish the fire, Fire Brigade used water jets thereby spraying water on all the machines located in the premises.*

*Loss is admissible under the terms and conditions of the policy.”*

It is noteworthy that despite the aforesaid observations and the Probable Cause, the Surveyor interpreting and MTDC’s Report to mean that rusting cannot occur within 4-5 hours and relying on the same concluded that the damages to the Galus and Aquaflex printing machines did not fall within the purview of the policy and hence rejected the valid claims of the Appellant in respect of the same. True copy of the Report submitted by the M/s Prabha Associates/Surveyor with the Respondent on 28.03.2005 is annexed herewith and marked as **ANNEXURE-P/28 (Pgs To ).**

AG. That to the utter shock and surprise of the Appellant, the Respondent vide its voucher dated 16.05.2005 approved the claim of the Appellants for a paltry and meagre sum of Rs. 16,15,606/- (Rupees Sixteen Lakh Fifteen Thousand Six Hundred and Six Only) in full and final payment of the entire claim of the Appellant, against the claimed amount of more than Rs.2.5 crore by the Appellant.

AH. That the Appellant being completely shocked with the paltry sum offered by the Respondent in full and final settlement of the claims objected to the unilateral manner in which the claim was determined by the Respondent’s and protested against the issue of the above mentioned voucher of Rs. 16,15,606/-. However, in view of the precarious financial position of the Appellant, it accepted the voucher without prejudice to its rights and contentions in law and accepted the sum of Rs. 16,15,606/- under protest as part payment against the Appellant total claim of Rs. 2.5 crore. True copy of the Appellant’s protest letter dated 13.06.2005 of the Appellant to the Respondent is annexed herewith and marked as **ANNEXURE-P/29(Pgs To ).**

AI. The Respondent malafidely and with a view to further perpetuate fraud upon the Appellant vide its letter dated 05.07.2005 informed the Appellant that since the Appellant had marked the settlement voucher as accepted without prejudice and under protest they would be unable to release even that amount against the settlement intimation voucher. True copy of the letter dated 05.07.2005 of the Respondent to the Appellant is annexed herewith and marked as **ANNEXURE-P/30 (Pgs To ).**

AJ. That the Appellant being aggrieved by the deficiency in service and unfair trade practice on the part of the Respondent on 31.01.2006 filed a consumer complaint bearing CC No. 21 of 2006 before the Hon’ble National Consumer Disputes Redressal Forum. True copy of the Consumer Complaint no. 21 of 2006 filed by the Appellant before the Hon’ble National Consumer Disputes Redressal Forum is annexed herewith and marked as **ANNEXURE – P/31 (Pgs To ).**

AK. That on 18.05.2006, the Respondent filed its Reply Affidavit in C.C. No. 21 of 2006 before the Hon’ble National Commission putting forth erroneous submissions to controvert the allegations of deficiency in service and unfair trade practice on its part. True copy of the Reply Affidavit filed by the Respondent before the Hon’ble National Commission in C.C. No. 21 of 2006 is annexed herewith and marked as **ANNEXURE – P/32 (Pgs To ).**

AL. That in view of the ambiguous and vague findings in the MTDC Report, the Appellant approached the Indian Institute of Technology Bombay, Powai on 20.06.2006 for its expert technical opinion on the MTDC Report. Accordingly, Professor Dr. S.N. Malhotra, Department of Metallurgical Engineering & Material Sciences studied the MTDC Report and categorically stated vide its Report dated 12.07.2006 that the results and conclusions of the MTDC Report are highly flawed even if they their simulation was to be accepted (“**IIT Powai Report 2**”). Further, the IIT Powai Report 2 states that the simulation done by the authors in the MTDC Report cannot be considered as replicating the conditions to which the metallic parts were exposed during the fire and after the fire had been extinguished. It is noteworthy that the MTDC Report lists 7 conditions for the corrosion to occur. However, they do not point out as to which of those seven conditions did not exist or would not have existed and interestingly the stipulated conditions have not been arrived at from their simulation experiments. After a detailed independent inquiry into the issue, the IIT Powai Report 2 came to a finding that not only the 7 conditions listed by the MTDC Report exist at the time of the incident, but that it is indeed improbable and impossible that the said conditions did not exist at the time of the incident for the reasons recorded therein.

The said IIT Powai Report 2 also clearly observes that in view of the Quality Certificates issued by Expo India Agencies, Lupin Limited Mandideep, L’Oreal, Dr Reddy’s, Wockhardt, Sandvik, Siemens etc. which state that the output of the machine prior to the incident was 100% as per the required standards. It only goes to reason that if there were any prior corrosion on the rollers prior to the fire incident, then and in such event there would not be any production much less quality production. Further, the said IIT Powai Report 2 contains several annexures including extracts from several authoritative books, extracts from the operating manual of the said machines as well as quality certificates issued by the customers of the Appellant to substantiate its findings.

True copy of the IIT Powai Report 2 dated 12.07.2006 is annexed herewith and marked as **ANNEXURE-P/33 (Pgs To ).**

AM. That Gallus being the manufacturers of Gallus printing machine again vide. its letter dated 07.08.2006 categorically stated that the break out of fire was the only cause of damage to the machinery and the damage is beyond repair. True copy of the letter dated 07.08.2006 of Gallus to the Appellant is annexed herewith and marked as **ANNEXURE-P/34 (Pgs To ).**

AN. That in August 2006, the Appellant filed its Affidavit in Rejoinder in response to the Reply dated 17.05.2006 filed by the Respondent. True copy of the Affidavit in Rejoinder filed by the Appellant before the Hon’ble National Commission is annexed herewith and marked as **ANNEXURE-P/35 (Pgs To ).**

AO. That on 06.12.2006, the Respondent led its evidence by way of an affidavit before the Hon’ble National Commission in C.C. No. 21 of 2006. True copy of the evidence by way of affidavit led by the Respondent before the Hon’ble National Commission is annexed herewith and marked as **ANNEXURE-P/36 (Pgs To ).**

AP. That the Appellant appointed one Shri. Subhash Chandra Baksi, an Insurance Surveyor and Loss Assessor in order to assess whether the machines damaged in the untoward fire incident could be repaired in India, whether such repairs will indemnify the insured and also whether such repairs can be done at a cost of Rs. 16 lakh. Shri. Subhash submitted his final report on 08.08.2007 (“**Subhash Report**”) whereby it was categorically stated that the conditions after the extinguishing of fire were 100% conducive to extremely fast rusting/corrosion of equipments. Further, the Subhash Report concluded that the machines are virtually to be treated as total loss since repairs are indicated to involve a greater cost than the original supply. True copy of the Report submitted by Shri. Subhash Chandra Baksi dated 08.08.2007 is annexed herewith and marked as **ANNEXURE-P/37 (Pgs To ).**

AQ. That on 23.10.2007, the Surveyor/Prabha Associates led its evidence by way of an affidavit before the Hon’ble National Commission in C.C. No. 21 of 2006. True copy of the evidence by way of affidavit led by the Surveyor/Prabha Associates before the Hon’ble National Commission is annexed herewith and marked as **ANNEXURE-P/38 (Pgs To ).**

AR. That on 02.02.2008, Shri. Subhash Chandra Baksi led its evidence by way of an affidavit as Prosection Witness No. 1 before the Hon’ble National Commission in C.C. No. 21 of 2006. True copy of the evidence by way of affidavit led by Shri. Subhash Chandra Baksi before the Hon’ble National Commission is annexed herewith and marked as **ANNEXURE-P/39 (Pgs To ).**

AS. That on 17.07.2009, Mr. Bharat Mehta, Partner of the Appellant tendered his evidence before the Hon’ble Commission as P.W.2. True copy of the evidence led by Mr. Bharat Mehta, Partner of the Appellant, before the Hon’ble Commission is annexed herewith and marked as **ANNEXURE-P/40 (Pgs To ).**

AT. That on 24.02.2015, the Hon’ble National Consumer Disputes Commission erroneously dismissed the Consumer Complaint bearing C.C. No. 21 of 2006 filed by the Appellant (**IMPUGNED ORDER**).

**GROUNDS**

5. Being aggrieved by the Impugned Order dated 24.02.2015 passed by the Hon’ble Commission in Consumer Case No. 21 of 2006, the Appellant prefers the present Appeal before this Hon’ble Court, inter-alia, on the following grounds, amongst others, which are taken in the alternative and without prejudice to one another:-

A. Because the Hon’ble National Commission erred in not holding the Respondent liable for deficiency in service and unfair trade practice although the Respondent has malafidely accepted, admitted and relied upon the Surveyor’s report submitted after a lapse of over 12 months from the date of the incident of fire in complete contravention of Regulation 9(2) of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 which mandates that the surveyor shall furnish his report in not more than 6 months from the date of his appointment.

B. Because the Hon’ble National Commission erred in not noticing that Regulation 9 of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 categorically provides that the surveyor shall furnish his report in not more than 6 months from the date of his appointment and that thereafter within a period of 30 days the insurer shall offer a settlement of the claim to the insured and is as under:

*“****9.******Claim procedure in respect of a general insurance policy.***

1. *….*
2. *Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.” …*
3. *….*
4. *….*

*5. On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.”*

However, in the instant matter though the Surveyor/ Prabha Associates was appointed on 28.02.2004 i.e., the date of the alleged incident, they submitted their final Surveyor’s Report with the Respondent only on 23.03.2005, after a lapse of over 12 month drastically varying its earlier approved claim to a paltry sum of Rs. 16,15,606/- (Rupees Sixteen Lakh Fifteen Thousand Six Hundred and Six Only) in complete contravention of the IRDA 2002 Regulations.

C. Because the Hon’ble National Commission erred in not holding the Respondent liable for deficiency in service and unfair trade practice although the Respondent has acted contrary to Regulation 9(5) of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002, which mandates that on receipt of the surveyor report the insurer shall within a period of 30 days offer a settlement of the claim to the insured. It is submitted that in the instant matter although the surveyor’s report was submitted by the Surveyor on 28.03.2005, the Respondent after the lapse of mandatory 30 days issued the voucher for a sum of Rs. 16,15,606/- to the Appellant only on 16.05.2005 thereby clearly evidencing malicious and fraudulent conduct on the part of the Respondent.

D. Because the Hon’ble National Commission erred in rejecting the claims of the Appellant although fire was the efficient and active cause of damage to the printing machines by solely placing reliance on the opinion obtained from M/s Material Technology Development Centre/MTDC on technical issues which opinion was in complete contradiction to the reports tendered by highly specialized expert bodies including M/s Loss Prevention Association of India Ltd., Gallus Ferd Ruesch AG, Graphic Technologies Inc., at the instance of the Surveyor appointed by the Respondent and also IIT Powai and Shri. Subhash Chandra Baksi - an Insurance Surveyor and Loss Assessor appointed by the Appellant on his own volition, without recording reasons for rejecting the same. In this regard the following dates and findings of various technical experts are noteworthy:

(i) On 01.03.2004, the Loss Prevention Association of India Ltd. (“**LPA**”) was informed by the Respondent about the incident of fire at the Appellant’s premise and was directed to undertake an investigation on the following issues:

(a) Probable cause/causes of initiation of fire;

(b) Suggestion on remedial measures to minimise recurrences of such incident in future.

It is noteworthy that in furtherance of the abovementioned reference, the Respondent had informed LPA that the estimated loss in this particular incident would be more than Rs. 1 crore. Thereafter, LPA visited the site on 12.03.2004 and based on information available at the site and the discussions held including physical observation vide its report (“**LPA Investigation Report**”) came to a categorical finding that *inter alia* “*Aquaflex and Gallus Rotascreen Printing machines were found partly damaged due to heat, smoke and fire fighting water*”.

(ii) On 02.03.2004, an inspection was carried out at the Appellant’s premise of the Aquaflex colour printing machines manufactured by Aquaflex Canada by their service engineers in India being Graphic Technologies Inc. (“**GTI**”), Delhi,. Thereafter, GTI submitted its report on the Aquaflex printing machines on 17.04.2004 (“**Aquaflex Inspection Report**”), whereby it was categorically stated that there was extensive damage to the Aquaflex machine in the unfortunate recent fire in the Appellant’s premises. Further, the said Aquaflex Inspection Report unambiguously stated that given the existing situation the cost of repairing the machine may well exceed reasonable limits and GTI may not be able to guarantee optimum printing quality in spite of the repairs as the metal deformation on the main frame cannot be reverted.

(iii) On 05.10.2004 and 06.10.2004, at the insistence of the Surveyor appointed by the Respondent, a joint inspection of the printing machines was carried out by Gallus’ engineer in the presence of the Surveyor, Appellant and Gallus’ representative in India being Heidelberg at the Appellant’s premise. Thereafter, an Inspection Report along with a technical report was prepared and submitted by Gallus’ engineer on 06.10.2004 (“**Gallus** **Inspection Report**”). It is noteworthy that vide the said Gallus Inspection Report, Gallus’ engineer assessed the physical damages and also gave his technical comments on the status of the press categorically recording that the press was extensively damaged as a result of fire and that the press cannot be overhauled, repaired at the site.

(iv) On 07.10.2004, the Surveyor after two days of joint inspection of the machinery with the Gallus engineers from Switzerland, Heidelberg India engineers and the Appellant agreed to the claim amount of Rs. 2,26,61,376/-.

(v) On 06.01.2005, after a lapse of over ten months the Respondent retained M/s Material Technology Development Centre (“**MTDC**”) to inspect the machines, to gauge the extent of corrosion and to conduct tests as deemed necessary to evaluate the corrosion resulting out of the fire and its extinguishing at the Appellant’s premise. That thereafter on 10.02.2005, MTDC submitted its report to the Respondent on the evaluation of corrosion in printing machinery rollers (“**MTDC Report**”). It is noteworthy that the said MTDC Report was based on the “*visual assessment*” of the following: Gala layout and machines therein, evaluation of feasibility of the damage phenomenon (Thermal), major material of construction in the machine, theory of conduct and the engineering and designs concepts of material science. Further, MTDC had carried out/analyzed corrosion behaviour neither on actual rollers used in the Appellant’s machines nor on fresh ink sample. But instead they used mild steel structural metal hence the said MTDC Report could not be conclusively relied upon for determining the rate of time/time to rusting for highly specialized machines used by the Appellant. It is submitted that MTDC concluded in its Report that it could not confirm significant amount of rusting within 4-5 hours because of fire and its extinguishing as valid, hence clearly demonstrating the findings in the said Report to be vague and inconclusive.

(vi) On 20.06.2006, in view of the ambiguous and vague findings in the MTDC Report, the Appellant approached the Indian Institute of Technology Bombay, Powai for its expert technical opinion on the MTDC Report. Accordingly, Professor Dr. S.N. Malhotra, Department of Metallurgical Engineering & Material Sciences studied the MTDC Report and categorically stated vide its Report dated 12.07.2006 that the results and conclusions of the MTDC Report are highly flawed even if they their simulation was to be accepted (“**IIT Powai Report 2**”). Further, the IIT Powai Report 2 states that the simulation done by the authors in the MTDC Report cannot be considered as replicating the conditions to which the metallic parts were exposed during the fire and after the fire had been extinguished. It is noteworthy that the MTDC Report lists 7 conditions for the corrosion to occur. However, they do not point out as to which of those seven conditions did not exist or would not have existed and interestingly the stipulated conditions have not been arrived at from their simulation experiments. After a detailed independent inquiry into the issue, the IIT Powai Report 2 came to a finding that not only the 7 conditions listed by the MTDC Report exist at the time of the incident, but that it is indeed improbable and impossible that the said conditions did not exist at the time of the incident for the reasons recorded therein.

(vii) On 08.08.2007, one Shri. Subhash Chandra Baksi, an Insurance Surveyor and Loss Assessor appointed by the Appellant to assess whether the machines damaged in the fire incident could be repaired in India, whether such repairs will indemnify the insured and also whether such repairs can be done at a cost of Rs. 16 lakh submitted his final report (“**Subhash Report**”). It is submitted that in the said report it was categorically stated that the conditions after the extinguishing of fire were 100% conducive to extremely fast rusting/corrosion of equipments. Further, the Subhash Report concluded that the machines are virtually to be treated as total loss since repairs are indicated to involve a greater cost than the original supply.

E. Because the Hon’ble National Commission erred in rejecting the claims of the Appellant although fire was the efficient and active cause of damage to the printing machines by opining on technical issues placing reliance on Wikipedia articles, which are inconclusive and not authentic since the information can be entered therein by any person and is editable.

F. Because the Hon’ble National Commission erred in not noticing that the appointment of MTDC by the Respondent in essence amounted to appointing a second surveyor although the report of the first surveyor being M/s Prabha Associate was pending and hence no occasion for the appointment of the second surveyor arose in terms of the law laid down by this Hon’ble Court in the case of ***Sri Venkateswara Syndicate  
Vs. Oriental Insurance Company***, reported as (2009) 8 SCC 507, whereby it was categorically held that although there is no prohibition in the Insurance Act for appointment of second surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first surveyor and the need to appoint second surveyor.

G. Because the Hon’ble National Commission erred in not holding the Respondent is liable for deficiency in service and unfair trade practice since the appointment of M/s Material Technology Development Centre/MTDC, which is not an authorized loss assessing agency/licensed surveyor approved by IRDA to assess the damage by fire, by the Respondent only evidences that it did so to influence and get a favourable report to suit its estimation of loss of plant and machinery in the fire incident, is illegal and shatters the confidence and trust of the people on the very purpose of insurance.

H. Because the Hon’ble National Commission erred in not noticing that although the Surveyor had consistently accepted the claims of the Appellant including those for plant and machinery approving a sum of Rs. 1,81,35,810/-   on 06.09.2004 and thereafter revising it upwards to Rs. 2,32,02,000/- and Rs. 2,26,61,376/- pursuant to its meeting with the engineers of the printing machines on 07.10.2004 holding that the cause of loss was due to fire, heat, smoke, water and moisture, the Respondent belatedly raised certain technical queries even before the submission of the Surveyor’s Report which queries were already adequately answered by the engineers of the printing machines and without any justification used it to influence the final report submitted by the Surveyor drastically reducing the approved claim to Rs. 16,15,606/- on frivolous grounds.

I. Because the Hon’ble National Commission erred in not noticing that although the Surveyor was in receipt of the reports submitted by the Loss Prevention Association of India Ltd., the Report dated 17.04.2004 submitted by Graphic Technologies Inc. being the engineers of Aquaflex printing machines manufactured by Aquaflex Canada and the report dated 06.10.2004 submitted by Gallus being the manufacturers of Gallus printing machines, the Surveyor only submitted its Report on 23.03.2005 to the Respondent thereby clearly evidencing deficiency in service and unfair trade practice on the part of the Respondents and its Surveyors.

J. Because the Hon’ble National Commission erred in not noticing that although the Surveyor had finally agreed and approved the claim of the Appellant for a sum of Rs. 2,26,61,376/- on 07.10.2004, it waited to for a period of over 5 months to submit its report to the Respondent on frivolous grounds only to drastically reduce the claim of the Appellant to Rs. 16,15,606/- rejecting the major claim items being plant and machinery squarely covered within the terms of the fire policy.

K. Because the Hon’ble National Commission erred in not noticing that the fire insurance policy procured by the Appellants indicated the clear intention of the parties was to cover plant and machinery, however the Respondent maliciously and malafidely with a view to avoid its liability under the fire policy got MTDC to give a report to suit its stand and got its findings incorporated in the Surveyor’s Report so as to avoid payment of the claim for Aquaflex and Gallus Plant and Machinery by making use of the exclusions in the fire policy.

L. Because the Hon’ble National Commission erred in not noticing that the ambiguous and vague findings in the MTDC Report stood completely negated by the Report submitted by the Indian Institute of Technology Bombay, Powai on 12.07.2006 which categorically recorded that the simulation done by the authors in the MTDC Report cannot be considered as replicating the conditions to which the metallic parts were exposed during the fire and after the fire had been extinguished and hence held that it is indeed improbable and impossible that the 7 conditions listed in the MTDC Report did not exist at the time of the fire incident.

M. Because the Hon’ble National Commission erred in not noticing that in view of the Quality Certificates issued by Expo India Agencies, Lupin Limited Mandideep, L’Oreal, Dr Reddy’s, Wockhardt, Sandvik, Siemens etc. which state that the output of the machine prior to the incident was 100% as per the required standards, it only goes to reason that if there were any prior corrosion on the rollers prior to the fire incident, then and in such event there would not be any production much less quality production. It is submitted that Gallus and Aqua Flex are one of the most reputed and best quality equipment manufacturers and there equipments are designed to produce excellent printing quality, which equipments work in pristine condition and produced very high quality of labels till the date of incident of fire. Hence, any averment of rusting before the incident does not arise.

N. Because the Hon’ble National Commission erred in not noticing that Shri. Subhash Chandra Baksi, an Insurance Surveyor and Loss Assessor, who had tendered his evidence before the Hon’ble National Commission as Prosecution Witness No. 1 on the basis of his report dated 08.08.2007, categorically stated that the conditions after the extinguishing of fire at the Appellant’s premise were 100% conducive to extremely fast rusting/corrosion of equipments. However, failure to cross-examine Shri. Subhash Chandra Baksi to test the veracity of his statements before outrightly rejecting his technical submissions clearly demonstrates that the Impugned Order deserves to be set aside as being illegal and void.

O. Because the Hon’ble National Commission erred in not noticing that the Surveyor had itself vide. its letter dated 19.08.2004 approved and recommended an “On Account” payment of Rs. 30 lakh to be made to the Appellant, however the Respondent not only failed to make an such payment to the Appellant but also reduced the final approved claim to Rs. 16,15,606/- which is almost half of the interim payment approved by the Surveyor.

P. Because the Hon’ble National Commission erred in not noticing that the Surveyor had agreed to the fact that since the Appellant’s machineries could neither be repaired by them nor could they offer any salvage value, therefore the Appellant would sign a discharge for disposal of the damaged machinery as salvage so its machineries could be taken over on “*As is Where is*” basis. Accordingly, in furtherance of the said understanding, the Surveyor gave a draft format to the Appellant in his own handwriting stating the contents for making the aforesaid discharge for disposal of damaged machineries as salvage.

It is submitted that the Appellant in furtherance of the agreed understanding with the Surveyor, vide its letter dated 26.08.2004, reiterated the contents of the handwritten format provided by the Surveyor whereby it requested that its machineries should be taken over on “*As is Where is*” basis since the Appellant can neither get them repaired nor can it offer any salvage value. Further, vide the said letter the Appellant categorically reiterated the fact that the life of its machineries under consideration was 15 years keeping in view their usage.

It is further submitted that the Surveyor accepted the Appellant‘s proposal made vide letter dated 26.08.2004 and accordingly forwarded the advertisement to be published in main English newspapers along with the tender documents for disposal of “*Fire/Water affected Printing Press Machinery*” including the Gallus, Aquaflex, Plate Mounting printing machines clearly stating that the said machines were affected by fire and water.

Q. Because the Hon’ble National Commission erred in allowing interest at the rate of 9% per annum only from the date of filing of the complaint and not from the date of denial by the Respondent to pay the amount indicated in settlement intimation voucher clearly evidencing the prejudice being caused to the Appellant on account of deficiency in service and unfair trade practice adopted by the Respondent.

**PRAYER :**

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to:

1. Admit and allow the appeal and set aside the Impugned Judgement and Order dated 24.02.2015 passed by the Hon’ble National Consumer Dispute Redressal Commission New Delhi in Consumer Case No. 21 of 2006; and
2. Pass any other orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY**

**DRAWN & FILED BY:**

**M/S AP&J CHAMBERS**

**ADVOCATE FOR THE APPELLANT**

[**prashant@apjlaw.com**](mailto:prashant@apjlaw.com)

**DRAWN ON: .3.2015**

**FILED ON: .3.2015**

**NEW DELHI**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2015

IN THE MATTER OF:

M/s SUPER LABEL MFG. CO. ....APPELLANT

VERSUS

NEW INDIA ASSURANCE COMPANY LIMITED ....RESPONDENT

**CERTIFICATE**

“Certified that the Appeal is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/ annexures attached to the Appeal are necessary to answer the question of law raised in the appeal or to make out grounds urged in the appeal for consideration of this Hon’ble Court. This certificate is given on the basis of the instructions given by the Appellants/person authorised by the Appelants whose Affidavit is filed in support of the Appeal.”

**FILED BY :**

**(M/S AP&J CHAMBERS)**

**NEW DELHI: ADVOCATE FOR THE APPELLANT**

**FILED ON: .3.2015**