

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 1894 OF 2018**

1. THE BHARAT SALT AND CHEMICAL INDUSTRIES  
LIMITED

.....Complainant(s)

Versus

1. ORIENTAL INSURANCE CO. LTD. & 2 ORS.

Through the Senior Divisional Manager, Divisional Office  
Cuttack, Managalam Nivas, 2nd Floor, Infront of HDFC Bank,  
Bajrakabati Road,  
Cuttack-753001

2. The Oriental Insurance Company Limited

Through the Chief Regional Manager, Regional Office, 6th Floor,  
Alok Bharati Tower, Saheed Nagar,  
Bhubaneswar-751022

3. The Oriental Insurance Company Limited

Through the Chairman-cum-Managing Director, Reg. Office;  
Oriental House, A-25/27, Asaf Ali road,  
New Delhi-110002

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER  
HON'BLE DR. INDER JIT SINGH, MEMBER**

**For the Complainant :** Mr. Arnav Patnaik, Advocate

**For the Opp.Party :** Mr. Vishnu Mehra, Advocate

**Dated : 17 Jan 2023**

**ORDER**

1. Heard Mr. Arnav Patnaik, Advocate, for the complainant and Mr. Vishnu Mehra, Advocate, for the opposite parties.

2. The Bharat Salt and Chemical Industries Limited (the Insured) has filed above complaint for directing The Oriental Insurance Company Limited (the Insurer) to pay (i) Rs.8384944/- with interest @16.25% per annum, from March, 2015 till the date of filing the complaint and thereafter @18% per annum till actual payment, as the insurance claim; (ii) Rs.13521174/-, as compensation for business loss; (iii) Rs.3/- lacs, as cost of litigation; and (iv) any other relief which is deemed fit and proper, in the facts and circumstances of the case.

3. The facts as stated in the complaint and emerged from the documents attached with the complaint are as follows:-

(a) The Bharat Salt and Chemical Industries Limited (the Insured) was a public company, incorporated in 1950 and engaged in producing raw salt from sea water and selling it. The Insured set up its manufacturing unit at village Surala, district Ganjam, Odisha. The Insured also started manufacture of pharmaceutical at Industrial Estate, Khapurua, Cuttack. The Insured was registered as Small Scale Industry with District Industries Officer, Cuttack on 20.05.1976. In the year 2013, the Insured expanded its business and commissioned a triple refined

iodized salt manufacturing plant at Surala, district Ganjam. The present claim relates to the loss occurred at the factory unit at Surala, district Ganjam on 12.10.2013.

(b) The Oriental Insurance Company Limited (the Insurer) was a public sector insurance company and engaged in the business of providing different types of insurance services. The Insured obtained "Standard Fire & Special Peril Policy" No.345100/11/2014/125, for the period of 13.09.2013 to 12.09.2014, from the Insurer, for sum insured of Rs.4.77/- crores (i.e.Rs.17/- lacs for Furniture, Fixtures, Fitting & all electrical, Rs.2/- crores for Stock, Rs.10/- lacs for Transformer, Motor Pump-set, Generator-set, Cable, Poles, Infrastructure of Electrical, Rs.75/- lacs for Plant & Machinery, Rs.60/- lacs for Stock in Process and Rs.115/- lacs for Building). This policy was a renewal policy.

(c) Super cyclone "Phailin" hit the Odisha south coastal region in the night of 12.10.2013, with wind velocity of 205-220 Kmph, making land fall near Gopalpur, Ganjam. Cyclone was followed by torrential rain for three days, resulting in severe flood in Ganjam district. Due to devastating cyclone and flood, manufacturing unit of the Insured at Surala, district Ganjam was badly affected. AC sheet roofs of the factory premises were flew away. Flood water entered the factory premises, due to which plant, machinery, furniture, fixture, electrical fitting, generator-set, building were damaged and stock of raw material, finished material and stock in process were washed away.

(d) The Insured informed the Insurer on 15.10.2013 about the loss caused by super cyclone "Phailin" followed by rain. The Insurer appointed Sanjay Dwivedi & Associates, Surveyor and Loss Assessors, Ghaziabad, as the surveyor on 19.10.2013, for survey and assessment of loss. According to the surveyor, he tried to inspect the spot during 19.10.2013 to 22.10.2013 but roads were cut off from all the sides due to flood as such he could not reach the factory premises of the Insured. He inspected the factory premises on 23.10.2013. The surveyor recorded statements of Sarpanch, Gram Panchayat Surala and other witness to verify the cyclone and rain. The surveyor, vide letter dated 24.10.2013, demanded various papers and claim form for assessment of loss. The surveyor again visited the factory premises on 10.11.2013 and issued a reminder dated 16.12.2013, for providing papers and claim form. The Insured vide letter dated 20.12.2013, informed that he would take some time for providing the papers. Senior Divisional Manager also wrote a letter dated 23.12.2013 to the Insured for providing papers and claim form. The Insured supplied some papers and claim form for Rs.15142560/- to the surveyor on 26.04.2014. The surveyor gave a reminder for remaining documents. On receiving required documents, the surveyor prepared his report and shared draft assessment of loss on 13.11.2014 to the Insured and demanded rent receipts and purchase invoices of Iodine, which were supplied on 22.11.2014. The surveyor submitted Final Survey Report dated 03.02.2015, assessing Net Loss to Rs.8384944/-.

(e) The surveyor gave an email dated 03.02.2015 to the Insured for giving its consent for settlement of the claim for the amount as assessed in Final Survey Report dated 03.02.2015. The Insured gave its consent through email dated 03.02.2015, for settlement of the claim as per survey report dated 03.02.2015. The Insured wrote a letter dated 09.03.2015 and reminders dated 12.05.2015 and 11.07.2015 to the Insurer to settle the claim as per survey report dated 03.02.2015. Senior Divisional Manager held a meeting on 11.03.2015 with the Insured and discussed on all the points and the documents. When the settlement was unreasonably delayed, the Insured made a complaint to Customer Service Cell on 02.11.2015. Customer Service Cell, vide letter dated 24.11.2015, informed that concerned section was requested to expedite the matter.

(f) The Insured filed Writ Petition (C) No.1072 of 2016, before Orissa High Court, for directing the Insurer for settlement of the claim within a reasonable time. High Court, vide order dated 15.03.2016, directed the Insurer to take decision in the matter within a period of three months, from the date of communication of the order. The Insured sent the certified copy of the order to the Insurer on 21.03.2016 through speed post but the Insurer did not comply with the order within the period allowed by High Court. Then the Insured filed Contempt Case No.1296 of 2016, in which, notices were issued to Chairman-cum-Managing Director vide order dated 24.11.2016, fixing 03.01.2017 to show cause.

(g) After receiving the order dated 15.03.2016, the Insurer appointed Sanjaya K. Das, Investigator, Cuttack, as the investigator, without any information to the Insured. The Investigator submitted his report dated 15.11.2016, stating that the Insured had not submitted claim in respect of actual loss rather exaggerated it. The Insurer wrote

a letter dated 15.02.2017 to Bank of Baroda (the financier of the Insured) that the Insured had failed to reply to its letter dated 11.01.2017, as such, the claim has been repudiated invoking clause-8 of General Condition. The Insured has stated that letter dated 11.01.2017 was not served upon the Insured prior to 15.02.2017 as it was deliberately dispatched on the address of the factory at Surala, which remained closed for four years after incident and not to the corporate office at Khapuria, Cuttack, although in the insurance policy and claim form, address of corporate office was given and all previous correspondences were done from the corporate office.

(h) The Insured obtained copy of the letter dated 11.01.2017, from Regional Office of the Insurer then it was noticed that in this letter, the Insurer had mentioned that (i) The documents submitted to the Insurance company by the claimant/Insured in support of their claim, seems to be manufactured and without any basis on record. (ii) There was complete mismatch of quantity of salt damaged as per the claim form and the assessment by Factory Officer, Surala Salt Factory. Factory Officer has also provided documents in support of their findings. (iii) Moreover, documents provided by Branch Manager, Bank of Baroda, CDA, Cuttack and Registrar of Companies, Cuttack also have confirms complete mismatch of figures.

(i) The Insured wrote a representation dated 11.03.2017, for reconsidering the matter. The Insured applied for supply of Final Survey Report, Investigator Report and Insurance Policy with Terms and Conditions, under Right to Information Act, 2005, on 26.02.2018, which were supplied on 23.03.2018 along with an email dated 05.06.2015 of the Insurer to the surveyor, seeking some clarification and reply email of the surveyor dated 09.06.2015. On receiving these reports, it was noticed that the Investigator had completely misread and wrongly indicated various figures in respect of stock. The claim was repudiated for malafide reasons due to initiation of contempt proceeding against the Managing Director of the Insurer. Then this complaint was filed, 23.08.2018, claiming deficiency in service.

4. The Insurer filed its written reply on 06.11.2018, and contested the case. The Insurer stated that as soon as the Insured informed on 15.10.2013, regarding loss, the Insurer appointed M/s. N R Associates to conduct preliminary survey but due to heavy rain, he could not conduct survey. The Insurer then appointed Sanjay Dwivedi & Associates, Surveyor and Loss Assessors, Ghaziabad, as the surveyor on 17.10.2013, who inspected the factory of the Insured, on 23.10.2013. The surveyor, vide letter dated 24.10.2013, demanded various papers and claim form for assessment of loss. The Insured took time in submitting the necessary papers to the surveyor and some papers and claim form were supplied on 26.04.2014 and remaining papers were supplied till July, 2014. The Insured initially claimed loss of Rs.1.52 crores, which was revised to Rs.2.50 crores. The surveyor submitted Final Survey Report dated 03.02.2015, assessing the net loss to Rs.8384944/-. The competent authority of the Insurer examined the papers and the report of the surveyor. The Insurer, vide email dated 05.06.2015, sought for some clarifications from the surveyor, which was replied by the surveyor through email dated 09.06.2015. The competent authority was not satisfied with the reply of the surveyor. The Insurer therefore appointed Mr. Sanjay K. Das, Investigator, Cuttack, for investigation into the matter, who after investigation, submitted his Investigation Report on 15.11.2016. The Investigator collected papers relating to stock from Bank of Baroda, to whom stock were hypothecated, Superintendent of Salt, Humma and Factory Officer and tallied it with the papers submitted by the Insured to the surveyor. Government Authority did not fix any rate of raw salt and finished salt. The Insured was asked to submit invoices/vouchers of raw materials and sales register of finished material, which was not produced. Statement of stock as supplied to the surveyor was found to be exaggerated and not matching with the figures mentioned in other documents. The Insurer wrote a letter dated 11.01.2017, calling for reply of the Insured in respect of discrepancies but the Insured did not respond. The Insurer then repudiated the claim of the Insured vide letter dated 15.02.2017, invoking Clause-8 of General Condition of "Standard Fire and Special Peril Policy". Investigation Report dated 15.11.2016 does not suffer from any illegality. Factory Officer Surala prepared papers relating to loss on 30.01.2014, on the basis of information supplied by the Insured and not on the basis of his personal verification and was not relevant. The surveyor has accepted the papers of the Insured without noticing the fact that figures as mentioned in different documents were not matching. The Insured informed that there was 49% rise in the price of raw materials. Reply of the Insured dated 22.11.2014 to the letter of the surveyor dated 13.11.2014 was without any basis. At the time of loss, the factory of the Insured was running on trial basis and commercial production was not started. Complicated issues of fact are involved in this complaint, which cannot be adjudicated in summary jurisdiction.

It has been denied that the claim was repudiated mala fide due to initiation of contempt proceeding. There was no deficiency in service on its part.

5. The Insured filed Rejoinder Reply on 28.03.2019, in which, the facts stated in the complaint were reiterated. The Insured filed Affidavit of Evidence, Affidavit of Admission/Denial of documents of Sanjay Kumar Modi, Affidavit of Evidence of Birendra Sanganageria and documentary evidence. The Insurer filed Affidavit of Evidence, Affidavit of Admission/Denial of documents of Bipin Kumar, Chief Manager, Affidavit of Evidence of Sanjaya Kumar Das, the Investigator and documentary evidence. Both the parties filed their written synopsis.

6. We have considered the arguments of the counsel for the parties and examined the record. The Insured claimed the loss in the heads of (i) Building Structures, (ii) Plant & Machinery, (iii) Electrical Fittings, (iv) Lab Equipment, (v) Computer, (vi) Stock of Chemical Iodine, (vii) Stock of Raw Salt, (viii) Stock in Process and (ix) Stock of Finished Salt. The Investigator, in his report dated 15.11.2016, raised doubts in the respect of stock only. The Insurer in show cause notice issued on 11.01.2017 also sought for explanations in respect of stock. The repudiation dated 15.02.2017, only invoked Clause-8 General Condition of the Standard Fire and Special Peril Policy and did not record any reason, stating that the Insured had not replied the letter dated 11.01.2017. However, the written reply submitted in this complaint, the Insurer is challenging the claim for Building Structure also, which cannot be permitted to be raised. Supreme Court in **Galada Power and Telecommunication Ltd. Vs. United Insurance Company Ltd., (2016) 14 SCC 161** and **Saurashtra Chemical Ltd. Vs. National Insurance Company Limited, (2019) 19 SCC 70**, held that the ground, other than taken in repudiation letter, cannot be permitted to be raised before the Court.

7. The Insured in paragraph-56 of the complaint has stated that the report of Investigator is based upon misreading of the documents and based on conjecture and surmises. The Insurer, in written reply filed in the complaint has not given any reply to various misreading as pointed out in the Investigator's report dated 15.11.2016. Sanjaya Kumar Das, the Investigator has filed his Affidavit of Evidence, in which, he merely reproduced his report and has not given any explanation of the various misreading as pointed out. Misreading pointed out in paragraph-56 of are given below:-

(a) At page 4 of the Investigation Report, the Investigator has noted information supplied by Salt Superintendent, Humma Circle as stock of salt as on 01.04.2014 was 7372 MT in L.No.1 and 924 MT in L.No.4, total 8296 MT. The Investigator, thereafter, has noted the Statement of Production of Salt during 01.04.2013 to 30.09.2013 issued by Factory Officer, Surala Salt Factory (attached hereinabove as Annexure P-10), the closing stock of salt as on 30.09.2013 at the Complainant's factory as 17872 MT in L. No. I and 1824 MT in L.No.4, the total of which comes to 19696 MT. The Investigator then has taken figures of stock as on 30.09.2013 and deducted the figures of stock as on 01.04.2014 to arrive at the figure of damage/loss of salt because of the cyclone.

The Insured has submitted its explanation as follows:-

(i) In paragraph C(3), the Investigator has incorrectly calculated loss of salt in L.No.1 to be only 10500 MT by taking the figure of 17872 MT, being the closing stock as on 30.09.2013 and deducting the figure of 7372 MT being the stock of salt as on 01.04.2014. Similarly, for L.No.4, the Investigator by taking the figure of 1824 MT being the closing stock as on 30.09.2013 and deducting from the figure the amount of 924 MT being the stock of salt as on 01.04.2014 concluded that damage of salt in Lot No. 2 is 900 MT only. Thereafter, strangely, the Investigator has added the stock of salt of 360 MT of some unconnected entity called M/s. Bahuda Salt Production & Sales Cooperative Society and concluded that the total damage to salt suffered by the Insured was 11760 MT.

(ii) The computation of damaged salt by this method is absurd as Salt Officer only takes into account the stockpiles on 30.09.2013 and 01.04.2014. Salt Officer is an officer under the Salt Cess Act, 1953 read with Salt Cess Rules, 1964 [Rule 2(g)] for the levy and collection of duty on salt manufactured, who merely records the stockpile of salt at different points of time. He does not have any mandate to assess any damage of salt under the said Act nor is he competent to make an assessment of the loss of salt due to a calamity for the purpose of

insurance. In any case, Salt Officer had assessed the loss immediately after cyclone 'Phailin' to 11760 MT, which was his own assessment and not the statement supplied by the Insured. It does not reflect the correct figure of stock on 12.10.2013. It cannot be used to contradict the assessment of the Insured.

(b) The Investigator has concluded at pages 7 to 8 of the Investigation Report that there was a discrepancy in figures in the Ledger Statement, the Balance Sheet of the year ending on 31<sup>st</sup> March, 2014 given by the Auditor and filed with the ROC, and the stock statement of salt submitted to the Bank of Baroda.

(i) The Investigator has stated that the Insured had submitted Statement of Stock to Bank of Baroda, in September, 2013, showing stock of salt of Rs. 259.60 lacs at its Surala Factory. The Investigator then states in its report that as per the Auditor's report in respect of balance sheet for the year ending 31.03.2014, the Insured had disclosed a damaged inventory of an amount of Rs.110.35 lacs relating to the Salt Section. Thereafter, the Investigator has extracted the figures provided in the Ledger Statement pertaining to Raw Salt and stated that Raw Salt before the day of cyclone Phailin was 15471.000 MT in the stock yard as on 07.10.2013. The investigator has compared the above figures to conclude that they do not match.

(ii) The Investigator has compared unrelated and incomparable figures which shows complete non-application of mind. In the Balance Sheet for the year ending 31.03.2014 filed with ROC, the Insured had disclosed the amount of damaged inventory to be Rs.110.35 lacs. In the insurance claim filed on 24.04.2014, the Insured claimed values of Chemical Iodine of Rs.90000/-, Raw Salt (15000 MT) of Rs.7980000/-, Salt in Process (3713 MT) of Rs.2302060/- and Finished Stock (265 MT) of Rs.662500/- total Rs.110.34560 lacs (total Rs.110.35 lacs approx.). Hence, there is no discrepancy in the figures of the value of the damaged stock stated in the Balance Sheet and in Claim Form. Copy of the Balance Sheet for the year ending 31.03.2014 has been filed as Annexure P-37 @ pg. 367-387.

(iii) Claim Form is corroborated with the ledger statements maintained by the Insured of Raw Salt, Salt in Process and Finished Stock. It is evident from the Ledger Statements pertaining to Raw Salt, Stock in Process and Finished Stock that were submitted to the Surveyor that the total stock just prior to the cyclonic storm as per the Ledgers as on 07.10.2013 were as follows: 15471 MT of Raw Salt, 3905 MT of Stock in Process and 125 MT Finished Stock. [Annexure P13 @ pg. 114].

(iv) The fact that the Investigator has only considered Raw Salt of 15471 from the Ledger Statement and not Stock in Process and Finished Stock of salt shows a completely callous approach while assessing damage to the salt. Hence, the finding in the report that the figure of Raw Salt as per Raw Salt Ledger of 15471 MT as on 07.10.2013 did not tally with the balance sheet of the year 31.03.2014 is a baseless conclusion.

(v) Statement of stock given to the Bank is the valuation of salt based on sale price of salt, which is clear from the fact that statement of stock contained i.e. margin, advance value and balance, whereas, for the purpose of auditor's report (Balance Sheet) and the lodging of the insurance claim, the valuation of stock of salt was done on the basis of cost price of salt and as such there is no discrepancy in figures submitted to the Bank and disclosed in the Balance Sheet ending 31.03.2014. Which is proved from Invoices dated 07.02.2014 and 14.02.2014, in which sale price of salt in the market was Rs.1350/- per metric ton. [See Invoices dt. 07.02.2014 and 14.02.2014: Annexure-/Ex. P- 38(Colly) @ pg. 388].

(vi) As per the Statement of Production of Salt dated 30.01.2014 issued by Factory Officer, Surala Salt Factory (attached hereinabove as Annexure P-10), the total closing stock of salt as on 30.09.2013 at the Insured's factory came to be 19696 MT, which when valued at its sale price clearly shows that the valuation given to the Bank is correct. Thus, it is clearly seen that the Investigator has not applied his mind and has made completely incorrect conclusions regarding the stock of salt. It is also seen that there is no discrepancy in figures submitted to the Bank or in the Balance Sheet.

(c) Further, at page 9 of the Investigation Report it is alleged that the stock of raw salt to the tune of 15471 MT as on 07.10.2013 did not tally with the production of salt and stock of salt supplied by Superintendent of Salt, Humma Circle.

(i) Though the RTI Reply given by Superintendent of Salt, Humma Circle to the Investigator has not been supplied to the Complainant along with the Investigation Report, the information supplied has been quoted in detail at page 4 of the Investigation Report, seems to have been taken from the 'Statement showing the Production, Issue and Closing Stock of Salt' prepared by the Office of the Factory Officer, Surala Salt Factory dated 30.01.2014 [See Annexure P-10 @pg. 107- 108]. The said statement records the total quantity of salt i.e. Raw Salt, Stock in Process and Finished Stock of Salt which total to 19696 MT as on 30.09.2013. The investigator has compared this figure with only the Raw Salt amount of 15471 MT as reflected in the 'Raw Salt' Ledger as on 07.10.2013. Had the investigator taken into consideration the 'Stock in Process' Ledger and the 'Finished Product' Ledger then the total amount of salt would have matched with the figure of the total quantity of salt recorded by the Factory Officer and supplied by Superintendent of Salt, Humma Circle to the Investigator.

(ii) The Investigator has further pointed out that the Insured could not submit details of loss of Salt sustained during Cyclone Phailin to its Bank. The bank has never sought any information from the Insured as regards loss suffered due to the cyclonic storm nor such information was required to be submitted under loan agreement. The bank has initiated recovery proceedings against the Insured, in which the Insured has given all details of the loss suffered.

(d) The Investigator has incorrectly noted that the Insured had not submitted any documents to show the stocks available in the premises or how much finished salt was sold prior to the cyclonic storm. All relevant documents were submitted by the Insured to the surveyor, which have been referred and relied upon by the surveyor in its report.

(e) At para C(2) of the Investigation Report, the Investigator has stated that his inquiry from the Office of the Salt Superintendent, Humma Circle, revealed that the Govt./Authority had not fixed the rate of Salt per MT. The investigator has himself not made any independent inquiry as to the rate of salt in the market and only asserted that the Insured has not filed any supporting document. The Complainant could have provided the information pertaining to the rates of salt in the market, had the Investigator requested for the same.

8. In view of the facts mentioned above, it is apparent that when High Court directed to take decision with a time limit, then due to malafide reason, the Insurer sought clarification from the surveyor which were replied by the surveyor. Then the Insurer appointed an Investigator and obtained Investigator's report. The Investigator ignoring the material document and referring wrong figures submitted his report that the claim was based upon the papers, in which, the figures were mismatching.

9. The counsel for the Insurer submitted that in the letter dated 11.03.2017, the Insured did not give any explanation although it had opportunity to give explanation as such, the explanation given in the complaint is not liable to be accepted. This argument is not liable to be accepted as the Insurer had already repudiated the claim on 15.02.2017. Even if the Insured could not give explanation in his reply dated 10.03.2017, it cannot be debarred from giving explanation at the subsequent stage in the court of law. The Insurer has committed deficiency in service in repudiating the claim.

10. Regulation-9 of The Insurance Regulatory and Development Authority (Protection of Policyholder's Interest) Regulations, 2002, required to settle the claim within six of the report of the claim. If the claim is not settled within six months, then the Insurer is liable to pay interest @2% above the market rate.

### O R D E R

In view of aforementioned discussion, the complaint is partly allowed. The Oriental Insurance Company Limited (the Insurer) is directed to pay Rs.8384944/- with interest @9% per annum, from 15.04.2014 till the date of actual payment, within a period of two months from the date of this judgment.

.....J  
**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**

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**DR. INDER JIT SINGH**  
**MEMBER**