



IRDAI/NL/ORD/MISC/203/10/ 2016

18<sup>th</sup> October, 2016

**ORDER**

**Re: Order of Insurance Regulatory and Development Authority of India, under sub section 3 of section 64 UM of Insurance Act, 1938**

**In the matter of claim under Open Marine Cargo Annual Turnover Policy by Nectar Life Sciences Ltd.**

**Factual Matrix:**

1. The Insured Company Nectar Life Sciences Ltd., was covered for the Marine Cargo transit with M/s The New India Assurance Co. Ltd., under Open Marine Cargo Annual Turnover policy no- 360100/21/12/05/00000001 for a Sum Insured of Rs.1430 Crores for the period 06/05/2012 to 05/05/2013.
2. The insured company is engaged in the business of manufacture and supply of pharmaceutical products in India and abroad. The insured company received an order for supply of a consignment consisting of 80 drums carrying a quantity of 14400kg of menthol which was required to be delivered to Fuyang Best Flavour perfumery Co. Ltd. Fuyang City, Auhi province, China. The said consignment was required to be ported through Nhava Sheva Port in Maharashtra and the said consignment was dispatched by the insured from their premises at Dera Bassi.
3. The consignment was packed in galvanized drums, loaded in MV Amsterdam Bridge; However, on.9.9.2012 shortly after leaving the Nhava sheva Port, fire broke out on MV Amsterdam Bridge, the vessel carrying the consignment. The loss was intimated to insurer on 21/09/2012. The insured informed the insurer that the consignment reached Nhava Sheva, Mumbai which was not true because the said container remained on board of the affected vessel and sailed to China.

The vessel berthed at Shanghai port on 15.4.2013., where containers were unloaded to facilitate the repair of the vessel. Since the consignment was not available for survey at Mumbai port the insurer engaged their overseas Survey and Claim Settling Agent, M/S W. K. Webster for conducting the survey. However, the Chinese port authorities did not allow survey of containers. Therefore, the survey of the said containers could not be undertaken at Chinese port.

4. It was informed to the insurer that the consignee refused to accept the consignment and therefore the said consignment was brought back to India. After receipt of intimation of arrival of the container at insured's premises in India on 21.12.2013. on the same day insurer deputed M/s Consolidated Insurance surveyors and Loss Assessors Pvt. Ltd to carry out the survey.
5. The Surveyors, M/s Consolidated Insurance Surveyors & Loss Assessors Pvt. Ltd, conducted survey at Dera Bassi and submitted the Survey Report on 05/11/2014 and an addendum on 01/12/2014. The Surveyor attributed the reason for loss as-
  - i. Deterioration in purity of consignment material due to delay in transit as the consignment remained in transit for almost one and half year and was exposed to vagaries of weather. and that it was not because of the fire in the vessel.
  - ii. The major loss suffered by insured was a trading loss as the prices of menthol in international market crashed by 30% during the period it remained in transit. Thus, there was almost 30% loss in the consignment due to crash in its price in international market which is trading loss and the policy does not cover the same.

Therefore, the surveyors observed that the loss is out of the scope of Marine Cargo Insurance policy.

6. The insured filed a Writ Petition No- 26803 of 2014 which was disposed of by the Honorable High Court of Punjab and Haryana on 24/12/2014 giving the insurer six weeks' time to process the claim. The insurer repudiated the claim on 07/01/2015 stating the reason that the loss is out of the scope of the Marine Cargo Insurance Policy.
7. The insured again filed a Writ Petition no- 16847 of 2015 before Honorable High Court of Punjab and Haryana and alleged that the Surveyor and insurer breached Regulations 12 A (2), (3), (4) & 13(2)(xii), (xv) and (3) of Insurance



Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations by, 2000 by

- i. Being arbitrary and by inordinately delaying the issue of Survey Report.
- ii. By calling for addendum to Survey Report without intimating to insured.
- iii. By not seeking necessary expert opinion before concluding on cause of loss.

The insured in the writ petition prayed for appointment of a fresh set of Surveyors/joint surveyors to assess the loss and to impose exemplary damages on insurer in favour of the insured company.

8. The Honorable High Court on 17/08/2015 directed the Authority to decide on the appointment of a second Surveyor under sub section 3 of section 64 UM of the Insurance Act, 1938 preferably within four months' time.
9. The Authority received a certified copy of the order on 30/10/2015 from the Court without any attachments thereto. Therefore, the Authority wrote to the insured vide letter dated 1.12.2015 seeking a copy of application U/S 64 UM (3) of Insurance Act, 1938 along with Annexures in the Writ Petition which was delivered to the insured on 08/12/2015. However, the Authority did not receive any reply from the insured to its letter dated 01-12-2015.
10. Authority vide letter dated 21.03.2016 requested the insurer to provide a copy of the application of the insured along with all other documents related to the claim. The insurer submitted all the documents vide letter dated 11.04.2016. The Authority also called insurer for a meeting to discuss the matter, which was held at IRDAI's office on 30/03/2016.
11. The Insurer in the said meeting submitted the following:
  - i. The consignment was boarded on vessel MV Amsterdam Bridge while as per bill of lading the name of the vessel was Kota Lagu.
  - ii. A fire broke out in the vessel MV Amsterdam Bridge on 09/09/2012 shortly after leaving Nhava Sheva Port near Mumbai.
  - iii. The vessel sailed towards Sanghai Port, China vial Colombo, Srilanka.
  - iv. The goods remained on board and the insurer appointed M/S W. K. Webster, its Overseas Survey and claim Settling Agent to assess the loss.

- v. The vessel was berthed at Shanghai port on 15/04/2013 after more than seven months and the overseas surveyor M/S W K Webster was not allowed to inspect the containers containing the goods. The consignee in China refused to take delivery of the goods.
- vi. The containers full of menthol reached back to the factory premises of the insurer at Dera Bassi, Punjab on 21/12/2013.
- vii. After arrival of the consignment in the premises of the insured at Dera Bassi M/S Consolidated Insurance Surveyors and Loss Assessors Pvt. Ltd. conducted survey of the goods on 21/12/2013 and thereafter on other occasions.
- viii. Three samples were drawn from the drums of menthol and were sent for lab tests at approved laboratories.
- ix. The surveyor submitted the report on 24/12/2014 and an addendum on 07/01/2015 respectively. However, the loss was quantified by the surveyor for Rs 76.03.456/-
- x. The surveyor recommended that the claim is not payable as the loss occurred due to delay in transit which is an exclusion in the policy and not due to fire.
- xi. The claim was repudiated by the insurer, vide letter dated 07/01/2015 stating the reason as "As per the terms and conditions of the policy obtained by you, your claim falls outside the scope of the policy vide exclusion 4.5 which reads as

*"Loss damage or expenses proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under clause 2 which is "this insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those in clause 4,5,6 and 7 or elsewhere in this insurance".*

12. The Authority vide, letter dated 14/06/2016 wrote to M/S Nectar Life Sciences Ltd. requesting to send a competent officer to attend a meeting to be held on 24.06.2016 in the Authority's office to discuss matters related to the claim. Mr. Sandeep. Goel, Vice President Finance & CFO attended the meeting at IRDA's office on 24/06/2016 and made the following submissions:



- i. The marine policy no-360100/21/12/05/00000001 was valid from 06/05/2012 to 05/05/2013.
- ii. The consignment was of 14400 Kgs of Menthol in 80 drums of 180 Kg each.
- iii. Surveyor deputed in India was Consolidated Insurance surveyors and Loss Assessors Pvt. Ltd.
- iv. The loss was due to accidental outbreak of fire.
- v. As per the insured the Menthol that was under the transshipment had a shelf life of two years.
- vi. The consignment was loaded in the vessel MV Amsterdam Bridge.
- vii. Fire broke out on 09/09/2012 shortly after departing Nhava Sheva Port, Mumbai.
- viii. Three samples were taken from the containers once it reached back to the factory premises on 21/12/2013. Two samples were tested by the surveyor in the Govt. approved labs and one sample was given to the insured.
- ix. The total claim lodged by the insured was for Rs 2,25,72,000/- the loss was assigned by the surveyor was 1.08 Cr.

13. In view of the submission made by the insured the Authority sought for the following documents in support of their submissions.:

1. Commercial terms with the buyer and the reason shown by the buyers for refusal to accept the delivery.
  2. Since there was a change in ship/vessel of transshipment as per bill of lading, whether the insured informed the insurance company about such change.
  3. Reason as to why the ship did not return to Nhava Seva Port after the fire.
  4. Certificate of shelf life of the product from the regulatory department.
  5. Reason as to why survey was not allowed in the Shanghai Port when the goods were unloaded there.
  6. Whether any other claim lodged by any other claimant in the same fire incident.
14. The insured, in the above meeting, submitted that he had no information about whether the vessel returned to Nhava Seva Port after the fire. He didn't have information about the unloading of goods at Shanghai port.

He didn't have any certificate from the drug regulator as on date about the shelf life of the product.

15. The insured assured to submit the documents/clarification by 15/07/2016. However, the insured did not submit any clarification and therefore the Authority sent a reminder vide letter dated 20.07.2016. The insured vide letter dated 25.07.2016 submitted a clarification. However in the clarification insured did not reply to the query relating to shelf life of menthol.
16. The insured vide, letter dated 12/08/2016 submitted a certificate from Food & Drugs Administrator, Punjab related to shelf life of the menthol. The certificate was issued on the basis of stability data submitted by M/s Nectar Life Sciences Ltd itself. The shelf life period mentioned in the certificate was said to be 2 years.

**17. Observations of the Authority with respect to the submission made by Insurer and Insured**

- A. The policy was in force during the fire incidence on 09/09/2012.
- B. The bill of lading shows a different name of the vessel Kota Lagu while the goods were originally boarded in MV Amsterdam Bridge.
- C. The damaged goods did not return to Nhava Seva Port, Mumbai after the incidence of fire. Rather it sailed to Shanghai, China enroute Srilanka. The goods were unloaded in Shanghai port for delivery. The buyer refused to take delivery of goods. The goods were returned back to the factory premises at Dera Bassi.
- D. The email communication between M/S W. K. Webster and the insurer shows that they were constantly in touch with the shipping company and tracking its movement so that loss can be assessed at the earliest.
- E. From the email it is noted that the survey of the goods was not allowed by the Shanghai port authority since there were no damage signs in the containers carrying the goods.
- F. Lab test reports show sharp decrease in the concentration of Menthol due to passage of time. The test report done at the International Testing Center, Panchkula on 06/03/2014 shows the menthol concentration level at 72.03%. The test report done on 19/07/2014 shows the menthol concentration level at 59.2%.



G. Survey reports state that there were no damage marks due to fire on the galvanized drums containing the menthol.

H. The insured did not submit any supporting document related to their submissions made in the meeting.

I. The certificate of shelf life from the regulator clearly mentions that it was issued at the request of the manufacturer and on the basis of data supplied by the Insured.

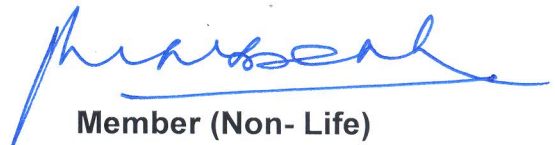
J. In reply to the query as to why the ship did not return to Nhava Seva port after the fire, the insured stated that they have a copy of letter dated 10/11/2012 from GroningerWelke Janssen stating that the vessel sailed from the anchorage off Mumbai on 08/11/2012. However, the copy of the letter is not submitted.

**18. Decision:**

1. On the basis of the submissions made by both the parties at the meeting in the Authority's office and examination of the documents submitted by the parties, the Authority has come to the conclusion that the Insured shipped menthol of 14400 Kgs to China in 80 drums of 180 Kgs each in a ship which was not mentioned in the original bill of lading and the insured did not inform the Insurance Company about the change of the vessel. Shortly after leaving Nhava Sheva port, a fire broke out in the vessel. The alleged fire took place in the mid sea on 09.09. 2012.
2. The insured informed the Insurance Company on 21/09/2012. Since the containers remained on board of the affected vessel the insurer appointed an overseas surveyor M/S W. K. Webster to conduct survey. However, the Chinese port authorities did not allow the survey of containers.
3. Consignment reached China after 7 months. and consignee refuse to accept the consignment and therefore the consignment was brought back to India. Surveyors M/S Consolidated Insurance surveyors & Loss assessors Pvt. Ltd. conducted survey at Dera Bassi. Three samples were drawn from the drums containing menthol and were sent for testing in approved labs. As per the lab reports the purity percentage of the Menthol has deteriorated. The insured's view is that it has happened due to fire and heat. But as per the survey report there were no fire or smoke marks on the drums on the container. Thus the deterioration in quality of material was due to delay in transit as the consignment remained in transit for almost one and half years and was exposed to vagaries of weather. The certificate submitted by the insured that

the shelf life of the menthol is two years cannot be accepted as the same was issued at the request of the manufacturer and on the basis of data supplied by the Insured. Further the insurer clarified vide their letter dated 1.09.2016 that the shelf life of two years is under controlled atmospheric conditions, but if the material is exposed to vagaries of weather it won't survive for two years and there would be gradual deterioration in quality and this has happened in the present case.

4. Considering the above facts and circumstances, it is confirmed that the loss did not occur due to fire in the ship, but due to delay in transit, which is an exclusion under the policy. Therefore, the Authority exercising the powers under section 64 UM (3) of Insurance Act, 1938 hereby decides not to appoint a second surveyor in this case.



**Member (Non- Life)**