



IRDAI/NL/ORD/MISC/186/11/2018

14th November 2018

**ORDER**

**Re: Order of Insurance Regulatory and Development Authority of India, under sub-section 6 of Section 64UM of Insurance Act, 1938**

**In the case of Claim of Alleged Loss due to fire accident to ship M.V.Amsterdam Bridge on 09.09.2012 covered by Open Marine Cargo Annual Turnover policy no.- 36010021120500000001 for the period 06.05.2012 to 05.05.2013- Nectar Life Sciences Limited, Chandigarh (Insured) New India Assurance Co.Ltd, Ludhiana (Insurer)**

This Order under Section 64UM(6) of Insurance Act, 1938, is being issued in compliance to the Order dated 03.01.2018 of Securities Appellate Tribunal (SAT) Mumbai, in Appeal No. 2 of 2017, directing this Authority to pass a fresh order on merits and in accordance with law.

**Factual Matrix:**

**(a)** Arising out of Civil Writ Petition (CWP) No.26803 of 2014 before Hon'ble High Court of Punjab and Haryana at Chandigarh filed by Nectar Life Sciences Ltd against The New India Assurance Co. Ltd and others, the Hon'ble Court vide its judgement dated 24.12.2014 had directed the insurer to communicate the decision taken on either accepting or repudiating the claim of the petitioner, within a period of six weeks from the date of receipt of copy of the order. It is noted that the Insurer repudiated the claim on 07.01.2015 stating the reason that the loss is out of the scope of the Marine Cargo Policy.

**(b)** The Insured again filed a WP No.16847 of 2015 before Hon'ble High Court of Punjab & Haryana and alleged that the Surveyor and Insurer breached Regulations 13A(2),(3),(4) & 13(2)(xii), (xv) and (3) of Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000 by being arbitrary and by inordinately delaying the issue of Survey Report, by calling for addendum to Survey Report without intimating to the Insured and by not seeking necessary expert opinion before concluding on the cause of loss. The Hon'ble High Court, on 17.08.2015, directed the Authority to decide on the appointment of a second surveyor under Sec.64UM (3) of the Insurance Act, 1938 preferably within four months' time. The Authority vide its order IRDAI/NL/ORD/MISC/2013/10/2016 dated: 18.10.2016 decided not to appoint a second surveyor.

**(c)** The order of the Authority rejecting the insured's request to appoint a second surveyor was challenged by the insured before Hon'ble SAT at Mumbai in Appeal No.2 of 2017- Nectar Life Sciences Ltd (vs) IRDAI & Others. The Hon'ble SAT, vide order dated 03.01.2018, disposed of the appeal with a direction to IRDAI to appoint a Surveyor having



the relevant technical expertise and based on the report, pass a fresh order on merits and in accordance with law. IRDAI appointed Rakesh Narula & Co, Vadodara (SLA No.6064) (Surveyor) vide its ref: IRDA/NL-Reg/SAT/02/2017 dated: 16.04.2018, under Section 64UM (3) (pre-amended; post amendment 64UM (5) of the Insurance Act 1938). The surveyor has submitted the Survey Report vide RNC/IRDAI/2018/2002 dated: 04.09.2018.

**(d)** The Surveyor i.e. Rakesh Narula & Co, has in its concluding remarks at 14.0- Non-Admissibility of the Claim made the following observations: -

*"14.1 Based upon all what has been written in the report above, it is established that the loss reported to have been suffered by the Insured is not at all attributed due to the subject incident of fire which had occurred on the ship MV Amsterdam Bridge. Insured has alleged that the fire on the ship lead to the deterioration in quality is not correct in our independent opinion, as per our examination of all facts and information related to the claim.*

*14.2 Also the Insured had mentioned that the cargo would be shipped in Ship MV Kota Lagu but it was shipped in MV Amsterdam Bridge, without the intimation to the Insurer.*

*14.3 Due to all the various serious nature of so many discrepancies that have all been explained at length in the body of this report, we independently opine that the Insured's claim is not admissible and it is not at all payable, as per the Policy terms and conditions.*

*14.4 Insured have also not been able to substantiate and prove their claim nor they have been able to provide the correct Product Identification, correct Product MSDS and also not provided the Product Stability characteristics, Stoichiometry, Product Literature, Product R&D data. Further no firm grounds of rejection by consignee have been provided, no tests have been carried out by the consignee and no visual fire effect has been found anywhere on the container, drums and the material contained in the subject consignment.*

*14.5 Insured also have not been able to conclusively establish the root cause of the alleged loss / damage.*

*14.6 The Insured have also not been able to prove that the loss is covered under the Policy terms and conditions and hence as the loss is not admissible and as there is large un-clarity of the product shipped as well as reprocessing cost documents, input output details and expenses incurred supporting documents have not been submitted, we have not gone into the loss assessment on reprocessing basis."*

**(e)** As regarding the cause of loss, the surveyor made the following remarks in the concluding part of 13.2.6

*"The purity of samples collected by the surveyor post the return of the consignments showed a continuous decline. According to the insured, this is due to inherent characteristic of product that once it degrades a little, the process continues and the purity continues to decline. As per our independent assessment the alleged decline of quality*

cannot be attributed to the fire on the ship. So the alleged quality loss is due to either non-use of refrigerated container as applicable for Menthol USP consignments or it was some inherent vice of the product itself, which has led to the quality loss over a period of time.”

(f) The relevant exclusions of the insurance policy are also reproduced by the surveyor at 14.7, as follows: -

**4. In no case shall this insurance cover**

**4.3. loss-damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this clause 4.3” packing shall be deemed to include stowage in a container or liftvan but only when such stowage is carried prior to attachment of this insurance or by the Assured of their servants).**

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The Menthol USP was mentioned on the Labels affixed on the Drums contained in the consignment. As per MSDS provided, Menthol is supposed to be carried in a Refrigerated vessel which was not done. Further Menthol USP is not a licensed product of Nectar and they have actually shipped Menthol in Liquid form whereas the shipping documents sent by them showed it to be Menthol USP.

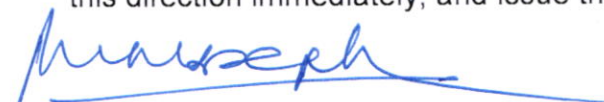
**4.4. loss-damage or expense caused by inherent vice or nature of the subject-matter insured.**

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The actual product shipped had some inherent vice, since the insured, themselves have admitted that they were after the surveyor for giving them the permission to quickly reprocess the returned consignment, since the quality of the same is getting deteriorated with the passage of time.

Even though 2 years shelf life guaranteed by the Insured had not been over, still by their own admission, even though 2 years were still not over, they have alleged that with time, the quality is going down, which clearly is an admission by the insured that the product is having an inherent vice and that with time delay, it is deteriorating, whereas the Shelf Life had been guaranteed by Nectar for a period of 2 years from the date of manufacturing.

(g) I have gone through the Surveyor’s Report dated 04.09.2018 carefully and find no reason to disagree with the conclusion reached by the surveyor. Therefore, after consideration of the Survey Report submitted by the Surveyor Rakesh Narula (SLA-6064), IRDAI, in exercise of the powers under section 64 UM(6) of Insurance Act, 1938, decides that the Claim is not payable. Accordingly, the Insurer is directed to comply with this direction immediately, and issue the necessary communication to the Insured.



(P.J. Joseph)  
Member (Non-Life)