IN THE HIGH COURT AT CALCUTTA

COMMERCIAL APPELLATE DIVISION

ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

AD COM 4 of 2026

WITH

C.S. (COM) No. 194 of 2024

(Old C.S. No. 82 of 2020)

IA No. GA-COM/1/2026

IRC Natural Resources Private Limited
Vs.
The New India Assurances Company Limited

For the Appellant	:Mr. Jishnu Saha, Sr. Adv. Mr. Ishaan Saha, Adv. Mr. Rohit Banerjee, Adv. Ms. Sananda Ganguli, Adv.
For the Respondent	:Mr. Sabyasachi Choudhury, Sr. Adv. Mr. Soumendranath Ganguly, Adv. Mr. Jit Ray, Adv. Mr. Deepesh Sharma, Adv.
Hearing Concluded on	: August 27, 2026
Judgement on	: October 13, 2026

DEBANGSU BASAK, J.:-

1. Appellant/plaintiff has assailed the judgment and decree dated May 21, 2026, passed in CS (COM) 194 of 2024 (Old No. CS No. 82 of 2020).

2. By the impugned judgment and decree, learned Single Judge has decreed the suit of the appellant/plaintiff for the sum of Rs. 11,89,70,780/- together with the interest at the rate of 9 per cent per annum on and from January 24, 2020 till re-payment.

3. Learned Senior Advocate appearing for the appellant/plaintiff has contended that the claim of the appellant/plaintiff arises out of an insurance policy to ensure Mobile Harbour Crane. He has contended that, such crane was imported from Germany and installed at the premises of the appellant/plaintiff on November 5, 2016. The crane had suffered damages by reason of fire for which, the appellant/plaintiff had lodged claims with the respondent.

4. Learned Senior Advocate appearing for the appellant/plaintiff has contended that, upon the repudiation of the claim, the appellant/plaintiff had filed the suit. Appellant/plaintiff had examined one witness at the trial while three witnesses had been examined by the respondent.

5. Learned Senior Advocate appearing for the appellant/plaintiff has contended that, assessment of loss done by the surveyor and accepted by the learned Single Judge

is incorrect. He has contended that, the crane was insured for the sum of Rs. 21,61,00,000/- with an escalation of 10 per cent bringing the total amount insured to Rs. 22,67,10,000/-. He has pointed out that the insurance policy was a reinstatement policy and therefore, the appellant/plaintiff became entitled to replacement value of the crane subject, however, to the depreciation applicable.

6. Referring to Clause 2(d) of Standard Policy Form being Exhibit D3, learned Senior Advocate appearing for the appellant/plaintiff has contended that, such clause provided that the appellant/plaintiff would be entitled to the value of the crane on replacement. He has contended that, depreciation was required to be calculated on the total lifespan of the equipment under Section 123(2) read with Schedule II of the Companies Act, 2013. He has referred to the letter dated April 13, 2019 being Exhibit BB of the original crane manufactured which confirmed the lifespan of the crane. Therefore, according to him, since the crane had been installed on November 5, 2016 and destroyed by fire on April 27, 2019 the depreciation should be 2.5 years. He has contended that, the alternative depreciation calculation comes to 11.69 per cent. Therefore,

when the appellant/plaintiff had opted for the higher rate of depreciation the same should be accepted.

7. Learned Senior Advocate appearing for the appellant/plaintiff had contended that, the surveyor accepted the landed cost of the new crane at Rs. 15,74,00,000/-. He has pointed out that, surveyor has calculated depreciation at 16.10 per cent per annum on the basis of which the surveyor had arrived at a depreciation of 40.25 per cent which is incorrect.

8. He has contended that, the surveyor did not take into account the estimated life of the crane both as per the declaration of the original manufacturer and as per Section 123 (2) read with Schedule II of the Companies Act, 2013.

9. Learned Senior Advocate appearing for the appellant/plaintiff has drawn the attention of the Court to the deposition of the witness of the respondent on the issue of depreciation. He has referred to ***2019 (16) SCC 370 (Sumit Kumar Saha vs. Reliance General Insurance Company Limited)*** in support of his contention on the quantification of depreciation.

10. Learned Senior Advocate appearing for the appellant/plaintiff has contended that the surveyor lacked any

basis or justification on the issue of under insurance. He has contended this from the fact that the total sum insured was Rs. 20,61,00,000/- plus 10 per cent escalation of Rs. 20,61,0000/-, and upon application of depreciation at the rate of 12.5 per cent on the said sum of 25,74,00,000/- (i.e, 3,21,75,000) the total depreciated replacement of the Mobile Harbour Crane works out to be Rs. 22,52,25,000/- which is lower than the insured value. Therefore, according to him, there could be no question about any other insurance. He has referred to the cross-examination of DW 2, that duly recognized the replacement cost of the machine as Rs. 25,74,00,000/- and the sum insured as Rs. 21,77,24,040/-, in an attempt to justify under insurance.

11. Learned Senior Advocate appearing for the appellant/plaintiff has placed reliance upon ***(2008) 8 SCC 279, (Dharmendra Goel Vs Oriental Insurance Company Limited)***, to contend that once an insurance Company has accepted the value of an equipment, it cannot claim that the value of the same on total loss basis, on the date of the accident in that same insured period was a lower value.

12. Learned Senior Advocate appearing for the appellant/plaintiff has contended that the appellant/plaintiff had separately insured itself of "Additional Customs Duty" for Rs. 5,92,25,000/-, and that the customs duty including lading charge and countervailing duty on the imported crane was adjusted against export incentives earned under the EPCG Scheme and was thus borne by the appellant/plaintiff out of its own income. He further referred to Clause 2(b) of the Standard Policy Form that provided for payment of customs duties on total destruction, if included in the sum insured. The appellant/plaintiff contended that the duty payable by the appellant/plaintiff had been adjusted against the export incentive earned by it, and that custom duty had been included in the sum insured, that the appellant/plaintiff is entitled to its claim on account of customs duty, countervailing duty and lading charge.

13. Learned Senior Advocate appearing for the appellant/plaintiff has referred to Regulation 15 Clause 10 of the Insurance Development Regulatory Authority of India (Protection of Policyholder's Interest) Regulation, 2017, to contend on the issue of interest. He further contended that the

average Prime Lending Rate (PLR) of State Bank of India from August 2019 till March 2025 as available from the public domain records to be 14 per cent per annum plus 2 per cent above bank rate, as per the regulation, computing interest to be 16 per cent with effect from August 25, 2019, the date when appellant/plaintiff claim was payable in terms of Regulation 5 (i) of the Claim Procedure in respect of a General Insurance Policy.

14. Learned Senior Advocate appearing for the Appellant/plaintiff has prayed for cost of the suit which was not considered in the impugned judgment and decree dated May 21, 2026. The appellant/plaintiff prayed for the cost of the suit amounting to Rs. 1,68,83,760/-.

15. Learned Senior Advocate appearing for the appellant/plaintiff has relied upon to contend that the Report of the licensed surveyor is not sacrosanct. He has placed reliance upon ***(2009) 7 SCC 787 (New India Assurance Company Limited vs. Pradeep Kumar)***.

16. Learned Senior Advocate appearing for the respondent has contended that the appellant/plaintiff failed to establish the case of accidental loss. He has contended that no expert

witness was produced to prove and substantiate the case of accidental nature of fire. Even a purported report of Perfect Forensic Scientific Society which was relied upon the by the appellant/plaintiff has neither been relied upon nor proved at the trial. The respondent further contended that only the evidence produced by the defendant gives concrete forensic evidence of the cause of fire. The learned Single Judge has rightly relied upon the reports of the authorized Surveyor and M/s Screen Facts Services Private Limited to adjudge the question of repudiation of the claim of the appellant/plaintiff.

17. Learned Senior Advocate appearing for the respondent has contended that the claim of the appellant/plaintiff was repudiated by invoking the exception clause 'O' read with condition 5(a) of the policy which provided for the obligation of the insured. He has further submitted that Standard Operating Procedure was not maintained while fueling the tank of the MHC and that the root cause of fire incident was use of fuel pump not adhering to safety norms and gross negligence on part of the appellant/plaintiff in running the pump.

18. Learned Senior Advocate appearing for the respondent has contended that the repudiation of the claims of the appellant/plaintiff by the respondent is based on the observations made by the M/s Screen Facts Pvt. Limited, Forensic Expert, dated August 9, 2019, regarding the cause of loss and recommendations of the report of the final surveyor dated December 11, 2019.

19. Learned Senior Advocate appearing for the respondent has relied upon ***2021 (17) SCC 682 (National Insurance Company limited vs. Hareshwar Enterprises Private Limited and Ors)*** and ***2023 (12) SCC 823 (National Insurance Company Limited vs. Vedic Resorts and Hotels Private Limited)*** to contend that the learned Trial Judge has rightly accepted the surveyor's assessment in absence of cogent rebuttal, as they are important evidence which are entitled to due weightage.

20. Learned Senior Advocate appearing for the respondent has relied upon ***2009 (7) SCC 777 (Sikka Papers Limited vs. National Insurance Company Limited and Ors)*** to contend that the sum insured under the policy as on the date of loss was Rs. 21,77,24,040/- whereas the new replacement cost of

the machine was Rs. 25,74,00,000/- thereby resulting in under-insurance, calculated strictly in terms of the policy conditions. He has further contended that the testimony of DW2 made on the aspect of assessment of loss has not been contradicted or impeached in the cross-examination.

21. Learned Senior Advocate appearing for the respondent has contended that the respondent calculated depreciation at 16.1 per cent per annum, based on the last books of accounts for the machinery of the insured. Therefore, the depreciation for the 2.5 years was calculated as 40.25 per cent on the sum of Rs. 25,74,00,000/-. He has contended that the while OEM-specified life of the machine is based on ideal operating conditions, actual depreciation depends on real-world usage, maintenance and economic life.

22. The appellant/plaintiff had taken out an insurance policy to insure a Mobile Harbour Crane (MHC) purchased from Terex Gottwald, a German Company, with the respondent that came into effect from October 4, 2016. The concerned Mobile Harbour Crane had been imported and installed on November 5, 2016.

23. On April 27, 2019, while the renewed insurance policy was in force an accidental fire from external source had completely damaged, one of the MHC bearing Serial No. 241760 resulting in death of the crane operator. The appellant/plaintiff had informed the respondent and the Kolkata Port Trust of the incident of fire.

24. Kolkata Port Trust had reported to the appellant/plaintiff that it considered the incident of fire under the 'Force Majeure' clause.

25. On being apprised of the incident, the respondent had appointed a Preliminary Surveyor to visit the site and prepare a report dated April 28, 2019. The surveyor had submitted his interim report dated November 2, 2019 and final report dated December 11, 2019. The surveyor had confirmed repudiation of the claim of the appellant/plaintiff on the Exception Clause 'O' of the policy. It had recorded that the standard operating procedure was not maintained and gross negligence was demonstrated by the appellant/plaintiff in not following safety norms attached to the pumps. The Surveyor's report had given a detailed account on the calculation and assessment of loss.

26. The respondent had, further appointed M/s Screen Facts Services Pvt. Ltd., a forensic expert to ascertain the cause of fire. After its visit on July 23, 2019, it had submitted its final report dated August 9, 2019, wherein it had observed that the root cause of the fire incident was due to using of the pump not adhering to safety norms and due to negligence on the part of the concerned in running pump after closing the valve.

27. The respondent had sent the letter dated January 24, 2020, repudiating the claim of the appellant/plaintiff on the grounds discussed above.

28. In ***Sumit Kumar Saha (supra)***, the Supreme Court has dwelt upon the importance and objective of the 'sum insured', its significance and the fact that it represented the value of the insured item as on the date when the coverage was obtained. The sum insured in that case was the present depreciated cost of the insured item as declared to the insurance company and accepted by them. It has held that it is not up to the surveyor or the insurance company to disregard the figure stipulated as 'sum insured' and that the loss had to be assessed keeping such figure in mind.

29. In ***Dharmendra Goel (supra)***, the Supreme Court while assessing a motor vehicle accident insurance claim has held that an insurer that has itself accepted the value of the vehicle and charged premium on that basis at renewal is bound by that value and cannot, on a claim arising during the policy period, assess a total loss at a substantially lower figure. The court has held that only a modest depreciation corresponding to the short lapse of the policy period can be allowed and the insurer cannot disown its own accepted valuation by relying on a surveyor's lower assessment, nor does the burden lie on the insured to lead evidence to disprove it.

30. In ***Pradeep Kumar (supra)***, the Supreme Court has held that under Section 64-UM(2) of the Insurance Act, 1938, assessment of the loss by a licensed surveyor is a prerequisite for the admission, payment or settlement of any claim of Rs 20,000 or more, so that the loss must first be assessed by such a surveyor before the insurer can settle the claim. However, the surveyor's report is not the last and final word and is not sacrosanct or conclusive. It may be the basis or foundation for settlement of the claim, but it is binding neither

upon the insurer nor upon the insured. The proviso to Section 64-UM(2) preserves the insurer's right to pay or settle a claim at an amount different from that assessed by the surveyor.

31. In ***Hareshwar Enterprises (supra),*** the Supreme Court has held that a surveyor's report under Section 64-UM(2) of the Insurance Act, 1938 is not sacrosanct, and contrary evidence, including an investigation report, may be produced to rebut it, but it is a piece of evidence that holds the field until more reliable evidence is brought on record to rebut its contents, following ***Pradeep Kumar (supra).*** The surveyor's report is the basic document with statutory recognition, and the adjudicating forum may make it the basis of its decision if it inspires confidence, and the forum finds no need to rely on any other material. Where the surveyor's report has dealt with the point in dispute in an appropriate manner, an investigation report based on an investigation started belatedly cannot take center stage. By contrast, an investigation report must be considered where the very nature of the incident, such as whether the fire was genuine or fraud was committed, is itself in dispute. The forum's preference for the surveyor's report is therefore a matter of plausibility and reliability on the

facts, including the manner in which the insurer proceeded, and not an inflexible rule.

32. In ***Vedic Resorts and Hotels (supra)***, the Supreme Court has held that, although the surveyor's report is neither final nor sacrosanct, an insurer who declines to accept it must make out cogent and satisfactory reasons for doing so, failing which repudiation of the claim cannot be sustained.

33. In ***Sikka Papers Ltd (supra),*** the Court has discussed that though the surveyor's report is not the final word, there must be legitimate reasons for departing from such a report.

34. The authorities noted above have laid down that, surveyor's report can form the basis of decree unless there are valid grounds to deviate from them. Facts and circumstances of each case have to be evaluated in order to arrive at a finding as to whether or not there exists a surveyor's report and that, such surveyor's report is acceptable and if not, whether, there are materials on record to arrive at a contrary finding.

35. Thus, in the facts of the present case, it is clear that the appellant/plaintiff had failed to produce any cogent or legitimate evidence to contradict on the issue of assessment of loss as quantified by the surveyor in his report. The

appellant/plaintiff has failed to produce any technical or eye witness to corroborate the testimony of the PW 1. Despite extensive mention in the plaint, of the various officers of the appellant/plaintiff; none of them had been produced as witness. The appellant/plaintiff has failed to bring an expert opinion to establish a contrary opinion on the quantum of the loss calculated by the surveyor. The appellant/plaintiff has failed to provide any legitimate reason for challenging the assessment of loss done by the surveyor. The depreciation calculated by the surveyor is relied upon from the last book of accounts of the insured. The surveyor has duly considered the insured sum as per the insurance of contract for the period of 2018-2019, to ascertain the quantum of loss. The appellant/plaintiff has failed to produce any supporting documents to rebut the assessment of loss computed by the licensed surveyor.

36. The claim of the appellants on account of interest has no foundational basis in the facts and circumstances of the present case. The respondent had accepted the surveyor's report and paid the appellant in accordance therewith. Appellant has failed to establish that the surveyors report

contains any errors requiring enhancement of the claim amount. Consequently, the learned Trial Judge has rightly not allowed the claim on account of interests.

37. Claim on account of the costs has rightly not being allowed by the learned Trial Judge in as much as the appellant did not succeed with any of the other claims.

38. We find no reason to interfere with the assessment on loss undertaken by the licensed surveyor under the said circumstances.

39. In view of the above, AD COM 4 of 2026 with C.S. (COM) No. 194 of 2024 (Old C.S. No. 82 of 2020) is dismissed without any order as to costs. IA GA COM No. 1 of 2026 stand disposed of.

[DEBANGSU BASAK, J.]

40. I agree.

[ARYAK DUTT, J.]