



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Shaheen Insurance Company Limited

Show Cause Notice Issue Date: May 2, 2013

Date of Hearing: October 28, 2013

Attended By: Mr. Farhan Janjua
Chief Financial Officer & Company Secretary
Mr. Sohel N. Kidwai
Chief Operating Officer
Mr. Aijaz Ali Khan
Head of Operation
Mr. Imran Hussain
Legal Advisor

Date of Order: December 20, 2013

ORDER

(Under Section 227 Read with Section 229 of the Companies Ordinance, 1984)

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This Order shall dispose of the proceedings initiated against M/s Shaheen Insurance Company Limited (herein referred as "the Company") for not complying with the provisions of Section 227 of the Companies Ordinance, 1984 (the "Ordinance").

Background Facts

2. M/s Shaheen Insurance Company Limited (the "Company") is a public limited company, incorporated under the Companies Ordinance, 1984 (the "Ordinance"), and its shares are quoted on Stock Exchanges.

SECURITIES & EXCHANGE
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3. The relevant facts for disposal of this case briefly, stated are that the relevant provisions of Section 227 of the Ordinance require each company, registered under the Ordinance, to transfer all money or securities which is deposited by its employees in pursuance of their contracts of service with that company, within fifteen days from the date of such deposit in a special account to be opened in a scheduled bank, and that no portion of such amount may be utilized by that company except in the case of breach of employment contract on part of the employee as provided in that contract and after notice to the employee concerned. For the purpose of ready reference, Sub-section (1) and (3) of Section 227 of the Companies Ordinance, 1984 (the "Ordinance") are reproduced below:

"Employees' provident funds and securities.- (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

...

(3) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company."

4. The Commissioner (Insurance) on November 27, 2012, ordered an onsite inspection of the Company, in exercise of the powers conferred under Section 59A of the Insurance Ordinance, 2000. However the Company, vide its letter dated December 6, 2012, requested the Commission to extend the date of commencement of onsite inspection, which was acceded to by the competent authority vide letter dated December 7, 2012, and hence, onsite inspection commenced on December 17, 2012 instead of December 10, 2012 as mentioned in inspection order dated November 27, 2012.

5. During the course of the onsite inspection of the Company, the inspection team observed that the Company deposited the provident fund contribution with delay of more than 15 days, while Section 227 of the Ordinance requires a company to deposit the each month's contribution within 15 days. Following is the summary of provident fund contribution related to year 2011.

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 2

Particulars	Amounts
Opening balance as per Accounts	874,631
Contributions due to PF during the year	3,192,755
Other amounts due to PF during the year	851,590
Payments made during the year	(4,500,000)
Closing balance as per Accounts	418,976

The breakup of contributions due and payments made in year 2011 is as follows:

Month	Contribution	Due Date	Amount Paid	Payment Date
January 2011	239,592	15-Feb-2011	1,000,000	27-Apr-2011
February 2011	232,971	15-Mar-2011		
March 2011	232,971	15-Apr-2011		
April 2011	243,566	15-May-2011	1,500,000	23-Jun-2011
May 2011	244,742	15-Jun-2011		
June 2011	392,093	15-Jul-2011		
July 2011	270,789	15-Aug-2011	2,000,000	28-Dec-2011
August 2011	262,582	15-Sep-2011		
September 2011	269,698	15-Oct-2011		
October 2011	270,163	15-Nov-2011		
November 2011	271,333	15-Dec-2011	2,000,000	28-Dec-2011
December 2011	262,255	15-Jan-2012		
Total	3,192,755		4,500,000	

The above table clearly showing that the Company does not make payments on regular and timely manner, as required under Section 227 of the Ordinance.

6. In view of the above mentioned facts, it appeared that the Company has contravened the provisions of Section 227 of the Ordinance, for which penal action as provided under Section 229 of the Ordinance.

Show Cause Notice

7. Accordingly, the Show Cause Notice was issued on May 2, 2013 under Section 227 read with Section 229 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 229 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 227 of the Ordinance.

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Company's Response to the Show Cause Notice

8. In response to the said Show Cause Notice, the Company, vide their letter of May 15, 2013 requested to allow two week time for submission of the written reply of the said notice, which was allowed via letter dated May 20, 2013. but no written reply submitted by the Company in response of the notice.

Hearing of the Case & Subsequent Developments

9. The hearing in the matter was scheduled on October 28, 2013 at 2:30 P.M., accordingly, the said hearing was attended by Mr. Farhan Janjua, Chief Financial Officer & Company Secretary, Mr. Sohel N. Kidwai, Chief Operating Officer, Mr. Aijaz Ali Khan, Head of Operation and Mr. Imran Hussain, Legal Advisor (they will be referred to as the "Company's representative" hereinafter).

10. Brief proceedings of the hearing of October 28, 2013 are as follows:

- a. Prior to the start of the hearing proceedings, the Company's representative was asked to provide the Power of Attorney for the presentation before the Director Insurance of the Show cause notice issued on May 2, 2013.
- b. The Company's representative replied the Board of Director of the Company authorized them to appear before you and the said Power of Attorney will be provided you later on, the Director Insurance allowed and the Company vide its letter dated November 7, 2013 provided the same which was signed by Mr. Shahid Hameed, Director of the Company, wherein the reference was made to the resolution of the Board of Directors of the Company dated October 24, 2013, hence accordingly, the extracts of the said resolution of the Board was also provided to the Commission in which Mr. Shahid Hameed, Director was authorized by the Board to represent the Company and its Directors in any proceedings that may be brought against the Company by any department of the Commission in relation to the manner in which the affairs of the Company have been managed in the past. The said resolution of the Board also empowered / authorized Mr. Shahid Hameed, Director of the Company to delegate this power, which has been delegated to the Company's representative;
- c. The Company's representative was asked to present the stance of the Company, to which the Company's representative stated that the intent of the Company was not mala fide, and that the management of the Company has changed during the period where these late payments in provident fund identified that the Company had in fact late in payment but payments



were made in quarters and these were happened due to the change in management during the recent past, now the company is fully complained in payments of the provident fund contributions but also discharging the liabilities of those employees who left the Company;

- d. The Company's representative, while clarifying the delay in depositing the Provident fund contribution amounts submit the written information of the twenty three employees who left the Company and the management paid their full and final settlement of the Provident fund. Director Insurance, raised the query, why the Company was in default in the period mentioned in the show cause notice and what is the current status of the provident fund contribution of the company;
- e. The Company's representative responded that, the Company was in default in the period mentioned in the notice because of the fact that the management of the company changed and now since June 2013 the Company is depositing the provident fund amount regularly and also agree to provide the written respond, the same is provided via letter dated November 7, 2013 to the Commission;
- f. The Company's representative, while admitting the default of the provisions of Section 227 of the Ordinance, mentioned that the Company is not in contravention of the said Section since June 2013 and onward;
- g. Finally, the Company's representative requested the Commission to take a lenient view and condone the Company for contravening the provisions of Section 227 of the Ordinance.

Consideration of Company's Submissions

11. I have carefully examined and given due consideration to the written and verbal submissions of the Company, and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default of Section 227 of the Ordinance, as the Company was required to transfer the amounts collected from the employees in respect of the Provident Fund in the designated bank account maintained for the purpose of the Provident Fund within 15 days.

12. However, before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day-to-day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence, the Directors are gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care. In the instant case, *Meri*



however, the Company and its Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 227 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

Conclusion

13. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 227 of the is established. Therefore, the penalty as provided under Section 229 of the Ordinance can be imposed onto the Company and/or its Directors.

14. Section 229 of the Ordinance states that:

“Penalty for contravention of section 226, 227 or 228.- Whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention.”

Order

15. In exercise of the power conferred on me under Section 229 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the act of late transfer of amounts to the Provident Fund has not harmed the interests of the employees of the Company.

Also, the Company is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

16. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Tariq Hussain
Director