



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 05 of 2013

1. Shaheen Insurance Company Limited
 2. Mr. M. Ikramullah Bhatti, Chairman
 3. Mr. Zafar Iqbal Mir, Director
 4. Mr. Tanveer Muhammad Sheikh, Director
 5. Mr. Imran Hafeez, Director
 6. Mr. Hammad Ahmed Butt, Director
 7. Mr. Shahid Hameed, Director
 8. Mr. Syed Hamza Gilani, Director
- ... Appellants

Versus

Director (Insurance)
(Securities and Exchange Commission of Pakistan) ... Respondent

ORDER

Date of hearing 27/12/13

Present:

For the Appellants:

Mr. Sohail N. Kidwai, Advocate, Chief Operating Officer

Mr. Farhan Janjua, Chief Financial Officer

Mr. Imran Hussain, Legal Advisor

Department representatives:

Mr. Tariq Hussain, Director (Insurance)

Mr. Muhammad Azam Nizami, Deputy Director (Insurance)



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1. This order shall dispose of appeal No. 05 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 17/12/12 (the "Impugned Order") passed by the Respondent.
2. The brief facts leading to the case are that the solvency position of Shaheen Insurance Company Limited (the "Company") as at 31/12/11 revealed that the Company was insolvent by an amount of Rs. 49,328,754. In view of the foregoing, it appeared that the Company had contravened the provisions of section 36 read with section 11(1) (c) of the Insurance Ordinance, 2000 (the "Ordinance").
3. Show cause notice dated 06/07/12 (the "SCN") was issued under section 36 read with section 11(1)(c), section 63(1) and section 156 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 sections 63(1) and 156 of the Ordinance, should not be imposed on the Company and/or its directors for not complying with the provisions of section 36 read with section 11(1)(c) of the Ordinance. The Appellants' counsel vide letter dated 23/07/12 submitted reply to the SCN on behalf of the Appellants and accepted that the Company had been unable to fulfill the minimum solvency requirement as on 31/12/11. Hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed penalty of Rs. 300,000 on the Company and Rs. 100,000 on each of the eight directors of the Company with the total penalty aggregating to amount of Rs.1,100,000. The Appellants were also directed to take immediate steps to meet the shortfall in their solvency requirement and were further informed that their annual audited accounts and regulatory returns for the year ended 31/12/12 should show that the Company has complied with the mandatory requirements of section 11(1) (c) and section 36 of the Ordinance relating to the minimum solvency.



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5. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' counsel argued that:

a) the Appellants' apparent non-compliance in respect of the solvency requirement is unintentional and involuntary. The Appellants have also taken all possible actions to meet the requirement of paid up capital laid down by the Commission in its Circular No.3 of 2007 dated 10/04/07 (the "Circular"). It was argued that the apparent non-compliance was due to factors beyond the control of the Appellants;

b) the rationale for the requirement of minimum capital/solvency is to ensure that the interest of the policyholders and the general public are not prejudiced unfairly. In the instant case, the Appellants have not failed to meet any liability in this regard and all relevant claims have been duly met; and

c) the Appellants have demonstrated realistic plans of raising capital through recovery of receivables to bring the capital to the required level under the law and the Appellants' efforts in this regard should be encouraged in the wider interests of the industry. The Appellants' representatives presented the said plan before the Appellate Bench.

6. The department representatives argued that:

a) the Circular required non-life insurers such as the Company to raise their paid-up capital to Rs. 250 million and Rs. 300 million by 31/12/10 and 31/12/11 respectively and the requirement was disseminated well before due time. The Appellants were only able to comply with the paid up capital requirement till



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31/12/12. The SCN was issued for failure to maintain the minimum solvency requirement and the Company is insolvent by an amount of Rs 269 million as on 31/12/12;

- b) the department has received numerous complaints against the Company due to non-payment of claims. The complainants protest that the Company has failed to pay claims even when all the required documents have been submitted to the Company; and
- c) the department acknowledged the previous attempts of the Company to meet the minimum paid-up capital. The Respondent took a lenient view in the Impugned Order and instead of imposing penalty of one million rupees on each Appellant under section 156 of the Ordinance; a much lesser penalty was imposed on the Appellants.

7. We have heard the parties. Our para-wise findings on the issues are as under:

- a) section 11(1) (c) of the Ordinance is reproduced for ease of reference:

*“An insurer registered under this Ordinance shall at all times ensure that:
(c) The provisions of this Ordinance relating to minimum solvency requirements are complied with;”*

Section 36 of the Ordinance is reproduced for ease of reference:

“Section 36 Insurers of non-life insurance business to have assets in excess of minimum solvency requirement.-

(1) An insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in



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excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.

(2) An insurer incorporated in Pakistan and registered under this Ordinance to carry on non-life insurance shall at all times have admissible assets in excess of its liabilities of an amount greater than or equal to the minimum solvency requirement.

(3) For the purposes of this section, the minimum solvency requirement is the greatest of:

(a) such required minimum amount as may be prescribed by the Commission;

(b) such percentage as may be prescribed by the Commission of its earned premium revenue in the preceding twelve months, net of reinsurance expense subject to a maximum deduction for reinsurance of fifty per cent of the gross figure; and

(c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure:

[Emphasis added]

Section 11(1) (c) and section 36 of the Ordinance clearly require insurers to comply with the minimum solvency requirements at all times. In the instant case, the Company has failed to comply with the minimum solvency requirement. Further, the directors of the Company are required to act proactively for compliance with the legal requirements and their argument that the non-compliance with section 36 read with section 11(1) (c) of the Ordinance is “unintentional and involuntary” is unacceptable;

b) the Appellants’ claim that they have not failed to meet any liability and all relevant claims have been duly met is incorrect as the department has received



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numerous complaints against the Company due to non-payment of claims. Further, the issue of claims raised by the Appellants is inconsequential and an action under section 36 read with section 11(1) (c) of the Ordinance is an independent requirement; and

- c) during the course of proceedings before the Appellate Bench, the Appellants submitted their business plan to meet the minimum solvency requirements. The business plan proposes a number of initiatives including enhancement of paid up capital by issuance of right shares of Rs 150 million. The requirement of section 36 and 11 (1) (c) of the Ordinance read with the Circular cannot be waived on the basis of the business plan. The requirement of minimum solvency level is one of the basic requirements for the registered insurer and the Appellant ought to ensure the compliance at all times in terms of section 11 (1) (c) of the Ordinance. The Respondent has already taken a lenient view by not issuing a direction to the Company to cease entering into new contract of insurance in terms of section 63(1) of the Ordinance. The Company has failed to comply with the minimum solvency requirement as per the regulatory returns for the year ended 31/12/12 despite a clear direction to the effect in the Impugned Order.

In view of the above, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

(Tahir Mahmood)
Chairman

(Zafar Abdullah)
Commissioner (SMD)

Announced on: 13/02/14