



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 51 of 2014

1. Mr. Naim Anwar, Chief Executive Officer
Crescent Star Insurance Limited
 2. Crescent Star Insurance Limited
- ...Appellants

Versus

1. Mr. Tariq Hussain
Director Insurance
Securities & Exchange Commission of Pakistan
 2. Insurance Division
Securities and Exchange Commission of Pakistan
- ...Respondents

Date of Hearing 21/01/15

ORDER

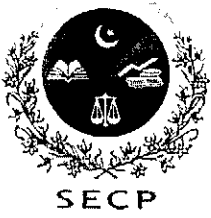
Present

For the Appellants:

1. Mr. Akbar Naqvi Zaidi, Deputy Managing Director

For the Respondents (through video conferencing):

1. Mr. Tariq Hussain, Director (Insurance)
2. Mr. Arif Nizami, Deputy Director (Insurance)



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1. This order is in appeal No. 51 of 2014 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order (the "Impugned Order") dated 05/10/13 passed by the Respondent.
2. The brief facts of the case are that as per record of the Commission, M/s Crescent Star Insurance Limited (the "Company") has failed to submit the following four statements forming part of the Regulatory Returns as required by Regulation 3 of the Securities and Exchange Commission (Insurance) Rules, 2002 ("Regulations") read with section 46(1)(b) and section 51(1) of the Insurance Ordinance, 2000 (the "Ordinance"):
 - a. Statement of Claim Analysis (Form GH) for the year ended 31/12/12;
 - b. Statement of Exposures (Form GI) for the year ended 31/12/12;
 - c. Statement of Assets for Solvency Purposes (Form GJ) for the year ended 31/12/12; and
 - d. Classified Summary of Assets in Pakistan (Form GK) for the year ended 31/12/12.
3. The above-mentioned observations were taken up with the Company to which the Company submitted their response by filing the statutory return as per regulation 3 of Annexure II of Part B of the Regulations read with section 46(1)(b) and section 51(1) of the Ordinance. It appeared that the Company has contravened the provisions of Regulation 3 of the Regulations read with section 46(1)(b) read with section 51(1) of the Ordinance regarding submission of the Regulatory Returns for the year ended 31/12/12. In addition to the above-mentioned contravention, the Audit Report as required by Regulation 6 of the Regulations, on the aforementioned Regulatory Returns for the year ended 31/12/12, was also not submitted with the Commission within due time frame i.e. when these Regulatory Returns were due to be filed. The said Audit Report was filed with the Company's letter dated 11/11/13.



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4. It was also noted that the Annual Audited Financial Statements (Published Financial Statements) of the Company for the year ended 31/12/12 were approved by the Board of Directors of the Company on 24/05/13 and the Auditor's Report on these Annual Financial Statements were signed off on the same date, however, the Auditor's Report on the above-mentioned four financial statements (forming part of the Regulatory Returns) was signed by the Auditors of the Company on 31/07/13, which further leaves sufficient grounds to believe that preparation and the audit of the said four financial statements/Regulatory Returns was deliberately delayed by the Company. Therefore, the Company has also contravened the provisions of Regulation 6 of the Regulations read with section 48(2) of the Ordinance, for which the Commission may take action as provided under section 156 of the Ordinance for the aforementioned contraventions.
5. Show Cause Notice dated 28/03/14 ("SCN") was issued under section 46(1) read with section 51(1) and 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 section 156 of the Ordinance, should not be imposed upon the Company and/or its Chief Executive and Directors for not complying with provisions of sections 46(1) read with section 51(1) of the Ordinance. Hearing in the matter was held on 19/05/14 which was attended by Mr. Malik Mehdi Muhammad, Chief Financial Officer of the Company ("Company's Representative"). During the course of the hearing, the Company's Representative mentioned that the delay occurred unintentionally and, therefore, the SCN be withdrawn.
6. The Respondent No.1 dissatisfied with the response of the Company held that the default of section 46(1)(b) and 51(1) of the Ordinance is established. The penalty, therefore, as provided under section 156 of the Ordinance can be imposed onto the Company, its directors and/or its management for the contravention of the provisions of the Ordinance, In exercise of the powers conferred under section 156 of the



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Ordinance, instead of imposing the maximum penalty as provided therein, a fine of Rs 500,000 was imposed onto the Company's Chief Executive Officer due to the fact that the during the pendency of the proceedings under sections 46(1) and 51(1) of the Ordinance against the Company, the Company had repeated the same contravention of the provisions of the Ordinance. The Company, its directors and the Chief Executive Officer were issued a stern warning that in case of similar non-compliance in future, a stronger action against the Company will be taken.

7. The Appellants have the preferred the instant appeal against the Impugned order. The Appellants' representative argued that the Impugned Order is unjust as the Respondents No.1 and 2 have ignored the fact that management of the company was changing during the time of the delay for which the penalty has been imposed. There is no justification for imposing such a harsh penalty for the mere delay of certain information, part of which was not possible to be submitted due to the Reconstruction and Rehabilitation process being underway at the time of the alleged delays as explained in the responses sent to the Respondent No.1. The Respondent No.1 completely ignored the fact that Appellant No.2 was under a lot of limiting factors during the period of the alleged default as it was facing a complete overhaul of its Board of Directors as well as change of Chief Executive Officer. Mr. Naim Anwar was appointed on 08/02/13 as CEO designated and his approval was received from SECP Insurance Division dated 05/03/14. The Company met its minimum capital requirement as on 26/03/14. During the period from 08/02/14 to 26/03/14 a whole process of change over occurring at the Company included appointment of new staff and handing over duties etc. During the same period a business plan for the revival of the Company was submitted to SECP which was duly approved on 01/08/13 and the compliance status of the Company has improved post appointment of Mr. Naim Anwar. In support of the contention, a list of detail of submission of financial results and statutory returns has been submitted.



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8. The department's representatives argued that the default of section 46(1)(b) and section 51(1) of the Ordinance is established and is unrelated to the Appellants' argument that post-appointment of Mr. Naim Anwar as Chief Executive, the compliance of the Company has improved. The penalty, therefore, as provided under section 156 of the Ordinance can be imposed onto the Company, its Directors and/or its Management for the aforementioned contravention of the provisions of the Ordinance.
9. We have heard the arguments. Section 46(1), 51(1) and Regulation No 3(1) of the Regulations are reproduced for ease of reference:

46. Accounting and reporting - (1) Every insurer shall at the expiration of each year prepare and deliver to the Commission with reference to that year annual statutory accounts comprising the following statements duly audited by an approved auditor:

(a) in the case of a life insurer,-

(i) a statement of assets and liabilities for each statutory fund operated by the life insurer and the shareholders' fund;

(ii) a statement of profits and losses for the shareholders' fund;

(iii) a statement of cash flows for each statutory fund operated by the life insurer and the shareholders' fund;

(iv) a revenue account for each statutory fund operated by the life insurer;

(v) a statement of premiums for each statutory fund operated by the life insurer;

(vi) a statement of claims for each statutory fund operated by the life insurer;

(vii) a statement of expenses for each statutory fund operated by the life insurer;

(viii) a statement of investment income for each statutory fund operated by the life insurer;

(ix) such other statements as may be prescribed by the Federal Government; each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf;

(b) in the case of a non-life insurer,

(i) a statement of assets and liabilities;

(ii) a statement of profits and losses;

(iii) a statement of cash flows;

(iv) a statement of premiums;

(v) a statement of claims;

(vi) a statement of expenses;



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(vii) a statement of investment income;
(viii) a statement of claims analysis;
(ix) a statement of exposures; and
(x) such other statements as may be prescribed by the Federal Government;
each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf.

51. Submission of returns - (1) The audited statements and report referred to in subsections (1) and (5) of section 46 and the report and statement referred to in section 50, including any report referred to in sub-section (7) of section 50, shall be furnished as returns to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within four months from the end of the period to which they refer:

Provided that the Commission may on application by an insurer extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding one month.

Regulation No. 3(1) of the Regulations

The form of Regulatory Returns shall consist of the following which shall be submitted according to the published Forms annexed to these Regulations:

- Balance Sheet (Form GA), which shall be deemed to constitute the "Statement of Assets and Liabilities" required by S46(1)(b)(i) of the Ordinance
- Profit and Loss Account (Form GB), which shall be deemed to constitute the "statement of profits and losses" required by S46(1)(b)(ii) of the Ordinance
- Statement of Cash Flows (Form GC) required under S46(1)(b)(iii) of the Ordinance
- Statement of Premiums (Form GD) required under S46(1)(b)(iv) of the Ordinance
- Statement of Claims (Form GE) required under S46(1)(b)(v) of the Ordinance
- Statement of Expenses (Form GF) required under S46(1)(b)(vi) of the Ordinance
- Statement of Expenses (Form GF) required under S46(1)(b)(vi) of the Ordinance
- Statement of Investment Income (Form GG) required under S46(1)(b)(vii) of the Ordinance
- Statement of Claims Analysis (Form GH) required under S46(1)(b)(viii) of the Ordinance
- Statement of Exposures (Form GI) required under S46(1)(b)(ix) of the Ordinance
- Statement of Assets for Solvency Purposes (Form GJ) which is hereby prescribed under S46(1)(b)(x) of the Ordinance
- Classified Summary of Assets in Pakistan (Form GK) which is hereby prescribed under S46(1)(b)(x) of the Ordinance





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156. Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, [or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer] and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Emphasis Added

The Appellants have argued that the default of aforementioned provisions was due to the fact that at the time the Company was going through a change of management process and overhaul and it was not possible for the Company to provide certain information, hence the delay. However, post appointment of the CEO on 05/03/14, a business plan for the revival of the Company has been submitted and the compliance of the Company has improved. The Respondents have argued that the default has been established and the said argument by the Appellants has no relevance to the facts of the instant case. The penalty was imposed for the contravention of the provisions of section 46(1)(b) and section 51(1) of the Ordinance. We are of the view that non-compliance cannot be excused on grounds that the Company was going through a overhaul, however, keeping in view the fact that the Company's compliance has improved, we reduce the penalty of the Appellant No.1 from Rs.500,000 to Rs.250,000. Further, the Appellants are strictly warned to comply with the Rules and Regulations in future.


(Akif Saeed)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 10 FEB 2015