



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 52 of 2012

EFU General Insurance Limited

..... Appellant

Versus

Executive Director (Insurance)

Securities and Exchange Commission of Pakistan

..... Respondent

Date of Hearing

21/05/15

ORDER

Present:

For the Appellant:

1. Mr. Rashid Sadiq, CEO RS Corporate Advisory

For the Respondent (through video conferencing):

1. Mr. Tariq Hussain, Director (Insurance)

2. Mr. Arif Nizami, Deputy Director (Insurance)

1. This order shall dispose of appeal No. 52 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 28/09/12 (the "Impugned Order") passed by the Respondent.



Securities and Exchange Commission of Pakistan

2. It was observed that the Company, in its Statement of Assets for Solvency Purposes as at 31/12/10 has included the deposits received as security against guarantees amounting to Rs 320.12 million as admissible assets in violation of section 32(2)(k) of the Insurance Ordinance, 2000 (the "Ordinance"). The auditor had also qualified the Regulatory Returns on this inclusion of deposit.
3. Show cause notice ("SCN") was issued to the Appellant under section 32(2) read with section 156 of the Ordinance. The Appellant filed reply to the SCN and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellant, passed the Impugned Order and imposed a penalty of Rs. 100,000 on the Appellant.
4. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants argued that:
 - a) the purpose of Statement of Assets for Solvency Purposes is to ensure that the insurer meets the minimum solvency requirements under the Ordinance. The treatment made by the Appellant in the Statement of 31/12/10 did not defeat this purpose. Even after the Statement was corrected as per the Impugned Order, the Appellant continues to meet the solvency requirements under the Ordinance. The net effect or relevance of the Appellant's understanding of section 32(2)(k) on its solvency status has been zero. It was, therefore, a purely technical error; and
 - b) section 163 of the Ordinance envisions that a person may be wholly "excused" of liability under the Ordinance if "*he has acted honestly and reasonably*" and if such exemption is warranted by "*having regard to all the circumstances of the case*". In the instant case, it is established that



Securities and Exchange Commission of Pakistan

the Company acted honestly, that is, without any design to defeat the purpose of the law, and reasonably, that is, on its understanding that liabilities in terms of guarantees should be squared off by corresponding assets in terms of security margins. On its part, the Company stands corrected on its interpretation of the law and undertook to prepare the solvency statements in future in light thereof. The penalty imposed on the Appellant for such a technical error is too harsh and the penalty be lifted as it has been the case with other insurers. Reliance is placed on the *SECP Appellate Bench judgment of UBL Insurers Limited vs Executive Director, SECP 23/12/09* in which the penalty imposed was condoned of an insurer who remained insolvent for more than seven months. In another case *re Excel Insurance Company Limited before Executive Director SECP, 16/06/11*, penalty imposed was condoned of the Insurer who failed to meet the statutory deposit requirement for more than three months.

5. The department's representative argued that:

- a) statement of Assets for Solvency Purposes is to ensure that the insurer meets the minimum solvency requirement under the Ordinance; however, calculating collateral amounts in the admissible assets will defeat the purpose. As the Appellant himself admits that the "*amounts available to the insurer under guarantees*" are the deposits received as security margin against are reflected as liability in the Appellant's Balance Sheet. The Respondent has held this stance all along. The argument over interpretation of law is valid only when the provision of law yields any room for it. When the meaning of the provision of law is simple and plain then the scope of interpretation does not exist; and



Securities and Exchange Commission of Pakistan

SECP

- b) section 156 of the Ordinance allows for a fine 'which may extend to one million rupees' but the Respondent, having considered the plea of the Appellant and taking a lenient view, fined only one lac rupees. The Commission pursues even handed policy in prosecution of wrong doing. The examples cited by the Appellant do not sit comfortably with the case at hand. Both UBL and Excel are unlisted and have little market share.

6. We have heard the parties. Section 32 (k) and 156 of the Ordinance are reproduced for ease of reference:

Section 32(2) of the Ordinance

(2) For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

(k) amounts available to the insurer under guarantees; ...

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

- a) the Appellant has argued that the purpose of the Statement of Assets is that the Appellant meets the solvency requirement. It is contented that Rs.302.12 million as admissible assets had a zero effect on the Appellant's solvency status and it was purely a technical error. The Respondent has said that there is no room for interpretation when section 32(2)(k) is very clear and explicit. We agree with the Respondent that



Securities and Exchange Commission of Pakistan


SECP

the violation of the section may not have a net effect on the solvency status of the Company, however, it was still a violation of the said section; and

- b) section 163 of the Ordinance gives the Court the power to grant relief if it appears to the Court that the person has “*acted honestly and reasonably*” and...” *having regard to all the circumstances of the case, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust..*” We agree with the Respondent that they have already taken a lenient view under section 156 of the Ordinance by not imposing the maximum penalty. In the instant case, however, we accept the Appellant’s plea that this was not an intentional mistake on their part and the penalty imposed should be condoned.

In view of the foregoing, we set aside the Impugned Order to the extent of penalty with no order as to costs.


(Akif Saeed)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 10 FEB 2015