



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH II

In the matter of

Appeal No. 50 of 2013

Asian Mutual Insurance Company (Guarantee) Limited

....Appellant

Versus

Director (Insurance)

.... Respondent

Date of Hearing

21/01/15

Present:

For the Appellant:

1. Mr. Irfan Ilyas, FCA, Ilyas Saeed & Co. Chartered Accountants
2. Mr. A. Rasheed Mirza, CEO, Asian Mutual Insurance Company (Guarantee) Limited
3. Mr. M. Faisal Rashid, Director, Asian Mutual Insurance Company (Guarantee) Limited

For the Respondent (through video conferencing):

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

1. This order is in appeal No. 50 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order (the "Impugned Order") dated 21/06/13 passed by the Respondent.
2. The facts leading to the case are that M/s Asian Mutual Insurance Company (Guarantee) Limited (the "Appellant") in pursuance of section 46(1)(b) and section 51(1) of the Insurance Ordinance, 2000 (the "Ordinance") had filed its Annual Audited Financial



Securities and Exchange Commission of Pakistan

Statements for the year ended 31/12/11 (the "Financial Statements"). The Appellant's Statement of Assets for Solvency Purposes as at 31/12/11 showed that the Appellant had taken all its available for sale investments at market value. The Financial Statements revealed that the Appellant has an investment property (Land & Building) amounting to Rs 9,180,000 which was previously revalued in the year 2004, and the Appellant had booked Surplus on Revaluation of Fixed Assets amounting to Rs 8,395,000. It was further observed that the Appellant has not carried out any revaluation of the said property since the year 2004. Accordingly, the Appellant has not recorded any impairment in the value of the said property, if any, which is required under regulation 16(1)(b) of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Rules"). Further, Note 13.1 to the Financial Statements revealed that the revalued assets are held for capital appreciation and are not being used for any purpose by the Appellant.

3. The Appellant had not stated the carrying amount of the property at cost and, therefore, it appeared that the Appellant had chosen to follow the fair value model under IAS-40, which is against the provisions of Regulation 16(1)(b) of the Rules. Moreover, the Appellant was required to revalue its investment property atleast once in every financial year. In view of the foregoing, it appeared that the Appellant had contravened the requirements of the Rules relating to the recording and reporting of the investment properties as laid down under Regulation 16(1)(b) of the Rules read with section 156 of the Ordinance.
4. Show Cause Notice dated 22/02/13 ("SCN") was issued to the CEO and directors of the Appellant. The Respondent, dissatisfied with the response, passed the Impugned Order and imposed fine of Rs.100,000 on the Appellant and directed the Appellant to reverse the treatment and book their Investment properties using Cost Model under IAS 40.
5. The Appellant has preferred appeal against the Impugned Order. The Appellant's representatives argued that the Appellant has been determining market value of its



Securities and Exchange Commission of Pakistan

investment properties as required under Rule 16(1)(b) of the Rules every year and the same was disclosed the same in the financial statements as per disclosure requirement at “Classified Summary of Assets in Pakistan”. Board of Directors in every year, adopting a prudent approach, as given under SEC Rules, carried out review of the valuations internally which were duly discussed and determined the impairment of investment properties, if any, as required in Rule 16(1)(b) of the SEC Rules. However, there was no impairment in any year. The Appellant in financial statements for the year 2004 carried out revaluation of the investment property (land and buildings), which was inadvertently been taken in the financial statements under note no.13 (investment properties). The mistake took place in the year 2004 without any willful default. Since 2004, the Appellant was duly following cost model as provided in Rule 16 of the SEC Rules, adopting the cost model and treated revalued amount as per financial statements for the year 2004 as cost of the investment property. The Appellant had considered the Commission’s reservations during the submission of its Financial Statements for the financial year ended 31/12/12. However, the annual Financial Statements for the financial year ended 31/12/11 were issued on 27/02/12 well before the date of the notice. The Appellant has not made any gains out of this statement of investment properties on valuation (carried out in 2004) and the Appellant has not violated any requirements for the year 2011. It is also pointed that the Appellant has never used the gain for the calculation of minimum solvency as required under section 36(3)(a) of the Ordinance. Further, the Appellant has never considered such gain for the payment of any dividend or for the calculation of EPS. The imposition of penalty, therefore, is excessive which is requested to be set aside.

6. The department’s representative argued that the regulation lays down unequivocally the mode of treatment an investment property shall receive. The Financial Statements for the year ending 31/12/11 were filed in pursuance of section 51(1) of the Ordinance which indicate that the Appellant has an investment property (Land and Building) which was revalued in the year 2004 and the Appellant has not carried out any revaluation of the said



Securities and Exchange Commission of Pakistan

property since then, quite contrary to the Rule 16(1)(b) of the SEC Rules. It is noted further in the Financial Statements that the said property has been held for capital appreciation and is not being used for any other purpose by the Appellant. No impairment in the value of the property has ever been estimated as the Appellant himself admits that the last revaluation was carried out in 2004 but they reported to the Respondent that no impairment occurred to the property as has been stated herein the appeal. When no revaluation in all the intervening 8 years was conducted, the Appellant could not have assumed that no impairment in the value took place. Para 75(e) of the International Accounting Standard 40 requires that:

An entity shall disclose:

(e) the extent to which the fair value of investment property (as measured or disclosed in the financial statements) is based on a valuation by an independent valuer who holds a recognized and relevant professional qualification and has recent experience in the location and category of the investment property being valued. If there has been no such valuation, that fact shall be disclosed.

The Classified Summary of Assets in Pakistan pertaining to the year 2011 depicts the market value of the property to the amount of Rs.15,375,800 as against Book value of Rs. 9,180,000 appearing in the financial statements since 2004. Part of this account too carries gross incongruity; the revalued amount has been shown as Book Value and the Market Value has been given quite arbitrarily with no way of determining as per the ISA 40. Moreover, copies of the valuation Certificate remained unverified by no less than the surveyor himself. Therefore, it is incorrect that the Appellant determined market value of the said property every year as required under the concerned rule. The Appellant has argued that they have followed the cost model as given in the Rule 16 of the Rules but there has been no such compliance. The Appellant has booked a surplus on revaluation of



Securities and Exchange Commission of Pakistan

fixed assets of Rs. 8,395,000 against revaluation of their land carried out on 05/04/04 as reported in Note 8 to the Financial Statements for the year ended 31/12/11.

7. We have heard the arguments. Section 156 of the Ordinance and Regulation 16(1)(b) of the Rules are reproduced for ease of reference:

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.

Regulation 16(1)(b) of the Rules

Investment and Investment Properties- For the purpose of all statements prepared under these regulations, and for the purpose of S34 (1) of the Insurance Ordinance 2000.

(b) Investment Properties shall be stated on the basis of Cost Model under IAS-40. In case there is any impairment in the value then this shall be recognized. The market value of properties shall be determined atleast once in every financial year and disclosed, as shall the effect of non-compliance with IAS-40.

Emphasis Added

The Appellant has argued that there was no impairment in any year. The Appellant in financial statements for the year 2004 carried out revaluation of the investment property (land and buildings), which was inadvertently been taken in the financial statements under



Securities and Exchange Commission of Pakistan

note no. 13 (investment properties). The mistake took place in the year 2004 which was unintentional. The Respondent has argued that the Appellant has not followed the cost model as given in Rule 16 of the Rules. We are of the view that the Appellant has admitted the default and already a lenient view has been taken in the matter under section 156 of the Ordinance by not imposing the maximum penalty of Rs 1 million and instead imposing a penalty of Rs 100,000.

In view of the foregoing, we see no reason to interfere with the Impugned Order. The Appeal is dismissed with no order as to costs.

(Akif Saeed)
Commissioner (SCD)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **10 FEB 2015**