



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 08 of 2013

1. Mr. Muhammad Ikhtlaq Butt (FCA), Chairman & Chief Executive
2. Mr. Amjad Javed Butt, Director
3. Mr. Basalat Dar, Director
4. Mr. Muhammad Ishaq, Director
5. Mr. Muhammad Zahid Noor, Director
6. Mr. Rajab Abbasi, Director
7. Mr. Zahid Akhtar, Director
8. M/s. The Credit Insurance Company Limited ...Appellants

Versus

Director (Insurance), SECP ...Respondent

### ORDER

Date of hearing 21/01/15

#### Present:

For the Appellants:

Mr. Abdul Samad Rana

For the Respondent (through video conferencing):

Mr. Tariq Hussain, Director (Insurance Division)

Muhammad Azam Nizami, Deputy Director (Insurance Division)



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1. This order shall dispose of appeal No. 08 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "Act") against the order dated 28/12/12 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that it was observed by the Commission that Credit Insurance Company Limited ("the Company") had not submitted the Published Financial Statements and Regulatory Returns for the year ended 31/12/11 within the stipulated time frame i.e. within four months from the date to which these financial statements are prepared. Additionally, no extension was given to the Company in terms of the Proviso of section 51(1) of the Insurance Ordinance, 2000 (the "Ordinance"). The Commission, therefore, vide its letter dated 10/05/11 asked the Company to provide documentary evidence in case the said Published Financial Statements and Regulatory Returns had already been filed with the Commission. The Company, vide their letter dated 12/05/12, informed that the Annual General Meeting of the Company was held on 30/04/12 and stated that the financial statements and returns will be submitted to the Commission in due course. The Company, vide their letter, dated 13/05/12 stated that due to the prevailing issue of power shortage, the Company could not prepare the financial statements within the due time and requested the Commission to grant maximum extension for completion of the requisite financial statements. The Company's application, however, was time barred as the Company was required to apply for an extension on or before 30/04/12.
3. Show Cause Notice ("SCN") was issued on 06/07/12 under section 46(1) read with section 51(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 penalty, as provided



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under section 156 of the Ordinance should not be imposed upon the Company and/or its directors for not complying with provisions of section 46(1) read with section 51(1) of the Ordinance.

4. In response to the SCN, the Company vide their letter dated 11/07/12 reiterated their earlier stance and stated that the Company could not prepare the Financial Statements due to breakage of computer software and heavy energy crisis and the required returns could not be prepared within the prescribed period of time. Furthermore, the Company would submit the printed copy of Financial Statements within a short period of time and had already applied for the extension of filing of returns for a period of ten days vide their letter dated 02/07/12. Subsequently, the Company vide letter dated 16/08/12 filed its Annual Audited Financial Statements and Regulatory Returns for the year ended 31/12/11.
  
5. Hearing in the matter was held on 30/11/12 and was attended by Mr. M. Ikhtlaq Butt, Chief Executive Officer of the Company (the "CEO"). The CEO, while presenting the copies of the Company's letter dated 12/05/12 and 13/05/12, stated that the Company had applied for maximum extension in filing of the financial statements and regulatory returns for the year ended 31/12/11. Since no response was received from the Commission, it was assumed by the Company that extension had been granted. Moreover, even if the Company had applied for extension of time on or before 30/04/12, the Company would have still failed to comply with the requirements of the Ordinance by filing the Annual Financial Statements and Regulatory Returns after the date of the maximum allowable extension on 16/08/12. It was further requested that the default may be condoned on the written assurance of the Company that it will ensure compliance with the applicable laws and rules in letter and spirit.



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6. The Respondent, after carefully reviewing the facts and circumstances of the case held that the Company and its management had failed to ensure compliance with the provisions of section 46(1) read with section 51(1) of the Ordinance by not filing the Annual Audited Financial Statements and Regulatory Returns for the year ended 31/12/11 within the stipulated timeframe. A lenient view, however, was taken on the grounds that the Company had applied for maximum extension vide their letter dated 13/05/12 even though the Financial Statements and returns were filed after the maximum allowable extension; the non-filing of Annual Audited Financial Statements and Regulatory Returns had not adversely affected the shareholders and policyholders of the Company and that the Company will make sufficient efforts to overcome the problems and submit its financial statements in time. In exercise of the power conferred on the Respondent under section 156 of the Ordinance, a fine of Rs. 20,000 was imposed on the Company and the Company and its management were warned to be vigilant in the future.
  
7. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant's representative argued that no harm has been caused to the shareholders/policy holders and consequently where no fiduciary duty has been violated by the Appellants, the Appellants may not be held liable for any violation, and a lenient approach be taken towards the Appellants. Moreover, where no harm has been caused to the shareholders, there is no reasonable justification to impose such extreme penalties. Accordingly, the penalty is not in proportion to the alleged violation and is in violation of the principles of proportionality of penalties. The penal liability is, therefore, contrary to the law. The Appellants have fully discharged their obligation towards the Respondent and have provided the documents as required by the law. As such the only objection raised by the Respondent is a mere technical ground of delay. It has time and again been conveyed to the Respondent that the reason for the delay was circumstances outside



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the Appellants' control. The Appellants have always maintained correspondence with the Respondent and have kept the Respondent updated with regards to the Appellants' ongoing efforts for filing of the documents. The Appellants have never been evasive or dishonest. The Respondent, therefore, should have given due consideration to the fact that the Appellants had ensured substantial compliance of the filing obligations and accordingly should not have penalized them as substantial compliance had been made. Further, it is an established principle of law that delay no matter how serious can be condoned provided a reasonable justification for the delay is provided. The Impugned order, therefore, is excessive and contrary to the law and is liable to be set aside.

8. The department's representatives argued that irrespective of the fact that the violation caused any harm to the shareholders or not, the Company was required under section 51(1) of the Ordinance to furnish the annual statutory Financial Statements and returns to the Respondent. Producing accurate Financial Statements is the responsibility of the Appellant which does not exonerate the Appellant from other offences of non-compliance. Further, it's non-compliance which has resulted in the penalty. The Respondent has already taken a very lenient approach and imposed a fine of Rs. 20,000 when the maximum fine under section 156 of the Ordinance may extend to one million rupees and in case of continuing default may extend to ten thousand rupees for every day until such time the default continues. Furthermore, the Appellants have a dismal record marked by incessant defaults. The Appellants have engaged in delaying tactics and when the SCN was served, again a request for extension of time was made. It is an established principle of law that a breach can be condoned before the law takes its course and it is not possible for the Respondent to override the express provisions of the law.



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9. We have heard the arguments. Section 46(1), 51(1) and 156 of the Ordinance 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;

(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.



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**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.*

**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]<sup>16</sup> 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 delay was only a technical default for circumstances which were beyond their control. Moreover, no harm was caused to any shareholders/policy holders in the instant case. The Respondents have argued these are mandatory provisions of the law which need to be followed regardless of whether it causes any harm to the shareholders or not. We are of the view that the Appellants were under a fiduciary responsibility to ensure full compliance of sections 46(1) read with section 51(1) of the Ordinance by timely filing Published Financial Statements and Regulatory Returns for the year ended 31/12/11. It was the Company's responsibility to ensure that compliance was made. The Company had excessively delayed filing of the said Financial Statements and returns which they subsequently filed vide its letter dated 16/08/12. The delay has also exceeded the maximum allowable extension time of one month had it been granted to the Appellants. The Respondent has already taken a lenient approach by not imposing the maximum penalty under section 156 of the Ordinance.



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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: 13 FEB 2015