



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 37 of 2013

Takaful Pakistan Ltd

..... Appellant

Versus

Commissioner (Insurance)

Securities and Exchange Commission of Pakistan

..... Respondent

Date of Hearing

21/01/15

ORDER

Present:

For the Appellant:

1. Mr. Shahid Nizam, Advocate, Mohsin Tayabaly & Co
2. Dr. Syed Arif Hussain, Chief Executive Officer, Takaful Pakistan Ltd

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. 37 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 08/05/13 (the "Impugned Order") passed by the Respondent.



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2. Brief facts of the case are that Appellant No.1 is a Takaful operator licensed under the Takaful Rules, 2005 by the Commission. It was noted from the Company's letter, dated 6/1/2013, that Dr. Mumtaz Ahmed Hashmi ("MAH"), Director is holding the office of Chief Executive Officer, and the position has been termed '*Chief Executive Officer (Acting)*'. It was noted that MAH took role of the position without the approval and notification of the Commission, which is in violation of regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 ("Regulations") which were in force since 9/1/2012. It was also noted that the other 5 directors were aware of this development and were determined to be in violation of Section 12(1)(b), read with Section 11(1)(f) of the Insurance Ordinance, 2003 (the "Ordinance"), as they did not ensure that a 'fit and proper' person was appointed to the position of CEO.
3. Show Cause Notice (the "SCN"), dated 11/3/2013, was issued to the Appellants under regulation 2(2) of the Regulations and under Section 12(1)(b) read with section 11(1)(f) of the Ordinance, for appointing a person who was not 'fit and proper' to act as Chief Executive Officer and for MAH assuming the role of the CEO without Commission Approval. Hearing on the matter was held on 29/4/2013 where the Appellants explained their position. The Appellants filed an application for approval of MAH as CEO under regulation 2(2) of the Regulations on 30/4/2013.
4. The Respondent, dissatisfied with the response of the Appellant, imposed the penalty of Rs.1,000,000 on MAH under section 156 of the Ordinance for violation of Regulation 2(2) of the Regulations and Rs.200,000 on the remaining 5 directors under Section 12(1)(b) and 11(1)(f) of the Ordinance.



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5. The Appellants have preferred the instant appeal against the Impugned Order. The Appellant's counsel argued MAH was an existing director of the Company since 05/01/12 and the Company Secretary was not aware of the Regulations which came into force in 2012 while the default was committed in 2013. Consequently, the Company Secretary has resigned from the Company on 12/08/13. The non-filing of the application for seeking approval under Regulation 2(2) of the Regulations was a bona fide mistake and the same was and is truly regretted by the Appellants. Moreover, the instant case was the first case in which the Appellant was required take approval from the Commission) in accordance with regulation 2(2) of the Regulations. Subsequently approval of MAH as CEO under regulation 2(2) of the Regulations was given by the Respondent on 27/5/2013. Therefore, while deciding the matter and passing the Impugned Order, the Respondent failed to exercise the inherent power to do justice, failed to be fair and failed to be unbiased. The entire exercise of hearing and passing of the Impugned Order is, therefore, also in violation of section 24-A of the General Clauses Act, 1897. The penalty imposed is extremely harsh and is liable to be set aside.
6. The department's representative argued that the Appellant has accepted the default of Regulation 2(2) of the Regulations for failing to take approval from the Commission for appointment of MAH as CEO of the Company. Moreover MAH was an existing director and all existing directors of the Company had to ensure compliance with the Regulations by meeting the criteria of '*fit and proper*' within one year of issuance of the Regulations and in the event of failure to do so such directors had to be removed. Therefore, the terming of the Impugned order as being unfair or violation of the law is simply not sustainable. As envisaged by section 24-A of the General Clauses Act 1897 the Appellant throughout the proceedings were fully extended the opportunities to be aware of the offence charged. The Appellant did not ask



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for the hearing, however, they were still afforded an opportunity which they availed. Besides that the Appellant has not illustrated at what point the Respondent fell short over compliance with the said law. The penalty imposed on the Appellant is far less than prescribed in section 156 of the Ordinance.

7. We have heard the arguments. Sections 11(1)(f), 12(1)(b), 156 of the Ordinance and Regulation 2(2) of the Insurance Ordinance are reproduced for ease of reference:

Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012

2. Application and Scope:

(2) A proposed director of chief executive or principal officer of the insurer shall not assume the charge of office until their appointment has been approved by the commission.

Insurance Ordinance, 2000

11. Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

(f) the insurer meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;

12. Criteria for sound and prudent management.- (1) For the purposes of this Ordinance, the following shall, without limitation, be recognized as criteria for sound and prudent management of an insurer or applicant for registration as a person authorized to carry on insurance business:



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(b) each director and officer or (in the case of an applicant which is a body corporate incorporated outside Pakistan) the principal officer in Pakistan of the insurer or applicant is a fit and proper person to hold that position;

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

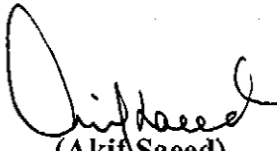
The Appellant has argued that the default was not willful and the Company Secretary was not aware of the law at the time of violation of the Regulations. Consequently, failure to comply with the said Regulations resulted in the Company Secretary's resignation from the Company on 12/08/13. The Respondent has argued that the Appellant has accepted the default of not complying with Regulation 2(2) of the Regulations. Moreover, MAH was an existing director and all existing directors of the Company also had to ensure that they meet the criteria for 'fit and proper person' within one year of issuance of the Regulations and the penalty imposed is still not the maximum as suggested by the law. We are of the view that ignorance of the law is no defense and the Appellant

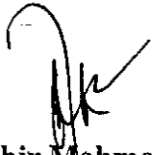


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should have taken consent from the Commission before appointment of MAH. However, subsequently the approval was granted by the Commission on 27/5/2013 which implies that although it was a procedural violation but has not impacted the overall objective of the regulation i.e. appointment of a person as CEO who fulfills the criteria outlined in regulation 2(2) of the Regulations. The Appellant has accepted the default and convinced the Bench that they will fully comply with the said provisions of the law and Regulations in future.

In view of the foregoing, taking a lenient view, we set aside the Impugned Order to the extent of penalty and strictly warn the Appellant to be careful in future.


(Akif Saeed)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 17 FEB 2015