



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Continental Insurance Company Limited

Show Cause Notice Issue Date: March 26, 2014

Date of Hearings: May 21, 2014

Attended By: Mr. Sohail Saleem , (Authorized Representative)
Mr. Zubair Ali Khan, (Authorized Representative)

Date of Order: June 30, 2014

ORDER

(Under Section 218 (1) read with Section 218 (6) of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against M/s Continental Insurance Company Limited and others (herein referred to as "the Respondent") for not complying with the provision of Section 218 (1) read with Section 218 (6) of the Companies Ordinance, 1984 ("the Ordinance").

Background Facts

2. M/s Continental Insurance Company Limited ("the Company") is a public limited company, incorporated under the Companies Ordinance, 1984 ("the Companies Ordinance").

3. The relevant provisions of Section 218 of the Ordinance, states that:

"Disclosure to members of directors' interest in contract appointing chief executive, managing agent or secretary.- Where a company—

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 1

(a) appoints, or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the company, in which appointment or contract any director of the company is in any way, whether directly or indirectly, concerned or interested;
or

(b) varies any such contract already in existence;

the company shall make out and attach to the report referred to in section 236 an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation."

4. During the examination of annual audited accounts for the year ended December 31, 2012 it was observed that the Company appointed Mr. Syed Wasimuddin Hashmi as Company Secretary during the year 2012 however, compliance with Section 218 of the Companies Ordinance, 1984 is not evident in the Directors Report to the members.

5. The company shall make out and attach to the report i.e. Director's report to the members referred to in section 236 of the Ordinance, an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation.

6. In response of the query raised by the Supervision wing of the Insurance Division, the Company replied that Syed Waseem Uddin Hashmi was appointed by the Board as Company Secretary at the same time that he was elected as a Director, i.e. in the EOGM held on December 08, 2012. This was duly disclosed/mentioned in the said EOGM meeting's minutes. Thereafter, a formal intimation to this effect was submitted to the SECP vide Form-29. Moreover, no director of the company was concerned or interested, whether directly or indirectly, in the appointment.

7. It was observed during the examination of the annual audited accounts for the year ended December 31, 2012 that Note 26 to the Accounts shows an amount of Rs. 1.8 million as remuneration to a Director of the Company. Whereas, this remuneration was not evident in the accounts of the Company for the previous year, which means that the Company had appointed an Executive Director (whole time director) for which the disclosure required through Section 218 of the Companies Ordinance, 2000 was not provided in the Directors Report.

8. The Company response was revealed that the Company violates the section 218 Sub Section 1 of the Companies Ordinance, 1984.

9. In view of the abovementioned facts, it appeared that the Respondent have failed to ensure compliance with the provisions of Section 218 (1) of the Ordinance, for which the penal action as provided under Section 218 (6) of the Ordinance may be taken against them.

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Show Cause Notice

10. Accordingly, the Show Cause Notice was issued on March 26, 2014 under Section 218 (1) read with Section 218 (6) of the Ordinance to the Chief Executive and Directors and the Company, calling upon them to show cause as to why the penalty, as provided under Section 218 (6) of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 218 (1) of the Ordinance.

Company's Response to the Show Cause Notice

11. The Company vides its letter dated April 9, 2014, submitted reply to the Show Cause Notice, whereby they had stated that:

".....we would like to apprise you that the entire shareholding of Continental Insurance Company comprises of the following members,

(1) Mr. Naveed Ahmed Siddiqui, (2) Mrs. Deeba Siddiqui, (3) Mis. Maya Siddiqui, (4) Mis. Zoya Siddiqui, (5) Mr. Ahmed Zafar Shaheen Siddiqui, (6) Mr. Muhammad Shaheen Siddiqui, (7) Syed Nayyar Hasnain Haider, (8) Syed Wasim Uddin Hashmi,

Out of the above serial number 1 to 4 are one family that constitute around 87.5% shareholding. Of these four members, serial 1 & 2 are husband and spouse whereas serial 3 & 4 are their daughters. Both the husband & spouse are Directors in the Company.

Similarly item 5 & 6 are father & son of whom father (serial 5) is also a director. These two members constitute 12.5% shareholding. The remaining two shareholders having the mandatory 500 share each are also the directors of the Company.

From the above, it may be inferred that 5 of these shareholders are already on the Board of directors whereas the remaining three are closely related to the directors as mentioned above.

There is no shareholding outside this closely-knit pattern.

....Mr. Wasim Uddin Hashmi was proposed and appointed as a Director and immediately thereafter in the same BOD meeting also as Company Secretary on December 08, 2012. This appointment of the said director as Company Secretary was duly effected through formal Board resolution. Thus, no other director was directly or indirectly interested in the said appointment.

....it may please be noted that Mr. Syed Wasim Uddin Hashmi had been duly and clearly mentioned by name under the head "Company Secretary" on the 'Company Information page' immediately preceding the Directors' Report in the Annual Financial Report of 2012. Furthermore, in the same page he has been mentioned even the second time as holding this designation under the head "Management".

The remuneration to the one of the Directors, namely Mr. Ahmed Zafar Shaheen Siddiqui, (who was simultaneously redesigned as an executive director by the Board)his remuneration was effected by way of formal Board resolution.

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In view of the foregoing clarification, it is humbly submitted that the essence of the section 218 of the Companies Ordinance, 1984 was at all times met in as far as disclosure to the Shareholders is concerned.

It is however conceded that there may have been inadvertent and entirely unintentional omission in scrupulous compliance with section 218 (1), yet as can be inferred by our above stated actions, there was neither any intention of knowingly or willfully withholding any material information from the shareholders, nor was such information withheld as at the very least the requisite information was duly conveyed and also made available.

May we therefore request your good self to kindly take our explanation fully into account and condone any lapse on our part since the same was neither intentional nor willful..... "

Hearings of the Case & Subsequent Developments

12. The hearing in the matter was scheduled on May 21, 2014 at 11:30 A.M., accordingly, the said hearing was attended by Mr. Sohail Saleem and Mr. Zubair Ali Khan, the authorized representative on behalf of the Company, the Chief Executive, and Directors of the Company (herein referred to as "the Representative).

13. Brief proceedings of the hearing of May 21, 2014 are as follows:

- a. The case was briefed by the Deputy Director with the instruction of the Director Insurance, the Representative replied, everyone has acknowledged the matter regarding the appointment and the same was acknowledged in the EOGM of the Company, however, we accept the noncompliance of the section 218 (1) of the Ordinance as far as the disclosure of the appointment in writing in concerned;
- b. The Representative again acknowledge the noncompliance and also sought the guidance from the Commission; the Director Insurance argued that the Director's Report would have been reviewed and republished again;
- c. The Representative replied that the all the shareholders of the Company are the family members as we stated in our reply to the SCN dated April 9, 2014 therefore, all the directors and shareholders are fully aware of the fact of the appointment of the Mr. Wasim Uddin as Company Secretary and also knew the fact that the remuneration of the one Director also endorsed and approved the Board of the Directors of the Company;
- d. The representative ensured that the Company should be very careful and will not repeat in future, and also ensure to comply the adherence of the laws and rules in its letter and spirit; Director Insurance told that the Company should circulate the appointment of the Company Secretary and the remuneration of the Director to their shareholders as required in section 218 (1) of the Ordinance,
- e. The Representative stated that we will submit this information within 15 days after circulation to you and also prayed for condone the matter as the non-compliance was not intentional and willful.

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Subsequent Submission after hearing

14. The Company vides its letter dated June 5, 2014 informed the Commission as per hearing the Company issued addendum to the Directors' Report to all the members of the Company showing the Company Secretary terms of appointment and mention the nature of Directors interest for the appointment vide circulation dated May 26, 2014.

Consideration of Company's Submissions

15. I have carefully examined and given due consideration to the written and verbal submissions of the Company, and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default under the relevant provision of the Ordinance. The Representative of the notice has also admitted this as well and showed the commitment of the Company to fulfill the requirement and will not repeat the wrong practice in future.

16. Before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day to day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence the Directors are gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care. In the instant case, however, the Directors have over looked and failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of the Section 218 of the Ordinance i.e. the Directors of the Company were required to follow the laws in letter and spirit at any cost, therefore, it could be legitimately inferred that the default was committed.

Conclusion

17. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 218 of the Ordinance is established, and to a greater extent, the Company has also accepted its default. Therefore, the penalty as provided under Section 218 (6) of the Ordinance can be imposed on the Company.

18. Section 218 sub section 6 of the Ordinance states that:

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"If default is made in complying with any of the provisions of the section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine which may extend to five thousand rupees."

Order

19. In exercise of the power conferred on me under Section 218 sub section 6 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company was not intent to hide the information to be written in the Directors' Report of the Company and ensure that such mistake will not repeat in future and at the time of hearing of the show cause notice the Respondent has endorsed that they will communicate the information to the shareholders of the Company through addendum and also submit the Commission of the same addendum of the Directors Report to the shareholders and also showed their willingness to adopt the provision of section 218 of the Ordinance in letter and spirit.

Also, the Company is hereby issued a **stern warning** that in case of similar non-compliance in future a stronger action against the Company will be taken.

20. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Tariq Hussain
Director