



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Mr. Masood Noorani, Chairman Board of Directors
Jubilee Life Insurance Company Limited

Show Cause Notice Issue Date: January 22, 2014

Date of Hearing: May 20, 2014

Attended By: 1. Mr. Naveed Ul Haq, Advocate Supreme Court;
2. Ms. Sidrah Jameel, Advocate Lower Court; and
3. Ms. Zara Bokhari, Associate.

Date of Order: July 2, 2014

ORDER

(Under Section 214 of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against Mr. Masood Noorani, Chairman Board of Directors, M/s Jubilee Life Insurance Company Limited ("the Company") for alleged non-compliance of the provisions of Section 214 of the Companies Ordinance, 1984 (the "Ordinance").

Background Facts

2. The relevant provisions of Section 214 of the Ordinance state that:

"(1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors:

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Insurance Division

Continuation Sheet 1

Provided that a director shall be deemed also to be interested or concerned if any of his relatives, as defined in the Explanation to sub-section (1) of section 195, is so interested or concerned.

(2) The disclosure required to be made by a director under sub-section (1) shall be made

(a) in the case of a contract or arrangement to be entered into, at the meeting of the directors at which the question of entering into the contract or arrangement is first taken into consideration or, if the director was not, on the date of that meeting, concerned or interested in the contract or arrangement, at the first meeting of the directors held after he becomes so concerned or interested; and

(b) in the case of any other contract or arrangement, at the first meeting of the directors held after the director becomes concerned or interested in the contract or arrangement.

(3) For the purposes of sub-sections (1) and (2), a general notice given to the directors to the effect that a director is a director or a member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

(4) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

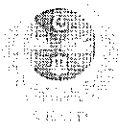
(5) No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the directors, or the director concerned takes reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given." (Underlined to put emphasis)

3. An Onsite Inspection was conducted on the order of the Commissioner (Insurance) under Section 59A of the Insurance Ordinance, 2000, which was passed on April 17, 2013.

4. During the course of the Onsite Inspection, it was noted that investments of the Company, especially trades in listed securities, have been made on the advice of its investment advisor, named M/s Noorani Associates, a sole-proprietorship. And, Mr. Masood Noorani, Chairman of the Board of Directors of the Company was found to be the owner of M/s Noorani Associates.

5. The Onsite Inspection Team reviewed the minutes of the meetings of the Board of Directors, which showed that the compliance of Section 214 of the Ordinance was not made by Mr. Masood Noorani.

Plus



Specifically, Section 214 of the Ordinance requires that where any director is directly or indirectly interested in any arrangement entered into by the company, he would be required to disclose it at a meeting of directors. The section also requires annual renewal of the notice of interest from any such director. And since, Mr. Masood Moorani was directly / indirectly interested in the aforementioned arrangement of investment advisory, which was entered into by the Company, so he was required to disclose it at a meeting of directors and obtain renewals of the notice of interest on annual basis.

6. The observation was taken up with the management of the Company, which responded as:

"The Board of Directors in its 50th meeting held on August 26, 2005 decided to reconstitute the Finance Committee and also resolved to appoint Mr. Noorani in the capacity of Investment Advisor and authorized Mr. Tawfiq H. Chinoy, a Director of the Company, to finalize the terms and conditions of the appointment.

The above assignment to perform extra service to the company by Mr. Noorani is in line with clause 76 of the Articles of Association of the Company, a copy of which is attached for your ready reference.

The Board of Directors was informed by Mr. Chinoy that Mr. Noorani is performing his functions as Investment Advisor since July 10, 2005, and his remuneration will be finalized soon.

Advisor at a monthly remuneration of Rs.150,000 per month effective from July 10, 2005. A copy of the letter is attached.

In the 59th meeting of the Board of Directors, the Board approved the enhancement of the remuneration to Rs.250,000 per month w.e.f. 01.04.2006 which is still valid.

Keeping in view the above facts, we are of the view that section 214 is not applicable in this case as the BOD itself has assigned the additional job to Mr. Noorani in line with the provision of Articles of Association of the Company."

7. It would be important to state that the appointment of Mr. Masood Noorani and/or his firm by the Board of Directors in their 50th meeting, which was held on August 26, 2005, and subsequent revision of his remuneration as the Company's investment advisor in the 59th meeting of the Board of Directors, does not grant any sort of exemption to Mr. Noorani from making a disclosure of interest at a meeting of the Directors of the Company and get the notice of disclosure renewed on annual basis.

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8. Thus, in view of the abovementioned paras hereof, it appeared that Mr. Masood Noorani has violated the said section by not giving notice of his interest at a meeting of board of directors and subsequent annual renewals of the notice have not been made, which attract penal provisions as provided under Section 214(6) of the Ordinance.

Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on January 22, 2014 under Section 214 of the Ordinance to Mr. Masood Noorani, Chairman Board of Directors of the Company, calling upon him to show cause as to why the penalty, as provided under Section 214(6) of the Ordinance, should not be imposed upon him for not complying with requirements of Section 214 of the Ordinance.

Company's Response to the Show Cause Notice

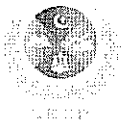
10. As per the abovementioned Show Cause Notice, Mr. Noorani was required to submit his response on the allegations stipulated in the Show Cause Notice within 14 days from the date thereof, or in case he wishes to appear in person he was required to indicate the same in writing. Accordingly, Mr. Noorani, vide his letter dated January 28, 2014, had stated that he wishes to appear in person to respond to the contents of the Show Cause Notice.

11. Subsequently, response to the Show Cause Notice was submitted through Mr. Manzoor Ahmed, Company Secretary of the Company, vide his letter dated February 6, 2014, which states that:

"...in the Company's 50th meeting of the Board of Directors, held on August 26, 2005, the Company had resolved to appoint Mr. Noorani in the capacity of Investment Advisor and had authorized the director of the Company to finalize the terms and conditions of this appointment.

2. With respect to the disclosure required under Section 214 of the Ordinance, we would like to take this opportunity to clarify that in the minutes of the meeting of the Board of Directors of the Company (which was attached in our previous correspondence for your ready reference), the Company was well aware of the fact that Mr. Noorani was the sole-proprietor of M/s Noorani Associates. The Board of Directors itself recommended this appointment, which was in line with Article 76 of the Articles of Association of the Company (also attached for ease of reference).

3. By approving the appointment and remuneration of Mr. Noorani, and outlining the same in the minutes of the meeting of the Board of Directors, the Company is of the



view that the disclosure required under Section 214 of the Ordinance was complete and absolute, and synonymous with the disclosure required under the same.

4. In addition to the above, the Company, at the 59th meeting of the Board, approved the enhancement of the remuneration of Mr. Noorani with effect from April 1, 2006, which is still valid. It is pertinent to note that at the time when said remuneration of Mr. Noorani was called into discussion at this meeting, Mr. Noorani withdrew from the same, being an interested director. This is recorded in the minutes of the meeting, and further evidences the fact that all directors at the Company were fully aware of Mr. Noorani's conflict of interest. We believe that this was equivalent to compliance with Section 214(4) of the Ordinance, which states that each disclosure required under Section 214(1) must be renewed for a further period at the end of each financial year.

5. In view of the above, we respectfully submit that Section 214 of the Ordinance is not applicable to the Company in the given circumstances, as the recording and approval of Mr. Noorani's remuneration as the Investment Advisor in the relevant meetings of the Board of Directors of the Company was tantamount to an express disclosure. Also, given the fact that the Company was cognizant of the fact that Mr. Noorani was the owner of M/s Noorani Associates, the Company believes that any explicit disclosure made would have been superfluous and extraneous.

6. It is therefore requested that the SECP withdraw the abovementioned Show Cause Notice..." (Underlined to put emphasis)

12. Vide the above-quoted reply, the Company Secretary has made submissions that:

- a. In the 50th meeting of the Board of Directors of the Company, which was held on August 26, 2005, the Board had resolved to appoint Mr. Noorani in the capacity of Investment Advisor;
- b. The Company was well aware of the fact that Mr. Noorani was the sole-proprietor of M/s Noorani Associates;
- c. The Board of Directors itself recommended this appointment, which was in line with Article 76 of the Articles of Association of the Company;
- d. At the 59th meeting of the Board, the Board had itself approved the enhancement of the remuneration of Mr. Noorani with effect from April 1, 2006, which is still valid. It is pertinent to note that at the time when said remuneration of Mr. Noorani was called into discussion at this meeting, Mr. Noorani withdrew from the same, being an interested director. This is recorded in the minutes of the meeting, and further evidences the fact that all directors at the Company were fully aware of Mr. Noorani's conflict of interest.



- e. By approving the appointment and remuneration of Mr. Noorani, and outlining the same in the minutes of the meeting of the Board of Directors, the Company is of the view that the disclosure required under Section 214 of the Ordinance was complete;
- f. Given the above facts, any explicit disclosure made would have been superfluous and extraneous.

13. In view of the above, it has been given to understand that the Board of Directors of the Company was well-aware of the fact that Mr. Noorani was directly or indirectly interested in the arrangement entered into by the Company with its investment advisor, M/s Noorani Associates, of which Mr. Noorani was the owner. However, the compliance of the explicit provisions of Section 214 of the Ordinance were required to be made in explicit terms, traces of which should have been reflected in the minutes of the meetings of the Board of Directors of the Company as an evidence of compliance of these provisions.

14. Subsequently, the Company, through their letter dated February 10, 2014, had disclosed that the Company will no longer be availing the services of Mr. Masood Noorani or M/s Noorani Associates and in this connection, the Company had already served notice dated December 6, 2013 to both.

Hearings of the Case & Subsequent Developments

15. The Commission had scheduled the hearing in the matter for May 20, 2014 at 11:00 a.m., which was communicated to Mr. Masood Noorani via the Commission's hearing notice no. ID/Enf/JLI/2014/19669 dated May 9, 2014.

16. The hearing of May 20, 2014 was attended by Mr. Naveed Ul Haq, Advocate Supreme Court, Ms. Sidrah Jameel, Advocate Lower Court and Ms. Zara Bokhari, Associate. The Power of Attorney handed over by the said persons empowered / authorized Mr. Naveed Ul Haq, Mr. Hasan Mandviwalla and Ms. Sidrah Jameel to act and appear for Mr. Noorani in his name on his behalf in the matter of the abovementioned Show Cause Notice, and that they be treated as true and lawful advocates, jointly and severally. Accordingly, Mr. Naveed Ul Haq and Ms. Sidrah Jameel shall be treated as lawful attorneys of Mr. Noorani, and hence, shall be referred to as the "Respondents" hereinafter.

17. The Respondents reiterated the contents of the Company's / Mr. Noorani's letters dated February 6, 2014 and February 10, 2014, and requested the Commission to take a lenient view and thus condone Mr. Masood Noorani.



Consideration of Company's Submissions

18. I have carefully examined and given due consideration to the written submissions of Mr. Masood Noorani, through Mr. Manzoor Ahmad, the Company Secretary of the Company, and through Mr. Naveed Ul Haq, Advocate and Ms. Sidrah Jameel, Advocate, and have also referred to the provisions of the Ordinance, I am of the view that there has been an established default of Section 214 of the Ordinance, as the appointment of Mr. Masood Noorani and/or his firm by the Board of Directors in their 50th meeting, which was held on August 26, 2005, and subsequent revision of his remuneration as the Company's investment advisor in the 59th meeting of the Board of Directors, does not grant any sort of exemption to Mr. Noorani from making a disclosure of interest at a meeting of the Directors of the Company and get the notice of disclosure renewed on annual basis. Hence, the penalty as provided under Section 214(6) of the Ordinance can be imposed onto Mr. Masood Noorani, the Chairman of the Board of the Directors of the Company.

19. However, before proceeding further, I find it relevant to discuss the duties of each Director. 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 failed to perform their duties with due care and prudence in respect of holding timely elections of Directors. Moreover, since the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 214 of the Ordinance, therefore, it could be legitimately inferred that the default was committed to the extent of explicit disclosure and annual renewal only.

20. Although the Board of Directors of the Company was aware of the fact that Mr. Noorani was directly or indirectly interested in the arrangement entered into by the Company with its investment advisor, M/s Noorani Associates, of which Mr. Noorani was the owner, however, the compliance of the explicit provisions of Section 214 of the Ordinance were required to be made in explicit terms, traces of which should have been reflected in the minutes of the meetings of the Board of Directors of the Company as evidence of compliance of these provisions.

Conclusion

21. 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 214 of

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the Ordinance is established. Therefore, the penalty as provided under Section 214(6) of the Ordinance can be imposed onto Mr. Masood Noorani, the Chairman of the Board of the Directors of the Company.

22. Section 214(6) of the Ordinance states that:

“(6) A director who fails to comply with sub-section (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.”

Order

23. In exercise of the power conferred on me under Section 214(6) of the Ordinance, instead of imposing the maximum penalty, take a lenient view, and thus, condone Mr. Masood Noorani due to the following reasons:

- a. THAT in the 50th meeting of the Board of Directors of the Company, which was held on August 26, 2005, the Board had resolved to appoint Mr. Noorani in the capacity of Investment Advisor, and subsequently, i.e. at the 59th meeting of the Board, the Board had itself approved the enhancement of the remuneration of Mr. Noorani with effect from April 1, 2006; and
- b. THAT the Company and its Board were aware of the fact that Mr. Noorani was the sole-proprietor of M/s Noorani Associates, as Mr. Noorani withdrew from the proceedings of the 59th meeting of the Board when the remunerations of the investment advisor came under discussion.

However, Mr. Masood Noorani is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against him shall be taken.

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

Tariq Hussain
Director