



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Ms. Nasreen Rashid, Executive Director (Insurance)

In the matter of

M/s GIP Surveyors (Private) Limited

Date of Show-Cause Notice: July 19, 2010
Date of Hearing: July 30, 2010
Attended by: Mr. Muhammad Iftekhar, Chief Executive Officer
Date of Order: December 08, 2010

ORDER

(Under Section 111 Read with Section 112(3) and Section 112(6) of the
Insurance Ordinance, 2000)

This Order shall dispose of the proceedings initiated against M/s GIP Surveyors (Private) Limited (hereinafter referred to as ("the Company") for making default in complying with the requirements of Section 111 and Section 112(3) of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

The relevant facts for the disposal of this case are briefly stated as under:

1. The provisions of Section 111 of the Ordinance states that:

"Subject to sub-section (2), it shall be unlawful for any person to act for remuneration as a surveyor, loss adjuster, or loss assessor (by whatever title called) unless such person is-

- (a) an adjuster of aviation or maritime losses; or*
- (b) a person licensed as a surveyor under this Ordinance."*

2. AND WHEREAS, the conditions of the insurance surveying license are laid down under Section 112(3) of the Ordinance, and Clause (c) of which states that:

"No person shall be entitled to apply for or to hold a licence as a surveyor under this Ordinance unless the following conditions are fulfilled at the date of the application and at all times during which the licence is held:



...
(c) reports issued in respect of surveys conducted by the person are signed by natural persons, registered under section 113 as authorised surveying officers;
..."

3. AND WHEREAS, Sub-Rule 3 of Rule 19 of the Insurance Rules, 2002 illustrates that:

"Every application made under sub-rule (1) and sub-rule (2) shall be accompanied by a declaration by the applicant stating that-

- (a) the information presented in accordance with sub-rule (1) or sub-rule (2), as the case may be, is complete and correct;
- (b) the applicant has complied with the requirements of the Ordinance and rules concerning the required qualifications of an insurance surveyor;
- (c) the applicant is not appointed as an insurance agent of an insurance company;
- (d) the applicant undertakes to comply and, in the case of an existing insurance surveyor, declares that he has during the previous twelve months complied, with the Ordinance and rules concerning the conduct of insurance surveyors;
- (e) the insurance surveyor or, in the case of a body corporate, any director of the body corporate, or officer of the body corporate engaging in the business of insurance surveying or, in the case of a firm, any partner of the firm, or officer of the firm engaging in the business of insurance surveying, is not disqualified from acting as an insurance surveyor by virtue of -
 - (i) being a minor;
 - (ii) having been found of unsound mind by a Court of competent jurisdiction
 - (iii) having been found guilty, within five years preceding the date of the declaration, of criminal misappropriation or criminal breach of trust, cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction;
 - (iv) having served any custodial sentence imposed by a Court of competent jurisdiction, ending within five years preceding the date of the declaration;
 - (v) having been found guilty by a Court of competent jurisdiction of any offence involving insurance; or
 - (vi) having been otherwise declared as disqualified by the Insurance Tribunal, other than for a term which had expired prior to the date of the declaration."



4. The Company had filed an application for the renewal of their insurance surveying license under Section 112 of the Ordinance in respect of Fire, Marine and Motor classes.
5. During the process of scrutiny of the aforesaid application, it was noted in the Form, prescribed under Circular No. 25 of 2009 dated August 19, 2009, that the applicant had conducted 104 surveys in respect of the Miscellaneous (Cash Loss and Others) class, for which neither the Company had the license nor its Authorized Surveying Officer (ASO) was registered under the said class.
6. Therefore, the Company was asked to provide the signed copies of all such survey reports issued in respect of the Miscellaneous (Cash Loss and Others) class during the period.
7. In response to the aforesaid letter, the Company provided the survey reports which were found to be signed by the person(s) not registered under Section 113 of the Ordinance as ASOs for the Miscellaneous (Cash Loss & Others) class, thereby violating the mandatory requirements of Section 111 and Section 112(3)(c) of the Ordinance.
8. An inquiry was made with the relevant insurance companies who had appointed the Company for conducting such surveys vide the Insurance Division's letter dated May 20, 2010. The insurance companies have confirmed that the Company has conducted these surveys.

Show-Cause Notice

9. On May 20, 2010, a Show-Cause Notice under Section 111 read with Section 112(3) and Section 112(6) of the Ordinance was served to the Directors and Chief Executive of the Company, whereby the Company was asked to clarify their position as to why the penalty under Section 112(6) of the Ordinance may not be imposed on them for violating the provisions of Section 111 and Section 112(3) of the Ordinance.

Company's Reply

10. The Company, vide their letter of July 22, 2010, responded to the aforesaid Show Cause Notice, wherein the Company stated that the Cash Losses came under the category of Fire class under the repealed Insurance Act, 1938. Additionally, they were not aware of the changes made in this respect.
11. And through the same letter, the Company also opted to be called for a hearing. Therefore, the hearing was scheduled for July 30, 2010 at 03:30 p.m.,



which was communicated to Mr. M. Iftexhar A. Shaikh, Chief Executive of the Company, vide Commission's letter of July 26, 2010.

Proceedings of the Hearing

12. The said hearing was attended by Mr. Muhammad Iftexhar A. Shaikh, Chief Executive of the Company.
13. Brief proceedings of the hearing are as follows:
 - (a) During the hearing Mr. Iftexhar insisted that they were not aware of the fact that Cash-Losses do not fall under the Fire class any more, as was the case under the repealed Act of 1938.
 - (b) Executive Director - Insurance stated that the ignorance of Law is no excuse. Further that it is the responsibility of the management to be aware of the applicable laws and comply with them. And apparently, no other company is unaware of this major change.
 - (c) Director - Insurance briefed about the penalty that can be imposed under the Ordinance.
 - (d) Mr. Iftexhar admitted that the Company has contravened the provisions of the Ordinance.
 - (e) Executive Director - Insurance inquired about the insurance companies who have appointed the Company on their panel of approved surveyors. Mr. Iftexhar replied that they are on the panel of the following insurers:
 - i. Adamjee Insurance Company Limited
 - ii. EFU General Insurance Limited
 - iii. Saudi Pak Insurance Company Limited
 - iv. Takaful Pakistan Limited
 - v. Pak-Kuwait Takaful Company Limited
 - vi. Pak-Qatar General Takaful Limited
 - vii. Premier Insurance Limited
 - (f) Mr. Iftexhar, while admitting the contravention of the Ordinance, requested the authority to take a lenient view. He further committed to ensure compliance of the law in future.



Consideration of the Submission

14. 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 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. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirements of Section 111 and Section 112(3) of the Ordinance, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

Conclusion

15. After carefully examining the documents, arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 111 read with Section 112(3)(c) of the Ordinance is established and the Company has also accepted it.

16. It has also been established that the Company has contravened the provisions of the Ordinance by:

- a. Conducting surveys in Miscellaneous (Cash Loss and Others) class of business for which neither they had the license nor the Authorized Surveying Officers of the Company had been granted the registration, and
- b. Submitting a false and misleading declaration to the Commission that they have complied with the provisions of the Ordinance and Rules during the preceding 12 months.

17. Additionally, the Company has been misleading their clientele at large by mentioning Miscellaneous class on the face of their letterhead, thereby giving the impression that the Company possesses the license for the Miscellaneous class as well.

18. Therefore, the penalty as provided under Section 112(6) of the Ordinance can be imposed on the Company, which states that:

"If the Commission believes on reasonable grounds that a licensed surveyor has failed to comply, or has ceased to comply, with a condition of his licence, the Commission may by notice to the licensed surveyor of not less than two weeks cancel that licence.



Provided that a licence shall not be cancelled under this sub-section without giving the holder of the licence an opportunity to be heard."

Order

19. In exercise of the power conferred on me under Section 112(6) of the Ordinance, I have decided to cancel the insurance surveying license of the Company with effect from December 28, 2010, inline with the notice period of at least two weeks as stipulated under Section 112(6) of the Ordinance.

20. *M/s. GIP Surveyors (Private) Limited* are hereby directed to confirm the compliance of this Order within thirty (30) days from the receipt of this Order for the information and record of the Commission.

Nasreen Rashid
Executive Director