



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 39 of 2012

M/s Capital Insurance Company Limited

.... Appellant

Versus

Executive Director, (Insurance Division) Karachi
Securities and Exchange Commission of Pakistan

.... Respondent

Date of hearing:

30/04/15

Present:

For Appellant:

Ch. Sheraz Suhail, Advocate

For Respondent:

1. Shahid Nasim, Executive Director
2. Tariq Hussain, Director Insurance

ORDER

1. This order shall dispose of Appeal No. 39 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 12/07/12 ("the Impugned Order") passed by the Respondent, wherein a penalty of Rs.100,000/- was imposed under section 156 of the Insurance Ordinance 2000 ("the Ordinance") for violation of section 28 read with section 11(1)(a) of the Ordinance.



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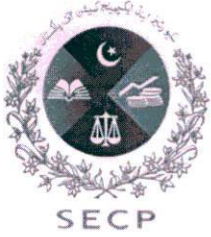
2. The facts leading to this case are that the unaudited financial statements for the three quarters ended 30/09/11 revealed that the paid-up capital of Capital Insurance Company Limited (“the Appellant”) as on 30/09/11 was Rs.262,705,750/-, which was below the requirement of minimum capital contained in section 28 and 11(1)(a) of the Ordinance. Therefore, the Securities and Exchange Commission of Pakistan (“the Commission”) vide its letter dated 21/11/11 advised the Appellant to provide its future plan as to how compliance with section 28 of the Ordinance shall be made before 31/12/11.
3. The Appellant replied vide letter dated 25/11/11 that it is fully aware of its obligation to comply with the requirements of minimum paid-up capital and stated that it intends to offer right issue to the existing shareholders for the rest of the amount of Rs. 37.29 million to meet the minimum paid-up capital requirement of Rs. 300 million before close of the year 2011. Thereafter, the Appellant vide its letter dated 28/12/11 requested the Commission to grant an extension of one year for the increase in its paid-up capital based on the fact that the offered right shares were not subscribed by the existing shareholders up to the last date of right acceptance i.e. 28/12/11. The Commission vide its letter dated 09/01/12 refused to grant extension to the Appellant for the increase in its paid-up capital based on the fact that the Commission has no power to grant any relaxation/exemption in this regard. The Appellant, therefore, contravened the provisions of section 28 read with section 11(1)(a) of the Ordinance, relating to the minimum paid-up capital requirement as on 31/12/11.
4. Therefore, the Respondent issued a Show Cause Notice (“SCN”) dated 18/01/12 under section 28 read with section 11(1)(a) and section 156 of the Ordinance to the Chief Executive and Directors of the Appellant, calling upon them to show cause as to why the penalty as provided in section 156 of the Ordinance should not be imposed. The Appellant submitted its response vide letter dated 28/01/12



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and later hearing on the matter was held on 03/02/12. The Respondent being dissatisfied with the response held that the Appellant has not yet complied with the statutory requirement pertinent to the minimum paid-up share capital and this fact was admitted even prior to issuance of SCN dated 18/01/12. Therefore, a penalty of Rs. 100,000 was imposed on the Appellant in exercise of powers conferred under section 156 of the Ordinance.

5. The Appellant, being aggrieved by the Impugned Order filed an appeal before the Appellate Bench on the following grounds and prayed to set aside the Impugned Order and to waive off the penalty imposed therein:
- i. The penalty imposed on the Appellant by Impugned Order is against the law and facts, passed without lawful authority and jurisdiction.
 - ii. The alleged failure to comply with the minimum paid up capital requirement was beyond control of the Appellant and despite bona fide efforts, the needful could not have been done as same was communicated to the Respondent in reply of SCN. Further, the Appellant since 01.01.2012 has not undertaken any business, therefore it has not contravened any provision of the Ordinance.
 - iii. The Respondent has no power under the Ordinance to impose the penalty. The Impugned Order was passed without valid reasoning/justification and as such the same is hit by section 24-A of General Clauses Act.
 - iv. The contents of SCN reply dated 31.01.12 were sufficient to answer the alleged default wherein it was stated that the Appellant despite all its bona fide efforts failed to fulfill requirement of minimum paid up capital. The Appellant cannot be penalized for the circumstances, beyond its control. The shareholders did not subscribe the right issue therefore the Appellant failed to meet the requirement of minimum paid up capital.



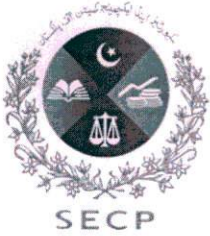
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- v. The contentions/arguments raised by the representative of the Appellant were not properly appreciated by the Respondent, therefore miscarriage of justice has been caused.
 - vi. The provision of Section 156 of the Ordinance is not attracted to the case in hand.
 - vii. That the option before the Appellant as explained by the representative at the time of hearing i.e. to look forward for winding up or merger with another insurer was sufficient that the Appellant was not at default.
 - viii. That the request of the Appellant for extension/relaxation in the requirement of minimum paid up capital was illegally and unlawfully declined.
 - ix. The conclusion drawn in the Impugned Order by the Respondent is erroneous and against the record.
6. The Respondent replied to the appeal through para wise comments and rebutted the grounds of appeal and arguments of the Appellant against the Impugned Order. The Respondent reiterated the arguments stated in the Impugned Order and prayed to dismiss the appeal. However, the Respondent rebutted the grounds of appeal in the following manner:
- i. The Respondent has the power to impose penalty on Appellant under section 156 of the ordinance. Furthermore S.R.O 666 (1)/2009 dated 16.07.09 empowers Executive Director Insurance to take cognizance for default of any of the provisions of the Ordinance.
 - ii. The submissions made by the Appellant were considered. However the Appellant was responsible to maintain the minimum paid up capital which it failed to maintain. It is mandatory for all the insurance companies to maintain required level of paid up capital at all times.



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- iii. The Respondent vide letter dated 21.11.11 drawn the attention of the Appellant towards the sub section 2 of section 28 of the Ordinance amended vide official gazette Notification SRO 291(1)/2007 dated 26.03.07 whereby the minimum paid up capital requirements for the insurer registered under this Ordinance were prescribed. However, Appellant failed to comply with the requirements and placed a request for relaxation/exemption. The said request was denied because the Respondent had no power to grant such relaxation under the Ordinance.
- iv. The cessation of insurance business by the Appellant does not bear upon the validity and application of section 11 and 28 of the Ordinance.
- v. The Impugned Order is well reasoned order and the Respondent has taken into account all the submissions of the Appellant. Further the Appellant has failed to point any specific submission which was not considered while Impugned Order was passed.
- vi. The verbal submissions of the Appellant were not different from written submissions.
- vii. Section 156 empowers the Commission to impose the fine on the insurer at default.
- viii. As per express provisions of section 11 and 28 of the Ordinance the Appellant was solely responsible to comply with the requirements. External factors could not be considered as valid excuse to avoid the process of law.
- ix. The Appellant got enough time to meet the requirements of section 11 and 28, however it failed to comply with.
- x. The conclusion drawn by the Respondent through the Impugned Order was as per the settled principles and in accordance with the express provisions of the Ordinance.



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7. We have heard the parties i.e. Appellant and Respondent at length and perused the relevant record with the able assistance of the parties.
8. The Appellant has admitted its default and failure to comply with the requirement of minimum paid up capital contained in section 28 and 11(1)(a) of the Ordinance, therefore it could not be exempted from the liability at all.
9. However, the Appellant has tried to establish its bona fide by stating that it tried to issue right shares to meet the requirement of minimum paid up capital but right shares were not subscribed by the shareholders.
10. Effort in this regard cannot be considered compliance with the legal requirement. The Appellant was required to ensure compliance with the minimum paid up capital as required under section 28 read with section 11(1)(a) of the Ordinance.
11. As per Article 113 of QANUN-E-SHAHADAT ORDER, 1984 "Facts admitted by the party need not be proved". Article 113 is reproduced for reference;

"113. Facts admitted need not be proved: No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may in its discretion, require the facts admitted to be proved otherwise than by such admissions."
12. The Appellant has failed to establish that the Respondent has acted beyond the jurisdiction and authority by passing the Impugned Order. The Appellant further failed to point out any irregularity or illegality in the Impugned Order.
13. The submissions made by the Appellant that it has not undertaken any business since 01.01.12 and that the existing shareholders did not subscribe to the offer for right issue, have no substances or strength which could exonerate the Appellant




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from the consequences of the violation attributed through the Impugned Order. The further submission of the Appellant that it intends to pursue its merger with another insurer and last option is to winding up if it fails to meet the requirement of minimum paid up capital, cannot be considered as valid ground to escape from the liability.

14. In view of the aforesaid, there being no reason to interfere with the Impugned Order dated 12/07/12 passed by the Respondent for violation of section 28 and section 11(1)(a) of the Ordinance under section 156 of the ordinance, therefore appeal is dismissed.

15. Parties to bear their own cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 15 JUL 2015