



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 01 of 2021

IGI General Insurance Limited

...Appellant

versus

Executive Director/HOD, Adjudication Department-I, SECP

...Respondent

Date of hearing:

April 17, 2025

Present:

For the Appellants:

1. Mr. Nadeem Ahmed (Authorized Representative)
2. Ms. Samya Saeed Khan (Company Secretary)
3. Mr. Syed Awais Amjad

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication, SECP
2. Mr. Shafiq ur Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 01 of 2021 filed by IGI General Insurance Limited (the Appellant) against the Order dated December 03, 2020 (Impugned Order) passed by the Executive Director/Head of Department, Adjudication-I (the Respondent) under section 156 of



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the Insurance Ordinance, 2000 (the Ordinance), on account of the default of Rule 2(1)(b)(i) and 4(2) of the Credit and Suretyship (Conduct of Business) Rules, 2018 (the Rules).

2. The brief facts of the case are that the Appellant is a company registered under the Ordinance to carry on non-life insurance business in Pakistan. While examining the Annual Audited Accounts and regulatory returns of the Appellant for the year ended December 31, 2018, it was revealed that the Appellant, *prima facie*, did not comply with the requirement of Rule 4(2) of the Rules as the adequate collateral was not procured in respect of its guarantees/bond policies of an amount equivalent to at least 80% of sum insured/amount of bond/guarantee less reinsurance. It was also observed that the Appellant kept the collateral in the form of 'undated cheques' which is, *prima facie*, in contravention of the definition of collateral as given under Rule 2(1)(b)(i) of the Rules.
3. In light of the observations of the non-compliance of the regulatory provisions, the Securities and Exchange Commission of Pakistan (the Commission) vide its email dated January 28, 2020 advised the Appellant to clarify its position in the matter. In response, the Appellant vide its letter dated February 11, 2020 submitted its reply. The reply of the Appellant was not found to be satisfactory, therefore, a show cause notice dated May 28, 2020 (the SCN) was served upon the Appellant. The Appellant vide its letter dated June 10, 2020 submitted its written reply to the SCN and hearing in the matter was held on October 26, 2020. The Respondent not being satisfied with the response and submissions of the Appellant, and in exercise of powers conferred under Section 156 of the Ordinance, imposed a penalty of Rs. 175,000/- (Rupees One Hundred Seventy Thousand only) for the contravention of Rule 2(1)(b)(i) and Rule 4(2) of the Rules.
4. The Appellant has preferred this appeal *inter alia* on the grounds that the Impugned order has been passed without considering the facts and the relevant law. The Appellant stated that by obtaining 'un-dated cheques', it had not violated the provisions of Rule 2(1)(b)(i) of the Rules as it had not obtained 'post-dated cheques' which are specifically and expressly prohibited



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under the Rule. The Appellant stated that in terms of the cardinal principle of interpretation of laws internationally followed and embodied in the Latin Maxim '*Nulla Poena Sine lege*' meaning that everything which is not prohibited is allowed, and that as per the Appellants interpretation of the Rule 2(1)(b)(i), the acceptance of 'un-dated cheques' has not been prohibited and that the same are acceptable as a 'collateral' under the law. The Appellant further argued that the Impugned Order is not a speaking order as the submissions of the Appellant were not considered/discussed in the Impugned order. The Appellant submitted that the intent of the provisions in question of the Rules was that cheques in toto are not to be accepted for the purposes of 'collateral', then the Rules should have categorically not only prohibited acceptance of the 'post-dated cheques' but in fact 'cheques' altogether. With regard to the legality of an incomplete negotiable instrument, the Appellant placed reliance on (2004 CLD 1577), wherein it was held that '*Section 20 of the Negotiable Instruments Act, provides that where one person signs and delivers to another a paper stamped in accordance with law, either wholly blank or having written thereon an incomplete negotiable instrument, in order that it may be made, or completed into a negotiable instrument, he thereby gives prima facie authority to the person who receives that paper to make or complete it, as the case maybe into a negotiable instrument for any amount*'. The Appellant further submitted that the use and practice of submitting 'undated cheques' is a widely accepted practice in commerce and trade and the same practice had been adopted by the Appellant.

5. The Respondent countered that arguments of the Appellant and submitted that the Impugned Order is a speaking order, wherein the submissions of the Appellant were considered and an order was passed accordingly. The Respondent submitted that the intent and spirit of the law can well be understood from the provisions contained in Rule 2(1)(b)(i) which defines collateral as '*Cash-ready money which can be used as money without being converted into another form and which circulates as money including bank bills but does not include promissory notes or post-dated cheques*'. The Respondent stated that in practicality, an undated cheque does not fulfill the criteria of collateral as laid down under the provision of the Rules, because it needs to be presented to a bank, who can honor it if the amount of the cheque is available in the bank



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account for encashment on the date of submission, therefore, undated cheques or even cheques cannot be considered as valid or admissible collaterals under the Rules. The Respondent further stated that the wordings of Rule 2(1)(b)(i), expressly state that Collateral means '*ready money which can be used as money without being converted into another form...*' and in the case of an undated cheque, it seems that the drawer wants to deffer it. The Respondent further submitted that undated cheques are not an asset as it is a differed mode of payment and in no way can qualify as a realized asset. The Respondent further placed reliance on a judgment rendered by the Sindh High Court in (*YLR 2021 114*), in which it was held that when adequate or effective collateral are not taken by a company then it does not indemnify the loss on time. The Respondent stated that the guarantees are unconditional and incase of encashment of any guarantee, the collateral should be held in 'ready money form' and in the case of an un-dated cheque, funds might not be available in an account at the time encashment. The Respondent while concluding the arguments, submitted that the Impugned Order may be upheld as it is a speaking order which was passed after considering the submissions of the Appellant.

6. The Bench has heard the arguments of both the parties and perused the record. In view of the foregoing discussion and upon careful consideration of the submissions made by both the Appellant and the Respondent, as well as the material placed on record, it is evident that the Appellant failed to comply with the mandatory requirements of Rules 2(1)(b)(i) and 4(2) of the Rules. The use of undated cheques as collateral does not satisfy the definition of "ready money" as envisaged under the Rules, and therefore, does not constitute valid collateral under the applicable legal framework. The Bench has also noted that the Impugned Order is a speaking order, wherein the Respondent has duly considered the contentions and defenses raised by the Appellant, and passed a reasoned order in accordance with law. With regard to the interpretation of Rule 2(1)(b)(i), the Bench has noted that the Rule aims to ensure '*liquid and realizable assets*' as collateral and although 'undated cheques' are not explicitly excluded like post-dated cheques, their inability to be encashed immediately makes them inconsistent with "ready money." The purposive interpretation leans towards *substance* and that collateral must be available without further acts like deposit or verification of account funds. The Bench has




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further noted that the Appellant's use of undated cheques fails to meet the 80% requirement in realizable terms as required under Rule 4(2) of the Rules. The Bench would further like to reiterate that the issue is not with regard to the legality of an 'undated negotiable instrument' but it is a matter of the form of a collateral and as envisaged under the Rules, an 'undated cheque' does not qualify as a form of 'cash-ready money'.

7. In view of the foregoing, the Bench finds no reason to interfere in the Impugned Order and accordingly the Appeal is dismissed, without any order as to cost.


(Zeeshan Rehman Khattak)
Commissioner


(Akif Saeed)
Chairman/Commissioner

Announced on: **02 JUN 2025**