



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 03 of 2020

Trafco Insurance Company Limited

Versus

...Appellant

Commissioner (Insurance) SECP

...Respondent

Date of hearing:

August 22, 2024

Present:

For the Appellant:

Mr. Munir Ahmed (CEO)  
Mr. Tahir Malik (Company Representative)

For the Respondent:

Mr. Shafique-Ur- Rehman, Assistant Joint Director, Adjudication Department-I, Adjudication Division, SECP

## ORDER

1. This Order shall dispose of Appeal No. 03 of 2020 filed by Trafco Insurance Company Limited (the "Appellant") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order dated November 04, 2019 (the "Impugned Order") passed by the Commissioner Insurance (the "Respondent") under Section 45 of the Insurance Ordinance, 2000 (the Ordinance), Section 2(1)(11) and Section 220 of the Companies Act, 2017 (the Act) read with Section 156 of the Ordinance.



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2. The brief facts of the instant appeal are that the Appellant is registered under the Ordinance to carry on the business of non-life insurance in Pakistan. That during the examination of the annual audited accounts and regulatory returns for the year ended December 31, 2017, the Appellant was advised to submit to the Securities and Exchange Commission of Pakistan (the "Commission") the management letter (the "ML") issued by the statutory auditors of the Appellant Company. Perusal of the ML revealed the following observations that were made by the statutory auditors during the audit of the Appellant company for the year ended December 31, 2017;
  - i. The Appellant had no title documents of property, plant and equipment amounting to Rs. 83,977,839; The Appellant does not maintain any fixed assets register; In the absence of relevant documentation, the ownership of the property, plant and equipment cannot be ascertained. This leads to the possibility that the Company's assets are overstated and the lack of a fixed asset register stipulates that any misappropriated assets remain untapped.
  - ii. The Appellant had not carried out revaluation of its assets since 2007. This practice is in contravention to the requirements of the International Accounting 'standard - 16 Property, Plant and Equipment". In the absence of a latest revaluation, the financial statements do not depict the fair value of the assets;
  - iii. The Appellant had no agreement regarding the advance given to the supplier for purchase of land amounting to Rs. 31,125,000.
  
3. The Commission, vide letter dated August 17, 2018 advised the Appellant for clarification on the matters stated in the ML along with timelines for rectification. The Appellant submitted the response vide letter dated August 27, 2018, and indicated that "*matters stated in audit report will be settled up to end of this year positively*". The Commission also advised the Appellant to provide detail of the surplus on revaluation of property and equipment amounting to Rs. 7.18 million and also advised to provide latest revaluation. The Appellant submitted that "*Rs. 7.18 million revaluation of Property was on Land and Building*". However, the Appellant did not submit the detail of surplus on revaluation of property and equipment and also did not submit the latest revaluation report. Total assets of the Appellant as on December 31, 2017 were Rs. 132.96 million, out of which, the statutory auditors were unable to obtain sufficient evidence for the verification of Rs. 115.10 million, which constituted 86% of the total assets of the Company. The Appellant did not maintain a fixed asset register due to which Rs. 83.97 million worth of property, plant and



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equipment could not be verified and also the Company did not provide sufficient evidence regarding advance to suppliers amounting to Rs. 31.12 million. It was inferred that the financial statements of the Company did not present a true and fair view of the affairs of the Company. Subsequently, a Show-Cause Notice dated January 17, 2019 (the SCN) was issued to the Appellant. The Appellant did not submit a reply to the SCN, however, hearing in the matter was held on September 27, 2019, which was attended by the Representative. The Respondent being dissatisfied with the response of Appellant imposed a fine of Rs. 1,000,000/- (One Million Only).

4. The Appellant has filed this appeal, *inter alia*, on the grounds that the Respondent has failed to consider the fact that the balance sheet of the company in respect of fixed assets and other tangible remained almost unchanged for the last 10 years and the same balance sheet has been submitted after being audited, however, no objection was ever raised earlier by the Commission. The Appellant further argued that the register of fixed asset was furnished through the auditors who proceeded in a casual manner without carrying on any verification and the same register was also submitted to the Respondent at the time of the hearing. The Appellant stated that the Respondent is not justified in doubting the authenticity of the balance sheet, as it has already been approved by the Commission in 2015 when the current management took control of the Appellant company. The Appellant asserted that in order to give a 'true and fair' view of the financial statements, the amount of non-verification of the property and equipment, as well as surplus on revaluation has been written-off in the financial statements for the year ended December 31, 2021. The Appellant stated that the penalty is unjust given its proactive efforts to rectify the situation and its commitment to regulatory compliance. The Appellant further stated that the amount of non-verification of advance to suppliers has been written-off during the audit of financial statements for the year ended December 31, 2020. While concluding the arguments, the Appellant stated that the Respondent was not justified in imposing such a huge penalty merely on the auditor's observation without applying its own judicious mind and requested that the Impugned order be set aside.
5. The Respondent refuted the Appellant's claims asserting that the Impugned order is lawful and with proper jurisdiction as it is based on established facts of the case and passed in light of the applicable provisions of the law after giving the Appellant an ample opportunity of presenting their stance. The Respondent stated that the transfer of shares from the previous management to the current management was corresponding to the total assets and liabilities of the Appellant company



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at the time of transfer of shares, and the Commission only granted the approval in terms of Section 67 of the Ordinance, on the application of the management of the Appellant company at the time. The Respondent further emphasized that the balance sheet was not the subject matter of such approval for the acquisition and the Appellant cannot judiciously put the onus on previous owners for not having documents of its fixed assets, as it was the sole responsibility of the new management to ensure that it has documentations of all assets specified in the fixed asset register. The Respondent further argued that subsequent rectification in the financial statements of the Appellant company in the years 2020 and 2021, reflects that there is admission on part of the Appellant that the accounts the year ended December 2017, were not giving a 'true and fair' picture and requested that the Impugned order passed against the Appellant be upheld due to the casual approach of the Appellant towards the requirements of the all applicable laws. The Respondent further emphasized that the decision to impose a token penalty, rather than the maximum allowed, reflected the Respondent's leniency towards the Appellant as the breach of the relevant laws was apparent from the facts of the matter and the Appellant was granted reasonable time to take corrective action against the breach but the Appellant showed a casual approach. Furthermore, the Respondent submitted that the law did not require proof of deliberate intent to justify a penalty and the Appellant's admission of non-compliance alone sufficed. Lastly, the Respondent reiterated that no new legal ground was introduced in the Appeal reinforcing the need to conclude the matter based on the current arguments and evidence.

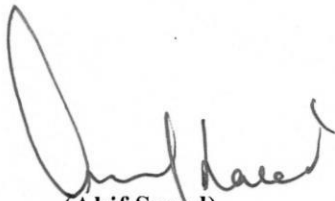
6. The Appellate Bench (the Bench) has heard the parties and perused the record. The Bench is of the view that the Appellant was bound to adhere to all relevant regulatory laws. The Bench notes that the Appellant did not maintain a fixed asset register due to which the Rs. 83.97 million worth of property, plant and equipment remained unverified. Similarly, the Appellant did not provide sufficient evidence regarding advance to suppliers amounting to Rs. 31.12 million. It is also noted that the revaluation of property amounting to Rs. 7.18 million was also questionable because the Company did not have any fixed asset register and fresh revaluation report.
7. The Bench has also noted that during the course of arguments of the appeal, the Appellant has conveniently put the onus on the previous owners for not having documents of its fixed assets and also that the Commission did not have any objection earlier for not maintaining a fixed asset register, which is not a tenable argument. However, the Bench has taken into consideration the fact




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that the Appellant has subsequently written off the non-verified property and equipment during the audit of financial statements for the year ended December 31, 2021, and the non-verified advance to suppliers has been written off during the audit of financial statements for the year ended December 31, 2021. The Bench appreciates that the Appellant has made the relevant efforts and written-off any unverified amounts, but the same does not absolve the Appellant from the breach committed earlier, by not maintaining proper books and records of the Company as at December 31, 2017.

8. In view of the foregoing, the Bench finds no reason to interfere with the Impugned order, therefore, by maintaining the Impugned Order, we hereby **dismiss** this Appeal without any order as to costs.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Abdul Rehman Warraich)  
Commissioner

Announced on:

08 OCT 2024