



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 07 of 2019

1. Asian Mutual Insurance Company (Guarantee) Limited
2. Mr. A. Rashid Mirza
3. Mr. Hassan Muhammad Mirza
4. Mr. Faisal Rashid
5. Mrs. Bilquis Hussain
6. Mr. M. Hamza Ali Rashid
7. Mr. Aftab Ahmad

...Appellants

Versus

Commissioner, Insurance

...Respondent

Date of hearing:

April 10, 2025

Present:

For the Appellants:

Mr. Faisal Rashid

For the Respondent:

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

ORDER

1. This Order shall dispose of Appeal No. 07 of 2019 filed by the Asian Mutual Insurance Company (Guarantee) Limited (the Company) and its directors ("the Appellants") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "the SECP Act") against the Order dated November 14, 2018 (the "Impugned Order") passed by the Commissioner (Insurance) ("the Respondent") under Section 63 read with Section 156 of the Insurance Ordinance, 2000 ("the Ordinance").



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2. The brief facts of the case are that the Appellant Company is registered under the Ordinance to carry on the business of non-life insurance in Pakistan. The Commission, through its Directive dated May 06, 2008, issued under Section 63 of the Ordinance (the "Directive"), directed the Appellant to cease entering into new insurance contracts. The Directive was issued to the Company for its failure to comply with the requirements to maintain the statutory deposit under Section 29 read with Section 11 (1)(b) of Ordinance and minimum solvency requirements as provided under Section 36 read with Section 11(1)(c) of the Ordinance.
3. The Company filed an appeal against the Directive before the Appellate Bench of the Commission. The Appellate Bench vide its Order dated November 12, 2008 upheld the Directive. Aggrieved by this decision, the Company challenged the decision before the Lahore High Court ("the LHC"), which, vide its Order dated May 25, 2017 upheld the decision of the Appellate Bench of the Commission. Thereupon, the Company filed an intra court appeal in LHC against its earlier judgement dated May 25, 2017, which was subsequently dismissed as withdrawn, vide order dated July 19, 2017.
4. Subsequent to the dismissal of the case, the Securities and Exchange Commission of Pakistan (the "Commission") vide its letter dated August 16, 2017 directed the Company to comply with the Directive with immediate effect. In response, the Company vide its letter dated September 14, 2017 requested the Commission to remove the restriction imposed by the Directive, which was not entertained by the Commission. Thereafter, the Company approached the Commissioner, Insurance vide its letter dated October 27, 2017, requesting for relaxation under Section 36 of the Ordinance, along with a request to remove the restriction imposed through the Directive. However, the Company's request was not acceded to. The Company thereafter filed a writ-petition before the LHC against the Commission. The LHC while disposing of the writ-petition filed by the Company, directed the Commission to decide the matter as per law. Following the court's direction, the Respondent conducted a hearing on July 31, 2018, where the Company again requested a relaxation in the solvency requirements. The Respondent, during the hearing and through a letter dated August 2, 2018, apprised the



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Appellant that the Ordinance does not provide for any such exemption or relaxation as requested.

5. A review of the Appellant's audited financial statements for the year ended December 31, 2016 was conducted which disclosed that the Company remained non-compliant with the requirements of minimum statutory deposit and solvency margin. Moreover, in order to comply with Section 29 of the Ordinance, Rs. 5 million was deposited with the State Bank of Pakistan, nonetheless, the statutory deposit requirement remained deficient by Rs. 5 million. Further, the solvency margin as at December 31, 2016 was negative by Rs. 151.641 million. Additionally, a review of the Appellant's interim financial statements for the quarter ended September 30, 2017, submitted on December 19, 2017, disclosed that the Appellant had entered into new insurance contracts in violation of the Directive. As per the unaudited statement of premium, the Appellant underwrote business amounting to Rs. 2.14 million between July 1, 2017 and September 30, 2017.
6. Since the LHC had affirmed the Directive on May 25, 2017, the Company was required to cease insurance operations. Thereafter, the Commission held that the conduct of business for the quarter ended September 30, 2017, constitutes a violation of the Directive dated May 6, 2008, in addition to ongoing non-compliance with statutory deposit requirements as required under Section 63 of the Ordinance and the solvency requirements. In view of the above, a show-cause notice dated February 28th, 2018 (the "SCN") was issued to the Appellants, calling upon them to show-cause as to why fine as provided under Section 156 of the Ordinance should not be imposed upon the Appellants for the alleged contraventions of the law.
7. In response to the SCN, the Appellants vide letter dated March 8, 2018 requested the Commission to extend the period for submission of reply to the SCN. Accordingly, the Respondent vide letter dated March 12, 2018 allowed an extension till March 22, 2018. The Appellant vide its letter dated March 15, 2018 submitted a reply to the SCN. The Appellants were accorded an opportunity of personal hearing on June 21, 2018. Subsequently, the Respondent not being satisfied with the response of the Appellants and in exercise of powers



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conferred under Section 156 of the Ordinance imposed a penalty of Rs.100,000/- (Rupees One Hundred Thousand Only) on the Company for the aforementioned contraventions

8. The Appellants have preferred this Appeal on several grounds, including the assertion that the Impugned Order lacks a proper appreciation of the relevant law and facts of the matter. The Authorized Representative for the Appellants submitted before the Bench that the Company had already complied with the requirement of statutory deposit under Section 29 of the Ordinance, and had deposited rupees five million in the State Bank of Pakistan. The Authorized Representative further submitted that in an effort to fulfill the said requirements, the Appellants had submitted title documents of properties valued at Rupees 21 crore, which were accepted by the Commission at 20% of their value. It was further submitted that in addition to these, the Appellants provided further documents of properties worth Rs. 63 million, however, these were not accepted on the grounds that the Company did not have any ownership over the properties. The Authorized Representative, pursuant to this, argued that despite the Company's sincere efforts to meet the solvency requirements, compliance has not been accepted due to technical grounds.
9. The Authorized Representative further highlighted that the Impugned Order has wrongly/incorrectly held that the Company had been conducting insurance business during the prohibited period from 01.07.2017 to 30.09.2017 and submitted that the Impugned Order cites an underwriting of Rs. 2.14 million in insurance premiums during this period, only based on the Company's condensed interim statement. Additionally, the Impugned Order notes that the Company wrote insurance premiums amounting to Rs. 10.750 million for the year ending 31.12.2017, including Rs. 8.610 million during the last quarter of 2017. In response to the abovesaid, the Authorized Representative submitted that no new insurance contracts were entered into during the prohibited period. It was emphasized by the Authorized Representative that once an insurer is directed to cease operations, existing insurance contracts cannot be cancelled unilaterally and with immediate effect, as such action could expose the Company to legal and financial liabilities. The Authorized Representative stated that the Company remained under an obligation to honor its commitments under existing contracts, which remained valid and enforceable for their stipulated duration.



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10. It was further submitted by the Authorized Representative that the premium amounts referred to in the Impugned Order, do not relate to any new business, but to premiums earned under existing contracts that remained legally enforceable. The Authorized Representative contended that the interpretation of such figures as indicative of new business activity is incorrect. Therefore, the conclusion drawn by the Respondent that the Company was actively conducting insurance business during the prohibited period is speculative, arbitrary, and unlawful.
11. In conclusion the Authorized Representative stated that the continuation of obligations under existing insurance policies, in the absence of express cancellation provisions and in the context of public interest, did not constitute a violation of the regulatory prohibition. As such, the Company's actions were not unlawful or detrimental and should not have formed the basis for the adverse findings in the Impugned Order.
12. In response, the Respondent countered the grounds of the Appeal and proffered arguments by emphasizing that the Impugned Order was not only issued in strict accordance with the law but also after thorough consideration of the facts presented in the matter. The Respondent submitted that Section 39 of the Ordinance provides that "*None of the assets in Pakistan of any insurer shall, except in the case of deposits made with the State Bank of Pakistan under section 29, or in the case of assets, other than deposits, with a scheduled bank acting as a custodian, be kept otherwise than in the corporate name and under the direct control of the insurer and, in the case of assets of a statutory fund of a life insurer, in the name of the statutory fund.*", therefore the declaration as provided by the Appellant could not be considered, in order to meet the solvency requirements since the ownership of the property was not transferred/vested in the Company's name, and was subject to prescribed limits of admissibility under Rule 13(1)(n) and 13(1)(o) of Insurance Rules, 2017 (the "Insurance Rules") read with Section 32(2)(n) of the Ordinance.
13. In addition, the Respondent submitted that as per Section 63(3) of the Ordinance, a direction to cease entering into new insurance contracts becomes effective one month from the date of issuance, unless a later date is expressly provided. The Respondent also highlighted that



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following the dismissal of the Appellants' intra-court Appeal by the LHC on May 25, 2017, the Commission's Direction attained finality. Subsequently, the Company was under an obligation to comply with the Directive by June 25, 2017 and cease all new underwriting activities, while permitting only the completion of outstanding formalities related to insurance contracts that had already been initiated before the effective date. The Respondent argued that it is essential to resort to Rule 58(2) of the Insurance Rules, which allows insurers to issue cover notes prior to receiving premiums for the limited purpose of enabling policyholders to review the coverage offered. The Respondent further submitted that since the Appellants were involved in non-life business only, the cover notes may not exceed a period of seven days and must be converted into formal policies upon receipt of premium. Moreover, it was submitted that any business underwritten after June 25, 2017, including the third quarter (July 1 to September 30, 2017) and the quarter ending December 31, 2017, cannot be justified under the cover note provision and amounts to a direct contravention of the Direction.

14. Moreover, the Respondent in response to the Appellants contention with regard to its existing obligations submitted that Section 63(6) of the Ordinance clearly distinguishes between the continuation of obligations under pre-existing contracts and the initiation of new business. In pursuance of this, the Respondent highlighted that while the law explicitly allows insurers to provide service to existing contracts beyond the effective date of the Direction, this exemption does not extend to the issuance of new policies, including those issued under the guise of extended cover notes or delayed formalization.
15. Regarding providing insurance at reduced premium the Respondent also submitted that the Authorized Representative's submission does not affect the Appellants legal obligations to comply with the regulatory requirements. The Respondent stated that market conduct considerations, including pricing strategies, cannot override an insurer's statutory obligation to comply with regulatory directives. Compliance with the applicable legal framework is a continuing and non-negotiable requirement for all registered insurers. Furthermore, the Respondent emphasized that the Company, regardless of its business model was under an obligation to maintain the minimum solvency requirement for the reason being that adequate financial strength is essential to ensure the insurer's ability to honour its liabilities to



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policyholders. The Respondent further argued that the Company's continuation of underwriting activities beyond June 25, 2017, its reliance on pricing flexibility as a defence, and its non-compliance with minimum solvency requirements collectively amount to violations of the applicable legal and regulatory framework.

16. The Bench has heard the arguments of both the parties and perused the record. The Bench is of the view that since the Directive had attained finality on June 25, 2017 and despite numerous opportunities and extensions of the deadlines the Company had failed to comply with the requirements under the Ordinance. Moreover, the Bench finds it crucial to state that the compliance needs to be substantive and in accordance with the law. With regard to the Appellants contention that title documents of properties worth Rs. 21 crores were submitted for the purpose of meeting solvency requirements, the Bench has noted that the failure to transfer ownership of the assets in the Company's name and their inadmissibility under the Insurance Rules renders this claim untenable. The Bench is of the opinion that compliance must be substantive and in accordance with the law and shall not be based on valuations that fall outside the admissible criteria prescribed under the applicable legal framework. Furthermore, the Bench finds that the explanation with regard to the premium underwritten during the third quarter of 2017 does not adequately rebut the evidence presented by the Respondent. In particular, there is no credible documentation or audit verification demonstrating that the recorded premiums pertain exclusively to policies issued prior to the effective date of the Directive. Moreover, it is also opined that the continuation of obligations does not entitle the Appellant to underwrite new policies or extend coverage in violation of a regulatory directive that had attained finality following the dismissal of the Appellants intra-court appeal. However, the Bench has noted that while the SCN was issued to the directors and the Company, the penalty under the Impugned Order has been imposed solely on the Company and not on its directors, consequently no liability has been established against the directors by the Respondent, while only highlighting the responsibilities of directors.

17. In view of the above, the Bench opines that the Company has failed to meet the statutory deposit and solvency requirements as required under the Insurance Ordinance and has willfully



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violated the Directive by entering into new insurance contracts beyond the effective date of June 25, 2017 Accordingly, the Appeal is dismissed, without any order as to costs.

(Abdul Rehman Warriach)
Commissioner

(Akif Saeed)
Chairman/Commissioner

Announced on:

23 MAY 2025