



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 09 of 2017

Shabir Ahmed, FCA of Kreston Hyder Bhimji & Co.

...Appellant

versus

Executive Director (Insurance), SECP

...Respondent

### Date of hearing:

March 06, 2024

### For the Appellant:

Mr. Muhammad Sohaib Sheikh, ASC

### For the Respondents:

1. Mr. Shafiq ur Rehman, Additional Joint Director, Adjudication-I, SECP
2. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 09 of 2017 filed by Mr. Shabir Ahmed, FCA-Partner M/s Kreston Hyder Bhimji & Co. Chartered Accountants (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act").
2. Brief facts leading to the instant Appeal are that the Appellant is aggrieved of the order dated January 17, 2017 (the "Impugned Order") passed by the Executive Director, Insurance (the "Respondent") on account of contravention of section 48(2), 48(4) of the Insurance Ordinance 2000 (the "Insurance Ordinance") read along with section 255 of the Companies Ordinance 1984 (the "Ordinance") and penalty was imposed under section 260(1) read with section 476 of the Ordinance.



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3. At the outset, the Counsel for the Appellant submitted that the show-cause notice dated June 01, 2016 (the "SCN") and the Impugned Order are patently illegal for the reason that the penalty under the latter has been imposed on the Appellant on account of non-compliance of International Standards on Auditing ("ISAs"), cognizance whereof does not fall within the jurisdiction of the Securities and Exchange Commission of Pakistan (the "Commission"). In support of his contention, he has placed reliance on order of the Hon'ble Lahore High Court, Lahore passed in commercial appeal titled '*S. Zafar Shah and Company vs SECP*' (reported as **2022 CLD 164**).
4. On merits, Counsel for the Appellant submitted that the entire SCN proceedings emanate from an FIR lodged against M/s. Silver Star Insurance Company Limited (the "Company") (not the Appellant who were auditors of the Company) and for the same reason entire contents of the SCN is a mere reproduction of the challan/report submitted in the said FIR. He further submitted that the said criminal case against the Company is still pending adjudication and thus the SCN proceedings and Impugned Order are tainted in that regard as nothing has been proved in the criminal case which forms the basis of the SCN. The Counsel for the Appellant contended that the role of the auditor i.e. the Appellant is only to the extent of giving its opinion after conducting the audit on sample/test basis and the same cannot be held responsible for any alleged wrongdoings of the Company. While summing his arguments, Counsel for the Appellant submitted that the Impugned Order is liable to be set aside as the allegations levelled in the SCN pertained to the year 2014 whereas penalty under the Impugned Order has been imposed on the Appellant on the basis of audit report for the year 2013. He referred to the management letter of the auditor i.e. the Appellant, wherein nominal procedural lapses were highlighted and it was submitted that irregularities were found in the offsite review of the financial accounts of the Company for the year 2014 conducted by the Commission.
5. The Respondent while controverting the aforementioned legal objection, submitted that objection with respect to jurisdiction has not been taken by the Appellant during the SCN proceedings and thus the same cannot be raised at a belated stage in the instant Appeal. The Respondent argued that the objection with respect to lack of jurisdiction of the Commission does not sustain as the Appellant being an auditing firm has itself admitted in its audit report that ISAs have been followed while conducting audit.



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6. The Respondent contended that enough information was available with the Appellant to form a true and fair opinion, but this was not done. The Respondent stated that the very purpose of an audit is to give an opinion as to whether the financial statements prepared by the company gave a 'true and fair' view and by giving an unqualified opinion, the Appellant essentially gave a clean chit to the companies accounts and the same was cognizable under section 48 of the Insurance Ordinance read with section 255 and section 260 of the Ordinance. The Respondent while defending the penalty imposed upon the Appellant, argued that under the Impugned Order, civil liability of the Appellant has been affixed which is different from the criminal case pending against the Company and even exoneration of the Company from the criminal case will have no bearing on the SCN proceedings and the Impugned Order.
7. The Appellate Bench (the "Bench") has heard the parties. It would be imperative to first deal with the legal objection with regards to the jurisdiction of the Commission to take cognizance in matter pertaining to contraventions of ISAs. Perusal of the record transpires that the SCN was issued to the Appellant under section 255 of the Ordinance on account of contravention of the ISAs but in the final order, the contravention of section 48 of the Ordinance has been established. The Hon'ble Lahore High Court, Lahore in the order referred by the Appellant has held that;

*"10. It is apparent from the afore-mentioned provisions that the auditors report must violate any of the provisions of the Ordinance in order for the Commission to exercise jurisdiction over it and impose penalty. Admittedly, section 234 of the Ordinance deals with the balance sheet and obligated the auditors to follow such International Accounting Standards in regard to the accounts and preparation of balance sheet and profit and loss account as are notified in the Official Gazette by the Commission. There was, however, no provision in the Ordinance dealing with the auditing standards. The situation was remedied in Companies Act, 2017..."*

8. The Appellate Bench does consider the Dictum laid down by the Hon'ble Lahore High Court with regard to ISAs, but the violation of the ISAs was not the sole basis on which the SCN was issued nor is it the reason why the Appellant was penalized in this instance. The Appellant being the auditor of the company was under an obligation to follow the minimum requirements laid down in section 48(2) of the Insurance Ordinance. The Bench is of the view that the Appellant was positively required to express an opinion on whether the accounts fairly represented the 'state of affairs of the company' in terms of Section 48(2)(c) of the Ordinance. The order passed by the Respondent clearly

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holds that the Appellant failed to discharge this duty despite having the requisite information at the relevant time. The Appellant has not controverted the above finding. The Appellate Bench having considered the matter, does not see how the Appellant did, in fact meet the minimum requirements of section 48(2)(c) of the Insurance Ordinance. The onus was firmly on the Appellant to establish that the opinion so expressed fairly represented the state of affairs of the company.

9. That Bench finds it important to mention that the Insurance Rules, 2002, Part A- Accounting Regulations pertaining to life Insurer's in Regulation 5 and Part B- Accounting Regulations for Non-life insurers in Regulation 6, both state in "(1) Both the Regulatory Returns and Published Financial Statements shall be accompanied by an Audit Report as required under Section 48(2) of the Insurance Ordinance in accordance with the annexed format". Further, the annexed format for the Auditor's report requires the auditors to confirm that they have complied with International Standards of Auditing. The relevant part is reproduced hereunder:

*"We conducted our audit in accordance with the International Standards on Auditing. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting policies used and significant estimates made by management, as well as, evaluating the overall financial statements presentation. We believe that our audit provides a reasonable basis for our opinion".*

These rules were applicable at the time of the audit in 2013 and 2014, even though they were later repealed in 2017. It is important to mention that the Appellant in the Audit report pertaining to the year 2013, has submitted a declaration that the audit has been conducted in accordance with the ISAs. Therefore, the Insurance Rules, 2002 should have been referred by the Respondent in the SCN and subsequently in the final order. The violation of ISAs referred to in the SCN and Impugned order were referred only in the context of the Companies Ordinance, 1984, under which the ISAs had not been notified at the time and hence could not be penalized. However, the Respondent did not refer the applicability of ISAs with reference to the Insurance framework due to its negligence in citing the applicable Insurance rules.

10. In view of the above, the Bench is of the opinion that the ISAs were to be followed by the Appellant as laid out in the Insurance Rules and the Insurance Ordinance, however, no such requirement has been placed under Section 255 of the Ordinance. In view thereof, the Appellant has been successful

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in establishing that no violation of Section 255 of the Ordinance is established, therefore, penalty cannot be imposed under Section 260 of the Ordinance as the cognizance of the matter did not fall under the jurisdiction of the Commission as per the Ordinance.

11. In view of the above, the Impugned Order is not sustainable, therefore, we hereby set-aside the Impugned Order. Accordingly, the instant Appeal is **allowed** without any order as to costs.



(Akif Saeed)  
Chairman/Commissioner



(Mujtaba Ahmad Lodhi)  
Commissioner

Announced on: 08 OCT 2024