



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

### Appeal No. 108 of 2017

1. Takaful Pakistan Limited
2. Syed Tariq Hussain, CEO
3. Dr. Mumtaz Ahmed Hashmi, Director
4. Mr. Ahmed Shuja Kidwai, Director
5. Mr. Haseeb Ahmed, Director
6. Mr. Saeed Khan, Director
7. Syed Abdul Razzaq, Director
8. Ashraf Ali Velji, Director

Appellants

versus

The Director (Insurance) Insurance Division, SECP

Respondent

### Dates of hearing:

March 6, 2024 and  
March 11, 2024

### Present:

#### For the Appellants:

Mr. Muhammad Hassan Abbas, Advocate (Mohsin Tayebaly & Co.)

#### For the Respondent:

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

## ORDER

1. This Order shall dispose of Appeal No. 108 of 2017 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Takaful Pakistan Limited and its seven directors



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(the Appellants) against the Order dated October 13, 2017 (the Impugned Order) passed by the Director Insurance, SECP (the Respondent) under Section 11(1) and Section 28 read with Section 156 of the Insurance Ordinance, 2000 (the Ordinance).

2. The brief facts of the case are that Takaful Pakistan Limited (the Company) failed to meet the minimum paid-up capital requirements of the Securities and Exchange Commission (Insurance) Rules, 2002 (the Rules). As per Rule 9 of the Rules notified through S.R.O 828(I)/2015 dated August 18, 2015 (the SRO), the Company was required to raise its paid-up capital for the following periods, however, it failed to meet the aforesaid requirement:

S. No	Period	Actual Paid-up Capital (In Million)	Minimum Paid-up Capital Requirement (In Million)
1.	June 30, 2016	300	350
2.	December 31, 2016	300	400
3.	June 30, 2017	300	450
4.	December 31, 2017	300	500

3. The Securities and Exchange Commission of Pakistan (the Commission) allowed the Company, vide letters dated December 27, 2016 and May 31, 2017, to issue right shares under Section 84 of the Companies Ordinance, 1984 (the Ordinance 1984) at a discount to meet the minimum paid-up capital requirements of the periods mentioned in the paragraph above. However, the Company failed to comply with the minimum paid-up capital requirement of Rs. 350 million as on June 30, 2016, Rs. 400 million as on December 31, 2016, Rs. 450 million as on June 30, 2017 and Rs. 500 million as on December 31, 2017, respectively, in violation of Sections 11 and 28 of the Ordinance read with Rule 9 of the Rules.
4. Given the above violation, the Show-Cause Notice dated August 23, 2017 (the SCN) was issued to the Appellants. The Appellants submitted their reply vide letter dated August 28, 2017. A hearing in the matter was held on September 27, 2017. After the hearing, additional written



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submissions were also filed by the Appellants, vide letters dated October 6, 2017 and October 10, 2017. The Respondent concluded the SCN proceedings and imposed an aggregate fine of Rs. 1,200,000/- (Rupees One Million Two Hundred Thousand Only) under Section 156 of the Ordinance for contravening the provisions of Sections 11(1) and 28 of the Ordinance read with Rule 9 of the Rules. The Appellants were further directed to complete the process for meeting the paid-up capital requirement and submit a compliance report to the Commission within thirty 30 days of the date of the Impugned Order. The fine was imposed in the following manner:

Sr. No.	Name of the Appellants	Amount of penalty/fine (Rs.)
1.	Takaful Pakistan Limited	500,000/-
2.	Syed Tariq Husain	100,000/-
3.	Dr. Mumtaz Ahmed Hashmi	100,000/-
4.	Ahmad Shujah Kidwai	100,000/-
5.	Haseeb Ahmed	100,000/-
6.	Saeed Khan	100,000/-
7.	Syed Abdul Razzaq	100,000/-
8.	Ashraf Ali Velji	100,000/-
<b>Total</b>		<b>1,200,000/-</b>

5. The Appellants have preferred this Appeal *inter alia* on the grounds that the non-compliance with respect to the minimum paid-up capital was not deliberate or with mala fide intention, rather it was caused due to the volatile market and hesitant investors. The Appellants submitted that the Company's earlier applications for the extension of time to meet the minimum paid-up capital requirement were duly accepted by the Commission, however, the rejection for further extension after execution of the MOU between the Company and Faizan Holdings (Investors), to enhance the paid-up capital was unwarranted. The Appellants stated that in this regard, the Appellants' efforts are reflected in board meeting minutes and this fact was intimated to the SECP promptly. The Appellants further stated that they had already provided sufficient evidence including the MOU with the Investors, and the Company would comply with the requirement of issuing paid-up capital of Rs. 500 Million by December, 2017. The Appellants stated that the Respondent failed to prove *mens rea* or willful default necessary to proceed under Section 156 of the Ordinance, therefore, the Impugned Order is not sustainable in law and is liable to be set aside.



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They argued that the Impugned Order is in manifest violation of Article 18 of the Constitution and the same constitutes unreasonable and illegal regulation of the takaful business and discourages the business of takaful in Pakistan. The Appellants further contended that the Respondent had not exercised its inherent power to act in a just and fair manner and was, therefore, acting contrary to the provisions and spirit of Section 24-A of the General Clauses Act, 1897.

6. The Appellants' representatives argued that as the Company complied with the requirement of minimum paid-up capital in June 2018, therefore, the Appellate Bench (the Bench) should take a lenient view and the penalty imposed on the Appellants may be waived. The representative further argued that most of the directors against whom the Impugned Order was passed are no longer directors in the Company, therefore, leniency was also pleaded on this ground. The Appellants' representative stated that the Appellants never denied their responsibility to ensure timely compliance of the minimum paid-up capital requirements, however, this non-compliance was neither willful nor within the control of the Appellants.
7. The Respondent rebutted the grounds of Appeal and stated that the non-compliance was deliberate and willful as the SRO was published on August 18, 2015, and even after the lapse of considerable time, the Appellants failed to ensure compliance within the stipulated time. The Respondent stated that the Appellants sought further extension after issuance of the SCN, which was not allowed. The Respondent further submitted that the MOU did not materialize till the date the Impugned Order was passed. The Respondent submitted that the Appellants failed to demonstrate material progress to enhance minimum paid-up capital and mere signing of an MOU with the investor cannot be considered material progress. The Respondent stated that the Appellants contravened Sections 11 and 28 of the Ordinance relating to the minimum paid-up capital requirement, hence the Appellants were penalized. The Respondent submitted that the reason for failure to meet the minimum paid-up capital requirement given by the Appellant is not sustainable under the Ordinance because the law does not provide any relaxation in this regard. The Respondent was of the view that they proceeded as per law, therefore, the Impugned Order has not infringed the rights of the Appellants guaranteed under Article 18 of the Constitution. The Respondent stated that the Appellants were given the opportunity of hearing and a well-reasoned

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Appellate Bench

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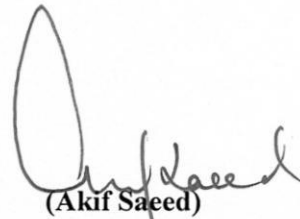
Order has been passed, therefore, requirements of Section 24-A of the General Clauses Act, 1897 were duly met.

8. The Bench has heard the parties and perused the record. The Bench has noted that the Appellants have not denied in the pleadings that the Company was required to meet the requirement of the minimum paid-up capital of Rs. 500 Million on December 31, 2017. Furthermore, the Appellants admitted that the said requirement was subsequently met on June 30, 2018. The Bench has noticed that, as per the record, the Company attempted to issue the right shares through two transactions to enhance its paid-up capital, however, such efforts could not succeed and materialize in time. The Bench is of the view that the Company was aware of its responsibility to enhance its paid-up capital and in this regard its efforts are on record, therefore, the margin of good faith or benefit of "clean hands" should have been given to the Appellants. Furthermore, most of the directors who were penalized via the Impugned Order are no longer on the Company's board, therefore, maintaining the penalty order against such directors would not serve the purpose as the Company subsequently complied with the requirement of minimum paid-up capital.
9. Given the aforementioned facts, by maintaining the merits of the Impugned Order, we hereby convert the penalty into a warning. Accordingly, the Appeal is disposed of without any order as to costs.



(Mujtaba Ahmad Lodhi)

Commissioner



(Akif Saeed)

Chairman/Commissioner

Announced on:

03 JUN 2024

03 JUN 2024