



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 147 of 2020

Crescent Star Insurance Limited

Versus

Executive Director/HOD Adjudication-I, SECP

Dates of hearing:

May 30, 2024 and June 03, 2024

Present:

For the Appellant:

Mr. Saadat Ali Saeed, Advocate

For the Respondent:

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

ORDER

1. This order is in Appeal No. 147 of 2020 filed by Crescent Star Insurance Limited (the Appellant) against the Order dated November 10, 2020 (the Impugned Order) passed by the Executive Director, Adjudication-I (the Respondent), for the contravention of Rule 5(vi) of the Companies (Issue of Capital) Rules, 1996 (the Rules) and Section 11(1)(f) read with Section 12(1)(a) of the Insurance Ordinance (the Ordinance).
2. The brief facts of the case are that the Appellant's Board of Directors (the BOD) in its meeting dated May 2, 2017 accorded the approval for issuance of 25,011,708 right shares. As per Rule 5(vi) of the Rules, the Appellant was required to make its book closure within 30 days from the date of right shares



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approval by the BOD i.e. June 2, 2017, however, it failed to do so. Thereafter, the Appellant vide letter dated October 31, 2017 requested the Securities and Exchange Commission of Pakistan (the Commission) to allow book closure between 6th and 7th November 2017, however, the request was denied due to violation of the requirements contained under Rule 5(vi) of the Rules. In view thereof, the Respondent issued a Show-Cause Notice dated January 9, 2018 (the SCN) to the Appellant. The Appellant submitted its written response to the SCN vide letter dated August 20, 2020. Hearing on the matter was held on October 20, 2020, and after hearing the Appellant, the Respondent imposed a penalty of Rs. 1,000,000/- under Rule 11 of the Rules and Section 156 of the Ordinance.

3. The Appellant has preferred this Appeal, *inter alia*, on the grounds that the Respondent neglected the fact that Section 156 of the Ordinance restricts the Commission's cognizance to violations of the Ordinance and any rules, regulations, or guidelines made under the Ordinance. The Appellant also contended that the Commission overlooked the Rules that were established under the Companies Ordinance 1984 (the 1984 Ordinance), and therefore, for any alleged breach of the Rules, the Commission lacks jurisdiction to take cognizance under Section 156 of the Ordinance. The Appellant argued that the adjudicating authority failed to consider that Rule 11 of the Rules explicitly provides a penalty for any breach of the Rules, therefore, any alleged contravention of the Rules should be penalized in accordance with the provisions of the 1984 Ordinance.
4. The Appellant also asserted that the provisions of Sections 11 and 12 of the Ordinance were wrongly invoked in the SCN and that the Respondent's reliance on these provisions is unlawful. The Appellant emphasized that it is evident from the preamble of the Ordinance that it was enacted to regulate the insurance business and protect the policyholders. The Appellant argued that the sound and prudent management and professional skills required under Sections 11(1)(f) and 12(1)(a) of the Ordinance refer to skills necessary for running an insurance business, however, issuance of share capital is a strategic business decision regulated and governed under the provisions of the 1984 Ordinance. Therefore, the Appellant contended that Sections 11(1)(f) and 12(1)(a) of the Ordinance can only be invoked in matters relating to the insurance business of the company and not in every aspect of the company. The Appellant further stated that any alleged breach of the Rules is punishable under Rule 11, therefore, imposition of penalty regarding the same offense under the Ordinance would result in double jeopardy and violation of Article 13 of the Constitution of the Islamic Republic of Pakistan 1973 (the Constitution) which provides protection against double jeopardy. The Appellant further asserted



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that the Impugned Order breaches Articles 4 and 10-A of the Constitution where Article 4 guarantees the fundamental right to due process and to be dealt with in accordance with the law, while Article 10-A enshrines the right to a fair trial and due process. The Appellant further stated that by taking cognizance of the incorrect provision, the Impugned Order contravenes Articles 4 and 10-A of the Constitution.

5. The Appellant further asserted that in the year 2018, there was political turmoil in the country and despite the Appellant's best efforts, no third-party was willing to underwrite any shares. The Appellant further stated that it is a settled principle of law that the Regulator must consider external and mitigating factors when assessing non-compliance with legal provisions and that the Respondent has erred in considering that the external factors were beyond the Appellant's control. The Appellant argued that by imposing the maximum penalty, it is evident that these mitigating factors were disregarded by the Respondent. The Appellant further argued that the Impugned Order represents a clear violation of Section 24-A of the General Clauses Act, 1867. The Appellant stated that under the law, the Respondent was obligated to decide the SCN reasonably and provide a well-reasoned, speaking order. In light of these arguments, the Appellant requested that the Appellate Bench (the "Bench") may adopt a more lenient perspective, duly considering the aforementioned contextual factors.
6. The Respondent countered the grounds of the Appeal by asserting that, due to the default of Rule 5(vi) of the Rules as well as Section 11(1)(f) read with Section 12(1)(a) of the Ordinance, punitive provisions of both corresponding laws were invoked in the SCN, accordingly, a penalty of Rs. 1 million was imposed on the Appellant. The Respondent further contended that there is no restriction on the imposition of penalties under the respective laws when the default of the Rules as well as provisions of the Ordinance are established. Additionally, the Respondent stated that in violation of Rule 5(vi) of the Rules, the Appellant also failed to ensure compliance with Section 12(1)(a) of the Ordinance, which stipulates the criteria for sound and prudent management. The Respondent stated that the provisions of Section 12(1) are not only limited to the running of the insurance business but encompasses all the affairs of the company and its strategic decisions. The Respondent further emphasized that, for the defaults of Rule 5(vi) of the Rules and Section 11(1)(f) read with Section 12(1)(a) of the Ordinance, the punitive provisions of both corresponding laws were invoked in the SCN, therefore, there is no question of double jeopardy. The Respondent stated that the Impugned Order was passed after



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considering the facts of the case in light of the applicable provisions of the law, making it a well-reasoned and lawful.

7. The Bench has heard the arguments of both the parties and perused the record. The Bench considers that the primary purpose of the law is to protect the interests of policyholders. In this case, the Bench finds no justification for the Appellant's argument that the provisions of the law in the SCN were wrongly invoked. The Appellant is a non-life insurance listed company; therefore, it was not only required to meet the requirements of the Rules but compliance with the Ordinance was also mandatory. The Bench has no doubt that by failing to issue the right shares within the stipulated time of thirty days, the Appellant has failed to ensure that affairs of the company are being run with integrity, due care, professional skills and in a sound and prudent manner. In view thereof, the Respondent has rightly invoked the provisions of the Rules and the Ordinance and passed the Impugned Order.
8. The Bench is not ready to accept the Appellant's reasoning regarding the breach of Rule 5(vi) of the Rules because the appointment of two independent underwriters for the right issue was the responsibility of the Appellant, however, instead of admitting default, the Appellant is trying to take refuge behind political and economic scenario prevailing at the relevant time. The Bench wanted to make it clear that after and before the time when "The Panama case" was pending before courts, all public and private institutions including the Commission, PSX, Banks, Central Depository Company and National Clearing Company of Pakistan were operational and working, therefore, the Appellant had no room to escape from its responsibilities.
9. The Bench believes that the Ordinance is a special law for insurance companies, whereas, the Rules apply to all listed companies, therefore, the Appellant being a listed insurance company was required to comply with both laws. In the Bench's opinion, for insurance companies, the Rules and the Ordinance must be considered in their entirety, not partially. Furthermore, the Appellant has not refuted the allegation of non-compliance but rather seeks to leverage on technicalities, which the Bench finds no *bona fide* on the part of the Appellant. In view thereof, violation of Rule 5(vi) of the Rules has made it clear that the affairs of the Appellant were not as per the requirements of Section 11(1)(f) read with Section 12(1)(a) of the Ordinance, therefore, two separate violations under different laws are established against the Appellant. Given the above, the Respondent had rightly invoked Rule 11 of the Rules and Section 156 of the Ordinance to penalize the Appellant for violation of Rules 5(vi) of the



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Rules and Sections 11(1)(f) and 12(1)(a) of the Ordinance. In view thereof, the Bench find no merit in the Appellant's argument that issuance of SCN and imposition of penalty under the Rules and the Ordinance amounts to double jeopardy.

10. In view of the foregoing, the Bench, finds no reason to interfere in the Impugned Order. Therefore, the instant Appeal is dismissed without any order as to costs.


(Abdul Rehman Warraich)
Commissioner


(Akif Saeed)
Chairman/Commissioner

Announced on: 11 SEP 2024