



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 15 of 2023

Shams-ud-Din

...Appellant

Versus

Director/HOD, Adjudication-I, SECP

...Respondent

Date of hearing:

September 08, 2023

Present:

For the Appellant:

Mr. Shams-ud-din

For the Respondent:

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

ORDER

1. This Order shall dispose of Appeal No. 15 of 2023 filed by Mr. Shams-ud-Din (the "Appellant"), former Company Secretary of Pakistan Reinsurance Company Limited (the "Company"), under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order



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dated June 29, 2022 (the "Impugned Order") passed by the Director/HOD, Adjudication I, SECP (the "Respondent").

2. Brief facts of the case are that inspection of the Company, ordered vide inspection order dated July 02, 2020, *inter alia* revealed that the Appellant, in order to comply with the requirements of section 54 of the Insurance Ordinance, 2000 (the "Ordinance"), submitted minutes of the Extraordinary General Meeting (EOGM), allegedly held on December 31, 2019. During inspection, it was further observed that though EOGM was scheduled to be held on December 31, 2019, however, the same was never held and thus *prima facie* the minutes submitted by the Appellant were false and fabricated. Consequently, a show-cause notice dated February 23, 2021 (the "SCN"), under Sections 11(1)(f), 12(1)(c), and 54 of the Ordinance and Regulation 2(5) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the "Regulations") read with section 158 of the Ordinance, was *inter alia* issued to the Appellant and after affording an opportunity of hearing, the Respondent vide Impugned Order declared the Appellant not fit and proper in terms of the criteria for the fitness and propriety, as laid down under the Regulations.
3. The Appellant *inter alia* contended that minutes of the EOGM were submitted merely in order to ensure compliance of section 54 of the Ordinance. Moreover, the Appellant contended that it is usually the case that the number of candidates contesting for the position of directors in the Company equals the available positions, resulting in appointment of directors without the need of holding the election in terms of section 159 of the Companies Act, 2017 (the "Act"). However, this particular instance in the Company was a case of first impression where the number of candidates exceeded the available positions and thus EOGM was scheduled to be held on December 31, 2019. However, a day before the said EOGM, one candidate withdrew his candidature, leaving the number of candidates equal to the positions available for directorship of the Company. The Appellant argued that the minutes were submitted in compliance of the direction of the Commission whereby the Company was requested to provide the extracts of minutes of the EOGM in respect of election of directors. The Appellant admitted that no EOGM was held on December 31, 2019 and the resolution regarding election of directors was submitted to comply with the direction of the Commission. The Appellant concluded his arguments by asserting that the above mentioned peculiar circumstances arose due to ambiguity in section 159 of the Act which is silent as whether a meeting should be held when the number of candidates equals or is less the number of directors fixed to be elected and argued that it is for the very reason Circular No. 29



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of 2020 was issued by the Securities and Exchange Commission of Pakistan (the "Commission") on September 30, 2020 to clarify the said ambiguity. The Appellant has prayed that a lenient view may be taken and the appeal may be accepted.

4. The Respondent contested the grounds of the Appeal asserting that the Appellant had deceived the Commission by submitting fictitious minutes of EOGM which never took place. Additionally, the Respondents argued that if the EOGM was not held as scheduled, the Appellant should have simply informed the Commission instead of submitting fabricated minutes. The Respondent also argued that during the subsequent annual general meeting on May 28, 2020, the Appellant sought approval for minutes of EOGM that never took place. Furthermore, the Respondent contended that the Board of the Company did not endorse these minutes and directed the management to seek guidelines from the Commission. The Respondent additionally asserts that the Appellant submitted fabricated minutes of the purported EOGM without the approval of the Board of the Company. The Respondent argued that on these grounds the appeal may be dismissed.
5. The Appellate Bench (the "Bench") has perused the record and heard the parties. It is the case of the Appellant that he being Company Secretary submitted the resolution of the EOGM (that was admittedly never held) pertaining to election of two directors due to the reason that the same was demanded by the Commission. The Appellant in support of his contention has argued that section 159 of the Act is ambiguous as the same does not specify as to whether a meeting of the Company is required to be held in case where the candidates contesting for the position of directors equals the position of directors fixed. For convenience relevant provision of section 159 of the Act is reproduced hereinunder:

"159. Procedure for election of directors.—...

*(5) The directors of a company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of directors fixed under sub-section (1), be elected by the members of the company in general meeting in the following manner, namely—
..."*

6. The Bench is of the view that there is no ambiguity in the aforementioned provision as the same does not dispense the requirement of holding a general meeting of a company, in case where the number of persons who offer themselves to be elected is not more than the number of directors fixed. The



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Appellant has not disputed the fact that he submitted to the Commission the extracts of the meeting of the EOGM (purportedly held on December 31, 2019) despite the fact that no EOGM was held on December 31, 2019 with respect to election of directors of the Company. The said admission of the Appellant along with documents available on record clearly manifest that at no stage the Appellant tried to rectify his action prior to the issuance of SCN rather presented false and fabricated minutes of the EOGM in the subsequent general meeting of the Company for approval.

7. The Bench expresses serious concern with respect to the validity of the status of directors who were elected unopposed, as per extract of the purported EOGM which was submitted by the Appellant. The said question though *prima facie* connected with the question involved in the instant Appeal, it is beyond comprehension that why the department has not taken cognizance of the matter.
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.

(Mujtaba Ahmad Lodhi)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on:

02 OCT 2023