



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 16 of 2019

National Insurance Company Limited

...Appellants

versus

Commissioner Insurance, SECP

...Respondent

Date of hearing:

December 30, 2024

Present:

For the Appellants:

Farrukh Zulfiqar, Advocate High Court

For the Respondent:

1. Mr. Sohail Qadri, Director, HOD, Adjudication-I, SECP
2. Mr. Shafiq-ur-Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 16 of 2019 filed by the National Insurance Company Limited (the Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act), against the Order dated April 2, 2018 (Impugned Order) passed by the Commissioner Insurance, SECP, (the Respondent) under section 46(1) read with section 51(1), Sections 11 and 12 of



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the Insurance Ordinance, 2000 (the Ordinance), along with Clause Ixxviii, Ixxix and Ixxx of the Code of Corporate Governance for Insurers, 2016 (the Code).

2. The brief facts of the case are that the Appellant failed to submit annual audited accounts and regulatory returns for the years ended December 31, 2015, December 31, 2016 and December 31, 2017. Moreover, the Appellant also failed to submit the valuation report on the estimation of incurred but not reported claims (IBNR) for the year December 31, 2017 to the Securities and Exchange Commission of Pakistan (the Commission) as per requirements of Circular 9 of 2016 of the Commission (issued under section 34(3) of the Ordinance). The Commission, vide letters dated May 21, 2018 and July 05, 2018 advised the Company to submit the required documents in order to comply with the law. The Appellant submitted its reply vide letter dated July 10, 2018. Subsequently, the Show-Cause Notice dated August 02, 2018 (the SCN) was issued to the Appellant and its Chief Executive and Directors for the violations. Thereafter, the Appellant vide letter dated September 17, 2018 submitted the reply to the SCN. The hearing was scheduled for February 27, 2019 which was attended by the Authorized Representatives of the Appellant. The Respondent after hearing the Appellants and being dissatisfied with the response of the Appellant held that the Appellant has argued that the delay in filing financial statements cannot be attributed to the current Board of Directors of the Appellant as it was appointed in the second quarter of the year 2018; therefore, to the extent of the Board of Directors, a lenient view was being taken. However, in exercise of the powers conferred on the Respondent under section 156 of the Ordinance, a fine of Rs 1,000,000/- (Rupees One Million Only) was imposed on the Appellant and was further directed to submit a compliance report containing therewith audited financial statements for the year ended December 31, 2017.
3. The Appellant has preferred this appeal *inter alia* on the grounds that in the Impugned Order the Respondent has completely failed to appreciate the fact that in 2015, the Appellant's previous Board and management had painstakingly initiated the process of auditing the Appellant's accounts starting from the year 2010. The Appellant submitted that the aforesaid process is sequential and thus the audit of each year's accounts must be completed before the same can be initiated and completed for in the later years. It was submitted that the audited accounts of the Appellant for the year ended December 31, 2010 and December 31, 2011 have been approved and adopted vide the Appellant's Annual General Meeting held on March 30, 2017. Furthermore, the Appellant stated that external auditors were also appointed in the aforesaid meeting for auditing of the Appellant's accounts for the years 2012, 2013



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and 2014 respectively. The Appellant further submitted that the appointment of external auditors for the audit of the Appellant's accounts for the years 2015 and 2016 has also been finalized. The Appellant stated that given the aforesaid facts, it is evident that the Appellant, despite its previous record, is in the process of complying with the relevant provisions of the Code and the Ordinance. The Appellant further stated that the Impugned Order has completely failed to appreciate the fact that the Appellant's previous accounts are pending and the Appellant had to finalize these prior to finalizing the accounts of 2015, 2016 and 2017 and that the imposition of a penalty for subsequent years regarding the exact matter is unjust and against the principles of natural justice. The Appellant stated that it is diligently complying with the SECP's directive to prepare and submit its Accounts and statutory returns for past years, and penalizing it during this process would be unjust. The Appellant argued that the Impugned Order is effectively penalizing the Appellant and its current management and directors for failing to comply with acts which occurred prior to them joining the company and imposing a penalty for the wrong doings of the previous management clearly violates the principles of natural justice. It was further argued by the Appellant that the Respondent has by passing the impugned order acted in violation of section 24-A of the General Clauses Act, 1897 "Where...a power to make any order or give any direction is conferred on any authority, office or person, such power shall be exercised reasonably, fairly and justly". However, by holding that "violations of Clause (Ixxviii), (Ixxix) and (Ixxx) of the Code read with Section 34(3), Section 46, and Section 51 of the Ordinance, are clearly established". The Appellant has stated that the current Board is not liable for the previous non-compliances, therefore the Impugned Order is unjust and unreasonable. Therefore, by considering these circumstances a lenient view may be taken by waiving the penalty.

4. The Respondent rebutted the grounds of Appeals and the arguments put forth by the Appellant, wherein, it was stated that the Appellant has admitted that it has failed to submit audited financial statements for the year ended December 31, 2017. The Respondent further added that it is pertinent to mention here that despite the Commission's direction issued under section 170 of the Ordinance to the Appellant to convene its overdue annual general meetings for the financial years 2010 to 2014 by August 31, 2015 and submit the compliance report within a week, the Appellant failed to adhere to the aforesaid direction. The Respondent further submitted that the Appellant had sufficient time till issuance of the SCN dated August 2, 2018 to comply with the Commission's Direction; however, the Appellant has not submitted the annual accounts and regulatory returns for the year ended December 31, 2017. The Respondent further stated that the Annual Statement of Compliance and Valuation Report on the



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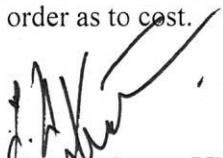
estimation of IBNR to the Commission has not been submitted by the Appellant till date. The Respondent further added that the aforesaid facts clearly depict the Appellant's non-serious attitude towards complying with the Commission's directions. The Respondent further stated that the Appellant was only penalized under section 156 of the Ordinance for contravention of Clause (Ixxviii), (Ixxix) and (Ixxx) of the Code, Section 34, section 46 and section 51 of the Ordinance. The Respondent stated that while passing the Impugned Order, all facts and circumstances presented before him were taken into account and the order is a speaking order. The Respondent further argued that since the Board was appointed in 2015, it was expected that annual audited accounts and regulatory returns would be submitted to the Commission on a priority basis as considerable time had lapsed since the current Board was appointed but compliance of the Ordinance could not be made by the Appellant. However, the Respondent stated, that still a lenient view has been taken on the Board of Directors of the Appellant and no adverse action was taken against them while only the Appellant was penalized, therefore, the Appellant's plea that the Order is unjust and unreasonable is not valid. Furthermore, the Respondent argued that the Impugned Order was issued in order to conclude show-cause proceedings initiated for non-submission of regulatory returns including annual accounts for the year ended December 31, 2017 and , therefore, the Appellant's stance that the penalty imposed vide Impugned Order is unjust due to pendency of Appeal before the Appellate Bench for alleged failure to submit annual accounts for the years 2012 to 2014, does not hold as the matter at hand deals with non-submission of annual account and regulatory returns for the subsequent years. The Respondent further added that the Appellant has not only contravened the provisions of Sections 46(1)(b) 46(2), 51(1) and 51(2) of the Ordinance but also failed to adhere to the deadline in all directions given by the Commission. The Respondent argued that non-compliance is evident from the fact that the first direction was issued on July 15, 2017 and despite repeated directions/reminders over the years, the Appellant has been very slow in compliance with its statutory obligation. In addition, it is added by the Respondent that the current management although fully responsible for the affairs of the Company since assumption of charge was not penalized through the Impugned Order dated April 2, 2019. However, the Appellant company being a legal entity was penalized for its persistent failure to submit annual audited accounts and regulatory returns to the Commission. The Respondent further argued that the Impugned Order did not ignore the relevant facts and was reasonable, fair and just. The Respondent added that the Impugned Order is passed after providing proper opportunity of hearing and taking into account written as well as verbal submissions made by the Appellant during the course of the hearing in accordance with the provisions of the law. The Respondent added that a lenient view was taken based on the facts/merits of the case and only



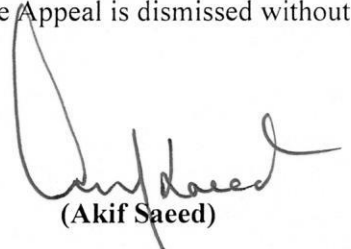
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penalized the Appellant under section 156 of the Ordinance, therefore, the Impugned Order fully complies with the provisions of section 24-A.

5. The Appellate Bench (the Bench) has heard the arguments of both parties and perused the record. The Bench considers that a state owned company has a higher and more significant responsibility towards its stakeholders and is obligated to act in the best financial interest of the shareholders of the company. The law has made certain provisions mandatory in nature which are required to be followed. Justification of the violations of the mandatory provisions merely on the basis of resource constraints is not acceptable. The Appellant has also admitted default during the course of arguments and also in the facts of the appeal, thus the Appellant cannot be exonerated from such a default. The Appellants' argument, that the default committed earlier is due to the irregularities of the previous management and that the current management cannot be held liable for the errors committed in the past, is not tenable as the penalty has been imposed on the Appellant company being a separate legal entity. The Appellant is obligated to abide by any directions given by the regulator under the relevant provisions of law. In view of the above deliberation of the arguments put forth by the parties, the Bench finds no reason to interfere in Impugned order and accordingly the Impugned order is upheld and the Appeal is dismissed without any order as to cost.


(Zeeshan Rehman Khattak)

Commissioner


(Akif Saeed)

Chairman/Commissioner

Announced on:

27 FEB 2025