

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 17 of 2016

1. Muhammad Adil, Chief Executive
2. Muhammad Farrukh Bashir
3. Saad Aftab Shamsi
4. Haris A. Shamsi
5. Ahtesham Ashraf
6. Naveed Hamid
7. S. Muhammad Imran

(All Directors of Hallmark Insurance Company Limited)

Appellants

Versus

The Commissioner (SMD), SECP

Respondent

Date of hearing:

20/10/16

Present:

For Appellants:

Mr. S. M. Suhail, F.C.A

For Respondent:

1. Ms. Ayesha Riaz, Additional Director (CSD)
2. Mr. Haroon Abdullah Abbas, Deputy Director (CSD)
3. Mr. Farrukh Majeed Qureshi, Deputy Director (Insurance)
4. Mr. Shafiq-ur-Rehman, Deputy Director (Insurance)

ORDER

1. This order shall dispose of the appeal No. 17 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated

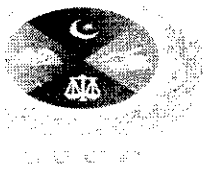


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05/04/2016 (the Impugned Order) passed by the Respondent under section 160 read with section 100 of the Securities Act, 2015 (the Act).

2. Brief facts of the case are that Hallmark Insurance Company Limited (the Company) was placed on the defaulter counter of Pakistan Stock Exchange (the PSX) on 01/08/06 due to its failure to pay annual listing fee and to join the Central Depository System (the CDS). Consequently, the trading of Company shares was suspended on 16/08/10. The Respondent, issued a direction on 01/09/15 (the Direction) under Section 100 of the Act to the Chief Executive Office (the CEO) and other directors of the Company to take immediate steps to undo the defaults of the Listing Regulations of the PSX within 14 days. The Appellants replied vide letter dated 11/09/15 and stated that the default took place due to enhanced paid up capital requirement. A Show Cause Notice (the SCN) dated 16/10/15 under section 160 read with section 100 of the Act, was served on the Appellants as to why the penal action may not be taken against them, as provided under section 159 of the Act. The Appellants replied the SCN vide letter dated 31/10/15 and hearing in the case was held on 20/01/16. Mr. S. M. Suhail represented the Appellants. He contended that the Company is dormant for last 12 years and has paid listing fees till 2011-12. The Company had been included in CDS. However, SECP froze them as their paid up capital was not as per the requirements of the new Insurance Rules. The Respondent being dissatisfied with the response of the Appellants, imposed a penalty of Rs.500,000 on each of the directors of the Company in the following manner:

S. No.	Name of Appellants	Amount Rupees
1.	Muhammad Adil, Chief Executive	500,000
2.	Muhammad Farrukh Bashir	500,000
3.	Saad Aftab Shamsi	500,000
4.	Haris A. Shamsi	500,000
5.	Ahtesham Ashraf	500,000
6.	Naveed Hamid	500,000
7.	S. Muhammad Imran	500,000
	Total	3,500,000



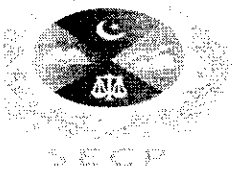
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3. The Appellants have preferred this appeal against the Impugned Order on the following grounds:

- i. The Company was already placed at default counter of PSX and trading of shares was suspended. Therefore imposition of fine through the Impugned Order amounts to double jeopardy.
- ii. The imposed penalty of Rs.3,500,000 is not justified because paid up capital of the Company is Rs.5,000,000 and default committed by the Company was non-payment of listing fee of Rs.200,000. The law of limitation provides that penalty in any case cannot be exceeded the principal amount, which was not paid.
- iii. The directors have taken certain steps to revive the Company and the members in annual general meeting dated 30/04/16 passed a resolution to diversify the nature of business instead of insurance business. Therefore, the Company shall apply for exit from insurance sector in the best interest and to safe guard the stake of minority shareholders.
- iv. One default cannot to be penalized twice. Pakistan Stock Exchange is already handling the non-compliance in terms of the surcharge and the members and Company has already suffered the punishment of default counter for last 8 years. Hence it does not appear justified that further penalty be imposed on the same issue.
- v. The Company or shareholders were not enjoying any benefit from the Company. Therefore, imposition of such a huge amount of penalty of Rs.3,500,000 cannot be justified.

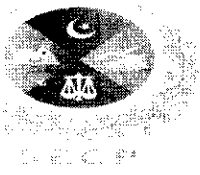
4. The Respondent has denied and rebutted the grounds of appeal as follows:

- i. The fine has been imposed on the directors in their personal capacity for their past conduct with respect to non-compliance of listing regulations since 2006. Inability to trade in the scrips is a punishment to the shareholders; hence directors have been rightly penalized and principle of double jeopardy is not applicable in this case.



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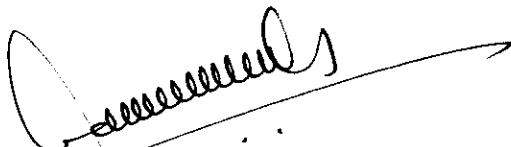
- ii. The penalty has been imposed on directors in their personal capacity hence its comparison with the paid up capital of the Company is not justified.
 - iii. The Company has clearly indicated its inability to continue as a going concern, and recently it has applied for revocation of their registration under the Ordinance, which is under consideration of the Commission.
 - iv. The penalty has been imposed on directors vide the Impugned Order whereas the surcharge on non-payment of listing dues has been charged on the Company.
 - v. The penalty has been imposed on the directors due to their failure to undo the defaults.
5. The Appellate Bench (the Bench) has heard the parties i.e. Appellants and Respondent and perused the record of appeal.
6. Mr. S. M. Suhail admitted on behalf of the Appellants the alleged default of the Company. However, he requested to take lenient view by considering subsequent steps of the management for betterment of the Company. He has not contested the appeal on any legal ground. He reiterated that the default occurred due to enhanced paid up capital requirement. The Bench asked him to argue the case on legal or factual ground, if any. However, he prayed to waive the penalty imposed through the Impugned Order. The Appellant inter alia filed this appeal on the ground that placement of the Company on the defaulter counter and suspension of share trading is a punishment. Therefore, Appellant cannot be penalized twice through the Impugned Order. The argument of the Appellants with respect to double jeopardy cannot be acceded due to two reasons. One the Act empowers the Respondent to proceed against the directors of the non-compliant companies. Second and most important reason is that the penalty has been imposed on directors in their personal capacity and not on the Company.
7. The Company is still under suspension due to non-payment of annual listing fee and non-inclusion into CDS. The default status as per latest PSX information is still the same i.e. the Company has outstanding listing dues (penalties or other dues) and has not joined the CDS. The Direction for compliance with both requirements was issued




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on September 01, 2015 and Impugned Order was passed on April 05, 2016. Hence ample time was provided to the Appellants for rectification of default status or submitting any alternate plan including but not limited to resumption of insurance license leading to compliance of CDS requirement and resumption in trading etc. In view of above, the Company cannot be allowed to linger on its non-compliant status on the PSX to the detriment of its shareholders.

8. The Appellants were required to follow the Direction of the Respondent with respect to compliance of listing regulations of PSX; however, they failed; hence, the Impugned Order was passed. The penalty has been imposed on the directors in their personal capacity for their past conduct with respect to non-compliance of listing regulations since 2006. Whereas inability to trade in the scrips is a punishment for the shareholders; hence directors have been rightly penalized.
9. In the above circumstances, we find no reason to interfere with the Impugned Order, therefore, we hereby dismiss the appeal with no order to cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 11 NOV 2016