



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 25 of 2020

(i) M/s. Premier Insurance Limited

(ii) Mr. Asad Ullah Khawaja

(iii) Mr. Shams Rafi

(iv) Mr. Nadeem Maqbool

(v) Mr. Attaullah A. Rasheed

(vi) Mr. Shehryar Mazhar

(vii) Mr. Khalid Bashir

(viii) Mr. Imran Maqbool

(Appellants (ii) to (viii) are all Directors of Premier Insurance Limited)

...Appellants

Versus

i. The Executive Director/HOD (Adjudication-1)

ii. Pakistan Chipboard (Pvt.) Limited

...Respondents

Date of Hearing: 09/06/21

Present:

For the Appellants:

- i. Mr. Raza Imtiaz, Barrister, Imtiaz Siddiqui & Associates
- ii. Mr. Rashid Sadiq, CEO Corporate Advisory

For Respondent No.1:

- i. Mr. Hammad Javed, Additional Director, Adjudication-1
- ii. Mr. Shafiq Ur Rehman, Additional Joint Director, Adjudication-1

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For Respondent No.2

- i. Mr. Mirza Mahmood Ahmad, Advocate Supreme Court of Pakistan
- ii. Mr. Muhammad Usman Sheikh, Advocate High Court
- iii. Ms. Zarmina Khan, Advocate
- iv. Mr. Mirza Ali Bashir Ahmad, Representative of Pakistan Chipboard (Pvt.) Ltd

ORDER

1. This Order is passed in Appeal No. 25 of 2020 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 (the SECP Act) against the order dated 20/03/20 (the Impugned Order) passed by Director (Adjudication-1) (Respondent No.1).
2. The brief facts of the case are that an application was filed with the Securities and Exchange Commission of Pakistan by Pakistan Chipboard (Pvt.) Ltd., (Respondent No.2), seeking implementation of the Order dated 19/01/18 passed by the Federal Insurance Ombudsman (the FIO Order) in the matter of complaints No. 357 and 358 against Premier Insurance Limited (the Appellant No.1) and Atlas Insurance Limited (the co-insurer). As per para 14 of the FIO Order dated 19/01/18, while disposing of the Review Petition, held that: *"instant Review Applications are disposed of and the Opponent Companies are hereby directed to immediately settle the claims of the Applicant to the extent of their respective liabilities within 30 days of the order failing which the Applicant will be entitled to claim liquidated damages under section 118 of the Insurance Ordinance, 2000"* Respondent No.2 prayed that the Appellants may be directed to make payment of the insurance claim of Rs 199,699,148/- along with liquidated damages to Respondent No.2.
3. The Show Cause Notice dated 06/11/19 (the SCN) was issued to the Appellants for alleged non-compliance of section 12(4), section 118 and section 130 read with section 60 and section 130(3) of the Insurance Ordinance, 2000 (the Ordinance). In response to the SCN, the Appellant No.1 submitted their reply vide letter dated 03/12/19 and hearing in the matter was held on 06/02/20. The hearing was attended by Mr. Shehryar Kasuri, Advocate Supreme Court, Mr. Rashid Sadiq, CEO, RS Corporate Advisory, and Mr. Raza Imtiaz Siddiqui, Advocate as the Authorised Representatives of the Appellant (the Authorised Representatives). During the hearing proceedings,



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the Authorised Representatives reiterated the submissions and arguments made in the written reply dated 03/12/19. The Authorised Representatives were of the view that section 24 of the Federal Ombudsman Institutional Reforms Act, 2013 (the Act) provides for an exclusive jurisdiction of FIO in the matter; therefore, the Securities and Exchange Commission of Pakistan (the Commission) cannot proceed in the matter. Furthermore, they argued that the Contempt Notice dated 07/09/18 issued by FIO had been suspended by the Honourable Lahore High Court vide its Order dated 24/09/18 and that sections 10, 12, 18 and 24 of the Act do not allow the Commission to assume its jurisdiction in the matter. The Authorised Representatives reiterated the stance of the Appellant No.1 that it is willing to settle the claim in accordance with the findings of the Surveyors' Report. On applicability of section 118 of the Insurance Ordinance in the matter, the Authorised Representatives were of the view that the Insurance Tribunal is the competent forum to impose liquidated damages on the insurer who makes a delay in settlement of the claim, as per the provisions of section 118 of the Ordinance.

4. Respondent No.1 held that, after carefully examining and giving due consideration to the written/verbal submissions of the Appellant, one of the fundamental objectives of ensuring the protection of interests of insurance policyholders as an Insurance Regulator, the Commission has a definite and statutory role in terms of section 130(3) of the Ordinance. Respondent No.1 also held that the objective of protection of the interests of the insurance policyholders is categorically recognized in the preamble of the Ordinance and from the perspective of the insurance industry, the pursuit of this objective is of paramount importance in order to establish the trust and credibility of the industry for prospective policyholders. Respondent No.1, moreover, stated that in pursuance of section 20(4)(s) of the SECP Act, 1997, the Commission is responsible for "*ensuring and monitoring compliance by insurers, insurance surveyors and insurance intermediaries of all laws, rules and regulations pertaining to insurance for the time being in force*". The Respondent quoted section 20(6)(fa) of the SECP Act, 1997, "*in performing its functions and exercising its powers, the Commission shall strive to maintain the confidence of holders of insurance policies by protecting the interests of policy holders and beneficiaries of insurance policies in all matters, including assignment of insurance policies, nomination by policyholders, insurable interest, surrender value of policies of life insurance, and other terms and conditions of contracts of insurance;*" The Respondent No.1 held that Respondent No.2 had approached the Commission for seeking the implementation of the Order dated 19/01/18 passed by FIO in respect of his complaint

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against the Appellant. The Appellant has submitted that the Contempt Notice issued by FIO was challenged before the Honourable Lahore High Court vide W.P. No. 236664/2018 titled "*Premier Insurance vs. FOP, etc.*" and a learned Single Bench has been pleased to stay the Notice of the FIO. However, Respondent No.1 held that the instant proceedings initiated by the Commission through SCN under section 130(3) of the Insurance Ordinance are not the subject matter of the case pending adjudication before the Honourable Lahore High Court. Furthermore, Respondent No.1 observed that having gone through the relevant provisions of sections 10, 12, 18 and 24 of the Act, no inconsistency or conflict can be observed in the provisions of section 130(3) of the Ordinance that restricts the Commission from exercising its powers for implementation of the Order passed by FIO in respect of a complaint of an aggrieved policyholder. Respondent No. 1 stated that, since the provisions of section 130(3) of the Ordinance aim at implementation of the Order of FIO, they effectively reinforce and strengthen the provisions of section 24 of the Act. Furthermore, the Respondent No.1 held that the Appellant had given its written commitment vide letters dated 13/12/16 and 27/03/17 during the proceedings of the case before the FIO that it was willing to settle the claim under the insurance policies covering fire and allied perils if Respondent No.2 have the clauses of section 7 of Anti-Terrorism Act, 1997 (the ATA) removed from the FIRs. Respondent No.1 held that FIO decided the matter vide its Order dated 19/01/18 as the condition of removal of clauses of section 7 of ATA had been fulfilled and, therefore, the Appellant was required to honour its written commitment without any further delay. Furthermore, the Respondent No.1 observed that there is no justification for non-compliance of the Order dated 09/0/18 passed by the FIO whereby it is obligatory for the Appellant to settle the claim within 30 days failing which the Appellant will be entitled to claim liquidated damages under section 118 of the Ordinance. Respondent No. 1 stated that, therefore, in exercise of the powers conferred on the Respondent No.1 under section 60 and 130(3) of the Insurance Ordinance and other enabling provisions of the law, the Appellant was directed to ensure full compliance with the Order dated 19/01/18 passed by FIO immediately.

5. The Appellants preferred the instant appeal *inter alia* on the following grounds:

- (i) It was communicated to Respondent No.1 during the course of the proceedings that Respondent No.2 had *inter alia* not challenged the recommendations of the surveyors by approaching the appropriate forum under the Ordinance. As a result, thereof, the Joint Report of the surveyors has attained finality and, therefore, the same cannot be deviated from by the Appellants. Furthermore, Respondent No.2 as well as Respondent No.1 have failed to appreciate that the

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Appellant No.1 as an insurance company cannot travel outside the ambit and scope of the Report furnished by the surveyors, as provided for under the Ordinance. In furtherance thereto, the Appellant No.1 as an insurance company has to comply with the mandate of the said statutory scheme; as a result thereof, it is bound by the content of the Report of the surveyor (the Surveyor's Report). The Appellant No.1 cannot claim reinsurance from its reinsurer for any claim paid, above the amount as mentioned in the Surveyor's Report. It is in this context that time and time again, the Appellant No.1 has communicated that the claim needs to be settled in terms of the Surveyor's Report; however, the Respondent No.2 fails to comprehend the statutory regime in field. The Impugned Order, therefore, is liable to be set aside.

- (ii) The SCN issued by Respondent No.1 with reference to a matter already pending adjudication before the Honourable High Court is a violation of the order dated 24/09/18 passed by the Honourable Lahore High Court, Lahore. Respondent No.2 had approached the learned FIO seeking implementation of its orders. It is this action that was challenged by the Appellants before the Honourable Lahore High Court, Lahore, therefore, the action of Respondent No.1 to hold that the Commission has the power in terms of section 130 of the Ordinance to seek implementation of the orders of the FIO is not correct, as Respondent No.2 had already availed the remedy of seeking implementation of the orders of the learned FIO by approaching the said forum. Therefore, the Impugned Order is not tenable in law.
- (iii) The Honourable High Court of Sindh at Karachi rendered a judgment reported as *2019 CLD 1194*; therein the Honourable Sindh High Court has reaffirmed the order of the President of Pakistan. The order of the President held that the learned Ombudsman could not have exercised jurisdiction with reference to a matter where there existed factual controversies and that the parties were to resort to the learned Insurance Tribunal with reference to quantification of their claim. This contention was also raised by the Appellants before Respondent No.1, during the course of the proceedings. It was the Appellant's contention that the orders of the FIO do not mention the quantum that is to be paid to Respondent No.2. Therefore, the quantum mentioned in the Report of the surveyors is the amount that is to be paid to Respondent No.2 and that the Appellants are willing to pay the same. Notwithstanding the conciliatory posture of the Appellants, the Impugned Order fails to address this contention of the Appellants. As a result, the Impugned Order is liable to be set aside.
- (iv) Without prejudice to the aforementioned, in terms of section 24 of the Act, the SCN under the Ordinance could not have been issued as Respondent No.2 has already approached the FIO for

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implementation of its orders. Furthermore, in terms of section 10, 12, 14, 18 and 24 of the Act, the Commission is barred from exercising its jurisdiction under section 130 of the Ordinance and entertaining any complaint for non-implementation of the order of the FIO.

6. Respondent No.1 rebutted the arguments of the Appellant *inter alia* on the following grounds:

- (i) The Impugned Order was passed after considering all the facts of the case and applicable provisions of the law. The Appellant entered into insurance contracts with Respondent No.2 by issuing insurance policies covering incidents of fire, whereby the Appellant was required to indemnify the Respondent No.2 in case of occurrence of loss. However, when Respondent No.2 fulfilled the condition imposed by the Appellant No.1 to remove section 7 of ATA from FIRs, the Appellant did not honour its written commitment submitted to the FIO vide letter dated 13/12/16. The co-insurer has already paid its share (30%) of claim in compliance of the Order passed by the FIO. The main grievance in the complaint before the FIO was the findings of the survey report as the surveyor excluded the fire insurance policies from the scope of his survey report as stated in para 22 of the Order dated 02/02/17 passed by FIO. The matter, therefore, was disposed of by FIO based on the written assurance of the Appellant No.1.
- (ii) There is no inconsistency or conflict in the provisions of section 130(3) of the Ordinance and those of section 10, 12, 14, 18 and 24 of the Act. Therefore, the said provisions of the Act do not restrict the Commission from exercising its powers for implementation of the Order passed by FIO in respect of a complaint of an aggrieved policyholder.

7. Respondent No.2 rebutted the arguments of the Appellants *inter alia* on the following grounds:

- (i) Respondent No.2, despite its reservations, is willing to settle the claim as per the loss assessed by the surveyors in their report. Furthermore, it is clear that Respondent No.2 was not required to challenge the Surveyor's Report before the Insurance Tribunal or any other relevant forum. The recording of evidence would have been necessary had Respondent No.2 challenged the quantum of loss assessed by the surveyors in their report. The only question before the FIO was whether the claim of Respondent No.2 should be processed under fire or terrorism insurance policies which have already been addressed in the FIO in light of the statements and undertakings. In the proceedings before the FIO, the Appellant No.1 and the co-insurer took the stance that they were prepared to settle Respondent No.2's claim under the fire insurance policies if the Terrorism offence was removed from the FIRs registering the incident of fire at



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Respondent No.2's factory. The FIO Order was passed in accordance with representations/undertakings of the Appellant No.1 and the Respondent No.2. It is important to note that the Terrorism Offence was deleted by the court of competent jurisdiction after following the due process and the same is a matter of record.

- (ii) The Appellants are duty-bound to implement the decisions of the FIO given as a result of mediation and in case of their failure to do so the Commission is required to act against the Appellants and impose fine or penalty in terms of section 130(3) of the Ordinance.
- (iii) It is clear from the language of section 130(3) of the Ordinance that the remedy available thereunder is independent and separate from other actions which may be provided for under any other law. In particular, the Commission's powers to initiate action against the Appellants are not subject to the powers of the FIO, as provided for under the Act. Therefore, the Appellants' argument that the Respondent cannot approach the Commission to redress its grievances under section 130(3) of the Ordinance as the Honourable High Court has suspended operation of the show-cause notice issued by the FIO under section 12 of the Act is misconceived. The suspension of the said show cause notice does not in any way operate to bar jurisdiction of the Commission over the instant matter. Furthermore, the show cause notice dated 07/09/18 issued by the FIO was served upon the insurance companies for them to explain why contempt proceedings may not be initiated against it for non-compliance of the FIO Order and the said SCN did not require the insurance companies to implement the FIO Order. Therefore, the argument that Respondent No.2 had already initiated proceedings for implementation of the FIO under the Act is meritless.

8. We have heard the parties i.e. the Appellants and the Respondents. We are of the view that the FIO Order has reached finality in view of the representations made by both the Appellants and the Respondent No.2. Furthermore, section 130(3) of the Ordinance provides that the Commission has the power to initiate action against the Appellants and impose fine or penalty if the order of the Insurance Ombudsman has not been implemented by an insurance company. Furthermore, when the Respondent No.2 fulfilled the condition imposed by the Appellant No.1 to remove section 7 of ATA from FIRs, the Appellant No.1 did not honour its written commitment submitted to the FIO vide letter dated 13/12/16. The Appellant No.1, therefore, must implement the decisions of the FIO given as a result of mediation and in case of their failure to do so the Commission is required to act against the Appellants and impose fine or penalty in terms of section 130(3) of the Ordinance. We have also observed that



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the FIO Order was subsequently challenged before the Honourable Lahore High Court, Lahore through writ petitions Nos. 166036 & 166280 of 2018 which were later dismissed vide judgment dated 18/04/18 whereby the FIO Order was upheld. The Appellant No.1 and the co-insurer preferred Civil Petitions for Leave to Appeal before the Honourable Supreme Court of Pakistan (the CPLA) which were dismissed as withdrawn vide order dated 30/09/19. Furthermore, after dismissal of the above said writ petitions and the CPLAs, FIO served upon the Appellant No.1 and the co-insurer a show-cause notice dated 07/09/18 for non-compliance of the FIO Order in exercise of powers conferred upon it under the Act. In the said show-cause notice, the Appellant and the co-insurer were called upon to show cause and explain as to why action should not be taken against them for non-compliance of the FIO Order. The said show-cause notice was challenged by the Appellant No.1 through writ petition No. 236664 of 2018 titled "*Premier Insurance Limited versus The Federation of Pakistan etc.*" before the Honourable Lahore High Court, Lahore on the ground that the Ombudsman's jurisdiction to issue such notices has been declared *ultra vires* by the Honourable Lahore High Court vide judgment reported as *United Bank Limited versus Federation of Pakistan and others* cited at *PLD 2018 Lahore 322*. We have observed that the Honourable Lahore High Court vide its order dated 24/09/18 suspended the operation of the said show-cause notice pending final adjudication of the petition, however, the Honourable Lahore High Court's order of 24/09/18 has no bearing on validity of the FIO Order dated 19/01/18 which has already been upheld by the High Court in Writ Petitions No. 166036 and 166280 of 2018. The only question that is pending adjudication in Writ Petition number 236664 of 2018 is whether the FIO can punish the Appellant No.1 and the co-insurer for non-compliance of its order under the law. Therefore, we are of the view that Writ Petition No. 236664 of 2018 currently pending before the Honourable Lahore High Court has no bearing on the proceedings before the Commission and the Respondent No.1 was correct in upholding the FIO Order. However, we have also observed that quantum of the claim by the Respondent No.2 has not been discussed in the FIO Order which has led to further dispute between the Appellant No.1 and the Respondent No.2 over payment of the claim. We have reviewed the Survey Report by Hamid Mukhtar & Co. (Pvt.) Ltd (the Surveyor) and have observed that the total loss was assessed at Rs 89,037,289 out of which Rs 26,711,187 (30%) has been paid by the co-insurer through a settlement. It was stated in paragraph 0702 of the Survey Report that, "*the insured agreed with the loss quantities but wished to sign off on the loss under normal Fire Insurance Policies and not the Fire Terrorism Policy from the eyewitness reported circumstances, media coverage and police FIRs as mentioned above...*" We are of the view that in light of the FIO Order and removal of section 7 of the ATA from the FIRs by the Respondent



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No.2, the Appellant No.1 must compensate the Respondent No.2 under normal fire insurance policies. Therefore, the Appellant No.1 is directed to pay the Respondent No.2 the remaining 70% of the assessed loss i.e. Rs 62,326,102.

9. The appeal is disposed of accordingly.

Sadia Khan

Commissioner (SCD-S&ED)

Farrukh Sabzwari

Commissioner (SCD-PRDD)

Announced on: 25 AUG 2021