



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 32 of 2018

PICIC Insurance Limited

...Appellant

versus

Commissioner Insurance (SECP), Islamabad

...Respondent

Date of hearing:

April 15, 2024

For the Appellant:

Mr. Zeeshan Abdullah (Advocate)

For the Respondents:

1. Mr. Shafique Ur Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 32 of 2018 filed by PICIC Insurance Limited through (the Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act), against the Order dated July 3, 2018 (the Impugned Order), passed by the Commissioner Insurance (the Respondent), for the contravention of Clauses lxxvii, lxxix and lxxx of the Code of Corporate Governance for Insurers 2016 (the Code), read with Section 11 and Section 12 of the Insurance Ordinance 2000 (the Ordinance), wherein, a penalty of Rs. 100,000/- was imposed on the Appellant under Section 156 of the Ordinance.



Securities and Exchange Commission of Pakistan

2. Brief facts of the instant appeal are that the Appellant is a Company registered under the Ordinance to carry on non-life insurance business in Pakistan. It was observed by the Respondent that the Appellant did not submit the Certificate of Compliance for the year ended December 31, 2016. The Appellant was reminded through a letter dated July 25, 2017 to submit the Certificate of Compliance for the year ended December 3, 2016 without any delay. However, the Appellant failed to file the said certificate even after the issuance of the reminder letter and did not seek any extension prior to the due date i.e April 30, 2017 for its submission .
3. In light of the aforementioned violation, the show-cause notice dated October 27, 2017 (the SCN) was issued to the Appellant. The Appellant submitted its reply to the SCN on November 08, 2017 and the hearing was scheduled for July 03, 2018, which was attended by the authorised representatives of the Appellant. After examining the submissions and considering the facts, the Respondent, in exercise of powers conferred under Section 156 of the Ordinance, imposed a penalty of Rs. 100,000/- on the Appellant for the contravention of Clauses lxxvii, lxxix and lxxx of the Code, read with Section 11 and Section 12 of the Ordinance.
4. The Appellant has preferred this appeal *inter alia* on the grounds that the Impugned Order is without factual and legal basis and has been passed without taking into consideration the submissions of the Appellant and evidence presented in support of their submissions. The Counsel for the Appellant while arguing the appeal stated that the Appellant is presently not underwriting any work and, moreover, that a merger application is still pending before the Securities Exchange Commission of Pakistan. The Counsel for the Appellant admitted the delay in filing the annual Certificate of Compliance for the year 2017, stating that due to the sudden death of the Chief Executive Officer and resignation of Chief Financial Officer, the Appellant was not able to comply with the requirement.. The Appellant further argued that the Impugned Order passed by the Respondent is *ultra vires* and the respondent has stepped outside the scope of its jurisdiction, as a penalty cannot be imposed upon the Appellant under section 156 of the Ordinance, as the respondent is not empowered to impose penalty or punishment for the non-compliance of Clauses lxxvii, lxxix and lxxx of the Code under Section 156 of the Ordinance. The Appellant further argued that the jurisdiction of section 156 of the Ordinance can only be invoked when



Securities and Exchange Commission of Pakistan

there is any default in complying with any requirement of the Ordinance, secondly, in a scenario where the insurer contravenes a requirement of the Ordinance and lastly when the insurer defaults in complying or contravenes a direction made by the Securities Exchange Commission of Pakistan (the Commission). The Appellant further argued that as per section 156 of the Ordinance, any director or other officer of the Company, who is knowingly a party to the default, shall be punishable with fine, further that the company is a juristic person and thus cannot itself commit any default or crime and therefore cannot be made punishable with fine, hence the Impugned order is liable to be set aside.

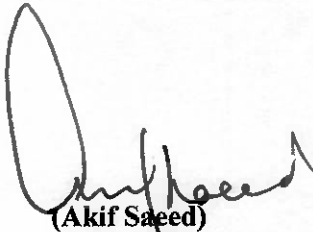
5. The Respondent while controverting the arguments of the Appellant, stated that the Appellant has no case on merits as the Appellant has admitted, in its written response as well as during the hearing, that the required certificate was not submitted within due time, as clause lxxviii of the code requires that the insurer shall file an Annual statement/certificate of compliance with the commission confirming status of compliance with the provisions of section 11 and section 12 of the Ordinance. The Respondent in rebuttal to the argument of Appellant, stated that the Code was made under section 11 and section 12 of the Ordinance and any non-compliance of the Code is a violation of the Ordinance and hence penalized as per the relevant provision of the Ordinance. The Respondent further argued that the default was willful, as in the reply to the SCN dated November 8, 2017, the Appellant committed to provide the Statement of Compliance within 15 days, however, the said certificate was submitted vide letter dated June 27, 2018, after the issuance of the hearing notice. The Respondent stated that the certificate was submitted after a delay of more than 13 months from the date on which it was required to be submitted, hence the respondent has taken a lenient view and has not imposed the maximum fine of Rupees one million. The Respondent while concluding the arguments, contended that the penalty has been rightly imposed upon the Appellant, as a blatant violation of the Code is apparent from the facts of the appeal, and prayed that the earlier decision be upheld.
6. The Appellate Bench (the Bench) has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellant had an obligation to adhere to the relevant provisions of the Code and the Ordinance, however, as per the facts of the appeal and record, it has been established that the Appellant defaulted upon and submitted the relevant documents after a delay of more than 13 months. The Bench is also not inclined to accept the Appellant's argument that cognizance of the matter

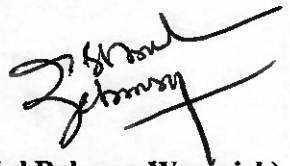


Securities and Exchange Commission of Pakistan

and imposition of penalty by the Respondent is *ultra vires* to the law and beyond the powers vested with the Respondent. The Bench has no doubt that the Respondent was competent to pass the Impugned Order as the Code has been issued in pursuance of section 11 and section 12 of the Ordinance, therefore, non-compliance of the Code has been rightly dealt by imposing penalty under section 156 of the Ordinance. The Bench has further observed that the definition of an insurer as defined under section 2 subsection 31 of the Ordinance includes a company within the definition of an insurer and section 156 of the Ordinance empowers the Commission to impose a penalty on a company or any of its directors as the wordings of section 156 are very clear to the extent that where any insurer who makes default in complying with or acts in contravention of any requirements of the Ordinance, the Commission shall have the power impose fine upon the insurer.

7. 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.


(Akif Saeed)
Chairman/Commissioner


(Abdul Rehman Warrach)
Commissioner

Announced on: **03 JUN 2024**