



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 33 of 2018

M/s. PICIC Insurance Limited

...Appellant

Versus

Commissioner (Insurance)

...Respondent

Date of hearing:

April 15, 2024

Present:

For the Appellant:

1. Mr. Zeeshan Abdullah (Advocate)

For the Respondent:

1. Mr. Shafiq-ur-Rehman, Additional Joint Director (Adjudication Department I)
2. Mr. Yasir Maqbool, ICAP Trainee (Adjudication Department I)

ORDER

1. This Order shall dispose of Appeal No. 33 of 2018 filed by M/s. PICIC Insurance Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated July 20, 2018 (the "Impugned Order") passed by the Commissioner (Insurance) (the "Respondent") under Rule 13 of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Rules") read with Section 11(1)(c), Section 36 and Section 156 of Insurance Ordinance, 2000 (the "Ordinance").



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2. The brief facts of the case are that an insurer registered under the Ordinance to carry on non-life insurance business is required to have at all times admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement which is Rs. 150 million as prescribed under Rule 13 of the Rules. The Commission vide Order dated December 31, 2015 directed the Appellant to meet the minimum solvency requirement by March 31, 2016 and submit an auditor's certificate verifying status of compliance. However, the Appellant failed to comply with the same. Therefore, a show-cause notice (the "SCN") dated November 01, 2017 was issued to the Appellant and after considering the submissions of the Appellant rendered in the hearing, the Respondent, vide the Impugned Order, imposed a penalty of Rs. 500,000/- on the Appellant.
3. The Appellant prayed for the suspension of the Impugned Order, *inter alia*, on the grounds that under Section 156 of the Ordinance the Respondent is not empowered to impose any penalty upon the insurer, if the insurer is a company (juristic person), as the company cannot itself commit any default, rather it could be its officer, director etc., who commits default, hence, the company being a juristic person cannot be punished. The Appellant further argued that the Respondent failed to appreciate the crucial fact that the Appellant has practically stopped running insurance business while ceasing underwriting business and, in this regard, has also filed an application under Section 9 of the Ordinance for the revocation of the insurance license which, after being declined by the SECP, is under challenge in Suit 716/2018, which is pending adjudication before the Honorable High Court of Sindh at Karachi. Moreover, the Appellant's merger with Crescent Star Foods (Pvt.) Ltd. ("CSFL") is also evident of its departure from insurance business entirely, the Petition No. JCM 45/2018 of which is also pending adjudication before the Honorable High Court of Sindh at Karachi.
4. The Respondent rebutted the grounds of the Appeal and presented their arguments. It was contended by the Respondent that the Appellant has misinterpreted Section 156 of the Ordinance as the said Section empowers the Commission to impose fine on the insurer, its director and other officers of the insurer, thereby, the law is very clear and hence the argument of the Appellant is not tenable. The Respondent argued that the wordings of Section 156 as emphasized by the Appellant only stresses further on the point that the section is equally applicable on the insurer and its directors and other officers of the insurer. The Respondent further argued that it has taken a lenient view by



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not imposing maximum fine on the Appellant and also that the Board of Directors of the Appellant were not penalized. The Respondent emphasized that the default was willful as the Appellant previously assured to comply with the minimum solvency requirement in future and for this reason a lenient view was taken vide order dated December 31, 2015. However, the Appellant again failed to comply with the requirement as the Auditor in their audit report for year ended December 31, 2016 highlighted that admissible assets of the Appellant as at December 31, 2016 were in excess of the Company's liabilities by Rs. 6.370 million only and was not meeting the minimum solvency requirement by Rs. 143.270 million as at the said date, therefore, the Impugned Order is just, fair and valid.

5. On the stance of the Appellant regarding non-consideration of crucial facts regarding its operations, the Respondent emphasized that Section 11(1) of the Ordinance provides the conditions imposed on a registered insurer which includes a condition under sub-section (c) where it states that an insurer registered under this Ordinance shall at all times ensure that the provisions of this Ordinance relating to minimum solvency requirement are complied with. The Respondent further elaborated that section 36(1) of the Ordinance provides that an insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement, therefore, as long as the Appellant is registered under the Ordinance, it is incumbent upon it to comply with the requirement of the Ordinance and Rules made thereunder. The Respondent further argued that the matter pertaining to solvency of the Appellant is not pending before the Court, therefore, it has no correlation whatsoever with the application submitted before the Court for revocation of the insurance license by the Appellant as subject matter of both the cases are different in nature and in the absence of any restraining order issued by the Court in the matter, the adjudication proceedings cannot be suspended.
6. The Bench has heard the arguments of both the parties and perused the record. The Bench is of the opinion, that adjudication proceedings were initiated through issuance of the SCN dated November 01, 2017 against the Board of Directors as well as the Appellant under Rule 13 of the Rules read with Section 11(1)(c), Section 36 and Section 156 of the Ordinance, however the penalty was only imposed on the Appellant by taking a lenient view by the Respondent, therefore the provisions of Section 156 of the Ordinance is equally applicable on the insurer as well as its directors and officers.



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As far as the contention of the Appellant with respect to its application for revocation of Insurance Registration is concerned, the Bench is of the view that the Appellant was holding a valid insurance licence/registration when the contravention with regard to minimum solvency requirement was observed and SCN proceedings were initiated. Therefore, as per the applicable provisions of law the Impugned Order was adjudicated upon and imposition of penalty was in accordance with the law.

7. In view of the foregoing, the Bench finds no reason to interfere in the Impugned Order and thus upholds the same. Therefore, the instant Appeal is **dismissed** without any order as to costs.

(Akif Saeed)
Chairman/Commissioner

(Abdul Rehman Warraich)
Commissioner

Announced on: 07 MAY 2024