



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 35 of 2012

Avais Hyder Liaquat Nauman, Chartered Accountants Appellant
Versus

Executive Director (Insurance)
Securities and Exchange Commission of Pakistan Respondent

Date of Hearing 01/09/15

Present:

For the Appellant:

- (i) Shazib Masood, Advocate
- (ii) Adnan Tirmizey, FCA, Avais Hyder Liaquat Nauman, Chartered Accountants

For the Respondent:

- (i) Ali Azeem Ikram, Executive Director (Insurance)
- (ii) Tariq Bakhtawar, Director (Insurance)

ORDER

1. This order in appeal No. 35 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 25/06/12 (Impugned Order) passed by the Respondent.



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2. Avais Hyder Liaquat Nauman, Chartered Accountants (Firm) was required to execute a declaration along with the application that was submitted pursuant to section 48(1) of the Insurance Ordinance, 2000, (Ordinance), to the Commission soliciting approval to act as approved auditors to undertake audit assignments of insurance entities. However, it was observed that a proviso as declared by the Appellant was untrue. The Insurance Division called for comments from the Firm and pending outcome of the matter, the Firm was simultaneously barred from assuming any new audit assignment in respect of insurance entities. The Firm submitted its response dated 29/3/12 but the Respondent was dissatisfied from the response of the Appellant.
3. Show cause notice dated 12/04/12 (SCN) was issued to the Firm under section 158 read with section 48(1) of the Ordinance and hearing on the matter was held on 22/05/12. The Respondent, dissatisfied with the response of the Firm, passed the Impugned Order and imposed penalty of Rs.50,000 under section 158 of the Ordinance and further directed the Firm to refrain from assuming new assignments relating to the audit of financial statements for the year ending 31/12/12 of insurance, reinsurance and takaful entities.
4. The Appellant preferred to file the instant appeal against the Impugned Order on the grounds that the Respondent ignored the facts mentioned in letter dated 29/03/12 by a senior partner of the Firm, wherein, it was stated that penalty imposed on one of the partners of the Firm namely Mr. Nauman Mahmood at Islamabad office vide order dated 04/11/11 was not communicated to other partners of the Firm. Further, the said penalty was imposed on the engagement partner in his personal capacity. The matter, therefore, was unintentionally not brought to the notice of the Firm and its other partners, while the declaration was signed by another junior partner at Lahore. Moreover, the Respondent issued the SCN dated 12/04/12 under section 158 of the Ordinance which had been amended in the year 2007. The hearing under the invalid notice cannot be subsequently redressed by the subsequent Order under the amended law. The prequalification of auditors in terms of the standard set by the Commission



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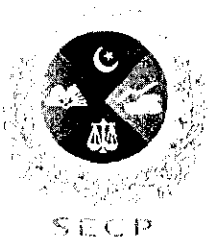
as per its own requirements is not covered under the provisions of section 158 of the Ordinance. Strict interpretation of the penal provisions of section 158 of the Ordinance has to be applied for determining that the declaration was willfully made knowing it to be false, failing which the benefit of the doubt has to be given to the Firm.

5. The Respondent rebutted the grounds of appeal by stating that the Order was issued after giving due consideration to every stance of the Appellant and no assumptions were made while deciding the case on merit. As the audit firm was enlisted on the approved panel of auditors, the negligence at the end of one partner is representation of the audit firm as a whole. Further, the Order is in accordance with the law for the misstatement made in declaration knowingly and willfully and, therefore, meets the requirements of section 158 of the Ordinance.
6. We have heard the arguments and perused the record provided to us by the parties i.e. the Appellant and the Respondent. Sections 48(1) and 158 of the Ordinance are reproduced for ease of reference:

48. Audit.- (1) Every insurer shall appoint an auditor who shall be:
(a) approved by the Commission as qualified to perform audits of insurance companies; and
(b) authorised under the Companies Ordinance to perform audits of public companies.


158. Penalty for false statement in document.- Except as otherwise provided in this Ordinance, whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Ordinance, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable [by the Commission] with fine which may extend to one million rupees

Emphasis Added



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7. The Appellant has argued that penalty was imposed on the engagement partner, Mr. Nauman Mahmood in his personal capacity, therefore, it was not in the knowledge of the Firm that such penalty had been imposed. It is pertinent to mention, however, that SCN was issued to the Firm as a whole and penalty was imposed for the violations committed by the Firm of which Mr. Nauman Mahmood is a partner. Therefore, the argument that the Firm was unaware of the Order dated 04/11/11 is without any merit. Further, the Appellant has argued that the SCN is defective as the penal provisions of section 158 of the Ordinance reproduced in the SCN were in force prior to the amendment in 2007 which stipulated "...imprisonment for a term which may extend to three years, or with fine which may extend to three years, or with fine which may extend to one million rupees, or with both." The amended section 158 of the Ordinance does not include imprisonment but only stipulates a fine of one million rupees. This Bench is of the view that it is the responsibility of the Respondent to ensure that correct section and contents are reproduced in any show cause notice issued or other correspondence. However, in the instant case, the mistake in the SCN does not change the outcome of the show cause proceedings which were initiated for the violation of section 158 of the Ordinance. Moreover, the said section was correctly reproduced in the Impugned Order and penalty was rightly imposed.
8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Appeal is dismissed with no order as to costs.
9. The Respondents are directed to be careful in communication in future.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 21 SEP 2015