



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 36 of 2017

1. Chief Justice (R) Mian Mahboob Ahmad, Chairman
 2. Maheen Yunus, Chief Executive Officer
 3. Mohsin Ali Kanchwala, Director
 4. Umeed Ansari, Director
 5. Javed Yunus, Director
 6. Pervez Yunus, Director
 7. Naved Yunus, Director
 8. Omar P. Yunus, Director
 9. M/s. East West Life Assurance Company Limited
- ...Appellants

Versus

The Commissioner (Insurance), SECP.

...Respondent

Date of Hearing: 30/09/21

Present:

For the Appellant

Mr. Ali Ahmad Shah, Advocate High Court

For the Respondent:

- (i) Mr. Shafiq Ur Rehman (Additional Joint Director), Adjudication -I, SECP
- (ii) Mr. Hammad Javed, Additional Director, Adjudication -I, SECP
- (iii) Mr. Bilal Mustafa, Additional Joint Director, Offsite-I, SECP
- (iv) Ms. Minaal Tariq, Assistant Director, Adjudication Advisory & Litigation, SECP

ORDER

1. This Order is passed in the matter of Appeal No.36 of 2017 filed by the Chairman, Chief Executive Officer and directors of M/s. East West Life Assurance Company Limited (the Appellants) under



Securities and Exchange Commission of Pakistan

section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated April 4, 2017 (the Impugned Order) passed by the Commissioner, Insurance (the Respondent).

2. The brief facts of the case are that during the hearing proceedings of an application filed by M/s. East West Life Assurance Company Limited (the Company) regarding approval for appointment of new directors namely; Mr. Naveed Yunus, Mr. Javed Yunus, Mr. Pervez Yunus, Mr. Omer P. Yunus and Mian Mahboob Ahmed, it was apprised to the Company Secretary that Maheen Yunus was granted approval vide Commission's letter dated June 26, 2015 for appointment as a Director only. It was further communicated to the Company Secretary that Maheen Yunus was acting as Chief Executive Officer of the Company on the date of issuance of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the Regulations) i.e. January 9, 2012 and transitional period of five years to act as a CEO expired on January 8, 2017. However, the Appellant did not apply for approval as CEO of the Company for the remaining term beyond January 8, 2017. Furthermore, the Company has also not obtained approval in respect of appointment of Mr. Umeed Ansari as its Director.
3. In view of the above violations, a show cause notice dated January 31, 2017 (the SCN) was issued to the Appellants under Regulation 2(2) of the Regulations, Sections 11(f) and 12(1)(b) of the Insurance Ordinance, 2000 (the Ordinance) read with sections 60 and 156 of the Ordinance. The Appellants replied to the SCN vide letter dated February 20, 2017. Hearing in the matter was held before the Respondent on March 13, 2017. The Respondent concluded the SCN proceedings and imposed a fine of Rs. 200,000/- on the Company, Rs. 100,000 on Mr. Maheen Yunus, for acting as CEO of the Company without prior approval/submission and Rs. 100,000 on Mr. Umeed Ansari for acting as a Director without prior approval. However, while taking a lenient view, no penalty was imposed on other Appellants. Furthermore, the Appellant and its management were directed by the Respondent to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.
4. The Appellant preferred the instant appeal *inter alia* on the following grounds:
 - i. The matter was initiated by the Respondent when the Appellant submitted the Application for approval of its six directors before the Commission. A hearing opportunity was provided to the Appellant by the Respondent and during the said hearing, the allegations for non-approval of CEO and Director Mr. Umeed Ansari were added. Therefore, it is established that the matter originally did not disclose any charge against the Appellant for which the penalty was imposed



Securities and Exchange Commission of Pakistan

later. Subsequently, through the Impugned Order, the original charge was waived off and penalty was imposed against the allegations which were added at a belated stage.

- ii. With regards to the matter of Mr. Umeed Ansari, the Impugned Order did not take into consideration that not only the Commission had already granted approval for his appointment as director, but the said approval was available on record. Furthermore, the Impugned Order completely ignores to take into consideration Regulation No. 4(3) of the Regulations which clearly provides that a director shall comply with the provisions of the Regulations before commencement of his new term. The Company, in compliance with the said Regulation, obtained approval of Mr. Umeed Ansari before commencement of his new term as director and, therefore, the requirement of Regulation No. 4(3) was fulfilled. Similarly, Form-29 for appointment of Mr. Umeed Ansari as director was duly submitted with the CRO and the same was accepted and CTCs were issued, therefore, the factum of estoppel was proved against the Commission and no action could have been taken on account of such an allegation.
- iii. The Impugned Order itself expressly lays down that approval of Maheen Younis, the director and CEO of the Appellant was issued by the Commission. The Impugned Order further states that the said approval was to the extent of directorship for a period of five years and for the office of CEO for a period of two years. Furthermore, Form-29 for appointment of CEO was duly submitted with CRO and the same was accepted and CTCs were issued, therefore, the factum of estoppel was proved against the Commission in this instance as well and no action could have been taken on account of such an allegation.
- iv. The Appellant sought approval of six of its directors from the Commission and made compliance with the directions of the Commission for submission of additional documents/annexures. The said compliance by the Appellant was duly acknowledged in the Impugned Order when the said charge was waived off. There was no reason or motive for the Appellant to seek approval in cases of six directors and make all the efforts thereupon and violate the requirement for one director and a CEO. It was merely a matter of interpretation of law by the Appellant as it believed in good faith that the Regulations do not provide for fresh approvals once the same have already been granted. As stated hereinabove, penal provisions must be construed strictly, and any benefit must be granted to the person against whom allegation has been levelled. It is further pointed out that the "willful default", by no stretch of



Securities and Exchange Commission of Pakistan

interpretation, can be attributed to the Appellant since the same Impugned Order accepts and acknowledges the good faith compliances by the Appellant.

- v. The Impugned Order is not in line with the binding precedents of the honorable superior courts of Pakistan that an order determining civil or criminal liability of a person must be a speaking order. The Impugned Order is devoid of any attempt to provide reasons, grounds, evidence, and record for the conclusion that the Appellant is in violation of the Regulations.

5. The Respondent rebutted the arguments of the Appellant *inter alia* on the following grounds:

- i. It would be pertinent to state that Regulation 2(2) of the Regulations specifically requires that prior approval of the Commission i.e. through Insurance Division should be obtained by the persons before assuming the charge as CEO/Director of an insurer, hence, the application for grant of approval to act as CEO/Director should have been filed with the Insurance Division and approved before their assumption of charge as CEO/Director. Moreover, by merely filing the form with CRO, the requirement of approval from the Insurance Division is not met. As regards the case of Mr. Maheen Yunus, the Commission approved him as Director only. He was required to apply for seeking approval for appointment as CEO of the Company. This requirement was already conveyed to the Representative however, no compliance was made.
- ii. Mr. Umeed Ansari applied for approval as director after expiration of his term in March 2017 instead of applying for approval before the expiry of the term. Furthermore, the Appellant had not met the requirement of Clause VII of the Code of Corporate Governance for Insurers, 2016 which provides conditions for Qualification and Eligibility to act as a Director:

“No person shall be appointed, elected or nominated as a director of an insurer unless his appointment has been approved by the Securities and Exchange Commission of Pakistan under the Insurance Companies (Sound and Prudent Management) Regulations, 2012, This requirement cannot be relaxed in exercise of the powers conferred by this Code.”

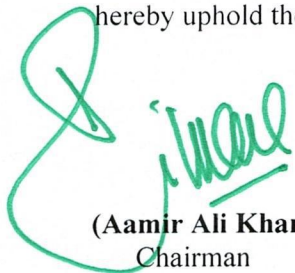
- iii. The Appellants were required to ensure compliance with Regulation 2(2) of the Regulations, sections 11(1)(f) and 12(1)(b) of the Ordinance by seeking prior approval of the Commission for appointment of its Directors/CEO which the Appellants failed to comply. After establishing that the Appellant failed to obtain approval of the Commission under the Regulations, prior to assumption of charge as CEO/Directors of the Company, particularly Mr. Maheen Yunus and Mr. Umeed Ansari, the penalty was imposed accordingly.



Securities and Exchange Commission of Pakistan

6. The Appellate Bench (Bench) has heard the parties i.e. the Appellant and the Respondent. We have observed that the Board elections took place in April, 2015 and application for approval of directors by the Appellant was made in June, 2016, however, name of Mr. Umeed Ansari was not included therein. Subsequently, the application for approval of Mr. Umeed Ansari as a director was made on April 7, 2017 with a delay of two years and after expiry of his term. Furthermore, mere submission of Form 29 in the CRO does not tantamount to approval of the Commission and application for approval of Maheen Yunus was made on April 7, 2017 after the expiry of the 5-year transitional period in his position as CEO. The Appellant's argument that the default was not willful does not hold merit as the word "*willful default*" has been defined in Oxford Dictionary of Law Fifth Edition as "*The failure of the person to do what he should do, either intentionally or through recklessness.*" In the instant case, the Appellants had not exercised due skill and care required by the applicable laws and failed to obtain prior approval of the Commission while appointing CEO/director within stipulated time frame, therefore, default is established against the Appellants.

7. In view of the foregoing, we see no reason to interfere with the Impugned Order. Therefore, we hereby uphold the Impugned Order and dismiss this Appeal without any order as to cost.



(Aamir Ali Khan)
Chairman



(Farrukh Hamid Sabzwari)
Commissioner

Announced on: **30 NOV 2021**