



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 42 of 2015

Credit Insurance Company Limited

.... Appellant

Versus

The Director (Insurance Division) Securities and Exchange
Commission of Pakistan

.... Respondent

Date of hearing:

21/01/16

Present:

For Appellant:

Mr. Ata Muhammad Khan, Advocate High Court

For Respondent:

1. Mr. Hasnat Ahmad, Director Insurance Division
2. Mr. Shahid Javed, Deputy Director Insurance Division

ORDER

1. This order shall dispose of Appeal No. 42 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the Credit Insurance Limited (Appellant) against the order dated 08/10/15 (the Impugned Order) passed by the Respondent.
2. Brief facts of the case are that the Appellant has not submitted its Audited Annual Accounts and Regulatory Returns (the Accounts and Returns) for the year ended



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31/12/14 by 30/04/15. The Appellant, vide its letter dated 09/04/15 requested for an extension in submission of the said the Accounts and Returns, which was acceded to and an extension of up till 31/05/15 was granted in terms of section 51(1) of the Insurance Ordinance 2000 (the Ordinance). However, the Appellant failed to submit the Accounts and Returns even after the lapse of extended period as required under section 46(1)(b) read with section 51(1) of the Ordinance. Therefore, a Show Cause Notice (the SCN) dated 13/08/15 was issued to the Appellant under section 46(1)(b) read with section 51(1) and section 156 of the Ordinance. The Appellant submitted SCN reply vide letter dated 02/09/15. The hearing in the matter were firstly scheduled for 16/09/15 however no one appeared on behalf of the Appellant, thereafter in the interest of justice another hearing opportunity was provided on 29/09/15, however, no one appeared on behalf of the Appellant. The Respondent, after carefully reviewing the facts and circumstances of the case held that the default of section 46(1) (b) and section 51 of the Ordinance is established. Therefore, a fine of Rs.100,000 was imposed on the Appellant under section 156 of the Ordinance.

3. The Appellant has preferred the appeal against the Impugned Order on the following grounds:

- a) The default for non-filing the financial statement was not deliberate.
- b) The change of management has caused a delay in submission of the financial statements.
- c) The Appellant has never defaulted in the past in the submission of the financial statements.
- d) The notice of hearing dated 17/09/15 and 29/09/15 was not received by any authorized person and could not be delivered to the management.
- e) The observation of the Respondent is merely based on his personal thinking which does not have any backing in the law.
- f) The penalty imposed of Rs.100,000 is quite excessive, harsh and unjustified, hence, liable to be set aside.



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4. The Respondent has rebutted the grounds of appeal in the following manner:
- a) The default for non-filing the financial statements was deliberate and willful as the provisions of section 46(1)(b) read with section 51(1) of the Ordinance clearly stipulate the timeframe allowed for filing the audited financial statements and regulatory returns, and ignorance of law is no excuse.
 - b) The ground that the change in management caused a delay in submission of the financial statements is baseless, therefore, cannot be relied upon because the Appellant has not obtained the express approval in this regard, which itself an unlawful and ultra vires on part of the Appellant.
 - c) The Appellant has stated that it has never defaulted in the past in submission of the financial statements which is a false statement as the Commission has already taken cognizance of similar non-compliance i.e. non-filing of the financial statements vide an earlier SCN dated 06/07/12 and order dated 28/12/12 was passed by the Respondent, whereby a penalty of Rs.20,000 was imposed onto to the Appellant. Therefore, the instant appeal is liable, to be set aside.
 - d) The hearing notices dated 17/09/15 and 29/09/15 were duly served at the registered office of the Appellant. It would be important to state that at the same address the Impugned Order dated 18/10/15 was dispatched, hence, the plea of the Appellant that the aforesaid hearing notice was not received by the management of the Appellant is not correct.
 - e) The Impugned Order is a speaking one and was passed in accordance with the law by keeping in view the relevant facts of the case.
 - f) The Respondent was authorized to impose maximum penalty of Rs. 10,000,00 envisaged in the section 156 of the Ordinance, however by taking lenient view the Respondent has imposed only Rs. 100,000.



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5. We have heard the parties i.e. Appellant and Respondent and perused the relevant record which revealed that the alleged late filing of the Accounts and Returns has been admitted by the Appellant. However, the Appellant has taken plea that late filing was not a deliberate or willful rather it was caused due to change of management of the Appellant as on 08/12/14. On the other hand, the Respondent has raised a preliminary objection that Mr. Tahir Malik was not authorized to appoint Mr. Abdul Hameed Khan, FCA and Mr. Atta Muhammad Khan as authorized representative to plead the instant appeal, as he has not obtained the requisite approval under the Insurance Companies (Sound and Prudent Management) Regulations, 2012 before assuming the charge as a director or the chief executive officer of the Appellant.
6. The objection raised by the Respondent is prima facie a separate case of non-compliance, hence it should be dealt by the Respondent in accordance with the applicable laws. The Respondent objection has no relevance to the merits of this appeal therefore appeal is maintainable. Admittedly, the new management of the Appellant assumed charge on 08/12/14 therefore, they were required to submit the Accounts and Returns before expiry of extended time i.e. 31/05/15 but they failed to perform their statutory duties. The Appellant has submitted the Accounts and Returns with the delay of 36 days which cannot be ignored in the circumstances wherein the Appellant has history of non-compliance of same requirement. Inconsequence of similar non-compliance a SCN dated 06/07/12 and order dated 28/12/12 was passed against the Appellant, whereby a penalty of Rs.20, 000 was imposed.
7. The Appellant has failed to comply with the legal provisions of the Ordinance. As per legal precedent cited in 1987 MLD 3039, the legal duty or liability is needed to be discharged as required by law and if not complied, the presumption will be that non-compliance was willful. Therefore, when a requirement of a statute has been violated then there is no need to establish mala fide or mens rea to prove the non-compliance of the provisions.




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8. In our view the fine imposed through the Impugned Order should have been maximum as the Appellant has history of same non-compliance, however at the movement, keeping in view the admission of non-compliance by the Appellant, we find it appropriate not to interfere with the Order dated 08/10/15 passed by the Respondent, therefore the Impugned Order is upheld and the appeal is dismissed.
9. Parties to bear their own cost.



(Zafar Abdullah)
Commissioner (SCD)



(Tahir Mahmood)
Commissioner (CLD)

Announced on: 28 JAN 2016