



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 42 of 2016

M/s. Crescent Star Insurance Limited

...Appellant

versus

Securities and Exchange Commission of Pakistan

...Respondent

### Date of hearing:

September 20, 2023

### Present:

#### For the Appellant:

Mr. Saadat Ali Saeed, Advocate

#### For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Mr. Shafique Ur Rehman, Additional Joint Director, Adjudication-I, SECP
3. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 42 of 2016 filed by M/s. Crescent Star Insurance Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act").
2. The brief facts leading to the instant Appeal are that the Appellant vide application dated September 09, 2013 sought approval of the Securities and Exchange Commission of Pakistan (the "Commission") for issuance of 49,912,500 ordinary shares, of Rs.10 each, at Rs.6 per share (at 40% discount). The



## Securities and Exchange Commission of Pakistan

Commission, on November 13, 2013, granted approval under section 84 of the repealed Companies Ordinance, 1984 subject to the condition that the issuance of shares shall be in cash and the Appellant was required to submit bank statements to the Commission upon receipt of the subscription money from the shareholders and underwriters to the issue. Subsequently, the Commission initiated an onsite inspection of the Appellant vide order dated July 28, 2015, which revealed that the general public subscribed 10,775,534 shares and Rs. 64.653 million were received as subscription money, whereas, the remaining 39,136,966 right shares were issued to the underwriters namely; M/s. Elahi Noor Enterprises (Private) Limited, and M/s. Weavers Pakistan (Private) Limited. The inspection report revealed that the Appellant's bank account with the United Bank Limited showed that on March 12, 2014 an amount of Rs. 20 million was credited, and debited simultaneously eleven times and Rs.0.573 million and 10.246 million were also credited on the same day. These debit and credit transactions showed receipt of Rs. 230 million against the subscription of right shares. However, each transaction was credit and debited sequentially and the bank balance remained unchanged at Rs. 2.718 million.

3. Show cause notice (the "SCN") dated April 01, 2016 was *inter alia* issued to the Appellant under sections 45, 46 read with section 158 of the Insurance Ordinance, 2000 (the "Ordinance"). Hearing in the SCN proceedings was held and warning was *inter alia* issued to the Appellant, vide order dated June 21, 2016 (the "Impugned Order"), and the concerned department of the Commission was directed to review in detail, the upcoming half-yearly accounts for the period ended June 30, 2016 and refer the matter to the onsite inspection team, if deemed necessary.
4. The Counsel for the Appellant submitted that the Impugned Order inflicts double jeopardy upon the Appellant as the same has already been *inter alia* penalized vide earlier order dated September 04, 2014 under the pretext of non-compliance with meeting the minimum paid-up capital requirement and for that reason non-compliance of any or related conditions could not have been initiated as a separate and distinct offence. The Appellant's counsel submitted that the transaction in question has already been discussed in the earlier show-cause notice proceedings and must be treated as a 'past and closed transaction'. He argued that the sole purpose to issue shares was to comply with the minimum paid-up capital requirement as enunciated under the law, however, neither the SCN nor the Impugned Order state as to how the Appellant 'mis-stated' and how the Respondent, vide the Impugned Order, has based



## Securities and Exchange Commission of Pakistan

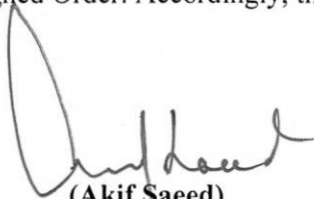
its finding on the documents which have already been taken into consideration while passing the earlier order. The Counsel further argued that issuance of warning to the directors of the Appellant is against the principle of fair trial as the same were not issued a show-cause. The Appellant submitted that an amount of Rs. 230.82 million was received in cash in accordance with the approval granted by the Commission which does not prohibit receiving proceeds of right issue in tranches or any condition that the said amount once received cannot be debited from the bank account.

5. The Respondent controverted the arguments of the Appellant and submitted that the Impugned Order has been passed on account of violations of the Ordinance mentioned therein which are materially different from the ones which were the subject matter of the earlier order dated September 04, 2014. The Respondent, while defending the Impugned Order, reiterated its stance as mentioned in the written reply to the instant Appeal.
6. The Appellate Bench (the "Bench") has heard the parties. The primary contention of the Appellant on the basis of which Impugned Order has been challenged is that the same is hit by the principle of 'double jeopardy'. Perusal of the record unequivocally shows that the earlier order dated September 04, 2014 whereby the Appellant was penalized was on account of non-compliance of a statutory requirement to maintain the minimum paid-up capital, whereas, the Impugned Order is a culmination of the SCN issued under section sections 45, 46 read with section 158 of the Ordinance. There is no cavil to the fact that the Impugned Order has been passed under the provisions of the Ordinance which were not the subject of the earlier order dated September 04, 2014. The contention of the Appellant that the Impugned Order touches upon the same transaction decided by an earlier order is misplaced as mere mentioning of facts in an earlier order does not in any manner operate as an estoppel to invoke the relevant provisions of law on account of a contravention. The Appellant's contention that the Impugned Order fails to establish 'mis-statement' in terms of sections 45 and 46 of the Ordinance is also not tenable as the Appellant has not denied any aspect of the transactions nor the manner in which they were reported in the financial record. Moreover, the contention of the Appellant that the Impugned Order violates Article 10A of the Constitution of the Islamic Republic of Pakistan is without any basis as it is evident from the record that SCN was *inter alia* also issued to the directors of the Appellant and the ingredients of a fair trial have been fulfilled in the SCN proceedings.



## Securities and Exchange Commission of Pakistan

7. Furthermore, the view of the Appellant that the approval granted by the Commission does not prohibit receiving of funds in tranches has no relevance to the matter at hand. It is a matter of record that one of the underlying conditions for grant of approval by the Commission was that the issuance of shares shall be in cash. The Appellant failed to comply with the said condition and has not offered any cogent reasoning before the Bench whereby it can be said that the aforementioned condition was duly met in letter and spirit by the Appellant and was thus *inter alia* warned vide the Impugned Order.
8. In view of the above, the Bench does not find any merit in the instant Appeal and thus upholds the Impugned Order. Accordingly, the instant Appeal is hereby **dismissed**. No order as to cost.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Mujtaba Ahmad Lodhi)  
Commissioner

Announced on: 21 NOV 2023