



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 44 of 2022

United Insurance Company Limited

...Appellant

Versus

The Director/HOD, Adjudication-I, Adjudication Division, SECP, Islamabad.

...Respondent

Date of hearing:

August 22, 2024

Present:

For the Appellant:

Mr. Ali Ibrahim, Advocate

For the Respondent:

Mr. Shafiq -ur- Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. The United Insurance Company Limited (the Appellant) filed this Appeal against the Order dated May 18, 2022 (the Impugned Order) passed by the Director/HOD, Adjudication-I, Adjudication Division, SECP (the Respondent) under Section 32(2)(g) of the Insurance Ordinance, 2000 (the Ordinance) read with Sections 32(7) and 158 of the Ordinance.
2. The brief facts of the case are that the Appellant is registered under the Ordinance to undertake non-life insurance business in Pakistan. During the review of the Statement of Solvency (Form GJ) and Note 40 to the financial statements of the Company for the year ended December 31, 2019 (the Accounts), it has been



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noted that the Company has misreported the figures in the Statement of Solvency while calculating admissible assets for solvency purposes. The Company has contravened the provisions of Section 32(2)(g) of the Ordinance by including receivables from related parties for the purpose of solvency calculation, in the following manner;

- i. Rs. 1.567 billion from Apna Micro Finance Bank (AMBL); and
- ii. Aggregated Rs. 20.17 million from United Tack System (Pvt.) Limited and Tawasul Healthcare TPA (Pvt.) Limited;

The Appellant and AMBL are related parties in terms of Section 32(7) of the Ordinance as in both the cases effective shareholding of Mian M.A. Shahid exceeds 49% (67.75% and 87.79% shares in AMBL and the Appellant, respectively).

3. In view of the above, a show-cause notice dated June 10, 2021 (the SCN), was issued to the Appellant. The Appellate submitted a written reply to the SCN vide email dated September 14, 2021. The hearing was also scheduled and held on September 14, 2021. The Respondent concluded the SCN proceedings and imposed a fine of Rs. 175,000/-.
4. The Appellant has preferred this Appeal *inter alia* on the grounds that the SCN is controversial because powers under Section 156 of the Ordinance have been delegated to different persons. As such delegation of powers under the S.R.O. No. 1545(1)/2019 dated December 6, 2019 (the SRO) constitutes a sub-delegation of power that is not within the ambit of Section 10 of the SECP Act, 1997.
5. The Appellant argued that during the course of proceedings, various correspondence took place between the Commission and the Appellant, including the SCN and its reply furnished by the Appellant, however, the Respondent did not discuss sufficient details on what grounds the Impugned Order had been passed. The Appellant stated that in terms of Section 24-A of the General Clauses Act, 1897 (the GC Act), every authority and officer, who is empowered to pass any order is required to give reasons for passing such order, however, a bare reading of the Impugned Order makes it clear that the Respondent, in violation of the mandatory requirements of the GC Act, passed a 'non-speaking' and unreasoned Order.



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6. The Appellant stated that it had already been clarified vide letter dated January 19, 2021 that it had only 44.5% shareholding of AMBL, falling short of the 49% requirement for related companies. The Appellant stated that the AMBL is not owned by the same family members and its shareholding is divided between unrelated people. The Appellant argued that the Appellant and AMBL are listed entities with their own board of directors, therefore, no question of common control exists, which could establish the 'related companies' status. The Appellant stated that contrary to the findings of the Impugned Order, Mian M.A. Shahid's direct ownership in the Appellant and AMBL is 3.66% and 4.46%, respectively, therefore, both companies are not related in terms of Section 32(7) of the Ordinance. The Appellant stated that by adding the words "direct" and "indirect" to explain the term ownership used in Section 32(7) of the Ordinance, the Commission has aimed to supplant the law with its own meaning just to make out a case against the Appellant. The Appellant stated, in view thereof, the Respondent has not only acted against the intent of the legislature but also supplanted the law through undesired additional requirements of "indirect interest or ownership". In this regard the Appellant has relied upon the case titled *Getz Pharma (Pvt.) Limited Vs. Federation of Pakistan, etc. 2019 PTD 2209*. The Appellant stated that the Commission cannot import its own meaning of the word ownership into the statute, as this will be contradictory to the legislation, and not an interpretation of the existing law. The Appellant further stated that there is a stark difference between 'direct' and 'indirect' ownership, and the latter cannot be used to supplant the former in terms of calculating a shareholding percentage. In this regard, the Appellant has also relied upon the case law titled *Khair Din and another versus Muhammad Hussain and others, PLD 1961 SC 468* whereby the rights of an owner explained, which include the right of enjoyment, right to possess, power to alienate and power to leave the *res* by will. The Appellant stated that the upshot of the case law leaves no doubt that the shareholding percentage of Mian M.A. Shahid does not confer any of the above-stated powers, and therefore, his shareholding cannot be brought into question by the addition of indirect ownership. The Appellant further stated that relevant law is ambiguous with respect to direct and indirect ownership, therefore, as per settled law any ambiguity must be decided in favor of the Appellant. In this regard, the Appellant has relied upon case law titled *Commissioner of Income Tax/Wealth Tax versus Papers and Board Mills, 2006 PTD 386*.
7. The Appellant stated that the Appellant and SPI Insurance Company have initiated merger proceedings which are currently underway, and it will solve all the issues raised in the SCN. The Appellant stated that without prejudice to the foregoing, even if it is assumed without conceding that both the definitions of 'associated' and 'related' are the same, and the Appellant is in contravention of the applicable law, it is



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worth mentioning here that the Appellant has started the process of selling 40% of its shareholding in AMBL. The Appellant stated that, in this regard, a buyer has already been found for the purchase of the shares, and in fact, the Appellant has sent a fit and proper check to the State Bank of Pakistan (the SBP) for approval of the purchase, therefore, even if the Appellant is in contravention of any requirements of the law, the same will be alleviated.

8. The Appellant stated that in 2015 it owned 32% shareholding in AMBL, however, two shareholders left AMBL, therefore, the SBP directed the Appellant to purchase an additional the 15% shares of the shareholders, consequently raising the shareholding in AMBL to 48%. The Appellant stated that due to the direction of SBP the Appellant acquired the controlling shares in AMBL. The Appellant stated that it further acquired 15% shareholding in AMBL because Mr. Qamar uz Zaman exited from AMBL. The Appellant stated that it also injected around one billion rupees into AMBL, to meet the requisite Capital Adequacy Ratio (CAR) and Minimum Capital Requirements (MCR) and in result thereof, it further acquired 10% shareholding. The Appellant stated that the above chain of events is not in any way an attempt of fraud or otherwise by the Appellant, rather the increase in shareholding came as a compulsion so as to meet the stringent legal requirement applicable to AMBL and the Appellant.
9. The Respondent rebutted the grounds of Appeal and stated that The Respondent stated that the SCN had been issued in the exercise of the powers vested under Section 156 of the Ordinance vide the SRO, hence, there is no question of sub-delegation of powers.
10. The Respondent stated that the Impugned Order is well-reasoned and self-explanatory and was passed after providing the Appellant/Representative an ample opportunity to be heard. The Respondent stated that the submissions of the Appellant/Representative were not found to be satisfactory, therefore penalty was imposed through the Impugned Order.
11. The Respondent stated that the Appellant's contention that for the purpose of determining whether two companies are related parties, they have to be connected directly by an ownership interest exceeding 49%, is not tenable. The Respondent stated that indirect ownership interest definitely augments the direct ownership interest of a shareholder, resulting in an increase in effective ownership interest and control in the companies i.e. related parties; The Respondent argued that Section 32(7) of the Ordinance, does not



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restrict ownership interest of a shareholder to his/her/its direct shareholding only. In the instant case, Mian M A. Shahid has an effective shareholding in the Appellant and AMBL of 87.79% and 67.75%, respectively, thus, both the Appellant and AMBL not only belong to the United Group but are connected with each other by an ownership interest exceeding 49% by the same person deeming them under common control. The Respondent stated that the Appellant has included receivables from 'related parties' as admissible assets for its solvency calculations, which constitutes violations of Section 32 (2)(g) of the Ordinance read with Section 32 (7) and 158, thereof, the Statement of Solvency and Note 40 of the financial statements for the year ended December 31, 2019 are significantly misstated.

12. The Respondent stated that regardless of the outcome of the merger proceedings and offloading of 40% AMBL shareholding, the Appellant was required to ensure compliance with the aforesaid applicable provisions of the law, however, in its Statement of Solvency (Form GJ) and Note 40 to the Accounts, the Appellant misreported the figures while calculating admissible assets for the purpose of solvency.
13. The Respondent stated that in the instant proceedings, acquisition of controlling shares of the Appellant in AMBL had not been questioned, rather, non-compliance of Section 32(2)(g) of the Ordinance was alleged and established due to effective ownership interest, based on the direct as well as indirect shareholding of Mian Shahid in both the Appellant as well as AMBL.
14. The Appellate Bench (the Bench) has heard the parties and perused the record. The Bench has pursued the SRO whereby powers under the different administered legislations of the Commission had been delegated to the Commissioners, Head of Department and Wing Heads. The Bench is of the view that the Appellant's objection that the delegation of powers under Section 156 of the Ordinance to Commissioner Insurance, HOD, Adjudication-I and Wing Head Adjudication-I tantamount to sub-delegation of Commission's powers is a misconceived notion, therefore, we reject it. The Bench believes that Section 156 of the Ordinance is a penal clause that is delegated to different persons to adjudicate the matters involving violations of the substantive provisions of the Ordinance. In view thereof, the Bench finds no substance in the arguments that delegation of penal provision powers to different persons amounts to sub-delegation. Furthermore, we want to make it clear that the Commission has delegated its powers through the SRO to various persons, therefore, it is not sub-delegation, rather it is a direct delegation of powers. The Bench wants to clarify that sub-delegation is the process whereby a delegate further delegates powers delegated to



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him to any third person, however, in this case, the Commission directly delegated its powers to different persons including the Respondent, therefore, it cannot be considered as sub-delegation. The Bench also finds it appropriate to mention here that the preamble of the SRO is self-explanatory, that the Commission has delegated its powers through the SRO to different officers, therefore, the question of sub-delegation does not arise. Lastly, the Bench wants to make it clear that the Appellant's argument with respect to Section 156 of the Ordinance is not relevant to the case in hand because neither the SCN was issued under the said Section nor the Impugned Order had relied upon this provision.

15. The Appellant's argument that the Impugned Order is a non-speaking order and violative of the requirements of Section 24-A of the GC Act is not tenable, therefore, the Bench is not inclined to endorse it. The Bench has perused Section 32(2)(g) of the Ordinance, which says that receivables from 'related parties' cannot be admitted as admissible assets while calculating the solvency. The Bench has also perused Section 32(7) of the Ordinance wherein criteria to establish the 'related parties' status has been provided. Keeping in view the above mentioned both provisions, the Bench is of the view that the Respondent has adequately and reasonably adjudged in the Impugned Order that the inclusion of receivables from 'related parties' as an admissible asset for solvency calculation is a violation of Section 32(2)(g) of the Ordinance. The Bench has noted that in the Impugned Order, the Respondent has established that the Appellant and AMBL are 'related parties' in terms of Section 32(7) of the Ordinance because in both companies, shareholding of Mian M.A. Shahid exceeds 49%. In our view, the Respondent had adequately explained that Mian M.A. Shahid has an effective shareholding of 87.79% and 67.75% in the Appellant and AMBL, therefore, both companies are 'related parties' in terms of Section 32(7) of the Ordinance. The Bench has noted that on the same premise, the Respondent has established the 'related party' status of the Appellant with United Tack System (Pvt.) Limited and Tawasul Healthcare TPA (Pvt.) Limited, therefore, receivables from such entities are also not admissible for calculation of solvency. The Bench has no doubt that the Impugned Order is a well-reasoned and speaking order, therefore, the Appellant's assertion of a "non-speaking order" is without any substance.

16. The Bench has perused paragraph five of the Impugned Order wherein the Respondent has explained that AMBL and the Appellant are 'related parties' due to direct and indirect shareholdings of Mian M.A. Shahid, therefore, it cannot be assumed that the case is based on premise of direct shareholding alone. The Bench is of the view that the Appellant's assertion that by including indirect shareholdings while calculating



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“Ownership” stake of ‘related parties’ under Section 32(7) of the Ordinance the Respondent has violated the principle of *casus omissus*, is not correct. The Bench is of the view that the Respondent has acted as per law, therefore, the assertion that the Respondent has assumed the role of legislature is a misconceived notion. The Bench believes that under the scheme of law, the term “ownership” used in Section 32(7) of the Ordinance does not provide that “ownership” means only “direct ownership”. In our view, the term “ownership” includes direct as well as indirect ownership interest because if the Appellant’s assertion that ‘related party’ status could only be determined through direct shareholdings then one may defeat the purpose of the law by acquiring more than 49% ownership interest through indirect ownership interest. The Bench is of the view that such a flawed interpretation would defeat the purpose of Section 32(2)(g) of the Ordinance, which states that ‘related party’ receivables are not admissible for the calculation of solvency. In view thereof, we are not inclined to accept that by considering “direct” and “indirect” ownership while establishing ‘related party’ status under Section 32(7) of the Ordinance, the Respondent has assumed the role of the legislature. Additionally, there is no legislative deficit or fault in the relevant statute, thus the appellant's argument that the law is being applied beyond what the legislature intended is baseless. In the circumstance, the referred case law (2019 PTD 2209) is not applicable in this case because the Impugned Order has been passed as per law and by considering indirect and direct shareholding of Mian M.A. Shahid to establish the ‘related party’ status of the Appellant and AMBL, the Respondent has not assumed the role of legislature. Furthermore, the Bench is of the view that the other case law referred by the Appellant (PLD 1961 468) pertains to the inherited and gifted corporeal property and the court had discussed the rights of ownership in that context only. Due to this fact, the Bench believes that *ratio decidendi* of the case is not applicable in cases involving incorporeal properties such as shares and their ancillary rights. The Bench also rejects the Appellant’s contention that Section 32(7) of the Ordinance is ambiguous and it is open to different interpretations, hence, interpretation in the Appellant’s favor be adopted. As a matter of fact, and as per the scheme of law, the provision is explicit and it refers to “ownership” which includes “direct” as well as “indirect” ownership, therefore, in the Bench’s view the referred case law (2006 PTD 386) is not applicable in this case.

17. The Bench is of the view that misreporting of financial facts by the Appellant is a serious violation and the Respondent has fairly established a violation of Section 32(2)(g) of the Ordinance. The Bench is of the view that as the misreporting of admissible assets for calculation of solvency had been duly established by



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the Respondent, therefore, any subsequent compliance or intention to rectify the violation after the merger or off-loading of 40% ABL shares cannot undo the previous default and its penal consequences.

18. The Bench is of the view that this is not a case against the Appellant that it acquired controlling shares and rights of ABL, rather, the case is that the Appellant failed to implement the requirements of Section 32(2)(g) of the Ordinance and included 'related party' receivables while calculating solvency. Furthermore, the Appellant also admitted in paragraph 5(viii) of the Appeal that after the year 2015 it not only acquired controlling/majority shares and rights in the ABL but also injected Rs. 1 billion into ABL, so as to meet the requisite Capital Adequacy Ratio (CAR) and Minimum Capital Requirements (MCR), therefore, 'related party' status of the Appellant and the ABL also stands admitted due to this fact.

19. In view of the above, the Bench finds no reason to interfere in the merits of the Impugned Order, therefore, the Appeal is dismissed without any order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Akif Saeed)
Chairman/Commissioner

Announced on: 18 NOV 2024