



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 45 of 2015

The Asian Mutual Insurance Company (Guarantee) Limited

.... Appellant

Versus

Director (Insurance) Securities and Exchange Commission of Pakistan

.... Respondent

Date of hearing:

21/01/16

Present:

For Appellant:

1. Mr. M. Faisal Rashid, Director
2. Mr. Zafar Iqbal, Chief Manager

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. 45 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the Asian Mutual Insurance Company(Guarantee)Limited (Appellant) against the order dated 19/12/14 (the Impugned Order) passed by the Respondent under section 158 of the Insurance Ordinance 2000 (the Ordinance).

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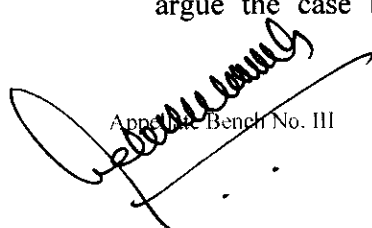
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2. Brief facts of the case are that an onsite Inspection Team (the team) inquired the Appellant about the gratuity scheme but the team was informed that the Appellant is not operating any employment benefit scheme. The team observed, that the Appellant does not pay commissions to its agents through cross cheque rather the Appellant adjusts the amount of commission from the balance receivables from its agents. Furthermore, verification of ownership of the assets of the Appellant revealed that Appellant's Motor cycle (Registered No. LZA-4851) was registered in the name of an employee of the Appellant. Therefore, a Show Cause Notice (the SCN) was issued on 19/06/14 under section 158 of the Ordinance. The Appellant replied the SCN vide letter dated 26/07/14 and hearing in the matter was held on 25/08/14. The Respondent being dissatisfied with the response of the Appellant imposed a penalty of Rs. 100,000 vide the Impugned Order.
3. The Appellant has preferred the appeal against the Impugned Order on the following grounds:
 - a) The Impugned Order is not a speaking order.
 - b) The facts disclosed in the Impugned Order do not constitute misstatement in the books of accounts.
 - c) The Impugned Order was passed without establishing the mala fide "mens rea" on the part of the management.
 - d) The Impugned Order has been passed on surmises and conjectures and without any cogent reason.
 - e) The Impugned Order does not qualify any single instance of non-recording or mis-recording of the premium in the books of accounts.
4. The Respondent has denied and rebutted the grounds of appeal in the following manner:
 - a) This ground is denied. The Impugned Order is speaking one, as it contains complete disclosure of relevant facts and finding along with rationale, hence, it is free from all conjectures, surmises and presumptions.



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- b) The Impugned Order was passed on the basis of facts of misstatement in the books of accounts. The representative of the Appellant has also admitted in the hearing that they violated the Section 158 of the Ordinance. The Appellant has misstated in the employee benefit policies, agents commission, premium written, tax payments and fixed assets.
 - c) As stated above in para b.
 - d) The Impugned Order was passed on the basis of facts and figures observed during the on-site inspection conducted under order dated 01/02/13 under section 59A of the Ordinance.
 - e) The Appellant has misstated in the books of premiums and the Appellant has no control over reliability and authenticity of the amount of premium disclosed by their agents. Therefore, the Appellant bound to rely on the premium reported/disclosure by their agents.
5. The Appellate Bench (the Bench) fixed the hearing of appeal on 21/01/16 at Securities and Exchange Commission of Pakistan Headquarter in Islamabad and parties i.e. Appellant and Respondent were served hearing notices on 14/01/16 with an instruction to reach at the hearing venue at least fifteen minutes before the time mentioned for hearing in the notice. Thereafter, a request for hearing through video link was received on behalf of the Appellant vide email dated 20/01/16, which was allowed accordingly and Appellant was allowed to attend the hearing through video link from Securities and Exchange Commission of Pakistan Lahore office.
6. On the day and time fixed for hearing, the Director and Chief Manager of the Appellant appeared before the Bench. They requested the Bench for five minute to enable Mr. Irfan Ilyas (the authorized representative of the Appellant) to reach the hearing venue to plead, however even after lapse of thirty minutes the authorized representative failed to appear before the Bench. In the circumstances the Bench asked the director of the Appellant to argue the case but he showed inability to present the case. Therefore, the Bench


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communicated to the director of the Appellant that it shall decide the appeal keeping in view relevant documents including contents of appeal and grounds of appeal. However, the Appellant was given three days to submit written submissions or material in support of appeal. Thereafter, the Bench has received the relevant documents along with the adjournment application. The Appellant director was informed after hearing that the Bench shall decide the appeal in accordance with record and same fact was communicated to the authorized representative in reply of his email dated 21/01/16.

7. We have perused the relevant record which revealed that on inquiry by the team about the gratuity scheme, it was communicated that the Appellant is not operating any employment benefit scheme so there is no data available in this regard. The Appellant has restated its stance with regard to non-existence of any employment benefit scheme in para 3(ii) of the appeal. However, note 6.2 to the Accounts of the Appellant states that "The company operates an un-funded retirement gratuity scheme. Gratuity is accounted for as and when paid. The requirement of IAS19, employee's benefits (revised 1998) has been partially complied with." The above stated two versions regarding existence and non-existence of the employment benefit scheme/gratuity scheme have been stated by the Appellant. The stance of Appellant about non-existence of any employment benefit scheme/gratuity scheme has rendered the annual audited accounts of the Appellant for the year ended 31/12/11 untrue due to material misstatement in the annual audited accounts.
8. The Appellant has also violated the requirement of section 99(4) of the Ordinance which states that "It shall be unlawful for an agent to deduct from premiums paid by and received from a policy holder any sums on account of commission due to the agent." The Appellant has admitted in reply to the SCN and in appeal that the agents were used to deduct their commission from the amount of premium received from policy holders. The self-explanatory admission of the Appellant vide reply of SCN is reproduced below:
"Payment /Adjustment of Commission



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..... For commercial expediency and under the norms of business, the agents deduct their due share of commission, after tax, from the balance to be remitted to the Company, instead of transferring all the balance first to the Company and then Company issuing Cheques of commission to the agents.....”

The recording and reporting of the premium in the accounts of the Appellant was not in accordance with the required standard and procedure.

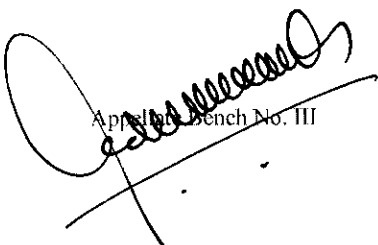
9. The team while reviewing the ownership of the assets of the Appellant, observed that Appellant’s Motor cycle (Registered No. LZA-4851) was registered in the name of an employee of the Appellant. Therefore the Appellant has boldly misstated its assets by giving an impression that the said Motor cycle was registered in its own name. The Appellant has admitted this fact in reply to the SCN in the following manner:

“Fixed Assets

It is humbly submitted that the ownership of the motor bike (LZA-4851) was registered in the name of the employee, rather than in the name of the Company for commercial expediency. Under taking front the employee was duly obtained in this regard.

The asset has been disposed of during the financial year 2013 and the disposal proceeds have been recorded in the accounts of the Company. The asset belonged to the Company and its disposal proceeds were returned in the Company. However, we assure you of full compliance of provision of law in future.”

10. Irrespective of the fact that the asset sale proceeds were returned to the Appellant, a violation of law has been committed by the Appellant while keeping its asset in the name of an employee. Application of law does not mean to get the desired results only; rather it requires application of law in true letter and spirit. The submission of the Appellant


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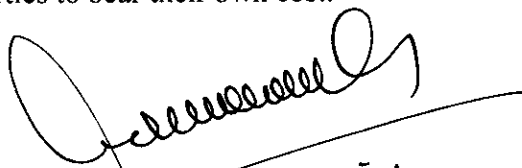




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contained in reply of SCN and the appeal that there would have been no material impact on the financial position and performance of the Appellant is not cogent. The Appellant has violated the express provisions of law, which cannot be tolerated to ensure justice and rule of law. As matter of fact the misstatements referred in the Impugned Order and stated above are material. The jurisprudence has envisaged a principle for administration of justice which requires that "If law requires that an act must be done in a particular way, it should be done in that manner as prescribed by law."

11. In our view, the Appellant has failed or intentionally avoided to comply with the legal provisions of the Ordinance. As per case law cited as 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 malafide or mens rea to prove the non-compliance of the provisions.
12. In view of the above the Impugned Order was passed with due care by keeping in view the principle of legal reasoning, necessary to establish the guilt and violation of law by the Appellant. Therefore, we find no reason to interfere with the Impugned Order dated 19/12/14 passed by the Respondent, therefore appeal is dismissed.
13. Parties to bear their own cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 28 JAN 2016