



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 53 of 2023

1. Premier Insurance Limited
2. Nadeem Maqbool
3. Sharik Bashir
4. Imran Maqbool
5. Shameem Azfar
6. Khalid Bashir
7. Attulah A. Rashid
8. Asadullah Khawaja

..... Appellant

Versus

Director/HOD, Adjudication – I, SECP.

..... Respondent

Date of Hearing:

March 10, 2025

Present:

For the Appellant:

Mr. Jahanzaib Sukhera, Authorized Representative

For the Respondent:

Appellate Bench

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1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication Division, SECP.
2. Mr. Sohail Qadri, Director/HOD, Adjudication-I, SECP
3. Mr. Shafiq ur Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 53 of 2023 filed by Premier Insurance Limited (the Appellant), against order dated April 06, 2023 (the Impugned Order), passed by Director/HOD, Adjudication-I, SECP (the Respondent), under Section 156 of the Insurance Ordinance, 2000 (the Ordinance), read with Section 11(1)(f), 12(4) and 118 of the Ordinance.
2. The brief facts of the case are that the Federal Insurance Ombudsman (FIO), through its Order dated January 19, 2018, directed the Appellant and Atlas Insurance Limited (Co-insurer) to settle the insurance claim of Pakistan Chipboard (Pvt.) Ltd. (the Company) within 30 days, failing which the Company would be entitled to claim liquidated damages under Section 118 of the Ordinance. The Appellant and Co-insurer challenged the FIO's order before the Hon'ble Lahore High Court (LHC) through writ petitions, which were dismissed on April 18, 2018, on the ground that an alternative remedy was available. Despite the dismissal of writ petitions, the Appellant and Co-insurer failed to comply with the FIO's directions, prompting the FIO to issue a show-cause notice (SCN) on September 07, 2018, initiating contempt proceedings. The Appellant and Co-insurer again approached the LHC, which stayed the contempt proceedings vide order dated September 24, 2018. The Appellant and Co-insurer further filed petitions before the Hon'ble Supreme Court of Pakistan against the LHC's dismissal of their writ petitions, but these were dismissed as withdrawn on September 30, 2019. Meanwhile, the Respondent issued an SCN to the Appellant on November 06, 2019, for non-compliance with the FIO's order, and through an order dated March 20, 2020, directed full compliance of the FIO's order. During these proceedings, the Company informed the Respondent that the Co-insurer had settled its 30% share of the Assessed Loss amounting to Rs. 26,711,187/-. The Appellant, aggrieved by the



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Respondent's order, filed an appeal before the Appellate Bench (the Bench), which, through its order dated August 25, 2021, upheld the Respondent's decision and directed the Appellant to pay the remaining 70% of the Assessed Loss, amounting to Rs. 62,326,102/-. The Appellant challenged the Bench's order before the LHC, however, it was dismissed as withdrawn on July 05, 2022, following which the Appellant filed an appeal before the Hon'ble Sindh High Court (SHC), which initially directed the Appellant to furnish a bank guarantee of Rs. 62 million but later dismissed it on March 02, 2023, due to non-compliance of its earlier order to furnish a bank guarantee. Thereafter, the Respondent issued an SCN on January 17, 2023, to the Appellant for persistent non-compliance with the FIO and the Commission's orders. Concluding these proceedings, the Respondent, through the Impugned Order, imposed an aggregate penalty of Rs. 2,600,000/- on the Appellant, its CEO, and directors, and further directed the payment of liquidated damages from the expiry of 30 days from the FIO's Order dated January 19, 2018, calculated at 5% above the prevailing base rate, along with compliance of the Respondent's order dated March 20, 2020.

3. The Appellant preferred the instant appeal *inter alia* on the grounds that the orders passed by the FIO were non-binding and lacked mandatory enforceability, as its role was primarily recommendatory and its directives could not be executed like judicial decrees, reliance was placed on *Messrs Muslim Commercial Bank Ltd. Vs. Federation of Pakistan (2020 CLD 829)* and *East West Insurance Co. Ltd. Vs. Federal Insurance Ombudsman (PLD 2019 Sindh 557)* wherein it was held that "the orders of the Ombudsman did not have the force of law in the same manner as judgments rendered by courts." The Appellant further submitted that the Respondent lacked jurisdiction to enforce the FIO's orders, as held in *Energy Solution Vs. The President of Pakistan (2019 CLC 1639)* that "Federal Ombudsman Institutional Reforms Act, 2013, had overriding effect in case of conflict with the Ordinance, thereby ousting the Respondent's authority." The Appellant argued that any enforcement action under Section 130(2) of the Ordinance was *ultra vires* and misconceived, emphasizing that Section 24 of the Federal Ombudsman Institutional Reforms Act, 2013 (FOIRA) provided its provisions an overriding effect over any other law. Relying on *Islamic Republic of Pakistan Vs. Muhammad Saeed (PLD 1961 SC 192)*



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and *United Bank Limited Vs. Federation of Pakistan (2018 CLD 587)*, the Appellant contended that the withdrawal of its petitions before the Supreme Court did not constitute acceptance of the FIO's orders and that the withdrawal of an appeal did not preclude further legal proceedings in the future. The Appellant submitted that the notion that FIO's order has attained finality is misconceived as legality and enforceability of an order can be challenged even at later stages and in executing proceedings. The Appellant further challenged the Respondent's authority to impose penalties and liquidated damages based on the FIO's orders, arguing that even superior courts had limited jurisdiction over such decisions, as held in *Qazi Zaheer Ahmad Vs. Federal Ombudsman Secretariat for Protection Against Harassment at Workplace, Islamabad (2021 PLC (CS) 839)*. The Appellant further contended that the Respondent disregarded independent assessments by surveyors and arbitrarily directed the settlement of the claim, while the imposition of liquidated damages at 5% above the base rate lacked legal justification. The Appellant further argued that such enforcement actions violated its right to a fair trial and due process under Article 10A of the Constitution of the Islamic Republic of Pakistan (the Constitution). The Appellant also cited a case law titled *Saleem Ahmad Jan Vs. Deputy Commissioner Islamabad (2024 CLC 953)* to establish that neither the FIO nor the Commission is empowered to enforce the order passed by the FIO. The Appellant stated that Sections 10(ii) of FOIRA is already declared *ultra vires* of the Constitution, and as such the FIO cannot implement its orders. The Appellant objected to the Respondent's adjudication while the matter was pending before superior courts, arguing that such actions led to unwarranted duplication of proceedings and abuse of process. Additionally, the Appellant contended that the Respondent failed to provide adequate reasoning for imposing penalties, and its approach lacked legal consistency. The Appellant submitted that enforcing penalties without a final determination of liability was unjustified, and, therefore, the Impugned Order was liable to be set aside.

4. In response to the Appellant's submissions, the Respondent *inter alia* submitted that the Appellant's contention is incorrect regarding the non-binding nature of the FIO orders. The Respondent stated that the FIO's order dated January 19, 2018, had attained finality and was binding, particularly as the Appellant subject to the removal of terrorism clauses from



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the FIRs had conditionally accepted the claim. The Respondent argued that since the terrorism clauses were removed from the FIRs by the court, therefore, the Appellant had no legal justification to refuse the settlement. The Respondent further contended that its enforcement order was validly issued under Section 130 of the Ordinance and that it had the requisite authority to ensure compliance with the FIO's directives. Refuting the Appellant's claim of lacking jurisdiction, the Respondent submitted that the Ordinance and FOIRA operated concurrently without contradiction, and its enforcement actions were lawful and essential for protecting the rights of the policyholders. The Respondent further stated that the penalties and liquidated damages imposed were neither arbitrary nor excessive, but rather justified due to the Appellant's persistent non-compliance despite repeated directions. The Respondent contended that penal action under Section 156 read with Sections 11(1)(f), 12(4), and 118 of the Ordinance was warranted and that the Appellant's withdrawal of appeals and failure to furnish a bank guarantee, as directed by the SHC, indicated deliberate non-compliance. The Respondent further argued that the Appellant's reliance on *res judicata* and double jeopardy was misconceived, as the current proceedings arose from its continued failure to comply with previous directions rather than a re-adjudication of an already decided matter. The Respondent maintained that the Appellant's actions demonstrated reckless disregard for policyholders' interests, directly contradicting the regulatory framework ensuring sound and prudent insurance management. Concluding its arguments, the Respondent submitted that the appeal lacked merit and prayed for its dismissal, emphasizing that enforcement action was necessary to ensure compliance with legal obligations and safeguard the policyholders' rights.

5. The Bench has heard the arguments of both parties and perused the record but before parting with the order, the Bench finds it necessary to summarize the chain of events leading to the present appeal. The Company lodged an insurance claim after its factory was set on fire by a charged mob, which the Appellant and Co-Insurer assessed, but only a partial amount was recommended for settlement under the terrorism policy. The FIO directed the Company to seek judicial clarification regarding the applicability of the Anti-Terrorism Act, 1997, as the Appellant made the settlement conditional upon the removal of terrorism-related clauses from the FIRs, following which the Anti-Terrorism Court, on the application



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of the Company determined that the incident did not fall within its ambit. Despite the FIO's subsequent order for settlement, the Appellant failed to comply, leading to multiple enforcement proceedings. The Co-Insurer discharged its liability and paid 30% share of the assessed loss, while the Appellant persistently resisted compliance, resulting in multiple proceedings. Following the dismissal of the Appellant's petitions before superior courts, the Respondent imposed penalties and liquidated damages due to the Appellant's continued failure to adhere to binding directions.

6. The Bench finds that the primary objective of the Ordinance is to safeguard the interests of policyholders. The contention of the Appellant that the Commission is barred from proceeding under Section 130 of the Ordinance due to the overriding effect of FOIRA is misconceived. FOIRA merely provides an additional remedy of representation and does not negate the enforcement powers of the Commission under the Ordinance. It is a settled principle of law that special legislation prevails over general law unless expressly provided otherwise. The LHC in *Writ Petition No. 166036 of 2018, Premier Insurance Vs. Federation of Pakistan* has already held that the remedy of appeal under Section 130(2) of the Ordinance remains intact despite the availability of representation to the President under the FOIRA. This Bench has also reaffirmed in *Appeal No. 146 of 2020, Crescent Star Insurance Limited Vs. ED/HOD, ADJ-I, SECP* that FOIRA and the Ordinance do not operate in conflict but rather complement each other. Moreover, the Bench finds the Appellant cannot be permitted to retract from the stance taken before the FIO, as an undertaking made in legal proceedings carries binding legal, moral, and ethical weight. Any departure from such commitments, if allowed, would erode public confidence in judicial forums and undermine the sanctity of legal proceedings. The Hon'ble Supreme Court in *Farzana Rasool Vs. Dr. Muhammad Bashir (2011 SCMR 1361)* has categorically held that retraction from an undertaking cannot be permitted as judicial integrity must be preserved at all costs.
7. The Bench further holds that the FIO is vested with the authority to issue orders through both the FOIRA and the Ordinance. While FOIRA is a general law applicable to



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Ombudsman institutions, the Ordinance remains a special law governing insurance regulation. The Commission's enforcement powers under Section 130 of the Ordinance, therefore, remains unimpeachable as the Ordinance is a special law dealing with the Insurance industry. The Hon'ble Supreme Court in *Muslim Commercial Bank Limited Vs. Muhammad Anwar Mandokhel (2024 SCMR 298)* has already settled the principle "*that reliance on general law is unwarranted where a special law provides a comprehensive mechanism.*" Since the Ordinance prescribes a clear enforcement framework, resorting to FOIRA to create a purported conflict is legally unsustainable. Furthermore, Section 10 of FOIRA explicitly states that its powers operate in addition to, rather than in derogation of, other relevant laws which includes the Ordinance. The provisions of both enactments must be read harmoniously to ensure the effective regulation of the insurance sector, and any interpretation that seeks to create inconsistency cannot be accepted.

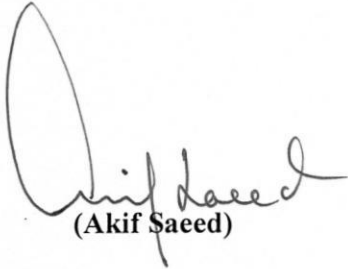
8. The Bench notes that the Appellant's persistent non-compliance, despite repeated directives issued by the Respondent and affirmed by judicial forums, necessitates penal action. The penalties and liquidated damages imposed under the Impugned Order are therefore justified. The Respondent has acted strictly in accordance with its jurisdiction under Section 156 read with Sections 11(1)(f), 12(4), and 118 of the Ordinance. Given the Appellant's continued disregard for regulatory directives and its failure to comply with the same, the penalties imposed are neither arbitrary nor excessive but rather proportionate to the Appellant's conduct.
9. It is pertinent to mention here that, during the course of the instant appeal, the Company filed an application on December 05, 2024, to be impleaded as necessary and proper party in the instant appeal. The Bench after hearing the Company and the Appellant on the application passed an order dated March 03, 2025, whereby the application was dismissed.
10. In view of the foregoing analysis and findings, the Bench is of the opinion that the Appellant's conduct not only violated the express provisions of law but was also contrary to the spirit and intent of the Ordinance, which emphasizes the protection of investors and



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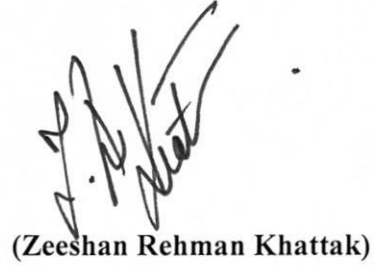
policyholders. The Bench finds that the Appellant's repeated non-compliance with the legal requirements undermined the regulatory framework governing insurers. Therefore, in order to ensure the growth of the insurance sector and to enhance the confidence of policyholders, the Respondent's action against the Appellant was not only justified but also necessary to uphold the sanctity of the legal and regulatory regime.

11. In light of the foregoing, the Bench finds no reason to interfere with the merit of the Impugned Order, therefore, the Appeal is dismissed without any order as to cost.



(Akif Saeed)

Chairman



(Zeeshan Rehman Khattak)

Commissioner

Announced on:

17 APR 2025