



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 58 of 2013

(i) Mr. Muhammad Ikhtlaq Butt
(ii) Mr. Amjad Javed Butt
(iii) Mr. Basalat Dar
(iv) Mr. Muhammad Ishaq
(v) Mr. Muhammad Zahid Noor
(vi) Mr. Raja Abbasi
(vii) Mr. Zahid Akhtar
(viii) The Credit Insurance Company Limited
(Appellant No (i) Chief Executive and Appellants (ii) to (viii) all directors
of Credit Insurance Company Limited) Appellants

Versus

Tariq Hussain, Director (Insurance division)
Securities and Exchange Commission of Pakistan Respondent

Date of Hearing 01/09/15

Present:

For the Appellant (through video conferencing):

Mr. Adil Bandial (Cornelius, Lane & Mufti Advocates and Solicitors)

For the Respondent:

Mr. Tariq Bhaktawar, Director (Insurance)



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ORDER

1. This order is in appeal No. 58 of 2013 filed under section 33 of Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 20/09/13 (Impugned Order) passed by the Respondent.
2. The facts leading to the case are that it appeared from records with the Commission that the last election of directors of The Credit Insurance Company Limited (Company) was held on 01/11/08 which was evident from Form 29 dated 29/09/12. On the expiration of three years term, the Company was required to hold election of directors which was due on 01/11/011 as stipulated in section 180 of the Companies Ordinance, 1984 (Ordinance). It appeared that the Company had not held the election during the year 2011. Moreover, the Company had shown the retired directors as 'directors of the Company' in its annual audited accounts for the year ended 31/12/11.
3. Show Cause Notice dated 22/03/13 (SCN) was issued to the Appellants under section 174 and section 180 read with section 186 and 189 of the Ordinance. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and debarred the Appellants from continuing as directors and chief executive officer of the Company for three years and imposed fine of Rs.10,000 on each of the seven directors with the aggregate fine amounting to Rs.70,000.
4. The Appellants have preferred the instant appeal against the Impugned Order on the following grounds:
 - (a) The request by the Appellant for an extension in date of submission of the reply was never given consideration by the Respondent despite the fact that



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Appellants informed the Respondent that an inspection of the Company records was being carried out by a team of the Commission due to which a proper reply to the SCN was not filed. In the reply to the SCN submitted, all documentary evidence was provided to prove that the Appellants were never in violation of section 174 and section 180 of the Ordinance. The Appellants had ensured that election of directors was held in time and consequently, the Appellants had never misrepresented to any shareholders by identifying themselves as directors/chief executive of the Company. The Appellants have never breached their fiduciary duty as directors/chief executive of the Company. The same fact is evident from the unanimous vote of the shareholders to elect them as directors/chief executive for consecutive terms and absence of any complaints against the Appellants. The SCN and findings of the Impugned Order are without any merit.

- (b) The Respondent relied upon a typographical error as a ground for passing the Impugned Order. Agenda No.1 of the Notice of the General Meeting of 01/11/11 stated "To confirm the minutes of the last meeting held on 08/05/13". The above stated honest typographical error was relied upon by the Respondent to pass the Impugned Order. The Notice was duly sent to all concerned and the Directors were duly elected in a meeting dated 01/11/11 for which complete and proper documentation had already been provided.
- (c) The Respondent has stated in the Impugned Order that the alleged failure of the Appellants to submit relevant documentary evidence of the election for the Directors being held in time depicts mala fide on behalf of the Appellants and in contravention of section 205 and section 54 of the Ordinance. It is submitted that any contravention which was not within the scope of the SCN cannot be made the basis for any order against the Appellants.
- (d) The Respondent proceeded ex parte in the matter and passed the Impugned Order without giving the Appellants an opportunity of being heard despite submission of detailed reply to the SCN and repeated requests of the



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Appellants to withdraw the same. The same is in violation of the principles of natural justice as well as inalienable fundamental rights of the Appellants and the Impugned Order is liable to be set aside on this ground alone. It is evident that the Impugned Order is a non-speaking order and has been passed without independent application of mind and adjudication of issues, therefore, the entire proceedings under the SCN and the Impugned Order is liable to be set aside.

5. The Respondent rebutted the grounds of appeal as follows:

- (a) The Appellant vide letter dated 03/04/13 submitted that they were busy with ongoing SECP inspection team and would send a reply after the inspection. The Respondent relying on certain grounds had issued an onsite inspection order under section 59-A of the Insurance Ordinance 2000 dated 08/03/13, however, the Appellant intimated to the Respondent vide letter dated 21/3/13 that they had filed a writ petition no. 6892/13 before the Honourable Lahore High Court impugning the inspection order and asked the Respondent to put off the inspection in view of the matter being sub judice. The Appellant, however, failed to show any court order prohibiting the Respondent from carrying out the inspection and it was conducted as per schedule. The request by the Appellant for deferring the hearing due to the inspection was not granted as it was found unsatisfactory. The inspection is not an unusual activity and only a liaison officer on part of the Company is required to handle the visiting team. Secondly, the Inspection team takes utmost care not to disrupt the routine activities of the Company. Further, the Appellant did not specify any date of availability for their hearing, therefore, the request remained unsubstantiated and it was rejected. The Appellant vide letter dated 22/04/13 in response to the Respondent's letter dated 12/04/13 stated that the election of directors were held in time on 01/11/11 and provided copies of the minutes and Form 29 filed



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as evidence. The documents, however, were ridden with inconsistencies. Notice of the Extraordinary General Meeting, 'Meeting to be held on 1st November 2011 to confirm the minutes of the last meeting held on 8th May 2013; had no dispatch receipt or mode, the list of shareholders was there but not of the participants which was signed and stamped without a date. Moreover, the covering letter to the Commission, the Challan date by MCB Bank and Form 29 carried the date of 02/04/13, however, the date given in the column of present appointment of directors was 01/11/11. The Appellants further requested the Respondent vide letters dated 23/04/13 and 15/05/13 to drop the SCN based on 'documentary evidence' provided to the Respondent. A final hearing notice was sent to the Appellant for hearing to be held on 10/06/13. The Appellant failed to appear at the hearing and the Respondent seeing the glaring deficiencies in the contents of the copies of the documents provided and failure of the Appellant to furnish further evidence, concluded that Election Meeting on 1/11/11 was fabricated. The Appellants have not met their fiduciary responsibilities and the reason for no complaint being filed by the shareholders is that since no proceedings against the Appellants had taken place, no complaint against any irregularity could be made.

- (b) The Impugned Order was not based solely on a typographical error. Moreover, a typo generally has its limits. While it is not unusual to make an error by writing previous or following year but the year 2011 was not a current or near actual date. The balance of probabilities, therefore, led the Respondent to conclude that the Appellants' claim was not valid and no meeting took place on the purported date i.e. 1/11/11.
- (c) The SCN and the Impugned Order are based on sections 174 and 180 read with sections 186 and 189 of the Ordinance, however, other sections such as section 54 of the Ordinance have been cited in the Impugned Order in order to elaborate and substantiate the reasoning which finally ended in penal action. In terms of section 54 of the Ordinance, the Appellants should have submitted the

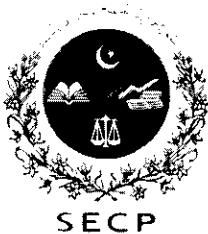


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minutes of the election meeting which they claimed to have been held on 1/11/11. Similarly in terms of section 205 of the Ordinance, Form 29 should have been filed within 14 days from the date of the election of directors. Even if one were to accept the claim of the Appellants that the election of directors was held on 01/11/11, Form 29 should have been submitted by 15/11/11. However, the copies of the documents submitted in response to the SCN dated 22/03/13 showed the date on related bank challan and SECP stamp to be of April 2013 which further established that election of directors did not take place in 2011.

- (d) The Appellants were continually afforded opportunities vide letters dated 22/03/13, 12/04/13, 02/05/13 asking the Appellants to appear before the Respondent and discuss the issue at hand but the Appellants declined to show up at the hearing. The Impugned Order was passed as a last resort when it was confirmed beyond any doubt that the Appellant was not willing to appear before it. Therefore, all dictates of natural justice were fully complied with and the Appellants have not been able to cite any instance where the Respondent overstepped its domain and authority.


6. We have heard the arguments and reviewed the record provided to us by the parties i.e. Appellants and the Respondents.
7. The Appellants' counsel has argued that election of directors was held on time, however, a fair hearing opportunity was not provided to the Appellants and an ex parte order was passed. The Respondent has rebutted the arguments of the Appellants by stating that several opportunities of hearing were provided which were not availed by the Appellants and there is ample evidence to suggest that the election of directors was not held on the purported date i.e. 01/11/11. We are of the view that in the interests of fairness and justice, a hearing opportunity should once again be provided to the Appellants




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by the Respondent. Furthermore, without a proper hearing, the facts of the case cannot be fully determined. The Appellants' counsel has given assurance that should the matter be decided afresh on merits in future, the Appellants will ensure their presence at any hearing to be fixed by the Respondent. Therefore, in view of the foregoing, we set aside the Impugned Order and remand it to the Respondent to be decided afresh on merits.

8. Parties to bear their own costs.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 11 SEP 2015