



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 65 of 2019

Dawood Family Takaful Ltd

...Appellant

versus

Director (Insurance-Enforcement) SECP, Islamabad

...Respondent

Date of hearing:

December 30, 2024

For the Appellant:

1. Mr. Abdullah Noor (Advocate)
2. Mr. Haseeb Majeed (Advocate)
3. Ms. Shanzay Kamran (Advocate)

For the Respondents:

1. Mr. Sohail Qadri, Director, Adjudication-I, SECP
2. Mr. Shafique Ur Rehman, Assistant Joint Director, Adjudication-I SECP

ORDER

1. This Order shall dispose of Appeal No. 65 of 2019 filed by Dawood Family Takaful Limited (the Appellant) under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act), against order dated July 24, 2019 (the Impugned Order), for contravention of Rule 16 of the Insurance Rules, 2017 (the Rules) read along with Section 35(7) of the Insurance Ordinance, 2000 (the Ordinance).
2. Brief facts of the instant appeal are that the Appellant is a company registered with the Securities and Exchange Commission of Pakistan (the Commission) under the Ordinance to carry on family takaful business in Pakistan. While examining the annual financial statements of the Appellant for the year



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ended December 31, 2017, it was observed that the Company did not comply with the minimum investment requirements in a combination of government securities and other approved securities from its *Shareholders' Fund* and *Statutory Funds* as required under Rule 16 of the Rules read with Section 35(7) of the Ordinance. The Appellant in response to the Commission's letter dated September 28, 2018 submitted its comments vide letter dated October 08, 2018 and took the stance that the Appellant has invested 35% of assets in government securities from its Statutory Fund as on September 30, 2018 and, therefore, that the Appellant is fully compliant with the requirements of the Ordinance and the Rules. The Respondent not being satisfied with the reply of the Appellant to the letter dated September 28, 2018, sent out another letter dated November 09, 2018 whereby the Appellant was advised to provide the status of investments in government securities as on October 31, 2018. The Appellant vide its reply dated November 23, 2018 provided details of the investments in government securities as on October 31, 2018. Perusal of the Appellant's response revealed that the Company was non-compliant with Rule 16 of the Rules by not maintaining the minimum required percentage of investment from its Shareholders Fund.

3. In light of the aforementioned violation a show-cause notice dated April 04, 2019 (the SCN) was issued to the Appellant. The Appellant submitted its reply to the SCN on April 22, 2019 and the hearing was scheduled for May 29, 2019, which was attended by the authorised representative of the Appellant. After examining the submissions and considering the facts, the Respondent was of the view that violation of Rule 16 of the Rules read with Section 35(7) of the Ordinance is clearly established and instead of imposing any penalty under Section 156 of the Ordinance, the Respondent took a lenient view and a strict warning was given to the Appellant and was directed to take immediate steps for making investment of thirty percent of its Shareholders' Fund in the government securities.
4. The Appellant has preferred this appeal *inter alia* on the grounds that the warning given against the observations of the Respondent is unjust, unlawful and needs to be withdrawn and that there is nothing on the part of the Appellant that is tantamount to a contravention of any of the Rules or of the Ordinance. The Appellant while arguing the appeal contended that a bare perusal of Section 35(7) of the Ordinance reveals that the law allows for investments to be made from the Shareholders' Fund or from the Statutory Fund of a life-insurer and placed reliance on the analysis rendered by the Supreme Court of Pakistan in *Supreme Court Bar Association of Pakistan vs. Federation of Pakistan (Ref No. 1 of 2022)*, wherein it was held that 'If blunders are found in legislation, they must be corrected by the Legislature, and it is not the function of the Court to repair them'. The Appellant further argued that as a general rule a Court of law is not authorized to supply *cassus omissus*, or to alter language of a



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statute for the purpose of supplying a meaning, if the language used in the statute is incapable of one, even though they may be of the opinion that a mistake has been made in drawing an act. The Appellant further submitted that it is obvious that the word “or” has been used instead of “and” not only in section 35(7) of the Ordinance but also in Rule 16 of the Rules. It was further submitted by the Appellant that it is a settled position in law that legislature is assumed to be cognizant of its purpose and intention, therefore its ordinary and plain meaning cannot be departed from, as has been done in the Impugned order by substitution of the expression “or” by “and” in Rule 16 of the Rules and Section 35 of the Ordinance and further placed reliance on PLD 2018 251, wherein it was held that that “the courts always presume that every word and expression used by the legislature has a purpose and intent, and that the courts cannot assume the role of the legislature by the addition or substitution of words in a statute”. While concluding the arguments, the Appellant submitted that since the Impugned order does not provide any cogent reasoning for its substitution of the expression “and” for “or” in Rule 16 of the Rules and Section 24A of the General Clauses Act, 1895, which reiterates the principle that statutory right is to be exercised “reasonably, fairly justly and for the advancement of the purposes of the enactment” and that any action by an executive authority which is violative of these principles is liable to be struck down and in view thereof the appeal shall be accepted and, hence, the Impugned Order is liable to be set aside.

5. The Respondent countered the grounds of the appeal by asserting that, while examining the annual audited financial statements of the Appellant for the year ended December 31, 2017, it was observed that the Appellant failed to comply with the minimum investment requirements in a combination of the government securities and other approved securities in the “Shareholders Fund” as per the provisions of Rule 16 of the Rules and Section 35(7) of the Ordinance. The said fact was conveyed to the Appellant vide the Commission’s letter dated September 28, 2018 and in response vide letter dated October 08, 2018, the Appellant replied that it is in compliance with the regulatory provisions related to investment in government securities and upon not being satisfied with the response of the Appellant, the Commission again advised the Appellant vide letter dated November 09, 2018 to provide the status of investments in government securities as on October 31, 2018 and the perusal of the Appellant’s response revealed that it was maintaining the prescribed percentage of investment in government securities from its statutory funds(s). The Respondent further stated that the Appellant had already been warned with respect to its non-compliance with section 35(7) of the Ordinance read with Rule 16 of the Rules vide the Commission’s letter dated April 23, 2018 and the Appellant did not contest the aforementioned warning letter at any point in time which is clearly an act of admission on part of the Appellant. The Respondent further argued that there can be no excuse as to the interpretation of the



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provisions of the Ordinance and the Rules, especially in the scenario where the Commission issued a warning letter dated April 23, 2018, prior to initiation of the show-cause proceedings, the said warning letter was not contested by the Appellant at any point in time. The Respondent further stated that the context of the provisions of Section 35(7) of the Ordinance implies that the requirement of investing the prescribed percentage of total assets would apply on non-linked statutory funds as well as Shareholders' Fund on separate basis in order to secure net admissible assets of each fund and that to maintain liquidity of funds, investments have to be made from the Shareholders Fund. The Respondent further asserted that upon previous warnings given to the Appellant, the Appellant only increased the percentage of investment made through Statutory Funds and never implemented the direction given by the Commission with regard to investments from the Shareholders' Fund. While concluding the arguments, the Respondent prayed before the Bench that the Impugned order be maintained and warning given to the Appellant should remain in field.

6. The Appellate Bench (the "Bench") has heard the arguments of both the parties and perused the record. The Bench finds it important to reproduce the relevant sections of the law;

Rule 16 of the Rules states that:

"Assets to be invested in securities. - (1) thirty per cent of the assets, excluding inter-fund receivables of the shareholders' fund of a life insurer, or of a statutory fund of a life insurer, other than a statutory fund which contains only investment linked policies, shall be invested in Government securities, under sub-section (7) of section 35 of the Ordinance.

(2) A further ten percent of the assets, excluding inter-fund receivables of the shareholders' fund of a life insurer, or of a statutory fund of a life insurer, other than a statutory fund which contains only investment linked policies, shall be invested in a combination of Government securities and other approved securities, under sub-section (7) of section 35 of the Ordinance."


Section 35(7) of the ordinance states that:

"(7) The Federal Government may prescribe a percentage or percentages of the assets of the shareholders' fund of a life insurer, or of a statutory fund of a life insurer, other than a statutory fund which contains only investment-linked policies, which shall be invested in Government securities, or in a combination of Government securities and other approved securities."



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7. From a plain reading of Rule 16 of the Rules and Section 35(7) of the Ordinance, it can be inferred that there is no ambiguity in the wordings of the law as it is clear that *“thirty percent of the investment in government securities can be made from the shareholders fund of a life insurer or from the statutory fund of a life insurer”*. In the view of the Bench there is no perplexity in the wordings of the law and it seems that the Respondent has misinterpreted the wordings of the statute and issued a warning to the Appellant for not investing in government securities from the Shareholders’ Fund. The Bench deems it important to mention that as a general rule in constructing and interpreting statutes, the Court has to first look at the language of the law and interpret the same in accordance with the ordinary meaning and usage of the words and in the present case the Bench has noted that the wordings of the statute are clear and shall be interpreted accordingly.
8. In view of the above, the Impugned Order is not sustainable, therefore, we hereby set-aside the Impugned Order. Accordingly, the instant appeal is allowed without any order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Zeeshan Rehman Khattak)
Commissioner

Announced on:

06 MAR 2025