



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 68 of 2019

National Insurance Company Limited

...Appellant

Versus

Director, Insurance Division Securities and Exchange Commission of Pakistan

...Respondent

Date of hearing:

January 11, 2024

Present:

For the Appellant:

Mr. S. Zain A. Naqvi Advocate

For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Mr. Shafiq ur Rehman, Additional Joint Director, Adjudication-I, SECP
3. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 68 of 2019 filed by National Insurance Company Limited (the Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the Order dated July 30, 2019 (Impugned Order) passed by the Director Insurance Enforcement Department, SECP, Islamabad (the Respondent) under regulation 2 of the Accounting



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Regulations for Non- Life Insurance (the Regulations), Part B of Annexure II of the Securities and Exchange Commission (Insurance) Rules 2002 (the Rules) and Sections 45 and 46 read with Sections 156 and 158 of the Insurance Ordinance, 2000 (the Ordinance).

2. The brief facts of the case are that the statutory auditors of the Appellant, M/s. Grant Thornton Anjum Rahman (the Auditor), in their Audit Reports for the years ended on December 31, 2012, 2013 and 2014 highlighted the following observations that the Appellant (i) has not adjusted unconsolidated financial statements for the effects of subsequent development in the provision for outstanding claims in subsequent years (ii) does not have a system of obtaining confirmations and performing reconciliation of balances in respect of Amount due to reinsurer, 'premium received in advance' and 'premium due but unpaid'. Furthermore, 'the amounts /balances' confirmed by the reinsurer did not match or otherwise reconcile with the amounts/balances as appearing in the Appellant's record. The Auditor further stated that in the past the Appellant has been charging depreciation on investment properties and fixed assets under the reducing balance method using rates that are not in agreement with its estimate of useful life which may result in material overstatement of the written-down value of assets and a material understatement in the profit for the years and retained earnings of the Appellant. In view thereof, the Respondent issued a show-cause notice dated April 11, 2019 (the SCN) to the Appellants. The SCN was replied by the Appellant on April 29, 2019. Subsequent to the reply of the Appellants, a hearing was fixed in the matter on May 28, 2019. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 200,000/- on the Appellant and directed the management to ensure compliance and submit a compliance report.
3. The Appellants have preferred this appeal *inter alia* on the grounds that the Appellant's Board was non-existent from 2012 to 2015. The Appellant further stated that the current management is being punished for the wrongdoings of the previous management which is clearly against the principles of natural justice. The Appellant further stated that the Appellant is willing to comply with all laws in their true letter and spirit, therefore, their plea may be considered for a lenient view.
4. The Respondent rebutted the grounds of Appeal as under; that the Appellant has not complied with the requirements of Regulation 2 of the Rules and Sections 45 and 46 of the Ordinance. The Respondents further stated that the directions have been issued to ensure compliance with the law to the current



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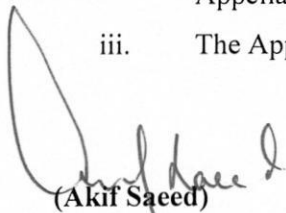
board. The Respondent further stated that the violations have been committed and the penalty was imposed as per law taking into consideration all the facts and circumstances.


5. The Appellate Bench (the Bench) has heard the arguments of both parties and perused the record. In view of the submissions put forth by the parties, the analysis and findings of the Bench are as under:

- i. A state owned company has a higher and more significant responsibility towards its stakeholders and is obligated to act in the best financial interest of the shareholders of the corporation. The law has made certain provisions mandatory in nature which are required to be followed. Justification of the violations of the mandatory provisions merely on the basis of resource constraints is not acceptable.
- ii. The Appellant has also admitted default during the course of arguments and also in the facts of the appeal, thus the Appellant cannot be exonerated from such a default.
- iii. The Appellants' argument, that the default committed earlier is due to the irregularities of the previous management and the current management cannot be held liable for the errors committed in the past, is not tenable as the penalty has been imposed on the Appellant company being a separate legal entity. The Appellant is obliged to abide by any directions given by the regulator under the relevant provisions of law.

6. In view of the above discussion, the Bench decides as under:

- i. The decision made in the Impugned Order is maintained.
- ii. Although the real value (time value) of the penalty amount has significantly reduced due to inflation, by giving due regard to the admission of default by the Appellant, the amount of the penalty is not enhanced.
- iii. The Appeal is dismissed without any order as to cost.


(Akif Saeed)
Chairman/Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on: 03 JUL 2024