



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 7 of 2018

1. Excel Insurance Company Limited
2. Syed Arif Hussain
3. Ghulam Muhammad
4. Muhammad Azhar Khan
5. Mrs. Shagufta Ghulam
6. Muhammad Irfan
7. Anwar Zafar
8. Syed Sajjad Ali

...Appellants

Versus

The Commissioner Insurance, SECP, Islamabad.

...Respondent

Date of hearing:

November 5, 2020

Present:

For Appellants:

Mr. Atir Aqeel Ansari, Advocate High Court,

For Respondent:

- i. Mr. Bilal Mustafa, Deputy Director, Insurance Division, SECP
- ii. Mr. Shafiq-ur-Rehman, Additional Joint Director, Adjudication-1, SECP

ORDER

1. This Order shall dispose of Appeal No. 7 of 2018 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by M/s. Excel Insurance Limited and its seven directors (the Appellants) against the Order dated December 12, 2017 (the Impugned Order) passed by the Commissioner Insurance, SECP (the Respondent) under Section 11(1) and Section 28 read with Section 63 and Section 156 of the Insurance Ordinance, 2000 (the Ordinance).



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that in violation of S.R.O.828(I)/2015 dated August 18, 2015, M/s. Excel Insurance Limited (the Company) had failed to increase its minimum paid-up capital to Rs. 450 million by June 30, 2017. The Company requested the Securities and Exchange Commission of Pakistan (the Commission) to extend time to meet the requirement of minimum paid-up capital vide letter dated August 28, 2017, however, the Commission vide letter dated September 13, 2017 had not acceded to the request. The Company failed to meet the minimum paid-up capital requirement, therefore, a show-cause notice dated November 3, 2017 (the SCN) was issued to the Appellants. The Appellants replied to the SCN vide LETTER dated November 13, 2017. Hearing in the matter was held on December 4, 2017 wherein Syed Arif Hussain, Chief Executive Officer of the Company submitted a copy of the deposit slip and bank statement to prove deposit of Rs. 50 million into the Company's account to ensure the minimum paid-up capital requirement of Rs. 450 million. The Company had not met the requirement of minimum paid-up capital within the stipulated time, therefore, the Respondent had imposed a fine of Rs. 100,000/- on each Appellant (Aggregate fine Rs. 800,000/-)
3. The Appellants has filed this Appeal *inter alia* on the grounds that the Company is unlisted, and due to its bleak financial status, no potential investor was ready to inject funds in the Company. The Appellants stated that non-compliance of the aforesaid requirement was not willful and no harm was caused to any stakeholder, therefore, in view of principle of consistency laid down in UBL Insurers case, 2010 CLD 379 and in Shaheen Insurance Company case, 2013 CLD 890, the Respondent should had taken a lenient view. The Appellants stated during the hearing, the Appellants had presented proof of the funds, which were to be used to meet the minimum paid-up capital requirement, however, the Respondent had not considered this fact. The Appellants stated that without prejudice to the above, imposition of penalty upon directors is harsh, as the directors cannot compel any person to invest in the Company and the matter was beyond their control; further no guilty attention or specific interest has been attributed to any director in the Impugned Order. The Appellants' representative apprised the Appellate Bench (the Bench) that the Company has already voluntarily surrendered its license to the Commission, therefore, he requested for a lenient view with regard to penalties imposed on the Appellants.
4. The Respondent had rebutted the grounds of Appeal and stated that the Impugned Order is lawful, reasonable and fair as the Appellants had ample time to increase the minimum paid-up capital requirement, however, they failed to comply with the express provisions of law. The Respondent



Securities and Exchange Commission of Pakistan

stated that on similar violation the Appellants were warned vide order dated December 28, 2016, however they had re-committed the default. The Respondent stated that while taking a lenient view, instead of maximum penalty of one million rupees, he imposed a penalty of Rs. 100,000/- on each Appellant, therefore, the Appeal should be dismissed.

5. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellants' representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof. The Bench has examined the case laws referred by the Appellants, however, UBL Insurers case, is not relevant because it is regarding minimum solvency requirement whereas, the other case of Shaheen Insurance Company is decided by the Executive Director, Insurance, which is not binding upon the Bench.
6. The Bench is of the view that it is evident from the facts of the case that violation against the Appellants are established beyond any doubt because requirement of minimum paid-up capital was met after issuance of the SCN. We have considered that due to bleak financial position and to avoid further non-compliances, the Company had voluntary revoked /surrendered insurance license. The Bench is of the view that the Company's directors had failed to ensure arrangement of minimum paid-up capital requirement on or before June 30, 2017, therefore, the directors cannot be exonerated from the consequences of non-compliance. The Bench do recognize that the directors of the Company's had admitted the violation, therefore, keeping in view subsequent compliance, we are inclined to take a lenient view.
7. In view of above facts, while maintaining the penalty on the Company, we hereby convert the penalty imposed on the Company's directors into a warning and direct them to avoid similar non-compliance in future. Accordingly, the appeal is disposed of, without any order as to cost.

(Farrukh Hamid Sabzwari)
Commissioner (SCD -PRDD)

(Shauzab Ali)
Commissioner (SMD)

Announced on: **25 NOV 2020**