



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 8 of 2016

1. Mr. Muhammad Ikhlaq Butt
2. Mr. Amjad Javed Butt
3. Mr. Basalat Dar
4. Mr. Muhammad Ishaq
5. Mr. Muhammad Zahid Noor
6. Mr. Rajab Abbasi
7. Mr. Zahid Akhtar

...Appellants

Versus

The Commissioner, Insurance, SECP.

...Respondent

**Date of Hearing:**

September 30, 2021

### Present:

#### For the Appellant:

Mr. Hassan Pervaiz, Counsel

#### For the Respondent:

- (i) Mr. Shafiq Ur Rehman (Additional Joint Director), Adjudication -I, SECP
- (ii) Mr. Hammad Javed, Additional Director, Adjudication -I, SECP

### ORDER

1. This Order shall dispose of Appeal No. 8 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan (the Commission) Act, 1997 against the order dated February 15, 2016 (the Impugned Order) passed by the Commissioner (the Respondent) under Section 67 read with Section 11(1)(f), Section 60 and Section 156 of the Insurance Ordinance, 2000 (the Ordinance).
2. The brief facts of the case are that the Directors' Report annexed to the annual audited accounts for the year ended December 31, 2014 (the Accounts) filed by M/s. Credit Insurance Company Limited (Company),



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revealed that the Board of Directors of the Company had changed from December 8, 2014 and the changes were made as follows:

Former BoD (Transferors)	Current BoD (Acquirers)
Mr. Muhammad Ikhlaz Butt, Chairman and Chief Executive	Mr. Tahir Malik, Chairman and Chief Executive
Mr. Amjad Javed Butt, Director	Mr. Saboohi Tahir, Director
Mr. Basalat Dar, Director	Mr. Asif Malik, Director
Mr. Muhammad Ishaq, Director	Mr. Kashif Malik, Director
Mr. Muhammad Zahid Noor, Director	Mrs. Mahnoor Malik, Director
Mr. Rajab Abbasi, Director	Mst. Sundis Malik, Director
Mr. Zahid Akhtar, Director	Mrs. Sadia Atif, Director

3. The Appellants had transferred their shares without obtaining approval of the Securities and Exchange Commission of Pakistan (the Commission) under Section 67 of the Ordinance, therefore, a show-cause notice dated November 30, 2015 (the SCN) was issued to the former and current Board of Directors. Hearing in the matter was held on February 3, 2016. The Respondent concluded the SCN proceedings and imposed a penalty of Rs.1,000,000 on the Appellants and current Board of Directors of the Company in the following manner:

S. No	Names	Penalty (Rs.)
1.	Mr. Muhammad Ikhlaz Butt, Chairman and CEO (former)	70,000
2.	Mr. Amjad Javed Butt, Director (former)	70,000
3.	Mr. Basalat Dar, Director (Former)	70,000
4.	Mr. Muhammad Ishaq, Director (Former)	70,000
5.	Mr. Muhammad Zahid Noor, Director (Former)	70,000
6.	Mr. Rajab Abbasi, Director (former)	70,000
7.	Mr. Zahid Akhtar, Director (former)	70,000
8.	Mr. Tahir Malik, Chairman & CEO (Current)	90,000
9.	Mrs. Saboohi Tahir, Director (Current)	70,000
10.	Mr. Asif Malik, Director (Current)	70,000
11.	Mr. Kashif Malik, Director (Current)	70,000
12.	Mrs. Mahnoor Malik, Director (Current)	70,000





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13.	Mst. Sundis Malik, Director (Current)	70,000
14.	Mrs. Sadia Atif, Director (Current)	70,000
	<b>Total</b>	<b>1,000,000/-</b>

4. The Appellants have preferred the instant appeal before the Appellate Bench (the Bench) *inter alia* on the grounds that the SCN was not served on the Appellants in accordance with the process of law, therefore, the Impugned Order is liable to be set aside. The Appellants have taken the plea that the SCN and Impugned Order have not been served at the Appellants' address i.e. Asmat Chamber, 68-Mozang Road, Lahore, rather, the same were delivered at Trafco House: 2<sup>nd</sup> Floor, 1-C-1, Canal Bank Road, Canal park, Gulberg II, Lahore, which is the address of other recipients of the SCN. The Appellants stated that they were never informed about hearing of the SCN proceedings and ultimately, they were condemned unheard and the Impugned Order was passed. The Appellants submitted that denial of opportunity of hearing to the Appellants and affording opportunity of hearing to the other recipients of the SCN is a clear case of discrimination which is a blatant contravention of Article 25 of the Constitution of the Islamic Republic of Pakistan. The Appellants stated that the Impugned Order is not a speaking order as various documents on record, as well as those present with the SECP, which demonstrate the baselessness of the Impugned Order and the SCN, have been blatantly ignored whereas the Appellants have been penalized on the basis of surmises and without any evidence. As a consequence, thereof the Impugned SCN and the Impugned Order are liable to be set aside. The Appellants stated that a memorandum of understanding dated April 7, 2015 (the MOU) was entered into between the Appellants and Mr. Tahir Malik regarding acquisition of the Company's shares, however, as of today the Appellants are still lawful owners of their respective shares in the Company, therefore, provision of Section 67 of the Ordinance is not applicable.
5. The Respondent rebutted the grounds of Appeals and stated that it is very clear and evident from the perusal of the document that the SCN was served on the Appellants on December 1, 2015 at Lahore and by authorizing Mr. Tahir Malik, the current Chief Executive to sign the documents, the Appellants have availed their right of hearing. The initial hearing fixed on January 7, 2016 was adjourned owing to the fact that Mr. Tahir Malik, appeared without a Power of Attorney from all other recipients of the SCN including the Appellants. The Respondent further submitted that no discrimination is made in serving the SCN and in issuing the notice of hearing and in offering the opportunity of hearing, therefore, the plea taken up by the Appellants is without any supporting evidence. The Respondent stated that the SCN issued under section 67 read with section 11(1)(h) and section 60 and section 156 of the Ordinance contain the relevant applicable provisions of the Ordinance. The Respondent stated that the SCN and the Impugned Order are very exhaustive and each relevant aspect has been discussed. The Respondent submitted that the MOU between





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the Transferors and the Acquirers has its scope limited to "*collaboration in development, reorganization and revamping of the Company in accordance with the SECP requirements*" which does not establish the denial of transfer of shareholding of the Company from the Transferors to the Acquirers, rather both the parties have reached an understanding on the estimated/proposed total cost of *intellectual property, virtually/intangible assets* inclusive of authorized/paid-up share capital of the Company as Rs. 10 million and terms of payment thereof. Therefore, it is not correct that the Appellants are true and lawful owners of their respective shares in the Company which is also evident from the fact that the Accounts including Pattern of Shareholding as on December 31, 2014 filed with the Commission under the relevant provisions of the Ordinance are signed by the current Chief Executive and Directors of the Company.

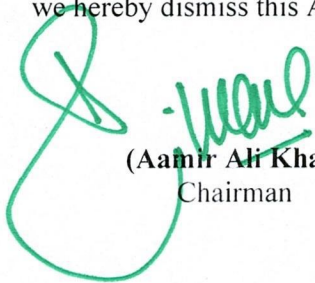
6. The Bench has heard the parties and perused the record and examined the documents. The Bench is of the view that the Appellants' assertion regarding denial of hearing opportunity and discrimination is without any substance, therefore, we have no reason to doubt or distort the findings of the Impugned Order. The Bench has perused para 6 and annexure "E" of the memorandum of Appeal, wherein the Appellants have admitted that they had the knowledge of the SCN and accordingly they have authorized one of the Appellants namely; Mr. Tahir Malik to represent them in the SCN proceedings, therefore, we are not inclined to accept that opportunity of hearing was denied or the Appellants were condemned unheard. We have examined the record and noted that the SCN was issued to the former and current directors of the Company, therefore, the Appellants' stance regarding discrimination is just a deliberate effort to undermine the sanctity of legal proceedings and to avoid mandatory requirement of Section 67 of the Ordinance whereby the Appellants were required to get a prior approval of the Commission before proceeding with the acquisition or transfer transaction.
7. The Bench is of the view that the names of the current directors were mentioned in the Accounts, without prior approval of the Commission, therefore, the Appellants have clearly violated the express requirement of Section 67 of the Ordinance, therefore, in our view the Appellants have no case to defend. The Bench also rejects the Appellants arguments that they merely entered into MOU and no actual transfer of shares was executed, because the Accounts, which reflected names of the current directors were related to the year 2014 whereas the MOU was entered into on April 7, 2015, thereby it is evident that the MOU was executed to avoid consequences of the violation.
8. The Bench is of the view that that the Appellants stance regarding restricted ambit of authorization of Mr. Tahir Malik is not tenable because he was authorized by the Appellants to appear before the Commission and appearance cannot be construed as mere signing of the documents. The Bench has noted that the SCN

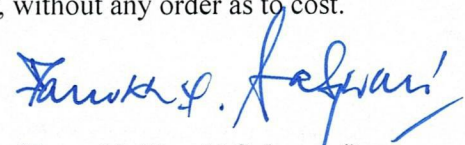


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was delivered at Trafco House: 2<sup>nd</sup> Floor, 1-C-1, Canal Bank Road, Canal park, Gulberg II, Lahore and the same address has been mentioned in Annexure "E" of the memorandum of Appeal (*Annexure "E" is a Power of Attorney executed by the Appellants in favor of Mr. Tahir malik*), therefore, we have no doubt that the said address also belongs to the Appellants, hence, the SCN and Impugned Order were duly delivered on the Appellants address. The Bench has reviewed the contents of the Impugned Order and noted that Mr. Tahir Malik has also pleaded the same case, as it has been narrated by the Appellants in this Appeal, therefore, we have no doubt that the Appellants were duly represented by Mr. Tahir Malik during the SCN proceedings.

9. In view of the foregoing, we find no reason to interfere with the merits of the Impugned Order. Therefore, we hereby dismiss this Appeal and upheld the Impugned Order, without any order as to cost.

  
(Aamir Ali Khan)  
Chairman

  
(Farrukh Hamid Sabzwari)  
Commissioner

Announced on: 29 NOV 2021