



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal Nos. 83 to 85 of 2017

1. Appeal No.83 of 2017: Ch. Ghulam Mustafa
2. Appeal No.84 of 2017: Ms. Amal Usman Ali
3. Appeal No.85 of 2017: Rehan Beg

(All above ex- Directors of M/s. Pakistan General Insurance Company Ltd.)

...Appellants

Versus

The Commissioner, Insurance, SECP.

...Respondent

Date of Hearing:

September 30, 2021

Present:

For the Appellants:

- (i) Mr. Mazhar Zahoor, Chief Executive
- (ii) Mr. Sajid Rabbani, Director

For the Respondent:

- (i) Mr. Shafiq Ur Rehman (Additional Joint Director), Adjudication -I, SECP
- (ii) Mr. Hammad Javed, Additional Director, Adjudication -I, SECP
- (iii) Mr. Bilal Mustafa, Additional Joint Director, Offsite-I, SECP
- (iv) Ms. Minaal Tariq, Assistant Director, Adjudication Advisory & Litigation, SECP

ORDER

1. This single Order shall dispose of three appeals registered as Appeal Nos. 83 to 85 of 2017 filed by the above-mentioned Appellants under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated June 7, 2017 (the Impugned Order) passed by the Commissioner (the Respondent) under Section 11(1)(f), section 12(1) & (4) read with Section 63(1) and Section 156 of the Insurance Ordinance, 2000 (the Ordinance).
2. The brief facts of the case are that an investigation of M/s. Pakistan General Insurance Company Limited (the Company) was carried out under section 59 of the Ordinance, which revealed an undisclosed bank account of the Company having No. 568-28 (Undisclosed Bank Account) maintained at Bank of Punjab



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(BOP) Patiala Ground Lahore. The aforesaid bank account was not disclosed by the Company in its records including trial balance and financial statements. The review of the bank statement from November 26, 2013 to December 31, 2015 revealed significant transactions in terms of the number and value along with the overdraft facility of Rs. 111,789,829/-. On the basis of confirmations received from the claimants, surveyors, banks and rescue centers, it was revealed that out of 87 claims, 57 claims amounting to Rs. 106.055 million were bogus, fake and fabricated. An amount of Rs 89.39 million was transferred from the Company's funds to the Undisclosed Bank Account, Rs 5.53 million was withdrawn in cash and Rs 11.135 million was transferred to another untraced account against the said bogus claims of Rs. 106.055 million. It transpired that the Company caused a loss to the Pakistan Reinsurance Company Limited (the PRCL) of an amount of Rs. 57.156 million because of reinsurance recoveries against the bogus claims. In view of the above, the Company was not conducting its business in a sound and prudent manner, with integrity and with due regard to the interest of its policyholders.

3. In view of above violations, a Show-Cause Notice dated April 28, 2017 (the SCN) was served to the Appellants, the Company and its Board of Directors. The SCN was replied by the Appellants vide letter dated May 8, 2017. Hearing in the matter was held on June 1, 2017 which was attended by Mr. Nasir Ali, Chief Executive of the Company, Mr. M. Azhar Hafeez, CFO of the Company and Mr. Ali Latif.
4. The Respondent concluded the SCN proceedings and held that the Appellants as Directors were supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of section 11(1)(f) and section 12(1) & (4) of the Ordinance, therefore, it could be legitimately inferred that the default concerning sound and prudent management was committed. In exercise of the powers conferred pursuant to section 63(1) of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, the Company was directed by the Respondent to cease entering into a new contract of insurance and further the Company was advised to refund an amount of Rs. 57.156 million to PRCL recovered on account of reinsurance claims against bogus/fake policies during the year 2014 and 2015. In addition to the above, an aggregate fine of Rs.2,200,000/- was imposed by the Respondent under section 156 of the Ordinance on the Appellants, Chief Executive and other Directors of the Company in the following manner:

S.No	Names	Penalty (Rs.)
1.	Chaudhary Zahoor Ahmed	1,000,000/-
2.	Ch. Athar Zahoor	200,000/-
3.	Ch. Ghulam Mustafa	200,000/-
4.	Mr. Iftikhar ul Haq	200,000/-
5.	Mrs. Amal Usman Ali	200,000/-
6.	Mr. Nasir Ali	200,000/-
7.	Mr. Rehan Beg	200,000/-
	Total	2,200,000/-



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5. The Appellants preferred appeals *inter alia* on the grounds that the Respondent has failed to establish that the Appellants were knowingly party to the default, therefore, fine under Section 156 of the Ordinance cannot be imposed on them. The Appellants further stated that after their resignation from the position of Directors, the Respondent was not authorized to impose fines, therefore, in view of the case law cited as 2016 CLD 792 (Case Law), the Impugned Order is liable to be *set aside*.
6. The Respondent rebutted the arguments of the Appellants *inter alia* on the grounds that the Appellants were part of the Board of Directors who failed to manage affairs of the Company in an adequate manner, therefore, they have been rightly penalized under Section 156 of the Ordinance. The Respondent stated that willful default of the Appellants is also evident from the Company's reply dated May 8, 2017 wherein it has been admitted that to have good IFS ratings, it has overstated its premiums during years 2014 and 2015. The Respondent stated that business of the Company was carried out with intent to defraud the stakeholders of the Company including the shareholders and reinsurer. The Respondent submitted that the persons involved in the management of the Company's affairs, including the Appellants, were responsible for fraud, breach of trust and other misconduct towards the Company. The Respondent submitted that the Board of Directors of the Company has failed to perform its fiduciary duty towards the Company and its stakeholders, therefore, the Appellants being members of that Board are responsible for violations and non-compliances committed by the Company. The Respondent stated that the case law referred by the Appellants was issued under Section 28 read with Sections 11(1), 63(1) and 156 of the Ordinance which mainly pertain to paid-up capital requirement, whereas the instant case is related to violations of Sections 11(1)(f), 12(1) & (4) read with Sections 63(1) and 156 of the Ordinance. Therefore, in our view the case law referred by the Appellants is irrelevant to the facts of this case because a plain reading of the referred order reflects that since the previous Board was responsible for the default, the new Board cannot be held responsible for the action and inaction of other individuals of the previous Board. In the instant case, the Appellants were responsible for deception that includes but is not limited to the concealment of the bank account, reinsurer recoveries from PRCL on bogus claims, manipulating ratings to have a good IFS rating etc. Furthermore, the underlying nature of the Impugned Order and referred order i.e paid up capital and fraud are entirely different; therefore, the Case Law cannot be used by Appellants in defense.
7. We have heard the parties i.e. the Appellants' and the Respondent's representatives. The Appellants' argument, that due to their resignation from the Board of Directors of the Company they cannot be penalized under Section 156 of the Ordinance, is an utter misconception and ignorance of law. The Bench is of the view that the Board of Directors of the Company including the Appellants have breached the trust of the stakeholders and failed to perform their fiduciary duties to ensure use of funds belonging to a listed

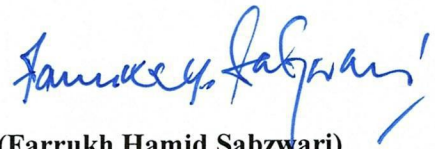


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entity having 62.71% shareholding of general public in a transparent and fair manner. Furthermore, we endorse the argument of the Respondent that the facts of the Case Law are entirely irrelevant to the facts of this case and is without any basis. The Case Law is about insurer's failure to maintain minimum paid up capital and non-compliance of the condition regarding bank statement of the account in which right issue proceeds were received, whereas, instant case is that during directorship of the Appellants, Company's funds were misused through the Undisclosed Bank Account, therefore, the Bench is not inclined to accept the Case Law as a plausible defense. Furthermore, the Bench is of the view that application of Section 156 is not regulated on the basis of current or previous Board of Directors, rather this Section is applicable on all wrongdoers whether they are a part of the previous or current Board of Directors/management of a company, therefore, the Case Law is not relevant to the facts of this case.

8. The Appellants' representatives have apprised the Bench during the hearing (and also confirmed vide email dated November 16, 2021) that the Appellant Ch. Ghulam Mustafa has passed away and therefore, requested to drop the proceedings against him. The Bench is of the view that penalty under Section 156 of the Ordinance is civil in nature and this liability devolves upon the legal heirs/ successor in interest along with the estate/assets of the deceased director. The Appellants' representatives have also informed the Bench that legal heirs of the deceased director are not interested to peruse this Appeal. In view thereof, civil liability cannot be dropped against the deceased Appellant Ch. Ghulam Mustafa. The Appellants' representative also requested to drop proceedings against two other Appellants namely; Ms. Amal Usman Ali and Mr. Rehan Beg. The Appellants' representatives stated that currently Ms. Amal Usman Ali is working as a housewife whereas, Mr. Rehan Beg is living abroad since 2017, however, the Bench is of the view that current status of Ms. Amal Usman and Mr. Rehan Beg is immaterial to decide this Appeal and cannot be considered as a legal bar to exonerate them from the consequences of their failure to ensure transparent affairs of the Company during their directorship.
9. In view of the foregoing, we find no reason to interfere with the merits of the Impugned Order. Therefore, Impugned Order is upheld and all three Appeals are dismissed through this single order, without any order as to cost.


(Aamir Ali Khan)
Chairman


(Farrukh Hamid Sabzwari)
Commissioner

Announced on: **29 NOV 2021.**