



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 84 of 2016

Mr. Imtiaz Ahmed Bhatti

(Former CEO Pak Kuwait Takaful Company Limited)

Appellant

Versus

Commissioner Insurance, SECP.

Respondent

Date of hearing:

14/11/16

Present:

For Appellant:

1. Barrister Taimur Ali Mirza
2. Barrister Sajeel Sheryar

For Respondent:

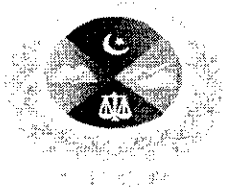
1. Mr. Mr. Ali Azeem Ikram, Executive Director (Insurance) SECP
2. Mr. Tariq Bakhtawar, Director (Insurance) SECP

ORDER

1. This Order shall dispose of Appeal No.84 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated 24/08/16 (the Impugned Order) passed by the Respondent under section 11(1)(f) and section 12(1) read with section 158 of the Insurance Ordinance, 2000 (the Ordinance).
2. Brief facts of the case are that the Board of Directors (the BOD) of Pak Kuwait Takaful Company Limited (the Company) in their meeting dated 01/12/14 appointed M/s. Ernst & Young (EY) to carry out assessment of reserves against claims, examination of paid claims, identification of potential phantom agents and assessment of adequacy of bad

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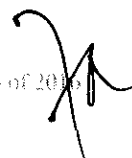
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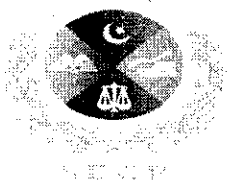
debts of the Company. The management of the Company carried out an analysis of the EY report dated 06/03/15 and identified certain irregularities with respect to contribution due but unpaid, understated claims and reversal of endorsements etc. The statutory external auditor of the Company has also observed in letter dated 24/04/15 that in order to show positive results and to maintain solvency requirements, the Company is practicing incorrect reporting since 2012. In view of aforesaid contraventions, the Respondent issued a Show Cause Notice (the SCN) dated 27/04/16 to the following persons/directors;

S.No	Name
1.	Mohd Tarmidzi Bin Ahmad Nordin, Chairman
2.	Mr. Imtiaz Ahmed Bhatti, Chief Executive Officer
3.	Mr. Rana Ahmed Humayun, Director
4.	Mr. Zaharudin Daud. Director
5.	Mr. Osman Kassim, Director
6.	Mr. Mansur Khan, Director
7.	Mr. Kamal Uddin Khan, Director
8.	Syed Amir Ali, Director
9.	Mr. Nazawawe Bahari, Director
10.	Mr. Talal B A KH A I-Mesallam, Director
11.	Pak Kuwait Takaful Company Limited

3. In response to the SCN, Mr. Ijaz Ahmed, advocate Supreme Court (the Counsel) submitted a reply vide letter dated 25/05/16 on behalf of the persons mentioned at serial nos. 1,3, 4, 5, 6, 8, 9 and 11, in para above (the Directors and Company). The SCN was not responded by the Appellant and two other directors mentioned at serial nos. 7 and 10 in para above. The Counsel submitted that the aforesaid persons (except mentioned at serial number 11) were the nominee directors of reputable and foreign institutional investors and being non-executive directors they were not the part of Company management. The Counsel further stated that the irregularities committed by the Company management came into the knowledge of the nominee directors during the


Appellate Bench No. 111





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BOD meeting dated 1/12/14 and, thereafter, the BOD has made corrections for the previous year's irregularities in order to become compliant with the regulatory requirements. Hearing in the matter of SCN was held on 22/06/16, which was attended by the representatives of the Directors and Company, who pleaded that section 158 of the Ordinance is not applicable on the nominee directors because they never acted knowingly and willfully.

4. The Respondent has issued a final hearing notice to the Appellant and two other directors mentioned at serial nos. 7 and 10 in para 2 above for 20/07/16. In response to the hearing notice, Mr. Kamal Uddin Khan (at serial no.7 in para 2) submitted vide letter dated 13/07/16 that he was co-opted as a nominee director in the 50th, 51st and 52nd BOD meetings held on 01/12/14, 31/03/15 and 30/04/15, respectively, however, the meetings were not attended by him due to preoccupations and leaves granted by the BOD and eventually he resigned on 15/05/15, and therefore, he had no nexus with the affairs of the Company. On the date of hearing, the authorized representative of Mr. Kamal Uddin Khan appeared and reiterated the same arguments as were already submitted through the written reply. The Appellant and the director mentioned at serial no.10 in para 2 above have neither responded to the hearing notice nor did they attend the hearing.
5. Taking into consideration the above circumstances, the Respondent in exercise of powers conferred under Section 158 of the Ordinance, imposed a penalty of Rs. 1,000,000 (Rupees One Million only) on the Appellant and the Company. The other directors of the Company were warned to be careful and diligent in carrying out the business of the Company.
6. The Appellant has preferred this appeal *inter alia* on the ground that matter was decided ex-parte by the Respondent, which is against the principle of natural justice and the rule of *audi alteram partem*. The Respondent has rebutted the grounds of appeal and stated that ample opportunities were provided to the Appellant to appear and plead his case but he failed to do so.



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7. The Appellate Bench (the Bench) has heard the parties i.e. the Appellant and the Respondent, and perused the record of Appeal. Admittedly, the SCN proceedings were concluded *in absentia* against the Appellant. The record also reveals that the Respondent has provided ample opportunities to the Appellant but he failed to respond to the SCN and appear for personal hearing. Therefore, the Respondent was left with no other option but to decide the case ex-parte against the Appellant. The previous conduct of the Appellant, with respect to proceedings before the Respondent, cannot be appreciated however, without going into the merits of the case, the Bench finds it appropriate to provide a final opportunity of fair trial to the Appellant. This view of the Bench is based on the decisions of apex courts whereby it has been observed that technical knockout would not serve the purpose of substantial justice and adjudication of the cases should be on merits rather than technicalities.
8. In view of above discussion and subject to payment of a cost of Rs. 10,000/- we hereby set-aside the Impugned Order to the extent of the Appellant and remand the matter to the Respondent to decide it afresh by providing an opportunity of hearing. The Appellant is directed to deposit the amount of cost in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within 10 days from the receipt of this order and furnish the challan to the Respondent, as evidence of deposit of cost. The Respondent is directed to provide an opportunity of hearing to the Appellant and the Appellant is also directed to appear on the day and time fixed by the Respondent for hearing. In the circumstances, the appeal is disposed of.

(Zafar Abdullah)
Commissioner (SCD)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: 04 JAN 2017