



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 86 of 2017

Chaudhary Zahoor Ahmad

...Appellant

Versus

The Commissioner, Insurance, SECP.

...Respondent

Date of Hearing:

September 30, 2021

Present:

For the Appellant:

- (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 Order is passed in Appeal No. 86 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (the Commission) 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 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 (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 bank statement from November



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26, 2013 to December 31, 2015 revealed significant transactions in terms of 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of Rs 89.39 million was transferred from the Company's funds to the Undisclosed Bank Account, Rs 5.53 million was withdrawn in cash and Rs 11.135 million was transferred to other untraced account against the said bogus claims of Rs. 106.055 million. It transpired that the Company caused 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 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 dissatisfied with the response of the Company held that as the Directors are 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 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 Chief Executive and Directors of the Company in the following manner:

1.	Chaudhary Zahoor Ahmed, Director (Ex-CEO)	1,000,000/-
2.	Ch. Athar Zahoor - Director	200,000/-
3.	Ch. Ghulam Mustafa, Director	200,000/-
4.	Mr. Iftikhar ul Haq - Director	200,000/-
5.	Mrs. Amal Usman Ali- Director	200,000/-



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6.	Mr.Nasir Ali – Chief Executive Officer (Ex-Director)	200,000/-
7.	Mr. Rehan Beg - Director	200,000/-
	Total	2,200,000/-

5. The Appellant preferred the instant appeal *inter alia* on the grounds that the Respondent has failed to establish that the Appellant was knowingly party to the default, therefore, fine under Section 156 of the Ordinance cannot be imposed. The Appellant further stated that after his resignation from the position of CEO and board, the Respondent was not authorized to impose a fine. The Appellant has taken plea that in view of case law cited as 2016 CLD 792 (the Case Law), he cannot be penalized. The Appellant's representative argued during the hearing before the Appellate bench that the National Accountability Bureau (NAB) has investigated the same matter upon a reference filed by the Securities and Exchange Commission of Pakistan and the Appellant had entered into a plea bargain of Rs 86.219 million as liability and was convicted by Accountability Court No.4, Lahore vide order dated December 12, 2017. Therefore, the principle of double jeopardy is attracted to the facts of the case and the Appellant cannot be tried twice for the same offence.
6. The Respondent rebutted the arguments of the Appellant *inter alia* on the grounds that the Appellant has misused funds of the Company and beneficial use of the Company's funds in personal capacity is a serious malpractice. The Respondent further stated that Section 156 of the Ordinance is applicable as the Impugned Order has clearly established the default and willful act of the Ex-CEO, Chaudhry Zahoor Ahmed. The Respondent stated that willful default of the Appellant is also evident from the Company's reply dated May 8, 2017 wherein it has been admitted that to have strong IFS ratings, it has overstated its premiums during years 2014 and 2015. The Respondent stated that the Appellant resigned after the investigation revealed fraud, however, resignation from the position does not absolve the Appellant of his responsibility and therefore would remain accountable for his actions. The Respondent stated that the Case Law was issued under Section 28 read with Section 11(1),63(1) and Section 156 of the Ordinance which mainly pertains to paid up capital requirement. The 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 Appellant was responsible for deception that includes but is not limited to the concealment of Bank Account, reinsurer recoveries from PRCL on bogus claims, manipulated ratings to have a strong IFS rating etc. The Appellant had a direct involvement in the matter. Furthermore, the underlying nature of



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the Impugned Order and referred order i.e paid up capital and fraud are entirely different; therefore, the Crescent Star Order example cannot be used by the Appellant in its defense. The Appellant's case does not attract the principle of double jeopardy. The Respondent argued that double jeopardy is a procedural defense that inhibits a defendant from being tried again for the same (or in some instances similar) charges following a legitimate acquittal or conviction. Section 403 of the Code of Criminal Procedure, 1898 which sets out the defense of double jeopardy embodies the ancient maxim that no one should be disturbed twice for the same cause. The Respondent further argued that there are certain exceptions to Section 403 of the Code of Criminal Procedure 1898; one being Section 403(2) which provides that a person acquitted or convicted may be tried for a separate and distinct offence. In the instant case, the Respondent argued that the exception applies since the Appellant's case was sent to NAB by the Commission. NAB has a completely different legal framework which grants it the jurisdiction to try offences under its own special laws which are separate and distinct from the laws administered by the Commission; in this case being the Insurance Ordinance. Therefore, the Respondent argued that the Appellant's contention that his case attracted the principle of double jeopardy is untenable and legally incorrect.

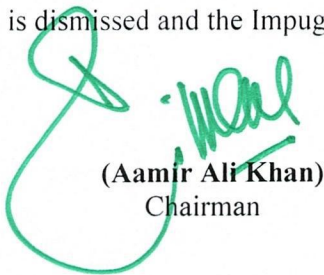
7. We have heard the parties i.e. the Appellant and the Respondent. The Appellant's argument that due to his resignation from the position of CEO and board of directors of the Company he cannot be penalized under Section 156 of the Ordinance is an utter misconception and ignorance of law. The Bench is of the view that misuse of the Company's funds by the Appellant is a crystal-clear depiction of willful and knowing involvement in unauthorized use of funds belonging to a listed entity having 62.71% shareholding of general public. Furthermore, we endorse the argument of the Respondent that the facts of the Case Law are entirely different and irrelevant to the facts of this case. 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. We concur with the Respondent that NAB tried the Appellant under special law i.e. the NAB Ordinance, 1999, which is separate from the laws administered by the Commission. In the instant case, the Appellant was penalized as a Director/CEO under section 156 of the Ordinance for failing to comply with their legal obligations in connection with the statutory requirement of section 11(1)(f) and section 12(1) & (4) of the Ordinance while NAB's investigation pertained to the criminal side which ended in a plea bargain by the Appellant. Therefore, the plea taken by the Appellant regarding attraction of the principle



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of double jeopardy is not applicable because the Impugned Order was passed in exercise of regulatory civil powers whereas, the proceedings under the NAB Ordinance were purely criminal in nature. Furthermore, the Bench is of the view that the principle of double jeopardy is only applicable in criminal proceedings triggered from the offence(s) whereas, the Impugned Order is civil in nature and action under the NAB Ordinance is purely criminal, therefore, the defense of double jeopardy is not relevant to this case.

8. In view of the foregoing, we see no reason to interfere with the Impugned Order. Therefore, the Appeal is dismissed and the Impugned Order is upheld with no order as to costs.


(Aamir Ali Khan)
Chairman


(Farrukh Hamid Sabzwari)
Commissioner

Announced on: 29 NOV 2021