



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 58 of 2009

Asia Care Health and Life Insurance Company
15-17 C, 2nd Floor
5th Commercial lane
Zamzama, Defense Housing Authority
Karachi

.....

Appellant

Versus

Director (Insurance)
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad.

.....

Respondent

Date of Hearing

23-11-09

ORDER

Present:

For the Appellant

Ijaz Ahmed
Advocate

Departmental representative

Mr. Kashif Siddiqui
Joint Director

Obaid-ur-Rehman
Deputy Director



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1. This order will dispose of appeal No. 58 of 2009 filed under section 33 of the Securities and Exchange Commission (the “Commission”) of Pakistan Act, 1997 by the Appellant against the order dated 25-09-09 (the “Impugned Order”) passed by the Respondent.
2. The brief facts of the case are that the Appellant at the time of its registration submitted profile of its parent company, Noor Sehat Health Systems Limited (NSHS), stating therein that NSHS was incorporated on 23-08-07 in New York and the paid up capital of NSHS was US \$ 10 million. The certificate of incorporation of NSHS, however, revealed that NSHS was incorporated in Cayman Islands and the condensed balance sheet of NSHS as on 31-12-08 showed that the investors paid up capital was US \$ 8.5 million.
3. Show cause notice (“SCN”) dated 13-08-09 was issued to the Appellant under section 6(10) of the Insurance Ordinance, 2000 (the “Ordinance”) for providing false information pertaining to the place of incorporation and paid up capital of the parent company. The Appellant filed reply to SCN and was provided an opportunity of hearing before the Respondent. The Respondent dissatisfied with the reply and the averments made before him passed the Impugned Order and imposed penalty of Rs. 50 thousand on the Appellant under section 157(1) of the Ordinance for violation of section 6 (10) of the Ordinance.
4. The Appellant preferred appeal against the Impugned Order before the Appellate Bench. The Appellant’s counsel contended that:
 - a) NSHS is an investment vehicle which is managed by its investment manager namely Noor Sehat Health System Management LLC (“Noor Management”) which is part of Galleon Group and acts as the investment manager of NSHS.



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Noor Management's principle office is based in New York and all investment activities of NSHS are managed by Noor Management, therefore, the profile of the Appellant's parent company namely Noor Management, showed its principle office in New York.

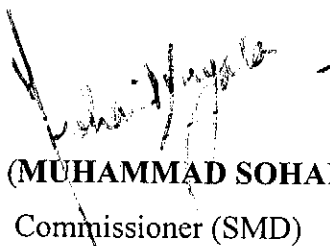
- b) The principle investor namely Galleon Fleet Fund Limited committed to make the investment of US \$ 10 million. In terms of the commitment, NSHS could draw the committed capital, therefore, it was treated as paid-up capital in commercial sense and was not meant to mislead the Commission. NSHS withdrew 85% of the said amount to capitalize the Appellant, which proves that the funds are available to NSHS.
 - c) SCN was issued by the Executive Director, (Insurance) whereas the Impugned Order has been passed by the Respondent, therefore, the Impugned Order is *coram non judice* and is not sustainable in law.
5. The departmental representative maintained that the Impugned Order was passed as the information regarding the place of principle office of the Appellant's parent company and its paid up capital was not found correct as per the record available with the Commission. The Certificate of Incorporation of NSHS revealed that NSHS was incorporated in Cayman Islands and according to the condensed balance sheet of NSHS as on 31-12-08, the investors paid up capital was US \$ 8.5 million.
6. We have heard the parties. The Appellant seemed to have provided the profile of NSHS as parent company at the time of incorporation and SCN was issued by the Respondent based on the information provided and the fact that NSHS was in fact incorporated in Cayman Islands and the condensed balance sheet of NSHS, as on 31-12-08, showed that the paid up capital was actually US \$ 8.5 million. The

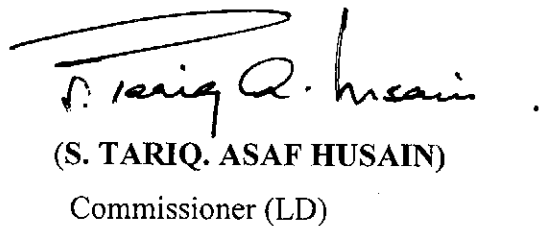


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Respondent was informed about the scheme of business and its organizational structure, however, the Respondent even after holding that the Appellant satisfied various concerns and queries went on to impose penalty of Rs 50,000/- on the Appellant under section 6(10) of the Ordinance read with section 157(1) of the Ordinance. The Respondent has observed that he is satisfied with the various issues raised in the hearing and has still gone on to impose penalty on the Appellant. The clarification regarding the paid up capital and place of business should have been sought at the time of incorporation and penal provision should not have been invoked. The objection of the Appellant, regarding the exercise of the powers by the Respondent has been examined in light of the SRO 666(I)/2009 dated 16-7-09. The powers under section 157(1) of the Ordinance have been delegated to the Executive Director (Insurance), however, in this case the powers have been exercised by the Director (Insurance) and are therefore without jurisdiction. The Insurance Division must ensure that powers are exercised by the officers to whom powers are delegated.

In view of the above we remand the case back to the Executive Director (Insurance), who shall obtain the necessary information and rectify the record of the Appellant.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S. TARIQ. ASAF HUSAIN)
Commissioner (LD)

Announced on: 23-12-09