



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 49 of 2009**

Capital Insurance Company Limited  
Muradia Road, Model Town, Salkot

..... Appellant

Versus

Sialkot International Airport Limited

..... Respondent

Date of hearing

13-10-10

**ORDER**

**Present:**

For the Appellant:

Asjad Saeed, Advocate

For the Respondent:

Ali Ibrahim, Advocate

Departmental representative:

Tariq Hussain, Director (Insurance)



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1. This order shall dispose of appeal No. 49 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 31-07-09 (the "Impugned Order") passed by the Executive Director (Insurance).
2. The facts of the case are that a complaint was lodged by Sialkot International Airport Limited (the "Complainant") before the Federal Insurance Ombudsman, (the "Ombudsman") against the Capital Insurance Company Limited (the "Appellant") wherein it was stated that a contract dated 15-04-04 was awarded to M/s Varrow International (Pakistan) (the "Contractor") for external electrical work at the airport. The Contractor was required to furnish a Performance Guarantee ("PG") in favor of the Complainant. The Appellant as an Insurance Company furnished the aforesaid guarantee of Rs 10 million and executed a PG on 10-06-04. The Complainant stated that despite extending full co-operation and opportunity to perform the contract, the Contractor failed to perform his part of the contract resulting in huge losses to it. The Complainant in terms of the PG called upon the Appellant vide letter dated 14-12-04 to en-cash the aforesaid guarantee for entire amount of Rs 10 million.
3. The Appellant contested the Complaint on the grounds that the default was on the part of the Complainant as it failed to make necessary arrangements for the work to start; and the PG had expired on 30-11-05 without being called for encashment within the period of its validity.



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4. The Ombudsman, dissatisfied with the response of the Appellant, passed an order dated 15-04-09 and directed the Appellant to en-cash the PG of Rs 10 million along with liquidated damages calculated under section 118(2) of the Insurance Ordinance, 2000 (the "Ordinance").
5. The Appellant filed an appeal with the Commission in terms of section 130(2) of the Ordinance. The appeal was heard by the Executive Director (Insurance), who was delegated the powers by the Commission to hear the appeals against the orders of the Ombudsman. The Executive Director (Insurance) after hearing the parties dismissed the appeal through the Impugned Order.
6. The Appellant preferred the instant appeal against the Impugned Order. The Respondent's counsel at the outset took a preliminary objection as to the maintainability of the appeal. The Respondent's counsel stated that the Ombudsman's order directing the Appellant to en-cash the PG within 30 days from the receipt of its order was challenged before the Commission in terms of section 130(2) of the Ordinance. The Executive Director (Insurance) heard the appeal and upheld the order of the Ombudsman. It was argued that in terms of section 130(3) of the Ordinance, an order passed by the Ombudsman, which has not been appealed against or any order passed by the Commission in appeal, as the case may be, becomes final and operative; therefore, in the instant case the order of the Executive Director (Insurance) passed in the appeal has attained finality. It was further argued that the instant appeal filed under section 33 of the Securities and Exchange Commission of Pakistan Act 1997 (the "SECP Act 1997") is not maintainable as the Appellant has availed its right of appeal provided under the Ordinance.



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7. The Appellant's counsel argued that the order of the Executive Director (Insurance) is appealable before the Appellate Bench (the "Bench") under section 33 of the SECP Act 1997 since the order of the Executive Director (Insurance) was passed as the delegate of the Commissioner.

8. We have heard the parties on maintainability as well as on merits. The counsels' were informed that the merits would only be touched upon in our judgment if the appeal is maintainable. Section 130 of the Ordinance is reproduced for ease of reference:

***130. Recommendations for implementation.- (1) In the event the Insurance Ombudsman comes to the conclusion that the complaint is justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation and failing that communicate his findings to the concerned insurance company with the direction -***

- (a) to reconsider the matter;*
- (b) to modify or cancel the earlier decision, action or failure to take appropriate action;*
- (c) to pay reasonable compensation to the complainant as fixed by the Insurance Ombudsman;*
- (d) to take the requisite steps to improve the functioning or efficiency of the insurance company; or*
- (e) to take such other remedial steps or actions as may be*



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*specified by the Insurance Ombudsman.*

- (2) *Any insurance company, or official of a insurance company or a complainant aggrieved by an order passed by the Insurance Ombudsman may file an appeal with the Commission within thirty days which shall pass any order thereon it deems fit.*
- (3) *Any order passed by the Insurance Ombudsman which has not been appealed against, or any order passed by the Commission in appeal, as the case may be, shall become final and operative and if not implemented shall render the insurance company concerned liable to such action including the imposition of a fine or penalty as the Commission may deem fit, and in relation to a insurance company officer, to the appropriate disciplinary or other proceedings.*
- (4) *Nothing contained herein shall prevent a complainant from filing a suit against an insurance company in the event his complaint is rejected.*

*Emphasis added*

Section 130(3) in clear and unambiguous terms states that the orders of the Ombudsman which have not been appealed against or any order passed by the Commission in appeal shall become final and operative. In our view, in this case, the order of the Ombudsman attained finality after its order was upheld in the appeal before the Executive Director (Insurance), who passed the Impugned Order in pursuance of the powers delegated by the Commission vide SRO 415(I)/2009 dated 27-05-09. The Ordinance was promulgated in the year 2000 and the legislature was fully aware of the provisions of section 33 of the SECP Act 1997. It is pertinent to mention



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that section 33 and 34 of the SECP Act 1997 have been cross-referred to in section 122(2) of the Ordinance. The intent of the legislature is clear and the Impugned Order has attained finality in the eyes of law.

In view of the above, the appeal is not maintainable. The Appellant is directed to en-cash the PG within 24 hours of the receipt of this order, failing which the Respondent would be entitled to avail remedy under the law.

(MR. TANVIR MAHMOOD)

Commissioner (CLD)

(S. TARIQ ASAF HUSAIN)

Commissioner (L.D)

Announced on 14 Oct 2010 -