



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 09 of 2010

Platinum Insurance Company Limited Appellant

Versus

Executive Director (Insurance) Respondent

Date of Hearing 02-03-10

ORDER

Present:

For the Appellant:

Mr. Atir Aqeel Ansari
Advocate

Respondent:

Ms. Nasreen Rashid
Executive Director

For the Respondent Department:

Mr. Tariq Hussain
Director

Muhammad Kashif Siddiquee
Joint Director



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1. This order shall dispose of appeal No. 9 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 14-01-10 (the "Impugned Order") passed by the Respondent.
2. On examination of Annual Audited Accounts of the Appellant for the year ended 31-12-08 (the "Accounts") it was observed that:
 - a) In the notes to the Accounts the accounting period was wrongly stated as 31-12-07.
 - b) In note No. 1 of the Accounts, it was stated that the Appellant is only listed in Karachi Stock Exchange ("KSE"). The fact that Appellant was also listed in Lahore Stock Exchange ("LSE") was not disclosed.
 - c) The pattern of share holding annexed to the Accounts of the Appellant reflects that there was a shareholder, holding 3,058,200 shares constituting 25.48% of the total shares issued. The Appellant failed to disclose separately the name of the person holding more than 10% of total capital as required by the Code of Corporate Governance.
 - d) The total number of shares reported in the said pattern of shareholding was not accurate. The shares reflected in the detailed note were 11,951,700 which were in disagreement with the total of 12 million shares issued.



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3. Inspection under section 231 of the Companies Ordinance, 1984 (the “Ordinance”) was conducted on the orders of ED (Enforcement). The following misstatements were observed in the ‘Statement of Compliance with the Code of Corporate Governance’ (the “Statement”):

- a) The Appellant has stated in item No.1 of the Statement that there were seven (7) independent non-executive directors on the board of directors (“BoD”), however, out of seven (7) directors, Mr. Iftikhar Ahmed has been working as the Chief Executive Officer (“CEO”), Ms. Sana Hashmi, Mr. Muhammad Inam and Mr. Mukhtar Ahmed shown as directors on BoD were working as Accounting Consultant, General Manager and Company Secretary respectively.
- b) Item No.5 of the Statement stated: that ‘Statement of Ethics and Business Practices’ was not provided.
- c) Item No.9 of the Statement stated: that the process of orientation courses has started, but no proof of the said events were found.
- d) Item No.12 of the Statement stated: that the Chief Finance Officer (“CFO”) and CEO have duly endorsed the financial statements whereas, the Appellant has no CFO.
- e) Item No.17 of the Statement stated: that the BoD has setup an effective Internal Audit Function. However, no audit function was found, because of non-availability of audit staff and Accounting and Internal Control System within the organization.



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3. Show cause notice dated 10-09-09 ("SCN") was issued to the CEO and directors of the Appellant under section 492 of the Ordinance. The Appellant submitted its reply and the CEO and legal advisor of the Appellant appeared for the hearing and admitted default due to ignorance of law. The Respondent not satisfied with the response passed the Impugned Order and imposed penalty of Rs. 100,000 on the Appellant.
4. The Appellant preferred an appeal against the Impugned Order. The Appellant's counsel argued that:
 - a) The misstatements in the Accounts were typographical errors and do not deserve harsh penalty. Further, pattern of shareholding contains calculation error: there is no shareholder, holding more than 10% of total shareholding. The entry made in the Accounts of the Appellant was a typographical error and correct information was provided to the Commission in form A.
 - b) The misstatements in the Accounts and Code of Corporate Governance cannot be penalized under section 492 of the Ordinance as the said section is only applicable to misstatements made in those documents that are required by the Ordinance.
 - c) Without prejudice to above arguments, even if an offence has been committed, the penalty imposed must commensurate with the offence.
5. The Respondent argued that:
 - a) The penalty was not imposed on just one misstatement but was a collective penalty for all the misstatements made by the Appellant. Further, these were not just typographical errors as the whole



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annual report was dubious due to the fact that Hameed Khan and Co shown as auditors in the annual accounts who had conducted the audit of the Appellant in fact through their letter dated 17-9-09 informed the Respondent that they have never audited the Accounts of year 2007 and 2008 of the Appellant. It was contended that the annual report is false and forged, and the management of the Appellant has defraud its stakeholders. It was further argued that the requirements of disclosing the pattern of shareholding in the annual report and in form A are two separate requirements of the Ordinance, and mere correction in the latter does not exempt the Appellant from applicability of section 492 of the Ordinance.

- b) The Appellant has made misstatement in the Accounts and have submitted fake audited annual accounts which is violation of the Ordinance and not that of Code of Corporate Governance. Section 492 of the Ordinance was invoked to penalize the Appellant for making wrong statements in the Accounts.
- c) The penalty imposed on the Appellant is in accordance with the provisions of section 492 of the Ordinance. The maximum penalty Rs. 500, 000 could have been invoked, however, a lenient view was taken by the Respondent and a penalty of Rs. 100,000 was imposed on the Appellant.

6. We have heard the parties and have taken serious note of the fact that the Appellant has presented false audited accounts to the Commission and have falsely stated that the accounts were audited by Hameed Khan and Co when the accounts had not been audited. It is apparent that the Appellant has

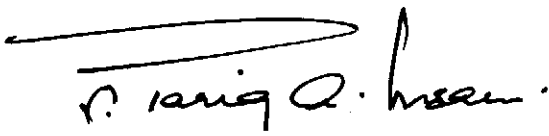


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indulged in fraudulent activity and is defrauding its stakeholders. The above violations constitute significant non-compliance of the law and cannot be considered mere oversight. We are convinced that the misstatements and omission were not just typographical errors but intentional and in clear violation of the duties of the management of the Appellant under the Ordinance.

In view of the above, we find that the penalty imposed was insufficient. Accordingly, we are of the view that the Appellant should pay the maximum penalty of Rs. 500,000 and order accordingly. The Impugned Order is modified to that extent.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S.TARIQ ASAF HUSAIN)
Commissioner (LD)

Announced on: 18-3-10