



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 10 of 2010

Platinum Insurance Company Limited Appellant

Versus

Director (Insurance) Respondent

Date of Hearing 02-03-10

ORDER

Present:

For the Appellant:

Mr. Atir Aqeel Ansari
Advocate

Respondent:

Mr. Tariq Hussain
Director

For the Respondent Department:

Ms. Nasreen Rashid
Executive Director

Muhammad Kashif Siddiquee
Joint Director

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1. This order shall dispose of appeal No. 10 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 accounts for the year ended 31-12-08 (the “Accounts”); it transpired that the Appellant has not disclosed the change in the terms and conditions which have affected the remuneration of the Chief Executive Officer (“CEO”) in the Directors’ Report annexed to the Accounts. The remuneration increased by 222 percent i.e. from Rs. 157,500 in 2007 to Rs. 350,500 in 2008, and the nature and terms and conditions were not reported in the Directors’ Report, as required under section 218(1) of the Companies Ordinance, 1984 (the “Ordinance”).
3. Show cause notice dated 10-09-09 (“SCN”) was issued to the CEO and directors of the Appellant under section 218 of the Ordinance. The Appellant submitted its reply. The CEO and the legal advisor of the Appellant appeared for the hearing. The Respondent not satisfied with the response passed the Impugned Order and imposed penalty of Rs. 5000 on the Appellant under section 218(6) of the Ordinance.
4. The Appellant preferred appeal against the Impugned Order. The Appellant’s counsel argued that the remuneration of the CEO had not increased for the last eight (8) years and the CEO was drawing Rs. 157, 500 since 2002. The increase in remuneration in the year 2008 was on account of one time allowance and the contract of employment of CEO was not varied, therefore, section 218 of the Ordinance is not applicable. It was stated that without prejudice to above argument, the increase in remuneration was duly annexed



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with the Directors' Report on page 38 of the Annual Report, hence, the requirements of section 218 of the Ordinance have been complied with. It was further argued that the increase in remuneration was backed by the resolution of Annual General Meeting ("AGM"); therefore, the spirit of section 218 of the Ordinance has been fulfilled.

5. The Respondent contended that section 218 of the Ordinance applies in the instant case as all payments made to the CEO, whether one time or on regular basis, must be in accordance with the terms of service of the CEO. It was argued that the increase in remuneration was not disclosed in the Directors' Report as required under section 218(1) of the Ordinance. Further, any reference to the fulfillment of the spirit of section 218 is irrelevant as the Appellant was required by the Ordinance to do a particular thing in a particular manner i.e. in accordance with section 218 of the Ordinance.
6. We have heard the parties. Section 218 of the Ordinance is reproduced for ease of reference:

218 Disclosure to members of director's interest in contract appointing chief executive, managing agent or secretary.- (1) Where a company—

(a) appoints, or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the company, in which appointment or contract any director of the company is in any way, whether directly or indirectly, concerned or interested; or

(b) varies any such contract already in existence;



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the company shall make out and attach to the report referred to in section 236 an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation.

- (2) *Where a company appoints or enters into a contract for the appointment of a chief executive of the company, or varies any such contract already in existence, the company shall send an abstract of the terms of the appointment or contract or variation to every member of the company within twenty-one days from the date of the appointment or of entering into the contract or varying of the contract, as the case may be, [...]*
- (3) [...]
- (4) [...]
- (5) *The provisions of this section shall apply in relation to any resolution of the directors of a company appointing a managing agent, a secretary or a chief executive or other whole-time director, or varying any previous contract or resolution of the company relating to the appointment of a managing agent, a secretary or a chief executive or other whole-time director, as they apply in relation to any contract for the like purpose.*
- (6) *If default is made in complying with any of the provisions of the section, the company and every officer of the company who is knowingly and willfully in default shall be liable to a fine which may extend to five thousand rupees."*

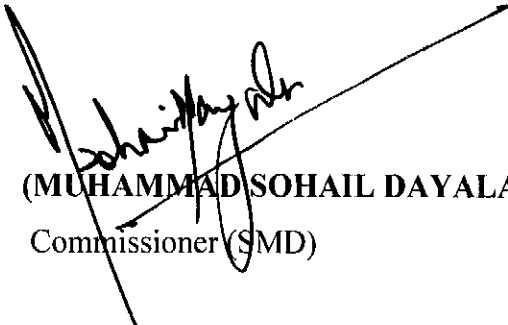
Emphasis added

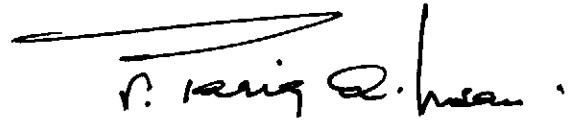


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The above cited section clearly states that where there is any variation in a contract of appointment of the CEO, an abstract of the variation shall be attached to the Directors' Report together with a memorandum clearly specifying the variation. Further, the company is required to send an abstract of the variation in terms to every member of the company within twenty-one (21) days from the variation in the contract. We have gone through the Annual Report of year 2003 of the Appellant and it has transpired that the Appellant has failed to specify the variation in the contract of CEO as required under section 218(1) of the Ordinance. We are not willing to accept that mere mention of the remuneration in the Directors' Report fulfills the requirement of section 218 of the Ordinance. We are also not willing to accept the resolution of AGM, which cannot substitute the requirements of the aforesaid section.

In view of the above, we do not find any grounds to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S.TARIQ ASAF HUSAIN)
Commissioner (LD)

Announced on: 18-3-10