



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 08 of 2010

Platinum Insurance Company Limited Appellant

Versus

Executive Director (Insurance)
Securities and Exchange Commission of Pakistan Respondent

Date of hearing 02-03-10

ORDER

Present:

For the Appellant:

Atir Aqeel Ansari
Advocate

Respondent:

Nasreen Rashid
Executive Director

For the Respondent Department:

Tariq Hussain
Director

Muhammad Kashif Siddiquee
Joint Director



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

1. This order shall dispose of appeal No. 8 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. During inspection of the books of accounts and other records of the Appellant, it transpired that the Appellant had invested Rs. 135 million in land, Rs. 39 million in building and Rs. 13.45 million on vehicles, out of total assets base of Rs. 187.450 million of the Appellant as on 31-12-08. The Appellant did not provide the title documents of any of the aforesaid assets to the inspection team which created a doubt about the assets and whether they were in the name of the Appellant.
3. Show cause notice dated 10-09-09 (“SCN”) was issued to the Chief Executive Officer (“CEO”) and directors of the Appellant under section 39 read with section 156 of the Insurance Ordinance, 2000 (the “Ordinance”). The Appellant submitted its reply and the CEO and legal advisor of the Appellant appeared for the hearing. The Respondent, not satisfied with the response of the Appellant, passed the Impugned Order and imposed penalty of Rs. 2 million on the Appellant.
4. The Appellant preferred appeal against the Impugned Order. The Appellant’s counsel argued that:
 - a) The assets had not been transferred in the name of the Appellant as full consideration was not paid to the seller. The Appellant has been ordered not to carry on its business for last one and a half year, therefore, the Appellant is in loss and does not have the resources to



**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY**

register the assets in its name. The Appellant, however, intends to get the title documents registered in its name as soon as its operations are restored.

- b) The power of attorney and sale agreements of the property are in favor of the Appellant. The Appellant has not registered the above stated documents due to significant amount of registration fee involved. Reliance was placed on copies of sale agreements, registration documents and power of attorney filed with the appeal. It was argued that the spirit of section 39 of the Ordinance has been fulfilled as the assets are publicly treated as property of the Appellant and the formality of transferring the assets in its corporate name is not necessary.
- 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 Appellant cannot be allowed to show the assets mentioned in para 2 above on its balance sheet unless the title of the asset is transferred in the name of the Appellant.
- b) The Appellant has an unregistered power of attorney in its name. The assets have to be in the name of the Appellant 'legally' rather than 'publicly' as required by section 39 of the Ordinance.

6. We have heard the parties. Section 39 of the Ordinance has been reproduced for ease of reference:

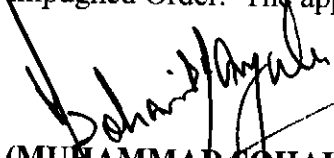


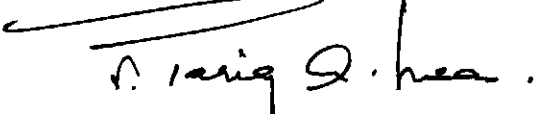
**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY**

39 Assets of insurer how to be kept:- None of the assets in Pakistan of an insurer shall, except in the case of deposits made with the State Bank of Pakistan under section 29, or in the case of assets, other than deposits, with a scheduled bank acting as a custodian, be kept otherwise than in the corporate name and under the direct control of the insurer and, in the case of assets of a statutory fund of a life insurer, in the name of the statutory fund.

Section 39 of the Ordinance clearly states that the assets of the insurer shall be kept in the corporate name and under the direct control of the insurer. We are not, under any circumstances, willing to accept that the Appellant be excused from transferring assets in its corporate name under. Further, the Appellant's argument that, since the assets are publicly treated as property of the Appellant, the formality of transferring the assets in corporate name as required under section 39 of the Ordinance is not necessary, is preposterous.

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: 30.04.10