



**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 51 of 2009**

TPL Direct Insurance Limited

..... APPELLANT

Versus

Executive Director (Insurance)

Securities and Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

..... RESPONDENT

**ORDER**

Date of Hearing

16 October 2009

**Present:**

For the Appellant:

Bilal Shaukat

Advocate

Saad Nisar

Chief Executive - TPL Direct Insurance Limited

Syed Kazim Hasan

Chief Operating Officer - TPL Direct Insurance Limited

Respondent

Ms Nasreen Rashid

Executive Director (Insurance)

For the Respondent Department:

Iftikhar Hussain

Assistant Director (Insurance)



## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No. 51 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 4-09-2009 (the "Impugned Order") passed by the Executive Director (Insurance) ( the "Respondent").
2. The facts leading to the case are that the Appellant was required to deposit and keep deposited with the State Bank of Pakistan ("SBP") statutory deposit of Rs 31 million in terms of section 29(2)(a) of the Insurance Ordinance 2000 (the "Ordinance"). The Appellant failed to maintain the statutory deposit in terms of the aforesaid provision and was served with show cause notice ("SCN") dated 16-7-2009 under section 29 read with section 156 of the Ordinance and called upon to show as to why penalty under section 156 of the Ordinance should not be imposed on it for the aforesaid default. In response to the SCN, the counsel for the Appellant stated that the Appellant meets the solvency level requirement laid down in section 36 of the Ordinance and is entitled to exemption of statutory deposit in terms of proviso to section 29 of the Ordinance. The counsel for the Appellant during the hearing before the Respondent stated that the insurance industry is unaware of omission of rule 9 of Securities and Exchange Commission (Insurance) Rules (the "Rules") and the Appellant genuinely believed that they are entitled to exemption. The Respondent after hearing the parties passed the Impugned Order; holding that the Appellant has failed to maintain the statutory deposit in terms of section 29 of the Ordinance. Penalty of Rs 3.4 million was imposed on the Appellant for having failed to meet the statutory requirement in terms of section 156 of the Ordinance. The Appellant was also called upon to make good shortfall of Rs 26 million within 30 days of the date of the Order.
3. The Appellant has preferred the instant appeal against the Impugned Order. The counsel for the Appellant argued the case on merits and reiterated the



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stance taken in the show cause proceedings before the Respondent. In response the Respondent vehemently opposed the contention of the Appellant's counsel and defended the Impugned Order.

4. We heard the parties at length. The Appellant's counsel was told that the Appellate Bench (the "Bench") would have taken lenient view; had the Appellant submitted the statutory deposit before the date of hearing of the instant appeal. It is pertinent to mention that the Insurance Department had sent the Appellant repeated reminders since 19-8-08 to comply with the statutory deposit requirement but the Appellant failed to meet the said shortfall till the date of hearing. The Appellant's counsel along with the representative assured the Bench that they always intended to comply with the direction of the Commission, however since large portion of investment had been made in the stock exchange and any disinvestment for the purposes of statutory deposit at this stage would cause loss to the company and the shareholders, therefore the requirement of statutory deposit could not be met. We see no merit in this argument. The requirement of law ought to have been met, if the Appellant was to continue carrying on business of Insurance. The Appellant's representative asserted that a further amount of Rs. 3.3 million has been deposited to make up the shortfall of the statutory deposit and remaining Rs. 22.7 million shall be deposited latest by 28-12-09 and sought time to submit written undertaking to the effect.
5. The Appellant has submitted a written undertaking dated 28-10-09 to comply with the requirement of statutory deposit latest by 28-12-09, which has been reproduced below:

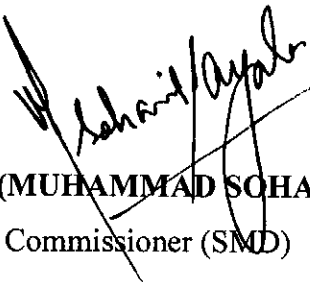


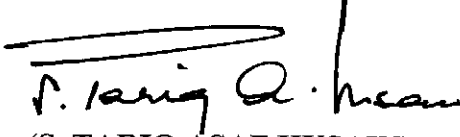
## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

*“We hereby undertake to invest a sum of Rs 22.7m by 28<sup>th</sup> December 2009 in the approved securities to meet statutory deposit requirements laid under section 29 of the Insurance Ordinance 2000”.*

*In the event we fail to fulfill the requirement by 28<sup>th</sup> December 2009, we undertake not to enter into any new insurance business beyond 28<sup>th</sup> December 2009.”*

In view of the above undertaking, we extend the time for submission of statutory deposit latest by 28-12-09; failing which the Appellant shall cease from entering into new contract of insurance in terms of section 63(2) (d) of the Ordinance. The Respondent ought to have imposed the penalty under section 157(1) of the Ordinance instead of section 156 of the Ordinance; section 157(1) of the Ordinance is a specific provision which provides penalty for contravention of section 29 of the Ordinance. The Impugned Order is therefore modified to the extent that instead of penalty of Rs 3.4 million imposed under section 156 of the Ordinance, the Appellant is directed to deposit penalty amount of Rs 2 million within 14 days of passing of the order, which is hereby imposed under section 157(1) of the Ordinance. The appeal stands disposed off with no order as to costs.

  
(MUHAMMAD SOHAIL DAYALA)  
Commissioner (SMD)

  
(S. TARIQ ASAF HUSAIN)  
Commissioner (LD)

Announced on: 17-11-09