



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 50 of 2009**

UBL Insurers Limited  
State Life Building No 2  
2<sup>nd</sup> Floor, Wallace Road  
Off I.I Chundrigar Road  
Karachi

.....

Appellant

Versus

Executive Director (Insurance)  
Securities and Exchange Commission  
of Pakistan

.....

Respondent

Date of Hearings

24-11-09

**ORDER**

**Present:**

For the Appellant

Shariq Abdullah  
Muhammad Ehtisham Ullah  
Najib Nasir Syed

Departmental representative

Mr. Kashif Siddiqui  
Obaid-ur-Rehman



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1. This order will dispose of the appeal No. 50 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the Appellant against the order dated 25-8-09 (the "Impugned Order") passed by the Respondent.
2. The brief facts of the case are that during the examination of the regulatory returns filed by the Appellant for the year ended 31-12-08, it transpired that the Appellant had not met its minimum solvency requirement as required by section 36 of the Insurance Ordinance, 2000 (the "Ordinance").
3. Show cause notice (the "SCN") dated 03-08-09 was issued to the Chief Executive and directors of the Appellant under section 36 read with section 63 and section 156 of the Ordinance. The Appellant sought extension in reply to the SCN and informed that it was in process of issuing right shares and 50% of their shareholders have subscribed or consented to subscribe, their right shares by the end of 3-8-09. The last date for subscription of right shares was extended to 30-8-09 by the Board of Directors ("BoD"). The Appellant was provided an opportunity of hearing on 21-8-09, where it was argued by the Appellant's representative that the Appellant was insolvent during the period from 31-12-08 till the time of issuance of right shares. The Appellant had received a sum of Rs 134.528 million as subscription of right shares upto 20-8-09. The Respondent dissatisfied with the explanation of the Appellant's representative passed the Impugned Order wherein penalty of Rs. 2.2 million was imposed on the Appellant under section 156 of the Ordinance for default of section 36 of the Ordinance.
4. The Appellant preferred appeal against the Impugned Order before the Appellate Bench (the "Bench"). The Appellant's representative stated that:

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- a) The non-compliance of the minimum solvency requirements was primarily attributed to the unforeseen and unprecedented political situation. The civil commotion and riots on the tragic assassination of Mohtarma Benazir Bhutto on 27-12-07 led to large claims arising out of damage to the insured property in the year 2007.
  - b) The stock market crisis also had a serious impact on the investment activities of the Appellant and affected its solvency level in the year 2008.
  - c) The Appellant initiated corrective measures just after the regulatory returns of the year 2008 indicated that the Appellant was not in compliance of the minimum solvency requirement in terms of section 36 of the Ordinance. The measures included speeding up the recovery of the premiums to increase the quantum of admissible assets and increasing its paid up capital from Rs. 300 million to Rs.500 million. The BoD of the Appellant approved the increase in the paid up capital on 19-3-09 which was ratified by the shareholders in the AGM held on 19-4-09. The Appellant had received a sum of Rs 134.528 million as subscription of right shares upto 20-8-09. One of the subscribers of the right shares of the Appellant was United Bank Limited ("UBL"). The Appellant is an associated company of UBL and approval of State Bank of Pakistan and shareholders approval under section 208 of the Companies Ordinance 1984, had to be obtained by UBL before right shares could be subscribed by UBL. The two requirements delayed further injection of paid up capital.
4. The departmental representative on the other hand stated that the requirement of maintaining solvency level is one of the basic requirements for registration of an insurance company. Section 11 (1) (c) of the Ordinance states that insurance companies must at all times ensure that minimum solvency requirement is met.



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The Respondent could have ceased the Appellant from entering into new contract of insurance under section 63 of the Ordinance. Instead a lenient view was taken and penalty under section 156 of the Ordinance was imposed. It was contended that since a lenient view has already been taken by the Respondent, the Appellant should, therefore, be directed to pay the penalty imposed.

5. We have heard the parties and have gone through the record. It transpires from the profit and loss account of the Appellant for the year ended 31-12-07 that the loss before tax was Rs 129 million, which has been attributed to events leading to the tragic assassination of Mohtarma Benazir Bhutto on 27-11-07, whereas for the year ended 31-12-08, the loss before tax was NIL. The Appellant has annexed with the appeal the losses incurred on account of impairment of stock, which has been stated as Rs. 45 million for the year ended 31-12-08. The Appellant took the remedial measures to enhance the paid up capital and injected Rs 134.528 million, as a result the solvency was achieved by the time hearing of SCN was conducted by the Respondent. In our view the Respondent should have taken into view that the Appellant was forthcoming in complying with the direction in respect of meeting the solvency requirement and therefore the Appellant should not have imposed penalty of Rs 2.2 million.
6. In view of the foregoing, we strictly warn the Appellant to be careful in future and maintain the solvency level at all times. The penalty imposed in the Impugned Order is hereby waived. The appeal is disposed off with no order as to cost.

**(MUHAMMAD SOHAIL DAYALA)**  
Commissioner (SMD)

**(S. TARIQ. ASAF HUSAIN)**  
Commissioner (LD)

Announced on: 23-12-09