



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 10 of 2017

Mr. Naim Anwar, Chief Executive Officer,
Crescent Star Insurance Limited

...Appellant

Versus

Director (Insurance), SECP

...Respondent

Date of Hearing: 19/09/19

For the Appellant:

- (i) Mr. Zeeshan Abdullah, Advocate
- (ii) Mr. Tanweer Ahmed, Director Crescent Star Insurance Ltd

For the Respondent:

- (i) Mr. Hasnat Ahmad, Director (Insurance)
- (ii) Mr. Mateen Abbasi, Assistant Director (Insurance)

ORDER

1. This Order is passed in the matter of appeal No.10 of 2017 filed by Mr. Naim Anwar, Chief Executive Officer (Appellant) of the Crescent Star Insurance Limited (Company) under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 against the order (Impugned Order) dated 01/12/16 passed by the Director Insurance (Respondent).
2. The brief facts of the case are that Mr. Sakib Berjees, Director of Crescent Star Insurance Limited (Complainant), filed a complaint dated 23/07/15 alleging that the Company had deliberately not invited him to participate in the Board of Directors (BOD) meetings of the Company. The



Securities and Exchange Commission of Pakistan

complaint was forwarded to the Company for comments, which was responded by the Appellant in the following manner:

“Mr. Sakib Berjees like other directors was sent notice for the Board Meetings, as a regular process, however, in case of any non-receipt as claimed, it is clarified that every Board Meeting is notified on the Karachi Stock Exchange as per rules laid down and is available for public consumption including that of the relevant directors and members of the exchange.”

3. An on-site inspection team was already conducting onsite Inspection of the Company, pursuant to the Inspection Order dated 28/07/15, therefore, to apprehend the facts, it was asked to provide feedback on the issue. The onsite team informed that out of seven meetings held during the period 01/07/14 to 30/06/15, the Complainant was not invited to four meetings of the BOD, as demonstrated in the following table:

S. No.	BOD Meetings Held on	Attended by Director (Mr. Sakib Berjees)	Leave Approved by the Board of Director	Notice Sent to Mr. Sakib Berjees through e-mail	Notice to the Karachi Stock Exchange
1.	05/03/14	No	Yes	Not sent	Not sent
2.	09/04/14	No	Yes	Yes	Yes
3.	30/04/14	Yes	N/A	Yes	Yes
4.	29/08/14	No	No	Not sent	Yes
5.	24/10/14	No	No	Yes	Yes
6.	31/03/15	No	Yes	Sent to incorrect email address	Yes
7.	24/04/15	No	Yes	Sent to incorrect email address	Yes

4. The aforementioned record shows that the invitations of two of the BOD meetings on 05/03/14 and 29/08/14 were not sent to the Complainant, while the invitations for the other two meetings



Securities and Exchange Commission of Pakistan

on 31/03/15 and 24/04/15 were sent to an incorrect email address. Furthermore, the Company was also unable to find the records related to BOD meeting on 05/03/14. It transpired that the affairs of the Company were not being managed with integrity, due care and professional skills, which was in violation of the provisions of section 12 of the Insurance Ordinance, 2000 (Insurance Ordinance). Therefore, a Show Cause Notice dated 07/03/16 (SCN) was issued to the Appellant, Company and its directors, who prima facie authorized the contraventions of the provisions of the Insurance Ordinance. In response, M/s. Mohsin Tayebaly & Co. vide its letter dated 31/03/16 submitted the reply to the SCN on behalf of Appellant, Company and its directors. Hearing in the matter was held on 07/10/16, which was attended by the authorized representatives of the Appellant, Company and its directors who made their submissions. The Respondent being dissatisfied with the response of the Appellants imposed a fine of Rs 100,000 on the Appellant.

5. The Appellant has preferred the appeal before the Appellate Bench (the Bench) on the grounds that the Impugned Order is bad in law and facts. During the hearing before the Bench, the Appellant argued that there is no provision in Insurance Ordinance that provides the Respondent power to impose a penalty for not inviting a director to the BOD's meetings, and this aspect of the matter was not dealt with by the Respondent while passing the Impugned Order. Furthermore, the Appellant argued that it was not the Appellant's responsibility to send notices for BOD's meetings, but it was the responsibility of the Company Secretary and mere typographical errors and inadvertent mailing omissions cannot be characterized as conducting business in an unsound and imprudent manner. The Appellant further argued that section 12(a) of the Insurance Ordinance is not applicable as it is concerned with the business of the company. Administrative matters such as failure to invite a director to BOD's meetings do not fall within the purview of Insurance Ordinance but Companies Ordinance, 1984 (Companies Ordinance) and the Respondent has failed to appraise the evidence by taking irrelevant considerations, such as protection of minority interest into account.
6. The Respondent rebutted the arguments of the Appellant on the grounds that the Impugned Order was passed in accordance with the provisions of the law. The Respondent argued that Appellant being the CEO must run the business of the Company with sound and prudent management. The



Securities and Exchange Commission of Pakistan

Respondent further argued that the Complainant who was also claiming to represent minority interest alleged that the Company deliberately did not invite him to the BOD's meetings. Onsite Inspection Team of the Commission also reported that notices for the BOD's meetings held on 05/03/14, 29/08/14, 31/03/15 and 24/04/15 were not served to the Complainant, which has also been admitted by the Authorized Representatives of the Appellants. Furthermore, the Respondent argued that a director of the concerned department of the Respondent received a letter from the Appellant dated 08/07/15 (Appellant's Letter) regarding approval of sale of right shares by the Complainant, wherein, it was stated by the Appellant that the Complainant intended to resign from the directorship of the Company and sell his shares. However, no proof of such intention was shared by the Company's management. Furthermore, in the letter dated 23/07/15 from the Complainant (Complainant's letter) addressed to Commissioner of the concerned department of the Respondent, the Complainant denied that he either intended to resign or sell his shares. Furthermore, the Respondent argued that the Complainant was removed from office for non-attendance of three consecutive BOD's meetings. The Respondent further argued that such actions by the Company are against sound and prudent management and result in erosion of stakeholder's confidence. Therefore, based on the information and evidence provided, default of Section 12(1)(a) of the Insurance Ordinance was established for which penalty was imposed in terms of Section 156 of the Insurance Ordinance.

7. The Bench has heard the parties i.e. Appellant and Respondent. We are of the view that there is sufficient evidence to prove that the Appellant was not running the Company in a sound and prudent manner as notices for the BOD's meetings held on 05/03/14, 29/08/14, 31/03/15 and 24/04/15 were not served to the Complainant. We are of the view that argument of the Appellant that the mistake was inadvertent does not hold merit, given their recurrent nature. Furthermore, in the Appellant's Letter, it was claimed that the Complainant intended to resign, however, no proof was provided, and the Complainant has also denied it. We do not concur with the Appellant's argument that it was only the responsibility of the Company Secretary to send notices for BOD's meetings as the Appellant being the CEO is responsible for running the affairs of the Company. The Appellant as CEO would have clearly noticed that the Complainant had been absent from more than one meeting, and it was also his responsibility to ensure the Complainant was receiving



Securities and Exchange Commission of Pakistan

notices of the BOD's meetings. The Appellant's argument that the Respondent did not have the power to impose penalty and that proceedings did not fall within the purview of the Insurance Ordinance also does not hold any merit as the Appellant was clearly not handling the business of the Company, "...with integrity, due care and the professional skills appropriate to the nature and scale of its activities..." in terms of section 12(1)(a) of the Insurance Ordinance. As a result, default has been established and penalty was rightly imposed in terms of section 156 of the Insurance Ordinance.

8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs. The Bench has also noticed that prima facie Company Secretary also failed to discharge his secretarial responsibilities in a required manner, because as per the findings of onsite team, out of seven BOD meetings held during the period 01/07/14 to 30/06/15, the Complainant was not invited to four meetings. Apparently, Company Secretary also failed to perform his duty to ensure delivery of BOD's meeting notices to the Complainant, therefore, notwithstanding, the decision of this Appeal, we direct the Respondent to proceed against the Company Secretary in accordance with law, if required.


(Aamir Khan)

Chairman/Commissioner (CLD-CSD)


(Shauzab Ali)

Commissioner (SMD)

Announced on: **18 DEC 2019**