



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Mr. Aziz Ahmad Mughal

c/o

The Asian Mutual Insurance Company (Guarantee) Limited

Show Cause Notice Issue Date: June 19, 2014

Date of Hearing: August 25, 2014

Attended By:

1. Mr. Irfan Ilyas, FCA
Partner
Ilyas Saeed & Co.
2. Mr. A. Rashid Mirza
Chief Executive Officer
The Asian Mutual Insurance Co. (Gte) Limited
3. Mr. Zafar Iqbal
Chief Financial Officer
The Asian Mutual Insurance Co. (Gte) Limited
4. Mr. Mubashir Raza
Ilyas Saeed & Co.

Date of Order: December 19, 2014

ORDER

(Under Section 188(1)(b) Read with Section 189 of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against Mr. Aziz Ahmad Mughal c/o M/s The Asian Mutual Insurance Company (Guarantee) Limited ("the Company") for not complying with the provisions of Section 188(1)(b) of the Companies Ordinance, 1984 (the "Ordinance").

SECURITIES & EXCHANGE
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Background Facts

2. The relevant provisions of Section 188 of the Ordinance provide that:

"Vacation of office by the directors. - (1) A director shall ipso facto cease to hold office if—

...

(b) he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absence from the directors;

..."

3. It was observed that Mr. Aziz Ahmad Mughal, Chairman of the Board of Directors of the Company remained absent from Five (05) consecutive meetings of the Board of Directors without any leave in writing by the other Directors. Accordingly, in the light of the provisions of Section 188(1) (b) of the Ordinance, Mr. Aziz Ahmad Mughal ceased to be the Director of the Company since he absented himself from three consecutive meetings of the Board of Directors or from all the meetings of the Board of Directors for a continuous period of three months, whichever was longer.

4. It has been noted that Mr. Aziz has shown / described himself to be the Director of the Company in the Accounts and before the Securities and Exchange Commission of Pakistan, (the Commission) and so the Commission may take action as provided under Section 189 of the Ordinance, for not attending the five consecutive meetings of the Board of Directors during the year 2012, as aforesaid.

Show Cause Notice

5. Accordingly, the Show Cause Notice was issued on June 19, 2014 under Section 188(1) (b) read with Section 189 of Ordinance to Mr. Aziz Ahmad Mughal, calling upon him to show cause as to why the penalty, as provided under Section 189 of the Ordinance, should not be imposed upon him for not complying with provisions of Section 188(1)(b) of the Ordinance and also describing himself as the Director of the Company in the Accounts and before the Commission.

Mr. Aziz Ahmad Mughal's Response to the Show Cause Notice

6. In response to the said Show Cause Notice, the Company, vide their letter of July 8, 2014, stated that the addressee of the Show Cause Notice i.e. Mr. Aziz Ahmad Mughal, was out of country, and hence, the Company might not be able to submit any



response to the said Show Cause Notice in his absence. And, vide the same letter of the Company, the Company had requested for grant of a month's extension in submission of response to the Show Cause Notice. However, through another letter of the Company i.e. letter no. AM-05/14/135 dated July 7, 2014, which was received by the Commission on July 11, 2014, the Company had requested for an extension of up to July 20, 2014 in submission of response to the Show Cause Notice.

7. Mr. Aziz Ahmad Mughal, vide his letter no. AM-05/14/146 dated July 26, 2014, which was received by the Commission on August 6, 2014, while purporting himself to be the Chairman of the Company on the letterhead of the Company, submitted his response to the Show Cause Notice as follows:

"...it is humbly submitted that I, Aziz Ahmad Mughal Chairman of the board of the director's was unable to attend the meetings of the Board of Directors, I had been abroad due to medical issue. I had duly informed the Company and my other colleagues on the Board. Since I was not sure of my return date, I requested leave from the meetings till my return. The Board of the Company had been very kind to appreciate my personal medical compulsions and wished me good health.

In the light of submission you are requested to accept my leave in this period and treat the case not to be falling under the above noted provision of law. It may also be submitted that despite my leaving abroad due to health problems. I always took due care and always gave proper attention to the Company affairs.

I assure you of full compliance of provision of law in future."

8. It has been noted in the response of Mr. Aziz Ahmad Mughal that he has claimed to be the Chairman of the Board of the Company. Moreover, he had asked the Board to grant leaves till his return from abroad, which was due to certain medical reasons. The Board, on the other hand, had not recorded the request in the minutes of the meetings of the Directors of the Company.

Hearing of the Case & Subsequent Developments

9. Although, Mr. Aziz Ahmad Mughal had not requested for hearing in the matter vide his letter dated July 26, 2014, the Commission, on its own motion, had scheduled the hearing in the matter for August 25, 2014 at 12:00 p.m., which was communicated to the Company via the Commission's hearing notices no. ID/ENF/AMICL/2014/20406 dated August 8, 2014.

10. The hearing of August 25, 2014 was attended by the following persons:

1. Mr. Irfan Ilyas of M/s Ilyas Saeed & Co., Chartered Accountants;

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2. Mr. A. Rashid Mirza, Chief Executive of the Company;
3. Mr. Zafar Iqbal, Chief Financial Officer; and
4. Mr. Mubashir Raza of M/s Ilyas Saeed & Co., Chartered Accountants

11. However, right at the start of the said hearing, Power of Attorney in favor of M/s Ilyas Saeed & Co., Chartered Accountants was submitted, and hence, the representatives from M/s Ilyas Saeed & Co. will be referred to as the "Representatives" hereinafter.

12. Brief proceedings of the hearing of August 25, 2014 are as follows:

- a. The Representatives argued that Mr. Aziz Ahmad Mughal was absent from the meetings of the Board of Directors due to certain medical reasons, and that everybody in the Company, including the Board of Directors, had the knowledge about Mr. Aziz's health;
- b. The Representatives further admitted that the written form of this situation was not available with the Company;
- c. Thereupon, it was clarified to the Representatives that Section 173 of the Ordinance requires that minutes of every meetings of the Directors should reflect true and fair view of the proceedings of that particular meeting, hence, any such leave of absence should have been made part of the proceedings and should have been recorded in the minutes thereof;
- d. The Representatives, while submitting the minutes of the meetings of the Directors, which were held after the Onsite Inspection, was concluded, in which Mr. Aziz was present, assured that the adherence to the law shall be made in letter and spirit in future.

Consideration of Company's Submissions

13. I have carefully examined and given due consideration to the written and verbal submissions of Mr. Aziz Ahmad Mughal (through the Representatives from M/s Ilyas Saeed & Co., Chartered Accountants), and have also referred to the provisions of the Ordinance. I am of the view that Mr. Aziz has been absent from five consecutive meetings of the Board of Directors without proper leave of absence in the written form and duly recorded in the minutes of the meetings of the Directors, and as per the provisions of Section 188(1)(b) of the Ordinance, Mr. Aziz cannot be the Director since he had absented himself from the three consecutive meetings of the Directors and that too without grant any leave of absence by the other Directors who have been present in those meetings in which Mr. Aziz was absent. Moreover, Mr.

Ali



Aziz Ahmad Mughal has, very boldly, shown himself to be the Chairman of the Company and that too during the pendency of the instant proceedings.

14. However, before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day-to-day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence, the Directors are gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care. In the instant case, however, the Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the statutory requirement, therefore, it could be legitimately inferred that Mr. Aziz Ahmad Mughal has not been the Director of the Company on absenting himself from the three consecutive meetings of the Board of Directors in the light of the provisions of Section 188(1)(b) of the Ordinance, and that he cannot purport himself to be the Director of the Company thereafter.

Conclusion

15. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the penalty as provided under Section 189 of the Ordinance can be imposed onto Mr. Aziz Ahmad Mughal.

16. Section 189 of the Ordinance states that:

"Penalty for unqualified person acting as director, etc.- If a person who is not qualified to be a director or chief executive or who has otherwise vacated the office of director or chief executive describes or represents himself or acts as a director or chief executive, or allows or causes himself to be described as such, he shall be liable in respect of each day during which he so describes or represents or acts, or allows or causes himself to be described, as such, to fine which may extend to two hundred rupees."

Order

17. In exercise of the power conferred on me under Section 189 of the Ordinance, instead of imposing the penalty, take a lenient view, and thus, condone Mr. Aziz Ahmad Mughal due to the following reasons:

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 5

- a. THAT he has not attended the meetings of the Directors of the Company as he was outside Pakistan due to certain medical reasons, which, on his part, was disclosed to the other Directors of the Company;
- b. THAT he has attended the meetings of the Directors of the Company upon his arrival from abroad, evidence of which was provided to the Commission during the course of hearing;
- c. AND THAT he has assured to ensure compliance in future vide his letter no. AM-05/14/146 dated July 26, 2014.

However, Mr. Aziz Ahmad Mughal is hereby issued a stern warning that in case of similar non-compliance in future a stronger action shall be taken.

18. The Company This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief Executive Officer and Directors of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.


Tariq Hussain
Director

19/12/14