



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Chairman Secretariat)

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Before Mr. Razi-ur-Rehman Khan, Chairman

Order

In the matter of

Beema Pakistan Company Limited

Number and date of notice

INS/KHI/BPCL/2007/001

Dated 1st June 2007

Dates of hearing

11 June 2007

21 June 2007,

2 August 2007

Present

Mr. Razi-ur-Rehman Khan,

Dr. Mumtaz. A Hashmi,

Mr. Waqas Qadeer Dar,

Mr. Shahid Nasim.

Date of Order

5th November 2007

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1. This Order shall dispose of the show cause proceedings initiated under Proviso (c) of Section 309 read with Section 305 of the Companies Ordinance, 1984 (hereinafter referred to as the **1984 Ordinance**), and Sections 135 and 143 of the Insurance Ordinance, 2000 (hereinafter referred to as the **2000 Ordinance**).

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2. Beema Pakistan Company Limited (hereinafter referred to as “BPCL”) is a Public Limited company incorporated under the Companies Act 1913, and now existing under the 1984 Ordinance. It is registered under the 2000 Ordinance to carry out the business of fire, marine, motor vehicle and other general insurance. Since 24th June 1999, Mr. Mirza Shahnawaz Agha has been the Chairman & Chief Executive of Beema Pakistan Company Limited. BPCL is conducting its business at 412-427, 4th Floor, Muhammadi House, I.I. Chundrigar Road, Karachi.

A. BACKGROUND

3. The Commission received the Half Yearly Draft Review Report of BPCL for the period ended 30 June 2006 by M/S Munif Ziauddin & Co. Chartered Accountants, (hereinafter referred to as the “BPCL auditors”) in which they had made the following observations:

- i) **Discrepancies relating to property:** Out of the total paid-up capital of BPCL amounting to Rs. 475.897 million, (including preference shares) issued up to December 31st, 2005, shares amounting to Rs. 450.42 million were issued by BPCL against agricultural lands. The title of which was never transferred to BPCL. Further, during the financial year 2006, shares with a face value of Rs. 77.5 million were issued against residential property on the basis of valuation agreed between BPCL and its Chief Executive. In both cases, a surveyor's report regarding physical verification and valuation of property was not obtained at the time of issuance of shares as required under Rule 8 of the Companies(Issue of Capital) Rules, 1996 (hereinafter referred to as the “1996 Rules”).
- ii) **Accounting Discrepancies:** During the financial year 2006, shares of face value of Rs. 41.158 Million have been issued to the Chief Executive of BPCL against cash for which bank statements were not made available to verify the receipt of share deposit money. The amount due to/ due from other insurance/reinsurance



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companies remained unconfirmed. There was inadequate provision for doubtful debts [receivable from subsidiaries M/S Shabestan Foods (Pvt.) Ltd. and Phoolwala (Pvt.) Ltd.] There was capitalization of expenses (Pakistan Fire Protection Academy and Live Rosturm). Insufficient provision was made for the impairment of investments in subsidiaries. Along with these, there was also non-payment of Zakat and Tax, both having been deducted at source.

4. The statutory auditors of BPCL for the year 2006, M/s. Muniff Ziauddin & Company, per their statement, were “compelled” by the management of BPCL to resign in November 2006. The current auditors M/s. Khalid Majid Rahman Sarfaraz Rahim Iqbal Rafiq & Company – Chartered Accountants have withdrawn their earlier opinion on the BPCL’s financial statements for the year 2006 and issued an adverse opinion stating that BPCL’s financials for the year 2006 do not reflect a true and fair position of the Company. It should also be noted that the Company did not issue its half yearly reviewed accounts for the six month period ended June 30th 2006, quarterly accounts for the quarter ended September 30th 2006 and quarterly accounts for the quarter ended March 31st 2007
5. The observations as identified by the auditors were significant in nature and triggered a detailed investigation by the Securities and Exchange Commission of Pakistan (hereinafter referred to as the Commission), into the affairs of BPCL vide Order no. **ID/SECP/BEEMA/KHI/001** dated March 07, 2007 under Section 231 of the 1984 Ordinance and Section 59 of the 2000 Ordinance. This order was further supplemented vide Order no. **ID/SECP/BEEMA/KHI/002** dated March 09, 2007 under Section 30 of the Securities and Exchange Commission of Pakistan Act 1997 (hereinafter referred to as the **1997 Act**). During the course of the Investigation, **Constitutional Petition No. 445 of 2007** (BPCL v. the Commission) was filed by the Company in the High Court of Sindh on 26th March 2007, under Article 199 of the Constitution of the Islamic Republic of Pakistan, asking that the orders passed by the Commission on 9th and 13th March 2007 be declared void and of no legal effect.
6. The Commission had, vide order dated May 02, 2007 directed the Karachi Stock Exchange to



suspend the trading of BPCL's shares. BPCL also filed **Constitutional Petition 1014 of 2007** (BPCL v The Commission) on 16th May 2007 which sought to have this direction rescinded. The case was merged with **C.P. 445 of 2007** by the High Court of Sindh. During the last hearing of this case on 26th June 2007, the Honorable Judges of the Sindh High Court dismissed an application for urgent hearing of the case, stating that the Commission should complete its enquiries against BPCL, and pass any order that they deem fit in the circumstances. However, it was also ordered that no action would be taken pursuant to the said order without first obtaining an approval from the Honorable High Court. On 4th October 2007, both petitions were dismissed by the Honorable High Court. **CP 445 of 2007** was declared infructuous whereas in **CP 1014 of 2007** the Honorable High Court directed the Commission to pass the final order in the proceedings which had been initiated on the basis of show cause notice dated 1st June, 2007.

B. FINDINGS OF THE COMMISSION'S INVESTIGATION:

7. During the course of the investigation, the following findings and observations were unearthed by the Investigation Team and the Insurance Division of the Commission:

- i. **1999:** The capital of BPCL was Rs.41.25 million, out of which Rs.15.77 million was unpaid, and subsequently issued to Mr. Agha without the Commission's approval, against the non-existent property situated at Plot No. 15/16, measuring 1213 Square yards, Karachi Cooperative Housing Society Union Limited, Karachi., Further, shares were also issued to Mr. Agha against Industrial Land situated at Property No. LC- 44, measuring 23,269 Square yards, Landhi Industrial Area, Karachi, title of which never belonged to Mr. Agha. The total reported value of both properties (hereinafter referred to as the "**1999 Properties**") was declared to be Rs.60.8 million, i.e. the property was shown at an overstated and falsified valuation in BPCL's books of account.

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- ii. **2001 – 2002:** The remaining amount of Rs.45.03 million out of the reported value of Rs.60.8 million of the 1999 properties was utilized to issue shares in the name of Mr. Agha for Rs.8.75 million and Rs.36.28 million in the years 2001 and 2002, respectively, without the Commission's approval.
- iii. **2002:** The management of BPCL swapped the non-existent and un-owned 1999 properties with 1737 acres of agricultural land in Thatta reportedly valued at Rs. 347.2 Million, belonging to Mr. Abdul Jalil. The consideration for this swap was 11.28 Million shares of BPCL @ Rs. 10/- each, amounting to Rs. 112.8 Million plus the 1999 properties reportedly worth Rs. 60.8 Million. The shares that were issued were done so without prior permission from the Commission, and whereas they should purportedly have been given to Mr. Abdul Jalil, they were, in fact transferred to a Mr. Dharam Das. Capital gains of Rs. 162.32 and brokerage of Rs. 11.28 Million net of cost was realized in this swap transaction which was never recorded in BPCL's books of account. In addition, agricultural lands of 50 and 119 acres with a reported value of Rs. 42.42 million were also acquired from a Mr. Sualeh Mohammad and a Mrs. Azra Sualeh in exchange for shares having face value of Rs. 20.20 million issued by BPCL. A capital gain of Rs. 22.22 million was realized in this transaction, which was never recorded in the books of BPCL. The said agricultural lands were never mutated in the name of BPCL as was observed by the company's auditors in their half yearly draft review report for the period ended June 30, 2006. BPCL applied for the ratification of issuance of shares but the same was never approved by the Commission.

Further, BPCL also issued 5.9 million preference shares with management rights to Mr.Agha, Chairman & CEO as opposed to the 2.55 million preference shares sanctioned at BPCL's 41st AGM on 29 June 2002. This transaction was also undertaken without the Commission's formal approval, and without Mr. Agha depositing the money for the share subscription and surrendering his ordinary shares in lieu.



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iv. **2003 – 2007:** It was discovered that despite the fact that BPCL's registration to transact insurance business was invalid till 2005, it underwrote Marine Hull insurance business in the USA reportedly during 2003 and 2004. BPCL neither had license to transact business of insurance in the country of its origin i.e. Pakistan nor it had the treaty arrangements to underwrite Marine Hull insurance business in the USA; hence, BPCL did not meet the conditions (d) and (h) of Section 11(1) of the 2000 Ordinance and also had violated the requirements of Section 41(1) of the 2000 Ordinance. Further, the premium received via remittance in this connection was not recorded as premium income in the books of BPCL. It was further revealed that the amount received by BPCL as insurance premium from the US was treated as loan from Mr. Agha in the books of accounts and BPCL issued shares against such amount in the year 2006 with out having any approval from the Commission as required to be provided under Section 86(1) of the Ordinance 1984.

The Commission vide letter No. SECP/ID/06/2006 dated 4 December 2006 (followed by a reminder Ref. ID/IO-Misc/2007 dated 15th February 2007) asked BPCL to submit their reinsurance treaty arrangements for the year 2007 by 31 January 2007, in response to which BPCL vide letter dated 6 March 2007, provided details of its reinsurance treaty arrangements, as under:

- | | |
|-------------------------------|---------------------|
| - General Cargo Treaty | up to October 2007 |
| - Motorcycle Insurance Treaty | up to December 2007 |

Scrutiny of the above documents submitted by BPCL as evidence of the treaty arrangements, revealed that the Motorcycle Insurance Treaty was a draft motorcycle insurance policy (i.e. not a reinsurance treaty document), prima facie establishing that BPCL has only a General Cargo Treaty, in place.

BPCL advertised in daily newspapers an auto insurance cover under the



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name of "BAAZ", without having any Motor reinsurance treaty arrangement, thus engaging in misleading/deceptive conduct which establishes non-compliance of clause (d) of sub-Section 1 of Section 11, and of Section 76 of the 2000 Ordinance.

- v. **2006:** On 7th February 2006, Plot 8, B-2 Street, Phase V, D.H.A, Karachi (hereinafter referred to as **“Residential Property”**) was purchased by Mr. Agha on behalf of BPCL from a Ms. Bushra Jamil, for Rs. 42.5 Million. The consideration for this transaction was paid by Mr. Agha, for which he was issued shares with a face value of Rs. 77.5 Million by BPCL; hence the property was shown at an overstated and falsified valuation in BPCL’s books of account. A notional capital gain was made in this transaction was illegally retained by Mr. Agha. It was discovered that on 30th September 2006, Mr. Agha allegedly repurchased the property from BPCL at a value of Rs. 45.0 Million, and the said property was subsequently mortgaged by Mr. Agha with Faysal Bank Limited for a loan of Rs. 20 Million. However, this property has been disclosed as an asset of BPCL in the audited accounts for the year ended December 31, 2006, therefore the real beneficiary of the said loan should have legitimately been BPCL.

In November 2006, BPCL also requested the Commission for issuance of shares for Rs. 405 million against agricultural/urban properties situated in Islamabad, District Rawalpindi and District Haripur for which no permission was granted. The said properties were never acquired by BPCL. However, BPCL has issued additional shares of Rs.405 million without meeting the requirements of Section 86 of the 1984 Ordinance, and Rule 8 of the 1996 Rules.

BPCL had also applied to the Commission for issuance of additional shares amounting to Rs. 41.158 million to Mr. Agha, against loan received (not verifiable) from him. No permission was granted; nonetheless the shares of Rs.41.158 million have been issued to Mr. Agha and these shares were offloaded through the Securities



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Market. The said shares were issued in contravention of the requirements of Section 86(1) of the Ordinance, 1984 and Rule 8 of the 1996 Rules.

- vi. 2005 -2007 - Disposal of BPCL Shares:** The Commission during the investigation came across information that the management of the Company has been fraudulently involved in disposal of shares issued against fictitious lands/properties through individuals which have been identified as Mr. Mirza Shahnawaz Agha's ex / current employees and their related persons. Out of total shares converted into electronic (demat) form, 72.982 million shares were deposited by the individuals who were in employment of BPCL or are related to the employees of the companies, namely Ms. Nusrat Shaheen (mother in law of the CFO & Company Secretary of the Company), Ms. Summaya Siddiqui (wife of Ex-Head of Marketing and presently the Chairman & CEO of Ittefaq General Insurance), Mr. Imran Siddique (brother of Ex-CFO of BPCL), Ms. Nazish Shah (P.A. to Mr. Shahnawaz Agha) and Mr. Ashraf Agha (Cousin of Mr. Shahnawaz Agha).

The management was observed transferring physical shares in the name of above individuals who got these shares transferred in electronic form into their investor accounts maintained with Central Depository Company of Pakistan (CDC). These identified individuals were subsequently observed maintaining their sub-accounts with the brokers namely M/s. Live Securities (Pvt) Ltd., M/s. Ace Securities (Pvt) Ltd., M/s. Azee Securities (Pvt.) Ltd., M/s. Haji Ghani Haji Usman Securities, M/s. Dattoo Securities (Pvt.) Ltd., M/s. Intermarket Securities (Pvt.) Ltd. and M/s. BMA Capital (Pvt.) Ltd. The shares were then sold into the market (Stock Exchange). Proceeds collected out of these disposal accounts were collected in the bank accounts maintained by these individuals. The amount collected was then disbursed to Mr.Mirza Shahnawaz Agha & the senior officials of BPCL as the beneficiaries in all of these transactions



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All the above identified individuals in response to the inquiry by the investigation team have submitted affidavits issued in their name by Mr. Agha admitting that these individuals were unaware of the transactions of shares disposal and that they were not in any way involved in any misconduct and that he (Mr. Agha) takes full responsibility of any civil or criminal misconduct in respect to the shares trading of BPCL.

C. SHOW CAUSE NOTICE

8. Consequent to the discrepancies and illegalities uncovered during the course of the Investigation, a Show Cause Notice dated 1st June, 2007 was issued to BPCL through its Chairman /Chief Executive and Board of Directors, calling upon them to show cause as to why action may not be taken against them under Section 309 read with Section 305 of the 1984 Ordinance, and Section 135 and 143 of the 2000 Ordinance, which would result in revocation of BPCL's license to transact the business of general insurance in cancellation of its registration, in an appointment of an Administrator, and subsequently filing petition in the Court for winding up of BPCL.

D. HEARINGS

9. In order to provide BPCL an opportunity to be heard, the case was fixed for Monday, 11th June 2007. On the said date Mr. Syed Misbahuddin (Company Secretary), Mr. Jamil-ur-Rehman (Tax advisor of M.G. Rehman and Company), and Mr. Emadul Hassan (Legal advisor of the Company from Abrar Hasan & Co. Advocates) appeared on behalf of BPCL and in order to prepare an adequate reply, requested for an extension of 15 days
10. On 21st June 2007, the second hearing, presided by the Chairman of the Commission, took place at 10.30 a.m. at the Company Registration Office, Karachi. The Director (NBFC), Advisor Insurance, and the Director (Law) also attended the hearing to assist the Chairman of the



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Commission. Mr. Misbahuddin and Mr. Jamil-ur-Rehman again appeared on behalf of BPCL. Various questions were placed before the BPCL representatives who were unable to reply to most of the queries for want of knowledge on the matter, and requested for an adjournment of the hearing, so that either Mr. Agha or Mr. Abrar Hassan (Legal Counsel for BPCL) could attend and respond to the queries, which was granted until 1.00 p.m. Mr. Agha appeared in person and made certain statements before the Chairman of the Commission, which were subsequently received in writing by the Commission on the 28th June 2007 and also made the following submissions:

- 1st.** In reply to the Commission's question, regarding the issuance of shares against the 1999 properties, BPCL's letter claimed that Crystal International Trading Company, (reportedly owned by Mr. Agha), gave a guarantee for the Rs. 60.8 million, whereas Mr. Agha had previously in the course of the hearing on 21 June 2007, stated that the said properties were never owned by him but the shares were issued against the guarantee of Crystal International Trading
- 2nd.** That BPCL has commenced the process of mutation of all lands currently owned by it, which, according to BPCL, is approximately 1600 acres. BPCL questioned the authority of the Commission to regulate property mutations. BPCL further stated that due to the order for inspection and subsequent suspension of the trading of its shares on KSE by the Commission, current transactions have been rescinded and BPCL aims to acquire a total of 2415 acres so as to complete the holding to match the share capital outlay of Rs. 999.555 million. BPCL demanded the Commission to permit BPCL to do so; otherwise it will get the transactions ratified by its own Board of Directors, and by the High Court.
- 3rd.** That the residential property was originally bought by Mr. Agha, and then mutated in BPCL's name for the purpose of saving rental expense.



- 4th.** That BPCL never engaged in foreign insurance underwriting; and that Mr. Agha in his personal capacity was engaged in insurance activities of placement and brokerage, and pumped such income into BPCL to keep it afloat.
- 5th** That the Commission's policy of no-response in regard to permission for issuance of shares under Rule 8 of the 1996 Rules led BPCL to believe that permission had been given. BPCL also alleged, with reference to a Commission letter of receipt dated 19 January 2007, that it amounts to tacit approval on behalf of the Commission.
- 6th** That Mr. Agha has 5.9 million shares with management rights.

11. In response to BPCL's letter referred to in Para 6 above, the Commission vide its letter dated 18th July 2007, asked for further details on the issues, as under:

- 1st.** That the 1999 properties which Mr. Agha sold to BPCL for Rs. 60.8 Million were either non-existent or were not in his name. The Commission also enquired as to how Crystal International Trading Company could collateralize against such property, which never existed or belonged to him.
- 2nd.** As per resolutions No. 7 and 8 of BPCL's 41st AGM dated 29th June 2002, the land area of the agricultural property is stated to be 1906 Acres in total, not "nearly 1600 Acres". Further, the documents provided as evidence of mutation of the agricultural property by BPCL are invalid due to the expiry of the three months validity period. The issue of the mutation of agricultural property arose as a direct consequence of the non-compliance by BPCL with the legal requirement of Section 209 of the 1984 Ordinance, which requires that all investments made by a company on its own behalf should be held by it, in its own name. The question was also raised as to how, in 2007, shares of Rs. 405 million were issued to the sellers of the properties and subsequently floated into the Stock Market; in respect of a land transaction that BPCL claims to be



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rescinded.

- 3rd.** Clarifications were sought as to whether the urban property is still effectively owned by BPCL, or whether it has been sold to Mr. Agha or to another party, and if the property has been encumbered or is clear from all encumbrances and charges to date.
- 4th.** As per the Commission's information, BPCL's name has been used in direct underwriting of Marine Hull business in the USA and all monies realized in such transactions have been sent directly to BPCL's accounts.
- 5th.** A "No response" from the Commission does not amount to tacit approval. The letter from the Commission dated 19th January 2007 is simply a receipt of BPCL's letter dated 11th January 2007, which in no way suggests that the Commission has given permission, whether inferred or otherwise, to BPCL for the issuance of shares.
- 6th.** The Commission has a copy of BPCL's Resolutions passed at its 41st AGM which only allows for issuance of 2.55 million shares, whereas 5.9 million shares were actually issued.
- 12.** The Commission in its letter referred to in Para 7 above, asked BPCL to provide the following documents;
- Documentation detailing the relationship between BPCL and Crystal International Trading Company;
 - 1999-2000 audited accounts of Crystal International Trading Company evidencing the financial undertaking/guarantee provided to BPCL;
 - Complete set of documentation related to the undertaking provided by Crystal to BPCL.
 - Valuation reports, conveyance deeds, sale and purchase agreements, and other relevant documentation for acquisition of land worth Rs. 405 million in 2006, along with



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payment details.;

- Type of business activities of Mr. Agha in the USA, type of services rendered by Mr. Agha in said business activities, details of parties with whom Mr. Agha did business in USA, and details of payments received in this regard.
- 13.** On 30th July 2007, BPCL submitted its reply to the Commission's letter dated 17th July 2007 was more of a reiteration of arguments given in their letter dated 28th June 2007. No documents were submitted apart from valuation documents of the properties, the purchase of which has already been rescinded by BPCL.
- 14.** Subsequently, the 3rd and final Hearing against BPCL, chaired by Chairman SECP, was held on Thursday, August 2nd 2007, at 3:00 pm at the Commission's Premises (5th Floor, State Life Building No.2, Wallace Road, Karachi). Advisor Insurance, Director (NBFC), and Director Law, assisted the Chairman of the Commission. BPCL was represented by Mr. Agha and a Director of BPCL, Mr. Nasim Qureshi. In his opening remarks Mr. Agha, referred to the difficulties he was facing in managing BPCL's affairs without his management team, who had left the employment of BPCL. The following discussion ensued:
- 1st.** Mr. Agha stated that the address of Plot No. 15/16, measuring 1213 Sq. Yards, at Karachi Co-operative Housing Society Union Limited, (part of the 1999 properties) had been wrongly quoted. When questioned about the correct address, he said he was unsure as he was not carrying the documents with him, but it could be Plot 15/60, as opposed to Plot 15/16. Further, he stated that he would provide the Commission with all documentation pertaining to the correct address as soon as possible. In response to the observation that BPCL books refer to the Plot number as 15/16, Mr. Agha stated that it was an error and would be rectified.
- 2nd.** In the reply dated 30th July 2007, Mr. Agha stated that the 1600 acres are a new acquisition to compensate for loss caused to BPCL by the rescission of the 2006



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transaction concerning agricultural and urban properties worth Rs. 405 Million. Mr. Agha stated that he had signed blank documents for convenience during his time abroad, which had been subsequently used by the CFO of BPCL, Syed Misbahuddin to show BPCL auditors that the 2006 transactions were genuine and current. It was also stated in regard to the mutation documents in respect of all properties owned by BPCL, that originals would be filed with the Commission with evaluation and certification by a chartered accountant. During the course of the hearing, in reference to the 2002 agricultural lands, it was pointed out that no documentary evidence had been provided in support of the swapping of urban properties with agricultural land of Mr. Abdul Jalil and Sualeh Family, against which shares were issued. Mr. Agha was again asked in the hearing about

how the capital gains earned by BPCL in the property swap of 2002 were distributed amongst the shareholders, to which he responded that they had been distributed on a pro-rata basis as shares. The Chairman also informed Mr. Agha that an independent survey was made by Iqbal Nanji and Company, on behalf of the Commission, regarding the 1906 Acres of swapped agricultural land mentioned in the BPCL reply dated 30 July, 2007. The Chairman pointed out that per the surveyors' report, 1110 acres of the said swapped agricultural land is located in the delta area where Deh Pakhiaro and Deh Kunh are surrounded by the Indus waters and per the surveyors' report, this is all marshy land and is unusable for agricultural purpose, which was vehemently denied by Mr. Agha.

3rd. In answer to an enquiry by the Chairman about the status of the Residential Property Mr. Agha claimed that it was a company asset and was titled as such. However, the Director NBFC produced copy of conveyance documents dated 02nd November, 2006, evidencing that the said Bungalow had been re-purchased by Mr. Agha and his son Mr. Salman Agha from BPCL. Similarly, documents were exhibited to Mr. Agha indicating available that a loan had been taken in the name of Mr. Agha against the said Bungalow from Faysal Bank Ltd. This fact was not denied by Mr. Agha, which

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was in complete contradiction with the 2006 Audited Accounts of BPCL which show the Bungalow as the property of BPCL.

- 4th.** Mr. Agha was asked about the remittances received by BPCL with regard to insurance business written by BPCL in the USA which he had claimed was his personal commission/brokerage. Mr. Agha was presented with documentary evidence proving that the Larson Group had remitted the balances to the BPCL bank accounts which do not show up on the books of accounts of BPCL. The Commission's investigations unearthed that the Larson Group had been providing insurance cover outside Pakistan while showing BPCL as their Underwriters. Mr. Agha was also presented with documentary evidence with his signatures confirming BPCL to be the Principal underwriter of the Risk. It is pertinent to note here that the Larson Group had also been using the name of M/S EFU and China Re as BPCL's re-insurers, a fact that has been categorically and officially denied by both the companies.
- 5th.** There was no discussion regarding the absence of permission from the Commission in regard to BPCL's issuance of shares.
- 6th.** In regard to 5.9 million shares issued to Mr. Agha in the 41st AGM of BPCL, Mr. Agha stated that per BPCL's books, 5.9 million shares are shown, as opposed to 2.55 million shares. He stated that it was a typographical error and that BPCL be permitted to rectify it.
- 15.** In conclusion, the Chairman asked about the kind of business BPCL was conducting and intended to conduct. Mr. Agha responded that they were planning a Gold based Reinsurance Pool and another project was under consideration with the Interior Ministry of Pakistan, for insuring every citizen of Pakistan under an Accidental Insurance cover. Responding to another query of the Chairman about the Commission's refusal to grant permission in this regard, Mr. Agha replied that they had received no correspondence from the Commission.



16. It is to be noted that Mr. Agha, said that he had been mostly out of the country this past year, and that his stationery, along with signed blank cheques, was easily accessible in his office during his prolonged absences. He also claimed that his top management including his former CFO, had used BPCL money to purchase M/S. Ittefaq General Insurance for their personal interest.

E. FINDINGS ON EACH ALLEGATION

17. Pursuant to the illegalities and frauds discovered as a result of the investigation (as detailed above), the following legal provisions are deemed to apply:

1) Application of Section 143(2)(a) of the Insurance Ordinance 2000:

“The court may, provided that it is satisfied that such order is in the interest of the policy holders of the company, order the winding up of an insurance company: (a) on the grounds set out under Section 305 of the Companies Ordinance 1984, but subject always to the provisions of this ordinance”

Read with Section 305(f)(i) of the 1984 Ordinance:

“A company may be wound up by the court – (f) if the company is –(i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities.”

It has been found that the transactions detailed in Paragraph 5 above all constitute fraudulent and unlawful activities, enabling the Commission to pass an order of compulsory winding up of BPCL.



**2) Application of Section 143(2)(a) of the Insurance Ordinance 2000 (as above)
read with Section 305(f)(iv) of the 1984 Ordinance:**

“A company may be wound up by the court – (f) if the company is –(iv)run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company .”

The following actions by the BPCL Management invokes the application of Section 305(f)(iv) of the 1984 Ordinance, enabling the Commission to pass an order of compulsory winding up of BPCL:

- i.** BPCL’s books of accounts falsely stated the value of the **1999 properties**, as outlined in Paragraph 5(i) above.
- ii.** Capital Gains from the 2002 property swap as explained in Paragraph 5(iii) above were never shown in BPCL books of account.
- iii.** The premiums and remittances earned by BPCL from its offshore insurance business’s was falsely shown in BPCL’s books of account as a loan from Mr. Agha as explained in Paragraph 5(iv) above.
- iv.** The Residential Property transaction detailed in Paragraph 5(v) above was falsely shown in BPCL’s books of accounts as a purchase from Mr. Agha for a value of Rs. 77.5 million. However, the actual value of the property was only Rs. 42.5 million. Subsequently, the said property was repurchased by Mr. Agha and his son Mr. Salman Agha for a consideration of Rs. 45 million. The said property is still falsely being disclosed as Company’s Asset in the audited accounts of BPCL for the year ended December 31, 2006. After repurchase of the said property Mr. Agha and his son Mr. Salman Agha, obtained a loan of Rs. 20 million against its mortgage with Faysal Bank Ltd
- v.** Shares of Rs. 405 million were fraudulently issued against the properties which BPCL never acquired and these shares were



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subsequently off loaded into the stock markets. as explained in Paragraph 5(v) above.

3) Application of Section 143(2)(a) of the Insurance Ordinance 2000 (as above) read with Section 305(f)(v) of the 1984 Ordinance:

“A company may be wound up by the court – (f) if the company is – (v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this ordinance, or fail to carry out the directions or decisions of the court or the registrar or the [Commission] given in the exercise of powers under this Ordinance.”

Despite repeated requests by the Commission to ensure proper mutations of BPCL assets in the rightful names, in a manner consistent with the recorded transactions of the Company, BPCL has failed to comply with the same. Further, Mr. Agha has also been requested by the Commission to provide evidence for the said mutations, and also the mutations he claims to have completed, but to no avail. These actions by the BPCL Management invoke the application of Section 305(f)(v) of the 1984 Ordinance, enabling the Commission to pass an order of compulsory winding up of BPCL.

4) Application of Section 135(1) of the 2000 Ordinance:

“If at any time, the Commission has reason to believe that an insurer carrying on insurance business is acting in a manner likely to be prejudicial to the interest holders of insurance policies, it may, after giving an opportunity to the insurer to be heard, appoint an administrator to manage the affairs of the insurer under the direction and control of the Commission.”

The Commission, in view of the activities of BPCL detailed in Paragraph 5 that BPCL,

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has sufficient reason to believe that BPCL is conducting the business of insurance in a manner that is prejudicial to the interests of its policy holders.

5) Breach of Section 86 of the 1984 Ordinance:

(1) Where the directors decided to increase the capital of the company by the issue of further shares, such shares shall be offered to the members in proportion to the existing shares held by each member, irrespective of class, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not excepted, will be deemed to be declined:

Provided that the Federal Government may, on an application made by any public company on the basis of a special resolution passed by it, allow such company to raise its further capital without issue of right shares.

(2) The offer of new shares shall be strictly in proportion to the number of existing shares held:

Provided that fractional shares shall not be offered and all fractions less than a share shall be consolidated and disposed of by the company and the proceeds from such disposition shall be paid to such of the entitled shareholders as may have accepted such offer.

(3) The offer of new shares shall be accompanied by a circular duly signed by the directors or an officer of the company authorised by them in this behalf in the form prescribed by the Authority containing material information about the affairs of the company, latest statement of the accounts and setting forth the necessity for issue of further capital.

(4) A copy of the circular referred to in sub-section (3) duly signed by the directors or an officer authorised as aforesaid shall be filed with the registrar before the circular is sent to the shareholders.

(5) The circular referred to in sub-section (3) shall specify a date by which the offer, if not accepted, will be deemed to be declined.

(6) [Omitted by Finance Act (I of 1995), S. 10 (3) (b) dated 2-7-1995].

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(7) If the whole or any part of the shares offered under sub-section (1) is declined or is not subscribed, the directors may allot and issue such shares in such manner as they may deem fit."

It has been found by the Commission that insufficient evidence has been provided by BPCL in support of their explanation for the issuance of shares without prior approval by the Commission. This extends to all property transactions as detailed above.

6) Breach of 209(1) of the 1984 Ordinance:

"(1) Save as otherwise provided in sub-sections (2) to (5) or another law for the time being in force, and subject to the provisions of sub-sections (6) to (8):-

(a) all investments made by a company on its own behalf shall be made and held by it in its own name; and

(b) where any such investments are not so held immediately before the commencement of this Ordinance the company shall, within a period of one year from such commencement, either cause them to be transferred to its own name, or disposed of them."

It has been found by the Commission in respect of all property transactions, with the exception of the Residential Property, that BPCL did not have sufficient title to either swap or purchase/re-purchase the said properties. Despite, ample opportunity to clarify the said illegalities before the Commission, BPCL has failed to give sufficient explanation for its actions in this regard.

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7) Breach of Rule 8 of the 1996 Rules:

“A company may issue shares for consideration otherwise than in cash subject to the following conditions, namely;-

- i. The value of assets shall be determined by a consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a valuer;*
- ii. the value of assets taken over shall be reduced by depreciation charged on consistent basis;*
- iii. the goodwill and other intangible assets shall be excluded from the consideration; and*
- iv. Certificate from a practicing Chartered Accountant shall be obtained to the effect that the above mentioned conditions have been complied with.*

The Commission has found that BPCL has repeatedly breached the legal requirement of providing a genuine valuation by authorized surveyors to the Commission before issuing shares against such property. In this regard, again, BPCL has been unable to clarify its position.

8) Application of Section 63 of the 2000 Ordinance:

“The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11.”

The Commission finds that BPCL, in underwriting off shore insurance business in the USA reportedly during 2003 and 2004, during which period its registration license of insurance business had been suspended has breached a lawful restriction placed on it by the Commission.

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9) Application of Section 17 of the Securities and Exchange Ordinance 1969:

“No person shall, for the purpose of inducing, dissuading, effecting, preventing or in any manner influencing or turning to his advantage, the sale or purchase of any security, directly or indirectly,-

- (a) employ any device, scheme or artifice, or engage in any act, practice or course of business, which operates or is intended or calculated to operate as a fraud or deceit upon any person; or*
- (b) make any suggestion or statement as a fact of that which he does not believe to be true; or*
- (c) omit to state or actively conceal a material [34] fact having knowledge or belief of such fact; or*
- (d) induce any person by deceiving him to do or omit to do any thing which he would not do or omit if he were not so deceived; or*
- (e) do any act or practice or engage in a course of business, or omit to do any act which operates or would operate as a fraud, deceit or manipulation upon any person, in particular-*
 - (i) make any fictitious quotation;*
 - (ii) create a false and misleading appearance of active trading in any security;*
 - (iii) effect any transaction in such security which involves no change in its beneficial ownership;*
 - (iv) enter into an order or orders for the purchase and sale of security which will ultimately cancel out each other and will not result in any change in the beneficial ownership of such security;*
 - (v) directly or indirectly effect a series of transactions in any security creating the appearance of active trading therein or of raising of price for the purpose of inducing its purchase by others or depressing its price for the purpose of inducing its sale by others;*
 - (vi) being a director or an officer of the issuer of a listed equity security or*

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a beneficial owner of not less than ten per cent of such security who is in possession of material facts omit to disclose any such facts while buying or selling such security”

Under this Section, it is a punishable offence to defraud general investors in the capital market by employing any device, scheme or artifice, or engage in any act, practice or course of business, which operates or is intended or calculated to operate as a fraud or deceit upon any person.

F. POWERS OF THE COMMISSION

18. The Commission is empowered under proviso c of **Section 309 of the 1984 Ordinance**, to present a petition before the High Court for winding up of a Company, and whereas the investigation into the affairs of BPCL as conducted under **Section 59 of the 2000 Ordinance** and under **Section 231 of the 1984 Ordinance** has revealed that the business of BPCL is being conducted in a manner oppressive to any of its members and that the management has been guilty of fraud, misfeasance, and misconduct towards BPCL and to allow BPCL to continue in the business of general insurance will be injurious to the interests of its Members and the general public.



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G. CONCLUDING ORDERS.

19. BPCL failed to provide any cogent reasons or produce any evidence to rebut the Notice under **Section 309 of the 1984 Ordinance**. It is, therefore, ordered that the Commission commence proceedings under Section 305 of the 1984 Ordinance and seek winding-up of BPCL.

Razi ur Rehman Khan
Chairman

Enclosed: Beema Pakistan Company Limited Investigation Report dated 13th July 2007, authored by the Securities and Exchange Commission of Pakistan.