



INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Continental Insurance Company Limited

Show Cause Notice Issue Date: ID/Enf/Continental/2017/8403 February 6, 2017

Date of Hearing: April 26, 2017

Attended By: Syed Bulent Sohail
M/s. Hassan & Hassan Advocates

Date of Order: May 12, 2017

ORDER

Under Section 158 of the Companies Ordinance, 1984

.....

This Order shall dispose of the proceedings initiated against M/s. Continental Insurance Company Limited (the "Company") and the Chief Executive and Directors for alleged contravention of Section 158(1) of the Companies Ordinance, 1984 (the "Ordinance"). The Company, its Chief Executive and Directors shall be collectively referred to as the "Respondents" hereinafter.

2. Facts of the matter are that, during examination of the Annual Audited Accounts and Regulatory Returns of the Company for the period ended December 31, 2015, it was revealed that the Company, in contravention of Section 158 of the Ordinance, held its last Annual General Meeting (AGM) on December 16, 2016 after nineteen (19) months of its previous AGM held on April 30, 2015.

3. It *prima facie* appeared that the Company convened its AGM after delay of more than seven months (from April 30, 2016) for the financial year 2015, thereby contravening the provisions of Section 158(1) of the Ordinance, for which the Commission may take penal action as provided under Section 158(4) of the Ordinance

4. The provisions of Section 158(1) & (4) of the Ordinance state that:

"Annual general meeting. -(1) Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year

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within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding thirty days."

.....

"(4) If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--

(a) if the default relates to a listed company, to a fine not less than fifty thousand rupees and not exceeding five hundred thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues; and

(b) if the default relates to any other company, to a fine not exceeding one hundred thousand rupees and to a further fine not exceeding five hundred rupees for every day after the first during which the default continues."

5. Therefore, a Show Cause Notice (SCN) ID/Enf/Continental/2017/8403 dated February 6, 2017, was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 158(4) of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

6. Upon non-receipt of reply to the SCN, the Commission vide letter dated February 28, 2017 bearing no. ID/Enf/Continental/2017/8652 scheduled the hearing on March 20, 2017. However, Syed Bulent Sohail from M/s. Hassan & Hassan (Advocates), the "Authorized Representative" of the Company vide letter dated March 18, 2017 sought additional time. Hence, request of the Authorized Representative was acceded to, and the Commission vide letter dated March 20, 2017, allowed a period of one week (i.e. till March 27, 2017) to submit the comments. Further period of one week (i.e. till April 7, 2017) was allowed on request of the Authorized Representative.

7. Thereafter, the Commission vide letter dated April 17, 2017 bearing no. ID/Enf/Continental/2017/9243 scheduled the hearing on April 26, 2017 at 3:30 pm. Subsequently, response of the Respondents to the aforesaid SCN was received vide letter dated April 19, 2017, which is summarized as under:

- i. Since the year 2010, the Company has been fully compliant with the requirements prescribed under the Ordinance. The Company has timely held AGMs under the management of the Respondents and it is not a habitual offender of the provisions of Section 158 of the Ordinance.

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- ii. The Company has a track record of timely submissions/ holding of AGMs since the Respondents acquired the Company in the year 2010. However, financial year 2015 proved to be turbulent and challenging year for the Company. Apart from coping with arrangements of re-insurance, the Company's senior management, i.e. CEO, CFO and the Company Secretary, all resigned between July and November of 2015. The sudden resignation of the key management and compliance personnel on very short notice, disturbed the smooth working of the Company. Accordingly, holding of the AGM was delayed due to late finalization of the books of accounts of the Company for the year ended on December 31, 2015. Finalization of the books of accounts was delayed due to sudden departure of the CFO, who was tasked by the Board to implement a new Enterprise Resource Planning System (ERP) for the Company for better and smooth working of the financial and planning systems. The CEO's and the CFO's departure left the books of accounts in an unorganized state and the general affairs of the Company were in disarray.
- iii. Anticipating delays, the Company sought an extension from SECP for submission of Annual Audited Accounts vide its letter dated April 2, 2016 and further filed an application to the Registrar of Companies under Section 158 and 233 of the Ordinance seeking an extension for holding AGM till July 31, 2016.
- iv. However, the Company's request for extension in submission of accounts was not entertained by the SECP. Instead, SECP commenced show cause proceedings against the Company and imposed fine on the Company for failing to submit its accounts. The Company deposited the fine in compliance with the said order.
- v. Moreover, no reply whatsoever was received to date from Registrar/SECP in response to the Company's request vide letter dated May 28, 2016 for an extension in holding of the AGM despite the fact that treasury challan of Rs.15,000 was submitted in respect of the fee for extension in holding of the AGM.
- vi. The Company's application for extension in holding of the AGM also contained a certificate from its auditors, whereby the auditors recommended to grant 60 days to the Company to get its Financial Statements audited and to hold its AGM.
- vii. The Company's application for extension in holding of the AGM on the basis of cogent reasons ought to have been entertained by the Registrar. Non- consideration of the same was highly prejudicial to the rights and interests of the Company and the Respondents.

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- viii. The AGM could not be held due to non-finalization of Audited Financial Statements as stated in the foregoing paragraphs. Therefore, the Respondents did everything possible to complete the audit, held AGM of the Company on December 16, 2016 and approved its accounts at the said AGM.
- ix. The Company is a tightly held family Company where the majority of shares are held by members of two families i.e., that of Mr. Naveed Ahmed Siddiqui and Mr. Ahmed Zafar Shaheen Siddique.
- x. The Respondents have ensured that going forward the Company complies with the provisions of Section 158 of the Ordinance. The Respondents / Board has already held its meeting on April 6, 2017 to approve the Annual Accounts for the year ended on December 31, 2016. In this meeting, the Respondents / Board further approved the holding of the AGM on April 28, 2017 to adopt the said audited accounts and other ordinary business. Therefore, it is evident, that the Company is fully compliant in respect of its legal obligations under Section 158 of the Ordinance.
- xi. No policyholder of the Company has complained to SECP in respect of its contract of insurance with the Company or any other grievance against the Company.
- xii. The Company has a good track record of meeting its claims and liabilities, which have been met or addressed properly by the Company. Moreover, the Respondents and the Company are ready and willing to provide an undertaking to SECP that the Company shall continue to meet the applicable legal requirements in the future.
- xiii. Reliance is placed on *Buxely Paints Limited* reported in 2010 CLD 1044 (*Director Enforcement*). In the said case, the company had faced crisis because of which the company could not finalize the accounts due to difficulties in retrieving the financial information. The adjudicating authority took a lenient view in the matter.
- xiv. The Respondents addressed these lapses and held the AGM, as soon as the audited accounts were available, on December 16, 2016 as noted in the SCN. Reliance is placed on *Noor Silk Mills Limited* reported in 2007 CLD 605 wherein a lenient view was taken by the SECP in light of the fact that AGM had already been held prior to the issuance of the show cause notice in that matter and that the management had undertaken to comply with all legal requirements in the future. Reliance is also placed on *Hamid Textile Mills Limited* reported in 2010 CLD 69, where similar decision by SECP was made in the similar facts and circumstances.
- xv. That while there is no cavil with the proposition that timely holding of the AGMs goes to the heart of corporate democracy [as held in *Shabbir Ghani vs.*

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Commissioner (CLD) reported in 2013 CLD 1466 (Appellate Bench)], it must be borne in mind that the Company is a tightly held entity between members of two families. These two families and dependents hold and control over 99.9% of the shares in the Company. Therefore, it is respectfully submitted that the late submission of accounts and late examination by the shareholders in the AGM held on December 16, 2016 was unintentional and, even otherwise, did not adversely affect or impact the interests of the shareholders of the Company due to two families and dependents hold and control over 99.9% of the shares in the Company. Moreover, no shareholder has raised any alarm or concern in this respect.

- xvi. It is the first time such a lapse has occurred for the reasons explained above. The same being unintentional cannot be considered as a "willful" default under Section 158 of the Companies Ordinance. Therefore, it is respectfully submitted that the basis for imposing penalties is not made out and reliance is placed on the following decisions of SECP / Appellate Bench: 2010 CLD 1268 (Shehryar Saeed Case), 2010 CLD 1214 (Service Fabrics Limited) and 2006 CLD 1295 (Hakim Textiles Mills Limited) against habitual offenders on whom penalties were justly imposed by SECP. It is respectfully submitted that the Company does not fall in the same category as strict enforcement actions against these companies had also been initiated in the past.
- xvii. The Respondents / Board has already held its meeting on April 6, 2017 to approve the annual accounts for the year ended on December 31, 2016. In this meeting the Respondents / Board further approved the holding of the AGM on April 28, 2017 to adopt the said audited accounts and other ordinary business.
- xviii. It is humbly submitted that SECP takes a lenient view in the matter and does not exercise its powers under Section 158 of the Ordinance. Keeping in view the adversities and difficulties faced by the Company, the Respondents have been undeterred in their resolve to satisfy the legal requirements.
- xix. The preamble to the SECP Act, 1997 calls for "*beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto*". Moreover, pursuant to Section 22(4) of the SECP Act, 1997, it is humbly requested that the adjudicating authority takes into consideration the facts and circumstances of the instant case, the viability of the Company and the quality and capability of the Respondents as beneficial contributors to the insurance industry and the interests of existing and potential policyholders. It would, therefore, serve the ends of justice if a benign view is taken by SECP and the condonation sought for is granted.

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8. The hearing of April 26, 2017 at 03:30 p.m. was held at the Head Office of the Commission in Islamabad in order to provide the Respondents final opportunity of being heard. The hearing was attended by the Authorized Representative to represent the Respondents before the Commission in the instant matter.

9. During the proceedings of the hearing, Authorized Representative reiterated the stance submitted through letter dated April 19, 2017. He insisted that 99.9% shares of the Company are held by two families. The Authorized Representative maintained that extension for holding of the AGM was sought from Registrar but no response was received from him. The Authorized Representative further stated that accounts could not be finalized because senior management of the Company had resigned. He said that the auditor had also recommended to grant further time to finalize the accounts and to hold the AGM. The Authorized Representative stated that non-compliance was not intentional and therefore lenient view may be taken.

10. The Respondents were required to ensure compliance with the mandatory provisions of the Section 158(1) of the Ordinance. However, the Company convened its AGM after delay of more than seven months (from April 30, 2016) for the financial year 2015, thereby contravening the provisions of Section 158(1) of the Ordinance .

11. The Respondents made reference to the letter dated May 28, 2016 whereby extension was sought till July 31, 2016 from the Registrar at Company Registration Office Karachi. The Respondents have stated that no response was provided to the Company in respect of said the application. It is pertinent to note that under Rule 14 of the Companies (General Provisions & Forms) Rules, 1985, an extension of 30 days for holding the AGM could only be allowed to the Company. Whereas, the Company requested for extension of about 60 days, which was not permissible under the said Rule. The Company did not even hold its AGM within self-imposed deadline i.e. July 31, 2016 but instead the AGM was held on December 16, 2016 after delay of more than seven months (from April 30, 2016).

12. The Company was required to comply with Section 158(1) of the Ordinance regardless of the fact that it is 99.9% controlled by two families. There is no exception available for family owned Companies for delay in holding of the AGM.

13. It has also been mentioned that in future the Company will comply with the requirement of Section 158 of the Ordinance and in this connection undertaking may be sought from the Company. Without any undertaking, the Company is required under all circumstances to comply with the mandatory provision of law.

14. These regulatory proceedings were initiated against the Company for delay in holding its AGM. However, factors such as good track record and no complaints filed against the Company are irrelevant for consideration. The Company should have a contingency plan to deal such matters i.e. resignation of the senior

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management. It appears from the response that Company faced delay/issues in the absence of its CEO and CFO which indicates internal control deficiencies on part of Respondents in violation of Section 12(1)(c),(d) &(e) of the Insurance Ordinance, 2000, which provides the criteria for sound and prudent management :

"...(c) the insurer or applicant is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold;

(d) the insurer or applicant maintains adequate accounting and other records of its business; and

(e) the insurer or applicant maintains adequate systems of control of its business and records..."

15. Furthermore, the Respondents have referred to few case laws, whereby the Commission took lenient view and did not impose penalty. However, there are many instances where penalty was imposed for contravening the provisions of Section 158 of the Ordinance. Some of those instances are given below:

Respondent Company	Order Date through penalty imposed	Amount of penalty imposed in aggregate (Rs.)
Data Textile Ltd.	June 16, 2016	350,000
Byco Petroleum Pakistan Ltd.	October 14, 2015	100,000
Metropolitan Steel Corporation Ltd.	October 14, 2015	350,000
Bela Automotives Ltd.	October 14, 2015	350,000
Husein Industries Ltd.	July 7, 2015	350,000
Mandviwalla Mauser Plastic Industries Ltd.	June 25, 2015	300,000

16. Nevertheless, the Commission has powers and discretion to impose fine/penalty or take a lenient view wherever deem appropriate. The Respondents cannot absolve themselves of their statutory duties as given under the law.

17. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance, the Rules made thereunder and/or other legal references, I am of the view that the default of Section 158 (1) of the Ordinance is established. Therefore, the fine as provided under Section 158(4) of the Ordinance can be imposed onto the Respondents i.e. the Company, its Chief Executive and Directors.

18. In exercise of the power conferred on me under Section 158 of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, I, instead of imposing the maximum fine as provided under the said provision, impose a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) on the Company due to the default of Section 158(1) of the Ordinance. However, I take a lenient view regarding other Respondents and do not impose fine on them. The Respondents are hereby warned

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to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

19. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

20. 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 of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Hasnat Ahmad
Director

