



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Crescent Star Insurance Limited

Show Cause Notice Issue Date: September 30, 2013
Date of Hearing: February 26, 2014
Attended By: Mr. Malik Mehdi Muhammad
Chief Financial Officer
M/s Crescent Star Insurance Limited
Date of Order: October 30, 2014

ORDER

(Under Section 160(1)(b) Read with Section 492 of the Companies Ordinance, 1984)
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This Order shall dispose of the proceedings initiated against M/s Crescent Star Insurance Limited ("the Company") for making material misstatement in the statement under Section 160(1)(b) of the Companies Ordinance, 1984 (the "Ordinance") annexed to the notice of the Extra Ordinary General Meeting of August 27, 2013.

Background Facts

2. The Securities and Exchange Commission of Pakistan (the "Commission") was in receipt of an application from the Company for grant of approval for issuance of right shares at a discount of Rs. 4/- per share, vide the Company's letter dated September 9, 2013.

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SECURITIES & EXCHANGE
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3. The abovementioned application was accompanied by certain documents and information, which amongst others, included the Notice of the Extra Ordinary General Meeting (EOGM), which was held on August 27, 2013.

4. A statement of material facts in respect of the special business i.e. to issue right shares at a discount of Rs. 4/- per share was appended to the aforementioned Notice of the EOGM, in pursuance of Section 160(1)(b) of the Ordinance.

5. The statement of material facts revealed that the Company had made a material misstatement in explanatory note to agenda item no. (2) of the Notice i.e. Para (e) of Item No. (1) of the "Explanatory Statement Accompanying Notice to the Members under Section 160(1)(b) of the Companies Ordinance, 1984", which states that:

"e) The Company in reply to the above mentioned show cause notice shared an abridged business plan with the SECP for the enhancement of the capital to the minimum required limit of Rs 300.00 million as explained above through the merger of the Company with M/s Weaver (Private) Limited and M/s Elahi Noor (Private) Limited. However, during its hearing of 23 April 2013 the Honorable Commissioner Insurance Division advised the Chief Executive Officer that since both of the company's Net Asset Value primarily represents the Real Estate held by these entities, therefore instead of the Merger with the above mentioned companies, the Company may adopt the course where it issues the Right Shares and the proceeds that can be utilized to acquire the Real Estate of the said entities. The Board of Directors considered the said advice in their meeting held on 22 June 2013 and find it prudent and fast tracked, the Directors are further of the opinion that it shall enable the Company to meet the Minimum Capital Requirement before the year ending 31 December 2013 as targeted. Therefore, after due consideration the Board has recommended the Issuance of Right Shares."

6. The above quoted explanation appeared to be contrary to proceedings of the hearing of April 23, 2013 and that no such advice was ever given by the Commissioner (Insurance) to the Company, and hence, the Company appears to have made a massive misstatement in the Notice of the EOGM held on August 27, 2013, as elaborated hereinabove, for which the Commission may take action under Section 492 of the Ordinance.

Show Cause Notice

7. Accordingly, the Show Cause Notice was issued on September 30, 2013 under Section 160(1)(b) read with Section 492 of the Ordinance to the Company's Chief Executive Officer and the Directors, calling upon them to show cause as to why the

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penalty, as provided under Section 492 of the Ordinance, should not be imposed onto them, for the misstatement as aforesaid.

Company's Response to the Show Cause Notice & the Hearing

8. The Managing Director & Chief Executive Officer of the Company submitted the response to the Show Cause Notice vide his letter dated October 1, 2013, in which he stated as follows:

"...We would like to mention that during the drafting of Explanatory Statement Accompanying Notice of Extra Ordinary General Meeting (EOGM) to the Members under Section 160(1)(b) of the Companies Ordinance, 1984, the para 1(e) was erroneously drafted

...

The Company would like to seek apology for the human error due to the misunderstanding of the Company Secretary who was not directly present during the hearing and was briefed about the proceedings. It appears that due to misunderstanding the statement under section 160(1)(b) reflected a misstatement, which may please be condoned. We would like to clarify that neither the Company nor any of its officers or directors had any intentions of any misstatement. Accordingly the Company will be publishing the attached corrigendum to clarify the statement."

9. The Managing Director & Chief Executive Officer of the Company submitted another letter dated October 7, 2013, in which he stated as follows:

"...We would like to mention that during the drafting of Explanatory Statement Accompanying Notice of Extra Ordinary General Meeting (EOGM) to the Members under Section 160(1)(b) of the Companies Ordinance, 1984, the para 1(e) was erroneously drafted and published

...

The Company would like to seek apology for the human error due to the misunderstanding of the Company Secretary who was essentially not present during the hearing. It appears that due to a gross misunderstanding the statement under section 160(1)(b) reflected a misstatement, which may please be condoned. We would like to clarify that neither the Company nor any of its officers or directors had any intentions of any misstatement.

...

The Company intends to publish the attached corrigendum to clarify the statement.

The Company and its CEO / Directors humbly request the Commission to condone the error on part of its Company Secretary and the Company for overlooking the human error on an individual's misunderstanding. We also request to kindly condone the penalty as we are already going through re-structuring phase."



10. The contents of the corrigendum were sent to the Commission for its review, which were discussed by the Commissioner (Insurance) with the Company's consultant, Mr. Ashfaq Tola, on October 8, 2013 and certain modifications were suggested so as to make the corrigendum more precise and accurate. And, the corrected version of the corrigendum duly published in the newspaper was sent to the Commission via Company's letter dated October 29, 2013.

11. Although the Directors of the Company, through their response letter dated January 6, 2014, have not requested to appear in person, the Commission, on its own motion, had scheduled the hearing for February 26, 2014, which was communicated to the addressees of the Show Cause Notice vide the Commission's hearing notice no. ID/Enf/Crescent Star/SCN-160/2014/18954 dated February 20, 2014.

12. The hearing in the matter of the aforesaid Show Cause Notice was attended by Mr. Malik Mehdi Muhammad, the Chief Financial Officer of the Company, who was authorized to represent the Company and its Directors in the instant matter, through a Power of Attorney dated NIL. Accordingly, Mr. Mehdi shall be referred to as the "Company's representative" hereinafter.

13. During the course of hearing of February 26, 2014, the Company's representative, while admitting that the Company had committed massive misstatement in the statement under Section 160(1)(b) of the Ordinance, sought an apology of the Commission for this misstatement.

Consideration of Company's Submissions

14. I have carefully examined and given due consideration to the written and verbal submissions of the Company, its Directors and the Management of the Company, and have also referred to the provisions of the Ordinance. I am of the view that there has been an established misstatement in the statement under Section 160(1)(b) of the Ordinance appertaining to the notice of the Extra Ordinary General Meeting, which was held on August 27, 2013.

15. However, before proceeding further, I find it relevant to comment on 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 performing their duties with due care. In the instant case, however, the Company and its 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 towards mitigation of the misstatements in the reports, returns,

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certificates, balance sheets, profit & loss accounts and other documents / information prepared under the law and submitted with the Commission, therefore, it could be legitimately inferred that the misstatement was committed, as aforesaid.

Conclusion

16. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the misstatement in statement under Section 160(1)(b) of the Ordinance is established and admitted by the Company's management, therefore, the penalty as provided under Section 492 of the Ordinance can be imposed onto the Company's Directors and the Chief Executive Officer. However, the Company had subsequently published the corrigendum of the said statement in the newspaper.

17. Section 492 of the Ordinance states that:

"Penalty for false statement. - Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees."

Order

18. In exercise of the power conferred on me under Section 492 of the Ordinance, I, instead of imposing the maximum penalty as provided therein, take a lenient view, and thus, condone the Company's Directors and the Chief Executive Officer due to the fact that corrigendum of the statement containing the misstatement was issued during the pendency of the proceedings, as mentioned hereinabove. Moreover, the matter of the Extra Ordinary General Meeting of August 27, 2013 appertained to the issuance of right shares which were issued during the first quarter of the year 2014 and that the matter of compliance with the minimum paid up share capital of the Company was subsequently dealt with by the Commission through the Order of the Commissioner (Insurance) under Section 28 read with Section 11(1), 63(4), Section 63(1) and Section 156 of the Insurance Ordinance, 2000, which was passed / announced on September 4, 2014.

However, the Company is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 5

19. 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.

Tariq Hussain
Director - Insurance