



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

[Islamabad]

Before Tahir Mahmood, Executive Director (Enforcement)

In the matter of

M/s. Progressive Insurance Company Limited

Review Application under Section 484 of the Companies Ordinance, 1984

Date of Review Application	November 13, 2008
Date of Final Hearing	April 1, 2009
Present	No one appeared on behalf of M/s. Progressive Insurance Company Limited
Date of Order	April 30, 2009

ORDER

(under Sub-Section (2) of Section 484 of the Companies Ordinance, 1984)

.....

This order shall dispose of the review application filed against order dated October 20, 2008 passed by the undersigned whereby a fine aggregating to Rs. 120,000/- (Rupees one hundred twenty thousand only) was imposed on the Chief Executive and five other directors of M/s. Progressive Insurance Company Limited (hereinafter referred to as "the Company") for making default in complying with provisions of Sub-section (1) of Section 245 of the Companies Ordinance, 1984 ("the Ordinance").

2. The review petition dated November 13, 2009 was filed by Mr. Ali Sarwar, authorized representative on behalf of the Chief Executive and directors of the Company wherein he requested for waiver of amount of fine due to financial constraints faced by the Company. The Commission was requested to review the said Order on the following grounds:-

- i. The Company is concentrating to redesign and revamp its organizational structure and financial reporting system in spite of the fact that it is facing critical financial crunch and lack of human resource.
- ii. The inability of the Company to hire right persons to right positions due to lack of financial resources is basic cause of non-compliance and failure to file the financial statements within due time.
- iii. The failure to file statutory returns is without any deliberate intention and just for the reasons and circumstances beyond the control of the Company.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 2 -

In the review application, the Chief Executive and directors of the Company have not come up with any new issue or new arguments in favour of their plea. All of the arguments repeated in the review application have been adequately addressed earlier in the said Order dated October 20, 2008. In consideration of the matter, it is imperative that applicant must bring out new facts or evidence which could not be produced at the time of passing of Order. Further, no error or omission has been pointed out in said Order which could have any significant impact on the Order.

The hearings of the review application were fixed for December 1, 2008, February 24, 2009, March 11, 2009, March 19, 2009 and April 1, 2009 but neither any of the directors of the Company nor its authorized representative appeared in any of these scheduled hearings.

In view of the forgoing, the undersigned finds no reason to review the said Order. Therefore, in view of the review application, the Commission's Order dated October 20, 2008 is upheld.

(Tahir Mahmood)
Executive Director (Enforcement)



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

purely due to redesigning and revamping of their financial reporting system which needed to be improved substantially. The Company further submitted that they have made many improvements and financial statements will be submitted right away. But as per record of the Commission, the said accounts were received in the Commission as late as on July 23, 2008 which constitutes a delay of 84 days beyond the due date i.e. April 30, 2008.

Hearing of the Case

In order to provide an opportunity to the Chief Executive and directors of the Company or their authorized representative of appearing in person to explain the reason for not complying with said provisions of the Ordinance, the hearing of the case was fixed on July 28, 2008 before Executive Director(Enforcement) but the Company vide its fax communication dated July 24, 2008 requested for grant of extension in hearing date as neither the Chief Executive nor any senior officer was available on July 28, 2008.

On the request of the Company, another hearing notice dated July 25, 2008 was issued to the Chief Executive and directors of the Company and hearing was re-fixed on August 12, 2008. The Company vide its letter dated July 29, 2008 requested that hearing in the aforesaid matter may be conducted in Karachi instead of Islamabad. Acceding to the request of the Company, a notice for hearing dated August 26, 2008 was issued to the Chief Executive and directors of the Company, advising them to appear in person or through their authorized representative for hearing of the said case at the Commission's Southern Regional Office, Karachi on August 13, 2008 before Executive Director(Enforcement).

During the aforesaid hearing, it was informed by Mr. Syed Ali Sarwar, Chief Internal Auditor of the Company (authorized representative of the Chief Executive of the Company) that he was representing on behalf of the Board of Directors of the Company and assured to submit requisite power of attorney in this behalf. Later, the Company vide its letter dated August 20, 2008 informed that power of attorney could not be submitted as some members of the Board of Directors were out of station and one director was admitted to hospital. Therefore, the Company requested to submit the said power of attorney in the next hearing.

In view of the Company's request vide letter dated August 20, 2008, the final hearing in the subject matter was re-fixed for September 10, 2008. During the proceedings of final hearing, Mr. Syed Ali Sarwar, authorized representative submitted the requisite power of attorney signed on behalf of the Chief Executive and all directors except Mr. Manzoor H. Jilani. Mr. Sarwar informed that he could not get the attorney signed by Mr. Jilani as the said director was extremely ill and was admitted to hospital in critical condition.

Submission of the Company and its Directors

In response to the show cause notice dated June 20, 2008, the Company vide its letter dated July 3, 2008 replied that:-

*".....delay has been purely due to our redesigning and revamping our financial reporting system which needed to be improved substantially.
We would like to inform you that we have made many improvements and assure you that all compliances will be made in future. The said financial statements will be submitted right away."*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

In the hearing held on August 13, 2008, Mr. Sarwar, authorized representative of the Company in his written submission attributed the delay in filing of subject accounts to critical financial crunch faced by the Company. He further contended that the Company could not hire suitable professionals due to limited resources which is the main reason for failure to file the subject accounts within due time. It was also informed that structural reforms are underway in the Company. He admitted that the Company has made default in complying with provisions of section 245 of the Ordinance. However, he prayed that a lenient view may please be taken in this matter, assuring that full compliance will be made in future.

During the hearing held on September 10, 2008, Mr. Ali Sarwar, authorized representative reiterated that subject accounts could not be filed within due time because of financial crunch being faced by the Company. He admitted that the Company has made default in complying with provisions of section 245 of the Ordinance in respect of filing of subject accounts with the Commission.

Consideration of the Submissions

One of the reasons advanced by the Company for delay in filing of the said accounts is redesigning and revamping of its financial reporting system which needed to be improved substantially. It is a common practice that redesigning of existing financial reporting system is carried out as a pilot project through parallel phase implementation on trial run basis so that ongoing business activities and statutory requirements of an organization may not be hampered due to introduction of new or modified system. The Company should have not dismantled the existing financial reporting system altogether before the successful implementation of redesigned/revamped system. Moreover, the backup data could have been used for preparation of accounts during the transition from old to new reporting system. Therefore, the redesigning and revamping of financial reporting system could not be considered as a cogent reason for delay in filing of accounts.

Limited resources could not be considered as a valid reason for not filing the subject accounts within due time as the Company must fulfill its statutory obligations. Similarly, the failure of the Company to hire the right professional can not justify the delay in the filing of accounts if the Company has proper system in place to meet its statutory obligations. Further, the Company can not exonerate itself from its statutory obligations due to that reason that structural reforms are underway in the Company.

Conclusion

I have given due consideration to the written as well as verbal submissions of the respondents and found that the arguments advanced by them do not justify late-submission of quarterly accounts for the first quarter ended March 31, 2008. As stated above, reasons like limited financial resources, failure in hiring of right professionals and structural reforms could not be considered as justification for delay of 84 days beyond the due date in filing of the said accounts to the Commission. Moreover, being a listed company, M/s. Progressive Insurance Company Limited are expected to exhibit more responsible and compliant corporate behaviour. The Company should have met the deadline for complying with statutory obligation of filing the said accounts by April 30, 2008 in spite of stated reasons.

Order

In view of the foregoing conclusion, the default under clause (b) of sub-section (1) of section 245 of the Companies Ordinance, 1984 is established and the Chief Executive and directors of the Company have made themselves liable for fine under sub-section (3) of section 245 of the Ordinance. As the directors are

(277)



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

supposed to be well aware of their legal obligations in connection with aforesaid statutory requirement and consequences of the said default, therefore, it could be legitimately inferred that the default was committed knowingly and willfully. The accounts for quarter ended March 31, 2008 were required to be filed by April 30, 2008 but the default of the Company continued for 84 days. However, keeping in view the financial crunch being faced by the Company, a lenient view is being taken and instead of imposing a maximum fine of Rs. 100,000/- on each director of the Company and a further fine of Rs. 1,000/- for every day during which default continued, I, in exercise of powers conferred on me under section 245(3) read with section 476 of the Ordinance, impose a fine of only Rs. 20,000/- each (Rupees twenty thousand only) on the Chief Executive and directors of the Company (except Mr. Manzoor Hussain Jilani who has been exempted from fine being in critical condition in hospital), as detailed below:-

S. No.	Name	Fine (Rs.)
1.	Mr. Khalid Mehmood, Chief Executive	20,000
2.	Mr. Rashid Munir Ahmed, Director	20,000
3.	Mr. Syed Saleem Ahmed, Director	20,000
4.	Mr. Waqar Ahmed, Director	20,000
5.	Mr. Nasir Munir Ahmed, Director	20,000
6.	Mr. Moeed Asghar Kidwai, Director	20,000
	Total	120,000

The Chief Executive and all other directors of M/s. Progressive Insurance Company Limited except Mr. Manzoor Hussain Jilani, are hereby directed to deposit the aforesaid fines aggregating to Rs.120,000/- (Rupees one hundred twenty thousand only) 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 receipt of this Order and furnish receipted vouchers issued in the name of Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 shall be initiated which may result in the attachment and sale of movable and immovable property. It may please be noted that the said fines are imposed on the Chief Executive and other directors in their personal capacity and they are required to pay the said amounts from their personal resources.

(Tahir Mahmood)
Executive Director (Enforcement)

Announced
October 20, 2008
Islamabad.