



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Shahid Nasim, Executive Director (Insurance)

In the matter of

Shaheen Insurance Company Limited

Show Cause Notice Issue Date: January 23, 2012
Date of Hearing: March 13, 2012
Attended By: Mr. Ali Thaheem Murtaza, Legal Counsel (SurrIDGE Beecheno)
Date of Order: July 18, 2012

ORDER

(Under Section 28 Read with Section 11(1)(a) & Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Shaheen Insurance Company Limited ("the Company") for not complying with Section 28 Read With Section 11(1)(a) of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. The relevant provisions of Section 11(1) of the Ordinance states that:

"11. Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

(a) the provisions of this Ordinance relating to minimum paid-up share capital requirements are complied with;

3. The relevant provisions of Section 28 of the Ordinance states that:

"28. Requirements as to capital.-(1) An insurer registered under this Ordinance to carry on insurance business shall have a paid-up capital of not less than the required minimum amount.

(2) For the purposes of this section, the required minimum amount is:



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 1

(a) one hundred and fifty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on life insurance business; and

(b) eighty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on non-life insurance business;”

4. The Ministry of Commerce vide S.R.O. Notification 291(I)/2007, dated March 26, 2007, prescribed the minimum amount of paid-up capital requirement for the insurers registered under the Ordinance. For the non-life insurers, the prescribed minimum amount of the paid-up capital was Rs.300 million as at December 31, 2011.

5. The unaudited financial statements for the three quarters ended September 30, 2011 reveal that the paid-up capital of the Company as on September 30, 2011 was Rs.250,000,000/-. Therefore, the Commission vide its letter no. ID/ENF/Shahen/2011/11099 dated November 21, 2011 advised the Company to provide its future plan as to how compliance with Section 28 of the Ordinance shall be made before December 31, 2011.

6. The Company vide its letter dated November 28, 2011, which was in response to the Commission's letter of November 21, 2011, stated that:

“...the Board of Directors of the Company in their meeting on November 24, 2011 have announced to increase the paid up share capital of the Company by Rs.50 million by issuing 5 million ordinary shares of Rs.10 each...”

However, under the Companies (Issue of Capital Shares) 1996 offering right shares within one year of previous right issue is not permissible. We have already applied to the Insurance Division, at SECP for exemption from this clause to compete the issue of right shares. We believe we will get this approval shortly as this proposed issue of right shares is for completing the statutory requirements of the increase in minimum paid up capital.”

7. Upon receipt of the said application of the Company, it was observed that the application was not in line with the requirements of Rule 30 of the Companies (General Provisions and Forms) Rules, 1985.

8. In this view, the Commission vide its letter no. ID/ENF/Shahen/2011/11190 dated December 9, 2011 advised the Company to submit the application along with other documents in the manner as laid down in Rule 30 of the Companies (General Provisions and Forms) Rules, 1985.

9. The Company vide its letter dated December 15, 2011 received in this office on December 20, 2011 submitted complete application along with the information, which was called by the Commission vide its letter of December 9, 2011.

10. Even though the Company had submitted an application for seeking an exemption with the requirements of the Companies (Issue of Capital) Rules, 1996, however, it was viewed that the Company was in default of the requirements of Section 28 read with Section 11(1)(a) of the Ordinance and S.R.O. Notification 291(I)/2007, dated March 26, 2007, whereby the Company was required to raise its paid up share capital to Rs.300,000,000/- latest by December 31, 2011.

Show Cause Notice

11. Accordingly, the Show Cause Notice was issued on January 23, 2012 under Section 28 read with Section 11(1)(a) read with Section 156 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided in Section 156 of the Ordinance, should not be imposed upon them and/or upon the Company for not complying with provisions of Section 28 read with Section 11(1)(a) of the Ordinance.

Company's Response to the Show Cause Notice

12. M/s Surridge & Beecheno ("the Legal Counsel") vide their letter no. S-3483/KHR/AT dated February 6, 2012, submitted reply to the Show Cause Notice on behalf of the Company, and the Chief Executive and Directors of the Company, whereby they had accepted that the Company has been unable to fulfill the minimum paid up share capital requirement. They further stated that:

"...The Circumstances under which the requirements were not met and whether the noncompliance happened intentionally and willfully are the relevant considerations here.

You will recall that a hearing was held last year on 22nd March 2011 on a similar notice served upon Shaheen. At the hearing, it was submitted that no violation of law had taken place as the Shaheen did not willfully evade its obligations. Evidence was furnished that Shaheen had already initiated the process of increasing its capital in order to comply with SECP's minimum paid-up capital requirements when one of its shareholder, Hollard Insurance Limited decided to disinvest. Shaheen took immediate positive steps towards compliance with the paid-up capital requirement after Hollard's decision...

The documents established the chain of events and showed beyond doubt that the so-called "contravention" (as the Circular does not unfortunately make an express provision for this admittedly unforeseeable scenario) was entirely unintentional, as it is this time...

Despite the difficult times, compliance with law is to top priority with Shaheen. On 15th December 2011 Shaheen submitted an application to the SECP for relaxation of the relevant rules on right issue and for allowing Shaheen to issue 5 million ordinary shares at Rs. 10 per share amounting to Rs. 50 million by way of right offer to the existing shareholders to increase its paid-up share capital in order to meet the Minimum Capital as requirement.

SECP through its Deputy Director has granted the aforesaid approval vide letter date 1st February 2012, which is attached, subject to conditions mentioned therein and has allowed the Company to meet these requirements in 15 days time...

The preamble to the SECP Act 1997 declares that SECP has been established for the "beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto". It would serve the interests of justice best if a benign understanding is displayed and Shaheen is appreciated for all the efforts it has put in to meet the requisitions in the circumstances."

Hearing of the Case

13. Although neither the Company nor did its Legal Counsel state in writing to be called for a hearing in the matter, the hearing in the matter was scheduled for March 13, 2012, which was

communicated to the Company via hearing notice no. ID/ENF/Shahen/SCN-28/2012/12746 dated March 9, 2012.

14. The said hearing was attended by Mr. Ali Murtaza of M/s Surridge Beecheno, the Legal Counsel to act on behalf of the Company, the Chief Executive and the Directors of the Company, and power of attorney on behalf of the Company, Mr. Asif Suleman, Mr. M. Ikramullah Bhatti, Mr. Syed Hamza Gillani, Mr. Hammad Ahmed Butt, Mr. Imran Hafiz, Mr. Shahid Hameed and Mr. Tanweer Muhammad Sheikh, however, power of attorney on behalf of Mr. Zafar Iqbal Mir was not presented at the time of the hearing, however, the Legal Counsel assured that the same will be provided at later stage.

15. Brief proceedings of the hearing are as follows:

- a. The representatives of the Commission inquired about the status of the issuance of the additional capital, when the Legal Counsel stated that the process of raising the paid up share capital has already been started. The Legal Counsel mentioned that he would ask the Company and then inform the Commission accordingly.
- b. The Legal Counsel also mentioned that the Company is currently undergoing extreme internal pressures, but the management of the Company is willing and committed to comply with the law at all times.
- c. The representatives of the Commission asked the Legal Counsel to provide the schedule as to how the Company plans to raise their paid up capital by Rs.50,000,000/-, to which the Legal Counsel stated that the schedule will be provided in due course.
- d. The Legal Counsel mentioned that the Board resolved the issuance of right shares on November 24, 2011, and the estimated time for the issuance of the right shares is normally one and a half to two months.
- e. The Legal Counsel requested the Commission to take a lenient view while deciding upon the case, stating that the Company's intent was not to commit any default of the provisions of the Ordinance, as it had already initiated the process in November 2011, when the Company had filed an application for relaxation of the Companies (Issue of Capital) Rules, 1985.

Consideration of Company's Submissions

16. Subsequent to the hearing, as aforesaid, the Company's Legal Counsel vide their letter no. S-3504/KHR/AT dated May 17, 2012, submitted the power of attorney of Mr. Zafar Iqbal Mir, the Director of the Company, duly authorizing the Legal Counsel to act on behalf of him. Vide the same letter, the Legal Counsel also enclosed the Schedule of Right Issue, the JS Bank's letter dated May 15, 2012 evidencing the collections of amount on account of the Right Issuance up till May 9, 2012, which was reported to be Rs.13,235,750/-, further elaborating the unsubscribed amount of Rs.36,764,250/-, which was supposed to be subscribed by the underwriters i.e. M/s Ensign Communique (Private) Limited. The Legal Counsel also submitted the Company's letter, which was addressed to the underwriters of the Company, stated to arrange to subscribe the unsubscribed amount of Right Issue as per the agreement of underwriting.

17. Vide the Commission's letter no. ID/ENF/Shahen/2012/13705 dated June 11, 2012, the Company was advised to apprise the Commission about the progress of the enhancement of the paid up share capital of the Company.

18. The Company vide their letter of June 18, 2012 informed that the process of enhancement of the paid up share capital has been completed, and a copy of Form 3 was also enclosed therewith, as filed with the Company Registration Office in Karachi.

19. The Company, at this stage, is compliant with respect to the provisions of Section 28 of the Ordinance, as the Company has a paid up share capital of Rs.300,000,000/-.

Conclusion

20. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's Legal Counsel), and have also referred to the provisions of the Ordinance. I am of the view that there has been a default under the relevant provision of the Ordinance. The Company's Legal Counsel has also admitted this as well.


21. Before proceeding any further, I find it relevant to discuss the duties of the Directors & the Chief Executive. The Directors & the Chief Executive of the Company, 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 obligations imposed by statute on them and on the Company. The Directors and the Chief Executive of the Company are supposed to be well aware of their legal obligation and the Company's legal obligation in the aforesaid matter along with the consequences of the said default.

22. As a matter of fact, the Company is now compliant with the statutory requirement pertinent to the minimum paid-up share capital.

23. This contravention does not appear to have affected the rights and interests of any of its stakeholders strictly during the period of non-compliance.

Order

24. In view of the foregoing material information, I, in exercise of powers conferred on me under Section 156 the Ordinance, will take a lenient view and instead of imposing a fine, hereby, condone the contravention by the Company. The Chief Executive, the Directors and the Company itself is, hereby, warned and advised to exercise due caution in the future whilst complying with the requirements of the law.


Shahid Nasim
Executive Director