



SECP
INSURANCE DIVISION
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

In the matter of

PICIC Insurance Limited

Show Cause Notice No. and Issue ID/Enf/PICIC/2018/14756 Dated May 9, 2018

Date of Hearing: July 3, 2018

Attended By: 1. Mr. Zeeshan Abbdullah
Advocate High Court
Authorized Representative

2. Mr. Tanveer Ahmed
Representative
M/s. PICIC Insurance Limited

Date of Order: October 8, 2018

ORDER

Under Section 67 read with Section 156 of the Insurance Ordinance, 2000

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This Order shall dispose of the proceedings initiated against M/s. PICIC Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 67 of the Insurance Ordinance, 2000 (the Ordinance). The Company, its Chief Executive and Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Commission received a complaint regarding unlawful trading in the shares from a shareholder of the Company; vide email dated April 25, 2018. The complainant in his complaint stated that:

"It is brought to your kind attention that KM Enterprises (Pvt.) Ltd. is the majority shareholder of PIL as of 31.12.2016 owned 20,800,338 shares in PIL which constitutes approximately 59.43% of the entire issue and paid up capital of the PIL.

That our Client being aggrieved by this sharp decline and unusual trading decided to look into this matter and found that the KM Enterprises had sold approximately 2.5455 Million shares in the Market which can be confirmed from the shareholding of PIL as of 30.06.2017."

3. It was observed from the pattern of Shareholding of the Company that 9,459,500 shares (27.03%) held by KM Enterprises (Pvt.) Ltd. were sold without approval of the Commission under Section 67 of the Ordinance.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 2 -

4. Hence, it appeared to the Commission that the Company failed to meet the mandatory requirements of Section 67 of the Ordinance.

5. Section 67 of the Ordinance requires that:

"Approval of acquisition or transfer.- (1) Any proposed transaction for the acquisition of a shareholding of more than ten percent (10%) in an insurance company, or, in the case of a non-life insurer, of the whole or any part exceeding ten per cent. (measured by either the premium income or the sum of the liabilities for unearned premium and outstanding claims and the premium deficiency reserve proposed to be acquired) of the business located in Pakistan of an insurer (whether in one or a number of related transactions and whether at the same or different times) shall not proceed unless, on application by the transferor, approval is given by the Commission.

Explanation: A number of transactions shall be deemed to be related if there being more than one purchaser, those purchasers are acting together or in concert or if, in all the facts and circumstances of the case, there is such a relationship between the purchasers or such common purpose between them so that it would be reasonable to conclude that the transactions are related.

(2) The application required under sub-section (1) shall be made in such form and shall be accompanied by such documents as may be prescribed.

(3) The Commission may, within 15 days from the receipt of the application, require the applicant to submit such further documents and information as may be required for it to make an informed decision about the transaction in the interests of policy holders and shareholders and the applicant shall provide the same within a period of seven days or such later period as the applicant may in writing request.

(4) If after sixty days of the receipt of the application or the receipt of any additional material under sub-section (3), approval has not been granted or a notice given to the applicant declining approval, the Commission shall be deemed to have given its approval.

(5) Approval given or deemed to be given by the Commission under this section shall not preclude the necessity of obtaining any such approval or consent required to be obtained from the Commission under the provisions of any other applicable law."

6. Therefore, a Show Cause Notice (SCN) ID/Enf/PICIC/2018/14756 dated May 9, 2018 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

7. The Authorized Representative of Company vide letter dated June 7, 2018 sought an extension of two weeks to submit reply to the aforesaid Show Cause Notice. The request of the Authorized Representative of the Company was acceded to and extension until June 21, 2018 was allowed.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 3 -

8. Thereafter, the Authorized Representative submitted the reply vide letter dated June 21, 2018, which is reproduced hereunder:

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1. Perusal of SCN shows that the same has been issued on a complaint statedly received by the August Commission by email dated 25.04.2018 (Copy has not been attached with the SCN) which, as per SCN, contained following allegations:
 - i. Unusual trading on the part of one shareholder, namely, M/s KM Enterprises, which held 20,800,338 shares in PIL as of 31.12.2016 constituting approximately 59.43 % of shareholding. However, later on KM Enterprises was found to have sold 2.5455 Million shares as of 30.06.2017.
 - ii. Pursuant to the above complaint, the Commission observed from the shareholding pattern of shareholding of our client that 9,459,500 (27.03 %) shares held by KM Enterprises were sold without approval of the Commission under Section 67 of the Insurance Ordinance 2000 (hereinafter referred to as 2000 Ordinance).
 - iii. Therefore, as per Hon'ble Commission's view, our client (Company) has prima facie failed to meet the mandatory requirements of Section 67 of the 2000 Ordinance for which PIL and its Board of Directors are liable to be penalized under Section 156 of the 2000 Ordinance.
2. So essentially contravention of Section 67 of the 2000 Ordinance has been alleged against our client and explanation has been sought why penalty under Section 156 of the 2000 Ordinance should not be imposed. In this regard, the response for and on behalf our client is as follows:
 - i. A bare reading of the provisions of Section 67 of the 2000 Ordinance would show that if any transaction is proposed for the acquisition of shareholding of the whole or any part exceeding 10 % (in the case of non-life insurer), whether **in one or a number of related transactions** and whether **at the same time or different times**, shall not proceed unless, **on the application of the transferor** {means a shareholder who is transferring his share(s)}, approval is given by the Commission.
 - ii. Whereas, section 156 provides that any insurer or where the insurer is a company, any director or other officer of the Company who makes default in complying with or acts in contravention of any requirements of this Ordinance shall be punishable with fine which may extend to One Million Rupees and additional fine in case of continuing default.
 - iii. In the instant case, undisputedly, insurer (our client) is a company (listed in PSX) and every shareholder may sell his shares in the market (through PSX being electronic transaction registered and maintained with CDC), as itself stated in the SCN, and since our client has no role either in selling of shares or in any matter whatsoever in transferring such shares in the name of purchaser, therefore, any omission of obtaining approval from this Hon'ble Commission with reference to Section 67 of 2000 Ordinance is not attributable against our client.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 4 -

- iv. In addition to the above, it is, in the same context, submitted that section 67 is very clear in its language which, as stated above, unambiguously requires. if there shall be an acquisition of shares more than the limit prescribed in such section, transferor (seller) has to seek approval from the Commission and an omission on the part of seller /transferor cannot, in any manner, alleged to be a default in complying with or act in contravention of any requirement of 2000 Ordinance within the meaning and for the purpose of Section 156 of the 2000 Ordinance, rendering insurer or any of its director or officer liable for any penalty under the aforesaid section.
- v. That completely without prejudice to the above but in addition thereto, it is most respectfully submitted that even, as clearly reflects from the shareholding patterns of the company as on December 2016 & December 2017 that the said shareholder did not sale / transfer shareholding exceeding 10 % for the purpose of acquisition in an insurance company in one or number of related transactions to anyone purchaser or more than one purchasers who are acting together or in concert or in all there is a relationship between the purchasers or such common purpose between them so that it would be reasonable to conclude that the transactions are related.

.....

- vi. It is further submitted that, in any case, our client, PIL, being insurer cannot be served with the Show Cause Notice in the instant matter under Section 156 of the 2000 Ordinance because the permission as required under Section 67 of the 2000 Ordinance was not required to be sought by our client. So if no permission was sought as alleged, the same was not default on the part of our client, attracting provisions of Section 156 of the 2000 Ordinance.

In view of the foregoing, it is most humbly requested for and on behalf of our client that this August Commission may be pleased to discharge the Show Cause Notice under reference.

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9. Thereafter, the Commission vide its notice dated June 25, 2018 scheduled the hearing on July 3, 2018. The aforesaid hearing was held at the Company Registration Office of the Commission in Karachi and was attended by Mr. Zeeshan Abdullah and Mr. Tanveer Ahmed for and behalf of the Respondents in the instant matter.

10. During the hearing, the Authorized Representative argued that every shareholder may sell his shares in the market and the Respondents have no role in selling/transfer of the shares. He maintained that the respective shareholder sold the shares in the open market without any information about the corresponding buyers. He was of the view that permission was not required to be sought by the Company but the transferor.

11. In terms of Section 67 of the Ordinance any proposed transaction for the acquisition of a shareholding of more than ten percent (10%) in an insurance company, or, in the case of a non-life insurer, of the whole or any part exceeding ten per cent of the business located in Pakistan of an insurer (whether in one or a number of related



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 5 -

transactions and whether at the same or different times) shall not proceed unless, on application by the transferor, approval is given by the Commission.

12. However, in the instant case it was observed from the pattern of Shareholding of the Company that 9,459,500 (27.03%) shares held by KM Enterprises (Pvt.) Ltd. were sold without approval of the Commission under Section 67 of the Ordinance.

13. The Authorized Representative stated that in the process of sale/purchase of shares of a listed company, the Respondents do not have any direct role because the shares are traded in the stock market and are transferred by the Central Depository Company, a separate entity established under the Central Depository Act, 1997. Keeping in view the points raised by the Authorized Representative during the hearing, he was advised to submit written synopsis of the arguments put forward by him for consideration of the Commission.

14. The Authorized Representative vide letter dated July 24, 2018 submitted additional arguments, which are summarized hereunder;

- i. The Company in the sale transaction of shares, being a listed company has no role, whatsoever, therefore, default for the purpose and within the meaning of Section 156 of the Ordinance cannot be attributed against the Company.
- ii. A plain reading of Section 67 of the Ordinance shows that if any transaction is proposed for the acquisition of shareholding of the whole or any part exceeding 10% (in the case of non-life insurer), whether in one or a number of related transactions and whether at the same time or different times, shall not proceed unless, on the application of the transferor [means a shareholder who is transferring his share(s)], approval is given by the Commission.
- iii. The Company cannot be held liable for punishment of fine under Section 156 of the Ordinance if, in any action being complained of, nothing was to be complied by the Company (insurer) itself, as in the instant case, alleged violation/ omission is of transferor of the shares, not of the Company because, under Section 67 of the 2000 Ordinance, it is transferor who is required to have permission.
- iv. It is further submitted that, even otherwise, under law, in case of sale of shares of a listed company being traded on the stock exchange through CDC, the issuer company has no role or have any control over sale or transfer of share from the name of the seller in the name of the purchaser.
- v. It is submitted that a close reading of the section 74 of the Companies Act, 2017 read with Regulations 7 & 8 of Table A of 1st Schedule of the Companies Act, 2017, leaves no manner of doubt that the method and procedure provided under the Companies Act for the transfer of shares is only confined to shares in physical form. In other words, the role of the Company for entertaining an application for registration of transfer of shares is only for and/or confined to those shares



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 6 -

which are in physical form as second proviso of Section 74 clarifies that the procedure provided for the transfer of shares provided under Section 74 shall not apply to any transfer of shares or other securities pursuant to a transaction executed on the Securities Exchange.

- vi. It reflects from the preamble of the CDC Act, 1997 that the same has been enacted to make provision for establishment and operation of book entry system for transfer of securities by Central Depository Company. Central Depository Register is provided being a computerized electronic register maintained by a Central Depository Company in respect of book entry securities as envisaged under Section 2(7) of the CDC Act, 1997. Section 3 of the CDC Act, 1997 gives the provisions of the said Act an overriding effect to provisions of the Companies Ordinance, 1984 (Now the Companies Act, 2017) or any other law or in any other character, statute or memorandum or article of association. Section 4(1)(b) of the Act, 1997 also provides for the establishment of a Central Depository system whereby, in accordance with the regulations transfer of such book entry securities shall be effected electronically or by any similar means. Section 6 of the CDC Act, 1997 provides that the transfer of book-entry securities from accounts or sub-accounts to other accounts or sub-accounts shall be made in a manner as may be prescribed by CDC and shall be effected by making an appropriate entry in the Central Depository Register in accordance with such regulations.
- vii. Section 11 puts bar on the rectification of Central Depository Register as provided under Section 152 of the Companies Ordinance, 1984 (Now Section 126 of the Companies Act, 2017) and instead rectification of register maintained at CDC, in case of any fraudulent transaction, if takes place, the court may grant damages to the Complainant.
- viii. However, it may be observed with certainty that in case of process of sale of book-entry securities (shares) and their transfer from the name of shareholder to the purchaser, the Company (issuer) has no role whatsoever.
- ix. Intra account delivery is not relevant for the issue at hand because that relates to transfer of book entry securities within account family, from one holding in the account family of an account holder to another holding in the same account family.
- x. Inter account delivery is relevant for the instant issue which under the said Regulation is defined as, from a holding under the control of account holder to a holding under the control of another account holder.
- xi. Regulation 9.2 is relevant for inter account delivery. The entire method/procedure provided in the said Regulation for the transfer of shares does not involve the Company (issuer) in the process of either selling or transferring book-entry securities (shares). On the contrary, as envisaged under clause (e) of Regulation 9.2.4, the CDC shall reject the transaction if, as per clause



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 7 -

(d) of Regulation 9.2.4, the inter account delivery transaction results in breach of the acquisition limit.

- xii. Acquisition limit defined in definition clause, reproduced hereinabove, states that in relation to any registered eligible securities, means a limit prescribed under any applicable law, rules and regulations governing such securities beyond which such securities shall not be deposited, issued or transferred to any person in the CDS unless the requirements prescribed under such applicable document in relation thereto are complied with as under Section 67 of the Ordinance if anyone or parties in concert enters into sale transaction of shares of an insurance company exceeding 10 % through the application of the transferor, required to obtain permission from the Hon'ble Commission.
- xiii. In view of the foregoing, detailed survey of relevant provisions of relevant laws and regulations discussed hereinabove, the cumulative reading clearly suggests that in transfer process of any securities (shares) of any listed company, the issuer company has no role to regulate the same and it is the CDC which is legally solely responsible to scrutinize the transaction being carried and if it results in breach of the prescribed acquisition limit then to reject it. Therefore, it is hereby prayed to discharge the under reference Show Cause Notice against the Company.

15. Based on the response submitted by the Company and the fact that K.M. Enterprises (Pvt.) Limited, sold its shareholding in the Company (Sold 9,459,500 shares), the Commission further enquired from FAMCO Associates (Pvt.) Limited, the share registrar of the Company (for the relevant period), about the evidence of information furnished to the Company of the aforesaid change in the shareholding of beneficial owner. It was apprised that last List of Beneficial Owners (LOBO)/free float submitted by FAMCO on the CDC Portal after taking approval from the Company was that of June 30, 2017, which infer that the Company was aware of the sale of shareholding by BO i.e. KM Enterprises. In view of the fact that relevant information was provided by the share registrar and the Company having sufficient knowledge of other facts, the Company should have required the transferor to comply with the requirements of provisions of Section 67 of the Ordinance. However, the same was not exercised and the Company did not attempt to seek approval in the matter.

16. 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 and other references, as stated above. In my interpretation of law, I agree with the arguments of the Respondents to the extent that approval under Section 67 of the Ordinance was mainly applicable to the transferor who disposed of his shares and due to omission on part of the transferor/seller, the Respondents cannot be held liable directly. Hence, any penalty under Section 156 of the Ordinance would not be justified. However, once the information was made available by the share registrar, the Company should have ensured compliance with the Ordinance. Being privy to the information as aforesaid, the Company as an insurer cannot be absolved from the obligation of Section 67 of the Ordinance. Therefore, the Respondents are hereby cautioned to be careful in



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 8 -

future whilst complying with the Ordinance, rules, regulations and directives of the Commission.

17. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.


Tahir Mahmood
Commissioner (Insurance)

