



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Takaful Pakistan Limited

Show Cause Notice Issue Date: June 15, 2015

Date of Hearing: August 3, 2015

Attended By:

1. Dr. Syed Arif Hussain
Chief Executive Officer
M/s. Takaful Pakistan Limited
2. Mr. Jamil Ahmed
Chief Financial Officer / Company Secretary
M/s. Takaful Pakistan Limited

Date of Order: August 18, 2015

ORDER

Under Section 218 of the Companies Ordinance, 1984

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This Order shall dispose of the proceedings initiated against M/s. Takaful Pakistan Limited (the "Company") and its chief executive and directors for alleged contravention of Section 218 of the Companies Ordinance, 1984 (the "Ordinance"). The Company, its chief executive and directors shall be collectively referred to as the "Respondents" hereinafter.

A. Background

2. During the year 2013, the Company appointed Dr. Syed Arif Hussain as its Chief Executive Officer and Mr. Muhammad Irfan as its Company Secretary, however, the Directors' Report made up and attached to the balance sheet as on December 31, 2013 did not comply with the provisions of Section 218 of the Ordinance. Therefore, a Show Cause Notice (SCN) bearing number ID/Enf/TakafulPK/2015/1339 dated June 15, 2015 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 218(6) of the Ordinance should not be imposed on them for the aforementioned

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alleged contraventions of the law. The contents of the show cause notice are reproduced below:

Sub: Show Cause Notice under Section 218 of the Companies Ordinance, 1984.

WHEREAS, during the year 2013, M/s. Takaful Pakistan Limited (the "Company") has appointed Dr. Syed Arif Hussain and Mr. Muhammad Irfan as its chief executive officer and company secretary, respectively.

2. AND WHEREAS, in pursuance of Section 236 of the Companies Ordinance, 1984 (the "Ordinance") the Company has filed its Directors' Report which was made up and attached to the balance sheet as on December 31, 2013.

3. AND WHEREAS, it has been observed that the said Directors' Report was made up in total disregard to the provisions of Section 218(1) of the Ordinance, which state that:

"(1) Where a company –

(a) appoints, or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the company, in which appointment or contract any director of the company is in any way, whether directly or indirectly, concerned or interested : or

(b) varies any such contract already in existence; the company shall make out and attach to the report referred to in section 236 an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation."

4. AND WHEREAS, in terms of Section 218(1) of the Ordinance, the Company was required to furnish, along with the Director's Report, an abstract together with the memorandum clearly stating the nature of the interests of directors to the aforementioned appointments which was not furnished with the said Report.

5. AND WHEREAS, in view of the above, the Company prima facie appears to have failed to comply with the provisions of Section 218(1) of the Ordinance by not furnishing a disclosure along with the Directors' Report an abstract together with the memorandum clearly stating the nature of interest of directors to the new appointments of chief executive and company secretary, which have been made during the year 2013.

6. AND WHEREAS, it would be pertinent to mention that the observation has been taken up with the Company for seeking their comments thereon, on which the Company has admitted its violation. Hence, for the alleged violation of Section 218(1) of the Ordinance, the above-named directors and chief executive officer of the Company are liable to be penalized under Section 218(6) of the Ordinance which states that:

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“(6) If default is made in complying with any of the provisions of the section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine which may extend to five thousand rupees.”

7. NOW, THEREFORE, you are hereby called upon to show cause in writing within ten (10) days from the date of receipt of this notice as to why penalty may not be imposed upon you for contravening the provisions of Section 218(1) of the Ordinance. In the event that you wish to be represented by a Representative, please ensure that the authorizing instrument (a board resolution or a power of attorney as may be appropriate) is submitted to this office along with your reply to this notice. In case you decide to opt for a hearing, you may appear in person or through a Representative. Please note that any reply submitted by a Representative without an appropriate authorizing instrument may not be taken into consideration for the purposes of the proceedings. All documents submitted by you in support of the reply must be duly authenticated. Please note that you will be liable under law for any concealment of any evidence or misstatement made in response of this show cause notice. We have video link facility available in the city in which you reside. In case you wish to avail this option please inform the undersigned in writing so that appropriate arrangements may be made in this regard.

Please acknowledge the receipt of this notice through return fax at the number provided in the letterhead.

Sd/-

Hasnat Ahmad
Director

3. The Respondents, vide their letter dated June 24, 2015, requested the Commission to extend the date for submission of written comments in response to the aforementioned show cause notice. Hence, request of the Respondents was acceded to as requested, and the Respondents vide Commission's letter no. ID/Enf/TakafuIPK/2015/1372 dated June 26, 2015, were allowed a further period till July 6, 2015 to submit their comments.

4. Subsequently, the Respondents, vide their letter dated July 2, 2015, submitted their comments as under:

“It is stated at the very outset that we have the highest respect and regard for the Commission and it is inconceivable that we would ever deliberately breach or violate any applicable law. It is pertinent to mention here that we had timely filed the Directors Report in the year 2013. It is further added that the said change in the management was in the knowledge of all the shareholders as the Company is an unlisted entity and has only eight (8) shareholders and therefore, in substance, we have complied with the said provision. However, the omission to furnish, along with the Directors Report, an abstract together with the memorandum clearly stating the nature of the interest of directors to the aforementioned appointments, was a bona fide and a genuine mistake.



From the bare parcel of Section 218(1) of the Companies Ordinance, 1984, it appears that the said provision is applicable only if the default is intentional or willful, whereas in our case the aforesaid omission/oversight was neither willful nor deliberate but was rather a bona fide and unintentional mistake. The said provision is reproduced herein for ease of reference:

“(6) if the default is made in complying with any of the provisions of this section, the Company and every officer of the company who is knowingly and willfully in default shall be liable to a fine which may extend to five thousand rupees”

In light of the aforementioned, the Commission is urged to take into consideration the fact that the said change in the management was in fact in the knowledge of all the shareholders and therefore, in light of the aforementioned, the Commission is urged to take into consideration the fact that the said change in the management was in fact in the knowledge of all the shareholders and therefore, in substance, we had complied with the aforesaid provisions. However, for the aforesaid genuine and bona fide mistake/omission, we hereby make an earnest request to the Commission to condone the unintentional mistake to furnish, along with the Directors Report, an abstract together with the memorandum clearly stating the nature of the interest of directors to the aforementioned appointments, which omission/oversight by us is nothing but a bona fide and genuine mistake for which we regret and tender an unconditional apology to the Commission and request that this omission/oversight may not be treated as a grave violation.

In view of the foregoing paragraphs, it is respectfully requested that the alleged omission be condoned by taking a lenient view. We assure that such oversight/omission would not occur in the future.”

B. Hearings

5. Thereafter, the Commission vide letter no. ID/Enf/TakafuIPK/2015/1470 dated July 8, 2015, scheduled a hearing for August 3, 2015 at 11:30 a.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. The hearing was attended by Dr. Syed Arif Hussain, Chief Financial Officer of the Company and Mr. Jamil Ahmed, Chief Financial Officer / Company Secretary of the Company.

6. Brief proceedings of the hearing of August 3, 2015 are as follows:

- i. The Respondents stated that they have already submitted their contentions before the Commission vide their letter of July 2, 2015;
- ii. The Respondents stated that the default of Section 218(1) of the Ordinance was not willful, as the Company is an unlisted public company and it has a very small number of shareholders and all of them knew about the new appointments in the Company;

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- iii. The Respondents also assured that if the Commission deems appropriate, the Company may disclose the same in writing as addendum to the Directors' Report for the year 2013;
- iv. Lastly, the Respondents, while requesting the Commission to take a lenient view, assured that an addendum to the Directors' Report for the years 2013 shall be issued under intimation to the Commission.

C. Issues

7. The Respondents were required to ensure compliance with the mandatory provisions of Section 218(1) of the Ordinance by furnishing an abstract together with the memorandum clearly stating the nature of the interests of the directors of the Company in the aforementioned appointments along with the Directors' Report made out and attached to the balance sheet as on December 31, 2013.

D. Summary of arguments and conclusions in respect of each issue

8. Through the written as well as verbal responses of the Respondents, it is quite evident that the directors of the Company have failed to furnish an abstract together with the memorandum clearly stating the nature of their interests in the appointments of Dr. Syed Arif Hussain as the Chief Executive Officer of the Company and Mr. Muhammad Irfan as the Company Secretary along with the Directors' Report made out and attached to the balance sheet as on December 31, 2013. Therefore, it is quite evident that the Company failed to comply with the provisions of Section 218(1) of the Ordinance.

9. On the other hand, it is worth noting that the Company is an unlisted public company, and that with a very limited number of shareholders, the argument seems to be logical and acceptable that all shareholders must have been aware of the aforementioned appointments and the Directors' interests therein. However, the law in its plain reading requires that an abstract of the terms of the appointment or contract or variation together with a memorandum clearly specifying the nature of concern or interest of the Directors in such appointments or contracts or variation, be attached to the Directors' Report made out in pursuance of Section 236 of the Ordinance, but the Directors of the Company have failed to comply with the said provision for which the penalty as provided under Section 218(6) of the Ordinance can be imposed.

E. Overall conclusion

10. 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 218(1) of the Ordinance is established. Therefore, the fine as provided under Section 218(6) of the Ordinance can be imposed onto the Respondents i.e. the Chief Executive and Directors of the Company. However, I take a lenient view given the fact that the Company is an unlisted public company and has a very limited number of shareholders who must be aware of the Directors' interest in the aforesaid appointments, and that the default of Section 218(1) of the Ordinance has to be willful for the Commission to impose any penalty as provided under Section 218(6) of the Ordinance.

F. Penalties and directions

11. In exercise of the power conferred on me under Section 218(6) of the Ordinance, I take a lenient view given the fact that the Company is an unlisted public company and has a very limited number of shareholders who must be aware of the Directors' interest in the aforesaid appointments, and that the default of Section 218(1) of the Ordinance has to be willful for the Commission to impose any penalty as provided under Section 218(6) of the Ordinance. The Respondents are further directed to ensure full compliance with the provisions of Section 218 of the Ordinance in future.

12. In case any willful misstatement is subsequently found in the submissions made by the Respondents, the Commission shall initiate proceedings under Section 492 of the Ordinance.

13. 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

