

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ

Mr. Justice Jawad Akbar Sarwana

C.P. No. D-8903 of 2018

M/s Crescent Star Insurance Ltd.

Versus

Securities & Exchange Commission of Pakistan & another

Date of Hearing: 23.09.2024 and 07.10.2024

Petitioner: Through Mr. Zeeshan Abdullah along with
Mr. Adnan Abdullah Advocates.

Respondents: Through Mr. Manzar Bashir Advocate.

Federation of Pakistan on Court notice: Through Ms. Wajiha Mehdi, Deputy Attorney
General.

J U D G M E N T

Muhammad Shafi Siddiqui, CJ.- This petition primarily impugns a direction of Security & Exchange Commission of Pakistan (Commission) dated 06.11.2018 whereby purportedly “directions” were issued against the petitioner company under section 41(4) of Insurance Ordinance (“Ordinance”), 2000. Its effect is to maintain Reinsurance Treaty Arrangements in accordance with Section 11(1)(d) and Section 41 of the ibid Ordinance and to submit details in respect of different Treaty Reinsurance/Retakaful arrangements as required under Rule 17 of the Insurance Rules, 2017.

2. We have heard learned counsel for the parties and perused material available on record.

3. M/s Crescent Star Insurance Company Limited (petitioner company) is registered with Securities & Exchange Commission of Pakistan (Commission) under the Ordinance, 2000 to carry on the business of non-life insurance in Pakistan. The question arises out of Section 11(1) of the ibid Ordinance 2000 and that is a registered insurer i.e. the company is

required to comply with the conditions disclosed and identified in Section 11(1) of Ordinance 2000, the relevant of which is reproduced as under:

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

(a) ...

(b) ...

(c) ...

(d) *the provisions of this Ordinance relating to the obtaining of reinsurance arrangements are complied with;*

(e) ...

4. Presumably such arrangements of the petitioner were existing with M/s Al-Wasl Insurance Brokers Limited (Broker). However, the Broker informed the Commission that the Reinsurance Contracts with the petitioner were terminated with effect from inception on 01.01.2018. The Broker stated that Reinsurers take no liability of any claim arising out of above Treaty Contracts. On account of such disconnect with the Reinsurer, the Commission sought comments from Pakistan Reinsurance Company Limited (PRCL) regarding participation in the Company's Reinsurance Arrangements. The PRCL vide its letter dated 14.09.2019 responded that the Petition Company had no Reinsurance Arrangement.

5. The respondent Commission provided an opportunity of hearing the petitioner to decide the matter in exercise of powers enshrined under section 41(4) of Ordinance 2000. After hearing the petitioner, the impugned "Direction" was passed/given whereby Company/petitioner was directed under section 41(4) of Ordinance 2000 to effect and maintain Treaty Arrangement in accordance with Section 11(1)(d) and 41 of Ordinance 2000 and submit details in respect of each Treaty Reinsurance/Retakaful Arrangements required under Rule 17 of the Rules 2017. This was impugned by the petitioner before Appellate Bench of Security & Exchange Commission of Pakistan, which appeal was declined to be registered in terms of Section 33 of Securities & Exchange Commission of Pakistan Act, 1997 as not being an appealable order vide order/letter dated 07.12.2018 issued by SECP Appellate Bench Registry. It was clarified

in the said order/letter of the Commission that it was only an administrative “direction” which falls within the proviso to Section 33 of SECP Act hence not appealable.

6. Although both the learned counsel have attempted to argue the case on its own merit as far as prerequisites of Treaty or Facultative contracts for reinsurance are concerned however one of the issue is whether the remedy available under section 33 of SECP Act, 1997 i.e. of an appeal before the Appellate Bench of SECP existed or not, and as a corollary, whether the Commissioner (Insurance) Show Cause Notice dated 11.12.2018 which includes the Direction dated 06.11.2018 can be sustained given that the Director (Insurance) has already given hearing to the petitioner company and issued the impugned Direction. While we intend to decide the above issues in the first instance, it may, however be clarified that such questions and/or the order/letter dated 07.12.2018 declining the appeal to be entertained is not challenged in this petition.

7. There is no cavil that the impugned “Direction” of 06.11.2018 was an outcome of a notice followed by hearing before the Director (Insurance) whereby the Commission directed the Insurer to make such modifications in Reinsurance Arrangement, as desired and specified therein. The direction under section 41(4) is in respect of a purported failure to maintain Treaty Reinsurance Arrangement as required under section 11(1)(d) and Section 41 of the Ordinance 2000 read with Rule 17 of Rules 2017. The direction under section 41(4) enabled the Commission to direct the Insurer to modify Reinsurance Arrangement to the extent of effecting and maintaining the Reinsurance Treaty Arrangements as in the wisdom of the Commission it was deemed necessary.

8. Under the notification under S.R.O. 750(I)/2017 dated 02.08.2017, issued by the SECP under Sections 10 and 20(4)(o) of SECP Act, 1997, the powers and functions of SECP’s Director (Insurance Division) are limited to directing insurers to modify reinsurance arrangements only. He could not compel the petitioner company to enter into new reinsurance contracts

from January to August 2018 or address any defaults regarding compliance with the Ordinance. This is perhaps why the Director (Insurance Division) avoided giving directions to the petitioner company to cease facultative reinsurance arrangements even though the petitioner company had submitted that as per its Board of Director's resolution in August 2018, it had presumably commenced facultative rearrangements. Instead, the Direction of 16.11.2018 kept itself limited to directions to effect and maintain treaty reinsurance only. The Director (Insurance) directions of 16.11.2018 were without teeth, directing the petitioner company to submit details of the treaty reinsurance for the period 01.01.2018 onwards. The direction neither threatened nor imposed any penal consequences for the petitioner for its non-compliance nor directed the petitioner to cease its facultative contract. We find that the direction dated 06.11.2018 was administrative and limited in its scope treating the termination of the treaty reinsurance arrangement by Al Wasl Brokers Limited, as a "modification" of the treaty reinsurance contracts for the period 01.01.2018 to 31.12.2018 for 1) Whole Account Excess of Loss Treaty, and 2) Motor Excess of Loss Treaty through Al Wasl Brokers Limited.

9. As per the notification no. S.R.O. 750(I)/2017 dated 02.08.2017, the Commissioner (Insurance) alone was empowered to take action to compel the petitioner to cease to enter into new contracts of reinsurances, including directing the petitioner company not to abandon/walk away from the treaty arrangements and/or to cease facultative reinsurance arrangements. In view of the above, we further find that the Commissioner (Insurance) is duly empowered to issue the show-cause notice dated 11.12.2018, which will require a holistic review by him of the entire dispute between the parties touching upon various aspects of Sections 11(1)(d), 41, 63, and 156 of the Insurance Ordinance, 2000 and Rule 17 of the Insurance Rules, 2017. This will involve an examination of the compliance of the *ibid* Ordinance on the part of the petitioner company and its consequences, i.e. imposing penalties, etc., while also determining

whether or not the petitioner may be compelled to continue its treaty contracts; as well as, potentially whether or not the petitioner can be directed to cease its facultative contracts. At this stage we are not inclined to respond to the debate between the parties as set out in the petition and commenting on it as it may prejudice the case of either parties before the Commissioner (Insurance).

10. We deem it appropriate to dispose of this petition directing the Commissioner (Insurance) to decide the matter de novo. The Commissioner (Insurance) must give a full opportunity of hearing to the petitioner company as a de novo proceeding independent of the hearing given during the directions of the Director (Insurance Division), as the scope of the show cause notice proceedings includes fresh sections that were not part of the proceedings before. At this point, the petitioner company has already filed its complete defence before the Commissioner (Insurance) in response to the show cause notice dated 11.12.2018, and the matter is ripe for hearing. Such hearing is to be concluded by the Commissioner (Insurance) within 90 days from the date of this judgment without being influenced by impugned decision dated 06.11.2018 and our observations stated herein.

11. Petition, along with pending application, stands disposed of in the above terms.

Dated: 31.10.2024

Chief Justice

Judge