

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of decision : 23.3.2018

Misc. Application No.3 of 2018
And
IRDAI Appeal No.4 of 2018

E-Meditek Insurance TPA Ltd.
577, Udyog Vihar, Phase-V, Gurgaon,
Haryana 122016. Appellant

Versus

Insurance Regulatory and Development Authority of India
Survey No.115/1 Financial District,
Nankramguda, Hyderabad – 500 032. ... Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Ankit Lohia, Ms. Sanaya Dadachanji, Mr. Rohit Lalwani, Ms. Aparna Pujar, Advocates i/b. Manilal Kher Ambalal & Co. for the Appellant.



Mr. Shrinivas Bhawe, Advocate with Ms. Sunayana Kashid and Mr. Gaurav Madhav, Advocates i/b. Bhawe & Co. for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Justice J. P. Devadhar (Oral)

1. Appellant is aggrieved by the ex-parte order passed by Member (Non-Life) of Insurance Regulatory and Development Authority of India ('IRDAI' for short) on 20th March, 2018. By the said order certificate of registration granted to the appellant has been suspended under Regulation 16(3) of the Insurance Regulatory and Development Authority of India (Third Party Administrators – Health Services) Regulations, 2016 (2016

Regulations) without notice and with immediate effect from 20th March, 2018 until further orders.

2. Appellant is a licensed Third Party Administrator (TPA) under the 2016 Regulations.

3. On receipt of a whistleblower complaint on 4th September, 2017, officials of IRDAI visited the office of the appellant between 13th to 17th November, 2017 and inspected the books of accounts. After analyzing the books of account the Member (Non-Life) found serious violations committed by the appellant and accordingly by the impugned order dated 20th March, 2018 suspended certificate of registration granted to the appellant by recording a finding that permitting the appellant to continue their activities as TPA shall have adverse impact on the policyholders and insurers.



4. Basic argument advanced on behalf of the appellant is that under Regulation 16(3) certificate of registration can be suspended without notice only if the four conditions set out therein are fulfilled. Regulation 16(3) to the extent relevant reads thus:-

“16.(3) However, the Authority may issue an order revoking or suspending the Certificate of Registration without notice if the TPA;

- a. violates any one or more of the requirements under the Code of Conduct mentioned in Regulation 23 of these regulations;
- b. is found to be guilty of fraud or is convicted of a criminal offence;
- c. commits such defaults which require immediate action in the opinion of the Authority;
- d. has not commenced business within twelve months from the date of Certificate of Registration;”

5. In the present case, it is contended that none of the above four conditions are satisfied and therefore the impugned order deserves to be stayed forthwith.

6. On perusal of the impugned order it is seen that the officials of IRDAI inspected the books of account between 13th to 17th November, 2017 whereas, the ex-parte order is passed after four months delay on 20th March, 2018. Very fact that IRDAI could wait for four months after conducting inspection clearly shows that immediate action as contemplated under Regulation 16(3) of the 2016 Regulations was not warranted in the present case.

7. Appellants have placed before us financial year wise lives and claims for the years 2014-15, 2015-16 and 2016-17 as follows:

FINANCIAL YEAR WISE LIVES AND CLAIMS

FINANCIAL YEAR	2014-2015	2015-2016	2016-2017
Lives Services	41,04,080	47,05,426	49,72,047
Claims Intimated/ Reopen (Cashless + Reimbursement)	4,84,668	6,10,672	3,37,816
Claim Settled	3,67,636	5,34,220	3,06,045
% of Claims Settled	75.853%	87.48%	90.59%
Claims Repudiated/ Rejected/ Closed	89,714	96,763	54,749
Claims Outstanding (as on respective year ends)	61,825	41,604	18,626



8. From the aforesaid facts it is evident that as against the 61,825 claims pending during the year 2014-15 the outstanding claim has come down to 18,626 in the year 2016-17.

9. The investigation is initiated by IRDAI against the appellant on the basis of a complaint filed by the whistleblower on 4th September, 2017. It is relevant to note that after receiving the complaint on 4th September, 2017

IRDAI has commenced inspection belatedly on 13th November, 2017 and passed the impugned order on 20th March, 2018 without giving an opportunity of hearing to the appellant.

10. It is the case of the appellant that in the present case the whistleblower would be none other than Mr. Sunil Sharma who was Vice President (Claims) against whom and several others the appellant has filed criminal case for defrauding the company even before the inspection by IRDAI commenced. In these circumstances, assuming that there are some inconsistencies/irregularities noticed in the accounts maintained by the appellant during the course of inspection the proper course for IRDAI is to give an opportunity of hearing and pass appropriate order thereon.

11. In the impugned order (page 26) Member (Non-Life) IRDAI has stated that inspection team vide email dated 16.11.2017 had called for certain clarification from the appellant but the same were not given by the appellant. Counsel for the appellant brought to our notice that email was infact sent on 17th November, 2017 and concerned official had acknowledged the same. Finding is recorded in the impugned order that the appellant had not cooperated during the course of investigation and furnished the particulars belatedly. However, from the table set out in the impugned order at page 53 of the Memo of Appeal it is seen that the delay cannot be said to be inordinate delay in submitting the information.



12. Counsel for IRDAI brought to our notice that during the course of inspection it was found that some of the hospitals empanelled by the appellant are fake hospitals. Counsel for appellant submitted that the said hospitals have not been empanelled since October, 2014. Thus, the appellant has explanation for every violation alleged in the ex-parte order. Whether to accept that explanation or not is left to IRDAI.

13. In these circumstances, we stay the operation of the impugned order forthwith with a direction to the Member (Non-Life) to give an opportunity of hearing to the appellant as expeditiously as possible and pass such order as he deems fit.

14. Once the impugned order is stayed nothing survives in the appeal. Even the Misc. Application becomes infructuous.

15. It is made clear that pending further investigation it would be open to the Member (Non-Life) to pass such order as he deems fit after hearing the appellant.

16. Appeal as also the Misc. Application are disposed of in the aforesaid terms with no order as to costs.



Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

23.3.2018

Prepared and compared by RHN
RHN

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**SECTION OFFICER - COURT OFFICER
SECURITIES APPELLATE TRIBUNAL
MUMBAI**