



No: IRDA/LIFE/ORD/MISC/188/11/2018

Order in the matter of
M/s. Exide Life Insurance Company Ltd.

Based on the

- (i) Show Cause Notice (hereinafter referred to as "SCN") Dated 5th April, 2016 issued by the Adjudicating Officer appointed by the Authority.
- (ii) Reply of M/s Exide Life Insurance Company Limited, erstwhile ING Vysya Life Insurance Co. Ltd.,(hereinafter referred to as "Exide Life") dated 5th May, 2016 to the SCN.
- (iii) Submissions made by Exide Life before the Adjudicating Officer during Personal Hearing on 17th June, 2016 at the office of Insurance Regulatory and Development Authority of India, 7th Floor, United India Building, Basheerbagh, Hyderabad.
- (iv) Inquiry Report of Adjudication Officer dated 30/10/2017,
- (v) Reply Letter dated November 10, 2017 of Exide Life to the Inquiry Report.
- (vi) Authority's letter dated July 30, 2018 to Exide Life intimating invoking Section 102 of Insurance Act 1938 and giving them an opportunity of personal hearing in the matter
- (vii) The Submissions made by Exide Life in its letter dated 14th August, 2018 and during the Personal Hearing held on 30th August, 2018 at 3.30 PM chaired by Dr. Subhash Chandra Khuntia, Chairman, IRDAI, at the office of Insurance Regulatory and Development Authority of India, Financial District, Nanakramguda, Hyderabad.

Background:

1. On examination of the data submitted by Exide Life with the Authority through its letter No. EXL/Regl/42/2014-15 dated 21st May, 2014 in accordance with Circular No. IRDA/F&A/CIR/DATA/066/03/2012 dated 2nd March, 2012, it was observed that during the FY 2013-14 Exide Life had paid Rs.24 crores towards the "Infrastructure facility charges" and Rs. 6.46 crores under the heads such as Auditorium Charges, Car parking, Rent for Corporate office and utility charges for Corporate Office, etc (totalling Rs. 30.46 crores) to its Corporate Agent M/s. ING Vysya Bank Ltd., which is now merged with Kotak Mahindra Bank (hereinafter referred to as "Corporate Agent/Bank") in violation of Clause 21 of the Guidelines on Licensing of Corporate Agents dated 14/7/2005 (hereinafter referred to as "Corporate Agency Guidelines") and Section 40 A of Insurance Act, 1938 as the same

exceeded the limit of expenditure on commission stipulated under Section 40A of the Insurance Act, 1938.

2. As regards possible violation of Section 40 of Insurance Act, the matter was referred to Adjudicating Officer appointed by the Authority as per the provisions of Section 105 (C) of Insurance Act 1938 as amended from time to time. The Adjudicating Officer issued a Show Cause Notice through letter No. IRDAI/ADJ/ExideLife/001/2016-17/OTW/441 dated 5th April, 2016 under Rule 4 of the Insurance (Procedure for Holding Inquiry by Adjudicating Officer) Rules, 2016 (hereinafter referred to as "AO Rules") to Exide Life.

3. Exide Life vide its letter dated 5th May, 2016 submitted its response to the SCN and as per the request of Exide Life, the Adjudicating Officer granted a personal hearing in the matter on 17th June, 2016.

4. The Adjudicating Officer submitted the inquiry report alongwith recommendations to the Authority on 30/10/2017. The report was forwarded to Exide Life by the Authority on 9th November, 2017. An opportunity for personal hearing by the Chairman, IRDAI was also offered. Exide Life vide its letter dated 10th November, 2017 stated that the Adjudicating Officer has observed in his report that there is no loss suffered by the Policyholders, hence requested to condone the deviation and stated that they have no further submission to make on the report of Adjudicating Officer. The Insurer did not avail of the opportunity of personal hearing.

5. The Authority issued another letter dated July 30, 2018 mentioning all the previous violations on the payouts to Corporate Agents by Exide Life intimating that invoking provisions of Section 102 of Insurance Act, 1938 is contemplated as penalty provisions of Section 40 (3) of Insurance Act are without prejudice to the provisions of Section 102 of the Insurance Act and allowed another opportunity of personal hearing in the matter.

6. Exide Life vide its letter dated 14th August, 2018 submitted its response to the letter dated July 30, 2018 and also opted for Personal hearing, which was held by the undersigned on 30th August, 2018 at IRDAI office, Hyderabad. Mr. Kshitij Jain, CEO & MD, Mr. Anil Kumar C, CFO and Ms. Arpita Sen, CCO of Exide Life were present in the hearing. On behalf of the Authority, Mr. V. Jayanth Kumar, CGM (Life), Mr. G.R. Surya Kumar, GM (EA to Chairman), Mr. Gautam Kumar, DGM (Life- Coordination), Ms. B. Padmaja, DGM (F&A-Life) and Ms. B. Aruna, Manager (Life-RA) were also present.

7. The submissions made by Exide Life in its letter dated 14th August, 2018 and during the personal hearing on 30th August, 2018 were taken into account.



8. The charges mentioned in the SCN 5th April, 2016, recommendations of Adjudication Officer, submissions of Exide Life to the SCN, to the letter dated July 30, 2018 of the Authority and the submissions made during the personal hearing held on August 30, 2018 are as follows:

(i) Charges under SCN dated 5th April, 2016 by the Adjudication Officer

Under the provisions of the Circular No. IRDA/F&I/CIR/F&A/066/03/2012 dated 2nd March, 2012, Exide Life submitted the details on the payments made to Agents and intermediaries under Section 31 B of the Insurance Act, 1938 for the financial year 2013-14 vide its letter dated 21st May, 2014. On examining the information submitted by Exide Life, it was observed that an amount of Rs. 30.46 crore was paid by Exide Life to the Corporate Agent ING Vysya Bank during the financial year 2013-14 towards “infrastructure facility charges” in addition to the commission.

(a) That the payment of Rs.30.46 crore towards the “infrastructure facility charges” by Exide Life to the Corporate Agent is in gross violation of Clause 21 of the Guidelines on Licensing of Corporate Agents, 2005.

(b) That the payment of Rs. 30.46 crore by the Exide Life to the Corporate Agent is in gross violation of Section 40 A of the Insurance Act, 1938 as the same exceeded the limit of expenditure on commission stipulated by Section 40 A of the Insurance Act, 1938.

(ii) Provisions of Clause 21 of Corporate Agency Guidelines and Section 40 A of Insurance Act, 1938:

Clause 21 of Corporate Agency Guidelines:

“...Insurer shall not pay any amount other than the permitted agency commission, whether as administration charge or reimbursement of expenses or profit commission or in any other form to the corporate agent. This does not prevent the Insurer from sharing expenses of co-branded sales literature with the Corporate Agent. Such expenses, however, should be reasonable and should not be in any way be linked with the success in sale or premium earned by the Corporate Agent...”.

Section 40 A (1) of the Insurance Act, 1938:

Prior to the Insurance Laws (Amendment) Act, 2015, (the period for which the present SCN is applicable), the Section 40A prescribes ceilings on expenditure on commission or remuneration in any form to be payable by Insurers and receivable by Insurance Agents.

SCN

(iii) Submissions of Exide Life to the SCN:

- (a) The payment of Rs. 30.46 crore was not at all related to the Corporate Agency Tie-up with the ING Vysya Bank (now Kotak Bank) and therefore does not come under the purview of Clause 21 of Corporate Agency Guidelines.
- (b) Total payout to the Corporate Agent was Rs. 73.72 crores in the FY 2013-14. Out of this, Rs. 43.26 crores pertain to commission. Out of the balance of Rs. 30.46 crores, an amount of Rs. 24 crore is towards infrastructure facilities charges and Rs. 6.46 crores were towards Auditorium charges, car parking, rent for Corporate Office, utility charges for corporate office, etc., which were independent arrangements with the Corporate Agent as landlord and have no linkage to solicitation of insurance business undertaken by the Bank under Corporate Agency agreement. Therefore the same cannot be categorised as commission and accordingly may kindly not be considered in violation of Section 40 A of Insurance Act.

(iv) Recommendation of Adjudicating Officer

While examining whether the payment of Infrastructure facility charges, over and above the commission, by Exide Life to the Corporate Agent is in compliance with the provisions of Section 40 A of Insurance Act, 1938 and Clause 21 of Corporate Agency Guidelines, the Adjudicating Officer mentioned that Clause 21 categorically prohibits Insurer to pay any amount other than the permitted agency commission, whether as administration charges or reimbursement of expenses or profit commission or in any other form the Corporate Agent, therefore, no other charges are permitted in the Corporate Agency Guidelines and recommended the following:

“

- (i) Under 105D of the Insurance Act, 1938, while recommending the quantum of monetary penalty under Section 105C of the Insurance Act, 1938, Adjudicating Officer shall have due regard to the following factors, namely:
 - (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default
 - (b) the amount of loss caused to the policyholders as a result of the default and
 - (c) the repetitive nature of default
- (ii) It is noted that the Bank, being the promoter of the Insurer, provided the infrastructure facility as the Bank has more pan India presence compared with the Insurer. There is no allegation that arm's length distance was not maintained for the agreement entered by both the parties. Therefore, no disproportionate gain to either party is observed. As there was no



disproportionate gain, the loss to the policyholders as a result of the default cannot be ascertained.

(iii) With regard to repetitive nature of the default,

(a) Insurer vide order dated 30/7/2012 was penalized for Rs. 10 lakhs for the FY 2009-10 and 2010-11 for reimbursement of marketing support cost for advertisements to erstwhile ING Vysya Bank. It was noted that the above amount was over and above the eligible commission.

(b) Insurer vide order dated 11/12/2013 was penalized for Rs. 1,00,000/- (Rs. one lakh) for the payout made, over and above the permissible limits, to its Corporate Agents.

(c) Insurer has been violating the Sec. 31 B in spite of penalized for the same violation and the default fits into the repetitive nature of default.

(d) Considering the above, I recommend a penalty on the Insurer for Rs. One lakh under Section 105C read with Section 40 C (3) of the Insurance Act, 1938. ”

(v) **Submissions of Exide Life in its letter dated 14th August, 2018 and during the personal hearing held on 30/8/2018:**

(a) The payments being in the nature of infrastructure facility charges were incurred in the normal course of business and executed under an unrelated independent contract and do not attract the provisions of Clause 21 of the IRDAI Corporate Agency Guidelines of 2005.

(b) The said payments cannot be categorised as commission and accordingly this is not in violation of Clause 21 of erstwhile IRDAI Corporate Agency Guidelines 2005 and/or Section 40 A of the Insurance Act, 1938.

(c) The payouts towards infrastructure facilities were on a fixed cost basis as per Infrastructure Agreement with ING Vysya Bank dated May 25, 2012 where the employees of Exide Life would be using the infrastructure of the Bank on a pan India basis at fixed cost of INR 50,000/- per branch per month. This arrangement was viewed to be commercially less expensive than entering into multiple individual agreements across India.

(d) The payouts pertain to the periods of 2012-13 and 2013-14 and these are under a different agreement for infrastructure facilities and are not in the nature of repetitive violation. Now there is no tie up of Corporate Agency with this Bank (now Kotak Bank) and in 2014 the agreement was cancelled.



(9) Analysis of the Response:

As per Clause 21 of Corporate Agency Guidelines, Insurer shall not pay any amount other than the permitted agency commission, whether as administration charge or reimbursement of expenses or profit commission or in any other form to the corporate agent, except for reasonable expenses towards co-branding sales literature.

With regard to the submission that the payouts are not repetitive it is observed that the agreement entered between the Bank and Exide Life dated March 27, 2012 is for 'Facilities and Cost' and the Annexure A of the Agreement shows the broad nature of the facilities that would be provided by the Bank in agreement with Exide Life. The payouts are made for the facility to assist "attending to concerns or queries of the policyholders as per the service standards and norms prescribed by the Insurer (Exide Life) from time to time and/or redirect such concerns or queries to Insurer" as stated in the said agreement and do not pertain only for infrastructure costs as claimed by Exide Life. It is observed in this regard that the Bank as Corporate Agent of the Life Insurer has responsibility to attend to the queries from its policyholders without requiring any payouts from the Life Insurer. The Agreement also contains the cost towards display of Exide Life advertisements on the Bank branch buildings which shall not exceed Rs. 50,000/- per the Bank branch location, unless otherwise mutually agreed between the parties. It is observed that the Bank as Corporate Agent is one of the beneficiaries of these advertisements. Further the Bank is not in the business of providing infrastructure facilities. Thus, the submissions that these contracts and payouts are not related to the Corporate Agent tie-up are not accepted and it is held that the payouts in question are in violation of Clause 21 of Corporate Agency Guidelines.

Further the penalties already levied vide order dated 30/07/2012 were for similar violations i.e. reimbursements made to the ING Vysya Bank in financial years 2009-10 and 2010-11 for advertisements primarily aimed at building the brand image of the company and towards setting up the sales kiosks, organizing the road shows and customer awareness programs at different Bank locations.

Exide Life was penalized for an amount of Rs. One lakh for the payouts made over and above the permissible limits to Corporate Agents/Brokers under the heads marketing research activities during the financial year 2011-12 vide Authority's Order No. IRDA/F&I/ORD/464.1/9/F&A/RDL-31B/2011-12/181 dated 11/12/2013 based on the review of reports filed under Circular dated 2/3/2012.

Exide Life was also penalized for an amount of Rs. Two lakhs vide Order No. IRDA/F&A/ORD/MISC/185/11/2018 dated 14/11/2018 for the payouts to ING Vysya Bank under the head of Infrastructure facility charges during the FY 2012-13.

From the above it is clear that the violation of Clause 21 of IRDAI Corporate Agency Guidelines, 2005 by the Exide Life is repetitive in nature. It is further seen that these large payouts are being made repeatedly while Exide Life has not been able to comply with the expenses of management limits statutorily mandated in the respective years.

Thus it is held that payout of Rs 24 Crs made by Exide Life towards the "Infrastructure facility charges" to its Corporate Agent during the FY 2013-14 is in violation of the said provisions of Clause 21 of Corporate Agency Guidelines.

The provisions of Section 105C read with Section 40 (3) of the Insurance Act are without prejudice to the provisions of Section 102 of the Insurance Act.


(10) **Decision:**

In view of the above, in exercise of the powers conferred under Section 102 (b) of Insurance Act, 1938, a penalty of Rs. 3 lakhs (Rs. three lakhs) is hereby imposed for repeatedly violating during 2013-14 the provisions of Clause 21 of Corporate Agency Guidelines read with Section 40 A of Insurance Act, 1938. Further, Exide Life is directed to place this Order before the next meeting of the Audit Committee of their Board and the next Board Meeting of Exide Life so that the Board can take note of the violation and to take preventive action to avoid such violations in future. The Authority may be provided with copies of the minutes of those meetings.

11. The penalty amount of Rs. 3 lakhs (Rs. Three lakhs only) shall be remitted by Exide Life by debiting the Shareholders' Account within a period of 45 days from the date of issuance of this Order through NEFT/RTGS. An intimation of remittance may be sent to Mr. V. Jayanth Kumar, Chief General Manager (Life) at the Insurance Regulatory and Development Authority of India, Survey No.115/1, Financial District, Nanakramguda, Hyderabad 500032, email id life@irda.gov.in.

12. If Exide Life feels aggrieved by any of the decisions in this Order, an appeal may be preferred to the Securities Appellate Tribunal as per Section 110 of the Insurance Act, 1938.

Place : Hyderabad
Date : 15th November, 2018


(Dr. Subhash C. Khuntia)
CHAIRMAN