



IRDAI/INT/ORD/MISC/170/06/2021

**ORDER of Insurance Regulatory and Development Authority of India in the matter of M/s. Salasar Services Insurance Brokers Pvt. Ltd. under Regulation 30 read with Reg. 48 of IRDAI (Insurance Brokers) Regulations, 2018 read with Sec 42E of Insurance Act, 1938**

**Based on the notice to show cause, issued to M/s. Salasar Services Insurance Brokers Pvt. Ltd., vide letter Ref no: IRDAI/INT/Salasar/SCN/05/20 dated 14.05.2020 and submissions made by the Broker in writing vide their letter dated 03.06.2020.**

The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") had come across an information brochure on Covid-19 (related to losses due to business interruption under an insurance policy) issued by M/s. Salasar Services Insurance Brokers Pvt. Ltd., (hereinafter referred to as "the Broker") wherein it was observed that the Broker is in violation of certain provisions of IRDAI (Insurance Brokers) Regulations, 2018 (hereinafter called the "Brokers Regulations"), related to the code of conduct. The Authority sought explanations from the Broker in regards to the same, vide email dated 18.04.2020. The Broker responded to the said email vide their letter dated 23.04.2020. Upon scrutiny of the above mentioned reply letter of the Broker, it was observed that the Broker has allegedly violated the provisions related to code of conduct, in terms of Clause 1, Clause 2 and Clause 10 given in Schedule I — Form H — Reg. 30 of the Brokers Regulations.

1. A Show Cause Notice (hereinafter referred as "SCN") dated 14.05.2020 on the observed violations was issued to the Broker and the Broker vide their letter dated 03.06.2020 made their submissions in writing on the charges raised in the SCN. The Broker, vide the said letter, had denied the charges made in the SCN and expressed that they require personal hearing in the matter.

In view of the request, a personal hearing was granted by Member (Non-Life) and was held on 28.08.2020 through video conferencing. The following officials were present in the meeting:

On behalf of IRDAI

- Smt. T.L. Alamelu — Member (Distribution)
- Shri Randip Singh Jagpal — CGM (Intermediaries)
- Shri K. Srinivas — AGM (Broker's Department)
- Shri Indradeep Sah — AM (Broker's Department)

On behalf of Broker:

Mr. Arvind Khaitan, Principal Officer

Mr. Keshav Basu, Sr. Manager

2. The charges framed against the Broker in the SCN dated 14.05.2020, response of the Broker in their reply dated 03.06.2020, submissions made by the Broker during personal hearing on 28.08.2020 and the decision thereon are detailed below:

3. **Charge 1:**

**Violation of Clause 1 of Code of Conduct given in Schedule I - Form H of the Brokers Regulations, 2018**

**As per the above said clause, every insurance Broker shall follow recognised standards of professional conduct and discharge their functions in the interest of the clients of policyholders**

The Broker had issued information brochure advising their clients to lodge claims for loss of net profits and net charges due to business interruption under SFSP/ IAR/ Mega policies due to Covid-19 pandemic. It further stated that insurers, prima facie, may deny the liability which can be contested later on, on merit. The brochure further states that it is hopeful that IRDAI, GIC Re or Government of India may intervene in due course. The Broker, by giving wrong and misleading advice to the clients/policyholders acted in an unprofessional manner and did not discharge its functions in the interest of the policyholders.

**Submission of the Broker in their written reply:**

The Broker submitted their detailed response and the brief of the same is as follows:

- i. Claim will trigger in losses due to interruption of business (only if there is damage to the insured property).
- ii. The policies (SFSP/IAR/Mega) in vogue in India carry some specific condition/exclusions relevant to the current situation (Covid-19).
- iii. Conventional wisdom of insurers shall deny losses due to interruption of business as BI responds only to physical damages.
- iv. Losses are only paid if there is a physical damage to the insured property.
- v. The readers are thus apprised of the facts which shows Broker acted professionally.

- vi. Brought the Authority's attention to the terms mentioned in the brochure "in the interim", "on merit".
- vii. Unequivocally clarified that the BI losses under the current set of policies shall not be payable.
- viii. Nowhere stated that such claims shall be admitted/paid by insurers.
- ix. Made abundantly clear that insurer shall deny liability which can be contested on merit.
- x. Stated that Denial of liability can be contested on merits just like other claims.
- xi. Mentioned interpretation or empathetic application is a 'possibility' and nowhere said it's a certainty'.
- xii. All the provisions under code of Conduct - Form H are duly followed.
- xiii. Not harmed the interest of the customers.
- xiv. Not given wrong information but only discharged their functions and explained the likely scenarios.
- xv. Not forced clients to lodge claims and quoted any case law or precedent.
- xvi. Possibility of intervention by Authorities hoped as Extraordinary circumstances require extraordinary interventions.
- xvii. Deny violation of clause 1 of code of conduct.

Submission made by the Broker on the above charge during personal hearing:

During the personal hearing, the Broker reiterated the submission made by them in their reply dated 03.06.2020. The Broker further submitted that all of a sudden lockdown was implemented which impacted corporates/small cap/mid cap entities. Their business stopped fully or partially. There was no personal touch and contacts were through phone calls and emails and hence the brochure was issued. The Broker also submitted that their intention was not to mislead the clients.

**4. Charge 2:**

**Violation of clause 2 of Code of Conduct given in Schedule I - Form H of IRDAI (Insurance Brokers) Regulations, 2018 - Conduct in matters relating to client relationship which stipulates that:**

**2(a) Every insurance Broker shall conduct its dealing with clients with utmost good faith and integrity at all times.**

**2(b) Every insurance Broker shall act with care and diligence.**

The Broker, by advising its client to lodge claims for loss of net profits and

standing charges on account of Business Interruption due to Covid-19 in its information brochure, has not conducted its dealing with utmost good faith and integrity. The Broker has given wrong and misleading advice to lodge claims when they know such losses are not covered and gave false hopes to clients. Hence they acted without due care and diligence.

**Submission of the Broker in their written reply:**

The Broker submitted their response in their written reply which in brief is as follows:

- i. Advised that clients could lodge claims based on our hope for constructive interpretation of the term physical damage and empathetic application of policy extension/add-ons in the larger interest of the country's economy.
- ii. Based on hope that there would be interventions given the enormity of the impact of Covid - 19 on our country (based on past and current experiences).
- iii. Neither made wrong declaration nor gave any false hope.
- iv. Deny violation of 2(a) & 2(b) of code of conduct.

**5. Charge 3:**

Violation of clause 10 of Code of Conduct given in Schedule I - Form H of IRDAI (Insurance Brokers) Regulations, 2018 - Conduct in matters relating to advertising which stipulates that every Broker shall conform to the relevant provisions of IRDA (Insurance Advertisement and Disclosure) Regulations, 2000, and:

10(a)-Ensure Statements are not misleading and extravagant.

10(g)-Ensure Advertisements are not framed to abuse the trust of the clients or exploit their lack of experience or knowledge.

10(h)-Ensure all descriptions, claims and comparisons , which relate to matters of objectively ascertainable fact shall be capable of substantiation.

By issuing such information brochure, the Broker has made statements which are misleading and extravagant, abuses the trust of the clients and their lack of experience and knowledge. The Broker's submission that the brochure is not misleading or un-reasonable are without any reasonable justification.

The submission of the Broker that "If, upon their disclosure, IRDAI deems appropriate to direct them its concerns, within reasonable time, they shall certainly obey the same", is not at all acceptable. The Broker cannot avoid his responsibility by a disclosure to the Authority and shift the onus to the Authority.

**Submission made by the Broker in their written reply:**

The Broker submitted their response in their written reply which is as follows:

- i. Information brochure under reference was a general purpose communication and does not qualify to be termed as an advertisement under clause 2(b) of the IRDA (Insurance Advertisement and Disclosure) Regulations, 2020 (amended up to May 2020). It does not constitute an advertisement and hence should not be part of SCN in first place.
- ii. Information brochure was representative of Principles & Practice of insurance, fully in alignment with current insurance eco-system.
- iii. Informed clients of all possible scenarios.
- iv. No reason to give misleading advice as they didn't stand to gain in any manner at all.
- v. Clause 10 in entirety does not apply to this brochure as it is not an advertisement.

**Submission made by the Broker during personal hearing on charge 2 & 3:**

The Broker reiterated their submission made in their written reply and further submitted as follows:

- i. The brochure was not circulated to anyone else but to their clients only and not sent to any insurers.
- ii. None of their clients have filed a claim.
- iii. Not taken any new clients on the basis of the brochure.
- iv. It is never our intention to mislead the clients and have no wrong intentions.
- v. It is not our intention to exploit the clients and Salasar will not mislead their clients.
- vi. The brochure was withdrawn immediately after receiving communication from the Authority.

## 6. **Decision:**

The charges 1, 2 and 3 are all emanating from the issuance of a Brochure by the Broker. Therefore, all charges are being dealt with together in a holistic manner.

The Broker's submission on the above charges are not acceptable on the following grounds:

- i. The Broker who is operating since 2003 is well aware that the Business Interruption (BI) policy in India covers losses under this policy only if the claim under Material Damage section is admissible. The Brochure clearly advises Salasar's clients, in the interim, to lodge the claim and also states that insurer prima facie may deny the claim which can be contested later. This statement may give a hope to the clients that the denial of claim can be successfully contested at a later date. This is a wrong and misleading advice and the Broker, being a professional should not issue such a misleading advice to their clients.
- ii. The Broker cannot absolve themselves for giving a wrong or misleading advice to their clients. The clients depend on the Broker for a professional advice and any wrong/misleading information/advice given to them by the Broker may have serious consequences. Hence, submissions by the Broker that "no client has filed a claim", "no new clients have been taken by the Broker" are not acceptable. The advice of the Broker to 'later contest the matter on merits' also has adverse financial consequences in the form of unnecessary litigation costs for the client and Insurer.

In view of the above, in terms of the powers vested with the Authority under Reg. 48 of the IRDAI (Insurance Brokers) Regulations, 2018 read with Sec 102(b) of the Insurance Act 1938, the Authority hereby imposes a monetary penalty of Rupee one lakh per day on the Broker for the violation period of 8 days which amounts to Rs. 8,00,000/- (Rupees Eight Lakhs only) from the date on which the brochure was introduced i.e. 13.04.2020 to the date when the brochure was withdrawn i.e. 20.04.2020.

As directed the penalty of Rs Eight Lakhs shall be remitted by the Broker within a period of 45 days from the date of this Order through NEFT/ RTGS (details for which will be communicated separately). An intimation may be sent to Mr Randip Singh Jagpal, Chief General Manager (Intermediaries) at the Insurance Regulatory and Development Authority of India, Sy. No. 115/1, Financial District, Nanakramguda, Gachibowli, Hyderabad 500 032.

The Broker has to place the Order in its next Board Meeting and submit copy of its Minutes of the discussion.

7. Further, if the Broker is not satisfied by the order of the Authority, an appeal may be preferred to the Securities Appellate Tribunal as per the provisions stipulated under Section 110 of the Insurance Act, 1938.

**Place: Hyderabad**  
**Date: 16.06.2021**

**Sd/-**  
**T.L. Alamelu**  
**Member (Non-Life)**