

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 12.02.2019**

**Date of Decision : 27.02.2019**

**IRDAI Appeal No. 3 of 2018**

Happy Insurance TPA Services Pvt. Ltd.  
7<sup>th</sup> Floor, Happy House,  
21, Camac Street,  
Kolkata – 700 016.

..... Appellant

Versus

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

..... Respondent

Mr. Chetan Kapadia, Advocate with Ms. Sabeena Mahadik  
and Mr. Pankaj Uttaradhi, Advocates i/b Vishesha Law  
Services for the Appellant.

Mr. Shrinivas Bhave, Advocate with Ms. Sunayana Kashid,  
Advocate i/b Bhave & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Dr. C.K.G. Nair, Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellant was established on January 18, 2011 with  
the objective of carrying out business as a Third-Party  
Administrator (TPA) for health insurance. On November 19,

2012 the TPA license was issued to carry on business for a period of three years i.e. from November 19, 2012 to November 18, 2015. Before the expiry of the license period the appellant made an application on October 10, 2015 for renewal of its license. Subsequently, Insurance Regulatory and Development Authority of India (hereinafter referred to as “IRDAI”) sought clarifications vide its letter dated February 16, 2016 relating to the adequacy of working capital maintained by the Company during the financial year 2012-13, 2013-14, 2014-15, changes in the shareholding pattern, qualifications of the Directors, etc. Further, IRDAI vide its letter dated May 13, 2016 issued a Show Cause Notice (SCN) to the appellant to show cause as to why the application for renewal of registration should not be rejected on account of certain deficiency observed in the functioning of the appellant. Additional details were thereafter supplied by the appellant, and after giving an opportunity of personal hearing, an order dated July 19, 2016 was passed by the Authority rejecting the appellant’s application for renewal of its license.

The application was rejected basically on two grounds –

- (a) that two audited financial reports for the financial year 2015-16 were submitted in which the working capital details were different and therefore the audited financial reports was not accepted;

- (b) the working capital for the financial years 2012-13, 2013-14, 2014-15 was less than Rs. 1 crore and therefore was in violation of Regulation 3(4) of IRDA (TPA - Health Services) Regulations, 2001 which stipulated that at no point of time of its functioning the TPA shall have a working capital of less than Rs. 1 crore.

2. The appellant being aggrieved filed an appeal before this Tribunal which was dismissed by an order dated December 21, 2016. The appellant thereafter filed a Civil Appeal which was entertained and an interim order dated March 3, 2017 was passed directing the appellant to continue with the business that it had already entered into, but shall not enter into in any further transaction. By another order dated August 21, 2017, the Supreme Court observed that since the working capital of the appellant was over Rs. 1 crore the appellant would intimate the same to the respondent who will take a decision in this regard within three weeks thereafter. Thereafter, the Supreme Court passed a final order disposing of the appeal by judgment dated November 20, 2017. For facility, the judgment of the Supreme Court is extracted hereunder:-

*“Considering the totality of circumstances, we are only inclined to grant liberty to the appellant to submit a fresh proposal with regard to its financial status which shall be considered by the State authority in accordance with law.*

*We may clearly state that we have not expressed any opinion on the merits of the case. The proposal be submitted along with particulars as put forth before this Court within six weeks hence. A reasoned order shall be passed by the respondent within six weeks therefrom.*

*As an assertion has been made, the respondent-authority shall take note of the fact that in certain cases different orders have been made.*

*In any case, we leave it to the discretion of the respondent.*

*The appeal stands disposed of accordingly.”*

3. Pursuant to the direction of the Supreme Court, a fresh application was filed before the Authority seeking renewal of its license. The Authority by the impugned order dated January 22, 2018 rejected the application and reiterated its earlier order dated July 19, 2016 by which the renewal application was rejected. The appellant being aggrieved has filed the present appeal.

4. We have heard Shri Chetan Kapadia, learned Counsel for the appellant and Shri Shrinivas Bhave, learned Counsel for the IRDAI.

5. The learned Counsel for the appellant urged that there were no two different audit reports and in fact there was only one audit report with a corrigendum withdrawing the earlier

audit report providing adequate explanation which audit report was accepted by the Income Tax Authorities. Further, the working capital issue was not in violation of the guidelines but an error which the appellant undertook to cure the error / violation in the subsequent financial years. It was further submitted that in similar circumstances where a party could not fulfill the minimum requirement of working capital, a warning was given to another TPA and the license was renewed but in the case of the appellant, the Authorities have discriminated and wrongly rejected the application of the appellant for renewal of the license. Example was given in the case of Sri Gokulam Health Services TPA Pvt. Ltd. ('Gokulam' for short) the Authority had issued a warning and imposed a penalty after finding that the said TPA had less working capital in the financial years in question.

6. On the other hand, the learned Counsel for the respondent submitted that two financial audit reports were submitted for the same financial year in which there was deficiency in the working capital. It was alleged this created a doubt with regard to the correctness of the audit report and therefore the said audit reports were rejected. It was further submitted that there is no discrimination by the Authorities in

distinguishing the case of the appellant with that of Gokulam. It was contended that the facts of Gokulam was different and since they had not carried any business the renewal was granted after giving them a warning. It was further urged that Regulation 3(4) of the Regulations of 2001 required that the TPA at no point of time of its functioning shall have a working capital of less than Rs. 1 crore. It was urged that in the financial year 2012-13, 2013-14, 2014-15, the working capital was less than Rs. 1 crore and, therefore on the short point the renewal application could not be renewed.

7. Having heard the learned Counsel for the parties we are of the view that the Authority has taken a very technical approach in dealing with this situation. A perusal of the impugned order indicates that admittedly two financial reports for the financial year 2016-17 was filed. The first audit report was signed at 12.15 p.m. and the second audit report was signed at 1.00 p.m. on the same day i.e. on April 11, 2016. The auditors while signing the second audit report give an explanation. The corrigendum to the audit report dated April 11, 2016 for the financial year 2015-16 is extracted hereunder:-

*“Dear Sir,*

*Sub: Corrigendum to the Audit Report dated 11.04.2016 for the FY 2015-16*

*We have carried out the statutory audit of your company and issued our audit report as on 11.04.2016 at 12.15PM which was duly approved by the directors of your company. Further the director of the company had identified an inadvertent error in showing the balance of a party as net of amount received and paid which was need to be shown separately on 11.04.2016 at 1.00PM. The directors of company rectified the balance in financial statements and classified it properly and produce all the original financial statements and audit Report with an assurance that no photo copy of financial statements for the year ended 31.03.2016 has been made by them with a request to consider the same by us.*

*On receiving all the copy of financial statement including Auditor’s Report for the financial year ended 31.03.2016 signed by us in original and a firm assurance from the directors that no photo copy had been made by them, we had issued an audit report along with financial statement which was duly explained to us. We had issued this letter of corrigendum in the matter of audit report issued by us and this letter of corrigendum forms part of our audit report which we have attached with our audit report dated 11.04.2016 at 5.00PM. The Audit Report and financial statements sign by us on 11.04.2016 at 12.15 PM was withdrawn by us.”*

The aforesaid corrigendum and the audited financial reports were duly accepted by the Income Tax Authorities. Thus, when the Competent Authority has accepted the audit reports and the certificate has been issued by the Chartered Accountants giving explanation to the issuance of the second audit report it does not lie in the mouth of the Authority to doubt the correctness of the second audit report. The purpose

for considering the audit report for the financial year 2015-16 was in view of the direction of the Supreme Court dated August 21, 2017 in order to see whether the appellant is now fulfilling the requirement of having a minimum working capital of Rs. 1 crore. In the revised audit report the appellant had shown a working capital of more than Rs. 1 crore and consequently there was no reason to doubt the genuineness of this entry which has been certified by the Chartered Accountant and accepted by the Income Tax Authorities.

8. Regulation 3(4) of the Regulations of 2011 stipulates as under:-

***“3. Conditions of and Procedure for Licensing of TPA***

.....

.....

*4. At no point of time of its functioning the TPA shall have a working capital of less than Rs. 1 crore;”*

On the basis of the aforesaid Regulation the application for renewal has been rejected on the ground that the appellant had violated the aforesaid provision. In our opinion, the rejection of the renewal application on this ground does not appear to be justifiable. The requirement of having a minimum working capital of Rs. One crore under Regulation 3(4) of the Regulations of 2011 is for a purpose. The logic of having a

minimum capital of Rs. One crore is that the appellant should have sufficient working capital to meet its liabilities. The explanation to Regulation 3(4) states that the working capital means the difference between the aggregate of the current assets and current liabilities as on date of reckoning. Going by this definition it is apparently clear that the working capital indicated by the appellant in three financial years 2012-13, 2013-14, 2014-15 was far in surplus than the current liabilities of that financial year. Thus, even though the appellant may not have adhered to the provision of maintaining the minimum working capital as per Regulation 3(4) of the Regulations of 2001 it was not fatal in as much as the working capital was still in surplus and was over and above the liability indicated by the appellant. Consequently, rejecting the renewal application on this ground itself was not justifiable, particularly when the direction of the Supreme Court was to have a fresh look at the financial status of the appellant.

9. We also find that the Authorities have acted discriminately. In the case of Gokulam admittedly the working capital of the said TPA was less than the minimum requirement of the Regulation 3(4). In spite of not meeting its

requirement of Regulation 3(4), the Authorities renewed its license whereas in the instant case the appellant has been discriminated.

10. There is another aspect of the matter. Section 102 of the Insurance Act, 1938 provides imposition of penalty if any provisions of the Act or Regulation have been violated. For facility, the provision of Section 102 of the Insurance Act is extracted hereunder:-

***“Penalty for default in complying with, or act in contravention of, this Act.***

***102. If any person, who is required under this Act, or rules or regulations made there under,-***

- (a) to furnish any document, statement, account, return or report to the Authority, fails to furnish the same; or*
- (b) to comply with the directions, fails to comply with such directions;*
- (c) to maintain solvency margin, fails to maintain such solvency margin;*
- (d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties,*

*he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.”*

From the aforesaid, it is also clear that a penalty could have been imposed for not complying with the provisions of Regulation 3(4).

11. In the light of the aforesaid, we are of the opinion that the impugned order passed by IRDAI dated January 22, 2018 cannot be sustained and is quashed. The appeal is allowed. We further direct the IRDAI to renew the license as per their application dated October 10, 2015 within a period of four weeks from the date a certified copy of this order is produced.

Sd/-  
Justice Tarun Agarwala  
Presiding Officer

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

27.02.2019

Prepared and compared by:msb