



IRDA/INT/MISC/ORD/ 238/12/2019

ORDER of Insurance Regulatory and Development Authority of India under Section 102 of the Insurance Act, 1938 read with Section 14 of the IRDA Act, 1999 and Guidelines on Motor Insurance Service Provider dt 31.8.2017 and subsequent circulars in the matter of M/s Aditya Birla Insurance Brokers Ltd.

A. Background

1. The Insurance Regulatory and Development Authority of India (hereinafter referred to as "the Authority") issued Motor Insurance Service Provider guidelines (hereinafter referred to as MISP Guidelines) ref no. IRDA/ INT/ GDL/ MISP/ 202/ 08/ 2017 dated 31st August, 2017 after extensive consultations with the industry stakeholders. The objective of these guidelines was to recognise the role of automotive dealer in distributing and servicing motor insurance policies to have regulatory oversight over their activities connected to insurance. These guidelines were to come into force on 1st November, 2017. In the meantime, the Authority received requests for clarifications, extension of time, etc. The Authority vide its circular dated 1st November, 2017 clarified on various issues raised including one on creating a panel of insurance companies for selling motor insurance policies. The Authority vide another circular dated 1st November, 2017 informed the insurers and insurance intermediaries the launch of the MISP portal housed in IIB. The Authority in its communication of 17th October, 2017 advised all insurer and insurance intermediaries to follow the guidelines both in letter and spirit with regard to payment and receipt of fees, charges, by whatever name called.
2. Further clarification was issued by the Authority vide its circular dated 11th January, 2018 on creation of panel of insurers by insurance intermediary or MISP. The Authority categorically clarified that neither the insurance broker nor the MISP can create such a panel of insurers for selling motor insurance policies. It was also categorically stated in the same circular that no MISP or the insurance intermediary can enter into an agreement with an OEM which has an influence or bearing on the sale of motor insurance policies.
3. In the meantime, the Authority received complaints from policyholders against some of the MISP sponsored by insurers and insurance intermediaries for doing the following:
 - a) forcing motor customers to buy motor insurance policies of the insurers who are on their panel.
 - b) having uniform premium rates of different insurers for same motor vehicle

m

AB

- c) discriminating between insurance policyholder who has bought motor insurance from that motor dealer as against who has not bought from them
4. Some General Insurance Agents Association also complained to the Authority of the apparent conflict of interest in the role of MISP in selling insurance policies and servicing & repairing motor vehicles under the insurance policies sold by it, high claims ratio under the MISP channel, extra payments made to MISP by insurers, disparity of treatment to agents, etc.
5. The Authority also received complaints from insurers that insurance intermediaries have created panel of insurers which is in violation of Guidelines on Motor Insurance Service Providers.

B. Off-site inspection of Aditya Birla Insurance Brokers Ltd (ABIBL) by the Authority to check compliance of MISP Guidelines

6. Since one year has elapsed from the issuance of the MISP Guidelines, it was decided to call for information from select insurance intermediaries who are mainly involved in selling and servicing motor insurance policies through the motor dealers. Accordingly, the Authority vide letter ref no. IRDAI/ MISP/ UT-Brokers/ Aug 2018 dated 31st August, 2018 asked Aditya Birla Insurance Brokers Ltd (ABIBL) to furnish the following information:
 - a. Premium rates insurer-wise for different categories of vehicle insurance sold through MISP
 - b. Name of insurers empanelled by the insurance intermediary as on 31.7.2017 and 31.8.2018
 - c. Affidavit duly notarised by the PO confirming compliance of the following:
 1. Full compliance of MISP guidelines.
 2. Insurance programme implemented by the insurance intermediary is not linked to automobile sales by MISP either directly or indirectly
 3. OEM does not set targets or offer incentives to MISP in meeting sales targets.
7. ABIBL vide letter dated 10.9.2018 furnished the above information and also submitted a duly notarised affidavit confirming compliance of the MISP guidelines along-with four conditions namely current infrastructure, collection & remittance of premium, agreement of your company with MISP and operational requirements of separate bank account of MISP, grievance handling, etc.
8. Based on the submission made, the Authority sought explanation on non-compliance of clause 5(f) (panel of insurers)/ clause 10 & 11 (code of conduct - same premium rate for different insurers) vide letter dated 25th September, 2018. Further methodology of calculating discounts, process flow chart with regard to pre-sales including issuance of insurance policies and post sales servicing and sample copies of motor insurance policies were sought. In addition, ABIBL was directed to share copy of the guidelines, circulars and correspondence exchanged on MISP with the Chairman of the Board of OEM's (Hyundai, Volvo, TVS, Royal Enfield, Ashok Leyland, Eicher, TAFE, JCB, Vespa, Piaggio).



9. A reminder letter dated 18th October, 2018 was sent to expedite the submission of the necessary information. ABIBL furnished the above information vide letter dated 22nd October, 2018. As regards sharing the information with the Chairman of the Board of OEM, ABIBL submitted that it was in discussions with the OEM's.
10. On examining the submissions made by ABIBL vis-à-vis the information/ clarification sought, it is observed that ABIBL had not complied with the applicable provisions of the Authority's Regulations/ guidelines/ circulars. The Authority issued a Show Cause Notice to ABIBL vide its letter dated 27th May, 2019 laying out the charges for the violation of the MISP guidelines and the IRDAI (Insurance Brokers) Regulations, 2018. ABIBL vide their e-mail dated 4th June, 2019 sought extension of time till 1st July, 2019. ABIBL submitted its response vide letter dated 14th June, 2019 which was e-mailed on 28th June, 2019 and sought a personal hearing.
11. In view of the request of ABIBL, a personal hearing on the SCN was granted by Member (Distribution). The personal hearing was held on 19th August, 2019 in the office of the Authority in Hyderabad. The following officials were present during personal hearing:

On behalf of the Authority:

- Shri Sujay Banarji – Member (Distribution)
- Shri Randip Singh Jagpal –CGM (Intermediary)
- Shri K. Srinivas – AGM (Brokers)
- Shri Indradeep Sah – Assistant Manager (Brokers)
- Shri Manoranjan Prusti – Assistant (Brokers)

On behalf of Aditya Birla Insurance Brokers Ltd:

- Dr Sandeep Dadia - Principal Officer - ABIBL
- Shri Lalit Vermani - Chief Compliance Officer – Aditya Birla Capital Limited
- Shri Punit Pancholi - Compliance Officer – ABIBL
- Ms Priyanka Jain – Company Secretary - ABIBL
- Shri Ram Subhag Singh – Joint Vice President Compliance - Aditya Birla Capital Limited

12. Based on the charges levied against ABIBL in the SCN, response of ABIBL in its replies dated 10th September, 2018, 22nd October, 2018, 4th June, 2019 and 14th June, 2019, the submissions made by ABIBL during personal hearing on 19th August, 2019 and the reply given by ABIBL as a follow-up of the personal hearing, the decision of the Authority with respect to each of the charges is as follows:

I. Charge 1–

- A. - Violation of clause 5 (f) of the MISP guidelines and subsequent clarifications dated 1st November, 2017 and 11th January, 2018 issued by the Authority**

- i) The Authority was informed by some general insurers stating that they are willing to enter into a service level agreement with ABIBL based on transparent and objective criteria. However, despite the insurance companies having made requests to ABIBL for empanelling them, ABIBL have neither responded nor empanelled them for selling motor insurance policies through their MISP's.
- ii) The Authority is in receipt of ABIBL circular no 2019/ 051/ HA/ 04 dated 7th May, 2019 called the Hyundai Assurance Programme addressed to all Dealer Principals/ CEOs/ GMs/ ABIBL Branch Heads. Apart from Customer benefits it also gives Dealer benefits. It also lists out only 9 general insurers through which the long term comprehensive policy will be made available to customers.

B. Submission of ABIBL:

- i) ABIBL in its reply letter dated 10th September, 2018 to the Authority has enclosed an affidavit duly notarised stating that the MISP guidelines are being complied with in full along-with four conditions namely current infrastructure, collection & remittance of premium, agreement of your company with MISP and operational requirements of separate bank account of MISP, grievance handling, etc. It has furnished names of 11 general insurers on its panel who sell motor insurance policies as against a total of 25 general insurers doing motor insurance business.
- ii) ABIBL in its reply letter dated 14.06.2019 and emailed on 28th June, 2019 to the Authority has submitted the following:
 - a) ABIBL has denied the first part of the charge which pertained to creating a panel of insurers. However, ABIBL has admitted entering into an arrangement with 17 insurers depending on their availability and presence in the vicinity of the MISP. According to ABIBL the criteria for establishing the agreements has been quality of services and other product features of the insurers
 - b) According to ABIBL, it chooses insurers based on the preferred choices of the customers communicated to them by the MISPs and takes into consideration factors in the interest of the policyholders.
 - c) ABIBL submitted that it was willing to increase the number of arrangements with insurers. According to ABIBL, creation of the panel was not factual and not based on any evidence. Further ABIBL has submitted that it has not received a single request or advice of an insurer desiring to have an arrangement. It also submitted that it has not received any complaint from customer of not having getting the desired choice of insurers.

- d) Therefore ABIBL submitted that the first part of the charge is not established and therefore be dropped. It offered to undertake compliance of the advices suggested by the Authority.
- e) On the second part pertaining to submission of notarised affidavit to the Authority and the names of insurers, ABIBL submitted that it had made arrangements with insurers and did not create a panel. It has no authority to empanel insurers. According to ABIBL, the word "empanel" used is merely an expression of an arrangement or a tie up, but it was mistakenly and unintentionally conveyed as a panel. ABIBL submitted to undertake a review of the entire arrangement and if any MISIP has made an error, it will take corrective action.
- iii) During the personal hearing, ABIBL reiterated the above points. In addition, ABIBL submitted the following:
- a) ABIBL has not received any request from insurance companies for empanelment. ABIBL would like to know which insurer has complained to the Authority regarding non-arrangement by the broker.
 - b) Some insurers do not have necessary network and accessibility to handle this kind of platform and this kind of volume of business. There is one new insurance company which approached ABIBL but they did not have any product or add-on to sell.
 - c) Empanelment of insurers involves integration with their IT system which involve cost and time in terms of man-hours. The integration of IT systems with insurers is a problem. Nevertheless, ABIBL is willing to integrate their IT systems with the insurers.
 - d) ABIBL submits that it did not get a timely response from some insurers on their Request for Quotation (RFQ) for having a motor tie-up arrangement.
 - e) Some insurers do not have centralised system. Geography-wise the level of service is also difficult. ABIBL lost one OEM due to lack of proper service to the customer.
 - f) There are certain challenges such as OEMs like Volvo whose total premium placed is around 30 crores require huge man hours and cost to empanel all insurers. This is not commensurate with the brokerage earned by the broker.
 - g) ABIBL in next 2 months will be signing with 4-5 insurers. According to ABIBL the agreement with insurers takes 4 to 5 months of time for finalisation.
 - h) ABIBL submitted that they have neither any control over the discounts which are offered by insurers nor can influence the insurers for discounts. Clients have been given choice to take insurance from anywhere.
 - i) ABIBL submitted that the penetration in motor insurance of the OEM they represent is around 50%-60% only which shows that clients are going out through other routes and that MISIPs are not forcing any customers to take/ renew insurance from them only.

- j) ABIBL submitted that out of 10 million policy approximately sold by them so far, only 32 complaints have been received so far and that too they are also on claims which are being handled by insurers. There has been no complaint of mis-selling/ conduct at ABIBL received from customer.

C. Observations on ABIBL reply and on the submissions made during personal hearing

- i) ABIBL denied creating a panel. Instead it submitted that it has arrangements with 17 insurers. It is observed that there is no difference between creation of a panel and having an arrangement as the outcome is the same. There are only limited insurers whose insurance policies are sold through the MISIP network created by ABIBL. The other insurers cannot sell their insurance policies through ABIBL MISIP network.
- ii) The submission made by ABIBL shows that the number of insurers who are on the panel created by them varies from 1 insurer to 11 insurers depending upon the different make/models of OEM. It is an incorrect submission on part of ABIBL to categorise all the make and models of different OEMs into one arrangement with 17 insurers. ABIBL has therefore made a wrong statement.
- iii) The criteria as to how the broker makes empanelment with the insurers, how they evaluate insurer for empanelment, what is the cut-off mark for an insurer to get empanelled and whether the broker shares the criteria to insurers was enquired. From the submissions made by ABIBL, the parameters given for creation of the panel appear to be generalized factors and more as an afterthought. ABIBL could not explain, how based on the criteria given above are the insurers shortlisted to create a panel.
- iv) ABIBL submitted that the word "empanel" used is merely an expression to mean an arrangement. It was mistakenly and unintentionally conveyed to mean a panel. By limiting the number of insurers through an arrangement it is self-evident that ABIBL has created a panel. Further the willingness by ABIBL to increase the number of insurers in the panel is an admission of violation of guideline 5(f) of the MSIP Guidelines.
- v) Therefore, by creating a panel of insurers ABIBL violated clause 5 (f) of MISIP guidelines dated 31.8.2017 & subsequent clarifications. ABIBL submission that it is in full compliance of the MISIP Guidelines is in direct contradiction to affirmations made in affidavit.
- vi) Member (Distribution) during the personal hearing made some observations and advised ABIBL to furnish the following information:
- a) what is the criteria followed by ABIBL for empanelment of the insurers, how do they evaluate the insurer for empanelment, what is the cut-off mark for an insurer to get empanelled with ABIBL and whether ABIBL shares the criteria with insurers?
- b) if broker is approaching insurers for empanelment it should keep a record of the same.





- c) write to all insurers for empanelment and if any insurer has not come onboard, inform the Authority and the Authority will consider the response.
- d) share the copies of correspondence done with insurers, who have not replied for the broker's invitation for empanelment

D. ABIBL reply to Member (Distribution) advise and observations thereon

- i) ABIBL submitted their response to Member (Distribution)'s observations vide their letter dated 30th August, 2019. ABIBL submitted the Request for Quotes (RFQ) dated 23rd July, 2019 issued to 25 insurance companies seeking their participation to structure, arrange and implement an MISP Program for the dealers and customers for private cars and 2-wheelers. ABIBL requested the company to share the company product, operations and IT details in the attached format. The last date of submission was 25th July, 2019. According to ABIBL 23 insurance companies responded.

E. Decision of the Authority

- i) The Authority examined the charges levied against ABIBL in the Show Cause Notice issued to it. The Authority also perused the submission made by ABIBL. It also took note of the submission furnished during the personal hearing. It also advised ABIBL and examined ABIBL's response to the advisory.
- ii) After taking into consideration all the facts placed before it, the Authority is of the view that:
 - i) ABIBL admitted to creating a panel of 1 to 11 general insurers out of a total of 25 general insurers depending upon the make and model of different OEMs and sought to prove it as one arrangement with 17 insurers.
 - ii) Principal Officer of ABIBL submitted an affidavit that the MISP Guidelines are being complied with in full which is contrary and wrong to the facts presented above.
 - iii) ABIBL submitted incorrect information to the Authority that it has empanelled 17 general insurers for selling motor insurance policies through MISP when it had 1 to 11 insurers for different make and models of OEMs.
 - iv) Member (Distribution) during the personal hearing made some observations and advised ABIBL to share the criteria followed by ABIBL for empanelment of the insurers, how do they evaluate the insurer for empanelment, what is the cut-off mark for an insurer to get empanelled with ABIBL and whether ABIBL shares the criteria with insurers. He also advised ABIBL to furnish copies of correspondence done with insurers, who have not replied for the broker's invitation for empanelment. It is observed that ABIBL did not share the criteria and associated questions related to empanelment.

- v) According to ABIBL, they issued RFQ to 25 insurance companies of which 23 insurers responded.
- vi) Guideline 5(f) of the MISP Guidelines states that if an insurance intermediary appoints the MISP, then it shall work for the number of insurers as allowed under the respective regulations governing the intermediary.
- vii) Authority vide circular dated 1st November, 2017 clarified on guideline 5(f) of the MISP Guidelines that an insurance intermediary based on an objective and transparent criteria can enter into service level agreements with general insurers for selling motor insurance policies
- viii) Authority circular of 11th January, 2018 reiterated that with the commission / remuneration levels for the insurance intermediaries and MISP being stipulated, the creation of a panel of insurers is restrictive, which can lead to undesirable market practices. Therefore, to remove misgivings in the minds of the stakeholders the Authority clarified that neither the insurance broker nor the MISP can create such a panel of insurer for selling motor insurance policies. However, the insurance companies should enter into service level agreements with insurance brokers/ MISPs based on transparent and objective criteria.
- ix) The above submissions by ABIBL establishes that ABIBL by creating a panel of insurers has violated clause 5 (f) of the MISP guidelines dated 31.8.2017 and subsequent clarifications dated 1st November, 2017 and 11th January, 2018.
- x) In exercise of the powers vested in the Authority as per the provisions of the section 102(b) of the Insurance Act, 1938 read with Clause 15(15)(d) of the MISP Guidelines dated 31.08.2017, the Authority hereby imposes a penalty of Rs. 1 crore (Rupees One crore) for the violation period exceeding 100 days which is from the date of implementation of the MISP Guidelines i.e. 1st November, 2017 till date.

II. Charge 2:

A. Violation of

i) **Guideline 11(b), 11(c), 11(d), 11(e) 11(l), 11(m) r/w 6(a), 12 & 13 of the MISP guidelines dated 31.08.2017**

- a) The Authority is in receipt of Dealer Qualitative Growth KPI - 2019 (Term 1) issued by the Dealer Development Dept of Hyundai Motor India Limited. The KPI is the dealer evaluation programme that covers multiple facets of business and maximizes dealer efforts in achieving highest level of performance across various parameters. The programme is linked to the rewards/ incentives which the dealer gets from the OEM. The KPI shows that of the 40 marks allocated to sales parameters, 10 marks are allotted for insurance penetration. The KPI gives the

M

AB

methodology of rewarding the dealer for retaining insurance policies issued through him. ABIBL is therefore: a) inducing the customer and indulging in unfair business practice; b) forcing the MISP to make customers buy motor insurance policies from them and restricts choice of policyholder; c) is prejudicial to the interest of the policyholder and leads to unfair trade practices.

- b) The Authority is also in receipt of ABIBL circular no 2019/ 05/ HA/ 04 dated 7th May, 2019 called the Hyundai Assurance Programme addressed to all Dealer Principals/ CEOs/ GMs/ ABIBL Branch Heads. Apart from Customer benefits it also lists Dealer benefits such as higher revenue not only from distribution fees but also from workshop traffic with increased customer retention; recurring income from one time efforts, etc. The circular also contains rate charts, illustration of dealership profitability with long term policy and the long term policy issuance process on portal. ABIBL has therefore; a) acted against the interest of policyholder and stopped the customer/ policyholder from getting lower premium rates that may be offered by insurers.
- c) By illustration of dealership profitability with long term policy, ABIBL has not followed recognised standards of professional conduct and discharge their functions in the interest of the clients or policyholders

B. Submission of ABIBL:

- i) ABIBL in its reply letter dated 10.9.2018 to the Authority has enclosed an affidavit duly authorised that the MISP guidelines are being complied with in full.
- ii) ABIBL in its reply letter dated 14.06.2019 to the Authority has submitted the following:
- a) ABIBL has denied violation of regulation, guidelines. According to it, Hyundai Motors India Limited has issued letter to its Dealers without their knowledge.
- b) ABIBL had communicated the guidelines, notifications and circulars pertaining to MISP to the OEMs
- c) ABIBL has not entered into any agreement with any OEM which has an influence or bearing on the sale of motor insurance policy
- d) According to ABIBL, the circular issued by it to its MISPs is designed to encourage MISPs for insurance penetration and promotion of insurance industry.
- e) The circular was to educate the MISPs on the products, features, insurance market and to encourage insurance penetration through MISPs.
- f) Further MISPs are not paid more than the prescribed limits of IRDAI. Therefore ABIBL has not followed any unfair trade practice.
- g) As per ABIBL, it has arrangements with 17 insurance companies and integrated systems for solicitation. However, neither ABIBL nor MISP forces any prospect to buy

m

Ab

an insurance policy of any particular insurance company. The choice of insurance company is of the prospect. MISPs do not curtail the freedom of the prospects to choose any insurer

- h) ABIBL has observed that the broking regulations have been clubbed with MISP guidelines. They deny violation or acting that has caused harm to the interest of the policy holders. ABIBL circular dated 7th May, 2019 addressed to the MISPs, highlighted key points of guidelines. It promotes benefits of motor third party insurance. It covers features/ pricing/ discounts offered by insurers and not broker. ABIBL has communicated the same to MISPs.
- i) ABIBL explained premium calculation and remuneration payable. According to ABIBL, the illustration focusses on dealership profitability. ABIBL states that it is not against policyholder interest. ABIBL illustrates the benefits of remuneration to MISP. It also explains to MISP that if MISP render effective service that will result in increased traffic and higher revenue for MISP
- j) According to ABIBL it should not be charged for: a) General code of conduct; and b) Conduct with good faith. ABIBL has therefore submitted that it has: a) acted with due care and diligence; b) not ignored the needs of the customer; c) not favoured any particular insurer(s); d) working with 17 insurers; e) take the responsibility for conduct of the MISP; f) no record that MISP has forced any customer to buy motor insurance policy from a particular insurer; g) No complaint received by any customers; h) not violated clause (d), (e), (k), (l), (m) of the MISP guidelines and therefore part (iv) of the charge may be dropped.
- k) The long term policy has been explained through example by ABIBL. The purpose is to motivate MISPs. Therefore it should not be construed as objectionable. According to ABIBL, the decision to buy a long term policy or an annual policy is of the prospect. ABIBL used the word profitability of dealer in order to encourage understanding of the feature to the customers
- l) During the personal hearing ABIBL reiterated the above points.

C. Observations on ABIBL reply and on the submissions made during personal hearing

- i) Under the Dealer Qualitative Growth KPI Programme entered into by the MISP with OEM, points are awarded to the dealer for issuing insurance policies to the new vehicle sold. It also awards points to the dealer for renewing insurance policies. The higher the marks scored by the dealer, more is the reward for the dealer by the OEM. The KPI programme therefore drives MISP behavior to issue and renew, as large a number as possible, of insurance policies. Further under the agreement the dealer is allowed to sell insurance policies of only those insurance companies who are on the panel created by ABIBL. By

n

B

virtue of this clause, the MISIP forces the prospect/ policyholder to necessarily buy motor insurance policies of an insurer on the panel created by ABIBL. This agreement therefore denies the prospect his rights and options to seek motor insurance policy from any other insurance intermediary or insurance agent. This clause in the agreement is a direct imposition of selected insurers and curtailment of choice of prospect/ policyholder. By virtue of this agreement, ABIBL has acted in a manner prejudicial to the interest of the policyholder leading to unfair trade practise.

- ii) Such a clause in the agreement is in violation of the MISIP Guidelines which prohibits a MISIP to enter into an agreement which has a bearing on sale of the insurance policy. Since the MISIP is sponsored by ABIBL, ABIBL has violated the MISIP Guidelines. Moreover the above agreement is also in contradiction to the assertion made by the PO of ABIBL in the notarised affidavit that the MISIP Guidelines are being complied with in full.
- iii) ABIBL circular no 2019/ 05/ HA/ 04 dated 7th May, 2019 called the Hyundai Assurance Programme addressed to all Dealer Principals/ CEOs/ GMs/ ABIBL Branch Heads puts a cap on discounts that can be offered by the MISIP to the prospect/ policyholder. By putting a cap on discounts broker has acted against the interest of the policyholder and stopped the customer / policyholder from getting lower premium rates that could be offered by insurers. ABIBL has acted in a manner prejudicial to the interest of the policyholder, manipulating the insurance business and indulging in unfair trade practice.
- iv) On the submission made by ABIBL that it has arrangements with 17 insurers and neither ABIBL nor MSIP force any prospect to buy insurance of a particular company. It is observed that the statement is incorrect, as ABIBL has a panel of insurers that range from 1 insurer to 11 insurers for different make/ models of OEM's. By doing so ABIBL has curtailed the choice of prospect and forces to customer to buy from only those insurers who are on the panel.
- v) On ABIBL's submission of clubbing broker regulations with MISIP guidelines, the same have been invoked as both have been violated. Further from the plain reading of the ABIBL circular of 7th May, 2019, the focus of the circular is on dealer profitability and dealer centrality. ABIBL, as a broker represents the customer, has not demonstrated that it has functioned for protection of customer's interest.
- vi) On ABIBL's submission on long term policy, it is observed that the illustration focusses on dealer profitability and is dealer centric. By focusing on dealer profitability ABIBL has neither followed recognised standards of professional conduct nor functioned in interest of customer.



D. Decision of the Authority

- i) The Authority examined the charges levied against ABIBL in the Show Cause Notice issued to it. The Authority also perused the submission made by ABIBL. It also took note of the submission furnished during the personal hearing.
- ii) After taking into consideration all the facts placed before it, the Authority is of the view that:
 - a) The MISP entered into an agreement with the OEM through the Dealer Qualitative Growth KPI programme, in which 40 marks allocated to sales parameters, 10 marks are allotted for insurance penetration. The marks under the programme are linked to the rewards/ incentives which the dealer gets from the OEM. By having insurance penetration as one of the sales performance parameters and linking it to rewards the PO of ABIBL has contradicted its assertion in the notarised affidavit and also violated MISP Guidelines and circular no. IRDA/ INT/ MISP/ 5/ 01/ 2018 dated 11th January, 2018.
 - b) By subjecting MISP sponsored by ABIBL to the dealer evaluation programme of the Hyundai Motor India Limited (OEM), makes the MISP to force customers/ prospects buy motor insurance policies from them. Moreover the MISP offers motor insurance policies of only those insurers who are on ABIBL panel. It therefore restricts the choice to the customer and forces the prospect/ policyholder to necessarily buy motor insurance policy through ABIBL. By imposing the above restrictions, the customer/ prospect is denied his rights and options to buy or renew his motor insurance policy from any insurance intermediary or insurance agent and curtails the choice of prospect/ policyholder. This is prejudicial to the interest of the policyholder and leads to unfair trade practices.
 - c) By the above actions, the MISP sponsored by ABIBL has violated the following guidelines:
 - a. 11(b) - force the prospect / policyholder to necessarily buy motor insurance policy through a particular insurance intermediary
 - b. 11(c) - deny the prospect his rights and options to seek motor insurance policy or renewal of motor insurance policy from any insurance intermediary
 - c. 11(e) - direct or indirect imposition of risk selection by insurers or curtailment of choice of the prospect/ policyholder
 - d) According to the rate chart issued by ABIBL to dealers (MISP) vide circular no 2019/ 05/ HA/ 04 dated 7th May, 2019 under the Hyundai Assurance Programme for long term comprehensive policy, the OD discount on new car (1st year) shall be: 1) premium cars - as per current discount available for respective models; 2) other cars - as per current discount available for respective models or maximum upto 40% whichever is



lesser. By putting a cap on discounts at current levels or maximum upto 40% whichever is less, ABIBL has acted against the interest of policyholder and stopped the customer/ policyholder from getting lower premium rates that may be offered by insurers. By having a cap ABIBL has not discharged its functions in the interest of the clients or policyholders. ABIBL has neither conducted its dealings with utmost good faith and integrity nor acted with care and diligence. ABIBL has therefore violated Regulation 8(2)(o), clause 1, 2(a),2(b),3(e), 5(h) of Schedule I - Form H - Regulations 30 - Code of Conduct - Insurance Broker of IRDAI (Insurance Brokers) Regulations, 2018. By having a cap on the discounts on the premium that the customer can get as per ABIBL circular no 2019/ 05/ HA/ 04 dated 7th May, 2019 under the Hyundai Assurance Programme the MISP are acting in a manner prejudicial to the interest of the policyholder, manipulating the insurance business and indulging in unfair trade practices.

- e) By the above actions, the MISP sponsored by ABIBL has violated the following guidelines:
- a. 11(d) - directly or indirectly control or interfere in determination of premium of policies.
 - b. 11(k) - conduct its business in a manner prejudicial to the interest of the policyholder.
 - c. 11(l) - indulge in manipulating the insurance business.
 - d. 11(m) - indulge in unfair trade practices

Since under Guideline 6(a) ABIBL as sponsoring entity is responsible for all acts of omission and commission of MISP, ABIBL has violated guidelines 11(b), 11(c), 11(d), 11(e), 11(k), 11(l) & 11(m) read with 6(a), 12 and 13 of the MISP Guidelines dated 31.8.2017.

- f) The illustration of dealership profitability with long term policy shows that the Hyundai Assurance programme created by ABIBL is dealer centric. The IRDAI (Insurance Brokers) Regulations, 2018 specify that every insurance broker shall follow recognised standards of professional conduct and discharge their functions in the interest of the clients or policyholders. By the above circular ABIBL has violated clause 1 of Schedule I - Form H under Regulations 30 & regulation 8(2) of the IRDAI (Insurance Brokers) Regulations, 2018.
- a) In exercise of the powers vested in the Authority as per the provisions of the section 102(b) of the Insurance Act, 1938 read with Clause 15(15)(d) of the MISP Guidelines dated 31.08.2017, the Authority hereby imposes a penalty of Rs. 1 crore (Rupees one crore) for the violation period exceeding 100 days which is from the date of implementation of the MISP Guidelines i.e. 1st November, 2018 till date.



III. Charge 3:

A. Violation of

- i. Regulation 4 and Schedule I - Form A of IRDAI (Insurance Broker) Regulations, 2018**
- ii. Point No. 1, 2(a), 2(b) and 3(e) under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018**
- iii. Guideline 5(f), 6(a), 11(b), 11(c), 11(d), 11(e), 11(k), 11(l) & 11(m) of the MISIP guidelines dated 31.08.2017**
 - a) ABIBL vide letter dated 10.09.2018 submitted a premium chart on the basis of which premiums are charged to the customers by insurers who are on ABIBL's panel. It shows that the premium being charged to the customer of different insurers is the same, thereby giving no choice to the customer.

B. Submission of ABIBL:

- i) ABIBL in its reply letter dated 22.10.2018 to the Authority stated that the premium quoted to customer are the rates offered by respective insurers. Insurers underwriting pattern keeps changing frequently and is driven by the loss ratio, however the best premium quotes are offered to ABIBL's customers which may be the same or may differ if loss ratios changes. ABIBL Has denied any role in fixing the premium being charged to the customer and instead held the insurer responsible for determining the premium to be charged to the customer.
- ii) ABIBL in its reply letter dated 14.06.2019 to the Authority has submitted the following:
 - a) According to ABIBL, the violations quoted are substantially the same as quoted in the charge no. 2 and their response may please be read jointly with the response they have made in relation to charge no. 2.
 - b) Further according to ABIBL, they have performed their functions completely as given in Regulation 4 Form A. According to ABIBL the charge is levelled in general form without quoting and substantiating as to what part of the functions are violated and in what form / manner has ABIBL violated the function.
 - c) According to ABIBL, the violation of Point No. 1, 2(a), 2(b) and 3(e) under Schedule I – Form H are explained under charge no. 2 and the response given above may be taken into consideration.
 - d) With regard to Guideline 5(f), 6(a), 11(b), 11(c), 11(d), 11(e), 11(k), 11(l) & 11(m) of the MISIP guidelines dated 31.08.2017, ABIBL negotiates with insurance companies to provide best premiums. The MISIP sponsored by ABIBL are integrated with the online

M

B

system. The insurance companies post evaluating all the factors, quote a premium as per their underwriting practice. ABIBL has denied violating the code of conduct.

iii) During the personal hearing ABIBL reiterated the above points. In addition, ABIBL submitted the following:

- a) ABIBL reiterated that they do not have any role in fixing the premiums and the insurers do that.
- b) ABIBL added that no customer has complained of high premium from approximately 10 million policies sold.

C. Observations on ABIBL reply and on the submissions made during personal hearing

- i. On ABIBL's submission that they have performed their functions completely, it is observed that the premium submitted by ABIBL vide letter dated 10.9.2018 shows premium charged by insurers are the same. While ABIBL has submitted that they have no role in fixing premium rates and is done by insurers, it is inexplicable that the premium rate chart for a particular make/ model of OEM given by the insurers are same. ABIBL being a representative of the customer, has a responsibility to ensure that the client gets the best terms, benefits, coverages and ABIBL renders proper advice on appropriate insurance cover and terms. ABIBL has not ensured that the customer gets the lowest premium rate. Therefore ABIBL has not performed the functions as laid down in Point 1 - Functions of a direct broker given in Schedule I Form A under Regulation 4 of IRDAI (Insurance Brokers) Regulations, 2018
- ii. ABIBL as per Broker regulations was required to explain to the customer the degree of choice that products are on offer, provide comparison in terms of price, cover or service. ABIBL did not provide the comparison of price, cover or service being offered by different insurers. Therefore, ABIBL violated the conduct in matters relating to clients relationship under Schedule I - Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018.
- iii. ABIBL is required to conduct dealing with clients with utmost good faith and integrity at all times, act with care and diligence. By not getting the best terms, benefits, coverages for the customer ABIBL did not conduct itself properly and violated conduct in matters relating to client's relationship under Schedule I - Form H dealing with Code of Conduct read with Section 42D (5)(g) and 42D (6) of the Insurance Act, 1938.

D. Decision of the Authority

- i) The Authority examined the charges levied against ABIBL in the Show Cause Notice issued to it. The Authority also perused the submission made by ABIBL. It also took note of the submission furnished during the personal hearing.



- ii) After taking into consideration all the facts placed before it, the Authority is of the view that:
- a) ABIBL being a representative of the customer, has a responsibility to ensure that he gets the best terms, benefits, coverages and render proper advice on appropriate insurance cover and terms as per Point 1 – Functions of a direct broker given in Schedule- I, Form A under Regulation 4 of IRDAI (Insurance Broker) Regulations, 2018. By having a uniform rate across all insurers, ABIBL has not performed the functions of the direct broker and violated Regulation 4 of IRDAI (Insurance Broker) Regulations, 2018.
 - b) Further under Point No. 3 in conduct in matters relating to sales practice under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018 ABIBL is required to explain to the customer the degree of choice products that are on offer, provide comparison in terms of price, cover or service. By not explaining to the customer the degree of choice of products that are on offer, providing the customer a comparison in terms of price, cover or service ABIBL has violated the conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018.
 - c) In addition, under Point No. 2 in conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018 ABIBL is required to conduct its dealing with clients with utmost good faith and integrity at all times, act with care and diligence. By not getting the best terms, benefits, coverages for the customer ABIBL has not conducted its dealing with clients with utmost good faith and integrity, nor has it acted with care and diligence thereby violating the conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018 read with Section 42D (5)(g) and 42D (6) of the Insurance Act, 1938
 - d) All the above submissions by ABIBL establishes that ABIBL has violated i) Regulation 4 of IRDAI (Insurance Broker) Regulations, 2018; ii) Point No. 2 of conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018; and iii) Point No. 3 of conduct in matters relating to clients relationship under Schedule I – Form H dealing with Code of Conduct under Regulation 30 & Regulation 8(2) of IRDAI (Insurance Broker) Regulations, 2018
 - e) In exercise of the powers vested in the Authority as per the provisions of the section 102(b) of the Insurance Act, 1938 read with Clause 15(15)(d) of the MISG Guidelines dated 31.08.2017, the Authority hereby imposes a penalty of Rs. 1 (Rupees one crore)



for the violation period exceeding 100 days, which is from the date of implementation of the MISP Guidelines i.e. 1st November, 2017 till date.

IV. Charge 4:

A. Violation of

i. Section 102 of the Insurance Act, 1938, Regulation 49 of the IRDAI (Insurance Brokers) Regulations, 2018

- a) ABIBL was directed, vide Authority's letter dated 25.09.2018, to share copy of the guidelines, circulars and correspondence exchanged on MISP with the Chairman of the Board of OEM's.

B. Submission of ABIBL:

- i) ABIBL in its reply letter dated 22.10.2018 to the Authority stated that it was in discussions with the OEM's regarding sharing of the information with the Chairman of the Board of OEM.
- ii) ABIBL in its reply letter dated 14.06.2019 to the Authority submitted that they have communicated the guidelines, the correspondence exchanged between ABIBL and the Authority on MISP with the Chairman of the Board of OEM. It also attached copies of the registered post acknowledgement slips.
- iii) During the personal hearing ABIBL confirmed that the letters written by the ABIBL to OEM were received by them

C. Observations on ABIBL reply and on the submissions made during personal hearing

- i. It was pointed out that copies of letters written were not submitted earlier and not even after that. It was submitted that only speed post slips are submitted by ABIBL.
- ii. Member advised ABIBL to submit copies of correspondence made with the OEMs.

D. ABIBL reply to Member (Distribution) advise and observations thereon

- i. ABIBL vide their reply dated 30th August, 2019 submitted the communication sent by ABIBL to the Chairman of the Board of the OEM's.

E. Decision of the Authority

- i) The Authority examined the charges levied against ABIBL in the Show Cause Notice issued to it. The Authority also perused the submission made by ABIBL. It also took note of the submission furnished during the personal hearing.
- ii) After taking into consideration all the facts placed before it, the Authority accepts the submission of ABIBL and does not press the charge.



C. Conclusion

- i. Aditya Birla Insurance Brokers Limited is one of the biggest composite insurance broker having a dominant position in the motor insurance in the country. It belongs to the famous Aditya Birla Group which is a big conglomerate having presence in various sectors of the Indian economy. The Aditya Birla group has a strong presence in the financial sector. Therefore, as one of the top brokers in the motor insurance broking segment, ABIBL is seen in different light. This places tremendous responsibility on ABIBL to act as a role model for other insurance brokers. In light of such expectations, ABIBL was expected to act diligently and with utmost care and responsibility giving no room for error. Unfortunately, ABIBL failed miserably in complying with the MISP Guidelines which had been created to protect the interest of the policyholders and other stakeholders. This is evident from the penalties imposed for the violations of various provisions of the MISP Guidelines. In order to ensure compliance with the MISP Guidelines and to improve governance in ABIBL, the Authority directs the ABIBL to undertake the following changes:
 - a) dismantle panel of insurers and empanel all insurers on platform, have full integration with insurers computer systems, ensure premiums quoted to customers come directly from insurer's systems without any intervention by the broker and report compliance within 2 months. In case any insurer does not wish to be part of the panel, the CEO of the general insurance company shall confirm the same in writing to the broker.
 - b) redesign the current system of seeking customer consent for purchasing the motor insurance policy in such a manner that the customer exercise choice of selecting the insurer through an OTP based system at the time of issuance of a new motor insurance policy and its renewal. The broker company shall complete the task in 6 months and report compliance.
 - c) submit a quarterly audit report from DISA/ CISA certified auditor that the electronic platform / portal complies with the requirements of the MISP guidelines and in no way interferes or places restrictions in the premium to be charged by insurers or in any way restricts / influences the choice of the customer
 - d) ensure compliance of Guideline 5(f) of the MISP guidelines and circular dated 1st November, 2017 and 11th January, 2018 and report compliance.
- ii. The Authority takes serious note that the affidavit submitted by the Principal Officer of ABIBL is contrary to the facts. Considering the seriousness of the issue, the Authority under Guidelines 15(d)(1) of MISP Guidelines directs that ABIBL shall not pay performance incentives to the Principal Officer for one year from the date of this order. ABIBL shall submit compliance of this direction to the Authority.



- iii. Based on above decisions in charge no. 1, 2 & 3 M/s. Aditya Birla Insurance Brokers Ltd., is hereby directed to pay a penalty of Rs.3,00,00,000/- (Rupees Three Crores only)
- iv. The penalty of Rs 3,00,00,000/- (Rs. Three Crores) shall be remitted by ABIBL through NEFT / RTGS (details of which will be communicated separately) within a period of 15 days from the date of receipt of this order. An intimation of remittance by ABIBL may be sent to Shri. Randip Singh Jagpal, Chief General Manager (Intermediaries), IRDAI, Sy. No. 115/1, Financial District, Nanakramguda, Hyderabad, 500032.
- v. If the Insurance Broker feels aggrieved by the above decision of the Authority, an appeal may be preferred to the Securities Appellate Tribunal as per Section 110 of the Insurance Act, 1938.

Place: Hyderabad

Date: December 23, 2019



(Sujay Banarji)

Member (Distribution)

