



No. IRDA/ENF/ORD/ONS/ 279 / 11 /2020

**Final order in the matter of
M/s. Metis Marketing Services Ltd., Corporate Agent**

[Based on reply dated 27th May 2020, to the Show-Cause Notice dated 20th May 2020 and submissions made during Hearing through Video Conference held at 2:45 pm on 18th August, 2020, chaired by Mr. K. Ganesh, Member (Life), at the office of Insurance Regulatory and Development Authority of India, Financial District, Nanakramguda, Hyderabad].

Background: -

1. The Insurance Regulatory and Development Authority of India (hereinafter referred to as "Authority") had conducted an onsite inspection during 18th to 22nd June, 2018, an onsite inspection of M/s. Metis Marketing Services Ltd, Corporate Agent (hereinafter referred to as "CA" or "Company") in order to examine overall regulatory compliance by the CA.

2. The Authority forwarded a copy of the Inspection Report to the CA on 16th August, 2018 seeking their comments and the CA's response was received vide their letter dated 20th September, 2018. Upon examining the documents on hand and submissions made by the CA, the Authority issued Show Cause Notice (hereinafter referred to as "SCN") on 20th May, 2020. The CA replied the SCN vide their letter dated 27th May, 2020 and they sought for personal hearing. Accordingly, the hearing was granted to the CA and the same was held through Video conference on 18th August, 2020. Mr. Sandeep Saini, Principal Officer, Mr. Sanjeev Pandey, Shareholder and Ex-Principal officer, attended the hearing, on behalf of the CA. On behalf of the Authority, Mr. T S Naik, GM (Agency Distribution), Shri Prabhat Kumar Maiti, GM (Enforcement) and Shri B. Raghavan, DGM (Enforcement), attended the hearing.

3. The submissions made by the CA in their written reply to the Show Cause Notice and those made during the course of the personal hearing and the documents submitted by the CA in evidence of their submissions have been considered by the Authority and accordingly the decisions of the Authority on the charges are detailed below.

Charges, Submissions in reply thereof and Decisions:

4. Charge No. 1

Upon examination of premium register many policies were observed wherein commission received was in excess of the regulatory limits, against the spirit of Regulation 18(1) of IRDAI (Registration of Corporate Agents) Regulations, 2015.

The CA, rather than justifying how the submitted data is in compliance of the regulation, preferred to share an e-mail from the Insurer. This implies that the CA is not aware of their level of compliance to the regulatory provision applicable to them.

5 Submission of CA:

The CA submitted that they are in compliance of the stated regulations and have in support shared the e-mail as received from the insurer in question. The CA further submitted that as a responsible corporate agent they approached the insurer to guide suitably on the issue, then to endeavour to explain and justify the brokerage as received from the insurance company. The respective insurance company has categorically mentioned that prescribed rate of commission has been paid to the CA and no excess commission has been paid.

The CA understands fully the level of compliance to the regulatory provisions as applicable to them. The CA has submitted that they are a small sized corporate agency and depend a lot on the expertise available at the level of insurance companies with whom they have arrangements for solicitation of business.

In view of the foregoing they explained that they have not disobeyed the regulatory provisions in the process of payment of remuneration to the corporate agency by any of the arranged insurance companies hence the averment is not applicable on them. On the above basis, the CA requested for sympathetic consideration of their submission as no material prejudice to their customers and IRDAI regulations have been caused.

The CA further requested that based on the perception of the two insurance companies no cause of action has arisen and no customer has been put to any disadvantage. Also no adverse effect has taken place in any part of the ecosystem the CA observes.

The CA prays that charge under Regulation 18(1) of IRDAI (Registration of Corporate Agents) Regulation 2015 may not be applied in this case.

6 Submission during personal hearing:

The CA submitted that they cross checked their data with the data of the insurers. And on that basis, the CA claims that it had received only as much commission/remuneration as is allowed under the law. The CA has further submitted that while cross verifying, they noticed that there was some clerical error in the data and the CA submits that it is confirmed by the insurers that they did not pay anything more than what is allowed under the regulations/guidelines.

7 Submissions post hearing:

The CA has sent an email communication to the Authority attaching therewith a letter submitting that they did not receive any amount in excess of the limit prescribed in the Regulations and that a minor variation noticed by the inspection team was on account of clerical error and mistake on the CA's side while collating the data for furnishing to the Inspection team.

8 Decision:

It is to be mentioned that the CA earlier did not speak about the clerical error in the data. In fact, in response to the SCN also, the CA has attempted to justify the receipt of the amount of commission by taking reference to a communication from the insurer. Still, taking note of the CA's submission, the charge is not pressed. The CA is advised to



maintain the records accurately so as to ensure that the commission/remuneration received by them does not exceed the limit prescribed.

9 Charge No.2

Violation of clause 3(ii)(a) and clause 3(ii)(m) of schedule III reads in conjunction with regulation 26 of IRDAI (Registration of Corporate Agents) Regulations, 2015

(a) The corporate agent had made payments other than salary to employees, SPs and also to individuals other than employees under section code 194J-‘Fees for professional or Technical Services’. Further, upon scrutiny of expense ledger for ‘consultancy charges’ for FY 2017-18, it was noted that the corporate has paid Rs. 1,728,452.00 to ‘Lost Village Green Barn Pvt. Ltd.’; which is also group company of the corporate agent. Subsequent examination of copy of invoices submitted by the corporate agent in support of it, showed that consultancy payment was related to ‘marketing activity done at various points in Ram Nagar Nainital, Uttarakhand’. From above submission of corporate agent, it can be concluded that it has engaged untrained and unauthorised persons to bring in business

10 Submission of CA:

The CA submitted that they are in compliance of the stated regulations and in the given case the CA submitted --:

That by using the services of “Lost Village Green Barn Private Limited” for marketing activities at various points of Nainital, they have not violated the stipulated regulations. The conclusion that the said marketing activity is nothing but solicitation is a sprawling remark.

Their understanding of difference in marketing activities and solicitation is as under:

Marketing:

- It is the process of communicating the value of a product or service through positioning to customers. It is an activity coupled with processes for creating, communicating, delivering and exchange offerings that have value for customers, clients, partners and society at large.
- Marketing is any technique used to make the public aware of a company and what it has to offer over its competitors. The variations of marketing activities are vast and encompass almost every kind of media and company – initiated outreach.
- Marketing satisfies these needs and wants through exchange processes and building long term relationships. It is the link between a society’s material requirements and its economic patterns of response.

Solicitation:

- In civil law, solicitation means any request or appeal, either oral or written, or any endeavour to obtain, seek or plead for funds, property, financial assistance or other things of value, including the promise or grant of any money or property of any kind or value.

- Solicitation must be addressed to a particular individual for instance, a letter constitutes a solicitation. However, a newspaper advertisement, would not be an act of solicitation because it is not addressed to any particular individual.

Although solicitation is used in a variety of legal contexts but cannot be applied here to the marketing activities carried out by “Lost Village Green Barn Private Limited”. The definition of “Solicitation” is already provided in the Insurance broking Regulation and the distance marketing guidelines as published by IRDAI.

It is submitted that, the conclusion regarding the said marketing activity is nothing but solicitation by the employees of “Lost Village Green Barn Private Limited” as arrived at by the Hon’ble Authority here, does not befit the solicitation law and its legal definition in this case.

As regards to the observation on involvement of unlicensed person in solicitation of business, the CA wishes to submit that, they are a responsible corporate agency. The CA follows a pre-defined SOP, as stated in their board approved policy for solicitation and business procurement. The CA have a stringent process of solicitation and procurement of insurance business, as illustrated in their shared SOP.

The CA wishes to reiterate that, at no stage they involve any unlicensed person in the solicitation process. There can be slight variation in the signatures of designated SP which may happen, may be due to various reasons, but they categorically wish to state here that they do not engage untrained and unauthorised persons to bring in business.

(b) Upon examination of sample dockets, it was observed that there were no signatures of Specified persons in the proposal forms collected from prospects for submission to insurers for issuance of policies. It was also observed in the sample cases that signatures of the same SP on the proposal forms/ACR were neither matching with each other nor with the signatures mentioned in the Permanent Account Number submitted to the CA.

11 Submission of CA:

They acknowledged that at places where the signatures of SP are not available are inadvertent error on their part and they undertook and assure IRDAI that henceforth such errors will not occur. At instances where slight deviation in signatures of SP is observed, it may be because the SP has done the signature in a hurry resulting in difference in flow. The signatures are a proof that the policies have been sold by SP. The CA further informed that with time the flow of signatures change and varies with passage of time. They submitted that all the signatures have been done by stipulated SPs only and there is no question of impersonating at all.

The CA do have sufficient internal controls and systems and have not violated the regulations or the clauses mentioned there under.

12 Submission during Hearing:

In regard to mismatch between the signatures of the SP the CA submitted that the SPs used to simply put their initials and not made full signatures. Now, post the inspection,

the CA has started to ensure that the SPs put their full signature and not initial the proposals. Also the CA will ensure that the insurer does not accept the proposal unless it is fully signed by the SP.

13 Post hearing, the CA has submitted a letter mentioning therein regard to this charge, that --

The transaction in question could be classified at that time as a related party transaction and that the company in question M/s. Lost Village Green Barn Pvt Ltd. involved in stevia farming and is based in the State of Uttarakhand. Being a developing and hilly state with extreme under penetrated insurance population the CA decided to do a pilot project for creating insurance awareness and this initiative may further open door to reach out in all the districts of this state. However this exercise gave the CA limited results due to the limited scale of economy of the state.

All the said signatures belonged to SP in the ACR. There were few policies where the initials were done and policies were accepted based on the same. This was also submitted in their response to the observation of the Authority. The CA would submit to the authority that they are ensuring compliance on all such advisory and any such issue will not be repeated in future and they would implement strict quality checks and balances in all the processes.

14 Decision:

Out of 20 sample documents examined by the inspection, there were no signatures in the space provided for signature of the Advisor in 8 proposal forms. In another 12 proposals that are claimed to have been solicited by one SP, on verification of the signature with the sample signature of the SP, there was clear mismatch in the signature, which proves that the said 12 proposals were not solicited by him. These 12 proposals were solicited on five different dates viz 12-6-17 (2 policies), 28-6-17 (2 policies), 29-6-17 (3 policies), 10-7-17 (4 policies), 13-7-17 (one policy). Hence it is clearly established that the CA has engaged unlicensed persons on the above mentioned five dates.

In the above manner, the CA violated Clause 3(ii)(a) and 3(ii)(m) of Schedule III under Regulation 26 of the IRDAI (Registration of Corporate Agents) Regulations, 2015.

Therefore, by virtue of the powers vested in it under Section 102(b) of the Insurance Act, 1938, the Authority imposes on the CA a penalty of Rs.5,00,000 (Rupees Five lakh only) for the above said violation [the amount of penalty has been arrived at on the basis of Rs.1 lakh per day for 5 days on which the solicitation by the unlicensed persons took place).



15 **Summary of Decisions:**

The following is the summary of decisions in this order:


Brief description of charge with provision under which the entity was charged:	Decision
Charge No.1 Excess commission received by the CA Violation of Regulation 18(1) of IRDAI (Registration of Corporate Agents) Regulation, 2015.	Advisory
Charge No.2 Engaging unlicensed persons for solicitation of business Violation of Clause 3(ii)(a) and clause 3(ii)(m) of schedule III read in conjunction with regulation 26 of IRDAI (Registration of Corporate Agents) Regulations, 2015.	Penalty of Rs.5 lakh

16 As directed under the respective charge, the penalty of Rs. 5 lakh shall be remitted by the Corporate Agent within a period of 15 days from the date of receipt of this Order through NEFT/ RTGS (details for which will be communicated separately). An intimation of remittance may be sent to Mr.Prabhat Kumar Maiti, General Manager (Enforcement) at the Insurance Regulatory and Development Authority of India, Sy. No. 115/1; Financial District; Nanakramguda; Gachibowli; Hyderabad – 500032.

17 The CA shall confirm compliance in respect of all the directions within 21 days from the date of receipt of this order. The order shall be placed before the CA's Audit committee and also in the next immediate Board meeting and the CA shall submit to the Authority a copy of the minutes of the discussion.

18 If the CA 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.

The CA is required to acknowledge receipt of this order.


(K. Ganesh)
Member (Life)

Place : Hyderabad

Date : 11th November, 2020