



ORDER
OF
THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
IN RESPECT OF
M/S. SKS MICRO FINANCE LTD.

1. M/s SKS Micro Finance (herein after referred to as 'the MFI') was granted a license bearing number 4901533 valid upto 07.12.2011 to act as a corporate agent of M/s Bajaj Allianz Life Insurance Company Ltd. (Herein after referred to as 'the insurer), In terms thereof, the MFI was subject to the terms and conditions of the license issued to it and was also required to abide by the relevant provisions of the Insurance Act, 1938 (hereinafter referred to as 'the Act'), the Insurance Regulatory and Development Authority Act, 1999 (hereinafter referred to as 'the IRDA Act, 1999), the Insurance Regulatory and Development Authority (Licensing of Corporate Agents) Regulations, 2002 (hereinafter referred to as 'the Regulations') and other directions issued by the Authority from time to time by way of circulars and/or guidelines .

2. By virtue of powers vested in the Authority under section 14 (2) (h) of the IRDA Act, 1999 the Authority has conducted an On Site Inspection of the MFI at its office on 21.10.2010. The Authority communicated the finding of inspection under cover of letter dated 29.11.2010. The Corporate Agent has replied vide its letter dated 22.12.2010. Based on the findings of the inspection report and reply of the MFI, the Authority issued a notice to Show Cause vide letter dated 13.02.2012. The MFI has submitted reply to the said Show Cause vide its letter dated 28.03.2012 and requested the Authority to provide an opportunity of personal hearing to present their case to the Authority. Accordingly, the Authority has granted the MFI with an opportunity of personal hearing on 24.05.2012. Accordingly the Authority conducted personal hearing of the MFI at 3.00 pm on 24.05.2012 in the office of the Authority. The MFI

represented through Mr.M.R.Rao, CEO & MD, K.V.Rao, Executive Vice President, A.V.Sateesh Kumar and Animesh Anand, Asst.Vice President. On careful examination of the charges and contentions of the MFI, the following decisions have been taken on each of the charges:-

3. Charge 1: The MFI is acting as a Group Policyholder and Administrator to obtain the Group Life Insurance for a flat sum assured equal to the loan amount granted (double the loan amount if the option to cover husband is also selected) from three insurance companies (LIC of India, Bajaj Allianz Life Insurance and ING Vysya) during 2009-10 and from two life insurance companies (LIC of India and BALIC) during 2010-11 for insuring the outstanding loan advanced to its members. This policy is taken to cover the amount of loan granted to its members. It is noticed that 1 % of the loan amount is being recovered by the Group Policy holder towards a "Death Relief Fund" (DRF) fee. A portion (around 55%) of the DRF fee is utilized to fund the group term insurance premium for the members. In case, a member opts to insure her spouse/child, an additional amount of 1 % for each additional member is recovered as DRF fee. The Group Policy holder does not insure all its members in a single policy but obtains a different policy (ies) for each month.

Further it is also observed that the Group Administrator is in practice of advancing Rs.1000.00 towards funeral costs to the nominee of the deceased member, which is recovered from the claim amount paid by the insurer. In terms of point no.C1 premium charged and benefits admissible to each member of the group shall be clearly specified in the group policy and the group manager shall not have the liberty to vary premium or benefits unless the same is part of the change in the policy benefits and conditions by insurance company or is made in accordance with pre-determined basis of determining the sum insured. This act of group policy holder amounts to change in benefits. The above acts are in violation of Clause C1 of Group Insurance Guidelines dated 14.7.2005.

Decision: The Clause C1 of the Group Insurance Guidelines dated 14.07.2005, requires the MFI to collect from his members amounts not more than the premium charged for the policy by the insurance company. In the instant case, the MFI has not collected any 'premium' amount from its members however they were collecting 1% of

the loan amount as "Death Relief Fund" fee. Presumably this fee was applied to the premium. The documents establish that the premium is only about 0.55% of the loan amount and not 1% as charged for the so called death protection fee. Thus the MFI has levied a charge more than the premium in violation of Clause C1 stated above.

4. Charge 2: As the Group Policy holder pays only a part of the DRF fee as insurance premium, the remaining amount is booked as revenue income. This is in violation of the Authority's Group Insurance Guidelines (clause C4) ref: 015/IRDA/Life/Circular/GI Guidelines/2005 dated 14th July, 2005 that prohibits collection of any amount higher than the amount charged by or paid to the insurer for such insurance except for an administration fee that is explicitly disclosed to the members. It is also noticed that the Annual Report of the Group Policy holder revealed the receipt of Rs 32.32 Crores in 2009-10 and Rs 17.53 Crores in 2008-09 towards Group Insurance Administrative Charges. It is observed that these charges are recovered from the DRF levied to the members, without explicit disclosure to them.

Further, the Group Policy holder also charges 1% fee from the loanee towards death relief fund. After paying the premium towards term insurance (i.e. Rs.5.5 per thousand), company has generated huge income of Rs.32.32 crore for FY 09-10 and Rs.17.53 crore for FY 08-09. Thus the company is generating substantial amount of income under this head by levying higher charges than actual. The above acts are in violation of Clause C4 of Group Guidelines dated 14th July 2005

Decision : In terms of Clause 4 referred above a Group Manager shall not collect by way of premium an amount higher than the amount charged by the insurer. The only amount levied by the MFI on his Members is 1% Death Relief Fund. There is no separate charge for premium. Consequently, 1% charge towards Death Relief Fund must be deemed to be the charge for the premium. However, as noted in Charge 1 above, the actual premium is only 0.55% and the balance is the MFI's internal management or administrative fee. It is to be noted that the MFI is barred from collecting service charge from its members under provisions of the Authority's Circular Ref No: IRDA/Life/CIR/MISC/001/01/2011 effective 04.01.2011. The earlier provisions in this regard permitted a Group Manager to collect a service charge from the Members provided it was clearly disclosed as additional cost and not as premium. Following this spirit, it is clear that about half of the amount charged is actually

service charge and was not disclosed to the members as additional cost. Hence, this is certainly a deliberate lapse on the part of the Master Policy Holder.

5. Charge 3: After recovery of the outstanding loan amount from the death claim amount, it is stated that the group administrator is paying the balance amount to the nominee of the deceased member. The Group Policy holder does not obtain any assignment from the members. Neither does the group policy explicitly state the purpose of the insurance is to collateralize the Group administrator in the event of the death of the member. In such cases the lender has insurable interest to tune of loan outstanding but does not hold valid title to recover outstanding loan unless the policy is assigned in his name. This is in violation of Clause 7 of Group Guidelines dated 14.7.2005.

Decision: This relates to the payment by the insurer of the claim amount in the event of occurrence of risk. The insurer has been making over the cheque to the Group Policyholder. In turn, the MFI deducts the balance due against his outstanding loan and remits any excess to the inheritors of the deceased. This manner of settling claims arising from group policies is widespread and is resorted to by practically all insurers.. However, this is strictly not in accordance with the insurance law. Payment of a claim on a insurance policy can only be made to the persons entitled to receive it either by way of nomination, assignment or inheritance. In the absence of a nominee, the payment can only be made to the Estate of the deceased. Admittedly, in the present case, there has been no assignment in favour of the MFI. In any case, the law prohibits assignment of a Group Policy. Hence, it is not permissible for an insurer to make a payment directly to the MFI.

As such policies are in the nature of credit life to protect the exposure of the deceased policy holder, the payment ought to have been made into the account of the deceased. Subsequently, the MFI could have recovered any monies due to it on the basis of the agreement entered into by it with the policyholder. In this case, there has certainly been a violation but the violation is that of the insurer for having made the payment to the Group Policyholder and cannot be held against the Group Policyholder.

6. Charge 4: There is a time lag of minimum of 45 days between the actual date of collection of the premium and its conversion into group insurance policy. Also, this

leads to loss of coverage and since the money collected lies with the Group Policy holder for a period of 45 days, there is enough scope for the utilization of the same towards the Group Policy holder's short term liquidity/investment needs. This is a clear violation of section 64VB of the Insurance Act, 1938.

Decision: Since MFI has kept a substantial advance with insurer, against which the premium is remitted from time to time, this charge is not pressed.

7. Charge 5: The members of the Group Policy holder can optionally enroll to the Group Insurance scheme. This is a savings linked group insurance scheme for a term of 5 years with double accident benefit offered by Bajaj Allianz Life Insurance Company (BALIC) under the corporate agency of the Group Policy holder. The premiums under this policy are Rs 20 per week. The Group Policy holder is in practice of lending/advancing Rs 500 (without any interest being levied) to each group member at the time of enrolment to the scheme towards the upfront costs of premium and remitting the same to the life insurance company. It is stated that the premiums received in the first 25 weeks would be adjusted towards the repayment of the amount lent to the borrowers / members while the subsequent premiums received are remitted to the insurance company. This amounts to violation of provisions of section 41 of Insurance Act, 1938.

Decision: This relates to a facility extended by the MFI, to extend a loan amounting to the premium of 5 months to the prospective loanee, to be adjusted against the weekly premiums due over the same five months. The idea seems to be to encourage a savings habit amongst the poorer sections. While this may strictly speaking amount to a rebate, the intention is to inculcate a desirable savings habit. There are no malafides in the transaction. The micro finance institution has maintained an open approach to such financing and it is also noted that only 37% of the policyholders availed of this facility. For all these reasons, this charge is not pressed.

8. Charge 6: It is noticed that the Group Policy holder is in receipt of monies from insurance companies, other than the commission, towards various charges / reimbursement of expenses.

It is also observed that The Group Policy holder is in the practice of paying the incentives to the field officials for procuring insurance business to the tune of Rs.18

for new business and Rs.0.25 for renewals. It is further to be mentioned that the Group Policy holder has an agreement with the Bajaj Allianz Life Insurance Company Limited (BALIC) for reimbursement of such expenses. The above mentioned incentives are reimbursed to the Group Policy holder , who is a corporate agent. The Group Policy holder is also being reimbursed stationary and meeting expenditure incurred by them. The corporate agent has also been reimbursed advertisement charges of Rs.1.20 per passbook for printing Swayam Shakthi Suraksha product in the pass book. Total payment made in respect of these payments for FY09-10 was to the tune of Rs.12 Crores. It is further observed that the Group policy holder(who is also a corporate agent) and Bajaj Allianz Life Insurance company have entered into an agreement which enables the Group policy holder(who is also a corporate agent) to receive payments for incurring certain expenditure during the course of rendering the services with regard to sale of its insurance products. These acts are in violation of clause 21 of Corporate agency guidelines dated 14th July2005.

Decision: It is observed that the total payment made to the MFI who is corporate agent of M/s Bajaj Allianz is only marginally in excess of the maximum stipulated in Corporate Agency Regulations. It is also noted that in the subsequent year, the payment was well within the maximum stipulated. For these reasons, I come to the conclusion that there is no violation and hence this charge is not pressed.

9. Charge 7: The SKS has 2424 branches and has a few thousand field officers who sell Swayam Shakti Suraksha Group Savings Linked Insurance. Only a few of the fields officers possess the required qualifications and have undergone training as per the provisions of the Licensing of Corporate Agents Regulations, 2002 to be termed as "Specified Person" and to be able to sell insurance.

Decision: The product being sold is Swayam Shakti Suraksha which is a group savings linked insurance. The group insurance policy is obtained by master policyholder for the benefit of its members. Communication of benefits and terms and conditions lies with master policyholder and admission of the member into the scheme depends on the consent of the respective member. Hence admission of member within the group does not amount to solicitation. Hence this charge is not pressed.

Having regard to the facts of the case and the Decision of the Authority in respect of charge 2 above, the Authority, in exercise of powers vested in it under section 102 of the Insurance act, 1938 passes the following Order.

Considering the violations committed by the MFI and keeping in view the work being done by the MFI in the micro insurance sector, the Authority hereby directs the MFI to remit a penalty of Rs 50,00,000 (Rupees fifty lakhs only) within 15 days from the date of receipt of this order through a crossed demand draft drawn in favour of The Insurance Regulatory and Development Authority and payable at Hyderabad which may be sent to Shri T.S Naik, Joint Director at the Insurance Regulatory and Development Authority, 3rd Floor, Parisrama Bhawan, Basheerbagh, Hyderabad 500004.

The MFI is also directed to acknowledge receipt of this order.


J. HARINARAYAN
CHAIRMAN

PLACE: HYDERABAD
DATE: 19.02.2013