



FINAL ORDER

in the matter of Kotak Mahindra Bank Ltd
(Corporate Agent of Exide Life Insurance Co. Ltd)

1. Based on the

- (i) Show Cause Notice (hereinafter referred to as "SCN") Dated 5th April, 2016 issued by the Adjudicating Officer appointed by the Authority.
- (ii) Reply of Kotak Mahindra Bank (earlier ING Vysya Bank) dated 18th May, 2016 to the SCN.
- (iii) Submissions made by Kotak Mahindra Bank before the Adjudicating Officer during Personal Hearing on 10th June, 2016 at the office of Insurance Regulatory and Development Authority of India, 7th Floor, United India Building, Basheerbagh, Hyderabad.
- (iv) Inquiry Report of Adjudication Officer dated 31/10/2017, and
- (v) Reply Letter dated 20th November, 2017 of the Kotak Mahindra Bank to the Inquiry Report.
- (vi) Submissions made by Kotak Mahindra Bank before Chairman-IRDAI during Personal hearing held on 9/1/2018 at IRDAI-Hyderabad.

2. On examination of the reports filed under Section 31 B of Insurance Act, 1938 i.e. payments made to intermediaries including Bancassurance Channel by Exide Life Insurance Company Ltd., erstwhile ING Vysya Life Insurance Co Ltd, (hereinafter referred to as "Exide Life"), it is observed that during the FY 2013-14 Exide Life has paid Rs.30.46 crores towards the "Infrastructure facility charges" to its Corporate Agent M/s. ING Vysya Bank Ltd., now merged with Kotak Mahindra Bank (hereinafter referred to as "Corporate Agent") in violation of Clause 21 of the Guidelines on Licensing of Corporate Agents dated 14/7/2005 (hereinafter referred to as "Corporate Agency Guidelines") and Section 40 A of Insurance Act, 1938 as the same exceeded the limit of expenditure on commission stipulated under Section 40A of the Insurance Act, 1938.

3. A Show Cause Notice dated 7th Jan 2015 was issued to ING Vysya Bank and its response was received vide letter dated 12th February 2015. In the meanwhile Insurance Laws Amendment Ordinance 2014 was promulgated and was effective from 26th December 2014 which later resulted into Insurance Laws (Amendment) Act, 2015. Section 40 was modified and Section 40A of the Insurance Act was omitted with effect from 26th Dec 2014. Though the above cited violations took place during Financial Year 2013-14 prior to the amendment of the Insurance Act, 1938, it was decided to follow the adjudication process to inquire into the violation to Section 40A as per the new Section 105C of the Amended Insurance Act, 1938.

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4. Thus the matter was referred to Adjudicating Officer appointed by the Authority as per the provisions of Section 105 (C) of Insurance Act 1938. The Adjudicating Officer issued a SCN bearing No. IRDAI/ADJ/KotakBank/002/2016-17/OTW/440 dated 5th April, 2016 under Rule 4 of the Insurance (Procedure for Holding Inquiry by Adjudicating Officer) Rules, 2016 (hereinafter referred to as "AO Rules") to the Corporate Agent.

5. The Corporate Agent vide its letter dated 18th May, 2016 submitted its response to the SCN and as per the request of the Corporate Agent, the Adjudicating Officer granted a personal hearing in the matter on 10th June, 2016.

6. Mr. Mohan Shenoy, Chief Operation Officer, Mr. Ambuj Chandna, Sr. Executive Vice President, Ms. Sonalee Panda, Sr. Executive Vice President and Mr. Thakur Bhaskar, Principal Officer of the Corporate Agent Kotak Mahindra Bank were present during personal hearing before the Adjudicating Officer.

7. The Adjudicating Officer submitted inquiry report alongwith his recommendations on 31st October, 2016 which was forwarded to the Corporate Agent Bank by the Authority on 9th November, 2017. While forwarding the Inquiry Report, the Chairman-IRDAI has accorded one more personal hearing in the matter to the Corporate Agent which was availed by the Corporate Agent on 9/1/2018 at IRDAI-Hyderabad.

8. The submissions made by the Corporate Agent in their written reply to the SCN as also those made during the course of the personal hearing were taken into account.

9. The findings on the explanations offered by the Corporate Agent to the issues raised in the SCN 5th April, 2016 and the decisions are as follows:

(i) Charges under SCN dated 5th April, 2016 by the Adjudication Officer

In compliance to the Circular No. IRDA/F&I/CIR/F&A/066/03/2012 dated 2nd March, 2012, Exide Life submitted the details on the payments made to intermediaries under Section 31 B of the Insurance Act, 1938 for the financial year 2013-14 vide its letter dated 21st May, 2014. On examining the information submitted by Exide Life, it was observed that an amount of Rs. 30.46 crore was paid by Exide Life to the Corporate Agent during the financial year 2013-14 towards "infrastructure facility charges".

(a) That the receipt of Rs. 30.46 crore towards the "infrastructure facility charges" by the Corporate Agent (Bank) from Exide Life is in violation of Clause 21 of the Guidelines on Licensing of Corporate Agents of 14/7/2005 (Corporate Agency Guidelines) and



(b) That the amount of Rs. 30.46 crore received by the Corporate Agent (Bank) from Exide Life is in violation of Section 40 A of the Insurance Act, 1938 as the same exceeded the limit of expenditure on commission stipulated by Section 40A of the Insurance Act, 1938.

(ii) **Provisions of Clause 21 of Corporate Agency Guidelines and Section 40 A of Insurance Act, 1938:**

Clause 21 of Corporate Agency Guidelines:

“...Insurer shall not pay any amount other than the permitted agency commission, whether as administration charge or reimbursement of expenses or profit commission or in any other form to the corporate agent. This does not prevent the Insurer from sharing expenses of co-branded sales literature with the Corporate Agent. Such expenses, however, should be reasonable and should not be in any way be linked with the success in sale or premium earned by the Corporate Agent...”


Section 40 A (1) of the Insurance Act, 1938:

Prior to the Insurance Laws (Amendment) Act, 2015, (the period for which the present SCN is applicable), the Section 40A prescribes ceilings on expenditure on commission or remuneration in any form to be payable by Insurers and receivable by Insurance Agents.

“No person shall pay or contract to pay to an insurance agent, and no Insurance agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance exceeding

(iii) **Recommendation of Adjudicating Officer**

(a) Bank provided the infrastructure facility as the Bank has more pan India presence compared with the Insurer. There is no allegation that arm's length distance was not maintained for the agreement entered by both the parties. Therefore, no disproportionate gain to either party observed. As there is no disproportionate gain, the loss to the policyholders as a result of the default cannot be ascertained.

(b) Exide Life vide Order dated 30/7/2012 was penalized for Rs. 10 lakhs for the FY 2009-10 and 2010-11 for reimbursement of marketing support cost for advertisements to erstwhile ING Vysya Bank (now Kotak Mahindra Bank) which was over and above the eligible commission. 

(c) The present payment by Exide Life to the Bank is also in excess of eligible commission and is fit into the repetitive nature of default. Hence recommended a penalty of Rs. one lakh under Section 105C read with Section 40 C (3) of the IA, 1938 to the Bank.

(iv) Submissions of Corporate Agent:

- The Infrastructure facility charges of Rs. 30.46 crores during the year 2013-14 were towards providing certain infrastructure facility and amenities in the Bank's premises to Exide Life under separate agreements which are distinct from the Corporate Agency Agreement and not linked to the business generated by the Corporate Agent. This allows Insurer and its personnel to use the bank's office infrastructure including projectors, printers, fax and telephone, meeting rooms etc at mutually agreed price.
- Kotak Mahindra Bank has a good track record in regulatory compliance. These payouts were received by the then ING Vysya Bank before merging with the Kotak Mahindra Bank.
- The Inquiry Report of the Adjudicating Officer also said that there is no disproportionate gain to either party observed and the loss to the policyholders as a result of the default cannot be ascertained.
- The repetitive nature mentioned in the Inquiry Report is pertaining to Insurer and not to the Kotak Mahindra Bank.
- Requested to take a lenient view and not penalize the Kotak Mahindra Bank for an issue which happened before merger with ING Vysya Bank.

(v) Decision:

(a) The Bank (Corporate Agent of Exide Life) has received payments totalling Rs 30.46 Cr over and above permitted agency commission/remuneration during the FY 2013-14 in violation of Clause 21 of Corporate Agency Guidelines read with Section 40 A of Insurance Act, 1938. Out of Rs 30.46 Cr it is observed that an amount of Rs 6.46 Cr was paid towards various facilities taken from the bank such as Auditorium Charges, Car parking, Rent for Corporate Office and utility charges for Corporate Office and Rs 24 Cr towards "Infrastructure facility charges" without any specific break-up. The agreement dated May 25, 2012 apart from providing for the use of bank's infrastructure including projectors, printers, faxes and telephones, meeting rooms at "mutually agreed rates" it also allows display of IVL



Hoardings, advertisements on the bank branch building and assisting in attending to policyholders queries.

- (b) The submission of the bank that the above agreement is a separate and independent of corporate agency agreement is not considered tenable due to the fact that the Bank is not in the business of providing infrastructure facility on commercial basis to all establishments. Display of hoardings and advertisements of Insurer in the premises of Bank is primarily going to benefit the Corporate Agent's Insurance business promotion. The code of conduct which the Corporate Agent has to abide by, require it to assist the policyholders who visit the bank premises. Thus the agreement cannot be treated as totally independent and distinct from the Bank's Role of being the Corporate Agent of the Insurer. On the submission that Kotak Mahindra Bank has good track record in regulatory compliance and these payouts were received by the then ING Vysya Bank before merger is not acceptable as when the ING Vysya Bank is merged with Kotak Mahindra Bank all the liabilities along with the assets of ING Vysya Bank are transferred to Kotak Mahindra Bank and thus it cannot avoid vicarious liability for the actions of ING Vysya Bank.
- (c) Provisions of Clause 21 of Corporate Agency Guidelines prohibit the Insurer from paying any amount other than the permitted agency commission, whether as administration charge or reimbursement of expenses or profit commission or in any other form to the corporate agent. It also bars additional relationships between the Corporate Agent and the Insurer.
- (d) Section 40 A of Insurance Act prohibits Insurance Agent to accept the commission or remuneration in any form in respect of any policy of life insurance issued in excess of the limits prescribed. Accordingly due limits are prescribed on different types of insurance policies.
- (e) Therefore I hold that Corporate Agent has accepted the payments towards Infrastructure charges in violation of Clause 21 of IRDA Corporate Agency Guidelines dated 14th July 2005 read with provisions of Section 40 A of Insurance Act, 1938.
- (f) It is observed that penal provisions under Section 40(3) are without prejudice to the provisions of Section 102 of Insurance Act,1938 which in the present case are the provisions prior to the amendment of the Insurance Act,1938 where a penalty not exceeding five lakh rupees for each failure is provided for. Thus invoking the provisions of Section 102 as it existed prior to amendment along with Section 40(3), I impose a penalty



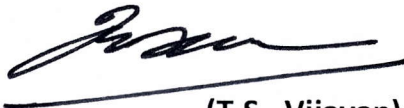
of Rs One lakh on the Corporate Agent and direct it to scrupulously abide by applicable Act and regulatory provisions.

(g) This Order shall be placed before the Board of the Corporate Agent Kotak Mahindra Bank in the next Board Meeting and to provide a copy of the minutes of the discussion to the Authority within 30 days from the date of such meeting.

10. The penalty amount of Rs. One lakh shall be remitted by Corporate Agent Kotak Mahindra Bank within a period of 21 days from the date of issuance of this Order through NEFT/RTGS (details for which will be communicated separately). An intimation of remittance may be sent to Mr. V. Jayanth Kumar, Chief General Manager (Life) at the Insurance Regulatory and Development Authority of India, Survey No.115/1, Financial District, Nanakramguda, Hyderabad 500032, email id life@irda.gov.in.

11. If the Corporate Agent feels aggrieved by this Order, an appeal may be preferred to the Securities Appellate Tribunal as per Section 110 of the Insurance Act, 1938.

Place : Hyderabad
Date : 19th February, 2018


(T.S. Vijayan)
CHAIRMAN