



Ref: IRDA/TPA/MISC/ORD/ 011 /01/2018

In the matter of M/s Happy Insurance TPA Services Pvt. Ltd.
Certificate of Registration No: 34 (since rejected)

Pursuant to the Order of Hon'ble Supreme Court dated 20th November, 2017, in the Matter of Civil Appeal No.3233 of 2017 – Happy Insurance TPA Services Pvt. Ltd. Vs Insurance Regulatory and Development Authority of India (IRDAI).

Based on the Representation filed by Happy Insurance TPA Services Pvt Ltd. (Happy TPA) dated 8th December, 2017 (received on 12th December, 2017) and submissions made during Personal Hearing on 12th January, 2018 at 02:30 PM taken by Member (Non-Life) at the office of Insurance Regulatory and Development Authority of India at Sy. No. 115/1, Financial District, Nanakramguda, Hyderabad – 500032.

Background

1. Happy Insurance TPA Services Pvt. Ltd. (the Appellant / Happy TPA) vide letter dated 10th October, 2015 submitted their application for renewal of Registration. While examining the Renewal Application of Happy TPA, it was observed that Happy TPA did not maintain the required minimum working capital of Rs. 1 Crore for the period of 2012-13, 2013-14 and 2014-15, which is a regulatory requirement to be complied by a TPA in accordance to the provisions of Regulation 3 (4) of IRDA (TPA – Health Services) Regulations, 2001.
2. After examining the application for renewal of Certificate of Registration (COR) and other annexed documents including financial statements, the Authority under the powers vested under Regulation (13) read with Regulation 14(8) of the IRDA (TPA- Health Services) Regulations 2001, rejected the renewal of Happy TPA vide Order dated 19th July, 2016 (Ref IRDA/TPA/MISC/ORD/140/07/2016).
3. Aggrieved by the Order of the Authority, Happy TPA approached Hon'ble Securities Appellate Tribunal (SAT) against the Order of the Authority. The Hon'ble SAT vide its Order dated 21st December, 2016 upheld the order passed by the Authority. Happy TPA then filed an appeal before the Hon'ble Supreme Court.
4. The Hon'ble Supreme Court vide its Order dated 21st August, 2017 has directed Happy TPA to intimate the respondent (the Authority) that it (Happy TPA) has

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already enhanced the working capital. Further, the Hon'ble Supreme Court directed as under:

"the respondent shall give instructions after receiving the letter to the counsel so that he can assist the court in the proper perspective".

5. The Authority on the directions of Hon'ble Supreme Court examined the submissions of the Happy TPA made vide their letter dated 24th August, 2017. On examining the contents of the letter, suitable instructions were issued vide letter dated 15th September, 2017. On hearing the submissions of both the parties, Hon'ble Supreme Court vide its Order dated 20th November, 2017 stated that *"considering the totality of circumstances, we are only inclined to grant liberty to the appellant to submit a fresh proposal with regards to its financial status which shall be considered by state Authority in accordance with law."* The Hon'ble Supreme Court asserted that in certain cases different orders have been made which shall be taken note of and further stated that they leave it to the discretion of the respondent.
6. Pursuant to Hon'ble Supreme Court order dated 20th November, 2017, Happy TPA has filed a representation dated 8th December, 2017.
7. In the personal hearing held on 12th January, 2018, Happy TPA was represented by Mr. Shushil Poddar – Director, Mr. Pradeep Aggarwal, Advocate, Mr. Pramod Sethia- Advocate and Mr. E.V. Venugopal, Advocate. On behalf of the Authority Mr. Suresh Mathur, Executive Director (Health), Mr DVS Ramesh, General Manager (Health), Mr. D P Pattanaik OSD (Health products & Analysis), Mr. Mohammad Ayaz, AGM (Health Regulations) and Ms. Manju Choudhary, Assistant Manager (Health –TPA) were present in the personal hearing.
8. The representation made by Happy TPA vide letter dated 08th December, 2017 to the Authority and also the submissions made during the course of personal hearing were taken into consideration.
9. The findings on submissions made by Happy TPA in their Representation, in the Personal Hearing and the decisions thereon are as under;

Submissions made by Happy TPA: The following are, inter alia, the submissions in brief made by Happy TPA.

10. It is evident from the Hon'ble Supreme court order that Happy TPA is prepared to meet all requirements of the regulations including that of working capital, equity requirement etc. In similar circumstances i.e. Gokulam, Universal Mediaid etc. the licenses were continued/renewed although they did not meet the working capital, various requirements and that there is no reason for the Authority to discriminate against the applicant.



11. It is evident from the order dated 20th November, 2017 that the Authority ought to consider the cases of others who had been cautioned/warned while the Applicant is being discriminated and as such the Hon'ble Supreme Court had directed for considering this aspect of the matter also.
12. Clarifications along with supporting documents were submitted on 18th May, 2016 including a copy of Audited Balance sheet. It is further submitted that the documents which were submitted on 18th May, 2016 were again submitted on 29th June, 2016 by electronic mail clearly showing that the working capital of the applicant was more than Rs 1 Crore to qualify under Regulation 3 (4) of the 2001 Regulations.
13. The working capital issue was not a violation of guidelines but an error.
14. It is the consistent practice of the Authority to issue warnings, impose penalties in case of non-compliance with the various regulations and the guidelines issued by the Adjudicating Authority in cases of various kinds of Insurance Regulations and there is no justification given by the Authority or Tribunal in not following such practice in case of Happy TPA. It is further submitted that the Adjudicating Authority in several cases had condoned serious violations with regard to not only maintaining of minimum working capital but also many more serious violations in respect of other TPA's.
15. Gokulam Health Services TPA license was cancelled as it did not abide by its own undertaking.
16. While on one hand the Adjudicating Authority had granted several opportunities to other TPAs like Gokulam, however, it has been discriminated against. It is further submitted that such action of the Adjudicating Authority is totally arbitrary and that there is no reason or justification to discriminate against the Applicant.
17. The Hon'ble High Court of Delhi vide its order dated 15th February, 2010 in Writ Petition (C) no 7469 of 2009 titled "M/s Universal Mediaid Services Ltd. vs IRDA" quashed the order passed by IRDA declining renewal of Petitioner's TPA license, specifically with regard to maintaining the minimum working capital and other alleged violations.
18. Great hardship is caused due to non-renewal of the license by the adjudicating authority and that it incurred huge losses.



19. The following fresh proposals are submitted in compliance with the Order dated 20th November, 2017 in Civil appeal no. 3233 of 2017:

- a. Happy TPA submitted that at present they have a Working Capital of Rs. 1,03,84,234 as reflected in Audited Balance Sheet of FY 2016-17.
- b. Happy TPA submitted that it undertakes to increase and maintain a share capital of Rs. 4 crores as required under amended Regulation of 2016.
- c. Happy TPA has further submitted that it undertakes to maintain the working capital of Rs. 1 crore as required under the amended Regulations of 2016 or any other sums that may be required to be maintained as per present Regulations.
- d. Happy TPA submitted that the Adjudicating Authority may conduct compliance Audits at such interval as it may stipulate during the review period of Applicant's License.
- e. Happy TPA in their representation submitted that it (the applicant – Happy TPA) undertakes to rectify the deficiencies noticed during audit by IRDAI within a period of 30 days failing which the applicant shall take no more than 60 days. The Applicant is ready and will abide by any other terms and conditions that has been prescribed.

20. Happy TPA requested an opportunity of personal hearing before passing any order on this proposal.

21. Written submissions were also made by Happy TPA on 12th January, 2018 during personal hearing.

22. Happy TPA has also brought 5 cheques dated 17th November, 2017 of Oriental Bank of Commerce of Rs. 50 Lakhs each stating that it is from one of the existing shareholders.

23. Happy TPA has also referred Circular no. 1 of 2003 of Ministry of Corporate Affairs which allows for reopening / revision of annual accounts after adoption in the AGM. It is submitted that in the present case, the corrected Annual Accounts were adopted in the Annual General Meeting and filed with the Authorities in accordance with law and concerned Authorities have accepted the same.

24. It is submitted by Happy TPA that they have not mis-represented at any point of time and they had only corrected an inadvertent mistake in the accounts and there was no reason with the Authority to discriminate them.



25. Happy TPA has also showed the Audited Financials of Happy TPA and Ganpati Promoters for FY 2015-16 and FY 2016-17 in order to demonstrate that a sum of Rs. 1 crore was shown in the Audited accounts of Ganpati Promoters as Long Term advance being the amount given to Happy TPA. The TPA submitted that Rs 1 crore was erroneously recorded by Happy TPA as Current Liability and this error was subsequently corrected on the same day. In the case of double entry system of Accounting, the Long Term advance in Balance sheet of Ganpati promoters cannot be shown differently in the Balance sheet, other than Long Term Borrowings. It was submitted that it had inadvertently shown it as Current Liability which was corrected on the same day.

Addressing the submissions of Happy TPA:

26. It is stated that the main violation cited against Happy TPA is that they did not maintain the minimum working capital requirement of Rs 1 crore as required under Regulation 3 (4) of IRDA (TPA-Health Services) Regulations, 2001.

27. The said regulation reads as under:

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

28. It is observed that Happy TPA did not maintain the minimum working capital requirement of Rs. 1 crore consistently since the grant of the TPA License i.e, for FY 2012-13, FY 2013-14, and FY 2014-15 as mentioned hereunder:

Amt Rs. In Lakhs				
SR. No	Financial Year	Current Asset	Current Liability	Working Capital (C-D)
A	B	C	D	E
1	2012-13	95.99	3.87	92.12
2	2013-14	93.37	21.03	72.34
3	2014-15	66.20	33.36	32.84

29. The submissions of Happy TPA that it is prepared to meet all requirements of the regulations including that of working capital, equity requirement etc. are considered. However, it is clarified that the rejection of renewal of the Certificate of Registration was owing to its failure to comply with minimum working capital requirements for the financial years referred in this order viz. for the FY 2012-13, FY 2013-14 and FY 2014-15. The contention of Happy TPA that in similar circumstances i.e. Gokulam, Universal Mediaid etc. licenses were continued/renewed although they did not meet the working capital and that there

is no reason for the Authority to discriminate against it, is not tenable for the following reasons:

- a. The license of Sri Gokulam TPA in the first instance for the period 24/03/2011 to 23/03/2014 was renewed taking into consideration that the said TPA Company did not do any business in the preceding period and that for all business purposes the said TPA was non-existent in the market. Thus, the license was renewed based on an assurance that it would maintain minimum working capital. This was in the year 2011. Subsequently, the Authority has been exercising closer review and when the renewal of Sri Gokulam was due the same was rejected at the second instance (for the period 24/03/2014 to 23/03/2017) owing to its continued non-compliance with the minimum working capital requirements. Thus, taking into consideration the business background of these TPAs, I aver that the treatment that was meted out to Sri Gokulam and to Happy TPA is same. On the submissions that Sri Gokulam Health Services TPA license was cancelled as it did not abide by its own undertaking, it is clarified that the undertaking pertains to maintaining the minimum working capital and its failure was considered as a violation of the within referred Regulations, hence, the rejection of renewal to Sri Gokulam TPA.
- b. As regards the case of Universal Medi-Aid Services Ltd the Hon'ble Delhi High Court has observed that the working capital requirement was satisfied by the said TPA as stipulated in the regulations. However, the condition imposed by IRDAI that investment should only be maintained in a Scheduled bank has not been accepted by High Court since the same is not stipulated in TPA Regulations, 2001. Thus, this instance referred by Happy TPA is not comparable.
- c. It is further clarified that in the matter of Spurthi TPA the renewal was rejected vide Order Ref No. IRDA/TPA/MISC/ORD/229/12/2015 dated 31/12/2015 as this TPA Company did not comply with minimum working capital requirements. Thus, similar treatment was meted out to Happy TPA as well.

30. The submissions of Happy TPA, that the Authority ought to consider the cases of others who had been cautioned/warned while the Applicant is being discriminated and that it is the consistent practice of the Authority to condone, issue warnings, impose penalties in case of non-compliance with various regulations / guidelines and that there is no justification in not following in its case are examined. However,



specific instances were not cited by Happy TPA. It is to state that the regulatory actions of the Authority are within the framework of the Regulations notified by the Authority and applicable statutory provisions thereunder. In this instance, the action of the Authority rejecting the renewal application is within Regulation 13 to be read with Regulation 14 (8) of IRDA (TPA-Health Services) Regulations, 2001.

31. On the contest of Happy TPA that great hardship is caused due to non-renewal of the license, it is clarified that every TPA is subject to the extant regulatory framework put in place by the Authority.
32. The submissions that clarifications along with supporting documents were submitted on 18th May, 2016 and that the documents which were submitted on 18th May, 2016 were again submitted on 29th June, 2016 by electronic mail showing that the working capital complies with the Regulations are examined and the following are the observations:
 - a) On examining the documents, it is noted that the first version of audited annual report for FY 2015-16 was submitted on 18th May, 2016– where the working capital was reported as Rs 47.08 lacs and the second version of audited annual report for FY 2015-16 was submitted on 29th June, 2016– where the working capital was shown as Rs 147.08 lacs. In my considered view, when there are significant changes in the underlying accounts concerning the Minimum Working capital of the Annual Report for FY 2015-16, Happy TPA shall not claim that they forwarded the same document again on 29th June, 2016. Thus, these submissions are not acceptable.
 - b) It is further observed that the Auditors of Happy TPA did not mention reasons for changing the Audited financials of first report and for preparing the second version of Audited Report. This fact that the Auditors did not specify reasons for preparing Second Audit Report was also brought out in the Authority's order dated 19th July, 2016.
 - c) On the submissions of Happy TPA that the working capital issue was not a violation of guidelines but an error, it is clarified that it has been consistently not complying with the working capital requirements for FY 2012-13, FY 2013-14 and FY 2014-15 as detailed in this order, which is a violation of the regulatory provisions specified herein.
 - d) From the minutes of AGM held on 15th July 2016 submitted by Happy TPA in the Personal Hearing held on 12th January, 2018, it is observed that there is no specific mention as to which version of Audited Annual Report was adopted and also there is no mention of the corrections carried out in the second version of Audited Annual Report for FY 2015-16. Thus, it is observed that the minutes of AGM did not bring out complete material information concerning second



version of Audited Annual Report for FY 2015-16, which I consider is a serious lapse.

- e) From the "Corrigendum to the Audit report by the Auditors" submitted by Happy TPA to the Hon'ble SAT as Exhibit A it is observed that the first Audited report was signed at 12:15 pm and the second Audited Report was signed at 1:00 PM on the same day, that is, on 11th April, 2016. It is further observed that the Auditors also mentioned that "On receiving all copy of financial statements including Auditors report for the financial year ended 31.03.2016 signed by us in original and a firm assurance from the directors that no photo copy had been made by them, we had issued an audit report along with financial statement which was duly explained by us." It is surprising that despite this remark by the auditors, the Happy TPA not only submitted the first version on 18.05.2016 but then apparently realizing the error submitted the second version on 29.06.2016. Happy TPA, in their written submission asserted that the second version is the correct one. The entire manner of submission of audited annual report for the FY 2015-16 in my opinion is questionable more so, since the corrigendum was not made part of second version of audited annual report. It is not clear why the TPA submitted the first version in the first place, when both versions according to them were prepared on the same day. Finally, even assuming that their second version is to be taken into consideration, this plugs the working capital requirement only for the FY 2015-16. Even this does not merit granting renewal, as the requirement of Regulation 3(4) is not fulfilled. Accordingly, I feel that there is no need to look into specific corrected entries made in the second submission.
- f) The submissions of Happy TPA in the Personal hearing that the accounts could be reopened and revised to meet requirement of other laws including IRDAI Regulations as per Circular No. 1 of 2003 issued by Government of India, Ministry of Finance and Company Affairs are examined. It is observed that the within referred circular, inter alia, allows a company to reopen and revise its accounts only to comply with technical requirements of any other law to achieve the object of exhibiting true and fair view. In view of the remarks in the above para there is no need to consider the merits of this submission.

33. Thus, it may be observed that Happy TPA consistently failed to meet the Minimum Working Capital requirements stipulated by IRDAI in violation of Reg. 3 (4) of IRDA (TPA – Health Services) Regulations, 2001.

34. I draw the attention of Happy TPA to the Authority's Final Order Ref: IRDA/TPA/MISC/ORD/140/07/2016 dated 19th July, 2016 wherein it is categorically mentioned that the TPA has been consistently failing in meeting the minimum working capital requirements as stipulated under the Regulations as amended from time to time.

Decision of Authority:

35. For the aforementioned reasons, on a review of the submissions made in the representation dated 08th December, 2017 and the submissions made in the personal hearing dated 12th January, 2018, and on a judicious exercise of powers vested with me under Regulation 13 read with Regulation 14 (8) of IRDA (TPA-Health Services) Regulations, 2001, I am not able to find any merit in the representation filed by Happy TPA and therefore, I am constrained to state that the Authority stands by its Final Order dated 19th July, 2016 by rejecting the Renewal Application of Happy TPA. Happy TPA is advised to comply with the following:

- a. Happy TPA is advised to remove the word TPA from name of its Company and that they shall not do TPA business.
- b. All insurers who are having TPA agreement with Happy TPA, shall immediately take such alternative steps including appointment of another TPA, if any, as may be necessary to continue to cater to the policy holders served by Happy TPA.
- c. Happy TPA shall immediately submit the data collection and the books, records or documents etc., relating to the TPA business carried on by it to respective insurers.
- d. Happy TPA shall cooperate with insurance companies in making suitable alternate arrangements to service the policy holders in respect of whom the policies are in force.
- e. Happy TPA shall, reconcile and close the accounts with concerned insurance companies and network providers, if any.

It is also to be noted that in accordance to the provisions of Regulation 10 (3) of IRDAI (TPA-Health services) Regulations, 2016, an applicant against whom an order of refusal to grant Certificate of Registration has been passed by the Authority shall not, for a period of two years from the date of such refusal, submit a fresh application to the Authority for grant of Certificate of Registration as a TPA.

Accordingly, in compliance to the Order dated 20th November, 2017 of Hon'ble Supreme Court, the representation of Happy TPA dated 08th December, 2017 is disposed of.

Place: Hyderabad
Date: 22-01-2018



Member (Non-Life)

