



No: IRDAI/NL/ORD/MTP/158/09/2019

13th September, 2019

Order in the matter of
M/s. SBI General Insurance Company Ltd.

I Based on the

- (i) Show Cause Notice (hereinafter referred to as "SCN") Dated 1st February, 2018 issued by the Adjudicating Officer appointed by the Authority.
- (ii) Reply of M/s SBI General Insurance Company Limited, (hereinafter referred to as "SBI General") dated 20th February, 2018 to the SCN.
- (iii) Submissions made by SBI General before the Adjudicating Officer during Personal Hearing on 23rd March, 2018 at the office of Insurance Regulatory and Development Authority of India, Sy. No. 115/1, Financial District, Hyderabad.
- (iv) Report of Adjudicating Officer dated 31st May 2018.
- (v) Authority's letter dated 18th January, 2019 and 20th February 2019 to SBI General intimating invoking Section 105 C(2) of Insurance Act 1938 and giving them an opportunity of personal hearing in the matter.
- (vi) The Submissions made by SBI General in its letter dated 26th February, 2019 and during the Personal Hearing held on 30th April, 2019 at 3.00 PM chaired by Dr. Subhash Chandra Khuntia, Chairman, IRDAI, at the office of Insurance Regulatory and Development Authority of India, Financial District, Nanakramguda, Hyderabad.

II Background:

- 1) On examination of the data submitted by SBI General in accordance with IRDAI (Obligation of Insurer in respect of Motor Third Party Insurance Business) Regulations, 2015, it was observed that there was a shortfall of Rs. 146.11

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crores (38.59%) in the Gross Direct Premium underwritten for Motor Third Party (MTP) Business during the FY 2016-17 by SBI General.

- 2) As regards possible violation of Section 32D of Insurance Act, 1938, the matter was referred on 21.12.2017 to the Adjudicating Officer appointed by the Authority as per the provisions of Section 105 (C) of the Act as amended from time to time.
- 3) The Adjudicating Officer issued a SCN vide letter ref. no. IRDAI/ADJ/SBI General/2017-18/OTW/1260 dated 01st February, 2018 under Rule 4 of the Insurance (Procedure for Holding Inquiry by Adjudicating Officer) Rules, 2016 (hereinafter referred to as "AO Rules") to SBI General.
- 4) SBI General vide its letter dated 20th February, 2018 submitted its response to the SCN and as per the request of SBI General, the Adjudicating Officer granted a personal hearing in the matter on 23rd March, 2018.
- 5) The Adjudicating Officer submitted the inquiry report along with recommendations to the Authority on 31st May 2018.
- 6) On examination of the Adjudicating Officer's report, it was decided that the said matter needed further examination and consequently the Authority issued a letter dated 18th January 2019, offering an opportunity of personal hearing to SBI General under section 105 C (2) of Insurance Act, 1938.
- 7) SBI General vide its letter dated 26th February, 2019 submitted its response and also opted for Personal hearing, which was held by the undersigned on 30th April, 2019 at IRDAI office, Hyderabad. Shri. Pushan Mahapatra, MD & CEO, Shri. Subramanyam B., Head- Underwriting & Reinsurance, Shri. Mahendra Tripathi, Head- Compliance, Legal & CS, Shri. Rikhil Shah, SVP & CFO and Shri. Sunil Raut, Lead- Compliance of SBI General were present in the hearing. On behalf of the Authority, Smt. Yegnapriya Bharat, CGM (Non-Life), Smt. Anita Josyula, GM (Non-Life) and Shri. A. Shrihari, Manager (Non-Life) were also present.



8) The charges mentioned in the SCN dated 1st February, 2018, recommendations of the Adjudicating officer, submissions of SBI General to the SCN vide letter dt: 20.02.2018 & 26.02.2019 and during personal hearing 23.03.2018 & 30.04.2019, are as follows:

(i) **Charges under SCN dated 1st February, 2018 by the Adjudicating Officer:** Under the provisions of Sec 32D of Insurance Act, 1938, amended from time to time, SBI General did not meet the Motor Third Party Obligation for the FY 2016-17 calculated as per Regulation 3 of IRDAI (Obligation of Insurer in respect of Motor Third Party Insurance Business) Regulations, 2015. During the referral Financial year, SBI General has underwritten Rs. 232.47 crore as against the minimum obligatory Motor Third Party Insurance business of Rs. 378.58 crore resulting in a shortfall of Rs. 146.11 crore. In percentage terms, the shortfall works out around 38.59% of the Motor Third Party Insurance business obligation. Also, from the insurer's clarification letter dated 04-12-2017, it appears that the insurer is not renewing Motor TP policies despite the Authority's clear instruction not to deny any Motor TP policies.

(ii) **Submissions of SBI General vide letter dt: 04-12-2017:**

- a. Private Car and Goods Carrying Vehicles (GCV) loss ratio as at 31.03.2016 were adverse. Underwriting of loss making models from these categories were driven by their HO, which led to drop in premium and portfolio started degrowing.
- b. The drop in business was more in GCV product which led to drop in premium contribution from MTP.

(iii) **Provisions of Section 32D of Insurance Act, 1938 and Regulation 3 of IRDAI (Obligation of Insurer in respect of Motor Third Party Insurance Business) Regulations, 2015:**

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- a. **Sec 32D of Insurance Act, 1938:** Every insurer carrying on General Insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2015, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by the regulations:

Provided that the Authority may, by regulations, exempt any insurer who is primarily engaged in the business of Health, Re-insurance, Agriculture, Export Credit Guarantees, from the application of this section.

- b. **Regulation 3 of IRDAI (Obligation of Insurer in respect of Motor Third Party Insurance Business) Regulations, 2015:**

The Obligation of an Insurer in respect to Motor Third Party insurance business for a Financial Year(X) should be arrived as below:

(i) Total 'Gross Direct Premium Income(GDPI)' under all lines of business of all insurers in the immediate preceding financial year = A

(ii) Total GDPI under motor insurance business of all insurers in the immediate preceding financial year = B

(iii) Insurer's GDPI under all lines of business in the immediate preceding financial year = C

(iv) Insurer's GDPI under motor insurance business in the immediate preceding financial year = D

(v) Total GDPI under motor third party insurance business of all insurers during the immediate preceding financial year = E

(vi) Obligation of the Insurer to be met in a financial year

$$X = \left(\frac{C/A + D/B}{2} \right) \times E \times \frac{90}{100}$$

- (iv) **Submissions of SBI General to the SCN dt: 01.02.2018 vide their letter dt: 20/02/2018:**

- (a) The Company has proactively disclosed to the Authority vide its letter dated 1st August 2017 that the Company was seeing a shortfall of Rs. 150 crores of MTP business for the Financial Year 2016-17.



- (b) The Company has never refused any "liability only" policy, coming to its offices.
- (c) The Company has not made any disproportionate gain or taken any unfair advantage or did not cause any loss to policyholder in falling short of achieving motor third party obligation.
- (d) The management of the company, under supervision of the Board, is taking necessary steps to ensure meticulous compliance with the minimum business requirements.

(v) **Additional Submissions by SBI General in their personal hearing held by Adjudicating officer on 23rd March 2018:**

- (a) Substantial growth in Health & Agriculture during 2014-15, 2015-16 and 2016-17.
- (b) It has not failed in meeting with Section 105B of the Insurance Act, 1938, since it has only failed to meet the provision of Section 32D only and not Sections 32B, 32C and 32D read together and cumulatively.

(vi) **Recommendation of Adjudicating Officer**

While examining whether any penalty should be recommended to SBI General for non-complying with the Sec 32D of Insurance Act, 1938 and IRDAI (Obligation of Insurer in respect of Motor Third Party Insurance Business) Regulations, 2015, observed the following:

- (i) Under Section 105D of the Insurance Act, 1938, while recommending the quantum of monetary penalty under Section 105C of the Insurance Act, 1938, Adjudicating Officer shall have due regard to the following factors, namely:
 - (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default
 - (b) the amount of loss caused to the policyholders as a result of the default and
 - (c) the repetitive nature of default

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(ii) After carefully examining the oral and written submissions of the Insurer and the documents available on record, the Adjudicating Officer came to the following conclusion:

- (a) The Insurer has not denied any Motor Third Party policy to any customer who has approached them. Hence, the disproportionate gain or unfair advantage, if any, and amount of loss caused to the policyholders cannot be quantified with the material available at record.
- (b) The violation is not repetitive. The Insurer had exceeded the prescribed third party insurance business obligation in MTP Regulations for the FY 2015-16 by Rs. 2.98 crore.
- (c) The shortfall of Rs. 146.11 crore (38.59%) in 2016-17 is a serious default. However, the Adjudicating Officer is inclined to take a lenient view as this is the first such default on the part of the Insurer and does not satisfy any of the three factors laid down in section 105D of the Insurance Act, 1938 which the Adjudicating Officer is bound to consider.
- (d) **Considering the above, the Adjudicating Officer did not recommend any penalty on the Insurer under sec 105C of the Insurance Act, 1938. However, the Adjudicating Officer recommended issuing a strict direction to the Insurer to take corrective steps to ensure compliance in the future and warn the Insurer that any future non-compliance of Section 32D and 105B of the Act would be taken strict cognizance of and the penalties leviable in that regard would be strictly applied.**

(vii) **Authority's letter dt: 18.01.2019:**

After careful perusal of the facts of the case and the submissions made by SBI General and the Adjudicating officer, it was felt by the Authority that the recommendations of the Adjudicating officer need to be reviewed vis-à-vis section 105(B) of the Act, based on the following observations:



- (a) MTP insurance is a statutory obligation, to provide timely help to the road accident victims and their families.
- (b) IRDAI came out with IRDAI (Obligation of Insurer in respect of Motor Third Party Insurance Business) Regulations, 2015 with an objective of ensuring coverage of MTP risks by all insurers.
- (c) By not complying with the obligation by a huge margin of Rs. 146 crores, the insurer has failed to complete its part of the obligation and burden of these risks may have been passed on to others.

SBI General was allowed another opportunity of personal hearing to make its submissions.

(viii) Submissions of SBI General during the personal hearing held on 30th April 2019:

- (a) The shortfall during the FY 2016-17 was neither deliberate nor incidental and was due to factors beyond the control of SBI General.
- (b) SBI General is committed to achieve the MTP obligation for the FY 2019-20 and thereafter as they have had recent tie-ups with substantial commercial Motor Portfolio which would result in improved MTP achievements year on year. It is equally committed to achieve, during FY 2020-21 and FY 2021-22, substantial higher MTP business so as to make good the shortfalls recorded during previous years which were due to market factors beyond control of SBI General.
- (c) SBI General has given a written undertaking on submissions made as per points no. 8(viii)(b).
- (d) SBI General also suggested that the formula for setting up MTP Obligations may be made akin to the Rural and Social Sector obligations, thereby making it based on number of policies instead of it being based on GDPI.

9) Decision of the Authority:

- (a) Motor Third Party Insurance is a statutory requirement as per Motor Vehicles Act, 1988. IRDAI has mandated that no insurer shall refuse to underwrite standalone Motor Third Party insurance cover. Further,

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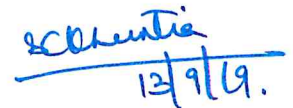
Section 32D of Insurance Act, 1938, as amended by Insurance Laws (Amendment) Act, 2015, along with IRDAI (Obligation of Insurer in respect of Motor Third Party Insurance Business) Regulations, 2015 provides formula for minimum obligations that should be underwritten by each insurer.

- (b) The basic objective of this regulation is to
- (i) Reduce number of Uninsured vehicles.
 - (ii) Ensure, as far as possible, every vehicle plying on the road has a MTP insurance.
 - (iii) No insurer refuses to underwrite MTP insurance cover.
 - (iv) The MTP insurance risk is not concentrated with few of the insurers but is a spread across the Industry.
- (c) For the FY 2016-17, SBI General has not fulfilled the obligation and has a significant shortfall of around Rs. 146 crores (38.59%) which amounts to non-compliance of MTP Obligations.
- (d) However, taking into consideration
- (i) That the violation is not of repetitive nature.
 - (ii) The submissions of the insurer that they are committed and are entering into various tie-ups to fulfil the MTP obligations.

The insurer is warned to be careful in future. The insurer is further directed to ensure compliance with the extant regulatory framework pertaining to Motor Third Party Obligations in future. This direction shall be brought to the notice of the Board of the insurer for compliance.

Place : Hyderabad

Date : 13th September, 2019


12/9/19.

(Dr. Subhash C. Khuntia)

CHAIRMAN