



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY OF INDIA

Order Number: IRDAI/F&I/ORD/ MISC/106/7/2024

Date: 23rd July, 2024

Order in the matter of M/s. Care Health Insurance Ltd. (hereinafter referred to as "CHIL") under section 34, 34E and 102 of the Insurance Act, 1938 (hereinafter referred to as "the Act") read with Guidelines on Remuneration of Non-Executive Directors and Managing Director/ Chief Executive Officer/ Whole-Time Directors of Insurers, 2016 dated 05th August, 2016 [Ref.: IRDA/F&A/GDL/LSTD/155/08/2016] and IRDAI Circular on Appointment of Common/ Nominee Director(s) on the Board of Insurance Company, dated 30th August, 2018 [Ref.: IRDA/F&A/CIR/MISC/141/08/2018]

Based on the:

- (i) Show Cause Notice (hereinafter referred to as "SCN") reference No. 258/F&I(NL)/HCH/Com/Part-II/02/2022/32 dated 14.06.2024 in connection with the directions of the Authority issued vide IRDAI Letter dated 10.05.2022,
- (ii) Response of CHIL dated 21.06.2024
and
- (iii) Submissions made by CHIL during the personal hearing held on 15.07.2024 at 12:00 noon before the panel of Chairman IRDAI, Member (Actuary) and Member (F&I).

Background:

1. The Insurance Regulatory & Development Authority of India (herein after referred to as "IRDAI") granted Certificate of Registration No. 148 dated 26th April, 2012 to Care Health Insurance Limited (formerly known as Religare Health Insurance Company Limited) (herein after referred to as "CHIL") to carry out health insurance business in India in terms of Section 3 of the Insurance Act, 1938. In terms thereof, CHIL was subject to the terms and conditions of the Certificate of Registration and was also required to abide by the provisions of the Insurance Act, 1938 (herein after referred to as the "Act"), the Insurance Regulatory and Development Authority Act, 1999, other directions issued by the Authority from time to time including by way of Regulations, Guidelines and /or Circulars.
2. In terms of Section 48A of the Act, permission of the Authority is required for new appointment and/or continuation of appointment of Common/ Nominee

Director(s) representing insurance agent or intermediary or insurance intermediary on the Board of the insurer. Further, the Authority, in exercise of the powers conferred under Section 14(1) of the IRDA Act, 1999, had issued circular ref. no. IRDA/F&A/CIR/MISC/141/08/2018 dated 30.08. 2018 ("2018 Circular"), wherein insurers while requesting for permission of common directors were required (as per Paragraph B(c) of the 2018 Circular) to ensure that:

"No remuneration shall be payable to Non-executive director without prior approval of the Authority. However, Insurers are permitted to pay sitting fee, as per applicable norms."

3. The Authority, in terms of Section 48A of the Act, vide its letter dated 18.09.2019 has granted approval to Dr. Rashmi Saluja, for her role as common director in CHIL and Religare Finvest Limited (Insurance Intermediary- Corporate Agent) subject to conditions. Further, the Authority vide its letter dated 28.01.2022 has granted approval to Dr. Rashmi Saluja, for her role as common director in CHIL and Religare Broking Limited (Insurance Intermediary- Corporate Agent) subject to conditions. The conditions inter alia include that:
"prior approval of the Authority shall be taken for payment of remuneration to the non-executive directors other than for payment of sitting fees"
4. The Authority received an application dated 31.12.2021 from CHIL requesting for grant of approval for issuance of stock options under an Employee Stock Options(ESOP) Scheme to Dr. Rashmi Saluja, Non-Executive Chairperson of CHIL, in her capacity as a Non-Executive Director (NED) of CHIL. The Authority vide its letter dated 10.05. 2022 rejected the request made by CHIL (to issue stock options in the capacity of NED of CHIL and employee of the holding company) as the remuneration guidelines of 2016 permit payment of "profit related commission' to NEDs apart from sitting fees. While rejecting the request it was indicated that:
"As the roles and responsibility of Non-Executive Chairman (NEC) is majorly comparable with that of Non-Executive Director (NED), the proposed remuneration shall also be reasonably commensurate with that of the Non-Executive Directors".
5. Vide email dated 12.05.2022, CHIL had requested for reconsideration of decision on rejection which was later withdrawn by them vide email dated 17.05. 2022.
6. Subsequently, basis news article published on 16.11.2023, it came to the notice of the Authority that CHIL had granted 2,27,11,327 ESOPs to Dr. Rashmi Saluja despite rejection by IRDAI and after withdrawal of their reconsideration request for the same. IRDAI vide email dated 20.11.2023 asked CHIL to submit comments/clarifications on the publicly available reports mentioned above.

CHIL, vide letter dated 29.11. 2023 submitted its response. The reply given by CHIL was examined and it was noted that CHIL had granted 2,27,11,327 ESOPs of which 75,69,685 ESOPs have been exercised by Dr. Rashmi Saluja, non-executive chairperson cum director of CHIL on 04.10.2023 even after rejection of the request for grant of approval for issuance of ESOPs by IRDAI. It is prima facie evident that CHIL had not complied with the directions of the Authority as issued vide IRDAI letter dated 10.05. 2022.

7. Subsequently, IRDAI vide its letter dated 24.05.2024 granted an opportunity to CHIL to ensure compliance with IRDAI's letter dated 10.05.2022 and confirm the compliance within a period of 7 days from the date of such letter. In response, CHIL sought the additional time, which was allowed up to 07.06.2024.
8. CHIL vide its letter dated 07.06.2024 has submitted that the grant of ESOPs to Dr. Rashmi Saluja has been in her capacity as Executive Chairperson of Religare Enterprises Ltd (REL) and not as Non-executive chairperson of CHIL. The Authority has not accepted the said explanation considering the same to be in alleged defiance of the directions of the Authority, communicated vide IRDAI letter dated 10.05.2022.

Charge: Issuance of SCN

9. In view of the above, SCN dated 14.06.2024 was issued to CHIL seeking its response with respect to alleged violations of the provisions of:
 - a) Section 48A of the Act read with IRDAI circular ref. no. IRDA/F&A/CIR/MISC/141/08/2018 for non-compliance with the conditions or restriction as imposed while granting approval of common director,
 - b) Annexure A (1) (b) of the IRDAI (Remuneration of Non-Executive Directors of Private Sector Insurers) Guidelines, 2016 for payment to Non-executive director in form other than 'profit related commission' and 'sitting fees'.

Response of CHIL to the SCN:

10. **A summary of the submissions made by CHIL in its response dated 21.06. 2024, is as follows:**
 - a) The application dated 31.12.2021 from CHIL requesting for grant of approval for issuance of stock options under an ESOP Scheme to Dr. Rashmi Saluja in her capacity as a Non-Executive Director (NED) of

CHIL has created confusion and condonation of the same has been requested.

- b) CHIL has complied with the IRDAI letter dated 10.05.2022 as it cancelled the grant of ESOPs made on 17.01.2022.
 - c) The Nomination and Remuneration Committee of CHIL thereafter gave a fresh grant of ESOPs to Dr. Rashmi Saluja on 19.09.2022 basis expert/legal opinions received by CHIL.
 - d) The provisions of the IRDAI (Remuneration of Non-Executive Directors of Private Sector Insurers) Guidelines, 2016 (hereinafter '2016 Remuneration Guidelines') and the 2018 Circular were not applicable to the grant of ESOPs of the Company to employees of its holding company, REL. Since the ESOPs were never granted to Dr. Saluja in her capacity as the Non-Executive Chairperson of the Company, the aforesaid guidelines and circulars were inapplicable.
 - e) Under the 2016 Remuneration Guidelines, there was no regulation of any remuneration paid to the Chairperson of an insurer (including the grant of ESOPs), which was left to the discretion of the Board of the Company.
 - f) Regulations regarding ESOPs for non-executive directors of insurers were introduced for the first time in 2023 vide the IRDAI (Remuneration of Directors and Key Managerial Persons of Insurers) Guidelines, 2023 (hereinafter "2023 Remuneration Guidelines"). These guidelines stipulate that Non-Executive Directors cannot receive any equity-linked benefits. This was not a restriction under the 2016 Remuneration Guidelines.
 - g) On 22 May 2024, IRDAI issued the Master Circular on Corporate Governance for Insurers, 2024 ("2024 Master Circular"). In clause 9.1(e) of the 2024 Master Circular, IRDAI has regulated grant of share-linked benefits to Non-Executive Directors of insurers by virtue of their position in other group companies. The Master Circular cannot be retrospectively applied to the grant already made in favour of Dr. Saluja.
 - h) Several employees of REL were granted ESOP of CHIL, ever since the inception of the ESOP Scheme of CHIL.
11. CHIL in its response dated 21.06.2024 had requested for an opportunity to present their case in greater detail during a personal hearing. In consonance with the principles of natural justice, personal hearing was granted on 15.07.2024 at IRDAI HO, Hyderabad where the submissions on behalf of CHIL

were made by Mr. Pratap Venugopal, Non- Executive Independent Director; Mr. Malay Kumar Sinha, Non-Executive Independent Director and Chairperson of Nomination & Remuneration Committee; Mr. Praveen Kumar Tripathi, Non-Executive Independent Director and Mr. Anuj Gulati, Managing Director & CEO. A summary of the submissions made in response dated 21.06.2024 were reiterated during the said hearing. An additional legal opinion in support of CHIL's submissions was also submitted to the IRDAI at the time of the hearing.

Observations:

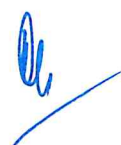
12. Since the application made by the Company for issuance of stock options was filed with the IRDAI in December 2021, the 2018 Circular is relevant for the present case by virtue of being the legal framework prevailing at the time of approval of the appointment of Dr. Rashmi Saluja as common director of CHIL, Religare Finvest Limited and Religare Broking Limited (insurance intermediaries). Similarly, the 2016 Remuneration Guidelines remain relevant to the present matter. The 2023 Remuneration Guidelines was not applicable at the time of issuance of stock options to Dr. Rashmi Saluja. Further, the contention of CHIL that the 2024 Master Circular is allegedly being retrospectively applied to CHIL is also not tenable as IRDAI vide its letters dated 18.09.2019 & 28.01.2022 has put the condition that "*prior approval of the Authority shall be taken for payment of remuneration to the non-executive directors other than for payment of sitting fees*"
13. Clause 1(a) of the Annexure A of the 2016 Remuneration Guidelines require the board of an insurer to formulate policies for payment of remuneration to NEDs. Clause 1(b) of the Annexure A of the 2016 Remuneration Guidelines *inter alia* specifies that the Board "*may, at its discretion, provide for, in the Policy, payment of remuneration in the form of profit related commission to the non-executive directors, subject to the insurer making profits*". Clause 2 of the Annexure A of the 2016 Remuneration Guidelines states that "*in addition to the directors' remuneration mentioned in para 1.b above, the insurer may pay sitting fees to the non-executive directors...*" (emphasis supplied). The usage of the words "in addition" makes it clear that only two forms of remuneration are contemplated to be paid to an NED under the 2016 Remuneration Guidelines. It is clear that the issuance of stock options to NEDs of insurers under the 2016 Remuneration Guidelines is not contemplated. This position was reiterated to CHIL by the Authority in the IRDAI letter dated 10.05.2022. The said letter clarified that for an NED (including a non-executive chairperson), other than sitting fees, only payment of profit related commission is envisaged under the 2016 Remuneration Guidelines.
14. The 2018 Circular under paragraph B(c) imposes specific approval requirement for remuneration payable to persons who are common directors of an insurer

and an insurance intermediary. The provision is applicable to all NEDs of insurers holding such common directorships. Further, the direction of the IRDAI under the letter dated 18.09.2019 and letter dated 28.01.2022, requires the Company to obtain approval of the IRDAI for payment of “remuneration” to NEDs, pursuant to Paragraph B(c) of the 2018 Circular. “Stock options” fall within the ambit of “remuneration” and hence would come under the purview of the 2018 Circular.

15. As per the 2018 Circular, the regulatory requirement of obtaining prior approval of the Authority for payment of remuneration to NEDs on their board is upon the insurer and the approval required under the Circular is independent of Dr. Rashmi Saluja’s position as the chairperson and executive director of REL. CHIL is subject to the regulatory supervision of the IRDAI and the 2018 Circular imposes a clear and non-derogable duty on CHIL to ensure that a director, who is on their board and also an insurance intermediary, is not provided any remuneration without having obtained the prior approval of the IRDAI (other than sitting fees). The 2016 Remuneration Guidelines also impose a duty on the insurer to ensure that non-executive directors (irrespective of being a chairperson or otherwise) are not provided any remuneration, other than profit related commission and sitting fees.
16. The 2018 Circular and the 2016 Remuneration Guidelines are specific regulatory requirements and are required to be complied with, in addition to the provisions of the Companies Act, 2013 as may be applicable to CHIL. Accordingly, for issuance of stock options of the Company pursuant to ESOPs, the Company is required to comply not only with the provisions of the Companies Act, but also the additional obligations and compliance requirements imposed by the IRDAI through directions (such as under the IRDAI Letters) as well as those specified in the Act, the 2016 Remuneration Guidelines and the 2018 Circular. In light of the principles laid out above, compliance of the 2016 Remuneration Guidelines and the 2018 Circular were also required in addition to the Companies Act.
17. In relation to the averment of CHIL that several employees of REL were granted ESOP of CHIL, ever since the inception of the ESOP Scheme of CHIL, the Authority finds no merit, given that CHIL has failed to establish or provide any details in relation to whether any of the said employees of REL were NEDs of CHIL, while also being on the board of an insurance intermediary, at the time of the grant of such ESOPs.

Conclusion

18. The IRDAI letter dated 10.05.2022 directed CHIL to refrain from issuance of stock options of CHIL to Dr. Rashmi Saluja as per the 2016 Remuneration



Guidelines. The IRDAI letter of 10.05.2022 was required to be given effect in "letter and spirit". The requirement to procure prior approval of the IRDAI for providing remuneration to NEDs of insurers who are common directors in insurance intermediaries (other than in relation to sitting fees), cannot be avoided on the grounds of such common director receiving stock options of the insurer, in his/ her capacity as a director/ employee of any other company.

19. The payment of remuneration (other than sitting fees) to Dr. Rashmi Saluja, who is an NED and Chairperson of CHIL, and also a common director with an insurance intermediary, in any event, required the prior approval of the IRDAI. It is reiterated that the fact that Dr. Rashmi Saluja held the position of the executive chairperson of the REL does not dilute the requirement of complying with the directions of the IRDAI and the provisions of the regulations, guidelines, circulars issued by the IRDAI.
20. In light of the above, the issuance of stock options of the Company to Dr. Rashmi Saluja in her capacity as the executive chairperson of REL is in violation of the Act, the Insurance Regulatory and Development Authority Act, 1999 and circulars, guidelines and the directions issued thereunder.

Decision:

21. In light of the above observations of the Authority, CHIL is therefore found in violation of applicable law including:
 - a) Section 48A of the Act read with IRDAI circular ref. no. IRDA/F&A/CIR/MISC/141/08/2018, for non-compliance with the conditions or restrictions as imposed by IRDAI while granting permission to be common director
 - b) Annexure A (1) (b) of the IRDAI (Remuneration of Non-Executive Directors of Private Sector Insurers) Guidelines, 2016, for payment to Non-executive director in form other than 'profit related commission' and 'sitting fees'.
22. Accordingly, in exercise of powers vested with IRDAI under sections 34 and 34E of the Act, CHIL is required to comply with the following:
 - a) To cause a buyback of 75,69,685 shares of CHIL allotted to Dr. Rashmi Saluja at the same price per share as the exercise price (i.e., INR 45.32 per share), in compliance with applicable laws including the provisions of Companies Act, 2013.

The compliance and confirmation of the same needs to be completed within 30 days from the date of the order.

- b) To the extent of any stock options to Dr. Rashmi Saluja which remains unexercised and/or unvested as on the date of this order, CHIL is hereby directed to cancel and revoke such stock options. In any event CHIL shall ensure that no further grant and/ or allotment shall be made to Dr. Rashmi Saluja.

The compliance and confirmation of the same needs to be completed within 15 days from the date of the order.

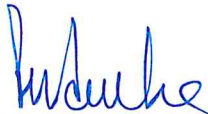
- c) In order to secure the proper management of CHIL, from the date of this order, any decision made by the Board of CHIL in relation to any remuneration/ payment/ perquisite or other benefit, monetary or otherwise in relation to any member of the Board including MD & CEO of CHIL, shall be implemented by CHIL only after prior approval of IRDAI, till further orders.

23. In accordance with the powers vested under Section 102, a penalty of Rs.1 crore (Rupees One Crore only) is imposed on CHIL.

CHIL is directed to deposit the penalty amount within 45 days of this Order. CHIL is also directed to charge the said penalty amount to its shareholders account. An intimation of remittance may be sent to Shri Mahesh Agarwal, General Manager (F&I) at the Insurance Regulatory and Development Authority of India, Survey no. 115/1, Financial District – Nanakramguda, Hyderabad – 500032 (email id : maheshagarwal@irdai.gov.in).

24. A copy of this order shall be placed before the Board of CHIL immediately. CHIL shall submit a copy of the minutes of discussion to the Authority, within 7 days of the same.

25. If CHIL feels aggrieved by any of the decisions in this order, an appeal may be preferred to the Securities Appellate Tribunal as per the provisions of Section 110 of the Insurance Act, 1938.


(Rajay Kumar Sinha)
Member (F&I)


(P.K. Arora)
Member (Actuary)


(Debashish Panda)
Chairman

Place: Hyderabad
Date: 23rd July, 2024