Ref: IRDA/SUR/ORD/MISC/201/07/2021

ORDER

Subject: Order dated 28.05.2021 passed by Hon'ble Delhi High Court in WP(C) 5586/2021 filed by IIISLA against the IRDAI on conduct of 12th IIISLA Council Elections

1. Background

12th Council Elections of IIISLA were conducted by Election officer Shri V Devanathan, Head-Technical & Projects, General Insurance Council, appointed by the Authority vide Order ref: IRDAI/SUR/ORDER/MISC/213/08/2020 dated 13.08.2020. The elections were conducted through e-voting on NSDL e-voting platform. Smt. Pratibha Sarathy, Head IT, General Insurance Council was appointed as Scrutiniser by Election Officer. National Securities Depository Limited (NSDL) provided 3 days' voting period for IIISLA elections held from 23.01.2021 to 25.01.2021. The results of Election were announced by Election officer on 25.01.2021.

1.1. One of the losing candidates Shri Kulbhushan Manchanda challenged the 12th Council Elections and filed WP(C) 1866/2021 before Hon'ble Delhi High Court which was disposed stating that the Rules and Regulations of IIISLA contains a dispute resolution clause in Regulation 5 which cover disputes regarding the validity of elections.

1.2. Pursuant to above, IIISLA Council passed a resolution in a meeting conducted on 03.03.2021 and declared 12th Council Elections as invalid through Board resolution.

1.3. Aggrieved with the above resolution of IIISLA Council, Shri Naishad Desai, one of the winning candidates of IIISLA appealed to the Authority against the above resolution and requested for issuance of directive to the current governing council to implement the results of 12th Council elections.

1.4. Authority has issued order dated 19.05.2021 upholding the conduct and result of 12th Council elections. The order of Authority was challenged by IIISLA in the Hon'ble Delhi High Court in WP(c) 5586/2021. Hon'ble Delhi High Court vide its order dated 28.05.2021 has *remanded the matter to IRDAI for fresh consideration, after giving notice of the appeal to all the stakeholders including inter alia the complainants before the Institute, and the candidates who stood for election. Hon'ble Court also directed Authority to convene a hearing of all the stakeholders*

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by video conferencing and dispose of the appeal filed by respondent no. 7 Shri Naishad Desai, after hearing the parties

2. Notice issued by Authority dated 09.06.2021, responses received from stakeholders and subsequent conduct of hearing through video conference on 02.07.2021

Authority has issued notice dated 09.06.2021 on the appeal of Shri Naishad Desai to following stakeholders of 12th IIISLA Council elections:

(i) IIISLA Council Members (seven council member and one director)
(ii) Contestants of 12th Council Elections (22)
(iii) Election Officer Shri V Devanathan
(iv) Scrutiniser – Smt.PratibhaSarathy
(v) National Securities Depository Limited(NSDL) - service provider of electronic voting platform for conduct of IIISLA elections through e-voting
(vi) Complainant (1)

Authority received response to the above notice from following stakeholders

S.No.	Name of stakeholders	Role in 12th IIISLA Council Elections	Whether upheld the conduct and result of 12th Council Elections
1.	Shri V Devanathan, Head-Technical & Projects, General Insurance Council, Scrutiniser	Election Officer	Yes
2.	SmtPratibhaSarathy - Head IT, General Insurance Council	Scrutiniser	Yes
3.	Shri Amit Vishal, Senior Manager, National Securities Depository Ltd.	Representative of NSDL the provider of e-voting platform for conduct of 12th IIISLA Council Elections	Yes
4.	Shri Rahul Jadhav	President, IIISLA Council	No
5.	Shri A. R. Ramesh	Vice President, IIISLA Council	No
6.	Shri Ajay Girdhar	IIISLA Council	No
7.	Shri Vipin K Shukla	IIISLA Council	No
8.	Shri Tanmoy Sarkar	Member IIISLA Council	Yes

9.	Shri Shreekumar Pillai	Member IIISLA Council	Yes
10.	Shri Rajnish Desai	Member IIISLA Council	No
11.	Shri Daljeet Singh Sardar	Director, IIISLA Council	No
12.	Shri Lalit Gupta	Winning candidate of 12th Council Election	Yes
13.	Shri Naishad Desai	Winning candidate of 12th Council Election	Yes
14.	Shri Ashok Kumar	Winning candidate of 12th Council Election	Yes
15.	Shri B Shivaprakash	Winning candidate of 12th Council Election	Yes
16.	Shri Manoj Bhargava	Losing candidate of 12th Council Election	Yes
17.	Shri Sunil Dhawan	Losing candidate of 12th Council Election	Yes
18.	Shri Jitendra Prasad Singh	Losing candidate of 12th Council Election	No
19.	Shri Dulal C Das	Losing candidate of 12th Council Election	Not clear. As per his email, he sent letter to Election Officer for withdrawal of his candidature.
20.	Shri Sanjay Kumar Neura	Losing candidate of 12th Council Election	No
21.	Shri S R Hanumaagar	Losing candidate of 12th Council Election	No
22.	Shri D M Basroor	Losing candidate of 12th Council Election	No
23.	Shri K B Manchanda	Losing candidate of 12th Council Election and complainant	No
24.	Shri Chand Bhatia	complainant	No. He has not contested 12th IIISLA

			Council elections and request Authority to re-conduct elections for all 12 elected council members positions.

Authority convened hearing through video conference on 2nd July 2021 at 11.30 AM and invited all the above respondents. The hearing was attended by all respondents except Shri Jitendra Prasad Singh and Shri D M Basroor. From NSDL, in addition to Shri Amit Vishal, Senior Manager, Shri Malav Rajesh Shah, Vice President attended the hearing through video conference. Shri Suresh Mathur, Executive Director, IRDAI, Shri Pankaj Kumar Tewari, General Manager, IRDAI and Smt Nimisha Srivastava, Deputy General Manager, IRDAI attended the hearing.

On examining of the responses to notice and submissions during hearing, it is observed that all winning candidates, 2 losing candidates and 2 council members have upheld the 12th IIISLA Council Elections. While remaining losing candidates and council members are not satisfied with the conduct of 12th IIISLA Council Elections. Winning candidates have also mentioned that in spite of having electoral mandate since 25th January 2021, they are not inducted in council.

Election officer Shri Devanathan, Head-Technical & Projects, General Insurance Council, Scrutiniser Smt. PratibhaSarathy - Head IT, General Insurance Council and representatives of NSDL have confirmed that there is no merit in re-conduct of IIISLA elections and that elections were conducted in a free, fair and transparent manner.

3. Submissions of stakeholders of 12th IIISLA Council Elections

On examining the replies of all the stakeholders in response to the notice and submissions made during hearing through video conferencing, the following issues are noted:

3.1. Wrong SMS Template: The stakeholders have raised issue with regard to the SMS template sent to the voters by NSDL wherein OTP for vote confirmation contained name of 'Calcutta Club Limited' instead of IIISLA Council Elections. This message containing name of Calcutta Club Limited instead of IIISLA Elections was sent to voters by NSDL for vote confirmation.

Losing candidates have alleged that this error caused confusion among voters.

On the contrary winning candidates have submitted that communications were sent to registered email addresses and registered mobile numbers of valid voters only. The list of valid voters was provided by IIISLA Council to NSDL and hence voters were able to cast their vote to the desired candidates. It has also been mentioned that 4 OTPs were received by each voter for casting four votes.

In their submissions and hearing, representatives of NSDL, Election Officer and Scrutiniser have confirmed that all votes of IIISLA Elections are accounted for and that the inadvertent

SMS wording containing name of Calcutta Club Limited does not imply any wrong voting as there was no ongoing voting for Calcutta Club Limited elections during the voting period of IIISLA election. NSDL has confirmed that the error was only in the text of the OTP message and not in the e-voting system for recording the votes. Each vote casted by IIISLA members through the e-voting platform have been attributed only to the IIISLA election and not to any other entity.

NSDL has also mentioned that they did not receive even a single complaint of aforesaid error during the entire three days' voting period as they could have rectified this inadvertent error of incorrect text in OTP sent to members for vote confirmation. This error was reported to NSDL only after declaration of result.

With respect to concern that many members of IIISLA might not have participated in Elections due to this error, NSDL has confirmed that more than 5000 votes were casted in IIISLA Elections.

3.2.Multiple Votes from one IP

Many losing candidates have submitted that multiple votes were cast by voters belonging to different states and remote areas from the same IP address and because of multiple votes, winning candidate got undue advantage. Shri Rahul Jadhav, President of IIISLA council has relied on report obtained from M/s Radius P Solution dated 27th February 2021 while passing the resolution on 03.03.2021 to hold the 12th Council Elections as invalid. The Resolution passed by President IIISLA mentions "in view of the above faulty and insecure process and taking into considerations the evidences, reports provided by various agencies, the results declared by the election officer vide Notice dated 25th January 2021 were NOTED as invalid and hence void."

Winning candidates have highlighted that this report is selectively silent on number of votes casted for losing candidates from same IP address. The notification of 12th Council elections do not restrict the number of votes per IP.

NSDL have mentioned that two factor authentication (first is login password and second is OTP) was enabled for 12th IIISLA council voting based on request of Election Officer. They have confirmed that email containing user ID and password was sent to registered email addresses provided by Election Officer in e- Voting system.

NSDL have also submitted that maintaining security of user ID and password and OTP is the responsibility of person who receive it on his registered email ID and registered mobile phone. If a voter voluntarily forward or share his details with someone, NSDL cannot be held responsible for this.

Further, it is confirmed by Election Officer and Scrutinizer that they have not received any complaint from any voter that their emails are hacked or their user ID and passwords were misused by someone else. In general, security alert messages come if an email is being hacked or if the person is using new machine to log in for email. This implies that likelihood of hacking of email without knowledge of user is remote.

Further NSDL has mentioned that there is OTP requirement for voting. Every time a voter selects a candidate, vote can only be casted by keying in OTP received on voter's registered mobile number only. NSDL has also mentioned that the system is secure to stop any attempt to cast multiple votes with same OTP which is valid only for 5 minutes. Thus voting cannot be done without consent of voter.

3.3.Sending of User ID and password through unencrypted email message:

Losing candidates have also raised concern that the user ID and password were sent by NSDL to email address through unencrypted email giving rise to apprehensions and concerns on the secrecy and security of the e-voting process.

NSDL has confirmed that their e-voting platform is fully secure and conform to all security measures and standards prescribed by Ministry of Information Technology and that there is no evidence found of hacking of voting platform during IIISLA election.

NSDL has mentioned that the decision to send user ID and password through encrypted or unencrypted message is taken by the Election Officer. NSDL also confirmed that OTP based voting on voting platform is a highly secured process. OTP on registered mobile number is required to successfully cast vote. Even if email is compromised, voting cannot be done without OTP. OTP is not sent on email address; it is only sent on registered mobile numbers provided by IIISLA Council to the Election Officer.

NSDL has stressed that security of user ID and password and OTP is responsibility of recipient member on whose email address and registered mobile number the information is being sent and they are expected to safeguard their personal details.

3.4. Allegation of vote cast by dead candidate:

During personal hearing, Shri Rahul Jadhav alleged that one vote was cast by a surveyor who died in October 2020, though he has not mentioned this allegation in his representation to the Authority challenging the 12th IIISLA Council elections. Subsequent to personal hearing, Shri Jadhav has also sent an email on 6th July 2021 to the Authority in this regard.

3.5. Involvement of President, IIISLA Council in 12th Council Election:

In their submission Shri Tanmoy Sarkar, and Shri Shreekumar S Pillai, present IIISLA Council members and also winning candidates have submitted emails as evidence to highlight that Shri Rahul Jadhav was actively campaigning for four candidates who lost elections. The candidate names are (i) Shri D. M. Basroor, (ii) Shri Kulbhushan Manchanda, (iii) Shri Jitedra Prasad Singh and (iv) Shri S. R. Hanumasagar. IIISLA Council has passed the resolution holding the 12th Council elections null and void on the basis of complaint of Shri Kulbhushan Manchanda.

Shri Tanmoy Sarkar and Shri Shreekumar S Pillai have even questioned the validity of the meeting held on 03.03.2021 in which the resolution to invalidate elections were passed. They have mentioned that the meeting was called on a very short notice of 10 hours and thus not allowing enough time for Council members to prepare for the meeting. Both these

council members could not attend the meeting held on 03.03.2021 as very short period notice was provided to them.

Shri Tanmoy Sarkar during the hearing mentioned that in last elections when he was holding office bearer positions in IIISLA Council, then council appointed an independent person to interact with Election Officer on election related matters to distance themselves as they were interested parties. He added that Shri Rahul Jadhav during 12th council elections not only failed to keep himself distanced from elections but even aggressively campaigned for four candidates who ultimately lost the elections.

3.6.Submissions of Election Officer on conduct of 12th IIISLA Council elections:

Election Officer is appointed by the Authority to conduct IIISLA council elections. Powers and duties of Election Officer are prescribed in Regulations & Procedure for the conduct of elections to council (RPCEC) of IIISLA. Under Article 49(o) of Article of Association of IIISLA, decision of Election Officer is final and binding.

Therefore, before passing decision on IIISLA Council resolution to invalidate elections under Clause 5(b) of RPCEC, Authority sought detailed report on Election from Election Officer. Pursuant to order of Hon'ble Delhi High Court in the matter of WP 5586/2021, Election Officer has again been issued notice alongwith other stakeholders. Election Officer in his response to Authority's notice dated 09.06.2021 has reiterated that elections were held in fair and transparent manner. He noted that even though there was inadvertent mistake by NSDL as they used an incorrect template of SMS for sending OTPs to IIISLA members, NSDL has confirmed that all votes casted by IIISLA members were counted and accounted only to the IIISLA Elections. This was also confirmed by Smt Pratibha Sarathy, Head IT, General Insurance Council who was appointed as Scrutiniser by Election Officer for 12th Council Elections. In addition to his previous report to the Authority, Election officer has submitted the following in his response to notice dated 09.06.2021:

(i) *"When President IIISLA had raised the issue about his receiving such a message I had requested the agency (NSDL) whether the vote cast by him was properly going to the desired candidates only. The same was confirmed by NSDL. There were some more complaints and Scrutiniser had confirmed that the votes had gone to the desired destinations only. IRDAI wrote to President to this effect after verifying the same with NSDL. After the declaration of results also the undersigned and Scrutiniser checked the data and confirmed that all the votes cast by them went to the respective candidates only. When we had received complaints about this we had called for a meeting of all aggrieved parties at Mumbai including the PRESIDENT IIISLA to prove that there is no malpractice that had happened during the election. Though most of them had attended the meeting except one candidate nobody was willing to get clarified about the actual fact and they were insisting for re-election only. At this point, there was no complaint about multiple voting (as they themselves had allowed multiple voting from their IP).*

(ii) *IIISLA Council had initiated an investigation and requested for certain data from NSDL. I had advised NSDL to submit all the data they require except the data of 'who voted for whom'. This was objected to by the President and he advised the undersigned to keep away from this investigation. Thus, the undersigned was kept completely in dark*

about the investigation. As an election officer, my opinion should have been sought and recorded which had not been done.

(iii) As far as multiple voting is concerned that it was a conscious decision on the part of the undersigned that since there are multilevel controls by OTP for each vote and also during the last election there were objections to the provision of barring more than 2 votes from single IP as voters in a remote area where connectivity problems are there cannot vote and also corporate surveyors can vote only from single IP. Moreover, the election notice (without the provision of barring more than 2 votes from single IP) before publication was sent to IIISLA Council and IRDAI for approval, and the same was approved by everyone.

(iv) Hence, in the absence of any specific directive in the election notice prohibiting more than one or two votes from a single I.P EO had to allow the multiple votes from the same IP.

(v) *However, since IIISLA council unilaterally had taken a decision to annul the election, IRDAI had asked me to investigate and report about any malpractices during election. I had chosen randomly around 250 voters who had voted from a remote place other than their own locality and sent mails requesting them to confirm the following. a) Whether they had voted in 12th Council election. b) whether they have any doubt about hacking of their mails? c) whether he had authorised somebody to vote on his behalf. etc. Such emails were sent to some of the Council members also as I find multiple voting from the IP from where they had voted. President IIISLA had replied that I should not write any such mails to their members as the role of Election officer was over once the results are declared ignoring the fact that IRDAI had advised me to look into the problem. I had received responses only for 35 members who confirmed that there is no hacking they had requested their friends to vote on their behalf expressing their choice of candidates. Similarly, some had responded that they had helped their friends in voting because of the connectivity and other problems."*

4. Decision of the Authority:

Requirement of Annual Elections and rotation of Office Bearers are clearly laid down in Article of Association (AOA) of IIISLA. Annual Elections ensure that vested interest are not created in the operation and functioning of IIISLA affairs and that IIISLA council is democratically elected and run by office bearers having electoral mandate. Annual Elections ensures transparency and accountability towards members of IIISLA whose subscription money is the main source of revenue for IIISLA. Section 64 UM (1) of The Insurance Act 1938 stipulates membership of IIISLA as a mandatory requirement for a person to act as surveyor and loss assessor.

Considering the material on record, responses of stakeholders to the notice of the Authority and additional submissions of stakeholders during hearing through video conference, Authority observed the following:

4.1. Conduct of 12th Council Elections on NSDL E voting platform:

National Securities Depository Limited (NSDL)is authorized by Ministry of Corporate Affairs(MCA) for setting up electronic platform to facilitate shareholders to cast their votes in electronic form. Their system of e-voting is certified by Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Government of India.

Shri Malav Shah, Vice President, NSDL has mentioned, during hearing through video conference, that NSDL is a provider of e-voting platform to over 3000 companies and that NSDL has conducted more than 16000 voting events in the last 6-7 years on their e-voting platform. NSDL provides a transparent voting process to all stakeholders and that adequate mechanism are laid down for resolving queries, grievances of voters through helpline numbers and email IDs. They have confirmed that more than 5000 votes are casted and all votes casted by IIISLA members are accounted for IIISLA Elections only. They have not received any complaint from any voters of IIISLA that they were unable to vote or access their User ID and password to cast vote on NSDL e-voting platform.

NSDL has confirmed that their e-voting platform is fully secure and conform to all security measures and standards prescribed by Government of India and that there is no evidence found of hacking of voting platform during IIISLA election.

4.2.Wrong SMS Template

On the matter of SMS text sent in the name of Calcutta Club Limited, NSDL has clarified that the inadvertent error was only in the text of the OTP message and not in the e-voting system for recording the votes. Each vote cast by IIISLA members through the e-voting platform have been attributed only to the IIISLA election and not to any other entity.

NSDL has also mentioned that they did not receive even a single complaint of aforesaid error during the entire three days' voting period so that they could have rectified this inadvertent error of incorrect text in OTP sent to members for vote confirmation. This error was reported to NSDL only after declaration of result.

Authority has carefully examined the submissions of NSDL and contentions of losing candidates. The e-voting period was of three days but neither any contestant nor any voting surveyor brought the issue of incorrect SMS in the name of Calcutta Club Limited to the notice of Election Officer or IRDAI. There is also no official complaint by any voter that due to wrong wording they were unable to cast their vote. As per NSDL submissions more than 5000 votes were polled during IIISLA election.

It is also worthwhile to mention that NSDL in its submission has stated that two factor authentication containing login password sent over email and OTP sent over mobile number was activated for the 12th IIISLA Council Election and that emails were sent to only registered email Ids of members as provided by IIISLA. None of the losing candidate have provided any evidence or even a complaint by any voter that his account was hacked and login password misused or he was unable to exercise his voting rights.

In view of above, Authority finds that the contentions of losing candidates are devoid of any merit and appears to be an afterthought of election result.

4.3.Multiple voting from single IP:

NSDL in its submission has mentioned that list of IPs provided to IIISLA and Election Officer was obtained from their data service provider and that IPs are public IPs not machine specific IP which is a private information, Election Officer and Scrutiniser have confirmed that they have not received any complaint from IIISLA members about hacking of email or that a voter was unable to exercise his right to vote in IIISLA Council elections.

Attention is drawn to submission made by Election Officer as below:

a. That there were incidences of multiple voting from single IP address ranging from 1 to 200 for example if voter from Assam had voted along with voters of Delhi from the same IP address. This had happened in all the election zones i.e., elections to South, East, West and all India zones. No voter has so far complained that his vote was wrongly cast by impersonation by somebody.
b. Further not only winning candidates but also most of the losing candidates and some of the council members had allowed multiple voting from their IP addresses. On analysis such multiple voting went in favour of almost all contestants. Voter from one city had voted along with the voters from different city and all the contestants were favoured by such cross border voting.

It is important to note that not a single evidence in terms of complaint from a voter that his email or OTPs were hacked and because of which he was unable to exercise his right to vote has been brought on record by any complainant. During the hearing, when NSDL clarified on the above, losing candidates mention that it is an apprehension but none of them could provide any evidence to support this. Therefore, there is no merit in this allegation.

4.4. Sending of user ID and password through unencrypted email

NSDL has clarified that OTP based voting confirmation was enabled for the aforesaid election. Therefore, two factor authentication (first is login password and second is OTP) was enabled for the aforesaid election. Moreover, emails were sent only to email id of members as uploaded by Election Officer in e voting system. Therefore, the process followed during the elections was having two factor security as mentioned above and hence the issue of unencrypted email has no relevance in this regard.

4.5.Allegation of Casting of vote by a dead person

With respect to casting of vote by a deceased member, it is observed that IIISLA Council has provided the list of valid voters as on 19.01.2021 to Election Officer. It was the responsibility of IIISLA Council to ensure that correct and up-to-date valid list of members is provided for elections. However, the one vote as mentioned is ignored on account of materiality as it will not affect the outcome of the election.

4.6.Declaration of election as null and void by IIISLA Council

IIISLA Council while passing the resolution declaring elections null and void has relied on a report prepared by M/s Radius P Solutions. The three-page report dated 27-02-2021, has neither found any instance of hacking nor concluded that actual hacking took place. The report merely expresses apprehension that hacking can take place but it has failed to provide any evidence or reason that the present elections were actually hacked and illegal votes were casted in favour of winning candidates. The report is also silent on the multiple votes polled in favour of losing candidates.

Order of Authority

In view of the above, the Authority, with regard to the various issues raised by the stakeholders, do not find merit in re-conduct of 12th Council Elections and result declared by Election officer on 25.01.2021 is upheld. Accordingly, resolution passed by IIISLA council on 03.03.2021 invalidating elections is set aside.

IIISLA Council is hereby directed to convene Council meeting to induct all newly elected members within 15 days from the receipt of this order.

If IIISLA is aggrieved by this order, an appeal may be preferred to the Securities Appellate Tribunal as per the provisions of the Insurance Act 1938.

Member(Non-Life) 27/7

Date: 27/07/2021

Place: Hyderabad