



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 41 of 2022

1. Fahim, Kapadia, CEO
2. Jawaad Haqqi, CFO
3. Hassan Ali Ghazi, CFO  
(All directors of M/s. Agriauto Limited)

...Appellants

versus

Additional Director, Adjudication-1, SECP, Islamabad

...Respondent

Date of hearing:

May 25, 2023

Present:

For the Appellants:

1. Syed Bulent Sohail, Advocate High Court
2. Ms. Nosheen Ahmed Alvi, Advocate

For the Respondent:

1. Mr. Amir Saleem, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director Adjudication-I, SECP
3. Mr. Sardar Sohaib Amin, Assistant Director, Adjudication-I, SECP

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## ORDER

1. This Order shall dispose of Appeal No. 41 of 2022 filed by the chief executive officer and the chief financial officers (the Appellants) of M/s. Agriauto Limited (the Company) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated April 22, 2022 (Impugned Order) passed by the Additional Director, Adjudication-I SECP, (the Respondent) under Section 237 read with Section 479 of the Companies Act, 2017 (the Act).
2. The brief facts of the case are that the Company failed to electronically transmit its interim financial statements (the Accounts) for the following periods with the Securities and Exchange Commission of Pakistan (the Commission) within the stipulated time under Section 237 of the Act.

S. No	Period Ended	Filing due on
1	September 30, 2020	October 30, 2020
2	December 31, 2020	March 1, 2021
3	March 31, 2021	April 30, 2021
4	September 30, 2021	October 30, 2021

3. In view of the above violation, the Respondent issued a show-cause notice dated March 18, 2022 (the SCN) to the Appellants. The hearing was held on April 15, 2022, which was attended by the authorized representative of the Appellants (the Representative). The Representative conceded the violation of Circular no. 24 dated 19 October, 2017 (the Circular) and requested to take a lenient view on account of filing with the Registrar through e-services, to the Stock Exchange and placement of Accounts on the Company's website. The Representative argued that after issuance of the SCN the Appellants have filed the Accounts electronically through a designated email address, hence violation of Circular was rectified. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 40,000 on the Appellants in the following manner:



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S.No	Name of Appellant	Amount
1	Mr. Fahim Kapadia (CEO)	20,000
2	Mr. Jawaad Haqi (CFO)	5,000
3	Mr. Hassan Ali Ghazi (CFO)	15,000

4. The Appellants have preferred this appeal *inter alia* on the grounds that the Appellants have never committed the default of Section 237 of the Act, rather requirements of the Circular were not met by the Company. The Appellants have submitted that the Accounts were filed within the stipulated time with the Registrar through e-services, however, the Company has overlooked the submission of the Accounts through designated email to the Commission. The Appellants stated that after four days of issuance of the SCN, the Accounts were also filed with the Commission on March 22, 2023 via designated email. The Appellants stated that the Impugned Order fails to appreciate the fact that the Company and the Appellants had acted in utmost good faith by submitting the Accounts to the Registrar and placing the same on the Company's website which depicts that they never intended to deprive the shareholders of their statutory rights. Therefore, by considering these circumstances a lenient view may be taken by waiving the penalty.
5. The Respondent rebutted the grounds of Appeals and put forth the arguments that the Circular is mandatory in nature, hence, the Appellants were required to file the Accounts with the Commission through a designated email address. The Respondent stated that the Appellants have committed non-compliance with the Circular, therefore, the Appeal may be dismissed.
6. The Appellate Bench (the Bench) has heard the arguments of both parties and perused the record. The Company did not file the Accounts via designated email with the Commission within the stipulated time. However, the Company did file the Accounts with the Registrar, the Stock Exchange, and also placed the Accounts on the Company's website. Therefore, these may be considered as mitigating facts to establish good faith of the Company and the Appellants. The Appellants have subsequently transmitted the Accounts to the Commission via designated email and the Company's satisfactory compliance history are key factors to reconsider the fate of this case. The Bench is of the view that



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since the Accounts were shared with the Registrar, the Stock Exchange, as well as published on the Company's website, therefore, the allegation of deprivation of shareholders' right is not all-together accurate. Furthermore, the Bench is of the view that multiple filing of the same documents/Accounts with the Commission and the Registrar may be streamlined through accessing the e-services portal by the Commission or its authorized officers to check and verify filing of the documents/Accounts by the Company. Keeping in view the aforesaid, the Bench is inclined to take a lenient view in this case, however, we direct the Appellants and the Company to be careful in future with respect to filing requirements and procedures.

7. In view of the above discussion, while admitting this appeal, we hereby dismiss the Impugned Order, without any order as to cost.

**(Abdul Rehman Warraich)**

Commissioner

**(Akif Saeed)**

Chairman/Commissioner

Announced on:

**08 JUN 2023**