



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 62 of 2023

Engro Fertilizer Limited

..... Appellant

Versus

Director/HOD, Adjudication – I Department, SECP

..... Respondent

Date of Hearing:

May 30, 2025

Present:

For the Appellant:

Mr. Furqan Mushtaq, Authorized Representative

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication Division, SECP
2. Mr. Rizwan ul Haq, Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 62 of 2023 filed by Engro Fertilizer Limited (the "Appellant"), against order dated April 07, 2023 (the "Impugned Order"), passed by the Director/HOD, Adjudication-I Department, SECP (the "Respondent"), under Section 184(2)(a) read with Section 479 of the Companies Act, 2017 (the "Act").

FACTS OF THE CASE

2. Brief facts of the case are that a news item circulating on social media revealed that a private jet owned by the Appellant was allegedly used for political purposes. Consequently, the Securities and Exchange Commission of Pakistan (the "Commission") vide letter dated April 18, 2022, sought an explanation from the Appellant, who vide its letter dated April 22, 2022, submitted that the aircraft had been handed over to Princely Jets (Private) Limited (the "Company") under an operating and maintenance agreement (the "Agreement") which allowed chartering of the aircraft to third parties when not in the Appellant's use, and



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claimed that the Company had violated the terms of the said Agreement by chartering the aircraft for political use without prior permission. The Commission, vide letter dated April 28, 2022, directed the Appellant to submit Company's explanation, which was forwarded by the Appellant through its letter dated May 6, 2022, wherein the Company admitted to the breach of terms of Agreement, apologized, and contended that the charter was based on a routine request without disclosure of passenger details, and undertook to settle any penalty imposed by the Respondent.

3. Subsequently, a Show Cause Notice (the "SCN") dated September 01, 2022 was issued for alleged contravention of Section 184 of the Act, to which the Appellant responded on September 13, 2022, asserting that the transaction in question was a commercial charter, conducted without its knowledge, and thus did not amount to a political contribution under Section 184 of the Act. The Appellant emphasized its strong compliance record, clarified the commercial nature of the charter, and undertook to enhance oversight of the Company's operations. A hearing was held on January 23, 2023, wherein the Appellant reiterated that the charter was on a fare basis, akin to transactions by airlines or hotels with political parties, and that the Appellant neither intended nor permitted its assets to be used for political purposes. However, the Respondent, after considering the submissions and arguments, held that the Appellant had failed to ensure compliance with Section 184 of the Act and was liable for allowing its asset to be used for a political purpose, even if through a third party. Consequently, a penalty of Rs. 500,000/- was imposed on the Appellant by the Respondent.

SUBMISSIONS OF THE APPELLANT

4. The Appellant preferred the instant appeal, *inter alia*, on the grounds that the Impugned Order is liable to be set aside as it was premised on a misinterpretation of Section 184 of the Act. The Appellant contended that Section 184 of the Act prohibits companies from making political contributions, not from engaging in, *bona fide*, commercial transactions with political persons. The Appellant submitted that the term "contribution" inherently implies a gratuitous act without consideration, however, in the instant case, the chartering of the aircraft by a political person through the Company constituted a purely commercial transaction undertaken in the ordinary course of business, without the Appellant's prior knowledge or consent. The Company charged the passengers a fare and issued a credit note of Rs. 2.4 million to the Appellant under the Agreement, thereby evidencing the commercial nature of the transaction. The Appellant contended that the aircraft chartering is permitted under its Memorandum of Association and the transaction was consistent with its lawful business activities. The Appellant compared the transaction to a political person purchasing a ticket from a commercial airline or renting a hall at a hotel, neither of which would be classified as a political contribution.
5. The Appellant further submitted that the Company chartered the aircraft to third-party without the knowledge and prior approval of the Appellant in violation of clause 15 of the Agreement. The Appellant having no knowledge of the transaction nor having approved it



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cannot be held liable for the fault of the Company. Clause 15 of the Agreement is reproduced for ease of reference;

"The Operator on the written notice of Owner agrees to charter the Aircraft to a third-party customer when not in use of the owner. All third-party charter bookings will be made after checking Owners schedule and with specific approval of the Owner."

6. The Appellant further argued that Section 184 of the Act must be interpreted purposively to avoid absurd results and unjust restrictions on legitimate business conduct. In support, the Appellant placed reliance on the judgment of the Hon'ble Supreme Court in *Saif-ur-Rehman v. ADJ, Toba Tek Singh (2018 SCMR 1885 at 1889 A)*, wherein it was held that "a purposive rather than a literal approach to interpretation is to be adopted while interpreting statutes," and that interpretations which advance the object of the Act are to be preferred. The Appellant also cited *Dr. Tariq Iqbal v. Government of KPK (2019 PLC (CS) 821 at 825 A)* and *Muhammad Nawaz Chandio v. Muhammad Ismail Rahu (2016 SCMR 875 at 886 G)*, to contend that Section 184 of the Act being a penal provision must be strictly construed, and any ambiguity must be resolved in favour of the person against whom the penalty is sought to be imposed. Moreover, reference was made to the judgment in *Sunni Ittehad Council v. ECP (PLD 2025 SC 67 at 148 N)*, which reaffirmed that penal consequences must be based on express and unambiguous legal provisions and should not be extended by implication.
7. The Appellant further contended that it lacked the requisite *mens rea* necessary for imposition of penalty under a penal statute, as it had neither authorized nor was aware of the chartering of the aircraft. In this regard, reliance was placed on *AKD Securities v. SECP (2019 CLD 583 at 587 A-B)*, wherein the Sindh High Court held that "the presence of *mens rea* is essential for the imposition of a penalty and that a punishment disproportionate to the gravity of the alleged offence is liable to be set aside". Finally, the Appellant argued that the imposition of the maximum penalty of Rs. 500,000/- was not only unjustified but also disproportionate, particularly when the act was committed by a third party in breach of contractual obligations and without the Appellant's consent or knowledge. The Appellant, therefore, prayed that the Impugned Order be set aside in the interest of justice.

SUBMISSIONS OF THE RESPONDENT

8. In response to the Appellant's submissions, the Respondent *inter alia* submitted that the grounds raised in the appeal are devoid of merit and vehemently denied each contention, arguing that Section 184(1) of the Act imposes an absolute prohibition on companies from contributing funds or permitting the use of their assets whether gratuitously or for consideration to any political party or for any political purpose, and this restriction is unequivocal, as evidenced by the, *non-obstante*, clause overriding any contrary provisions in the Act. The Respondent contended that while the Act permits companies to engage in legitimate commercial transactions with third parties, such agreements must strictly comply



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with statutory mandates, and the Appellant's reliance on the commercial nature of the aircraft charter is misplaced since its principal business under the Memorandum pertains to fertilizers, seeds, and pesticides, rendering the chartering of its aircraft to a political figure an impermissible diversion of assets for political purposes, unlike airlines or hotels whose core operations inherently involve such services.

9. The Respondent further argued that the Appellant's delegation of operational control to the Company under the Agreement does not absolve its liability, as the Act mandates companies to ensure third party compliance with the law, and the Appellant's failure to implement adequate safeguards to monitor the use of its asset constitutes a breach of Section 184 of the Act, making it vicariously liable for any violations by the third party. The Respondent stated that the Impugned Order was lawfully passed after due process, including a thorough examination of the Appellant's submissions and a conclusive finding of non-compliance. The Respondent refuted the Appellant's procedural objections as baseless, asserting that the penalty was within statutory limits and justified by the clear violation of Section 184 of the Act. Lastly, the Respondent argued that the Impugned Order may kindly be upheld in the interest of justice.

FINDINGS OF THE BENCH

10. The Appellate Bench (the "Bench") has heard both the parties at length and carefully perused the available record. The Bench is of the considered view that Section 184(1) of the Act imposes an absolute and categorical bar on companies from contributing any amount or allowing the utilization of their assets to any political party or for any political purpose, whether with or without consideration. This statutory bar, reinforced by a, *non-obstante*, clause, overrides all other provisions to the contrary and applies irrespective of the commercial nature of the transaction. The Appellant's contention that the transaction in question was a, *bona fide*, commercial charter falls flat in the face of the legislative intent and statutory clarity embedded in Section 184 of the Act. The Appellant cannot take shelter of its Memorandum of Association and Section 26 of the Act. The chartering of an aircraft to a political person amounts to diversion of assets for political purposes in direct violation of the Act.
11. The Bench further observes that the Appellant's delegation of operational control to a third party under the Agreement does not extinguish its liability under the Act. The Appellant remained under a continuing obligation to exercise effective oversight and implement sufficient controls to ensure compliance with statutory prohibitions. The Bench notes that through the Agreement executed between the Appellant and the Company, a relationship of principal and agent was created, and in such contractual agency, the acts of the agent done within the scope of the authority render the principal vicariously liable.
12. The Bench is further of the view that the Appellant, was under a continuing statutory duty to ensure strict adherence to the provisions of the Act, and such obligation could not be



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abdicated or diluted through contractual delegation to its agent. It was incumbent upon the Appellant to establish effective internal controls, monitoring mechanisms, and compliance oversight to prevent any utilization of its assets in contravention of Section 184 of the Act. The fact that the Appellant came to know of the chartering of its aircraft for political purposes only after issuance of SCN clearly demonstrates a lack of due diligence, inadequate supervision, and failure to exercise reasonable care in safeguarding its statutory obligations.

13. It is a well-established principle that where a statute imposes a duty, the omission to take preventive measures amounts to negligence in law, rendering the Appellant liable for non-compliance. The Appellant's failure to implement robust monitoring procedures, despite being under a continuing responsibility to do so, constitutes negligence in discharge of its legal obligations, thereby justifying the finding of liability under the Act.
14. The Bench holds that a principal is liable for acts of an agent where the principal expressly or impliedly ratifies the agent's actions *post facto*. In the instant case, the Appellant's assertion that the act of the Company was a *bona fide* commercial transaction as well as the acceptance of credit note of Rs. 2,495,700/- from the Company in respect of the said transaction amounts to implied ratification of the act. This implied ratification renders the Appellant vicariously liable for the actions of the Company. The Hon'ble Lahore High Court has held that ratification of a principle may be implied from silence in case titled "*Sana Ullah and 17 others Vs. Muhammad Rafiq and 10 others*" reported as *2003 CLC 138*. Relevant excerpt from the said judgment is reproduced for ease of reference;

"In the case of agent exceeding his authority, ratification may be implied from mere silence or acquiescence of the principal."

Similar position has been taken by the Hon'ble Sindh High Court in case titled "*Muhammad Azeem Vs. Mst. Rani through Special Attorney and 2 others*" reported as *2020 YLR 1932*, wherein it was held that;

"If an act is done by a person on behalf of another person but the same is without his 'knowledge' or 'authority', then also it may either be 'ratified' or 'disowned' by such another person, that is to say, in terms of Sections 196 and 197 of the Contract Act, 1872. If the other person [principal] 'ratifies' such an act already done/performed, then such act shall be deemed as 'duly performed' under his authority."

15. The contention of the Appellant that the actions of the Company in absence of any knowledge of the Appellant exonerates the Appellant from any penal consequences lack substance as no action for breach of contract was brought against the Company, which shows acquiescence on part of the Appellant. Furthermore, the fact that the Appellant accepted credit-note of the transaction further strengthen the impression that the Appellant was in knowledge of the entire transaction. The Appellant cannot be allowed to take advantage of the transaction and on the other hand dissociate itself from the liability



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stemming from the same. The Hon'ble Supreme Court of Pakistan has held that a litigant cannot be permitted to approbate and reprobate in the same breath in case titled "**Sardar Ali Khan Vs. State Bank of Pakistan and others**" reported as **2022 SCMR 1454**. Relevant extract from the judgment is reproduced for ease of reference;

"a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter"

16. When the possession of an asset is willfully handed over to another person, the liability for any wrongdoing committed through such asset squarely falls upon the owner, even if the person in possession operates the asset in a manner outside the scope of the express terms of the contract. Reliance is placed on **Seegmiller v. Langer (2008), 301 D.L.R. (4th) (Ont. S.C.)**, wherein it was held that;

"if possession is given, the owner will be liable even if there is a breach of a condition attached to that possession, including a condition that the person in possession will not operate the vehicle. Breach of conditions placed by the owner on a person's possession of the vehicle, including conditions as to who may operate the vehicle, do not alter the fact of possession."

This principle has consistently been applied in Canadian jurisprudence under section 192(2) of the Ontario Highway Traffic Act, 1990, which imposes statutory vicarious liability upon vehicle owners.

17. Similarly, in the United States, section 388 of the New York Vehicle and Traffic Law imposes liability upon the owner for the negligence of a permissive user, notwithstanding any limitations or restrictions the owner may purport to impose. The Court of Appeals in **Morris v. Snappy Car Rental, Inc., 84 N.Y.2d 21 (1994), and Murdza v. Zimmerman, 99 N.Y.2d 375 (2003)**, held that the liability of the owner remains intact even where the operator acted in contravention of the owner's express instructions.

18. In view of the foregoing, the **Appeal is dismissed** being meritless, without any order as to cost.

(Abdul Rehman Warraich)
Commissioner

(Muzafar Ahmed Mirza)
Commissioner

Announced on:

20 OCT 2025