



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 65 of 2020

M/s. Agritech Limited

...Appellant

versus

Securities and Exchange Commission of Pakistan and another

...Respondents

### Appeal No. 31 of 2021

Directors & Chief Executive Officer of Agritech Limited

...Appellants

versus

Joint Director/HOW (Adjudication-I), SECP

...Respondent

### Date of hearings:

March 09, 2023, and September 20, 2023.

### Present:

#### For the Appellants:

1. Ms. Rabia Hassan, Advocate (*in Appeal No. 65 of 2020*)
2. Ms. Asma Irfan – Company Secretary (*in Appeal Nos. 65 of 2020 & 31 of 2021*)
3. Mr. Rashid Sadiq (*in Appeal No. 31 of 2021*)
4. Mr. M. Azeem Rashid (*in Appeal No. 31 of 2021*)

#### For the Respondents:

1. Mr. Asif Iqbal, Director, PRDD, SECP (*in Appeal No. 65 of 2020*)
2. Ms. Sumaira Siddiqui, Additional Director, PRDD, SECP (*in Appeal No. 65 of 2020*)
3. Mr. Mahboob Ahmad, Additional Director, Adjudication-I, SECP (*in Appeal No. 31 of 2021*)
4. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP (*in Appeal No. 31 of 2021*)
5. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP (*in Appeal No. 31 of 2021*)



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## ORDER

1. This Order shall dispose of Appeal No. 65 of 2020 filed by M/s. Agritech Limited (“Appellant Company”); and Appeal No. 31 of 2021 filed by the Directors and Chief Executive of the Appellant Company (“Appellant Officers”), under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (“SECP Act”), as both arise of interconnected issues.
2. The brief facts in Appeal No. 65 of 2020 are that the Appellant Company filed an application with the Commission vide letter dated May 7, 2020 seeking direction under section 147 of the Companies Act, 2017 (“Act”) to hold its Annual General Meeting (AGM) till August 09, 2020 for the year ended December 31, 2019 as well as extension for filing of the first quarter accounts for the quarter ended March 31, 2020 till August 09, 2020. The Additional Joint Director, Corporate Supervision Department of the Securities and Exchange Commission of Pakistan (“Respondent in Appeal No. 65/2020”), vide impugned order dated May 19, 2020, issued direction for holding the AGM for year ended December 31, 2019 latest by August 07, 2020, whereas, extension in filing of first quarter accounts for quarter ended March 31, 2020 was declined.
3. Whereas, the brief facts in Appeal No. 31 of 2021 are that the Appellant Company failed to electronically transmit its interim financial statements to the Respondent within the stipulated time for the period ended March 31, 2020 (filing due on May 30, 2020) (“Default Period”). The Joint Director/HOW (Adjudication-I) (“Respondent in Appeal No. 31/2021”) in exercise of powers conferred under sub-section (4) of the section 237 of the Act, vide impugned order dated January 21, 2021, imposed a fine of Rs. 80,000/- (Rs. 10,000/- each Officer for the Default Period).
4. The authorized representatives appearing on behalf of the Appellant Company *inter alia* contended that there is no bar in section 237 of the Act to grant further extension and thus the refusal thereof for the reason that the Act does not allow the Respondent in Appeal No. 65/2020 in granting extension is legally untenable. It was submitted that under section 510 of the Act and section 20 of the SECP Act the Securities and Exchange Commission of Pakistan (the “Commission”) is empowered to issue such directives and have such powers as it necessary to carry out the purpose of the Act. It was argued that



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under the settled accounting principle and practice, the Appellant Company cannot finalize and publish its financial statements for the first quarter of 2020 until the final audited accounts for the financial year ended December 31, 2019 have been audited and approved by the Board. Furthermore, Counsel for the Appellant Company submitted that the Appellant Company cannot furnish information in its financial statements for the first quarter of 2020 that relate to the annual accounts for the year ended December 31, 2019, before the said annual accounts have been laid before the shareholders, and to do so would be a violation of law and established accounting practice and would not be in the interest of the Appellant Company or its shareholders. The Counsel for the Appellant Company argued that given this situation and in view of the fact that the Commission has allowed an extension to the Appellant Company for purposes of laying its annual audited accounts for the year ended December 31, 2019 till August 07, 2020, it had no reason to refuse an extension for the purposes of the quarterly financial statements for the quarter ended March 31, 2020.

5. The authorized representatives of the Appellant Company further submitted that by virtue of Circular No. 10 of 2020, the Commission expressly acknowledges that on account of Covid-19 pandemic, companies were facing difficulties in ensuring compliance with the regulatory requirements and, moreover, the lockdown imposed by the respective government created impediment in the completion of the financial statements. It was submitted that the order refusing extension is inconsistent because the Commission allowed an extension in time for holding of AGM and laying accounts for the year ended December 31, 2019.
6. The Respondent, in Appeal No. 65/2020, contended that vide impugned order dated May 19, 2020 the Appellant Company was directed under section 147 of the Act to hold its AGM by August 07, 2020. However, with regards to the second part of application of the Appellant Company regarding extension in filing of first quarter financial statements, it was clarified that the law does not allow the Commission to grant extension in filing/transmission of first quarter financial statements beyond thirty days as the same is already granted up to May 30, 2020 to submit financial statements for the quarter ended March 31, 2020 under the provisions of section 237 of the Act. Moreover, it was contended that Circular No. 10 of 2020 is self-explanatory in this regard and thus the Appellant Company is under an obligation to



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comply with requirements of the Act in letter and spirit and can be penalized if non-compliance is observed.

7. With regards to Appeal No. 31 of 2021, the authorized representatives of the Appellant Officers *inter alia* argued that where the preparation of annual financial statements is delayed and an extension is granted by the Commission, a similar extension is allowed for first quarter accounts, as per 2<sup>nd</sup> proviso to section 237(1)(b) of the Act, which recognizes the fact that quarterly financial statements cannot be prepared unless annual financial statements have been prepared as a prerequisite. The authorized representatives of the Appellant Officers submitted that delay in preparation of first quarter accounts is, therefore, consequential to the delay in preparation of annual financial statements which forms the basis for preparation of quarterly financial statements. The implication of delay in preparation of annual financial statements cannot be ignored by Respondent in Appeal No. 31/2021 especially where the delay has been approved and endorsed by the Commission. Moreover, the authorized representatives of the Appellant Officers contended that the delay in filing interim financial statements with the Commission was caused by Covid-19 pandemic and the resignation of the Appellant Company's statutory auditors. The authorized representatives also contested the impugned order dated January 21, 2021 on the ground that it is *inter alia* not in accordance with section 479 of the Act, along with sections 20(6)(c) of the SECP Act.
8. Controverting the arguments in Appeal No. 31 of 2021, the concerned Respondent contended that the impugned order dated January 21, 2021 has been passed in exercise of powers delegated vide S.R.O. 1545(I)/2019 dated December 06, 2019 and the same is based on default committed by the Appellant Company as it failed to transmit its interim financial statements within the stipulated time in violation of section 237 of the Act. The fact that timing of interim financial statements is of essence, the disclosure requirements of these accounts have been kept to a bare minimum. Interim financial statements prepared accurately and in a timely manner provide to its users a reliable source of information regarding a company's financial position and performance, besides illustrating the results of the management's stewardship of resources entrusted on to it. The Respondent further submitted that the directors, in addition to their responsibility of overseeing and managing affairs of a company, also have fiduciary duties towards the company and its shareholders. In order to ensure transparency, all

  
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companies must meticulously adhere to the law for preparation and circulation of interim financial statements.

9. The Appellate Bench (the “Bench”) has heard the parties and perused the record.
10. Subject matter in both the Appeals i.e. Appeal No. 65 of 2020 and Appeal No. 31 of 2021 is section 237 of the Act. The same is reproduced hereunder for ease of reference.

*“237. Quarterly financial statements of listed companies.—(1) Every listed company shall prepare the quarterly financial statements within the period of—*

*(a) thirty days of the close of first and third quarters of its year of accounts; and*

*(b) sixty days of the close of its second quarter of its year of accounts:*

*Provided that the cumulative figures for the half year, presented in the second quarter accounts shall be subjected to a limited scope review by the statutory auditors of the company in such manner and according to such terms and conditions as may be determined by the Institute of Chartered Accountants of Pakistan and approved by the Commission.*

*Provided further that the Commission may, upon an application by the company, extend the period of filing in case of accounts of first quarter for a period not exceeding thirty days, if the company was allowed extension in terms of sections 223.*

*(2) The quarterly financial statements shall be posted on the company's website for the information of its members and also be transmitted electronically to the Commission, securities exchange and with the registrar within the period specified under sub-section (1):*

*Provided that a copy of the quarterly financial statements shall be dispatched in physical form if so requested by any member without any fee.*

*Provided further that the Commission may specify the time period for which the quarterly financial statements shall be made available on the website of the company.*

*(3) The provisions of section 232 shall be applicable to the quarterly financial statements.*

*(4) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty of level 2 on the standard scale.”*

11. Perusal of the aforementioned provision of law reveals that a listed company is under an obligation *inter alia* to electronically transmit to the Commission, its quarterly financial statements within the time frame provided in sub-section (1) of the *ibid*. Summary of facts in both the Appeals is that the Appellant



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Company vide letter dated May 07, 2020 filed a composite application for seeking direction under section 147 of the Act read with sections 223 and 237 of the Act to hold the Annual General Meeting (AGM) for the year ended December 31, 2019 till August 09, 2020, and extension for filing of first quarter accounts for the quarter ended March 31, 2020 till August 09, 2020. The said application was responded vide impugned order dated May 19, 2020 whereby direction was given under section 147 of the Act to hold the AGM for the year ended December 31, 2019 by August 07, 2020 and to lay therein accounts for the year ended December 31, 2019 for shareholder's consideration, whereas, extension in time for filing of first quarter accounts for period ended March 31, 2020 was declined and the Appellant Officers, after issuance of show cause notice and affording opportunity of hearing, were penalized vide impugned order dated January 21, 2021, which is the subject matter of Appeal No. 31 of 2021. Moreover, it is also a matter of record that the Appellant Company eventually did hold its AGM for the year ended December 31, 2019 and later also filed its accounts for the first quarter for the period ended March 31, 2020. The said factual and legal position makes it quite clear that in the instant connected appeals the pivotal question is the treatment meted out to the composite application dated May 07, 2020 filed by the Appellant Company. In view of the relevant law i.e. section 147 of the Act, the legislative intent is to bring a company, which has committed default by not holding AGM, within compliance of the regulatory ambit. However, entertaining of Appellant Company's application under section 147 of the Act does not in any manner suggest that the Appellant Company was given extension in time in terms of sections 223 and 132 of the Act to lay the financial statements and hold the AGM, respectively, rather it was a direction given through the impugned order dated May 19, 2020 to lay the financial statements and hold the overdue AGM for the period ended December 31, 2019.

12. Similarly, section 237 of the Act provides the stipulations for transmitting quarterly financial statements while also providing room for extension in filing in case of accounts of the first quarter if the company was allowed extension in terms of section 223 of the Act. The Bench is of the view that the timeline provided in the section 223 of the Act is understandably aligned with section 132 of the Act to create harmony amongst both the provisions as financial statements are to be laid before the company in AGM. This fortifies the legislative intent behind section 237 of the Act, as extension in period for transmitting accounts of first quarter may only be granted where extension under section 223 of the Act has already been allowed, and clearly has no nexus with section 147 of the Act which being a stand-



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alone provision aims to ensure compliance of *inter alia* holding AGM of the company, once the default is established.


13. Furthermore, the arguments of the Appellant Company are not tenable for the reason, as section 237 of the Act empowers the Commission to grant, upon an application by a company, an extension in period of filing in case of accounts of first quarter for a period not exceeding thirty days provided the company was allowed extension in terms of section 223 of the Act. It is a matter of record that the Commission did grant an extension for filing accounts of first quarter (due on March 31, 2020) till May 30, 2020 to the Appellant Company, however, the same was not complied within the stipulated time. Moreover, the contention that the impugned order dated May 19, 2020 is in contravention of Circular 10 of 2020 dated April 01, 2020 is also misplaced as the said Circular explicitly states that the law does not provide for any relaxation in timeline for filing of quarterly financial statements except for first quarter financial statements i.e. second proviso to section 237(1)(b) of the Act. It is amply clear that the direction under section 147 of the Act to hold AGM can in no manner be treated as an automatic extension in period for filing the quarterly financial statements as the same is being dealt with under section 237 of the Act which is an independent provision of law.
  
14. As far as the issue involved in Appeal No. 31 of 2021 is concerned, the Appellant Officers have challenged the impugned order dated January 21, 2021 whereby penalty has been imposed upon them on account of non-filing/non-transmission of first quarterly accounts of the Appellant Company in terms of section 237 of the Act. In the instant matter, it is an admitted fact that the request of the Appellant Company for extension in time for filing accounts of first quarter i.e. for the period ended March 31, 2020 was acceded to and the Appellant Company was granted time till May 30, 2020, keeping in view that the Appellant Company was allowed extension in terms of section 223 of the Act vide above mentioned circulars. Non-compliance is apparent from the record as the Appellant Company filed the accounts of the first quarter for the period ended March 31, 2020 with the Commission vide email on January 06, 2021 and through e-services on February 01, 2021. For the said reasons, the Bench is not convinced with the submissions put forth by the authorized representatives of the Appellant Officers.



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15. In view of the above, the Bench does not find any reason to interfere with the impugned order dated May 19, 2020; and impugned order dated January 21, 2021, and thus uphold the same. Accordingly, Appeal No. 65 of 2020, and Appeal No. 31 of 2021 are hereby **dismissed** with no order as to costs.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Mujtaba Ahmad Lodhi)  
Commissioner

Announced on: 14 NOV 2023