



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 79 of 2019

1. Mr. Muhammad Faisal Muzammil
  2. Mr. Talha Saeed
  3. Mr. Asim Murtaza Khan
  4. Sardar Azmat Babar Chauhan
  5. Mr. Ahsan Raza Durrani
  6. Ms. Saira Ahmed
  7. Mr. Usman Shahid
  8. Mr. Zahid Anjum
- (All directors of M/s. Agritech Limited)

Appellants

Versus

Executive Director, CSD, SECP

Respondent

Date of hearing:

September 24, 2020

Present:

For Appellants:

Ms. Rabia Hassan, Advocate

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP.
2. Sardar Sohaib Amin, Assistant Director (Adjudication-I), SECP.

## ORDER

1. This Order shall dispose of Appeal No. 79 of 2019 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated September 4, 2019 (the Impugned



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Order) passed by the Respondent under section 237(4) read with Section 479 of the Companies Act, 2017 (the Act).

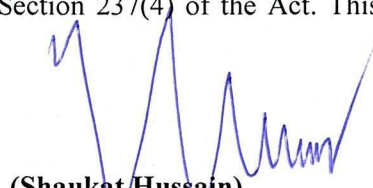
2. The brief facts of the case are that M/s. Agritech Limited (the Company) failed to file the interim financial statements for the quarter ended March 31, 2018 on or before April 30, 2018 (Quarterly Accounts). Therefore, a show-cause notice dated January 25, 2019 (the SCN) was issued to the Appellants for contravention of sub-section (4) of Section 237 of the Act. Hearing in the matter was held on February 7, 2019, whereas, written response was submitted on February 11, 2019. The Appellants contended that due to suspension of gas supply to the Company's Urea plant, Quarterly Accounts were not prepared. The Respondent concluded the SCN proceedings by passing the Impugned Order and imposed a fine of Rs. 10,000/- (Aggregate Rs. 80,000/-) on each Appellant.
3. The Appellants have filed this Appeal on the grounds that suspension of gas supply to the Company's Urea plant caused suspension of its operations, therefore, it was difficult to finalize the accounts for the year ended December 31, 2017 (Annual Accounts). The Appellants stated that the gas supply was restored on September 21, 2018. The Appellants stated that the annual general meeting for the year ended December 31, 2017 (AGM) was held on May 31, 2019 and accordingly the Annual Accounts were also approved. The Appellants stated that, thereafter, Quarterly Accounts were filed with the Securities and Exchange Commission of Pakistan (the Commission) and were uploaded on Pakistan Stock Exchange's portal on August 8, 2019. The Appellants further stated that the Impugned Order is liable to be set aside because it has been passed in contravention of the Lahore High Court, Lahore (the Court) order dated July 19, 2018 (Injunctive Order) passed in Writ Petition No. 226070/2018 (the Petition), whereby the Commission was restrained from taking any coercive measures against the Company.
4. The Respondent stated that the Impugned Order pertains to failure to file the Quarterly Accounts within the stipulated time. The Respondent stated that suspension of gas supply is not a cogent reason for non-finalization of the Quarterly Accounts. The Respondent stated that gas supply was resumed in 2018, however, the Company convened its overdue AGM on May 31, 2019 and subsequently filed Quarterly Accounts. The Respondent stated that an Injunctive Order was passed in reference to the AGM, therefore, it was not applicable to non-filing of the Quarterly Accounts.



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5. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof.
6. The Bench has no doubt that the Company has not filed Quarterly Accounts within the stipulated time, however, there is a need to probe the matter in view of the Injunctive Order passed by the Court. In view of the facts and arguments presented before the Bench during the hearing of Appeal No. 40 of 2019, it came on record that the AGM was delayed and it was held on May 31, 2019, thereby, Annual Accounts were also approved on May 31, 2019. The Bench endorse the Respondent's argument that the Injunctive Order was regarding the AGM and Annual Accounts, however, in our view it is also indirectly applicable in the matter of non-filing of Quarterly Accounts. The Bench is of the view that the Annual Accounts were approved on May 31, 2019, therefore, preparation and filing of Quarterly Accounts on or before April 31, 2018 was not possible. The Bench is of the view that delay in approval of the Annual Accounts in the AGM has inevitably caused delay in filing of the Quarterly Accounts. The Bench is of the view that the Injunctive Order has provided a valid ground to justify the delayed AGM and approval of Annual Accounts, therefore, applicability of subsequent ancillary legal obligations should have been adjudged on the basis of the Injunctive Order. Under the circumstances, we are of the view that issuance of the SCN and passing of the Impugned Order may cause a conflict with the judicial determination of the Petition. The Bench believes that we should avoid intervening in matters which are directly or indirectly pending adjudication before courts.
7. In view of the forgoing reasons, we hereby admit this Appeal and *set aside* the SCN and the Impugned Order. The Bench is of the view that subject to final decision of the Petition, the Respondent may initiate fresh legal proceedings against the Company under Section 237(4) of the Act. This order has been passed, without any order as to cost.

  
(Farrukh Hamid Sabzwari)  
Commissioner (SCD-PRDD)

  
(Shaukat Hussain)  
Commissioner (INS,C&CD)

Announced on: **30 DEC 2020**