



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

ORDER	
Name of Company:	M/s. Fatima Fertilizer Company Limited,
Show Cause Notice No. & Date:	CSD/ARN/215/2015-395 dated September 04, 2024
Name(s) of Respondent(s):	1. Mr. Arif Habib, Chairman; 2. Mr. Fawad Ahmad Mukhtar, Chief Executive; 3. Mr. Fazal Ahmad Sheikh, Director; 4. Mr. Faisal Ahmad Mukhtar, Director; 5. Mr. Muhammad Kashif Habib, Director; 6. Mr. Tariq Jamali, Director; 7. Ms. Julie Jannerup, Director; and 8. M/s. Fatima Fertilizer Company Limited.
Date(s) of Hearing(s):	i. December 19, 2024; and ii. January 08, 2025
Case represented by:	Mr. Jawad Ahmed Qurershi, Partner, M/s. Khalid Anwer & Co. (as Authorized Representative)
Provision of law involved:	Section 512 of the Companies Act, 2017 read with Regulation 3(2) of the Companies (Maintenance and Audit of Cost Accounts) Regulation, 2020
Date of Order:	May 26, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the “Commission”) through Show Cause Notice No. CSD/ARN/215/2015-395 dated September 04, 2024 (“SCN”) issued to M/s. Fatima Fertilizer Company Limited (the “Company”) and its Board of Directors (the “BOD”), hereinafter collectively referred to as the Respondents, under Regulation 3(2) of the Companies (Maintenance and Audit of Cost Accounts) Regulation, 2020 (the “Regulations”) read with Section 512(2) of the Companies Act, 2017 (the “Act”).

2. Regulation 3(2) of the Regulations prescribes that the cost accounting records shall be kept in such a way as to make it possible to calculate, from the particulars entered therein, the cost of production and cost of sales of each of the products separately during a financial year.

3. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) reviewed the audited accounts for the year ended December 31, 2023 (the “Accounts”) of the Company. As per note 21 of the Accounts, the Company produced three types of fertilizers; namely, Urea, Calcium Ammonium Nitrate (CAN) and Nitrogen Phosphate (NP). However, review of the Cost Audit Report and the Cost Accounts for the year ended December 31, 2023 (the “Cost Accounts”) revealed that it has not provided the calculation of the cost of production and cost of sales of each of the fertilizers produced by the Company, separately. It has further been observed that the Company has been following the said practice since inception.

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4. The Cost Auditors had qualified the Cost Audit Report on the Cost Accounts of the Company as follows:

"except for annexed statements of cost showing cost of production reflect total cost incurred on all chemical fertilizers being produced by the Company instead of different varieties separately in compliance of Regulations 3(2)"

5. Accordingly, the matter was taken up with the Company and in response the Company submitted its reply vide letter dated August 2, 2024 which *inter alia* states as follows:

"Fatima Fertilizer Company Limited ('the Company') owns and operates three fertilizer complexes with fully integrated production facilities, capable of producing multiple intermediate and fertilizer products. The production process is highly complex in nature, as multiple facilities are intertwined including but not limited to use of Intermediate products, combined plant resources like natural gas compressors, water treatment plant, power generation and distribution, steam generation and recovery plants and various allied support services.

We would like to submit that the management reviews and monitors the business on consolidated basis (and not on separate products basis) and believes that further break down of costs associated to integrated processes of the complex level operations does not add value to the decision making, therefore, the information being provided in the already submitted cost audit accounts along with Audit Report reflects the true and fair picture of the affairs of the Company.

It is further submitted that the management believes that the disclosure of product-wise costing may expose the business sensitive information which is potentially detrimental to the interests of the Company and its shareholders.

Based on the above, it is reiterated that the cost audit accounts along with the auditor's report already filed with the Commission should be considered as final."

6. The Commission in order to take cognizance of the matter issued SCN to the Respondents on September 04, 2024 to show the cause in writing as to why penal action may not be taken for non-compliance with the provisions of Regulation 3(2) of the Regulations. However, the Company vide its letter dated September 13, 2024 sought further time of three (03) weeks for submission of the response.

7. Accordingly, in order to provide opportunity of personal representation and to meet the ends of justice, hearing in the matter was fixed for December 19, 2024. However, Mr. Jawad Qureshi, Partner, M/s. Khalid Anwer & Co. vide letter dated December 17, 2024 intimated the Commission of the appointment of his firm as the Authorized Representative (**the "Authorized Representative"**) on behalf of the Respondents and sought an adjournment for availing further time to prepare the case. Subsequently the Company vide another letter dated 'Nil' received at this office on October 01, 2024, submitted that, *"the Company has approached the Honorable Islamabad High Court on this precise issue through the Writ Petition No. 2399 of 2024.....As the matter is currently sub-judice and a hearing in the case is fixed on 29.10.2024 before the*

Handwritten signature and date: 26-05-2025

Honorable Islamabad High Court, you are most humbly requested to await the decision of the Honorable Court."

8. Subsequently, the Authorized Representative attended the hearing on December 19, 2024 mentioning their recent appointment on December 17, 2024 by the Company and reiterated the request for adjournment in the matter to allow more time to prepare. Accordingly, another hearing opportunity was then fixed for January 8, 2025.

9. In the meanwhile, the Authorized Representative vide letter dated December 30, 2024 submitted the written response which *inter alia* stated as follows:

- i. *The Company and its directors were served with SCN dated 04.09.2024 for alleged non-compliance with Regulation 3(2) of the Regulations. The Company has challenged the vires of Regulation 3(2) through Writ Petition No. 2399/2024 filed before the Islamabad High Court. Notices have been issued, and the matter is pending adjudication. The Company asserts that these proceedings are subject to the High Court's final decision and its response to the SCN is without prejudice to its case in the writ petition. The SCN is alleged to be ultra vires the Companies Act, 2017, lacks jurisdiction, and infringes fundamental rights.*
- ii. *The Company operates three fertilizer complexes producing five products, including two intermediate and three final fertilizers (Urea, CAN, NP), of which CAN and NP are niche products. FFCL is subject to Sections 220 and 250 of the Act and maintains cost records accordingly at its registered office. An audit under Section 250 can only be directed upon the recommendation of the relevant sector regulator, which was absent in this case. The term "specified" under Section 2(67) refers to matters covered by regulations made under the Act.*
- iii. *The SECP framed the 2020 Regulations under Sections 220 and 250 to require maintenance and audit of cost records. Regulation 3(2) of the 2020 Regulations mandates product-wise cost accounting records. Despite no sectoral regulator recommendation, SECP directed cost audits for fertilizer companies via Regulations 4, 6, and 7. FFCL maintains records of materials, labour, inputs, and cost items as required under Section 220.*
- iv. *The cost auditor's report dated 26.06.2024 confirms maintenance of proper cost records per Section 220 and the 2020 Regulations. The auditor also stated that the records fairly reflect cost and profit metrics of all fertilizer products. Although product-wise costs are not presented, total costs are disclosed. Disclosure of proprietary cost structure for CAN and NP may harm the Company's competitive position. The Company argues that Regulation 3(2) is ultra vires the Act and the Constitution.*
- v. *Delegated legislation under Section 512 must remain within the bounds of the Act's purpose. The Act's accounting provisions ensure transparency for shareholders, with audit oversight being a key safeguard. The term "true and*

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fair view” is meant to ensure overall clarity and does not necessarily require product-wise cost bifurcation.

- vi. *Section 220 of the Act focus is on capturing costs across four broad categories: materials, labour, other inputs, and cost items. The Company has complied with this obligation and the auditor has certified such compliance. Regulation 3(2) introduces an additional, non-statutory requirement beyond what Section 220 envisages. The Company cites case law (2003 SCMR 370) explaining that rule-making powers cannot exceed the statute’s scope.*
- vii. *The legislative purpose behind cost record maintenance is to ensure internal transparency, not public disclosure. Requiring product-wise costing contradicts the limited regulatory authority and violates the legislative intent of Section 220. Proprietary cost structures of niche products constitute trade secrets, and forced disclosure would breach fiduciary duties to shareholders.*
- viii. *Consequently, Regulation 3(2) is unconstitutional and ultra vires the Companies Act, 2017. SECP’s power to mandate cost audits under Section 250 is contingent on a prior recommendation from a sector regulator. No such recommendation exists in FFCL’s case. Fertilizer is a deregulated sector under the Fertilizer Policy, 2001.*
- ix. *Therefore, Regulations 4 and 6 of the 2020 Regulations are also ultra vires, and cost audits conducted under them are legally invalid. The classification under the 2020 Regulations lacks intelligible differentia and is discriminatory in terms of Article 25 of the Constitution.*

10. On the date of hearing i.e. January 08, 2025, the Authorized Representative attended the hearing proceedings and reiterated the written submissions made vide the aforementioned letter dated December 3, 2024.

11. I have examined the relevant provisions of Regulation 3(2) of the Regulations and Section 512 of the Act and reviewed the Accounts and written submissions in response to SCN. The factual background and the legal arguments raised by the Authorized Representative have been duly considered. The following legal and factual elements are noteworthy:

- (i) Regulation 3(2) of the Regulations obligates every company engaged in production, processing, manufacturing, or mining activities to maintain cost accounting records in a manner that enables the calculation of cost of production and cost of sales of each of the products separately during a financial year. The objective of this requirement is to ensure transparency in cost disclosures, sectoral comparability, and regulatory consistency in pricing and profitability analysis.
- (ii) In the present matter, the Cost Accounts of the Company revealed that while the Company maintained cost accounting records, the annexed cost statements reflected aggregated cost figures for all fertilizers produced instead of providing product-wise cost details as required under Regulation 3(2) of the Regulations. The auditor also noted this as a qualification in the cost audit report, indicating

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deviation from the Regulations.

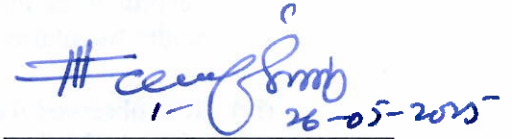
- (iii) The Company does not deny that the product-wise cost bifurcation was not made in the submitted cost statements. Instead, it seeks to justify this deviation on the grounds that: (a) such segregation is operationally impractical due to the integrated nature of its manufacturing facilities; (b) the disclosure of such data could compromise sensitive business information, particularly in relation to two (02) of the niche fertilizer products (CAN and NP); and (c) the Company interpreted Section 220 of the Act by explaining that same does not require cost records to be maintained or presented at the detailed product level as envisaged under Regulation 3(2).
- (iv) It is observed that the Respondents have contended that Regulation 3(2) is ultra vires to the Act and therefore unconstitutional and a constitutional challenge in this regard is currently pending before the Hon'ble Islamabad High Court in W.P. No. 2399 of 2024. However, it is pertinent to observe that no restraining order has been issued in the said petition as of the date of this Order and the Regulations remains enforceable and effective. The argument of the Respondents that disclosing the desired details would expose them to their competitors is not valid as the cost accounts reporting is specifically designed by law for such disclosure without any exception.
- (v) The Commission acknowledges that the Company did maintain cost records and did submit cost statements audited by a qualified cost auditor. However, the core issue pertains to meeting the specific requirement of Regulation 3(2) i.e., maintaining and disclosing product-wise cost data, which remains unfulfilled. The Company's general compliance with Section 220 of the Act does not override or substitute the more specific and binding requirement set out in Regulation 3(2) of the Regulations. It is also pertinent to observe that the Cost Auditor has also 'qualified' the report on these very grounds in their report dated July 26, 2024.
- (vi) The Regulations were validly issued by the Commission vide S.R.O. 1336(I)/2020 dated December 14, 2020, in the exercise of powers conferred under Section 512, read with Sections 220(1) and 250(1) of the Act. These Regulations supplement and fully complement the legislative framework by institutionalizing a mechanism for the maintenance and audit of cost accounts, thereby promoting transparency, corporate accountability, and efficient resource allocation across notified sectors. Accordingly, the Regulations are not ultra vires as they represent a valid and constitutional exercise of the Commission's regulation-making authority under the Act and serve legitimate regulatory objectives aligned with principles of good governance and public accountability.

12. I have reviewed the facts of the case and also considered the verbal and written submissions made by the Authorized Representative. It is evident that the obligation to maintain and report product-wise cost of production and cost of sales is clearly mandated under Regulation 3(2) of the Regulations. The Respondents, while having maintained cost records and submitted audited cost accounts, did not fulfil the specific requirement of presenting product-wise cost details, as required by law. The Company has acknowledged this approach and sought to justify it on operational and commercial grounds. While these explanations have been considered, it is imperative to note that regulatory obligations are prescriptive and uniform in nature, and cannot

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be adjusted based on internal business preferences by the Respondents. The requirement under Regulation 3(2) is fundamental to ensuring transparency and comparability across the sector, and compliance therewith is not optional. Accordingly, the Respondents' approach reflects a deviation from a core regulatory obligation.

13. In view of the foregoing, and the fact that Cost Audit Report has already been qualified by the Cost Auditor and the matter is now in good knowledge of the Management and the BOD of the Company, I, in exercise of the powers conferred under Section 512(2) of the Act read with SRO 1545(I)/2019 dated December 06, 2019, am inclined to conclude the instant proceedings without taking any adverse action but with a strict ADVICE and CAUTION to the Respondents to ensure strict and unqualified compliance with Regulation 3(2) of the Regulations in future, both in letter and in spirit



(Sohail Qadri)

Director/ Head of Department
Adjudication Department-I

Announced:

Dated: May 26, 2025

Islamabad