



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 40 of 2019

1. Mr. Muhammad Faisal Muzammil
2. Mr. Talha Saeed
3. Mr. Asim Murtaza Khan
4. Mr. Sardar Azmat Babar Chauhan
5. Mr. Ahsan Raza Durrani
6. Ms. Saira Ahmed
7. Mr. Zahid Anjum

Appellants

Versus

The 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. 40 of 2019 filed by Mr. Muhammad Faisal Muzammil and six other directors (the Appellants) of M/s. Agritech Limited (the Company) against the Order dated May 14, 2019 (the Impugned Order) under Section 132 read with Section 479 of the Companies Act, 2017 (the Act), passed by the Executive Director, CSD (the Respondent).

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2. The brief facts of the case are that in pursuance of the requirement contained under Section 132 of the Act, the Company failed to convene its annual general meeting for the financial year ended December 31, 2017 (the AGM) within a period of one hundred and twenty days following the close of its financial year (*Before April 30, 2018*). The Company was granted extension vide letter dated March 30, 2018 to convene the AGM by May 30, 2018. On May 24, 2018, the Company sought direction from the Securities and Exchange Commission of Pakistan (the Commission) under Section 147 of the Act to hold the AGM until November 30, 2018 (*Six months*). However, the Commission vide letter dated May 29, 2018 refused further extension (the Refusal Order) and directed the Company to convene the AGM without any further delay. The Company failed to convene the AGM, therefore, a show cause notice dated January 25, 2019 (the SCN) was issued. Hearing in the matter was held on February 7, 2019, whereas, the written reply of the SCN was received on February 11, 2019. The Appellants' representatives stated that the AGM could not be convened due to non-availability of gas supply to the urea plant of the Company. The Appellants' representatives also stated that the subject AGM would be held within a period of two months. The SCN proceedings were concluded and Impugned Order passed. The penalty was imposed on the Appellants in the following manner:

Sr. No.	Name	Penalty
1	Mr. Muhammad Faisal Muzammil	100,000
2	Mr. Talha Saeed Ahmed	100,000
3	Mr. Asim Murtaza Khan	100,000
4	Mr. Sardar Azmat Babar Chauhan	100,000
5	Mr. Ahsan Raza Durrani	100,000
6	Ms. Saira Ahmed	100,000
7	Mr. Zahid Anjum	100,000
	<b>TOTAL</b>	<b>700,000</b>

3. The Appellants have filed this Appeal *inter alia* the grounds, that the SCN and Impugned Order has violated the injunctive order of the Lahore High Court Lahore (the Court) issued in Writ Petition No.226070 of 2018 (the Petition) filed by the Company.
4. The Appellate Bench (the Bench) has perused the record which revealed that the Company had challenged the Refusal Order before the Court through the Petition and the Court had suspended the





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operation of the Refusal Order vide its order dated July 19, 2018 (the Injunctive Order). The Bench has directed the Adjudication-III department of the Commission to apprise the Bench regarding current status of the Injunctive Order. The Adjudication-III has informed the Bench that the Injunctive Order is still operative and next date of hearing is January 28, 2021. The Bench believes that in presence of the Injunctive Order, the Respondent should have avoided issuance of the SCN and the Impugned Order. The Bench is of the view that the Impugned Order has tried to defeat the purpose of the Petition, therefore, we have no doubt that the Impugned Order is not a sustainable order.

5. The Bench has perused the Impugned Order whereby the directors of the Company have been penalized under Section 132 of the Act for non-holding of the AGM. In our view the Respondent had no power to issue the SCN to the Appellants under Section 132 of the Act because under the relevant law only the respective company could be held liable for non-holding of the AGM. This Bench has already decided a similar matter in Appeal No. 1 of 2019 on October 26, 2020 wherein it was held that under Section 132 of the Act, the Respondent had no power or jurisdiction to initiate proceedings and to impose penalty on directors of the company. In the circumstance we are of the view that analysis of merits and other arguments of the parties may prejudice the rights of parties, therefore, the Bench will not touch upon the merits of the case.
6. 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 132 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**