



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 97 of 2020

1. Mr. Muhammad Faisal Muzammil
2. Mr. Talha Saeed
3. Mr. Asim Murtaza Khan
4. Sardar Azmat Babar Chauhan
5. Mr. Abdul Karim Sultanali
6. Ms. Amena Zafar Cheema
7. Mr. Usman Shahid

...Appellants

versus

1. Securities and Exchange Commission of Pakistan
2. Executive Director-Corporate Supervision Division
3. Joint Director/Head of Wing, Listed Companies, Adjudication Department – I

...Respondents

Date of hearing:

March 09, 2023

Present:

For the Appellants:

1. Ms. Rabia Hassan, Advocate High Court
2. Ms. Asma Irfan, Company Secretary
3. Syed Taneem Haider, Chief Financial Officer

For the Respondents:

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



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ORDER

1. This Order shall dispose of Appeal No. 97 of 2020 filed by Mr. Muhammad Faisal Muzammil and six others (the "Appellants"), who are the directors and chief executive of M/s. Agritech Limited (the "Company"), under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act").
2. The brief facts in Appeal are that the Company failed to file its interim financial statements with the Securities and Exchange Commission of Pakistan (the "Commission") within the stipulated time for the period ended June 30, 2018 (filing due on August 29, 2018), September 30, 2018 (filing due on October 30, 2018), and March 31, 2019 (filing due on April 30, 2019) (the "Default Periods") The Joint Director/HOW (Adjudication-I) (the "Answering Respondent") in exercise of powers conferred under sub-section (4) of the section 237 of the Act, vide order dated August 12, 2020 (the "Impugned Order"), imposed a fine of Rs. 200,000/- (Rs. 10,000/- per Appellant for each of the Default Periods, except for Appellant No. 7 who resigned from the Board on February 6, 2019 was held responsible only for the Default Periods June 30, 2018 and September 30, 2018).
3. The authorized representatives appearing on behalf of the Appellants *inter alia* contended that the Impugned Order is in violation of suspension order dated July 19, 2018 passed by the Hon'ble Lahore High Court, Lahore in Writ Petition No. 226070 of 2018 whereby *inter alia* direction under section 147 of the Act issued by the Respondent No. 2 was suspended and the Respondents were restrained from taking any coercive action against the Company. Moreover, the Appellants relied on decisions of the Appellate Bench (the "Bench") in Appeal Nos. 40/2019 and 79/2019 in support of the instant appeal and prayed for setting aside of the Impugned Order.
4. Controverting the arguments, the Answering Respondent contended that timing of interim financial statements is of essence and the disclosure requirements of these accounts have been kept to a bare minimum. Moreover, it was argued by the Answering Respondent that interim financial statements are required to be prepared accurately and in a timely manner to provide 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 Answering Respondent submitted



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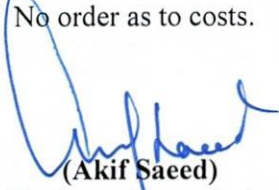
that the Appellants have fiduciary duties towards the Company and its shareholders while providing information to various stakeholders concerning their performance as to how diligently and ethically they are discharging their fiduciary duties and responsibilities. The Answering Respondent further submitted that the Impugned Order is based upon default committed by the Company as it failed to file its interim financial statements for the Default Periods within the stipulated time, which renders the Appellants liable to penal action under section 237 of the Act.

5. The Bench has heard the parties and perused the record. It is an admitted fact that the Company failed to timely transmit its interim financial statements for the Default Periods which were submitted subsequently. It is also a matter of record that the Hon'ble Lahore High Court, Lahore vide its order dated July 19, 2018 in Writ Petition No. 226070 of 2018, suspended the operation of the direction dated May 29, 2018 issued by the Respondent No. 2 and the said order remained in field till disposal of the aforementioned writ petition vide order dated January 28, 2021. The Bench while accepting Appeal No. 79/2019, set aside the order whereby penalty was imposed for non-transmission of the first quarter accounts (March 31, 2018) for reasons recorded therein. The said reasons are applicable to the instant appeal as well, as far as the second and third quarter accounts for the year 2018 i.e. June 30, 2018 and September 30, 2018 are concerned, delay in transmission whereof was condoned for reasons recorded vide order of the Bench dated December 30, 2020 in Appeal No. 79/2019.
6. As far as the default period (March 31, 2019), the submissions of the Appellants and reliance thereof on the order of the Hon'ble Lahore High Court, Lahore in Writ Petition No. 226070 of 2018 does not rescue them from the admitted default in transmission of first quarterly financial statements for the period ended March 31, 2019 as the same was not the subject matter of direction dated May 29, 2018 which was suspended by the Hon'ble Lahore High Court, Lahore vide its order dated July 19, 2018, thus drawing a clear distinction between the default period March 31, 2019 and the other periods.
7. In view of the above, the instant appeal is hereby disposed of on the following terms:
 - i. Impugned Order is hereby partially *set aside* to the extent of Default Periods (June 30, 2018 and September 30, 2018);
 - ii. Impugned Order is upheld to the extent of Default Period (March 31, 2019);



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- iii. Penalty imposed vide Impugned Order is hereby modified and resultantly reduced to Rs. 60,000/- (i.e. Rs. 10,000/- each Appellant Nos. 1 to 6 for the Default Period March 31, 2019);
- iv. No order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Mujtaba Ahmad Lodhi)
Commissioner

Announced on: **25 AUG 2023**