

AGL/CA/PSX/169- 2022

July 06, 2022

✓ The General Manager
Pakistan Stock Exchange Limited
Stock Exchange Building
Stock Exchange Road
Karachi

Executive Director/HOD
Offsite – II, Department
Supervision Division
Securities & Exchange Commission of Pakistan
63, NIC Building, Jinnah Avenue, Blue Area,
Islamabad

Subject: **Disclosure of Material Information**

Dear Sir,

In accordance with Section 96 of the Securities Act, 2015 read with rule 5.6.1 of the PSX Rule Book, we write to disclose that the Honorable High Court of Lahore at Lahore has approved the “Scheme of Arrangement” filed under section 284 read with section 285 to 288 of the Companies Ordinance 1984, which shall take effect from 31.12.2013. Certified copy of the Judgement of the Honorable High Court of Lahore in the matter is annexed herewith for your information.

You may please inform the TRE Certificate Holders of the Exchange accordingly.

Sincerely yours,



Mudassar Hassan Kamran
Company Secretary/ Head of Legal

Encl: As Above



Disclosure Form
In terms of Section 96 the Securities Act 2015

Name of the Company: **Agritech Limited**

Date of Reporting: **July 6, 2022**

Contact Information: **Mudassar Hassan Kamran**
Company Secretary/ Head of Legal
Agritech Limited
2nd Floor, Asia Centre, 8-Babar Block, New Garden Town,
Lahore.

Disclosure: In accordance with Section 96 of the Securities Act, 2015 read with rule 5.6.1 of the PSX Rule Book, we write to disclose that the Honorable High Court of Lahore at Lahore has approved the “Scheme of Arrangement” filed under section 284 read with section 285 to 288 of the Companies Ordinance 1984, which shall take effect from 31.12.2013. Certified copy of the Judgement of the Honorable High Court of Lahore in the matter is annexed herewith for your information

Signature: This form/ statement is signed by the Company Secretary for & on behalf of Company as required under law.

Mudassar Hassan Kamran
Company Secretary/ Head of Legal

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE.
JUDICIAL DEPARTMENT

CO No. 21 of 2016

In the matter of Agritech Pvt. Ltd.

JUDGEMENT

Dates of Hearing	18.02.2022, 25.03.2022, 08.04.2022, 29.04.2022 03.06.2022
For Agritech Pvt. Ltd.	M/s. Arshad Nazir Mirza, Syed Ali Zain Raza Naqvi, Maryam Salman, Amna Iqbal & Areeb Farooq, Advocates
For Federation of Pakistan	Mr. Azmat Hayat Khan Lodhi, Assistant Attorney General for Pakistan Mr. Masood ul Hameed Malik, Director (Coord) FEB&GID & Muhammad Saleem, Assistant Director, FEB&GID, Establishment Division Islamabad
For SECP	M/s. Hafiz Tallaha & Muhammad Naveed, Advocates
For JS Bank, Bank Alfalah and NBP	M/s. Ambreen Moeen, Javeria Latif & Shumail Cheema, Advocates
For Soneri Bank	Mr. Ashar Elahi, Advocate
For Silk Bank	Mr. Asfandyar Khan Tareen, Advocate
For Pak Libya	M/s. Adeel Shahid Kareem & Usman Nassir Awan, Advocates

SHAMS MEHMOOD MIRZA, J. This petition is filed under sections 284 read with Sections 285 to 288 of the Companies Ordinance, 1984 (the **Ordinance**) for sanction of the scheme of arrangement dated 31.12.2013. The scheme of arrangement together with its Schedules shall henceforth be mentioned as "**Scheme of Arrangement**".

2. The Petitioner is a listed company which is engaged in the manufacturing and sales of Urea and Granulated Single Super Phosphate fertilizer. It is stated that the petitioner was unable to discharge its financial obligations towards its creditors on account of variety of factors including the shortage of natural gas.

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3. The total long-term liabilities of the Petitioner towards the creditors as on 31.12.2013 (unaudited) under the head of principal is Rs. 19.447 billion and accrued markup is 6.075 billion.
4. The Petitioner and its management held various meetings with the creditors for the purpose of formulating a plan for discharge of the liabilities and finally agreed in principle on the terms and conditions which are enumerated in the Scheme of Arrangement.
5. The salient features of the Scheme of Arrangement are as follows.
 - (i) The issuance of preference shares by the petitioner to its creditors in lieu of the outstanding principal amount mentioned in Schedule A to the Scheme of Arrangement.
 - (ii) The overdue mark-up as on 31.12.2013 is proposed to be settled/restructured in terms of clause 11 read with Schedule F of the Scheme of Arrangement whereunder the creditors of the petitioner have been given various options for settlement/restructuring of the mark-up amount.
 - (iii) The Scheme of Arrangement also proposes the release of security interests over the immovable properties of the petitioner (unless the same have already been released by the creditors) for their sale or lease, as the case may be, for utilizing the funds thereof for reduction of financial indebtedness of the Petitioner as provided for in clause 12 of the Scheme of Arrangement.
6. This Court through order dated 10.06.2016 directed the holding of the meetings of the shareholders and creditors of the petitioner in terms of Rule 59 and 61 of the Companies (Court) Rules, 1997. This Court appointed Mr. Abdullah Dogar, Advocate as Chairman to hold meetings under his supervision and submit reports thereof in the Court. The notice for holding of the meetings was directed to be advertised through publications in the daily "Jang" and daily "Dawn." The Court further directed the Office to issue notice of the main Petition through publication in the national editions of daily "Dawn", daily "Jang" and daily "The Business Recorder" after the reports were filed by the Chairman.
7. The Court also issued notices to the Securities and Exchange Commission of Pakistan (SECP).
8. After fulfilling the necessary requirements, the meeting of the shareholders and creditors were held on 21.07.2016 and 25.07.2016

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respectively. According to the report of the Chairman, the members of the petitioner, present and voting or by proxy in the meeting, approved the Scheme of Arrangement by a majority of 99.99% whereas the creditors of the petitioner approved it by 100%.

9. The meeting of the members of the Petitioner resolved as under:

RESOLVED THAT the Scheme of Arrangement for the rehabilitation of the Company, inter alia by restructuring/ setting existing liabilities of the company towards its creditors, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications/amendments required or conditions imposed by the Lahore High Court, subject to sanction by the Honorable Lahore High Court at Lahore, in terms of the provisions of the Companies Ordinance, 1984.

10. The creditors of the petitioner in their meeting resolved as under:

RESOLVED THAT the Scheme of Arrangement between Agritech Limited and its creditors, subject to being approved in accordance with the provisions of the Companies Ordinance, 1984 and the sanction of the Lahore High Court at Lahore, for the rehabilitations of the Company, inter alia, by restructuring/setting specific existing liabilities of the Company towards its creditors with effect from December 31, 2013, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted.

11. The Additional Registrar of Companies/SECP filed the reply to this petition by raising objections on the transaction of allocating preference shares to the creditors in lieu of their debt. It was alleged that the allotment of preferences shares violates the provisions of section 87 of the Ordinance. It was also stated that the financial statement for the period ending December 31, 2013 submitted by the petitioner with SECP mentions at Note 18 an amount of Rs.6,155,636,564/- as accrued mark-up whereas in the present petition the amount of accrued mark-up is stated to be Rs.6,074,641,092/-.

12. The learned counsel for the petitioner as well as other creditors in response to the objection raised by SECP submitted that the transaction for allotting the preference shares contemplated by the Scheme of Arrangement is covered by section 92 (3-A) of the Ordinance. It is stated that section 87 is an exception to section 86 of the Ordinance which deals with ordinary shares and that the text of section 87 does not clog the right of the petitioner to issue preference shares to its creditors in lieu of its outstanding liabilities. In

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regard to the discrepancy in the amount of accrued mark-up, it was explained that the amount was shared with the creditors and no objection was ever raised by them. It was stated that the creditors have also given their consent to the Scheme of Arrangement. The audited financial statement reflecting the amount of Rs.6,155,636,564/- has been annexed with the petition as per the requirement of section 284 of the Companies Ordinance 1984. It is furthermore stated that all the stakeholders have agreed to the terms of the Scheme of Arrangement and that the minor difference in the amount can be reconciled.

13. The arguments of the parties have been heard.

14. The relevant provisions of the Ordinance relating to the issuance of shares are reproduced in the following comparative table.

Section 87	Section 92(3-A)
<u>Notwithstanding anything contained in section 86 or the memorandum and articles, a company may issue ordinary shares or grant option to convert into ordinary shares the outstanding balance of any loans, advances or credit, as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), or other non-interest bearing securities and obligations out-standing or having a term of not less than three years in the manner provided in any contract with any scheduled bank or a financial institution to the extent of twenty per cent. of such balance:</u>	<u>Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, where the authorised capital of a company is fully subscribed, or the un-subscribed capital is insufficient, the same shall be deemed to have been increased to the extent necessary for issue of shares to a scheduled bank or financial institution in pursuance of any obligation of the company to issue shares to such scheduled bank or financial institution.</u>

15. The first point to be noticed from the comparison of the two provisions is that both contain non obstante clauses. A *non-obstante* clause is a legislative tool employed to give overriding effect to certain provisions over some contrary provisions that are to be found in the same enactment or in a different enactment in order to avoid the operation and effect of all contrary provisions. The Hon'ble Supreme Court in M/s E.F.U. General Insurance Company Limited v. The Federation of Pakistan **PLD 1997 SC 700** explained the scope of such a clause by stating as under:

Thus a non obstante clause is usually used in a provision to indicate that the provision should prevail despite anything to the contrary in the provision

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mentioned in non obstante clause. In case there is any inconsistency between the non obstante clause and another provision, one of the objects of such a clause is to indicate that it is the non obstante clause which would prevail over the other clause.

Similarly, the Indian Supreme Court in *Chandavarkar S.R. Rao v. Ashalata S. Guram* 1986 4 SCC 447 held as under:

A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that inspite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned in the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment.

16. Although both section 87 and section 92(3A) on surface deal with issuance of shares by the companies in favour of scheduled banks or financial institutions but there are fundamental differences in their scope and the conditions and the manner for issuance of shares is quite distinct under both the provisions. One noticeable distinction between the two provisions is that the non-obstante clause contained in section 87 prevails over only section 86 or the memorandum or articles of association of a company. Section 86 of course recognizes the pre-emptory right of the existing shareholders on the issuance of further shares in consequence of increase in the capital of the company. Section 87 by its terms breaches the pre-emptory principle enshrined in section 86 by allowing a company to issue ordinary shares in lieu of 20% of the amount of any loan, advances or credit outstanding with any scheduled bank or a financial institution. The non-obstante clause in section 92(3A), on the other hand, by its terms gives it an overriding effect over all the other provisions of the Ordinance or any other law for the time being in force or the memorandum and articles of association of the company. This provision allows a company to issues shares to a scheduled bank or financial institution pursuant to any obligation it has undertaken in this regard and on such issuance of shares it is envisaged that the share capital of the company shall be deemed to have increased correspondingly to the amount for which shares have been issued. Another

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notable and perhaps most important difference between the two provisions lies in the nature of shares that can be issued by the company. A company under section 87 can only issue ordinary shares whereas section 92(3A) does not impose any such restriction. Whereas section 87 caps the conversion of shares in favour of a scheduled bank or financial institution up to 20% of the outstanding balance of the loan amount no such prohibition exists in section 92 (3A).

17. Originally section 90 of the Ordinance did not recognize issuance of preference shares by a company. The said provision as it was originally contained in the Ordinance reads as under:

90. Classes and kinds of share capital.- (1) A company limited by shares shall have only ordinary share capital, which may be sub-divided into different classes:

Provided that this sub-section shall not apply to preference shares issued before the commencement of this Ordinance or in pursuance of a contract or agreement entered into before such commencement.

(2) The rights as between various clauses of ordinary shares, if any, as to profits, votes and other benefits shall be strictly proportionate to the paid up value of shares.

This provision was substituted by Finance Act, 1999 and the substituted provision for the first time envisaged and recognized different kinds of share capital and classes of shares. The substituted provision reads as under.

90. Classes and kinds of share capital.- A company limited by shares may have different kinds of share capital and classes therein as provided by its memorandum and articles: Provided that different rights and privileges in relation to the different classes of shares may only be conferred in such manner as may be prescribed.

18. The SECP has itself issued a "Guidebook on Issue of Preference Shares". Chapter I (Introduction) states that

The guidebook summarizes the provisions of the Ordinance and the Rules relating to preference shares and steps to be taken by companies for issuance of these shares.

The provision of Section 90 of the Ordinance was substituted through Finance Act, 1999 in the year 1999, through which limited companies were allowed to have different kinds of share capital and classes therein as provided in their memorandum and articles of associations. Further, under Section 90 of the Ordinance, the Share Capital Rules were prescribed in the year 2000. Rule 3 (1) of the Share Capital Rules provide that a company limited by shares may have more than one kind of share capital and may have different classes of shares under each kind.

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Earlier to this provision of the Ordinance, companies could have only one class of share capital i.e. Ordinary shares having same kind of rights and privileges, attached thereto..... (emphasis supplied)

In Chapter 2 (Basic Concepts) of the Guidebook, the characteristics of preference shares are described in following terms:

1. During the continuance of the company its must have preferential dividend. The preferential dividend may consist of a specified amount payable to preference shareholders before any thing is paid to ordinary shareholders, or the amount payable as preferential dividend may be calculated at a fixed rate / percentage.
2. On the winding up of the company it usually carry a preferential right to be paid, that is, the amount paid up on preference shares must be paid back before any thing is paid to the ordinary shareholders.
3. Generally such shares do not carry voting rights.

In Chapter 4, the Guidebook has this to say about section 92 of the Ordinance.

Section 92 of the Ordinance states that a Company limited by shares, if so authorized by its articles, may alter the conditions of its memorandum so as to (a) increase its share capital by such amount as it thinks expedient. Sub-section (2) of the aforesaid provision of the Ordinance explains that the new shares issued by a company shall rank pari passu with the existing shares of the class to which the new shares belong in all matters, including the right to such bonus or right issue and dividend as may be declared by the company subsequent to the date of issue of such new shares. Provisions of sub-section (3A) provides that notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, where the authorised capital of a company is fully subscribed, or the unsubscribed capital is insufficient, the same shall be deemed to have been increased to the extent necessary for issue of shares to a scheduled bank or financial institution in pursuance of any obligation of the company to issue shares to such scheduled bank or financial institution.

By issuing the Guidebook, the SECP acknowledged that issuance of preference shares comes within the purview of the provisions contained in section 92(3A) of the Ordinance.

19. The learned counsel for the SECP vehemently argued that section 92(3A) shall have to be read subject to section 87 of the Ordinance as the former provision only deals with increase in authorized capital of a company. The text of both the provisions, however, does not support the plea put forward by the learned counsel for the SECP that section 92(3-A) is subordinate to section 87 of the Ordinance. Furthermore, the differences between the two provisions as highlighted above makes the argument of the SECP untenable. The Guidebook on Issuance of Preferences Shares in

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Chapter 3 makes reference to Rule 30 of the Companies (General Provisions and Forms) Rules, 1985 which prescribes the process for approval for allowing a company to issue preference shares. The objection of the SECP is accordingly repelled and it is declared that the issuance of preference shares is governed by section 92 (3A) of the Ordinance.

20. The next objection of the SECP is with regard to the amount of principal amount of Rs. 19,447,451,944/- and outstanding mark-up of Rs.6,074,641,092/- for which the Company as per Schedule E & F of the Scheme intends to issue preference shares up to Rs. 31 billion and settle its liability. According to the SECP, the amount of outstanding mark up is Rs.6,155,636,564/- which discrepancy has not been clarified. It is evident from Schedule F of the Scheme that the amount of mark-up of Rs.6,074,641,092/- pertains to both short term and long-term loans of the creditors whereas the issuance of preference shares contemplated by the Scheme is only in respect of long-term creditors/lenders whose liability shall be settled in accordance with Schedule C of the Scheme. Similarly, the amount of Rs.31 billion mentioned in Schedule E of the Scheme reflects the collective liability of both-short term and long-term creditors/lenders although the Scheme is applicable to the long-term creditors who shall be issued shares as per their existing liability i.e. the principal portion of liability as provided in Schedule C of the Scheme. In this regard, reference may be made to the definitions of Creditor, other creditors, existing liability-principle portion, existing liability-mark up portion as given in the Scheme as also its clause 10.

21. Learned Assistant Attorney General representing the Federal Government also objected to the Scheme. It is, however, apparent from the No Objection Certificate issued by Faysal Bank Limited, the trustee of the Federal Government, for conversion of 59.2% of its debt into preference shares that this objection has no merit to it.

22. The authorized capital of the Company is Rs. 15 billion whereas its liability towards the creditors as of 31.12.2013 is approximately Rs.25 billion. The total current outstanding principal amount is Rs.19.447 billion for which there is an agreement between 100% creditors and the Petitioner

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for conversion of this liability into equity by issuing preference shares. As regards the amount of mark-up that has accrued on the loans availed by the Petitioner, the Scheme offers various options to the creditors including the conversion of the same also into equity by issuing preference shares. The unsubscribed capital of the Petitioner is clearly insufficient to cater for the increase in the capital which shall result from issuance of the preference shares. With the sanction of the Scheme of Arrangement, the capital of the Petitioner shall automatically be deemed to have correspondingly been increased.

23. The Scheme of Arrangement has been approved by the requisite majorities of the creditors and the shareholders. The reports submitted by the Chairman of the meetings of the shareholders and creditors of the Petitioner shows that all essential and fundamental characteristics and attributes of the Scheme of Arrangement were placed before the stakeholders who did not object to the same. The proposed Scheme of Arrangement has not been found to violate any provision of law and is also not contrary to the public policy.

24. It is settled law that once the legal requirements of a Scheme of Arrangement have been found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the shareholders and creditors.

25. In the result, this petition is allowed as prayed for, and the Scheme of Arrangement which shall form part of this order as Schedule 'A' is hereby sanctioned. The Scheme of Arrangement shall take effect from 31.12.2013 in accordance with the provisions of the Ordinance. The petitioner shall strictly comply with the requirements of issuance of preference shares and privately placed term finance certificates in the mode and manner prescribed in the Scheme of Arrangement.

(Shams Mehmood Mirza)
Judge

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Lahore

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Copy Petition No: 175425
Case No: 31677
Submission Date: 9
No of Pages: 24
Fee (Rs.): 77
Urgent Fee (Rs.):
Total Fee (Rs.):
Date of Completion:
Date of Delivery:

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