



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Securities Market Division  
Market Supervision and Capital Issues Department

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**Before the Director/HOD (Market Supervision and Capital Issues Department)**

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Azgard Nine Limited, a more than ten percent shareholder of Agritech Limited

**Date of Hearing:**

02/08/2011

**Present at Hearing:**

*Representing the Respondent:*

- (i) Mr. Muhammad Ijaz Haider,  
Company Secretary,  
Azgard Nine Limited
- (ii) Mr. Syed M. Raza  
Financial and Corporate Consultant

*Assisting the Director (SMD):*

- (i) Mr. Muhammad Farooq,  
Joint Director (SMD)
- (ii) Mr. Nazim Ali,  
Assistant Director (SMD)

**Order**

This order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 ("**Ordinance**") by the Securities and Exchange Commission of Pakistan ("**Commission**") through Show Cause Notice No. S.M(B.O)C.O.222/ 9(91)11 dated 19/07/2011 ("**Notice**") issued to Azgard Nine Limited ("**Respondent**") a more than ten percent shareholder of Agritech Limited ("**Issuer Company**").

2. The facts of the matter leading up to aforesaid Notice are that it was observed from the record of this office that the Issuer Company is a public listed company. It was further observed that the Respondent is holding more than ten percent equity securities of the Issuer Company. Thus, pursuant to provisions of Section 222(2)(b) of the Ordinance, the Respondent was required to file its return of beneficial ownership on prescribed form, within the stipulated time period. But, it failed to discharge its said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.



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3. Section 222 of the Ordinance deals with the submission of statements by beneficial owners of listed securities. For convenience the provisions of the said Section are reproduced hereunder:-

- (1) *Every director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company who is or has been the beneficial owner of any of its equity securities, and every person who is directly or indirectly the beneficial owner of more than ten per cent of such securities, shall submit to the registrar and the Commission a return in the prescribed form containing the prescribed particulars pertaining to the beneficial ownership of such securities and notify in the prescribed form the particulars of any change in the interest aforesaid.*
- (2) *The period within which the said return is to be submitted to the registrar and the Commission shall be—*
  - (a) *where the person occupies the position or office specified in sub-section (1), or is a person whose interest as beneficial owner of securities requiring submission of the return as stated in the said sub-section subsists on the commencement of this Ordinance, within thirty days from such commencement;*
  - (b) *in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be;*
  - (c) *where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change; or*
  - (d) *where the Commission by an order so requires, within such period as may be specified in such order.*

4. It is worth mentioning that in order to provide an opportunity to beneficial owners of listed companies to file their over due returns of beneficial ownership without facing penal action, the Commission through Notices dated 07/09/2009 and 21/09/2010 asked them to file their returns of beneficial ownership with Head Office of the Commission by 31/10/2009 and 31/10/2010 respectively and to ensure timely compliance of Section 222 of the Ordinance in



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future. The aforesaid Notices were sent to all listed companies and were also disseminated through stock exchanges and print media.

5. As the Respondent failed to file the returns of beneficial ownership, the Company Secretary of the Issuer Company was, therefore, asked vide letter dated 29/11/2010 followed by reminder dated 20/04/2011 to collect returns of beneficial ownership on Form 31/32 from the beneficial owners of the Company including the Respondent alongwith reasons for non-filing of the same within the period stipulated in Section 222 of the Ordinance and to file the same with this office.

6. In response to aforementioned letter, the Respondent filed Form 31 with this Commission which showed that it was holding 313,423,184 shares (79.8700% shareholding) of the Issuer Company. The said Form 31 further showed that the Respondent was holding more than ten percent shareholding in the issuer company since its listing on Karachi Stock Exchange on 12/04/2010. Thus, it was required to file the said return with this Commission latest by 11/05/2010, but the same has been filed on 04/05/2011, with delay of 357 days, in contravention of Section 222(2)(b) of the Ordinance. The said default attracts penal provisions of Section 224(4) of the Ordinance, which provides as under:-

*“Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues”.*

7. The Commission accordingly took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon him to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against him pursuant to Section 224(4) of the Ordinance, for aforesaid contravention of Section 222(2)(b) of the Ordinance. The written reply in this regard was submitted by Company



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Secretary of the Respondent vide letter dated 28/07/2011. He, on behalf of the Respondent, stated that:-

*"The company was holding its 100% shares of AGL from the date it was acquired through Privatization process of Government of Pakistan in 2006. Since the company was facing some liquidity problems therefore it divested its 20.13% shares comprising 79,006,816 Ordinary shares of Rs.10 each through private placement and public offering. Accordingly company's shares have been listed on Karachi Stock Exchange (KSE) w.e.f. April 12, 2010 vide KSE Notification No. KSE/N-1940.*

*We understand that as soon as the AGL status was changed to that of a listed company, the company was required to comply with the requirements of Section 222 of the Companies Ordinance, 1984. However, since as we have mentioned above, the company was facing liquidity problems and to meet its financial needs a certain portion of its holding was divested as well as negotiations were also in the process with the lenders for restructuring of its debts. Since most of the head offices of banks are situated in Karachi therefore all the key management personnel had to visit Karachi frequently, therefore the filing of form 31 was delayed which was due to oversight neither willful nor intentional"*

8. In order to provide an opportunity of being heard in person, hearing in the matter was fixed for 02/08/2011 at Commission's Head Office, Islamabad. On the given date Mr. Muhammad Ijaz Haider, Company Secretary of the Respondent and Mr. Syed M. Raza Financial and Corporate Consultant ("**Authorized Representatives**") appeared before me on behalf of the Respondent and made the following submissions:-

- a) The Respondent was facing some liquidity problems, therefore, it divested its 79,006,816 (20.13%) shares through private placement and public offering. Respondent did not make any purchase and sale transaction in the market. It was first time when the Respondent was required to make compliance of section 222 on account of listing of its subsidiary. However, it will be appreciated that the company remained complaint with other corporate filings.
- b) The delay in submission of the return of beneficial ownership was not willful. The Respondent ensured that it will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.

9. I have considered written submissions made on behalf of the Respondent as well as the verbal arguments advanced by the Authorized Representatives during the course of personal

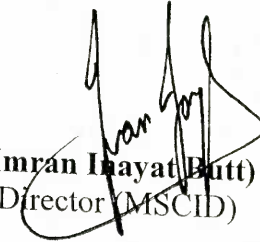


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hearing. The Respondent has admitted the default of late filing of the return of beneficial ownership with the contention that said default was not committed willfully and knowingly. The Respondent has assured for timely filing of the returns of beneficial ownership in future and requested to condone the default in question. In order to arrive at conclusion, I have also reviewed the available record which reveals that the Respondent has not made any purchase /sale transaction in the market. Considering the arguments advanced on behalf of the Respondent, I intend to agree with the contention of the Respondent and of the view that the late filing of the under reference return of beneficial ownership may not be willful. Therefore, a lenient view of the matter has been taken and the Respondent is hereby strictly warned to ensure timely compliance of Section 222 of the Ordinance in future.

10. This order is issued without prejudice to any other action that the Commission/Registrar may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.

Islamabad.  
Announced on August 11, 2011

  
(Imran Inayat Butt)  
Director (MSCID)