

Before Dr. Sajid Qureshi, Executive Director (CLD)

In the matter of

M/s. Haseeb Waqas Sugar Mills Limited

Under Section 171 of the Companies Ordinance, 1984

No. and date of show cause notice	EMD/233/345/2002 dated January 27, 2006
Date of hearing	March 17, 2006
Present	Mr. Muhammad Imran, Company Secretary
Date of Order	April 5, 2006

ORDER

This Order shall dispose off the proceedings initiated against M/s. Haseeb Waqas Sugar Mills Limited (hereinafter referred to as the “Company”) and its Directors for default made in complying with the provisions of Section 171 of the Companies Ordinance, 1984 (“Ordinance”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Sub-section (1) of Section 158 of the Ordinance, the Company was required to hold its Annual General Meeting (the “AGM”) for the year ended September 30, 2004 on or before January 31, 2005. The Company fixed the meeting for January 31, 2005, the agenda of which, among other ordinary business, included election of directors. However, a day before the date of AGM, Company published in the newspaper another notice for postponement of AGM in the newspapers. The reason given was that the majority shareholders (present management) had requested for postponement of meeting as five nominees who were contesting for directorship had acquired 39% shares of Company in violation of *Listed Companies* (Substantial Acquisition of Voting Shares and Takeover) Ordinance, 2002 (hereinafter referred as take-over Ordinance).



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3. The present management of the Company lodged compliant with Commission, Securities Market Division. The Compliant was lodged against acquisition of 39% shares of the Company by acquirer in violation of the Takeover Ordinance. The Company was of the opinion that the acquirers have acted in concert and have violated takeover Ordinance by purchasing the aforesaid shares. The postponement of AGM prima facie resulted in the violation of the mandatory provisions of the Section 158 of the Ordinance.

4. Consequently, a show cause notice dated March 04, 2005 was served on the Company and its Directors including the Chief Executive for the aforesaid violation. In response to the SCN, the Directors contended vide letter dated March 18, 2005 that publication of notice of AGM and circulation of annual accounts is evidence that they had all the intention to hold AGM. However, after the announcement of AGM, Company received nomination of five other persons for election of directors, who sent the proxies to the tune of 39% of total shareholding. The Company Secretary informed the directors that the shares have been acquired in violation of take-over Ordinance. The majority shareholders then requested the Company to restrain the 5 new nominees from contesting the elections to be held in AGM; and to postpone the AGM till decision of SEC on their complaint. Accordingly, the Board of Directors in its meeting held on January 29, 2005 decided to postpone the AGM. Directors in their reply requested that they have no objection in holding of AGM, if the voting rights of irregular 39% shares are suspended by the Commission.

5. The Security Market Division on November 24 , 2005 informed the Company that complaint under section 4 and 5 read with section 21 and 25 of the take over Ordinance on the grounds that the acquirers have acted in concert by obtaining proxies is not tenable. However matter regarding 5.4 million shares in the House account of First Capital equities was still under investigation by the Security Market Division.

6. Enforcement Department on December 08, 2005 passed order against the Company for non-holding of AGM on the grounds that any violation of take-over Ordinance does not allow the Company and its Directors to postpone the AGM. The non-holding of AGM deprived shareholders to exercise their powers envisaged in the statute. The distress of the shareholders required redressal and the Company was directed by the Commission on December 08, 2005



under Section 170 of the Ordinance to hold its AGM within thirty days of the issue of the direction.

7. The Company was aggrieved with the reply of the Securities Market Division dated November 24, 2005 in the matter related with take over Ordinance and filed a petition in Lahore High Court. Lahore High Court disposed off the petition on January 26, 2006 with the observation that the petitioner be heard by the competent Officer of the Commission for a determination of the complaint in accordance with law.

8. An organization's annual general meeting is the forum where the board, executives and shareholders are all in attendance for deliberating the important affairs of the Company. AGM is a forum at which management of the companies lays annual accounts and appraise the shareholders about performance. Moreover, Auditors of the companies are appointed by the Shareholders and if required, various powers are also exercised. These are fundamental requisite which necessitated holding of the AGM in the given time frame. The directions of the Commission issued under Section 170 of the Ordinance to hold AGM were not complied by the Company. The Commission vide letter dated December 27, 2005 asked the Company to explain its position with regard to the aforementioned direction. The Company neither responded back nor complied with the directions. Consequently a show cause notice u/s 171 of the Ordinance was issued on January 26, 2006 to the chief Executive of the Company for not complying with the directions of the Commission.

9. In response to the aforementioned show cause notice the Company replied that

- 13th Annual General Meeting was postponed due to blatant violations of Section 4 and 5 of the take over Ordinance.
- They stated that the Joint Director C.I., Securities Market Division decided the complaint in total disregard of the provisions of Section 22 and 24 of the takeover Ordinance.



- An appeal dated December 23, 2005 was filed in Lahore High Court against the letter dated November 24, 2005, which was decided on January 26, 2006 with the direction to Commission to hear the complaint in accordance with law.
- The SECP was also directed to hear the petitioners (major shareholders) during the course of inquiry under the takeover Ordinance. Especially with regard to “acting in concert” issue.
- The Director Enforcement has passed Order dated December 8, 2005 for non holding of AGM. A revision petition has been filed with the Company Bench of SECP under Section 484 read with Section 477 of the Ordinance.
- Section 26(2) (wrongly referred to as 26(6)) of the take over Ordinance states that

“In case the board of directors or management of the target company contravenes any provision of this Ordinance, the directors, the chief executive and the company and secretary, on a finding by the Commission, shall stand disqualified to hold any such office in a listed company for the next two years.”

In view of the law quoted above and till the final adjudication of the complaints Board of Directors in larger interest of the Company has decided to postpone the annual general meeting till the complaint filed under the takeover Ordinance is decided or till such time that SECP suspends the voting power of the unlawfully acquired shares.

10. In order to give an opportunity of personal hearing, the case was fixed for March 17, 2006. On the date of hearing Mr. Muhammad Imran, Company Secretary appeared on behalf of the Chief Executive. He reiterated the same argument as were advanced earlier in their written reply dated January 30, 2006 to the Commission. He fears that the Chief Executive of the Company will be penalized under Section 26(2) of the Ordinance, if the Company holds AGM.



11. I have given due consideration to the written submissions of the Chief Executive as well as the arguments advanced by the representative at the time of hearing but none of them justified the default in complying with the directions of the Commission. The Company has not act upon the directions of the Commission and in blatant disregard of the Commission's directions has not held AGM. The plea of the representative that the AGM could not be held due to violation of Takeover Ordinance is not rational ground for not complying with the directions of the Commission to hold the AGM. The Company was never allowed by Commission to delay the AGM rather was directed to hold AGM. The Board of Directors did not approach the Commission to seek the course of action and the Commission has exercised it's *sue moto* power while directing the Company to hold its AGM to alleviate the suffering of the shareholders.

12. The management was neither allowed by the shareholders nor by the Commission not to hold the AGM and is acting in total disregard of the rights of the shareholders. They have not been given any powers in the Ordinance to delay the AGM and the undersigned fail to understand as to how the management is not acting under the laid down parameters. The Directors, CEO, their spouse and minor children hold 27.33% shareholding (disclosed in the financial statement of the Company as at September 30, 2005) and are not allowing the shareholders having 72.67% shareholding to exercise their powers. This constitutes gross abuse of rights and powers of the shareholders of a public listed company.

13. The management of the Company is mixing up the issue of holding AGM with Takeover Ordinance. The Commission is in cognizance of the entire situation and after considering all the aspects directions under Section 170 of the Ordinance were issued. The Company was either acting on a wrongful advice or they have deliberately attempting to portray a distorted version of take over laws. The management of the Company should have given regard to the statutory provisions and in case of ambiguity in any issue, should have sought advice of the Commission. Moreover, the issue of revision petition also needs to be taken separately and should not be used as pretext for not complying with the direction of Commission to hold AGM. We need to protect and look after interest of the 72.67% shareholders of the Company. They cannot be just kept isolated from the affairs of the Company and should be allowed to exercise the fundamental rights provided in the statute.



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14. The Chief Executive of the company is therefore, responsible for not complying with the directions of the Commission to hold AGM with in the prescribed time limit. The default is, therefore, established, which attracts the Provisions of Section 171 of the Ordinance. I, in exercise of powers conferred upon me under Section 171 read with Section 476 of the Ordinance, impose a fine of Rs.33,200 (Rupees thirty three thousands and two hundreds only) on its Chief Executive.

15. The Chief Executive of the Company is hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fines totaling to Rs.33,200 (Rupees thirty three thousands and two hundreds only) in the Commission's designated account no. 75010-6 maintained at Habib Bank Limited, Central Branch, 102/ 103, Upper Mall, Lahore or pay by a DD/Pay order issued in the name of Commission and send a copy of the receipted vouchers to the Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive in his personal capacity; therefore, they are required to pay the said amounts from their personal resources.

16. Finally, since the Company has not held two consecutive AGMs, which attract penal action under section 305 of the Ordinance. The said section provides that a company may be wound up if it does not hold two consecutive AGMs. The Directors and Chief Executive of the Company are hereby directed to comply with the direction of the Commission issued on December 08, 2005 to hold AGM without fail and in case of default the Commission has the right to invoke Sections 305,495 and any other provisions of the Ordinance.

Dr. Sajid Qureshi
Executive Director (CLD)