

Before Mr. Tariq Bakhtawar, Director Enforcement

In the matter of

M/s. Haseeb Waqas Sugar Mills Limited

Under Section 158 read with Section 476 of the Companies Ordinance, 1984

No. and date of show cause notice	EMD/233/345/2002-152-159 dated July 06, 2006
Date of hearing	July 21, 2006
Present	Mr. Awais Yasin, Company Secretary
Date of Order	August 16, 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 158 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, 2005 on or before January 31, 2006. The Company, its Chief Executive and directors, however, failed to hold the said AGM within the time period. A show cause notice dated July 06, 2006, therefore, was served on the directors including Chief Executive of the Company for the violation of Sub-section (1) of Section 158 of the Ordinance.

3. The Company did not hold AGM even for the calendar year 2004, thus depriving the shareholders of their fundamental rights for continuously last two years. The Company fixed the Annual General 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 notice in the newspaper 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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4. The present management of the Company lodged compliant with Commission, Securities Market Division against the acquisition of 39% shares of the Company by acquirers 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.

5. Enforcement Department on December 08, 2005 passed order against the Company for non-holding of AGM and its Directors cannot holdup 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. However, Company did not comply with the directions of the Commission under Section 170. An order was passed imposing penalty on the Chief Executive of the Company for non-compliance with the directions of the Commission.

6. 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. The companies lays annual accounts and appraises the shareholders about performance. Moreover, Auditors of the companies are appointed by the Shareholders and if required, various statutory powers are also exercised. These are fundamental requisite which necessitated holding of the AGM in the given time frame. The Company has failed to comply with the mandatory provisions of the Ordinance, consequently a show cause notice u/s 158 of the Ordinance was issued on July 6, 2006 to the Directors, Chief Executive and the Company for not complying with mandatory requirement of the Commission.

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

- That the Mr. Ilyas Mehraj and family is major shareholder of the Company and Mehraj family is running and managing the Company since its incorporation very smoothly and successfully.
- That since its incorporation the management of the Company is committed for compliance of all the legal formalities which include but not limited to holding of Annual General Meetings and filing of all statutory documents with SECP as required by Companies Ordinance, 1984. Furthermore company is fulfilling all legal requirements of KSE and LSE listing regulations and other ancillary laws applicable to the Company.



- That all AGMs of the Company are being held regularly since its incorporation and there has been no other violation of the Companies Ordinance, 1984. The corporate record of the Company has been maintained strictly in accordance with law.
- That the AGM of the Company for year ended September 30, 2004 was fixed for January 31, 2005. The Notice of AGM was published in newspapers on January 10, 2005 and sent to the all members, SECP, KSE, and LSE in accordance with the requirement of Section 158(3) of the Companies Ordinance, 1984 and listing regulations of stock exchanges.
- That notice of the said AGM laid down the agenda for the AGM which, inter alia, included election of the directors. It is evident from publications of notices and other arrangements for AGM that the management of the Company had good intention to hold the AGM on its due date and performed all the legal requirements in this regard.
- That on January 13, 2005 the Company Secretary received the nomination papers from the following persons (hereinafter referred to as “the acquirers”) who intended to contest the election of directors in the forthcoming AGM.
 - (i) Major Gen. Retd. Shujat Ali Khan
 - (ii) Syed Akbar Naqi Zaidi
 - (iii) Air Commodore Retd. Pervaiz Akhtar
 - (iv) Mr. Iqbal Latif and
 - (v) Mr. Taufiqee Habib.
- Subsequently, Company Secretary received the proxies having voting shares to the tune of 39% of total shareholding in favor of above nominees.
- That upon inquiry by the Company and the majority shareholders it is transpired that the acquisition of 39% shares of the Company by the acquirers fall in the ambit of Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 (hereinafter referred to as “the Takeover Ordinance”). WHEREAS clause (a) of Sub section 1 of Section 2 of Takeover Ordinance defines “acquirer” and “person acting in concert” as follows;
 - “**acquirer**” means any person who, directly or indirectly, acquires or has proceeded to acquirer voting shares in the target company, or acquires or has proceeded to acquirer control of the target company, either by himself or through any person acting in concert;
 - “**person acting in concert**” means a person who co-operates with the acquirer to acquire voting shares of control of the target company;



- That aforesaid individuals “acting in concert” with a group of investors illegally acquired 39% shares of the Company in stark violation of Section 4 and Section 5 of the Takeover Ordinance. Section 4 and Section 5 of the Take Over Ordinance provides;

Section 4

“Any acquirer who acquires voting shares which (‘taken together with voting shares, if any, held by the acquirer) would entitle the acquirer to more than ten percent voting in a listed company, shall disclose the aggregate of his shareholding in that company to the said company and to the stock exchange on which the voting shares of the said company are listed”

Section 5

(1) No person shall, directly or indirectly, acquire-

- (a) voting shares which (taken over together with voting shares, if any, held by such person) would entitle such person to more than twenty five percent voting shares in a listed company; or*
- (b) control of a listed company*

unless such person make a public announcement of offer to acquire voting shares or control of such company in accordance with this Ordinance

- That in such circumstances, Mian M. Ilyas Mehraj having more than 10% voting shares in the Company file a complaint dated January 26, 2005 with SECP under Section 21 of the Takeover Ordinance and it was informed to the SECP that a group of persons “acting in concert” has secretly acquired 39 % voting shares of the Company in direct violation of Section 4 and 5 of the Takeover Ordinance.
- That majority shareholders having more than 52% voting shares in the Company filed a complaint on January 28, 2005 with the Company and demanded as follows;
 - (i) to restrain the above persons from contesting the election of the office of the directors of the Company to be held in the forthcoming AGM,
 - (ii) to postpone the AGM till the decision of the SECP on the complaint dated 26-01-2005 filed by Mian M. Ilyas Mehraj, and
 - (iii) to take the necessary action in accordance with the provisions of the Ordinance *ibid.*
- That on January 29, 2005 the Board of Directors in its scheduled meeting held to consider the first quarterly accounts for the period ended December 31, 2004, sought legal opinion and after considering the penal provisions given in Section 26(2) of the Takeover Ordinance decided to postpone the AGM on the request of the majority shareholders. Whereas Section 26 (2) of the Takeover Ordinance provides;



“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 secretary, on a finding by the Commission, shall stand disqualified to hold any such office in a listed company for the next two years “.

- That Notice, dated January 29, 2005 for the postponement of AGM was published in daily newspapers in English and Urdu and sent to SECP, KSE, LSE and wherein it was informed to the SECP, stock exchanges and the public at large about the reasons that compelled the Board of Director of the Company to postpone the above said AGM.
- That major shareholders of the Company filed a comprehensive complaint on February 18, 2005 with the Securities Market Division, SECP containing all relevant documents under Section 21 of the Ordinance in which majority shareholders requested to give directions under Section 25 of the Take over Ordinance and allow the AGM subject to suspension of 39% votes acquired by acquirers.
- Whereas Section 25 of the Takeover Ordinance provides;
 - (a) *directing the person concerned not to further deal in securities;*
 - (b) *prohibiting the person concerned from disposing of any of the securities acquired in violation of provisions of this Ordinance;*
 - (c) *directing the person concerned to sell the voting shares acquired in violation of the provisions of this Ordinance; and*
 - (d) *taking such action against the person concerned as may be necessary.*
- That in spite of reminders to SECP no date was fixed for hearing of the complaint and there was no immediate response from SECP and instead of initiating an inquiry the SECP issued a show cause notice dated March 4, 2005 under Section 158 of the Companies Ordinance, 1984 for not holding the AGM on time.
- That the complainants filed a comprehensive reply to the show cause notice on March 18, 2005. It is pointed out that delay of AGM was a material consequence of the illegal acquisition of shares and could not be treated separately, especially in the light of Section 26(2) of the Takeover Ordinance.
- That SECP reject the complaint dated February 18, 2005 filed by the majority shareholder of the company by his letter dated November 24, 2005, and specified also that 5.4 million shares of the Company are held by First Capital Equities Ltd., which is more than 10% of the paid up capital of the company and hence clearly violation of the Section 4 of the Takeover Ordinance.



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- That SECP did not pay any attention to all the submissions made by the respondents in respect of show cause notice dated March 4, 2005 and passed an Order against the complainants on December 8, 2005 to hold the AGM within 30 days.
- That on December 23, 2005 majority shareholder of the company filed an appeal against the direction dated November 24, 2005.
- That the Directors of the company filed a writ petition to the Lahore High court on December 24, 2005 which was disposed off on January 26, 2006 with the directions to the SECP to hear the petitioner and decide the case according to Takeover Ordinance.
- That on SECP issued show cause notices under section 170 and 171 of the Companies Ordinance dated December 27, 2005 and January 26, 2006 respectively and hence passed an order as on April 4, 2006
- That a revision was filed under section 484 read with section 477 of the Companies Ordinance, 1984 before Company Bench SECP against the order dated December 8, 2005.
- That on March 17, 2006 SECP established a committee to conduct the enquiry under section 21 of the Takeover Ordinance as instructed by Lahore High Court and hence the hearing was fixed as on April 10, 2006. The majority shareholders of the Company through their legal council Mr. Syed Mansoor Ali Shah has attended the aforesaid hearing and submitted that the matter of pending AGM should not be treated separated from illegal acquisition of 39% shares by the acquirer. Since the findings of the committee are still pending.
- That while the whole matter is subjudice before the Company bench the petitioners were surprised to receive the order dated April 4, 2006 in precisely the same matter of postponing the AGM.
- That the major shareholder of the company has filed a revision on May 19, 2006 against the order dated April 4, 2006 which is still pending.
- In view of the above submission it is clear that matter of holding of AGM and illegal acquisition of shares is still pending and hence prayed that the show cause notice under reply may graciously be withdrawn till findings of Enquiry Committee, final outcome of complaint filed by majority shareholders of the company under section 21 of the Takeover Ordinance, and final order of revision filed on May 19, 2006.



- In the alternative, the SECP may direct holding of the AGM subject to the suspension of the voting rights of the 39% illegally acquired shares.

8. In order to give an opportunity of personal hearing, the case was fixed for July 21, 2006. On the date of hearing Mr. Awais Yasin, Company Secretary appeared on behalf of the Directors. He reiterated the same argument as were advanced earlier in their written reply 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.

9. I have given due consideration to the written submissions as well as the arguments advanced by the representative at the time of hearing and my view on the issues are under:

- The Company has been facing financial difficulties and shareholders had been deprived of any reasonable return for a quite long time. The accumulated losses amounting to Rs. 71 million were reported at the end of the financial year September 30, 2003. However, Company managed to make profits for the financial years 2004 and 2005. Proceedings under Section 265 of the Ordinance were initiated in October 2002 against the Company on the reasons pertaining to depriving the shareholders of a reasonable return. In order to avoid the proceedings the directors announced dividend out of profits of first quarter of the year 2002-2003 and the proceedings were dropped in 2003. However, the Company suffered loss in the said year as per the audited accounts for the period ended on September 30, 2003 and aforesaid dividend was actually paid out of capital in violation of Section 249 of the Ordinance. An order dated June 30, 2005 was passed against the Company for the violation and directors of the Company were directed to make good the loss.
- The AGM has not been held yet and the important provision of the statute empowering the shareholders has been made to be violated by the Company by its directors. The non-holding of AGM for 2004 and 2005 means that accounts have not been approved by the shareholders, shareholders have not appointed auditors and shareholders have not been able to deliberate on various other important issues. The Arguments forwarded by the Company about their willingness, intentions and commitment to hold AGM are put forward only for the discussion sake and the Company is not holding AGM despite insistence of the Commission.



- The other issue raised by the Company is violation of Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 (hereinafter referred to as “the Takeover Ordinance”) by certain group of people and filing of application dated February 18, 2005. The above referred complaint is looked into by the Security Market Division and the Company is well aware of the development taking place on the case.
- The Directors of the Company are mixing up the issue of holding AGM with Takeover Ordinance. The complaint under the Takeover Ordinance has no implication on the AGM and the management of the Company should have given due regard to the statutory provisions. The earlier directions under section 171 very clearly put forward our stance on the issue and in case of ambiguity in any issue, the Company should have sought advice of the Commission. We need to protect and look after interest of the 72.67% shareholders of the Company.
- The Commission had given due consideration to the written submissions of the directors as well as the arguments advanced by the representatives of the Directors at the time of hearing but none of them justified the default in the holding of AGM. The plea of the representative that the AGM could not be held due to request of majority shareholders and the disputed takeover cannot be made a reason for not holding AGM.

10. The Directors was neither allowed by the shareholders nor by the Commission to holdup the AGM and have acted in total disregard of the rights of the shareholders. They have not been given any powers in the Ordinance to delay the AGM. 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. Certain approvals / authorization were required from shareholders have not been obtained which included approval for appointment of the auditors. The directors who are running the operations are appointing the auditors of their own choice instead of being appointed by the shareholders as per the statute. These kinds of issues are emanating from non-holding of AGM on which the Directors does not seem to be bothered and the consequential non-compliances are arising.



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11. In view of the above and the fact that the Company has not so far held its due AGM for the year ended September 30, 2005, the default under Sub-section (1) of Sections 158 of the Ordinance is established and it is considered willful. I have given due consideration to the written submissions of the directors as well as the arguments advanced by the representatives of the Directors at the time of hearing but none of them justified the default in the holding of AGM. The plea of the representative that the AGM could not be held due to request of majority shareholders and the disputed takeover is not reasonable ground for not holding AGM. Section 158 requires the Company to hold AGM by January 31, 2006 or get an extension from Commission. Any violation of take-over laws does not allow the Company and its Directors to postpone the AGM and not to hold it within prescribed time limit. The Directors of the company are therefore, responsible for not holding AGM within the prescribed time limit. The default attracts the Provisions of Sub-section (4) of Section 158 of the Ordinance. However, instead of imposing the maximum fine of Rs. 50,000 on every director and a further fine of Rs. 2,000 per day for the continuous default, I, in exercise of powers conferred upon me under Sub-section (4) of Section 158 read with Section 476 of the Ordinance, impose a fine of Rs. 50,000 (Rupees fifty thousand only) each on the Company, its Chief Executive and each of the Directors in the following manner: -

S/No.	Name	Penalty
1	Mian Muhammad Illyas Mehraj, Chairman	Rs. 50,000
2	Mian Waqas Riaz, Chief Executive	Rs. 50,000
3	Mrs Shahzadi Illyas, Director	Rs. 50,000
4	Mrs Bano Mehraj, Director	Rs. 50,000
5	Mrs Zainab Waqas, Director	Rs. 50,000
6	Mst. Maiza Riaz, Director	Rs. 50,000
7	Hafiz M. Irfan Hussain Butt, Director	Rs. 50,000
8	M/s Haseeb Waqas Mills Limited	Rs. 50,000
Total		Rs. 400,000

12. The Company, its Chief Executive and Directors are hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fines totaling to Rs.400,000 (Rupees Four Lacs only) in the Commission's designated bank 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



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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 and the Directors in their personal capacity; therefore, they are required to pay the said amounts from their personal resources.

Tariq Bakhtawar
Director Enforcement