



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Before Tariq Bakhtawar Director Enforcement

In the matter of

M/S Haseeb Waqas Sugar Mills Limited

(Under Section 158 Of the Companies Ordinance, 1984)

No. and date of show cause notice	EMD/233/345/2002 dated March 04, 2005
Date of final hearing	April 27, 2005
Present:	Mr. Munawwar Ali, Chief Financial Officer Mr. Muhammad Imran, Company Secretary
Date of Order	December 8, 2005

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 Sub-section (1) of Section 158 of the Companies Ordinance, 1984 (the "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 takeover

etc

NIC Building, Jinnah Avenue, Blue Area, Islamabad.

PABX: 9207091-4 Fax No. 9218592 & 9204915 E-mail: webmaster@secp.gov.pk Website: www.secp.gov.pk



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laws). The present management of the Company also lodged compliant with Securities Market Division of the Commission. The intention of the present management for postponement of AGM was, prima facie, to stop the other persons from contesting the election of directors for which the Company violated the mandatory provisions of Section 158 of the Ordinance. Consequently, a show cause notice dated March 04, 2005 was served on the Company and its Directors including the Chief Executive calling upon them to show cause as to why penalties as provided under Sub-section (4) of Section 158 read with Section 476 of the Ordinance may not be imposed on them.

3. 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 laws. 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.

4. In order to give an opportunity of personal hearing, the case was fixed for April 27, 2005. On the date of hearing Mr. Munawwar Ali, Chief Financial Officer and Mr. Muhammad Imran, Company Secretary appeared on behalf of all the directors. They reiterated the same argument as were advanced earlier in their written reply dated March 18, 2005 to the Commission. He also added that AGM was postponed due to threats given by the other party and to avoid chances of fight between the present management and the persons who illegally took-up the shares. Mr. Munawwar Ali contended that the management had all the intention to hold AGM for the year ended September 30, 2004 in time but it had to be cancelled due to circumstantial reasons. He accepted the default of Section 158 but requested to suspend disputed shares after which the AGM can be held.

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5. 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 rational ground for not holding AGM. Section 158 requires the Company to hold AGM by January 31, 2005 or get an extension from Commission. Any violation of the takeover laws does not allow the Company and its Directors to postpone the AGM and not to hold it within prescribed time limit. Moreover, the Commission is of the view that the complaint u/s 4 & 5 read with section 21 and 25 of the takeover laws on the grounds that the acquirers have acted in concert by obtaining proxies is not tenable. The Directors of the company are therefore, responsible for not holding AGM with in the prescribed time limit. The default is, therefore, established, which 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

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6. 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 hundred thousand 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 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

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