



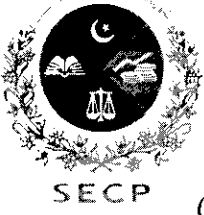
Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal Nos. 18, 20, 21, 22 and 23 of 2009

- (i) First Capital Equities Limited (Appellant No.1 in Appeal No. 18 of 2009)
- (ii) Shahid Hussain (Appellant No.1 in Appeal No. 20 of 2009)
- (iii) Farhan Usman (Appellant No. 2 in Appeal No. 20 of 2009)
- (iv) Mohammad Aslam (Appellant No. 3 in Appeal No. 20 of 2009)
- (v) Mian Mohammad Ilyas Mehraj (Appellant No.1 in Appeal No.21 of 2009)
- (vi) Mian Muhammad Ijaz Mehraj (Appellant No.2 in Appeal No 21 of 2009)
- (vii) Mian Muhammad Riaz Mehraj (Appellant No. 3 in Appeal No.21 of 2009)
- (viii) Shehzadi Ilyas (Appellant No. 4 in Appeal No.21 of 2009)
- (ix) Aisha Ijaz (Appellant No. 5 in Appeal No.21 of 2009)
- (x) Yasmin Riaz (Appellant No. 6 in Appeal No.21 of 2009)
- (xi) Bano Begum (Appellant No. 7 in Appeal No.21 of 2009)
- (xii) Haseeb Ilyas (Appellant No. 8 in Appeal No.21 of 2009)
- (xiii) Abdullah Ilyas (Appellant No. 9 in Appeal No.21 of 2009)
- (xiv) Zainab Waqas (Appellant No. 10 in Appeal No.21 of 2009)
- (xv) Zakia Ilyas (Appellant No. 11 in Appeal No.21 of 2009)
- (xvi) Miss Sidra Ilyas (Appellant No. 12 in Appeal No.21 of 2009)
- (xvii) Mian Waqas Riaz (Appellant No.13 in Appeal No.21 of 2009)
- (xviii) Maiza Riaz (Appellant No. 14 in Appeal No.21 of 2009)
- (xix) Hafiz M. Irfan Hussain Butt (Appellant No. 15 in Appeal No.21 of 2009)
- (xx) Abdullah Sugar Mills Ltd (Appellant No. 16 in Appeal No.21 of 2009)




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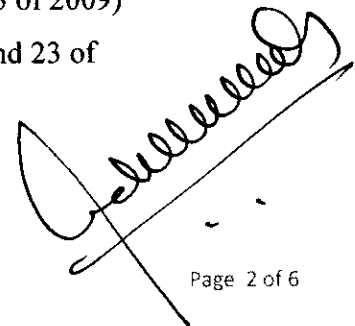
- (xxi) Haseeb Waqas Sugar Mills Ltd (Appellant No. 17 in Appeal No.21 of 2009)
- (xxii) Muhammad Junaid (Appellant No.1 in Appeal No. 22 of 2009)
- (xxiii) Farooq Bin Habib (Appellant No.2 in Appeal No. 22 of 2009)
- (xxiv) Iqbal Latif (Appellant No.1 in Appeal No. 23 of 2009)
- (xxv) Air Commodore (Retd.) Pervaiz Akhtar (Appellant No. 2 in Appeal No. 23 of 2009) ...Appellants

Versus

- (i) The Executive Director (Enforcement), Securities and Exchange Commission of Pakistan (Respondent No.1 in Appeal Nos. 18, 20, 21, 22 & 23 of 2009)
- (ii) Mian Muhammad Ilyas Mehraj (Respondent No.2 in Appeal No. 20, 22 and 23 of 2009)
- (iii) Mian Waqas Riaz (Respondent No.3 in Appeal No. 20, 22 and 23 of 2009)
- (iv) Shehzadi Ilyas (Respondent No.4 in Appeal No. 20, 22 and 23 of 2009)
- (v) Bano Begum (Respondent No. 5 in Appeal No. 20, 22 and 23 of 2009)
- (vi) Zainab Waqas (Respondent No.6 in Appeal No. 20, 22 and 23 of 2009)
- (vii) Maiza Riaz (Respondent No.7 in Appeal No. 20, 22 and 23 of 2009)
- (viii) Hafiz M. Irfan Hussein Butt (Respondent No.8 in Appeal No. 20, 22 and 23 of 2009)
- (ix) Muhammad Ijaz Mehraj (Respondent No.9 in Appeal No. 20, 22 and 23 of 2009)
- (x) Mian Muhammad Riaz Mehraj (Respondent No.10 in Appeal No. 20, 22 and 23 of 2009)
- (xi) Aisha Ijaz (Respondent No.11 in Appeal No. 20, 22 and 23 of 2009)
- (xii) Yasmeen Riaz (Respondent No.12 in Appeal No. 20, 22 and 23 of 2009)


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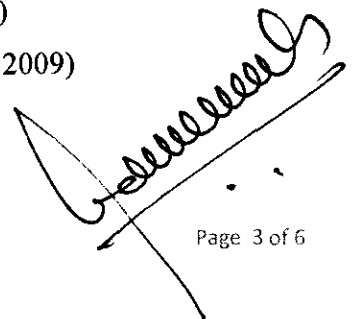


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- (xiii) Haseeb Ilyas (Respondent No.13 in Appeal No. 20, 22 and 23 of 2009)
- (xiv) Abdullah Ilyas (Respondent No.14 in Appeal No. 20, 22 and 23 of 2009)
- (xv) Zakia Ilyas (Respondent No.14 in Appeal No. 20, 22 and 23 of 2009)
- (xvi) Sidra Ilyas (Respondent No.15 in Appeal No. 20, 22 and 23 of 2009)
- (xvii) Mian Waqas Riaz (Respondent No.3 in Appeal No. 20, 22 and Appeal No. 23 of 2009)
- (xviii) First Capital Equities Limited (Respondent No.2 in Appeal No. 21 of 2009)
- (xix) Suleman Saeed Al Houqani, C/O First Capital Equities Limited (Respondent No.3 in Appeal No. 21 of 2009)
- (xx) Iqbal Latif, C/O First Capital Equities Limited (Respondent No. 4 in Appeal No. 21 of 2009)
- (xxi) Shaheen Insurance Company Limited, C/O First Capital Equities Limited (Respondent No.5 in Appeal No. 21 of 2009)
- (xxii) Syed Akbar Naqi Zaidi (Respondent No. 6 in Appeal No. 21 of 2009)
- (xxiii) Shahid Hussain (Respondent No. 7 in Appeal No.21 of 2009)
- (xxiv) Nazimuddin Siddiqui (Respondent No. 8 in Appeal No. 21 of 2009)
- (xxv) Ibrahim Lakhani (Respondent No.9 in Appeal No. 21 of 2009)
- (xxvi) Arshad Ibrahim Lakhani (Respondent No.10 in Appeal No. 21 of 2009)
- (xxvii) Ilyas Ali Patel (Respondent No.11 in Appeal No. 21 of 2009)
- (xxviii) Farhan Usman (Respondent No. 12 in Appeal No. 21 of 2009)
- (xxix) M. Yousuf Ansari (Respondent No. 13 in Appeal No. 21 of 2009)
- (xxx) M. Aslam (Respondent No. 14 in Appeal No.21 of 2009)
- (xxxi) M. Shoaib Bashir (Respondent No.15 in Appeal No. 21 of 2009)
- (xxxii) Taymur Ali Dawood (Respondent No. 16 in Appeal No. 21 of 2009)
- (xxxiii) M. Arif (Respondent No. 17 in Appeal No. 21 of 2009)
- (xxxiv) Abdul Samad (Respondent No. 18 in Appeal No. 21 of 2009)


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SECP

- (xxxv) Iqbal Latif (Respondent No. 19 in Appeal No. 21 of 2009)
- (xxxvi) Air Commodore (Retd) Pervaiz Akhtar Khan (Respondent No. 20 in Appeal No. 21 of 2009)
- (xxxvii) Major General (Retd) Shujaat Ali Khan (Respondent No. 21 in Appeal No. 21 of 2009)
- (xxxviii) Air Marshall (Retd) Arshad Chaudhry (Respondent No. 22 in Appeal No 21 of 2009)
- (xxxix) Toufeeq Habib (Respondent No. 23 in Appeal No. 21 of 2009)
- (xl) Fortune Securities Limited (Respondent No. 24 in Appeal No. 21 of 2009)
- (xli) Sheikh Qaiser, C/O Fortune Securities Limited (Respondent No. 25 in Appeal No. 21 of 2009)
- (xlii) Naveed, C/O Fortune Securities Limited (Respondent No. 26 in Appeal No. 21 of 2009)
- (xliii) M. Hassan Khan, C/O Fortune Securities Limited (Respondent No. 27 in Appeal No. 21 of 2009)
- (xliv) Ali Agha Jan (Respondent No. 28 in Appeal No. 21 of 2009)
- (xlv) Khurram Niaz (Respondent No.29 in Appeal No. 21 of 2009)
- (xlvi) M. Ayub (Respondent No. 30 in Appeal No. 21 of 2009)

...Respondents

Dates of Hearing 10/12/09, 24/12/09, 14/10/15 and 15/10/15

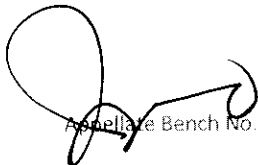
Present:

For the Appellant in Appeal No.18 of 2009 (via video conferencing):

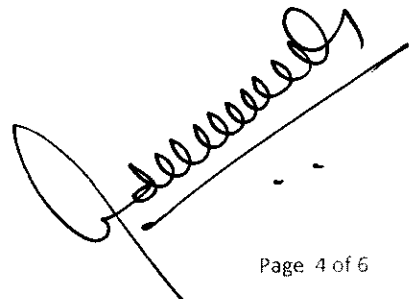
Mr. Syed Ali Rizvi, Advocate

For the Appellants in Appeal No.20 of 2009

- (i) Mr. Syed M. Yahya, Advocate
- (ii) Ms. Hana Yahya, Advocate


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SECP

For the Appellants in Appeal No. 21 of 2009

(iii) Mr. Malik Sardar Khan, Advocate

For the Appellants in Appeal No. 22 of 2009

Mr. Imran A. Ali, Advocate

For the Appellants in Appeal No. 23 of 2009

Mr. M. Safder, FCA, Tariq Abdul Ghani Maqbool & Co. Chartered Accountants

For the Respondent No. 1:

(i) Mr. Nasir Askar, Director (CSD)

(ii) Mr. Amir Saleem, Joint Director (CSD)

(iii) Mr. Moeed Hassan, Assistant Director (CSD)

ORDER

1. This order is in appeal Nos. 18, 20,21,22 and 23 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the order (Impugned Order) dated 17/04/09 passed by the Respondent.
2. The Appellants have preferred the appeal against the Impugned Order. We have heard the preliminary objection raised by the Appellants. The legal counsel of the Appellants pleaded that Executive Director (Enforcement) could not issue Impugned Order as he does not have the power under the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 (Takeover Ordinance).
3. This Bench has examined notification in this regard i.e. S.R.O. 1002(1)/2008 dated 22/09/08 which delegated certain powers and functions of the Commission to Executive Director, Enforcement Department including powers under 25 and 26 of Takeover Ordinance. Section 27 of the Takeover Ordinance specifically provides that the powers and functions of the Commission under the said Ordinance can only

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be delegated to the Commissioner, appointed under section 5 of the SECP Act. It states that “The Commission may, subject to such conditions and limitations as it may deems fit to impose, delegate all or any of its powers and functions under this Ordinance to a Commissioner appointed under section 5 of the Securities and Exchange Commission of Pakistan Act, 1997”.

4. Therefore the powers under the Takeover Ordinance could not be delegated to an Executive Director. This Bench is of the view that the Respondent No.1 as Executive Director did not have the powers to issue the Impugned Order.
5. In view of the above, we set aside the Impugned Order and remand the matter to the Department with the direction to initiate fresh proceedings in compliance with the law.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: **03 DEC 2015**