



**BEFORE**  
**RE-CONSTITUTED APPELLATE BENCH NO. III**

In the matter of

Appeal No. 87 of 2006

- |                               |                                  |
|-------------------------------|----------------------------------|
| 1. Mian Mohammad Ilyas Mehraj | 9. Abdullah Ilyas                |
| 2. Mian Mohammad Ijaz Mehraj  | 10. Zainab Wakas                 |
| 3. Mian Mohammad Riaz Mehraj  | 11. Zakia Ilyas                  |
| 4. Shehzadi Ilyas             | 12. Sidra Ilyas                  |
| 5. Aisha Ijaz                 | 13. Mian Waqas Riaz              |
| 6. Yasmin Riaz                | 14. Maiza Riaz                   |
| 7. Bano Begum                 | 15. Hafiz M. Irfan Hussain Butt  |
| 8. Haseeb Ilyas               | 16. Abdullah Sugar Mills Ltd     |
|                               | 17. Haseeb Waqas Engineering Ltd |

..... Appellants

Vs.

- |  |   |
|--|---|
| 1. Commissioner (Securities Market Division) | 19. M. Arif                                   |
| 2. Commissioner (SMD)                        | 20. Abdul Samad                               |
| 3. First Capital Equities Limited            | 21. Iqbal Latif                               |
| 4. Suleman Saeed Al Houqani                  | 22. Air Commodore (Retd.) Pervaiz Akhtar Khan |
| 5. Iqbal Latif                               | 23. Maj. General (Retd.) Shujaat Ali Khan     |
| 6. Shaheen Insurance Co. Ltd.                | 24. Air Marshal (Retd.) Arshad Chaudhry       |
| 7. Syed Akbar Naqi Zaidi                     | 25. Toufeeq Habib                             |
| 8. World Call Communications Ltd.            | 26. Fortune Securities Ltd                    |
| 9. Shahid Hussain                            | 27. Sheikh Qaiser                             |
| 10. Nazimuddin Siddqui                       | 28. Mr. Naveed                                |
| 11. Ibrahim Lakhani                          | 29. M. Hassan Khan                            |
| 12. Arshad Ibrahim Lakhani                   | 30. M. Ali Agha Jan                           |
| 13. Ilyas Ali Patel                          | 31. Khurram Niaz                              |
| 14. Farhan Usman                             | 32. M. Ayub                                   |
| 15. M. Yousuf Ansari                         | 33. Crescent Commercial Bank Ltd              |
| 16. M. Aslam                                 | 34. Crescent Standard Investment Bank Ltd     |
| 17. M. Shoaib Bashir                         | 35. PICIC Commercial Bank Ltd                 |
| 18. Taymur Ali Dawood                        | 36. Haseeb Waqas Sugar Mills Ltd              |

..... Respondents



Dates of Hearing of Appeal

23-01-2007 &  
16-02-2007

**PRESENT:**

1. Mr. Syed Mansoor Ali Shah, Advocate for the appellants
2. Mr. Imran Inayat Butt, Director (SMD) for respondent No.1
3. Mr. Afzal Siddiqui and Mr. Iqbal Bawani, Advocate for respondents No.5, 7, 21, 22, 23, 25
4. Naveed Alam for respondent No.3
5. M. Waseem for respondent No. 26
6. Adnan Alam for respondent No. 35

**ORDER**

1. This order will dispose of the appeal No.87 of 2006 filed by Mian Mohammad Ilyas Mehraj and others (the “Appellants”) under section 33 of the Securities & Exchange Commission of Pakistan Act, 1997.

2. Brief facts of the case are that the Annual General Meeting (AGM) of Haseeb Waqas Sugar Mills Limited (the ‘Company’) for the year ended 30-09-2004 was fixed for 31-01-2005 and the agenda of the meeting included election of directors. However, one day before the meeting, the Board of Directors of the Company postponed the AGM. It was stated by the Company that the majority shareholders had requested for postponement of the AGM as five nominees who had informed of their intention to contest the election of directors had acquired 39% shares of the Company in violation of *Listed Companies (Substantial Acquisition of Voting Shares and Takeover) Ordinance, 2002* (hereinafter referred as the ‘Takeovers Law’). The management thereafter lodged two complaints dated 26-01-2005 and 18-02-2005 with the



Securities Market Division of the Commission, under section 21 of the Takeovers Law, against the alleged acquisition of 39% shares of the Company. It was alleged in the complaints that First Capital Equities Ltd (respondent No.3 herein), Fortune Securities Ltd (respondent No.26 herein) and other individuals are persons “acting in concert” to acquire the shareholding and control of the Company in blatant violation of the provisions of the Takeovers Law.

3. In response to the complaints, the Commission appointed an Inquiry Committee vide notification dated 03-03-2006 under section 21 of the Takeovers Law to inquire whether or not there had been a violation of the law. The Inquiry Committee submitted its Inquiry Report dated 25-07-2006 to the Commission as required under section 24(1) of the Takeovers Law. In its findings, the Inquiry Committee rejected the allegations made by the complainants (the Appellants herein). The Committee found that the Respondents had not acquired more than 10% shares of the Company and therefore were not in violation of the Takeovers Law. Furthermore they had collected proxies from different shareholders in order to contest the election, which was also not a violation of the Takeovers Law. Moreover, the total shareholding of the Respondents including the proxies was not enough to give them the control of the Company. The findings of the Inquiry Committee were thereafter communicated to the complainants and the alleged acquirers (Respondents herein) by the Commission on 08-08-2006.

3. The Appellants not being satisfied with the findings of the Inquiry Report filed their objections against the findings under section 24(2) of the Takeovers Law and requested that they be given an opportunity of hearing to present their arguments before the Commission. The Commissioner (Securities Market Division) exercising the powers of the Commission under the Takeovers Law, rejected the objections raised by the Appellants and passed the impugned order dated 17-11-2006. The Appellants’ request for a personal hearing was also rejected by the Commissioner. The present appeal has been filed by the Appellants against this order of the Commissioner.

4. The appeal came up for hearing on 23-01-2007 when Mr. Mansoor Ali Shah appeared on behalf of the Appellants. He criticized the findings of the Inquiry Committee as being deficient



and flawed. He stated that no evidence was made part of the Inquiry Report. The Report does not refer to any evidence at all and is based on surmises and conjectures. He further stated that the report failed to address all the allegations raised in the complaints by the Appellants. Mr. Mansoor Ali Shah stated that the Inquiry Committee has based its findings on a flawed interpretation of law rather than investigating the facts and collecting evidence. He argued that there are no findings on the means (funds) of acquisition of shares, which is one of the important issues raised by the Appellants to prove concert among the acquirers. He stated that the Committee had only taken into account the 9.45% shares acquired by the persons who intended to contest the election to come to the conclusion that this acquisition was not in violation of section 4 of the Takeovers Law. The complainant's allegation that the remaining acquisition by other players was also funded by the same persons was not investigated by the Committee, which would have proven concert among the acquirers. He pointed to the fact that all proxies in favor of the acquirers intending to contest election were signed by the same two witnesses, which proved that there was a collaborative effort by the acquirers to takeover the Company. He further argued that the Inquiry Committee did not seek evidence to prove or disprove the defence put up by First Capital Equities Ltd that the shares lying in its house account were that of its clients and were placed there to arrange for finance for these clients. Yet, it accepted this contention and based its findings on this contention that there was no violation of Takeovers Law.

5. Mr. Afzal Siddiqui appearing on behalf of the Respondents defended the Inquiry Report. He stated that it was the responsibility of Appellants, who had filed the complaint against the Respondents, to provide the evidence. The Inquiry Committee was not required to go on a fishing expedition against the Respondents. He stated that it was for the Inquiry Committee to decide which evidence to call for and which witness to examine. He alleged that the Appellants were committing fraud with the shareholders and the complaint filed by them was just an excuse to deprive the minority shareholders from having representation on the board of directors of the Company.

6. Subsequent to the hearing held on 23-01-2007, the Securities Market Division vide its letter dated 24-01-2007 informed the Bench that it had only provided the findings of Inquiry



Committee to the parties concerned as provided under section 24(2) of the Takeovers Law, and not the complete Inquiry Report. The Securities Market Division requested that this Report may be placed on record before the Bench. The complete Inquiry Report was thereafter provided to the Appellants and the Respondents on directions of the Bench. In response to the Inquiry Report, the Appellants filed an application before the Bench under section 151 CPC alleging malafide on part of the Securities Market Division and praying for remanding the case back to another Commissioner. The Bench decided to give another opportunity of hearing to the parties and fixed the hearing on the application and the main appeal on 16-02-2007.

7. Mr. Mansoor Ali Shah appearing for the Appellants on the second date of hearing contended that by not providing the complete Inquiry Report and denying an opportunity of hearing before the Commissioner, his clients had been deprived of their right to represent against the findings of the Inquiry Committee. He stated that he had filed detailed objections to the findings of the Inquiry Committee provided to them, however the Commissioner did not give any findings of his own on the objections raised by him. He stated that there were numerous contradictions and inaccuracies in the Report which he would have pointed out if he had been given a chance. He argued that the Commissioner, without hearing them, and without exercising his reasonable and fair judgment, passed the impugned order. Mr. Mansoor prayed that the case may be remanded back.

8. The representative of the Securities Market Division contended that under section 24(2) of the Takeovers Law, the Commission was only required to provide the findings of the Inquiry Committee to the parties and not the entire Inquiry Report. He stated that the matter had been investigated properly by the Inquiry Committee and all parties were given an opportunity to represent their case before the Inquiry Committee. Therefore it was not necessary to give them another opportunity before the Commissioner also. He prayed that the appeal may be dismissed and the Impugned Order be upheld.

9. We have heard the parties in quite detail. We tend to agree with Mr. Mansoor Ali Shah that the Appellants should have been given an opportunity by the Commissioner to present their



grievances against the findings of the Inquiry Committee. Our view is strengthened by the fact that the Inquiry had been ordered by the Commission on the complaint of the Appellants. It is also clear from the bare reading of the Impugned Order that even the written objections filed by the Appellants were not considered and discussed in the Impugned Order. Furthermore, unless there were good reasons for not doing so, the Inquiry Report should have been provided to the concerned parties. However, we certainly do not agree with the Appellants' counsel that there was any malafide on part of the Securities Market Division in not providing the Inquiry Report.

10. For the above reasons, and without going into the merits and demerits of the findings of the Inquiry Committee, we remand the case back to Commissioner (Securities Market Division) for fresh proceedings. The parties should be given an opportunity to personally present their case against the findings of the Inquiry Committee. Furthermore, the parties are directed to assist the Commissioner in disposing off the matter as expeditiously as possible.

**(RAZI-UR-RAHMAN KHAN)**  
Chairman/Commissioner

**(SALMAN ALI SHAIKH)**  
Commissioner

Announced in Islamabad on 22 February 2007