



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

In the matter of

Revisions No. 6, 47 and 81 of 2006

Mian Mohammad Ilyas Mehraj and others ..... Appellants

Vs.

1. Executive Director (Company Law Division)
2. Director (Enforcement Department) ..... Respondents

Date of Hearing of Appeal

24 August 2006

**PRESENT:**

Mr. Syed Mansoor Ali Shah, Advocate for the appellants

Mr. Tariq Bakhtawar, Director (Enforcement) for the respondents



## **ORDER**

1. This order will dispose of these three revision petitions No. 6, 47 and 81 of 2006 filed by Mian Mohammad Ilyas Mehraj and other directors of Haseeb Wakas Sugar Mills Ltd under section 477 of the Companies Ordinance, 1984 (the 'Ordinance').

2. Brief facts of the case are that Haseeb Waqas Sugar Mills Limited (the 'Company') was required to hold its Annual General Meeting for the year ended 30-09-2004 on or before 31-01-2005 (the '2004 AGM'). The 2004 AGM was fixed for 31-01-2005, the agenda of which, among other ordinary business, included election of directors. However, one day before the 2004 AGM, the Company published a notice for postponement of AGM in the newspapers. The reason given was that the majority shareholders (i.e. present management) had requested for postponement of meeting as five nominees who were contesting the election of director 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 under section 21 of the Takeovers Law with the Securities Market Division of the Commission against the alleged acquisition of 39% shares of the Company. The Securities Market Division vide its letter dated 24-11-2005, without holding an inquiry under section 21 of the Takeovers Law as had been requested by the management, rejected the allegation that there had been any violation of the Takeovers Law.

3. Prior to the above decision of the Securities Market Division, the Enforcement Department of the Commission had issued a show cause notice dated 04-03-2005 on the Company and its Directors including the Chief Executive for not holding the 2004 AGM within the time prescribed under section 158 of the Ordinance. In response, the management took up the same plea that since certain individuals had acquired substantial number of shares of the Company in violation of the Takeovers Law and were intending to contest the election of directors to be held in 2004 AGM, it was incumbent upon the management to postpone the said



AGM. This argument was however rejected by Director (Enforcement) hearing the matter. Consequently, in his order dated 08-12-2005, the Director imposed a penalty of Rs.50,000/- on each of the seven directors including the Chief Executive, as well as the Company. The revision petition No.6 of 2006 has been filed by the petitioners against this particular order of Director (Enforcement).

4. On 08-12-2005 the Enforcement Department further directed the Company and its management under section 170 of the Ordinance to hold the AGM within 30 days of the direction. The Company did not comply with this direction of the Commission. Consequently another show cause notice dated 26-01-2005 was issued under section 171 of the Ordinance to the Chief Executive of the Company. The Chief Executive in his response took the same plea that unless the matter regarding illegal acquisition of shares of the Company by individuals intending to contest the election of directors was resolved, the AGM could not be held. The Executive Director (Company Law Division) who heard the matter also rejected this argument and vide his order dated 04-04-2006 imposed a penalty of Rs.33,200/- under section 171 on the Chief Executive. The revision petition No.47 of 2006 has been filed by the petitioners against this order of the Executive Director.

5. Prior to the above order dated 04-04-2006, the Company and its management had filed a writ petition before the Hon'ble Lahore High Court against the decision of the Securities Market Division which rejected the complaint of the management. They contended that the officer of the Commission who rejected the complaint was not legally authorized to do so. The Securities Market Division was directed by the High Court to have an inquiry conducted in to the matter by a competent officer.

6. While the above matter was still unresolved, the time for holding the AGM for the year ended 30-09-2005 on or before 31-01-2006 (the '2005 AGM') lapsed and the Company did not hold its 2005 AGM either. The Enforcement Department issued another show cause notice dated 06-07-2006 to the Company, its directors and Chief Executive under section 158 of the Ordinance for not holding the 2005 AGM. Predictably, the stance of the Company and its management was still the same. The Director (Enforcement) vide his order dated 16-08-2006



under section 158 again imposed a penalty of Rs.50,000/- on each of the directors including the Chief Executive as well as the Company. The revision petition No.81 of 2006 was filed by the petitioners against this order of the Director.

7. The petitions were heard by the Bench on 24 August 2006. Mr. Syed Mansoor Ali Shah appeared on behalf of the petitioners and Mr. Tariq Bakhtawar Director (Enforcement) appeared on behalf of the Department. Mr. Mansoor Ali Shah stated that the Company was all set to hold its 2004 AGM and election of directors when the Company Secretary received notices of intention to contest election from (i) Major General (Retd.) Shujat Ali Khan; (ii) Syed Akbar Naqvi Zaidi; (iii) Air Commodore (Retd.) Pervaiz Akhtar; (iv) Mr. Iqbal Latif; and (v) Taufiqur Habib. He stated that the above individuals acting in concert with a group of investors illegally acquired 39% shares of the Company in violation of the Takeovers Law. He argued that had the management allowed the above individuals to become directors of the Company, the management itself could have been penalized under sub-section (2) of section 26 of the Takeovers Law, which provides:

*“(2) 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.”*

8. He stated that the management had no intention of delaying the AGM and had therefore requested the Securities and Exchange Commission of Pakistan to conduct an inquiry under the Takeovers Law. Instead of conducting the inquiry, the Commission in disregard of the law had issued the show cause notices under section 158 and 171 of the Ordinance. He argued that the Commission should have first inquired into the complaint of the petitioners before directing the Company to hold its AGM and election of directors. He contended that in fact the entire matter pertained to the Takeovers Law which specifically overrides the Ordinance, and therefore the Company Law Division had no jurisdiction to pass the impugned orders under the Ordinance. He further contended that the orders were based on flawed interpretation of the Takeovers Law. He



argued that these orders passed by the Director (Enforcement) and the Executive Director (CLD) are therefore legally unsustainable and should be set aside. He stated that both the order passed under section 158 for not holding the 2004 AGM, and the order passed under section 171 were based on the letter dated 24-11-2005 which rejected the complaint of the petitioners without holding the inquiry under section 21 of the Takeovers Law. This letter, he stated had been set aside by the High Court.

9. He stated that the Company had repeatedly offered to the Commission to hold the AGM provided that the voting rights of the 39% shares illegally acquired by the individuals were suspended till the final outcome of the complaint under section 21 of the Takeovers Law. He further argued that the impugned orders were based on false assumption that the Mehraj family owns only 27.33% shares of the Company, and therefore are holding the majority shareholders hostage by not holding the AGM and the election of directors. He stated that the Mehraj family has never held less than 50% shares in the Company. He prayed that the revision petitions may be accepted and the impugned orders maybe set aside. In the alternative, the Commission may direct the holding of the AGM and election of directors provided that the voting rights of the shares acquired by the individuals in violation of the Takeovers Law may be suspended till the final outcome of the complaint.

10. Mr. Tariq Bakhtawar, Director (Enforcement) contended that according to the financial statements of the Company for the year ended 30-09-2005 the Directors, Chief Executive and their spouses and children hold just 27.33% of the total shares. He further informed us that 16.823% shares are held by Financial Institutions, Insurance Companies and Non-Resident investors, 20.889% were held by Public Sector Companies, and 34.944% shares were held by individuals. It was therefore clear that the present management's claim that they hold more than 50% shares of the Company is incorrect. He stated that the Commission has received innumerable complaints from the shareholders of the Company that the present management was holding the majority hostage by not holding the AGM and election of Directors. He argued that it was a very important statutory right of the shareholders to be informed of the state of affairs of the Company, which right was being denied by the management by not holding the AGM.



11. He argued that the management, on the pretext of alleged violation of Takeovers Law, was trying to keep the control of the Company with itself without holding majority shares. He stated that the Securities Market Division had examined the complaint of the management and were of the view that there was no violation of the Takeovers Law. However, on the directions of the Hon'ble High Court, a proper inquiry under section 21 was conducted later on. The inquiry officer in his report dated 25-07-2006 has come to the same conclusion that there was no violation of the Takeovers Law by the individuals intending to contest the election of directors. The findings of this inquiry were communicated to all the relevant parties including the management of the Company, by the Commission on 16-08-2006. It is therefore clear that the decision of the management to postpone the 2004 AGM, and not hold the 2005 AGM, was wrong and based on self interest. He pleaded that the impugned orders may be upheld and the petitions may be dismissed.

12. We have examined the matter in detail. The petitioners have pleaded that the sole reason for not holding the AGMs was that the election of directors which was to be held in the AGM would have resulted in persons, who had acquired shares of the Company in violation of the Takeovers Law, being elected on the Board. The Company would have been locked in a dispute and the shareholders would have suffered due to this. Also, according to the counsel, the management feared that they themselves may be found to be in violation of the Takeovers Law if they allowed the election to go through. If all of this is true, we must agree that these are noble reasons. We also agree that once the Commission had decided, or had been directed by the High Court to conduct an inquiry under section 21, and such inquiry was being conducted, it was reasonable to postpone the election of directors till the outcome of the inquiry. However, election of directors was just one of the agenda in the AGM and therefore should not have been made ground for not holding the AGM for two consecutive years. We do not see a reason why the AGM could have been held without holding the election of directors. The election of directors may have been held subsequently in an Extra-Ordinary General Meeting (EOGM) called specially for the purpose. This way neither the rights of the shareholders would have been violated, nor the management would have contravened the statutory requirement of holding the



AGM. The Commission and the Superior courts have repeatedly taken the stance that the AGM should not be postponed by the Company just because one of the agenda of the meeting cannot be carried out. For instance, if the annual accounts of the Company are not ready the AGM should be held within the prescribed time and the accounts may be presented in an EOGM to be held later. By not holding the AGM, the management has infringed the shareholders' right to be informed of the Company's affairs and the struggle raging between two groups of shareholders for the management of the Company. For the above reason, we cannot agree that there has been no violation of law by the management in not holding the AGMs within the prescribed time. The penalties imposed on the petitioners in all the three orders dated 08-12-2005, 04-04-2006 and 16-08-2006 are therefore, upheld.

14. Since the matter regarding the complaint of the management has been addressed and the Inquiry Report dated 25-07-2006 submitted by the Inquiry Officer has found no violation of the Takeovers Law, there is no reason whatsoever to delay the holding of the AGM and the election of directors. The Company is therefore directed to hold both the AGM and the election of directors without delay.

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

**(SALMAN ALI SHAIKH)**  
**Commissioner**

Announced in Islamabad on 30 November 2006