



No.SMD/TO/3/2005

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)**

NIC Building Jinnah Avenue, Blue Area, Islamabad

Before The Commissioner (Securities Market Division)

In the matter of

Compliant of acquisition of shares of Haseeb Waqas Sugar Mills Limited in violation of the Listed Companies (Substantial Acquisition of voting Shares and Take-overs) Ordinance, 2002

Complainants:

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

Respondents:

- | | |
|----------------------------------|---|
| 1. First Capital Equities Ltd. | 17. Mr. M. Arif |
| 2. Mr. Suleman Saeed Al-Houqqani | 18. Mr. Abdul Samad |
| 3. Mr. Iqbal Latif | 19. Air Comd. (Rtd.) Pervaiz Akhtar |
| 4. Shaheen Insurance Co. Ltd. | 20. Major Gen (Rtd.) Shujaat Ali Khan |
| 5. Syed Akbar Naqi Zaidi | 21. Air Marshal (Rtd.) Arshad Chaudhry |
| 6. World Call Communication Ltd. | 22. Mr. Taufeeq Habib |
| 7. Mr. Shahid Hussain | 23. Fortune Securities Ltd. |
| 8. Mr. Nazimuddin Siddiqui | 24. Mr. Sheikh Qaiser |
| 9. Mr. Ibrahim Lakhani | 25. Mr. Naveed |
| 10. Mr. Arshad Ibrahim Lakhani | 26. Mr. M. Hassan Khan |
| 11. Mr. Ilyas Ali Patel | 27. Mr. M. Ali Agha Jan |
| 12. Mr. Farhan Usman | 28. Mr. Khurram Niaz |
| 13. Mr. M. Yousaf Ansari | 29. Mr. M. Ayub |
| 14. Mr. M. Aslam | 30. Crescent Commercial Bank Ltd. |
| 15. Mr. M. Shoaib Bashir | 31. Crescent Standard Invest. Bank Ltd. |
| 16. Mr. Taymur Ali Dawood | 32. PICIC Commercial Bank Ltd. |
| | 33. Haseeb Waqas Sugar Mills Ltd. |

Date of Hearing:

March 05, 2007

Present at Hearing:

- 1 Major General (Rtd.) Shujaat Ali Khan
- 2 Mr. Iqbal L. Bawaney, Advocate representing Mr. Iqbal Latif, Syed Akbar Naqi Zaidi, Air Commodore (Rtd.) Parvaiz Akhtar, Maj. Gen Shujaat Ali Khan and Mr. Taufeeq Habib
- 3 Mr. M. Safdar representing Mr. Iqbal Latif
- 4 Mr. Farhan Usman
- 5 Mr. Muhammad Javeed representing First Capital Equities Limited
- 6 Mr. Mohammad Waseem representing Mr. Shahid Hussain, Mr. Nazimuddin Siddiqui, Mr. Ibrahim Lakhani, Mr. Arshad Ibrahim Lakhani, Mr. Ilyas Ali Patel, Mr. Farhan Usman and M. Yusuf Ansari
- 7 Mr. Adnan Alam representing PICIC Commercial Bank
- 8 Akhtar Aziz Khan, Advocate, Haseeb Waqas Sugar Mills Limited
- 9 Mr. Awais Yasin, Company Secretary, Haseeb Waqas Sugar Mills Limited
- 10 Mr. Munawar Ali, G.M. (F), Haseeb Waqas Sugar Mills Limited
- 11 Syed Mansoor Ali Shah, Advocate representing the Complainants
- 12 Mr. Muhammad Junaid
- 13 Mr. Imran Inayat Butt, Director (SECP)
- 14 Mr. Muhammad Farooq, Joint Director (SECP)
- 15 Mr. Sajid Imran, Deputy Director (SECP)

ORDER

This order shall dispose proceedings in the matter of the complaint dated 26 January 2005 by Mian Muhammad Ilyas Mehraj under Section 4 and 5 read with Sections 21 and 25 of the Listed Companies (Substantial Acquisition Voting Shares and Take-overs) Ordinance, 2002 (the “**Take-overs Ordinance**”) and the complaint dated 18 February 2005 by Mian Muhammad Ilyas Mehraj and 16 Others under Section 21 of the Take-overs Ordinance, both alleging that 39% shares of Haseeb Waqas Sugar Mills Limited (the “**HWSM**”) were acquired by the Respondents, acting in concert, in violation of the provisions of the Take-overs Ordinance.

2. The brief facts of the matter are as under:

- (a) Based on the information and material placed before the Securities and Exchange Commission of Pakistan (the “**Commission**”) by the Complainants, the Commission in terms of its letter dated 24 November 2005 observed that no case was made out for breach of Section 4 and 5 of the Take-overs Ordinance against the five alleged individual acquirers namely: (i) Mr. Iqbal

Latif, (ii) Syed Akbar Naqi Zaidi, (iii) Air Commodore (Rtd.) Pervaiz Akhtar, (iv) Major General (Rtd.) Shujaat Ali Khan, and (v) Mr. Taufique Habib because each had less than 10% shareholding in HWSM. However, the Commission observed that it would further investigate the alleged acquisition of 5.4 million shares held in the House Account of First Capital Equities Limited (“**FCEL**”);

(b) The Complainants, however, feeling aggrieved by the above decision of the Commission, invoked writ jurisdiction of the Honourable Lahore High Court in Writ Petition No. 19657 of 2005, which was disposed of by the Honourable Lahore High Court in terms of its order dated 26 January 2006 whereby the Commission agreed to consider all points of the Complainants in the then pending enquiry;

(c) An Enquiry Report was consequently submitted to the Commission on 25 July 2006 with the findings that no case was made out for violation of Section 4 and 5 of the Take-overs Ordinance against the Respondents; that Respondents had not acted in concert to acquire shares in HWSM as mere procurement of proxies does not tantamount to the same; and that 5.4 million shares of HWSM held in the House Account of FCEL too were not in violation of the Take-overs Ordinance. Resultantly, the undersigned Commissioner vide order dated 17 November 2006 dismissed the subject Complaints;

(d) The Complainants moved Appeal No. 87 of 2006 against the above order before the Appellate Bench of the Commission, wherein the Appellate Bench vide order dated 22 February 2007 remanded the case to the undersigned for fresh proceedings and directed the undersigned to afford due opportunity of hearing to the parties;

(e) Consequently, the parties were duly heard on 5 March 2007 and also granted due opportunity to submit written comments. The undersigned also called in relevant information from several of the Respondents, related parties

as well as the State Bank of Pakistan (the “**SBP**”) and the Central Board of Revenue (the “**CBR**”).

3. It is also pertinent to mention that alongside these subject proceedings, the Commission had initiated proceedings against the HWSM and its directors for not convening Annual General Meeting for the year ended 30 September 2004. These proceedings before the Commission eventually concluded against the said respondents. The matter was, however, challenged by the said respondents before the Honourable Lahore High Court in Commercial Appeal No. 1 of 2007. The Honourable Lahore High Court vide its order dated 20 February 2007 required the undersigned to proceed expeditiously in the matter. Accordingly, the undersigned has undertaken an extensive and rigorous examination of record after gathering additional relevant information from the Complainants and the alleged acquirers. The Commission has also procured relevant information from SBP and CBR so that due verification of the allegations made by the Complainants may be undertaken.

4. Following the remand of the matter by the Appellate Bench, a hearing in the matter was fixed on 5 March 2007 for which notices were issued to all Complainants and 33 Respondents named above. In the said hearing, all Complainants were duly represented by their Counsel and 17 Respondents out of the 33 Respondents appeared before the undersigned (themselves or through authorized persons) as per the attendance sheet comprising the record. These Respondents represent majority of the impugned shareholding in HWSM and the undersigned proceeded with the matter accordingly in the interest of substantial justice. Following the said hearing written comments and submissions were also invited. The Complainants through Counsel, Syed Mansoor Ali Shah, the principal Respondents through Counsel Mr. Iqbal Bawany, FCEL and Fortune Securities Limited (“**FSL**”) made detailed written submissions, which have been duly examined.

5. The Complainants were represented by Syed Mansoor Ali Shah, Advocate and their position is summarized below:

(a) The most essential documents which could easily establish that the shares of HWSM were acquired by persons acting in concert are: Account

Activity Report of securities of HWSM in FCEL; Main Account of FCEL; House Account of FCEL; Group Account of FCEL; and Individual Accounts (All clients involved); Detailed Purchase Record; Payment record against the purchase of shares; Bank Statements of all clients for verification of payment; Ledger Account of all clients; Request for arrangement of funds against COT (badla); Contract between FCEL investor for COT; Contract between FCEL and FSL for COT; Contract between FSL investor for COT; Payment Verification for COT transaction; Detail record from PICIC, KASB, Crescent Banks for Pledge/COT/Badla/REPO Transaction;

(b) That the illegal acquisition of voting shares of HWSM has been primarily masterminded by FCEL and Mr. Iqbal Latif;

(c) That in order to avoid the mischief of the Take-overs Ordinance, FCEL and Mr. Iqbal Latif acquired shares indirectly by parking the shares with the following persons, who have acted in concert to acquire 39% in gross violation of the Take-overs Ordinance namely: FCEL - House Account and Group Account; Suleman Saeed-ul-Houqani; Shaheen Insurance Company Limited; World Call Company Limited; Shahid Hussain; Farhan Usman; M Aslam; Shoaib Bashir; Iqbal Latif; Sheikh Qaiser; Naved; Muhammad Hassan Khan; Muhammad Agha Ali Jan; Khurram Niaz; Muhammad Ayub; FSL; Crescent Standard Investment Bank Limited; Crescent Commercial Bank Limited; and PICIC. The said shares were at all time under the control of FCEL and Iqbal Latif. It is therefore not a surprise that all of them gave proxies in favour of Air Commodore Pervaiz Akhtar Khan; Maj. Gen. (Rtd.) Shujaat Ali Khan; Taufiq Habeeb; Mr. Iqbal Latif.

6. Mr. Iqbal L. Bawaney, counsel for (i) Mr. Iqbal Latif; (ii) Syed Akbar Naqi Zaidi; (iii) Major Gen. (Rtd.) Shujaat Ali Khan; (iv) Air Commodore (Rtd.) Pervez Akhtar Khan; and Mr. Taufiq Habib submitted as follows:

(a) The above Respondents are *bona fide* genuine investors and never had any intention of taking over HWSM or its controlling shares. In this regard Mr.

Iqbal Latif has been making investments in shares and securities of various companies in Pakistan as well as abroad over the last twenty years;

(b) The Complainants have not produced any proof whatsoever to substantiate that the said Respondents directly or indirectly proceeded to take over HWSM or even acquired shares in excess of 10%, which is the threshold limit for reporting to the Stock Exchange under the Take-overs Ordinance;

(c) The Complainants, with the *mala fide* intentions of preventing the public shareholders from being elected as directors of the Company in accordance with the provisions of the Companies Ordinance, 1984 took the law in their own hands and unilaterally issued sensational public notice, alleging that they had filed a complaint and requested postponement of AGM on alleged violation of the Take-overs Ordinance by the above Respondents;

(d) The Complainants are legally estopped from challenging the purchase of the shares of HWSM since they had themselves offloaded 17% to 18% shares in the market. Their motive was apparent as they must have planned to repurchase the shares at a lower price since they had been mismanaging and manipulating the affairs of the Company and portraying drastic decrease in the gross profits and earning per share during the last quarter of September 30, 2004;

(e) Source of funds for acquiring shares is never material for determining the ownership of shares or the objective of the purchase of such shares. A person can even borrow funds from banks and private parties for making investments in shares. Once such shares are acquired, these become the properties of such investor. The source of funds is therefore not material;

(f) During the course of the hearing, the learned Counsel for the Complainants conceded that the party allegedly involved was only FCEL. So much so that the learned Counsel for the Complainants even mentioned to Major Gen. (Rtd.) Shujaat Ali Khan who was present at the hearing that he has no complaint against him or his associates, meaning Mr. Iqbal Latif, Syed Akbar

Naqi Zaidi, Air Commodore (Rtd.) Pervez Akhtar Khan and Mr. Taufiq Habib. In view of this admission, the Complaint against its Clients stands withdrawn and therefore there cannot be adverse findings against its Clients.

7. FCEL submitted as under:

(a) FCEL has merely been alleged as acquirer in concert, for the reason that some of the individuals alleged happened to be clients of FCEL. The Complainants have changed their position maintained for the last two years before the Commission and now surprisingly allege FCEL as the acquirer and termed the previously alleged individuals as simply *benami* shareholders;

(b) FCEL vehemently denies that FCEL has acquired substantial voting shares of HWSM or is the main financier behind the acquisition of shares. FCEL does not make long term investments in companies, other than in its associated concerns. The audited accounts of FCEL are evidence to this fact, as no investment in HWSM is appearing in its accounts;

(c) We reiterate that the shares of HWSM appearing in the House Account of FCEL (including the 5.4 million shares referred to in the complaint) were never owned by FCEL and are merely a result of book entry transfer. Accordingly, FCEL was not required to make a disclosure under Section 4 of the Take-overs Ordinance;

(d) FCEL, with due authorization from its clients, obtained finance by pledging these shares with financial institutions so as to settle their debit balance appearing in the books of FCEL. As the credit lines are available in the name of FCEL therefore these shares had to be transferred from the accounts of its clients to the House Account of FCEL but the ownership of shares was never transferred;

(e) The sole purpose of transferring the shares to the House Account of FCEL was to raise finance and the ownership of shares was never transferred to FCEL. That it is a commonly prevalent practice in the capital markets. In the

absence of availability of margin financing, this is one of the few modes available to a broker to raise finance on behalf of its clients and which does require the subject shares to bring into its own Central Depository Company House Account. Therefore the 5.4 million shares of HWSML appeared in the House Account of FCEL as a result of a book entry in the Central Depository Company, with no change in the legal ownership of the shares;

(f) The shares, for the purposes of entitlement to corporate action, were transferred to the CDC account of the owners on the date of book closure. Further, with the release of shares by the financial institutions, the balance of shares in the House Account of FCEL decreased with a transfer to the accounts of the legal and beneficial shareholders;

(g) The fact of the matter is that FCEL received some orders from clients and only serviced the orders. It is therefore incorrect that FCEL had any common goal or common affiliation with the other Respondents. As a brokerage house, FCEL has every right to service legitimate orders for sale and purchase of securities for clients. Merely because some of our clients decided to purchase the shares of HWSM does not mean that FCEL acted in concert with them.

8. FSL on behalf of its clients namely (i) Mr. Sheikh Qaiser; (ii) Mr. Naveed; (iii) Mr. M. Hasan Khan; (iv) Mr. M. Ali Agha Jan; (v) Mr. Khurram Niaz; and (vi) Mr. M. Ayub and itself stated that:

(a) FSL carried out only COT transactions in the said shares in accordance with the regulations of KSE laid down for COT transactions;

(b) The shares of HWSM were not purchased by FSL from the market and nor were they interested in the transaction of the said shares except to the extent that they provided finance on COT basis to FCEL.

9. On the basis of the arguments heard and considering the statements of the other Respondents submitted verbally as well as in writing, and perusal of relevant record on file, it appears that 38.25% shares of HWSM were purchased in the period commencing from July 2004 by the following individuals:

Name of client	Shares in CDC as on 14/01/2005	Shares with Fortune in REPO as per FCEL	Total Holding as on 14/01/2005	Percentage
Muhammad Aslam	1,463,500	651,500	2,115,000	6.53
Farhan Usman	908,000	475,000	1,383,000	4.27
Shahid Hussain	1,860,000	1,188,000	3,048,000	9.41
Iqbal Latif	3,043,500	-	3,043,500	9.39
Muhammad Shoaib Bashir	1,671,500 +1,041,500 (with Crescent St. Inv. Bank)	90,500	2,803,500	8.65
Total	9,988,000	2,405,000	12,393,000	38.25

Since the aforementioned individuals appear to have traded in the approximate number of shares of HWSM as alleged by the Complainants, I have examined their transactions in detail so as to determine whether there is, as alleged by the Complainants, any violation of the Take-overs Ordinance. Upon review of the record relevant to the above, the following is noted:

(a) Mr. Iqbal Latif (Code No. 110322):

Client Settlement Transaction Report of this account from 1 July 2004 to 31 March 2005 consists of more than 120 pages signifying numerous transactions in the shares of different companies. Pages 103-120 of the said Report indicate that he actively traded in the shares of HWSM from 17 August 2004 to 31 March 2005 both in the Ready Market and COT (*Badla*) Market. His Account ledger further indicates that an amount of Rs. 46,500,000/- was credited to his account on 23 December 2004. This amount was transferred from the Account No. 132133-008 maintained by Mr. Iqbal Latif (Running Finance Facility) with ABN AMRO Bank, Main Branch Karachi.

(b) Mr. Muhammad Shoaib Bashir (Code No. 110974):

Client Settlement Report of this account from 01 July 2004 to 31 March 2005 consists of more than 2,400 pages, which reveals numerous transactions in the shares of different companies. Pages 918 to 1069 of the Report detail transactions, made by Mr. Shoaib Bashir in the shares of HWSM. The transactions have been made both in Ready Market and in COT (*Badla*) Market. The documents provided by FCEL further show that a payment of Rs. 5,000,000/- was made by Mr. Shoaib Bashir on 25 August 2004 to FCEL; amount of Rs. 1,000,000/- was credited to his account (maintained with FCEL) on 10 September 2004; and another amount of Rs. 300,935/- was credited to his account on 23 September 2004 by cheque issued by Prime Trading Corporation. Moreover, FCEL has also made payments to Mr. Shoaib Bashir against his ledger balance and crossed cheques in this regard have been issued by FCEL in favour of Mr. Shoaib Bashir.

(c) Mr. Shahid Hussain (Code number 110318):

Mr. Shahid Hussain purchased 3,048,000 shares of HWSM from 5 August 2004 to 7 January 2005 on *Badla* financing basis. He sold his shares from 16 March 2005 to 30 September 2005. Settlement entries in Ledger Account of the client were made on 20 July 2005, 27 July 2005 and 04 October 2005 for 959,000, 901,000 and 1,188,000 shares respectively.

(d) Mr. Muhammad Aslam (Code Number 110838):

Mr. Muhammad Aslam purchased 2,115,000 shares of HWSM from 9 August 2004 to 7 January 2005 on *Badla* financing basis. He sold his shares from 16 March 2005 to 30 September 2005. Settlement entries in his Ledger Account were made on 20 July 2005, 27 July 2005 and 4 October 2005 for 661,000, 802,000 and 651,000 shares respectively. He also paid Rs. 2,470,000/- and Rs. 500,000 to FCEL through two cheques on 10 October 2005.

(e) Mr. Farhan Usman (Code Number 110681):

Mr. Farhan Usman purchased 1,383,000 shares of HWSM from 6 August 2004 to 3 January 2005 on *Badla* financing basis. He sold his shares from 16 March 2005 to 30 September 2005. Settlement entries in his Ledger Account were made on 20 July 2005, 27 July 2005 and 4 October 2005 for 495,000, 413,000 and 475,000 shares respectively.

Here it may be noted that since the shares mentioned in sub-para (c), (d) and (e) above were purchased by Mr. Shahid Hussain, Mr. Muhammad Aslam and Mr. Farhan Usman on *Badla* financing basis, FCEL was required to submit names of *Badla* financiers for the said transactions along with Transactions Ledger Reports of the financiers. These were provided by FCEL and it is noted that out of the six of the initial *Badla* financiers, four were group companies of FCEL. Later on, however, it is noted other non-group entities of FCEL were also involved in financing acquisition of HWSM shares through FCEL.

10. I have considered and examined the documents and data furnished by the parties and also called in by the Commission, which includes all available document or record required by the Complainants to be examined for determining the alleged concert of the Respondents. Even details of specific bank accounts of the above mentioned five Respondents have been perused along with those of FCEL and its employees with a view to ascertain the veracity of the allegations levelled by the Complainants. Account Activity Reports of accounts with the Central Depository Company of Pakistan (the “**CDC**”) have also been reviewed. A holistic view reveals the following movement of shares of HWSM:

(a) 1,066,500 and 2,083,500 shares were transferred from account of PICIC Commercial Bank Limited to Account Number 11 of FCEL from where 3,152,500 shares were transferred to sub-account of Mr. Iqbal Latif, resultantly total holding of Mr. Iqbal Latif in HWSM became 3,582,000 shares;

(b) 975,000 and 3,650,00 (total 4,625,000) shares were moved from Group Account (Account No. 60) and House Account (Account No. 29) respectively of FCEL to Main Account of FCEL from where 2,568,000 and 1,334,000 shares were transferred to the sub-accounts of Mr. Muhammad Shoaib Bashir and Mr. Suleman Ahmed Saeed Al-Houqani respectively. As a result total holding of Mr. Muhammad Shoaib Basher and Mr. Suleman Ahmed Saeed Al-Houqani in HWSM as on 14 January 2005 became 2,639,500 and 1,972,000 shares respectively. On the same date, another movement of 559,000, 968,000 and 1,972,000 (total 3,499,000) shares was detected from Sub-accounts of Mr. Iqbal Latif, Mr. Muhammad Shoaib Bashir and Mr. Suleman Ahmed Saeed Al-Houqani respectively to Main Account of FCEL from-where 1,860,000, 908,000 and 1,463,500 (total 4,231,500) shares were transferred to sub-accounts of Mr. Shahid Hussain, Mr. Farhan Usman, and Mr. Muhammad Aslam respectively;

(c) 1,860,000 908,000 and 1,463,000 shares of HWSM which were transferred to the sub-accounts of Mr. Shahid Hussain, Mr. Farhan Usman and Mr. Muhammad Aslam respectively on 14 January 2005 were taken out from their sub-accounts on 18 January 2005;

(d) CDC Activity Report of Mr. Suleman Ahmed Saeed Al-Houqani suggests that his closing holding in HWSM as on 14 January 2005 was nil, while as per his Trading Statement the same was 185,500 shares.

11. The issue of movement of shares was taken up with FCEL for clarification. In this regard FCEL stated that as per policy, on the eve of book closure, the pledged shares are normally redeemed from financiers and are transferred in the account of actual buyers for corporate actions. Similarly, the said shares of HWSM were released from the financiers by providing some other securities as collateral to the said financiers and were transferred in the accounts of buyers/owners including Mr. Iqbal Latif, Mr. Shahid Hussain, Mr. Muhammad Aslam and Mr. Farhan Usman. Furthermore, FCEL stated that closing holding of Mr. Suleman Ahmed Saeed Al-Houqani as on 14 January 2005 was 185,500 shares, but erroneously the said shares were credited to Mr. Muhammad Shoaib's account.

12. On the contentions that there was only one source of funding for the entire acquisition, the Client Settlement Transaction Reports, containing details of purchasing record of the clients; the Transactions Ledger Reports; and copies of instruments through which payment was made/received by the clients against their Ledger balances have been examined. In this regard it has been noticed that the above mentioned clients of FCEL have almost traded every day in shares of different companies. The Transaction Ledger Report of Mr. Iqbal Latif and Mr. Muhammad Shoaib Bashir contain the trading entries of the shares of the HSWM and the Ledger Accounts of the clients have been debited and credited on each purchase and sale transaction. Payment made or received by the clients has also been shown in their Transaction Ledger Reports. While, the other clients namely Mr. Muhammad Aslam, Mr. Farhan Usman and Mr. Shahid Hussain have mostly traded on *Badla* basis, which has been financed by the different institutions/persons. However, FCEL was asked to provide copies of request(s) made by its above named clients for arrangements of funds/*Badla* for purchasing of shares of HWSM. In response FCEL intimated that there is no such requirement to obtain client's request for *Badla* and as such, it does not obtain from each and every client their request for *Badla*. But, it has authority from its client to use their shares for raising finance against purchase of shares. Similarly, FCEL was also asked to provide copies of relevant pages of "Register" maintained under Rule 4 of the Securities and Exchange Rules, 1971, highlighting therein orders to buy or sell of shares of HWSL given by its above named clients. In this connection it was intimated that FCEL had a market share of 3.6% at the relevant time. In those days average market volume was well above 450 million shares. It is virtually impossible to keep manual order register for 16 million shares. However, FCEL has submitted Transaction Ledger Reports of the following institutions/person who initially financed the shares in *Badla*, which include I.P.A. Fund (In House *Badla* Account), World Call Telephony (Pvt.) Limited, World Call Communication Limited, Shaheen Insurance Company Limited, PICIC Commercial Bank Limited, and Mr. Latafat A. Khan.

13. In order to ascertain whether one party (as alleged by the Complainants) was financing the whole transactions and whether there were any inter-account

transactions among the clients who were dealing in the shares of HWSM, the following relevant information is noted from the record available on file:

(a) Transactions between Mr. Muhammad Aslam (Account No. 2347-7 MCB, KSE Branch, Karachi) and Mr. Muhammad Shoaib (Account No. 03443-1 MCB KSE Br. Karachi):

Sr. No.	Date of Transaction	Amount (Rs.)	Nature of Transaction	
			Debited from A/c of	Credited to the A/c of
1	03/11/2004	75,000/-	. Muhammad Aslam	. Muhammad Shoaib
2	25/11/2004	1,300,000/-	-do-	-do-
3	16/12/2004	5,814,638/-	-do-	-do-

(b) Transactions in the account of Muhammad Shoaib (Account No. 03443-1 MCB KSE Br. Karachi):

Sr. No.	Date of Transaction	Amount (Rs.)	Nature of Transaction	
			Debited from A/c of	Credited to the A/c of
1	22/02/2005	2,500,000/-	FCEL	Muhammad Shoaib
	22/02/2005	2,500,000/-	Muhammad Shoaib	Farooq Habib A/c No. 3046-1 MCB KSE Br. Karachi
2	04/03/2005	1,500,000/-	FCEL	Muhammad Shoaib
	05/03/2005	1,500,000/-	Muhammad Shoaib	Mr. Umar Bin Habib.

(c) Transactions in the account of Muhammad Aslam (Account No. 2347-7 MCB, KSE Branch, Karachi):

Sr. No.	Date of Transaction	Amount (Rs.)	Nature of Transaction	
			Debited from A/c of	Credited to the A/c of
1	21/03/2005	2,185,345/-	FCEL	Muhammad Aslam
	22/03/2005	1,185,345	Muhammad Aslam	Muhammad Junaid
2	15/07/2005	1,286,277/67	FCEL	Muhammad Aslam
	16/07/200	1,286,277/67	Muhammad Aslam	Muhammad Junaid
3	30/11/2005	999,955.88	FCEL	Mr. Muhammad Aslam
	30/11/2005	999,955.88	Mr. Muhammad Aslam	Muhammad Junaid

(d) Cheque based transactions accounts by Mr. Muhammad Shoaib Bashir:

Sr. No	Date of Transaction	Amount (Rs.)	Nature of Transaction	
			Debited from A/c of	Credited to the A/c of
1	10/09/2004	1,000,000/-	Muhammad Junaid A/c No. 3068-9 MCB KSE Br. Karachi	FCEL

(e) Cheque presented by Mr. Muhammad Aslam

Sr. No.	Date of Transaction	Amount (Rs.)	Nature of Transaction	
			Debited from A/c of	Credited to the A/c of
1	10/10/2005	500,000/-	Farhan Usman	FCEL

(f) Other transactions by FCEL:

Sr. No.	Date of Transaction	Amount (Rs.)	Nature of Transaction	
			Debited from A/c of	Credited to the A/c of
1	12/07/2004	184,840/-	FCEL	Mr. Shahid Hussain
2	11/08/2004	106,333/-	FCEL	Mr. Shahid Hussain
3	08/11/2004	94,482/-	FCEL	Mr. Shahid Hussain

14. Based on the transactions identified in paragraph 13 above, it appears that FCEL facilitated its clients to acquire shares of HWSM through *Badla* financing, including through its group companies and that certain employees of FCEL namely: Mr. Muhammad Junaid and Mr. Farooq Habib, have also exchanged (credit and debit) payments, in the relevant period.

15. It is pertinent to note that a fundamental ingredient of a 'person acting in concert', as per the definition of the said term in the Take-overs Ordinance, is that there has to be demonstrated co-operation with the acquirer to acquire voting shares or control of a target company. In the instant case, control of HWSM is not an issue, however, the Complainants vehemently allege that the Respondents have acted in concert to acquire up to 39% shares of HWSM. FCEL and other Respondents on the other hand maintain that there is no breach of the Take-overs Ordinance, that is, they

have not acted in concert to acquire any shares in HWSM. On the basis of the record on file, however, it cannot be ruled out that there was no “co-operation” between the Respondents in acquiring approximately 39% shares of HWSM without regard to the provisions of the Take-overs Ordinance. To the contrary, the transactions above noted point out that there has been significant interaction between the Respondents *vis-à-vis* dealings in HWSM shares, which require further reconciliation and clarification from FCEL and certain of the Respondents named in the paragraph 16 below.

15. It is also considered appropriate to mention that the Take-overs Ordinance does not provide for any specific provision whereby the Commission is required to entertain complaints, as in the present case. However, two provisions of the Take-overs Ordinance are relevant and provide the Commission statutory basis to proceed in such matters. First, Section 21 (c) grants the Commission the power to enquire *suo moto* or upon information received. Alternatively, the Commission may issue show cause notice under Section 26 of the Take-overs Ordinance. Given the peculiar facts of this case and keeping in view that the undersigned has called upon substantial information in the matter already from all sources concerned, including the Respondents, various institutions/companies extending finance for *Badla* transactions and also relevant information from the SBP and the CBR, it is not appropriate that these proceedings culminate in to another enquiry under Section 21. Since there is sufficient information available on file, which has been readily provided by relevant parties, it would be more appropriate to proceed under Section 26 of the Take-overs Ordinance.

16. In view of the circumstances above noted, I dispose off the subject Complaints with the following directions:

(a) Immediate show cause proceedings be initiated against each of the following individuals under Section 26 (3) (c) requiring each of them to show cause as to why they should not be proceeded against, individually as well as collectively, for contravention of Section 4 and 5 of the Take-overs Ordinance:

1. Mr. Iqbal Latif
2. Mr. Shahid Hussain
3. Mr. Farhan Usman

4. Mr. M. Aslam
5. Mr. M. Shoaib Bashir
6. Air Commodore (Rtd.) Pervaiz Akhtar
7. Major Gen (Rtd.) Shujaat Ali Khan
8. Mr. Muhammad Junaid
9. Mr. Farooq Habib

(b) Immediate show cause proceedings be initiated against First Capital Equities Limited and its directors under Section 26 (3) (c) requiring First Capital Equities Limited and its directors to show cause as to why they should not be proceeded against for contravention of Section 4 and 5 of the Take-overs Ordinance in the matter of acquisition of approximately 39% shares of Haseeb Waqas Sugar Mills Limited;

(c) Immediate show cause proceedings be initiated against each of the following group companies of First Capital Equities Limited and their directors under Section 26 (3) (c) requiring them to show cause as to why they should not be proceeded against for contravention of Section 4 and 5 of the Take-overs Ordinance in the matter of acquisition of approximately 39% shares of Haseeb Waqas Sugar Mills Limited:

1. Shaheen Insurance Company Limited
2. World Call Communication Limited
3. World Call Telephony (Private) Limited

(d) Each of the Respondents (including the Respondents mentioned in sub-para (a) through (c) above), is hereby directed to furnish such other information or document or evidence as may be required by the Commission for purposes, and due discharge, of the said show cause proceedings ordered to be commenced hereby;

(e) In the interim, in exercise of the powers vested in me under Section 25 of the Take-overs Ordinance, I hereby direct each of the Respondents mentioned in sub-paragraph (a) through (c) above) not to further deal in

securities of HWSM and/or prohibit each of the said Respondents from disposing of any securities held by them in HWSM acquired from the period of July 2004 up to the date of this order;

(d) The Complainants are also directed to fully cooperate and participate in the show cause proceedings.

Order accordingly.

(**Rashid I. Malik**)
Commissioner (Securities Market Division)

Announced on 1st October 2007
Islamabad