

BEFORE THE ANTI-DOPING APPEALS COMMITTEE
CONSTITUED BY
THE PAKISTAN CRICKET BOARD

Shoaib Akhtar

..... Appellant

&

Muhammad Asif

..... Appellant

- For the Appellant Shoaib Akhtar: Mr. Abid Hasan Minto Sr. Advocate Supreme Court of Pakistan & Mr. Bilal Minto, Advocate Supreme Court of Pakistan.
- For the Appellant Muhammed Asif: Mr. Aftab Gul, Advocate.
- For the Pakistan Cricket Board: Mr. Mark Gay, Solicitor, DLA Piper LLP, U.K.

Fakhruddin G. Ebrahim:

1. The above Appeals are directed against the Decision dated 1.11.06 of the Anti Doping Commission (“ADC”) established under clause 5.7 of the Pakistan Cricket Board (“PCB”) Anti Doping Regulations. The Appellants are aggrieved by the Decision of the ADC which found them guilty of committing a doping offence as defined under clause 4.1 of the PCB Anti Doping Regulations and imposed a two year ban on Shoaib Akhtar and a one year ban on Muhammad Asif under clauses 7 & 8 of the PCB Anti Doping Regulations.

2. The Appeals were filed by Shoaib Akhtar through counsel on 8.11.06 and Muhammad Asif on 6.11.06. The Appeals Committee held hearings in this matter on 15.11.06, 20.11.06 and 21.11.06, where submissions were made by the learned counsels, Mr. Abid Hasan Minto, Mr. Bilal Minto, Mr. Aftab Gul on behalf of the Appellants and Mr. Mark Gay on behalf of the PCB. On conclusion of the hearings, the Appeals Committee sought response from the Appellants in respect of various questions. The written response from Shoaib Akhtar was received by the Appeals Committee on 27.11.06 and from Muhammad Asif on 28.11.06. Both the Appeals of Shoaib Akhtar and Muhammad Asif are dealt with by way of this common decision.

3. The admitted facts leading to the Appeals are as follows. On 14.9.06, the then Chairman Pakistan Cricket Board directed that dope tests may be carried out on all 19 players being considered for inclusion in the Pakistan Cricket Team participating in the ICC Champions Trophy. In pursuance of this directive, the PCB's Anti Doping Control Officer ("ADCO") notified the players to provide necessary urine samples. That in a one week period from 25.9.06 to 2.10.06, all 19 players provided urine samples to the ADCO and the same were dispatched to the Doping Control Centre Universiti Sains Malaysia, which is a laboratory duly accredited by the World Anti Doping Agency ("WADA").

4. The Malaysian laboratory first informed the PCB on 12.10.06, that of the 19 samples, 2 had tested positive for banned substances. On 17.10.06, the same laboratory confirmed that the two samples contained 19-Norandrosterone, greater than the threshold of 2 ng/ml. On 19.10.06, PCB was informed that the

sample pertaining to Shoaib Akhtar was found to contain 19-Norandrosterone of 14.06 ng/ml while the sample pertaining to Muhammad Asif was found to contain 19-Norandrosterone of 13.07 ng/ml.

5. 19-Norandrosterone is a metabolite of Nandrolone and is on the list of prohibited substances under the PCB Anti Doping Regulations which specifies the limit of 2 ng/ml. On 15.10.06, the PCB suspended Shoaib Akhtar and Muhammad Asif and decided to establish the ADC under clause 5.7 of the PCB Anti Doping Regulations. The ADC was empowered to determine whether Shoaib Akhtar and Muhammad Asif had committed a doping offence and, if so, what sanctions should be imposed on the players and for how long.
6. That after recording the statements of the ADCO, both Shoaib Akhtar and Muhammad Asif were confronted with the adverse test results and their statements were also recorded by the ADC. The ADC also recorded the statements of the Pakistan Cricket Team Coach, Robert A. Woolmer, Team Physiotherapist, Darryn Lifson and Team Trainer, Murray Steveson as well as Professor Javed Akram and Dr. Syed Abbas Raza and afforded opportunity to Shoaib Akhtar and Muhammad Asif to put questions to the persons examined. It may be noted that despite repeated offers from the ADC, both Shoaib Akhtar and Muhammad Asif declined to be represented by legal counsel, although the former was assisted by Dr. Nauman Niaz before the ADC.
7. It is worthwhile to note that the sample collection for the dope tests were conducted by the ADCO as per procedure prescribed under WADA's

International Standards for Testing, June 2003. The certificate of analysis from the Malaysian laboratory confirmed that the chain of custody of the samples was intact. Moreover, both Shoaib Akhtar and Muhammed Asif have conceded before the ADC that they were satisfied with the manner in which the urine samples had been obtained by the ADCO. Both players also declined the offer of the ADC to have their B samples tested. The Appellants' stand on this issue remained unchanged before this Appeals Committee.

8. Shoaib Akhtar's defence to the charge of doping offence before the ADC was inter-alia as follows: that (i) his high protein intake and rigorous workout schedule over the years had caused endogenous production of 19-Norandrosterone in his system well over the prescribed limit of 2 ng/ml; (ii) that the nutritional supplements taken by him including Blaze Xtreme, Nitron 5, Size On, T-Bomb II, Promax 50 and Viper were not banned items¹; (iii) that contamination in the aforesaid supplements taken by him could have been the reason for the elevated level of 19-Norandrosterone; and (iv) that he was never warned by the PCB about the Anti Doping Regulations.

9. Muhammad Asif's defence to the charge of doping offence before the ADC was more circumscribed. Muhammad Asif pleaded (i) that he had not knowingly taken any medicine or substance which could explain the test result; (ii) that he had started using supplements, including Promax, when he was in the U.K. three years ago; (iii) that he honestly did not know the effects of the supplements he was taking; and (iv) that when recently the Team

¹ In response to the Appeals Committee questions, the counsel for Shoaib Akhtar provided a list of previously unspecified vitamin and herbal medicines also ingested by the Player. These were specified as Vivioptal, Surbex Z, Gonadil-f, Aswanghanda (Tribulus Terrestris) and Paullina Sorbilis (Guarna).

Physiotherapist Mr. Darryn Lifson advised him to discontinue the use of supplements, he immediately stopped ingesting the same.

10. After due deliberations, the ADC Decision concluded that *“In the totality of circumstances [it was] not convinced that there was no fault or negligence on the part of Shoaib Akhtar or even no significant fault or negligence.”* That Shoaib Akhtar *“has committed a doping offence as defined in clause 4.1 of the PCB Anti Doping Regulations. There are no mitigating circumstances which would justify the imposition of a sanction less than the minimum prescribed namely a ban of two years.”*

11. In respect of Muhammad Asif, the ADC concluded that his case was *“on a somewhat different footing with regard to the level of responsibility.”* The ADC noted with consideration that (i) he joined the Pakistan Cricket Team in March 2006; (ii) he was not present at any lecture or session on anti doping organized by the PCB; (iii) there was uncertainty that he was even handed over the 2006 list of prohibited substances or the WADA Athlete Guide; (iv) he had stopped the use of supplements as soon as was told to do so by the Team Physiotherapist; and (v) his command over the English language is limited. The ADC concluded that it was *“not convinced that Asif’s case is one of no fault or negligence. However, keeping in view the totality of the circumstances [the ADC was of the] view that it is one of no significant fault or negligence and that there are exceptional circumstances noted...hereinabove that justify a more lenient view than that taken by us in Shoaib Akhtar’s case.”*

12. It is worthwhile to note that the ADC which was a creature of the PCB Anti Doping Regulations, while repeatedly referring to the various PCB Anti Doping Regulations under which the players were charged, proceeded against and even punished, without any ostensible rationale sought to rely on distinct benchmarks of ‘*No Fault or Negligence*’ and ‘*No Significant Fault or Negligence*’ from the International Cricket Council (“ICC”) Anti Doping Code in its Decision. It may be mentioned that the ICC Anti Doping Code is to operate as the Doping Regulations for ICC Events² and it was no one’s case before the ADC that the ICC Anti Doping Code would apply to the case of Shoaib Akhtar and Muhammad Asif. In fact, even Mr. Mark Gay clearly asserted that the PCB Anti Doping Regulations are the only regulations applicable to the present case.

13. The ADC correctly noted that under clause 4.1 of the PCB Anti Doping Regulations, it is provided inter alia that “*A player commits a doping offence if: (a) a prohibited substance is present within the player’s body tissue or fluids, unless: (i) the player uses the prohibited substance for therapeutic purpose (see clause 4.4.); or (ii) there are exceptional circumstances (see clause 4.5)*”. The ADC even took into account that ‘exceptional circumstances’ are defined under clause 4.5 of the PCB Anti Doping Regulations to exist if inter alia “*the player held an honest and reasonable belief in a state of facts which if they existed, would mean that the player did not commit a doping offence*” and that the burden to prove exceptional

² See Clause D of the ICC Anti Doping Code

circumstances lies on the player. However, the ADC proceeded to adjudge the case of Shoaib Akhtar and Muhammad Asif on the benchmarks provided under the ICC Anti Doping Code and not the PCB Anti Doping Regulations.

14. The ADC proceeded to focus on the ICC Anti Doping Code benchmarks for exceptional circumstances of *'No Fault or Negligence'* and *'No Significant Fault or Negligence'*, whereas the same find no mention under the PCB Anti Doping Regulations. According to the ADC, the burden and standard of proof for *'No Fault or Negligence'* or *'No Significant Fault or Negligence'* under the ICC Anti Doping Regulations are *"very similar"* to the WADA Code.³ The ADC Decision records that *"Pakistan is a signatory to the Copenhagen Declaration establishing WADA and bound by the provisions of the WADA Anti Doping Code."* In this regard, this Appeals Committee has noted that although the Pakistan Olympic Association is a signatory to the Copenhagen Declaration, the same cannot be equated with the Federation of Pakistan nor will the same automatically bind the PCB. It may be added that in the section titled *"Matters Not Provided For"* the PCB Anti Doping Regulations clarify that only in the event of a dispute in connection to the PCB Anti Doping Regulations should the IOC/WADA law be followed. In his written submissions, Mr. Mark Gay also reasoned that *"as the terms of the pertinent clauses of the [PCB] Anti Doping Regulations are, in our view, free from doubt or ambiguity, the situation anticipated by the ["Matters Not Provided*

³ It is important to recognize that the ICC Anti Doping Code although largely WADA compliant, does have a few provisions which are different to the WADA Code. Most significantly, a player who is able to prove *'No Fault or Negligence'* is found to have committed no violation. This is a departure from the WADA Code, which even under the circumstances of *'No Fault or Negligence'* does not allow for a verdict of no violation but the same is only the basis for reduction in penalty. (see ICC Report to the Chief Executive's Committee Meeting, Lords, June 2005).

For” clause] simply does not arise.” There is considerable force in such submissions of Mr. Mark Gay and we accept the same. According to us, as there is no dispute or ambiguity with regard to the relevant clauses of the PCB Anti Doping Regulations and nor is the same claimed by any party, the question of resorting to the WADA Code does not arise. Moreover, as stated above, the ADC as well as this Appeals Committee are the creatures of the PCB Anti Doping Regulations and not the ICC Anti Doping Code or the WADA Code. Therefore, there is no doubt in our minds that the PCB Anti Doping Regulations are applicable to the present case of Shoaib Akhtar and Muhammad Asif who were tested in Pakistan by the PCB under its Regulations and not by any other international sports body.

15. With due deference to the ADC, we cannot reconcile as to why the question of ‘exceptional circumstances’ was dealt with on the benchmarks of ‘*No Fault or Negligence*’ and ‘*No Significant Fault or Negligence*’ as provided by the ICC Anti Doping Code by the ADC, when the PCB Anti Doping Regulations clearly defined ‘exceptional circumstances’ on a significantly different plane. Under clause 4.5 of the PCB Anti Doping Regulations exceptional circumstances are defined as follows: “*Exceptional circumstances exist if either: (a) the presence of the prohibited substance is beyond the player’s control; for example; i) the player has a natural testosterone: epitestosterone ratio above 6:1; or ii) the player is administered the prohibited substance in hospital with his knowledge in a life threatening situation); or (b) the player held an honest and reasonable belief in a state of facts which, if they existed, would mean that the player did not commit a doping offence.*” Whereas,

clause 9.5 of the ICC Anti Doping Code provides that “*Finding of No Violation or Reduction of Period of Ineligibility Based on Exceptional Circumstances: 9.5.1. If the Cricketer establishes in a individual case involving an Anti Doping Code violation under Clause 3.1 (presence of Prohibited Substance or its Metabolites or Markers) or Use of a Prohibited Substance or Prohibited Method under Clause 3.2 that he bears No Fault or Negligence [means that the Cricketer establishing that he did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he had Used or been administered the Prohibited Substance or Prohibited Method] for the violation, he shall be found to have committed no violation...*” As is evident from the above, the standard of ‘exceptional circumstances’ under the ICC Anti Doping Code and the PCB Anti Doping Regulations is entirely different in terms of language, scope and meaning.

16. The confusion between the applicability of standards of ‘exceptional circumstances’ under the ICC Anti Doping Code and PCB Anti Doping Regulations, fatally plagued the final decision of the ADC. This effect was debilitating. The distinction between the ICC Anti Doping Code and the PCB Anti Doping Regulations are striking. Under the ICC Anti Doping Code, clause 3.1.1, “*It is each Cricket Player’s personal duty to ensure that no Prohibited Substance enters his body. Cricket Player’s are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Cricket Player’s part be demonstrated in*

order to establish an anti-doping violation under Clause 3.1.” The PCB Anti Doping Regulations impose no such onerous burdens on the Players. In fact, in sharp contrast, the PCB Anti Doping Regulations impose responsibility on the PCB itself for educating and informing the players on doping. Clause 2.2 of the PCB Anti Doping Regulations provides that “The PCB aims to prevent the use of performance enhancing drugs and doping practices in Cricket...by (b) educating and informing persons about drugs in sport issues.” Similarly, clause 2.3 of the PCB Anti Doping Regulations provides that “The PCB will also (b) develop and implement drug education and information programs for players, coaches, officials and medical and health practitioners.”

17. It may be noted that under clause 8.3 of the PCB Anti Doping Regulations, the ADC could only have reduced the minimum sentence of a 2 year ban “*on basis of any report or evidence provided during the hearing by the PCB Anti Doping Medical Advisor.*” Yet, the ADC proceeded to reduce the sentence on Muhammad Asif on wholly extraneous grounds. More glaring is the fact that on one hand the ADC concluded that there were ‘exceptional circumstances’ in the case of Muhammad Asif, yet proceeded to find him guilty of an offence of doping. This is quite contrary to the language of clause 4.1 of the PCB Anti Doping Regulations which provides that if the Player can establish ‘exceptional circumstances’ then no offence is committed.

18. However, this is not the end of the matter. The aforesaid flaws plaguing the ADC Decision do not automatically resolve the serious charges and the complicated issues involved in the matter in favor of the Appellants before us.

The Appeals Committee is duty bound to consider the defence advanced by the Appellants on the criteria and benchmark of the applicable law on the subject i.e. the PCB Anti Doping Regulations.

19. The foremost argument advanced on behalf of Shoaib Akhtar's learned counsels, Mr. Abid Hasan Minto and Mr. Bilal Minto is that the PCB Anti Doping Regulations do not apply at all to the case of Shoaib Akhtar. In this regard, reliance was placed on the opening paragraph preceding the preamble of the PCB Anti Doping Regulations which records that "*The following Doping Control Regulations will apply to all events organized by Pakistan Cricket Board...*" The learned counsels argued that since Shoaib Akhtar was not tested during any 'event' organized by the PCB, but prior to an ICC event, therefore the PCB Anti Doping Regulations do not apply. With due respect, the aforesaid sentence cited by the learned counsels cannot be read in isolation without consideration of the operative part of the PCB Anti Doping Regulations which provides inter alia under clause 3 that the Regulations apply to members, players and employees and contractors of the PCB. Any doubt on this score is further resolved by considering the definition of 'Player' under the clause 1.1 of the PCB Anti Doping Regulations which provides that "*Player means a person who participates (whether in competition or out of competition) in the sport of Cricket under the jurisdiction or the auspices of the PCB or uses the facilities of the PCB*" (emphasis ours). Therefore, we are of the firm view that the PCB Anti Doping Regulations would apply to Shoaib Akhtar and Muhammad Asif notwithstanding that they are tested by PCB whether in competition or out of competition.

20. The learned counsels representing Shoaib Akhtar also laid particular emphasis on the scientific debate surrounding the level of 19-Norandrosterone and questioned the prescribed limit of 2 ng/ml by citing medical literature which argued that higher levels of 19-Norandrosterone was possible by way of endogenous production. However, this is not a new debate and has been repeatedly raised in international doping trials and also rejected with equal consistence. In the case of B v. FINA, CAS 2001/A/337, the Court of Arbitration for Sport held that *“the Panel does not share the Appellant’s opinion that the threshold of 2 ng/ml of NA in male urine is generally not reliable or that there was a grey zone between 2ng/ml and 5 ng/ml where endogenous production of such levels of NA was possible.”* This same view is also recorded in the 2003 Nandrolone Progress Report to the UK Sports Council from the Expert Committee on Nandrolone which concluded that *“Having considered all the information available to it, the Committee concluded that exercise may, in some cases, produce a small increase in the urinary concentration of 19-Norandrosterone, but found no reason to believe this would exceed 2 nanograms per milliliter, and thus the current reporting threshold of 2 nanograms per milliliter was regarded as appropriate for sportsmen.”* Moreover, this Appeals Committee cannot go behind the 2 ng/ml threshold adopted by the PCB in its Anti Doping Regulations. The fact that Shoaib Akhtar declined the offer of the ADC that he take the urine test GC-C-IRMS to determine whether or not the high level was due to endogenous production, notwithstanding the limited reliability of such test, is also not insignificant. Therefore, we are not persuaded by the defence that Shoaib

Akhtar's positive test on 19-Norandrosterone was caused due to endogenous production on account of his diet and exercise regime.

21. The last argument advanced by the learned counsels appearing on behalf of both the Appellants before us was that the positive test of 19-Norandrosterone was caused by the possible contamination/mislabeled of nutritional supplements ingested by Shoaib Akhtar and Muhammad Asif. In particular, the learned counsel, Mr. Abid H. Minto forcefully argued (i) that it was rather strange for the ADC to observe that "*None of the supplements being used by Shoaib Akhtar were offered to us for getting them analyzed for possible contamination*" when the supplements had already been consumed in the normal course; and (ii) that the observation made by the ADC is otherwise unwarranted as no such offer was made to his Client.⁴ The reasoning advanced by the learned counsel is not without merit and significantly our review of the record of proceedings before the ADC confirms that no such offer for testing the supplements for contamination was ever made to Shoaib Akhtar by the ADC. It was contended by the learned counsel that at no stage was any player informed or warned of the danger of supplement use by the PCB and that therefore, in such situation 'exceptional circumstances exist' as defined under clause 4.5 of the PCB Anti Doping Regulations. The learned counsels relied on the second part of the definition of 'exceptional circumstances' under clause 4.5 of the PCB Anti Doping Regulations which provides that if the Players held an "*honest and reasonable belief in a state of*

⁴ It is noteworthy that although the case of Shoaib Akhtar and Muhammad Asif stood on the same plane with regard to contamination and mislabeling, no such observation was made by the ADC in respect of Muhammad Asif.

facts which, if they existed, would mean that the player did not commit doping offence.”

22. In our view, the argument on ‘exceptional circumstances’ and the test of “*honest and reasonable belief*” as provided under clause 4.5 of the PCB Anti Doping Regulations places the burden on Shoaib Akhtar and Muhammad Asif to prove the following: (i) that use of supplements can be the cause of positive testing for 19-Norandrosterone; and (ii) that supplements are not included in the list of banned substances as prescribed by the PCB and/or that PCB has not warned them against the use of supplements.

23. In the submissions made by the PCB Counsel, Mr. Mark Gay, and the case law referred, it has been stated that the issue of contamination of nutritional supplements is so significant and widespread that international sports bodies strongly warn against the use of supplements by athletes. Contamination and mislabeling of supplements is such an accepted phenomenon that international sporting bodies now warn athletes that nutritional supplements may include prohibited substances even though the same are not included on the label and therefore may result in positive testing. The finding of the Court of Arbitration for Sport in the case of H. Knauss v. FIS, CAS 2005/A/847 illustrates the point vividly when it records, “*The Appellant ingested a nutritional supplement which, according to the parties uncontested and plausible submissions, was the cause of the Appellant’s adverse analytical findings. The Appellant consumed said product despite the express warnings of the national and international sports federations, the Austrian Anti-Doping Committee and*

*WADA, warnings which clearly and repeatedly over the past years have emphasized the risk of contamination and/or mislabeling in nutritional supplements.”*⁵

24. Even professional trainers of the prestigious Association of Tennis Players (ATP) were not immune from stumbling over the use of nutritional supplements. In 2004, ATP Trainers handed out supplements to professional tennis players, which caused them to test positive for 19-Norandrosterone. The dangers lurking in the use of supplements gained new notoriety when professional tennis player Greg Rusedski tested positive for 19-Norandrosterone in 2004 after ingesting supplements handed over to him by the ATP trainers. Sufficient material has been brought before this Appeals Committee to conclude that nutritional supplements used by Shoaib Akhtar and Muhammad Asif, which we may add are well known branded supplements readily available in the open market, could have contained an undeclared prohibited substance that resulted in their positive test for 19-Norandrosterone.

25. The next question which requires consideration is whether Shoaib Akhtar and Muhammad Asif can be said to have had an “*honest and reasonable belief*” that the nutritional supplements being ingested by them did not contain any banned substance. According to Mr. Mark Gay, the definition of “*exceptional circumstances would embrace circumstances where a player honestly and*

⁵ Although the WADA Code incorporates a strict liability rule on issue of doping offences, it is important to at least take note of the clarification provided in the illustrations to the WADA Code article 10.5. According to such illustration, the WADA Code seeks to deny the defence of ‘No Fault or Negligence’ to athletes testing positive due to use of supplements, because, “*athletes have been warned against the possibility of supplement contamination.*”

reasonably took something believing it to be clean, but found out subsequently that it was contaminated.” We are in agreement with this view. According to this Appeals Committee, the answer to the aforesaid question of honest and reasonable belief would turn on whether nutritional supplements were included in the list of banned substances provided under the items listed in PCB’s Anti Doping Regulations or, whether PCB at any stage even warned the Players against the use of supplements.

26. The PCB’s Anti Doping Regulations although clearly specify the limit of 2 ng/ml for 19 Norandrosterone, but are remarkably silent on the issue of supplements. The only document brought on the record of the ADC which clearly warns players as to nutritional supplements is the publication titled “Athlete Guide”. The Athlete Guide is a WADA publication and provides inter-alia that *“Extreme caution is recommended regarding supplement use. It is WADA’s position that a good diet is of utmost importance to athletes. The use of dietary supplements by athletes is a concern because in many countries the manufacturing and labeling of supplements may not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under anti doping regulations. A significant number of positive tests have been attributed to the misuse of supplements and taking a poorly labeled dietary supplement is not an adequate defence in a doping hearing.”*

27. The PCB’s Anti Doping Control Officer Dr. Sohail Saleem, was specifically asked by the ADC as to how many times were the players advised on Anti Doping Regulations in the past year. He answered, not even once. Dr. Sohail

Saleem stated that in 2002, an Urdu translation of the Anti Doping Regulations drafted by Dr. Meesaq Rizvi was distributed to the then players of the Pakistan Cricket Team. Although, there is no evidence that such translation was given to Shoaib Akhtar, the same is inconsequential as we have seen that such translation also does not contain any warning or caution regarding supplements. Moreover, no PCB official has stated that the 2002 lecture on anti doping which was apparently attended by Shoaib Akhtar warned players with regard to supplements. In fact, Dr. Sohail Saleem, PCB's Anti Doping Officer has candidly admitted before the ADC that he could not say if the players were told about the use of supplements not on the prohibited list.

28. As stated above, the Athlete Guide clearly contains strong warnings against the use of supplements. Therefore, it is important to consider whether the Appellants were made aware of the Athlete Guide. According to the ADCO, Dr. Sohail Saleem's statement before the ADC, when he received the 2006 Prohibited List and the Athlete Guide from the ICC, he handed 24 copies to the Team Physiotherapist Darryn Lifson for distribution to each player, but was unaware whether Mr. Lifson actually gave the copies as directed. This Athlete Guide in our mind is a critical document, in so far as it is the only document produced before us which contains warnings on supplements.

29. The Pakistan Cricket Team Physiotherapist, Darryn Lifson stated before the ADC that "*Prior to the team going on the England tour, in about August 2004 [date is apparently incorrectly recorded], at a practice session in the Gaddafi*

Stadium, Dr. Sohail Saleem handed over to me WADA publications ‘the Athlete Guide’ and ‘2006 Prohibited List’ and asked me to distribute the same to the players. I told the players that they should take a copy of these publications and study them...I cannot remember whether Shoaib Akhtar or Muhammad Asif were present at that time and took their copies” (emphasis is ours). Darryn Lifson conceded that “I have myself not given any formal lecture to the players about the drugs or the Anti Doping Regulations. It is within the scope of my duties to advise them about drugs and the Anti Doping Regulations. I have discharged this duty in the manner described above and by telling the players not to take anything that is banned or prohibited. As regards the use of dietary supplements, this is part of scope and duties of the trainer Murray Steveson.”

30. The Pakistan Cricket Team’s Fitness Trainer, Murray Steveson stated before the ADC that “I tell players about the diet that they should follow but not about any dietary supplements for which I have no responsibility. I have no responsibility in matters relating to drug and anti drug regulations.”

31. When Pakistan Team Coach Robert A. Woolmer, was shown the WADA 2006 Prohibited List and the Athlete Guide by the ADC, he did not recognize the same as having been provided to him or the players.

32. In view of the above, it is plainly evident that neither Shoaib Akhtar nor Muhammad Asif were ever warned or cautioned against taking supplements. Only recently, in August 2006, when Muhammad Asif himself volunteered to

Darryn Lifson that he was taking supplements, was he told to discontinue the same. The vast record of the proceedings before the ADC and this Appeals Committee establishes that Shoaib Akhtar and Muhammad Asif were never advised against taking supplements, nor were they even provided with any international or local publications warning them against the use of supplements. Hence, this Appeals Committee by a majority of 2 to 1 is of the considered view that Shoaib Akhtar and Muhammad Asif have successfully established that they held an honest and reasonable belief that the supplements ingested by them did not contain any prohibited substances. Accordingly, the Appellants have met the test of 'exceptional circumstances' as laid down under clause 4.5 of the PCB Anti Doping Regulations. This Appeals Committee therefore holds that Shoaib Akhtar and Muhammad Asif cannot be deemed to have committed a doping offence under clause 4.1 of the PCB Anti Doping Regulations. The ban and punishment imposed by the ADC Decision dated 1.11.06 is hereby set aside as being contrary to the provisions of clause 4.5 of the PCB Anti Doping Regulations.

Karachi.

Dated: 5 December 2006

Fakhruddin G. Ebrahim
(C h a i r m a n)

Hasib Ahsan
(M e m b e r)

The Member, Dr. Danish Zaheer, has expressed a dissenting opinion which is attached herewith.