



**BEFORE THE
MONOPOLY CONTROL AUTHORITY
IN THE MATTER OF
M/s. International Brands (Pvt.) Limited.
(File No. 358/INF/AC(R)/MCA/2007)**

Present:

Mr. Khalid A. Mirza
Chairman

Raja Raza Arshad
Member

Abdul Ghaffar
Member

Dates of hearing:

August 22 &
September 5, 2007

Present for the Respondent:

Mr. Abdul Rehman Memon
& Mr. S. M. Nasir Raza,
Directors & Mr. Mehmood
A. Razzak, Partner of M/s
Mahmood Idrees Qamar &
Company, Chartered
Accountants

ORDER

1. M/s International Brands (Pvt.) Limited, is a private limited company, engaged in trading and distribution of consumer goods, pharmaceutical and allied products, toiletries and sale related services of telecommunication products, is an undertaking (hereinafter referred to as the “undertaking”) within the meaning of section 2(1)(m) of the Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance 1970 (hereinafter referred to as the “Ordinance”). The total value of Assets of the undertaking, as per its annual audited accounts, for the year ended on June 30, 2006, was 4.305 billion rupees and an undertaking, which is not owned by a public limited company and the total value of its assets is not less than four billion rupees, *prima facie*, constitutes undue concentration of economic power under Section 4(a)(i) of the Ordinance which is prohibited under the provisions of Section 3 of the Ordinance.

2. The undertaking was, therefore, served with Show Cause Notice No 06 of 2007-08 dated July 23, 2007 under Section 11 read with Section 4(a)(i) of the Ordinance and it was required to respond to the Show Cause Notice by August 07, 2007. In response to the Show Cause Notice the Accountants of the undertaking, M/s Mahmood Idrees Qamar & Co., vide their letter dated August 06, 2007 contended that the value of assets as defined under Section 2(1)(o) of the Ordinance is at cost less depreciation at the normal rates at which depreciation is calculated for the purpose of assessment of income tax. They further contended that as per Note 10 of the financial statements for the year ended June 30, 2006 the total value of assets of the undertaking, as defined under the Ordinance, is Rs 137.34 million and not Rs 4.05 billion.

3. The undertaking was sent a reply vide Authority's letter dated August 10, 2007. The Authority drew attention to the Judgment of the Honorable Lahore high Court, Lahore, in the matter of M/s Sanaullah Woolen Mills vs. Monopoly Control Authority, which ruled that "assets", meant both fixed assets and current assets. The relevant portion of the Judgment is reproduced below:

"15. Having considered the meaning of assets and the manner it is understood in audit and accountancy practice business and companies, it can safely be stated that the word asset means and includes fixed assets and current assets. The Ordinance is an economic legislation intended to create an economic system which should not result in the concentration of economic power, monopolization and creating unreasonably restrictive trade practices. To restrict the meaning of assets to fixed assets only will amount to putting artificial barriers to the real meaning while determining the 'value of assets'. If current assets are excluded the effect and operation of the Ordinance shall be reduced to a narrow and limited sphere. This will nullify the object to the Ordinance."

4. It was also pointed out to the undertaking that subsequently M/s Sanaullah Woolen Mills filed an appeal in the Honorable Supreme Court of Pakistan, against the Order of the Honorable Lahore High Court. Lahore. The Supreme Court held:

"Taking the entries into consideration on the assets side, is in no way different from singly valuing the assets of the undertaking according to the definition clause of the Ordinance. The purport is in both cases to indicate the assets of the undertaking.

In the result and for the reasons stated above, the High Court was correct in holding, as it did, that the definition clause included not only fixed assets but also current assets as the assets in their entirety have to be taken into account which is the sole criterion for determining the economic power of the undertaking, and, therefore, no exception can be taken to the notices issued by the Authority”.

5. For disposal of the Show Cause Notice the matter was fixed for hearing on August 22, 2007 at 1.00.p.m. at Karachi, vide Hearing Notice dated August 10, 2007.

6. On the date of hearing, no one appeared before the Authority on behalf of the undertaking. The Authority took a serious view of non-compliance with its Notice by the undertaking. However, since inclement weather conditions in Karachi had rendered traveling by road both difficult and risky, the Authority decided to forbear and to provide the undertaking another opportunity of being heard on September 5, 2007 at Islamabad.

7. On September 05, 2007, Mr. Abdul Rehman Memon & Mr. S. M. Nasir Raza, Directors and Mr. Mehmood A. Razzak, Partner of M/s Mahmood Idrees Qamar & Company, Chartered Accountants, appeared before the Authority on behalf of the undertaking. They admitted that their original submissions were erroneous since they had not adverted to the Supreme Court’s ruling in Sanaulla Woolen Mills Ltd & Another vs. MCA in the matter. They agreed that under the provisions of Section 4(a)(i) of the MRTPO, 1970, the undertaking is required to be converted into a public limited company and requested for grant of time upto December 31, 2007 but were not able to provide any cogent reasons for this.

8. The Authority after considering the facts of the case and submissions of the representatives of the undertaking decided to give them time upto October 15 this year to convert the undertaking into a public company.

(Khalid A. Mirza)
Chairman

(Raja Raza Arshad)
Member

(Abdul Ghaffar)
Member

Islamabad the September , 2007