



**BEFORE THE
MONOPOLY CONTROL AUTHORITY
IN THE MATTER OF
M/s. Nawabsons Laboratories (Pvt.) Limited.
(File No. 344/INF/LO/MCA/2007)**

Present: Mr. Khalid A. Mirza
Chairman

Raja Raza Arshad
Member

Abdul Ghaffar
Member

Dates of hearing: August 16 & 27, 2007

Present for the Respondent: Mr. Asghar Hamid
Bhutta, Advocate
Supreme Court, Mr.
Akhter Hussain, Director.

ORDER

1. M/s. Nawabsons Laboratories (Pvt.) Limited, engaged in the manufacture and sale of pharmaceutical 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 audited accounts, for the year ended June 30, 2006, was Rs 72.838 million. Undertakings with assets of total value not less than fifty million rupees and not owned by a public limited company are liable for registration under Section 16(1)(d) of the Ordinance

2. The Monopoly Control Authority (hereinafter referred to as the “Authority”), asked the undertaking, vide letter No. 344/INF/LO/MCA/2007 dated February 12, 2007, to apply for registration, under Section 16 (1)(d) of the Ordinance but it failed to do so.

The undertaking was sent a reminder vide letter of even number dated March 07, 2007, in response to which the undertaking, vide its letter dated March 13, 2007, addressed to the Secretary Pakistan Pharmaceutical Manufacturer's Association (hereinafter referred to as the "PPMA") and copy endorsed to the Authority, contended that the Pharmaceutical Sector is not covered under the provisions of the Ordinance because all of their functions are controlled by the Federal Ministry of Health, under the Drugs Act, 1976 and Rules framed thereunder.

3. The undertaking was informed, about the law and rules, requiring an undertaking, individual or agreement for registration under the provisions of different clauses of sub-section (1) of Section 16 of the Ordinance, vide letter of even number dated March 20, 2007. In response to the Authority's letter the undertaking, vide its letter dated March 27, 2007, addressed to Chairman PPMA and copy endorsed to the Authority, again contended that the provisions of the Ordinance were not applicable to it. It also requested the PPMA for taking up the matter with the Authority.

4. The undertaking was once again reminded to apply for registration vide letter of even number dated April 03, 2007, but it requested, vide letter dated April 10, 2007 for keeping the matter pending up till meeting of the delegation of the PPMA with the Registrar of the Authority. A meeting of the PPMA delegation was held with the Registrar of the Authority on April 19, 2007 at Karachi and the delegates were informed about the requirements of registration of undertakings and their agreements under the provisions of Section 16 of the Ordinance. The PPMA delegation assured the Registrar that their member undertakings shall apply for registration promptly in future. The undertaking was informed, vide letter of even number dated May 02, 2007, about the outcome of the meeting of the PPMA delegation with the Registrar of the Authority.

5. The undertaking, vide its letter dated May 08, 2007 again stated that it had not been informed about the outcome of the meeting. It was informed, vide letter dated May 14, 2007, that the outcome of the meeting of the PPMA delegation had already been brought to its notice, vide letter dated May 02, 2007. In response, the undertaking, vide its letter dated May 18, 2007, suggested that the Authority should take up the issue with PPMA instead of contacting its members individually.

6. Since the undertaking willfully failed to apply for registration, it was, therefore, served with Show Cause Notice No. 58 of 2006-07 dated June 11, 2007 under Section 19 of the Ordinance. In response to the Show Cause Notice, the undertaking vide its letter dated June 23, 2007 submitted:

“It have already taken up the mater with PPMA requesting them to have an express authority from the Federal Ministry of Health Islamabad that they shall be lessening their control over the Pharmaceutical Industry after having accepted the interference by your authority, the reply of which is awaited and as soon as we get positive reply from them we will be taking up the matter in order to avoid parallelism between the two authorities because the field of standardized products are controlled by the Federal Ministry of Health who are competent to establish the necessary framework by amending their rules and regulation”.

7. For disposal of the Show Cause Notice the matter was fixed for hearing on August 16, 2007 at Lahore, vide Hearing Notice dated August 08, 2007.

8. On the date of hearing, Mr. Asghar Hamid Bhutta, Advocate, Supreme Court, and counsel of the undertaking, appeared before the Authority and requested for adjournment to another date as he had not done the necessary preparation to be able to represent the undertaking. The Authority expressed its strong reservations and displeasure over this untoward situation but decided to adjourn the matter to be heard on August 27, 2007, in Islamabad.

9. On August 27, 2007, Mr. Akhter Hussain, Director of the undertaking, alongwith Mr. Abdul Hamid Bhutta, Advocate, Supreme Court, and counsel of the undertaking, appeared before the Authority and argued the case. The counsel contended that the Pharmaceutical Sector is being regulated by Ministry of Health under Drugs Act, 1976, which is a special law and the Ordinance being general law cannot override that law.

10. The Authority informed the representatives of the undertaking that the undertaking is required to be registered under Section 16(1)(d) of the Ordinance. The Section provides that in order that information relevant to the performance of its functions under the Ordinance is available to the Authority, the undertakings, individuals and agreements as specified in this Section shall be registered with the Authority. The

modus operandi for registration is prescribed in Rule 10 of the Monopoly Control Authority Rules, 1971. Moreover, the functions stipulated by the Ordinance pertain to undue concentration of economic power, unreasonable monopoly power and unreasonably restrictive trade practices, which are not covered under the provisions of the Drugs Act, 1976 or regulated by the Ministry of Health.

11. The Authority after considering the facts of the case, submissions of the authorized representatives, decided to impose a penalty of Rs 100,000/- on the undertaking and directed the representatives to get the undertaking registered within ten days from the date of the hearing. The undertaking is also required to deposit the penalty under the relevant head of account within fifteen days from the date of receipt of the Order.

(Khalid A. Mirza)
Chairman

(Raja Raza Arshad)
Member

(Abdul Ghaffar)
Member

Islamabad the September _____, 2007