



**BEFORE THE
MONOPOLY CONTROL AUTHORITY**

**IN THE MATTER OF
M/s. Gharibwal Cement Limited
(File No.2(287)/Enq/CCAO-R&I/MCA/2002)**

Present:	<p>Mr. Khalid A. Mirza Chairman</p> <p>Raja Raza Arshad Member</p> <p>Abdul Ghaffar Member</p>
Date of hearing:	May 15, 2007
Present for the Respondent:	<p>Mr. Atiq-Ur-Rehman, Deputy Manager Finance</p>

ORDER

1. M/s. Gharibwal Cement Limited, engaged in manufacture and sale of Cement, is an undertaking, (hereinafter referred to as the ‘undertaking’) as defined under Section 2(1)(m) of the Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance, 1970 (hereinafter referred to as the ‘Ordinance’).

2. The Monopoly Control Authority (hereinafter referred to as the ‘Authority’) passed Order dated March 9, 2007, under Section 19 of the Ordinance, and imposed a penalty of Rs.100,000/- on the undertaking. The undertaking was required to deposit the penalty under the relevant head of account and to furnish original paid challan to the Authority within fifteen days from the date of receipt of the Order. The undertaking was also required to supply the requisite information within that time frame. In case of failure

action was required to be initiated against the undertaking under sub-Section (2) of Section 19 of the Ordinance.

3. In response to the Order of the Authority dated March 9, 2007 the undertaking vide its Appeal dated March 24, 2007 submitted:

“1. That this honourable Authority has passed Order u/s 19 of Monopolies & Restrictive Trade Practices (Control & Prevention) Ordinance, 1970 whereby Gharibwal Cement Limited has been asked to pay into government treasury a sum of Rs.100,000/- on account of alleged default in submission of certain information.

2. That the penalty imposed is harsh and unjustified on account of following grounds:

- a. There is no lawful service of Order of the Authority dated 09-03-2007 and there can be no presumption about service of Order while alleging default in making compliance.*
- b. During the material period, the addressee of Order i.e. Gharibwal Cement Limited, had been going under a turmoil as the production of cement was suspended resulting into lay off of workers / officials which brought confrontation with trade bodies. The addressee of the Order therefore could not do justice with routine business of the company including making compliant to the statutory bodies.*
- c. That addressee of Order i.e. Gharibwal Cement Limited is facing great liquid crunch and is running on the monies borrowed from financial institutions hence the volume of penalty incidentally the maximum leviable is very harsh upon the addressee of the Order.*

It is therefore prayed that the Order dated 09-03-2007 imposing penalty of Rs.100,000/- u/s. 19, may please be recalled and the penalty be set aside or alternatively the amount of penalty may kindly be reduced to a token

amount only. It is further prayed that a period of one month may please be allowed to make compliance to the requisition of the authority.”

4. In response to the Appeal of the undertaking dated March 24, 2007 it was informed that it failed to respond to the Order of the Authority dated May 8, 2006. It also failed to respond to the Show Cause Notice No.25 of 2006-07 dated February 07, 2007 and to appear before the Authority on the date of hearing on February 28, 2007. The Authority after considering the facts of the case concluded that non-supply of the information even after issue of Show Cause Notice, and no-appearance before it on the date of hearing by the undertaking was willful. The Authority, therefore, decided the matter ex-parte and imposed a penalty of Rs.100,000/- on it. The Order dated May 8, 2006 and Show Cause/ Hearing Notice dated February 7, 2007 were dispatched to the undertaking on the same address on which the Order dated March 9, 2007 was posted. The Order of the Authority dated March 9, 2007 was based on facts and is, therefore, justified.

5. The undertaking once again, vide its Appeal dated April 09, 2007 submitted:

- “1. *That a petition was filed before this honourable Authority seeking pardon of delay in complying to the Order of the Authority and also seeking waiver/reduction of penalty imposed at Rs.100,000/-*
2. *That the decision on the petition has now been communicated by the Registrar of Monopoly Control Authority whereby Order of the Authority dated 09-3-2007 has been held to be justified.*
3. *That the Order of this honourable Authority was not challenged through aforesaid petition which was filed only to seek pardon on the ground that the compliance by the due date was beyond the control of the addressee of the Order due to major administrative problems and closing down of the production process of the unit.*

It is therefore reiterated that the penalty imposed at Rs.100,000/- may please be waived or be reduced to the token amount as may deem fit by this Authority and the petitioner may now be allowed to file the requisite statement to the registry of this honourable Authority.”

6. The Authority decided to provide an opportunity of being heard to the undertaking and fixed the matter for hearing on May 15, 2007 at Islamabad.

7. On May 15, 2007, Mr. Atiq-Ur-Rehman, Deputy Manager Finance of the undertaking, appeared before the Authority and argued the case. He submitted that the Authority's Order dated May 8, 2006 and Show Cause/Hearing Notice dated February 07, 2007 were received by the undertaking. He further submitted that the Undertaking was going under turmoil as the production of cement was suspended resulting into lay off of workers/officials and, therefore, could not respond to the Authority's correspondence. The Authority pointed out that the Undertaking also failed to appear before it on the date of hearing on Feb, 28, 2007. He submitted that the undertaking was busy in conversion of the plant from wet to dry process and installation of a new plant. The Authority pointed out that the Undertaking did not take any responsibility to respond to its correspondence and therefore the same remained unattended. The Authority also pointed out that the Undertaking at one hand was converting its plant from wet to dry process and was also installing another new plant and on the other hand claimed that it was facing great liquid crunch and was running on the moneys borrowed from the financial institutions. Its statement that the penalty levied on it was very harsh was not based on the facts. The representative submitted that infact the amount of penalty was not important for the undertaking, however harmful for its reputation. The Authority pointed out that the undertaking failed to respond to its Order and Show Cause/Hearing Notice and also failed to appear before it on the date of Hearing, its Order dated March 09, 2007 was justified.

8. The Authority, therefore, directs the undertaking;-
 - i) to pay the penalty , under the relevant head of account, within seven days from the date of receipt of this Order; and
 - ii) to furnish the information for the outstanding quarters within the above time frame.

9. The Authority also directs that if the undertaking failed to comply with the above directions, within the given time frame, action shall be initiated against it under sub-section (2) of Section 19 of the Ordinance.

(Khalid A. Mirza)
Chairman

(Raja Raza Arshad)
Member

(Abdul Ghaffar)
Member

Islamabad the May _____, 2007

12. Order, Show Cause/ Hearing Notice were received by the undertaking but the same were not brought to the notice of the management by its employees. The undertaking, therefore, could not respond to the Order and Notice and also could not appear before it on the date of hearing. It only become aware of the facts when it received the Order of the Authority dated March 9, 2007. He further submitted that the undertaking had supplied the requisite information after receipt of the Order. The Authority pointed out that the Order dated May 8, 2006, Show Cause/Hearing Notice dated February 7, 2007 were addressed to the Chief Executive of the undertaking and not to its employees. The undertaking was required to respond to the Order and the Notice. The representative apologized and assured compliance with the Authority's direction promptly in future.

7. The Authority directed the representative to comply with the Order dated March 9, 2006 immediately and to provide paid challan alongwith outstanding information within two days.

-Sd-

(Khalid A. Mirza)
Chairman

-Sd-

(Raja Raza Arshad)
Member

-Sd-

(Abdul Ghaffar)
Member

Islamabad the May _____, 2007