



**BEFORE THE
MONOPOLY CONTROL AUTHORITY
IN THE MATTER OF
M/s. Murtaza Construction Corporation (Pvt) Limited
&
M/s. Zaver Petroleum Corporation Ltd.
(File No. 52/(RO-IV)/R&I/MCA/2005)**

Present:	Mr. Khalid A. Mirza Chairman
	Raja Raza Arshad Member
	Abdul Ghaffar Member
Dates of hearing:	November 6, 2006 & November 10, 2006
Present for the Respondent:	Mr. Kalim Ashraf, ACA & Khwaja Altaf-ur-Rehman, Manager Finance

ORDER

1. M/s. Murtaza Construction Corporation (Pvt) Limited engaged in the business of miners, builders, contractors and engineers in Pakistan 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. M/s Zaver Petroleum Corporation Limited, engaged in the business of oil and gas exploration in Pakistan, is also an undertaking and associated undertaking of the undertaking as defined under Section 2(1)(b) of the Ordinance (hereinafter referred to as the ‘associated undertaking’).

3. The undertaking granted interest free loan amounting to Rs 60.784 million to its associated undertaking during the year ended in 2003, as per its annual audited accounts for the year ended in 2004. The undertaking was asked vide letter dated July 28, 2005 to inform about the interest rate charged on the amount due from its associated undertaking. The undertaking vide its letter dated August 10, 2005 informed that it is not the practice of the group companies to charge interest on inter-company accounts. The undertaking and the associated undertaking were, therefore, served Show Cause Notices No 19 & 20 of 2005-06 dated October 3, 2005 respectively. They were required to respond to the Show Cause Notices in writing by October 22, 2005. The undertaking failed to respond to the Show Cause Notice, whereas, the associated undertaking made a request for grant of extension in time for submission of reply to the Show Cause Notice and the Authority, acceding to its request, allowed it time but it failed to respond to the Show Cause Notice within the given time frame.

4. For disposal of the Show Cause Notices, the matter was fixed for hearing on November 6, 2006 at Islamabad vide hearing notices dated October 19, 2006. Mr. Kalim Ashraf, ACA of M/s. Khalid Majeed Rahman Sarfaraz Raheem Iqbal Rafique, Chartered Accountants, vide letter dated November 2, 2006 stated that the Show Cause Notice was neither available with them nor the company. He further stated that they had been instructed by their client to request the Authority for providing them a copy of the Show Cause Notice. A copy of the Show Cause Notice was supplied to the accountants of the associated undertaking vide letter dated November 3, 2006.

5. On the date of hearing Mr. Kalim Ashraf ACA, appeared as an authorized representative of the undertaking, M/s. Zaver Petroleum Corporation Limited and submitted that their firm was very recently appointed by the undertaking as consultants and on their request the Authority was kind enough to provide them a copy of the Show Cause Notice on 3-11-2006. He further submitted that he had asked the undertaking for supply of detailed documents for arguments. He presented a written request for a short adjournment and the Authority, acceding to his request, adjourned the matter for Friday, November 10, 2006 at 9.00 a.m.

6. No one appeared, before the Authority, on behalf of M/s. Murtaza Construction Corporation (Pvt) Limited. The Authority pointed that from the plain reading of the law both the undertakings were in default. However, it would like to provide an opportunity

of being heard to both undertakings so that they may explain or clarify their position. The representative of M/s. Zaver Petroleum Corporation Ltd assured that both the undertakings will attend the hearing on November 10, 2006 (albeit he was not in a position to speak for M/s. Murtaza Corporation).

7. On November 10, 2006, Mr. Kalim Ashraf ACA alongwith Khwaja Altaf-ur-Rehman, Manager Finance, of the undertaking M/s. Zaver Petroleum Corporation Ltd appeared as an authorized representatives. Mr. Muhammad Rafique, General Manager Finance, Hashwani Hotels Ltd appeared as an authorized representative on behalf of M/s. Murtaza Construction Corporation (Pvt) Limited.

8. Mr. Kalim Ashraf argued the case. He submitted that in both the undertakings the major share holder is M/s. Hashoo Holdings Ltd. Its shareholding in M/s. Murtaza Construction Corporation (Pvt) Limited is 99.0067% and in M/s. Zaver Petroleum Corporation Ltd 34.9529%. He also provided the shareholding pattern of both the undertakings for the year ended in 2004. The Authority pointed out that the interest free loan was granted by M/s. Murtaza Construction Corporation (Pvt) Limited to M/s. Zaver Petroleum Corporation Ltd in 2002, therefore they are required to provide shareholding pattern of both the undertakings (including shareholding particulars of corporate shareholders) for that year. The representatives promised to provide the same in a couple of days.

9. The Authority directed the representative of M/s. Murtaza Construction Corporation (Pvt) Limited for providing the following further information by Friday, November 17, 2006: -

- i). the business carried out and shareholding pattern of M/s. Hashoo Holdings Ltd during the years 2002, 2003 & 2004;
- ii). percentage of holding of M/s. Hashoo Holdings Ltd, in the undertakings, mentioned as common shareholders in M/s. Murtaza Construction Corporation (Pvt) Limited and M/s. Zaver Petroleum Corporation Ltd, and
- iii). terms of the loan and mode of its disbursement alongwith necessary bank statement evidencing that.

10. The Authority also directed the representatives of M/s. Zaver Petroleum Corporation Ltd to provide the following information by the above referred time frame:

- i). annual audited accounts for the years 2002, 2003 & 2004, and
- ii). mode of receipt of loan alongwith bank statement showing the entry of receipt.

11. The undertaking and the associated undertaking supplied the requisite information. The information has been examined and found that M/s. Hashoo Holdings (Pvt) Limited in which the individual Mr. Sadruddin Hashwani and his son Mr. Murtaza Hashwani are directly holding over 86% shares, while remaining shares are held by private limited companies which are also directly or indirectly held and controlled by Mr. Sadruddin Hashwani and Murtaza Hashwani. In fact the Chief Executive of M/s. Hashoo Holdings (Pvt) Limited, Mr. Sadruddin Hashwani and his son Mr. Murtaza Hashwani alongwith their lineal ascendants and descendants are virtually and factually holding 100% shares of all the group companies including M/s. Murtaza Construction Corporation (Pvt) Limited and M/s Zaver Petroleum Corporation Ltd.

12. The Authority considered that net impact of interest free loan extended by the undertaking M/s. Murtaza Construction Corporation (Pvt) Limited to its associated undertaking M/s. Zaver Petroleum Corporation Ltd had been neutralized as the cost and benefit of the transaction remained within the family, broadly defined as an “individual” under Section 2(2) of the Ordinance. Since there is no minority share holder in the lending company whose interest had been prejudiced by the dealing between the undertaking and the associated undertaking, the Authority vacates Show Cause Notices No. 19 & 20 of 2005-06 dated October 3, 2005 served on M/s. Murtaza Construction Corporation (Pvt) Limited and M/s Zaver Petroleum Corporation Ltd respectively.

-Sd-
(Khalid A. Mirza)
Chairman

-Sd-
(Raja Raza Arshad)
Member

-Sd-
(Abdul Ghaffar)
Member

Islamabad the January ,2007