



**BEFORE THE  
MONOPOLY CONTROL AUTHORITY  
IN THE MATTER OF  
M/s. Polyfine Chempharma (Pvt.) Limited  
(File No. 1(85)/AR/AGR/MCA/2006)**

Present:	Mr. Khalid A. Mirza Chairman
	Abdul Ghaffar Member
Date of hearing:	April 26, 2007
Present for the Respondent:	Mr. Muhammad Haroon, Advocate.

**ORDER**

1. M/s. Polyfine chempharma (Pvt.) Limited, engaged in the manufacture and sale of pharmaceutical products, 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'). The Monopoly Control Authority hereinafter referred to as the 'Authority') asked the undertaking to supply a copy of its distributorship/dealership agreement executed by it with its distributors/dealers alongwith a copy of annual audited accounts for the year ended in 2006, vide letter dated November 20, 2006. In response, thereof, M/s Munawar Associates, Chartered Accountants, on behalf of the undertaking, vide their letter dated December 14, 2006 contended that being a pharmaceutical company regulated by the Ministry of Health, the provisions of the Ordinance were not applicable to the undertaking. The actual position as per Law was conveyed to the undertaking vide the Authority's letter dated December 27, 2006, and it was advised to supply the requisite information but it failed to do so. The undertaking was reminded vide letter dated January 18, 2007, and in response thereof, the undertaking's accountants again contended that as per the information received from the Chief Executive of the undertaking the provisions of Sections 2(1)(m), 16 and 19 of the Ordinance were not applicable to the undertaking.

2. Since the undertaking failed to supply the requisite information, Show Cause Notice No 29 of 2006-07 dated February 7, 2007 was, therefore, served on it. The undertaking was required to show cause in writing by February 22, 2007. In response to the Show Cause Notice, counsel of the undertaking, vide letter dated February 13, 2007 stated that the Authority was established for the check and balance of the stocks of undertakings, to control the prices of products, to discourage the monopoly of any industry in the market, and requested that he be educated as to whether he was right or not in contending this. He further stated that the undertaking did not have distributors of any kind and that it was selling its products from the factory gate. The text of this letter is reproduced below:

*“With reference to your show cause notice #.29 of 2006-07, dated 10/02/2007, file #.1(85)/AR/AGR/MCA/2006 on the subject noted above:-*

*It is requested in your kind honour that according to the knowledge of the management of the above said unit “the Monopoly Department is established for the check and balances of the stocks of the industries to control the prices of the product to discourage the monopoly of any industry in the market”. You are requested to educate us that it is right or not. If it is right than the above said industry have no any kind of huge closing stock in the industry, because they cannot hold the stock. Secondly they does not fix the price of their product as the price of the products have been fixed by the Ministry of Health. So, this is not the task of the Industry but it is under the task of the Ministry of Health, Block ‘C’, Pak Secretariat, Islamabad.*

*Moreover, we have already requested you that we have no any kind of distributors or dealers for our product and we are selling our product from the factory gate. However, you are requested to find enclose here with the Audited Financial Statement of our Industry for the year ended June 30, 2006.*

*So; we are also requesting the Chairman CBR for such of your correspondence. Because our client has never receive any such letters and notices in past and this is the first time in the history of the industry that our said client is under pressure due to the said huge correspondence of the Monopoly Department. It is also requested that why your goodself is misguiding any representative coming to you’re your office from the industry that the department should impose a huge penalty in case of non-compliance of the notices.*

*So, you are requested to guide the above said client and not to pressurize or torture them.”*

3. In response to the undertaking’s letter dated February 13, 2007 the Authority, once again, clarified that the information required to be provided under Section 21 of the Ordinance did not apply to only those undertakings which are defined under Section 25 *ibid*. The Authority also maintained that it was not established for “check and balance of

stocks “of the industry or “to control prices of product” and further that the Authority’s functions are defined in the Ordinance which is available on its website.

4. Meanwhile, for disposal of the Show Cause Notice the Authority fixed the matter for hearing on April 26, 2007 vide Hearing Notice dated April 11, 2007.

5. In response to the Hearing Notice the counsel of the undertaking vide his letter dated April 14, 2007 submitted as under:

*“It is requested in your kind honors that as per your last notice 1(85)/AR/AGR/MCA/2006 Dated 7-2-2007 we have already submitted you the audited financial statements and Power of Attorney respectively of our above mentioned client accordingly.*

*So, now (For information purpose of the client, as per instruction of the client) you are requested to inform the above mentioned client that why he or his representative should attend the office of the Authority for hearing regarding what matter or case.*

*Moreover, if the said notice is regarding the registration, then, our client has already written a letter to CBR house Islamabad for the purpose of confirmation & clarification regarding the matter of registration and we are still waiting for their response. All the necessary details and documents have been submitted you already for your kind consideration. So, as a matter of fact and matter of Law, the above discussed notice may become illegal as the position of the client is very much clear to your good-self.”*

6. On the date of hearing, Mr. Muhammad Haroon, Advocate and counsel of the undertaking appeared before the Authority and argued the case. He submitted that the Authority could not call for any information from the undertaking as the provisions of the Ordinance are not applicable to it since it is controlled/regulated by the Ministry of Health. Moreover, the undertaking had not executed any distributorship agreement and its medical representatives generated the demand for its products. He presented a letter of the undertaking, dated April 24, 2007 to that effect - this is, of course, somewhat different from sale of products at the factory gate as stated in their earlier letter dated February 13, 2007.

7. The Authority pointed out that the statement of counsel was not consistent with submissions of the undertaking as contained in its letter dated February 13, 2007.

8. The Authority also asked counsel to clarify his position with regard to the reference made to the CBR, mentioned in his letters dated February 13, 2007 and April 14, 2007 and further, to explain what pressure or torture had been applied to his client as stated in his letter dated February 13, 2007. The counsel did not respond to the Authority’s queries.

9. The Authority is also constrained to observe that counsel was either uninformed or ill-informed as to the contents of the Ordinance and the Rules made thereunder – otherwise he would not have made such incorrect statements. It is clear that he had come before the Authority without even the minimal preparation expected of legal counsel. In view of that obvious misstatements made by counsel in his letter dated February 13, 2007, the Authority feels it has no alternative but to refer the matter to the Pakistan Bar Council for such action as may be deemed appropriate.

10. The Authority, after considering the facts of the case, submissions of counsel and the fact that the undertaking failed to supply the requisite information even after issue of Show Cause and Hearing Notices, concluded that its default was willful and imposed a penalty of Rs 100,000/- (Rupees One Hundred Thousand) on it. The undertaking is 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 is also required to supply the requisite information within that time frame. In case of failure, action shall be initiated against the undertaking under sub-section (2) of Section 19 of the Ordinance.

-Sd-  
(Khalid A. Mirza)  
**Chairman**

-Sd-  
(Abdul Ghaffar)  
**Member**

**Islamabad May ,2007**