



**BEFORE THE
MONOPOLY CONTROL AUTHORITY**

**IN THE MATTER OF
M/s. Universal Tobacco Co. (Pvt.) Limited
(File No.219/INF/LO/MCA/2004)**

Present:	Mr. Khalid A. Mirza Chairman
	Mr. Abdul Ghaffar Member
Date of hearing:	April 26, 2007
Present for the Respondent:	Mr. Muhammad Azeem, Director Finance and Syed Mehmood Shah, Secretary of the Group

ORDER

1. M/s. Universal Tobacco Co. (Pvt.) Limited, engaged in manufacture and sale of Cigarettes, 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 November 10, 2006, against the undertaking, under Section 19 of the Ordinance and imposed a penalty of Rs.100,000/- (Rupees one hundred thousand) on it. The undertaking was required to deposit the penalty under the relevant head of account within fifteen days from the date of receipt of the Order. The undertaking was also required to apply for registration under Section 16(1)(d) of the Ordinance within that time frame.

3. The undertaking neither deposited the penalty under the relevant head of account nor applied for registration under Section 16(1)(d) of the Ordinance. It was, therefore, served Show Cause Notice No.11 of 2006-07 dated December 29, 2006, under sub-Section (2) of Section 19 of the Ordinance. The Notice was received back un-delivered with the remarks of the postman on the back of the envelop "Chowkidar refuses to receive - head office sells cigarettes- thanks".

4. Company Registration Office, SECP, Peshawar was requested to inform about the present status of the undertaking and also to provide its profile and Form-A. CRO provided a copy of the annual return filed by the undertaking on the prescribed Form-A upto 30-10-2006 alongwith a copy of Form 29 filed by it on 21-03-2007.

5. Show Cause Notice No.11 of 2006-07 dated December 29, 2007 was again dispatched at the address of the Chief Executive of the undertaking vide letter dated March 28, 2007. The undertaking was required to respond to the Show Cause Notice within fifteen days from the date of its receipt.

6. In response to the Show Cause Notice, the undertaking vide its letter dated April 13, 2007, stated:-

- "1. That on the date of hearing, we applied for adjournment and we presumed that due to oversightness the same has not been taken into consideration at the time of Order.*
- 2. That the operation of the company was stopped in the year 2002 and the Factory remain closed for almost 04 years and thus according to the provision of natural justice, even otherwise imposition of the penalty, and the proceeding Order the Act seems to the un-justified.*
- 3. That we could not defend our case at the preliminary stages due to harassment of NAB Authority and initiative cases on management of company.*
- 4. That the proceeding was initiated vide letter No.219/INF/LO/MCA/2004/942 dated 06-07-2004 on the basis of balance sheet for the year ended 30-06-2003, wherein the assets of the company was declared at Rs.59.714 million.*
- 5. That due to the division among the family members the assets of the company have come down by Rs.7,451,806/- and in consequence thereof our case does not fall under the ambit of the Monopoly Control Act.*

In the circumstances mentioned hereinabove, we request your honour to kindly drop the proceeding under the Act, and wave of the penalty imposed amounting to Rs.100,000/- vide Order No.219/INF/LO/MCA/2004 dated 07-11-2006 for which we shall be grateful.

It will not be out of the way to mention that the Factory in question is closed for the last four (4) months again and may continue for any length of time. The Balance Sheet for the year ended 30-06-2006 is still under process and shall be submitted to your goodself as soon as the same is received due Audited from Auditor.”

7. For disposal of the Show Cause Notice the matter was fixed for hearing on April 26, 2007 at Islamabad, vide hearing notice dated April 16, 2007, dispatched to the undertaking through Fax and Registered A.D. Cover.

8. On the date of hearing Mr. Muhammad Azeem, Director Finance and Syed Mehmood Shah, Secretary of the Group appeared before the Authority, as authorized representatives and argued the case. They submitted that due to the division among the family members the assets of the company had come down to below the required limit of assets for registration under Section 16(1)(d) of the Ordinance. The Authority directed them to provide the latest available audited accounts of the undertaking to ascertain as to whether this was indeed the case. The Authority also held that the mere fact that the company was not operational for long periods of time was clearly irrelevant insofar as compliance with the provisions of the Ordinance was concerned. The representatives then assured compliance with the Order of the Authority dated November 10, 2006 within a week.

9. The Authority after considering the facts of the case and submissions of the representatives directed them to comply with the Order by May 05, 2007 after which the undertaking shall be liable to pay penalty of Rs.10,000/- per day from the date of default till compliance with the Order.

10. The undertaking, vide its letter dated May 04, 2007 supplied a copy of its annual audited accounts for the year ended on June 30, 2005 but it did not apply for registration under Section 16(1)(d) of the Ordinance. The total value of assets of the undertaking, as per annual audited accounts, for the year ended in 2005 was Rs.54.73 million and an undertaking the total value of assets of which is not less than fifty million rupees and also not owned by a public limited company is liable for registration under Section 16(1)(d) of the Ordinance.

11. Since the undertaking failed to comply with the Order of the Authority dated November 10, 2006, even after giving assurance during hearing on April 26, 2007, the Authority held that the default of the undertaking was willful and continuing. The Authority, therefore, imposed a further penalty of Rs.10,000/- per day on the undertaking, from the date of default till compliance with its Order dated, November 10, 2006.

-Sd-

(Khalid A. Mirza)
Chairman

-Sd-

(Abdul Ghaffar)
Member

Islamabad the May _____, 2007