



**BEFORE THE
MONOPOLY CONTROL AUTHORITY**

**IN THE MATTER OF
M/s. Adam Sugar Mills Ltd
(File No.3 (32)/REG/MCA/06)**

Present:	Syed Bilal Ahmed Chairman
	Raja Raza Arshad Member
Date of hearing:	June 28, 2006
Present for the Respondent:	Mr. Munawar Iqbal Duggal

ORDER

M/s. Adam Sugar Mills Limited (hereinafter referred to as the ‘undertaking’), was directed by the Monopoly Control Authority (hereinafter referred to as the ‘Authority’), vide its Order, dated May 9, 2006 (hereinafter referred to as the ‘Order’), to release 8.33% of its production every month, commencing from October 2005. The undertaking was, therefore, required to release 58.31% of its production by April 30, 2006 (8.33% x 7 months). Instead it released 38.19 %, which was 20.12 % less than the prescribed percentage and thus it did not comply with the Order of the Authority.

2. The Authority, therefore, issued Hearing Notice to the undertaking on June 17, 2006, under Section 19 of the Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance 1970 (hereinafter referred to as the ‘Ordinance’), to show cause as to why appropriate action under Section 19 of the Ordinance may not be taken against it.

3. On the date of hearing, Barrister Munawar Iqbal Duggal, Advocate/Counsel for the undertaking appeared before the Authority and argued the case. He contended as under:-

- i). That 18 days given for release of sugar to the extent of 58.31% by April 30, 2006 was inadequate, as the Order was issued on May 09, 2006 and compliance was required by May 27, 2006.

The monthly release of sugar @ 8.33% of the production has been adopted by the Authority on the suggestions of the Sugar Mills starting from October, 2005. If the undertaking was releasing sugar by the said percentage each month, it would not have any difficulty to release the required percentage by April 30, 2006, as directed by the Authority. It may, however, be noted that the undertaking has not made any conscious effort to release 8.33% on monthly basis as its releases for May 31, 2006 and June 15, 2006 are far below the required percentage.

- ii). that there was over supply of sugar in the market.

Annual consumption of sugar, during 2005-06, was estimated at 4 million tons, as per Annual report of PSMA for the year 2005. By this reckoning, monthly consumption of sugar works out 333,333.333 tons. Consumption for 5 months, i.e. upto 28-2-2006 comes to 1.67 millions tons. The sugar manufacturers, in the corresponding period, produced 2.3 million tons and released 0.97 million tons only upto 28-2-2006. The argument of the counsel is therefore not based on facts. It may also be noted that if sugar was over supplied in the market, then there was no reason for escalation in prices, based on the fundamental principle of demand and supply.

- iii). that sugar prices were high due to high sugarcane prices.

This contention of the undertaking has no nexus with the lifting of sugar. Several other mills managed better lifting at similar prices.

- iv). Import of sugar.

The contention of the undertaking that import of sugar in the market restricted ability of the undertaking to release 8.33% of its production

every month is not sustainable. The prime reason to allow import of sugar by the government was scarcity of commodity in the market. Scarcity was caused by less production, which was accentuated by inadequate releases by the sugar mills. Immediate impact of imported refined sugar was on the province of Sindh. However, lifting of sugar of Sindh sugar mills was much more than Punjab.

- v). That the sugar year may be considered from December to October instead of October to September.

It is an established fact that the sugar industries' financial year is from October to September. Audited accounts of sugar mills are prepared on this calendar. PSMA's data is also based thereupon. Since the undertaking did not produce any sugar in October 2005 and did not have any "carry over stock from last year, the Authority accepted its point of view, adopting the monthly percentage from November 2005 to October 2006.

- vi). That sugar mills have sold 68% of their production by 31-5-2006.
The statement is factually incorrect.
- vii). That under Section 5 of the Sale of Goods Act, 1930, lifting/release of sold goods at a future date is permissible.

The Order of the Authority specifically stated "release of sugar , which implies physical transfer of the commodity from the seller to the buyer. Sugar sold but not lifted does not fall under this category. The quantity not lifted remains part of the mills' stock. The practice of forward selling and buying tantamounts to hoarding and creates shortage of an essential commodity of daily use in the market. Any contract between a seller and a buyer that is detrimental to the interest of the general public is against the maxim of "salus populi suprema lex esto , which means that welfare of the people is to be the supreme law. Such contracts can not be permitted in public interest.

- 4. As per PSMA's statement, the undertaking started crushing from 25.11.2005 and had no "carry over stock from the previous year. The Authority, therefore, decided to

take the monthly releases of the undertaking from December 2005. It should have released 41.65 % till end April 2006 (8.33% x 5 months). The undertaking, however, released 38.19 %. The undertaking continued to indulge in restrictive trade practices. Lifting of sugar upto May 31, 2006 and June 15, 2006, as per undertaking's own data, was only 41.46 % and 43.23 % against the monthly percentages of 49.98 and 54.14, respectively (December 2005 to mid June 2006).

5. The Authority, after considering the facts of the case, submissions of the counsel of the undertaking and the fact that the undertaking had not complied with the Order, in terms of the powers vested in it under Section 19 of the Ordinance, directs the undertaking to:

- i) Pay as penalty a sum of Rs 10,000 (Rupees One Hundred Thousand) under the relevant head of account within 7 days of the receipt of this Order, and
- ii) In view of undertaking's continuing failure, pay a further penalty of Rs 10,000 (Rupees Ten Thousand) for every day, starting from the date of issue of this Order and upto the date the undertaking releases sugar commensurate with the monthly percentages. The penalty shall be paid on fortnightly basis.

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(Syed Bilal Ahmed)
Chairman

-sd-
(Raja Raza Arshad)
Member

(SEAL OF THE AUTHORITY)

Islamabad, 17th July , 2006