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IN THE COMPETITION APPELLATE TRIBUNAL

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No. 508(V) /Reg./CAT/2025
Dated: 04-07-2025

AT TAHUR LIMITED
Vs.
COMPETITION COMMISSION OF PAKISTAN

NOTICE

APPEAL NO. 02/2023

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **03-07-2025** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 4th day of July, 2025.

Office of the Registrar
Diary No: 491
Date: 10/7/25

(MUSTAJAB ALAM KHAN)
Registrar

REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

Competition Appellate Tribunal Islamabad

1. **AT TAHUR LIMITED,**
   CB-House No. 182, Abu Bakar Block,
   New Garden Town, **Lahore.**

2. **SYED RAZA ALI,** (Barrister-at-Law,)
   Unit No.01, 1st Floor, Fountain Avenue Building, 64-A,
   Main Boulevard, Gulberg, **Lahore.**

3. **Pakistan Dairy Association,**
   Having its place of business at First Floor, Plaza Number 169,
   Sector C, Commercial Broadway, DHA Phase 8, **Lahore, Punjab.**

4. **Mr. Muhammad Mamoon Khan,**
   House No. 418, Karnal Sher Khan Shaheed Road,
   F-11/3, **Islamabad.**

5. **Competition Commission of Pakistan,**
   ISE Tower, 7th Floor,55-B, Jinnah Avenue, **Islamabad.**

Chairman Secretariat
Diary No 1378 Ext
Date Received 09-7-25
Date Forwarded 10-7-25

THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD.

Before: Mr. Justice Sajjad Ali Shah, Chairman
Dr.Faiz Illahi Memon, &
Mr. Asim Akram, Members Technical – I & II, respectively.

Appeal No. 02 of 2023

Date of Hearing 14-05-2025
Date of Judgment 03-07-2025

Appellant: **M/s At Tahur Limited** through its Registrar

Respondents:
1. **Competition Commission of Pakistan,** through its Registrar
2. **Pakistan Dairy Association.**

For the appellant: Mr. Sardar Muhammad Ali, Advocate.

For the Respondent: Mr. Hassan Raza, Advocate, for the CCP.
Muhammad Mamoon Khan Advocate for Respondent No.2.

JUDGMENT

Dr. Faiz Illahi Memon, Member Technical-I: -The Appeal in this case has been preferred by M/s. At-Tahur (Pvt.) Limited (**"Appellant"**) calling in question the order of Competition Commission of Pakistan (**"CCP"**) dated 27.12.2019, imposing penalty of PKR35 million under section 10(1) read with Section 10(2)(a),(b), and (c) of the Competition Act, 2010 (**"the Act"**). The proceedings of the CCP snowballed after receipt of complaint from Pakistan Dairy Association (**"PDA"**) dated: 17.10.2018 alleging that the Appellant has been indulging in deceptive marketing practices, thereby guilty of compromising on explicit provisions of Section 10 of the Act. The complaint alleged that after the pronouncement of the Supreme Court's order dated 08-12.2016, the Appellant has continued to and still continues to

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indulge in dissemination of false and misleading information by citing part of the Supreme Court order, thereby causing apparent deception.

2. After the receipt of complaint, the CCP initiated inquiry which formed basis of show cause notice dated 27.02.2019 (**"SCN"**) issued to the Appellant. The Appellant joined the proceedings and submitted rebuttal to the SCN, whereas, the complainant, PDA, despite being forwarded reply to SCN chose not to submit any written response even after issuance of reminder which is apparent from para 8 page 10 of the impugned order of CCP dated 27.12.2019. The CCP concluded the proceedings via issuance of detailed order dated 27.12.2019 thereby holding the Appellant guilty of compromising on section 10(1) read with Section 10(2), (a), (b) and (c) of the Act imposing penalty of PKR 35 million and further penalty of PKR 250000/- per day if compliance report is not filed within 60 days' time period retracting deceptive claims made earlier, hence the instant Appeal.

3. The Appeal filed by the Appellant was fixed for hearing. The arguments so advanced by the both parties have been given patient hearing and the record perused in detail.

4. The counsel of Appellant essentially submitted that his client at no point in time ever intended to deceive the general public but relied solely on the supreme court order dated 08.12.2016 which contain report submitted by Pakistan Council of Scientific and Industrial research ("PCSIR"). The PCSIR report adequately mention that except Prema milk, all other samples are found to be unfit for human consumption. The report from PCSIR was consequence of suo moto notice taken by the Supreme Court and therefore no malafide was intended at all. The Counsel further submitted that Pakistan Dairy Association's MoU suggest in unequivocal terms that it cannot

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undertake any commercial activity and thus the complaint filed before the CCP was outside its mandate, hence, not liable to be processed at all. The Counsel also submitted that there were grave concerns about the packaged milk being sold in the market which led the Supreme Court to take Suo Moto notice and look into the quality with particular reference to health hazards it was entailing for the general public. The Counsel of the Appellant also submitted that the product of its client sold by the name of Prema Milk was given a clean chit from the point of view of purity and thus the same was advertised giving hyperlink in that very advertisement should the general public wish to know the source of its advertisement and not be misguided by the posts it would put on the Facebook page hence it is absolutely inappropriate to infer that the intent was malafide at any given point in time. The action of CCP after the finalization of order imposing penalty of PKR 35 million and withdrawing an amount of PKR 31,356,402.65/- from its bank accounts was even more severe hence it is implored that the order passed by the CCP may be set aside as illegal, unconstitutional and without any merit.

5. The Counsel of CCP while advancing his submissions was asked as to what was the harm in publicizing the Supreme Court order by the Appellant and how it would trespass section 10 of the Act. The Counsel responded that the Hon'ble Supreme Court in its order dated 08.12.2016 cited reports submitted by PCSIR and other agencies which report conveyed to the Supreme Court that except Prema Milk all samples are found to be unfit for human consumption. But the order of Hon'ble Supreme Court was not limited to Prema Milk or the pasteurized Milk only but the very selective advantage derived by the appellant was preceded by Para which mention report about UHT Milk containing the fact that out of six samples, five were found fit for human consumption. The Council of the CCP also submitted

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that this very misleading practice has been discussed in detail in order of the CCP passed on 27.12.2019 whereby the Appellant omitted to purposely withhold overall material information pertaining to its context thus not fulfilling the standard of conspicuous statement making the claims on Facebook page as materially misleading.

6. We have heard the Counsel of the Appellant and the CCP. The deduction from the arguments advanced and careful scan of the case record leads us to believe that the Supreme Court Suo Moto and the order 08.12.2016 spelled out the report submitted by the PCSIR and other laboratories whereby the PCSIR did hold Prema Milk fit for human consumption however the same order of Hon'ble Supreme Court also mention five UHT standardized Milk samples as fit for human consumption. The Appellant provided hyperlink on its Facebook advertisement posted subsequent to the order of Supreme Court but the word Supreme Court should have been used carefully. For the sake of clarity, the excerpt from the Supreme Court order dated 08.12.2016 passed in Civil Petition no. 2374-L/2016 and CMA No. 2702-L/2016 is reproduced as under: **"Ten reports have been submitted with regard to pasteurized milk. Except Prema Milk, all other samples are found to be unfit for human consumption. Let a notice be issued to ….."**

7. Additionally, the excerpt from Hon'ble Supreme Court order (which was inferred from PCSIR report) was in relation to pasteurized milk, whereas, the same order also mentions that :-

> "One report pertains to UHT standardized milk samples which are six in numbers. Except Haleeb Milk, all samples of UHT milk tested by the said laboratory were found fit for human consumption. Let a notice be issued to…"

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When analyzed in the back-drop of Supreme Court order, the appellant was duty bound to use the wording within the context of pasteurized milk only, clearly and adequately, which apparently it did not do. Following posts on its face book page are therefore, worthy of reproduction here:

The post on 15.12.2016 states "Alhumdulillah except Prema Milk, all other samples are found to be unfit for human consumption": Hon'ble Supreme Court". Another shared on 28.12.2016 states. "The report on pasteurized Milk said all samples, except Prema Milk, were found to be unfit for human consumption": Source Dawn.Com" which post was followed by hash tags such as "Bring Purity Back-Say No to UHT-choose pasteurized Milk". The afore-said posts are certainly misleading. Yet another video was posted on 19.08.2017 wherein it was stated that powdered milk causes stunted growth in children and that Prema is the only milk fit for human consumption as observed by the Supreme Court of Pakistan.

8. The upshot of the discussion distinctly points out the fact that not only Prema Milk (Pasteurized) but the samples of UHT milk were also found fit for human Consumption but the appellant chose to select material which would benefit its product and proceeded to advertise same on social media thereby influencing general public which is apparent from comments posted by the people under the ads. No one engaged in any business/activity has the right to unduly exploit Supreme Court order rendering competitors whose product was also cleared for human consumption at a comparative dis-advantage. This is against the law and fair market practice. The appellant attempted to derive undue benefit from selective citation of Supreme Court's order thus, liable to invoking of Section 10 of CCP, Act.

9. During the proceedings, it was brought to our attention that PDA, the original complainant, later filed a resolution request before the CCP on

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09.03.2022, and subsequently entered into a "Settlement Agreement" with the Appellant on 15.04.2024. The CCP's counsel submitted that these developments occurred post the CCP's final order and thus were not considered relevant. We note, without giving them legal effect in this judgment, that such after-the-fact settlements raise questions regarding the intent behind the complaint and the subsequent conduct of PDA, which the CCP may examine under its mandate.

10. As to the quantum of penalty, while the violation of Section 10 is upheld, the Tribunal finds that the CCP's order lacks a reasoned analysis of the pecuniary gain, if any, derived by the Appellant as a result of the alleged deceptive marketing. In the absence of quantifiable benefits or sales data establishing the commercial advantage gained through these practices, the penalty of PKR 35 million appears excessive. The purpose of penalties is corrective, not punitive. Therefore, in the interest of fairness and proportionality, the penalty is reduced to PKR 05 million. The amount already recovered by the CCP from the Appellant's bank accounts shall be adjusted accordingly.`

The order of the CCP dated 27.12.2019 is upheld, to the extent of the finding of violation under Section 10 of the Competition Act, 2010.

1. The penalty is reduced to PKR 05 million.
2. There is no order as to costs.
3. There is no order as to costs.

CHAIRMAN

MEMBER TECHNICAL-I

MEMBER TECHNICAL-II

Announced in open court on: 03.07.2025

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