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# IN THE COMPETITION APPELLATE TRIBUNAL

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No. 465(iii) /Reg./CAT/2025
Dated: **17-06-2025**

**M/S PAKISTAN STEEL MILLS CORPORATION LIMITED**
**Vs.**
**COMPETITION COMMISSION OF PAKISTAN**

## NOTICE

**DIARY NO. 43/2017**

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **16-06-2025** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 17th day of, 2025.

M. Alam

**(MUSTAJAB ALAM KHAN)**
**Registrar**

Competition Appellate Tribunal Islamabad

REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

Office of the Registrar
Diary No. 533
Date 22/7/25

1. **M/S. Pakistan Steel Mills Corporation (Pvt) Ltd.,**
   Through DGM/Incharge (Law),
   having its registered office at Bin Qasim, **Karachi.**

2. **M/s. Aga Faquir Muhammad & Co.**
   **Advocate,**
   M/s. Aga Faquir Muhammad & Co.
   712, Uni Shopping Centre,
   Abdullah Haroon Road, **Karachi.**

Chairman Secretariat
Diary No. 1490 Ext
Date Received 21-7-25
Date Forwarded 22-7-25

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

4. **Frontier Foundry (Pvt) Limited.,**
   Through its Chief Executive having Factory No. 166 Road B-7,
   Hayatabad Industrial Estate, **Peshawar.**

THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD.

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

**Appeals No. 43 of 2017**

| | |
|---|---|
| Date of Hearing | 22-04-2025 |
| Date of Announcement of Judgment | |

| | |
|---|---|
| Appellant: | **Pakistan Steel Mills Corporation (Private) Limited** through its Chairman, Pakistan Steel, Bin Qasim, Karachi. |
| Respondents: | 1. **Competition Commission of Pakistan,** through its, Islamabad; and<br>2. **M/s Frontier Foundry (Private) Limited,** Factory No. 166, Road B-7, Hayatabad Industrial Estate, Peshawar. |
| For the appellant: | Agha Zafar Ahmed, advocate |
| For the respondents: | Mr. Hasnain Ibrahim Kazmi, advocate for respondent No.1 along with Hafiz Naeem, Legal Advisor for CCP; & Ms. Maria Khan, advocate on behalf of Mr. Qasir Ameer, advocate for respondent No.2. |

# JUDGMENT

Mr. Asim Akram, Member Technical – II; Through the titled appeal M/s Pakistan Steel Mills Corporation (Private) Limited, the appellant, has assailed the order dated 22.03.2010 of Competition Commission of Pakistan, (*the Respondent No.1*), hereinafter called *the impugned order*.

2. The impugned order was passed in furtherance of show cause notice dated 29.04.2009, issued by the Respondent No.1, upon taking *suo moto* notice of news items published in 'The News' on 12, 13 and 14 February, 2009, along with a complaint filed by M/s Frontier Foundry (Private) Limited *(the Respondent No.2)*. In the show cause notice the appellant was charged of the violation of Section 3 (3)(g) & (h) of the Competition Ordinance, 2007 *(the Ordinance, 2007)*. The Respondent No.2 in its complaint alleged that the appellant had been discriminatory in sale of low carbon steel billets classified as SAE 1008, SAE 1010 and WR8 *(the Products)*. An Enquiry was initiated by the Respondent No.1, while

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Islamabad
Dated: ........................................

taking *suo moto* notice of the news items referred above. As per the Enquiry report dated 10.04.2009 the appellant was prima-facie found guilty of misconduct. Accordingly, the show cause notice was served upon him. After detail proceedings and giving an opportunity of reply to the appellant the impugned order was passed whereby the appellant was found guilty of violative of Section 3 of the Ordinance, 2007. A penalty of Rs. twenty-five million was imposed upon the appellant. The Respondent No.1 further observed in the impugned order that the abuse occurred for a period of three months pertaining to discriminatory sales of SAE-1008 and SAE-1010 billets; the period comprises a very small portion of the annual production of the appellant hence small penalty is being imposed. The impugned order further states that the abuse occurred during the previous leadership of the appellant who has since been removed that's why they have refrained from imposing a higher penalty.

3. The counsel for the appellant contends that the appellant produces two types of products namely "Flat Products" and "Long Products". The billets of SAE 1008, SAE 1010 and WR8 fall within the category of "Long Products". It was contended that the appellant produces about 0.66 million tons of "Long Products" per year whereas total consumption of Long Products in the country rest at 04 million tons per year. The remaining 03.33 million tons per year is rerolled, remelted through ship breaking and imported in form of billets. The relevant market includes the product made by the appellant and imported in the form of scrap and shipbreaking. In the year 2008-2009 total production by the appellant was 0.22 million tons per year which is only 6% of the Products consumed in the country; the appellant produced 0.96% of SAE 1008 and SAE 1010 consumed in the country and accordingly it does not fall in dominant position, required by the Ordinance, 2007. The remaining low carbon steel was imported by rerollers at cheaper rates than the appellant to produce the wire rods. The counsel further state that due to cash starvation and other financial problems the appellant was producing 1/3rd of its capacity. At that time 'Abbas Group' came to rescue and obtained delivery orders in advance which eased the cash flow of the appellant. Counsel further highlighted a letter dated 23.10.2008, written by Respondent No.2 in response to the Notice of Readiness dated

30.08.2008 by the appellant according to which the Respondent No.2 has refused the Notice of Readiness due to closure of his mill for annual maintenance till November, 2008. The counsel has highlighted the year-wise dispatches of billets grades SAE and WR series for the year 2005, 2006, 2007 and 2008. He stated that no discrimination in sale of the products has been done. The dealers of the appellant can buy products from the appellant upon issuance/publication of Notice of Readiness by the appellant. The appellant was not called-in during the Enquiry to clear its stance and the impugned order passed by Competition Commission is based on findings and conclusions reached at in the Enquiry proceedings. Relying upon the conclusions of an Enquiry where the appellant was not given a chance to defend himself is an illegality in terms of general principle of law. In light of the facts and law points, the setting aside of the impugned order and recalling of the show cause notice is prayed for.

4. Mr. Hasnain Kazmi, learned counsel for the Respondent No.1, Competition Commission of Pakistan, vehemently opposed the titled appeal while contending that the appellant is the sole producer of the products in the country. It produces the products from iron ore whereas the other produces the product by rerolling the scrap and the broken ship material. Being the sole producer of the product from iron-ore the appellant has a dormant position during the period under consideration i.e., from November 2008 to January, 2009. The appellant did not place the Notice of Readiness on its website to inform the dealers of the availability of prepared products. By doing so, the dealers were kept ignorant about the readiness of the product and only the 'Abbas Group' was informed, who got the products at a lower rate there by the appellant violated the Section 3 of the Ordinance, 2007. When in November, 2008 when the appellant reduced the product prices and brought it in line with the international prices, the appellant did not respond to the requests of the respondent No.2. The counsel has also pointed out year wise dispatches of SAE and WR series billets for the year 2005 to 2008 and has highlighted that the sale of the products to 'Abbas Group' increased many folds in the year 2008, whereas nearly all other dealers / consumers declined during the same period. The impugned order is in

accordance with the law and facts accordingly the dismissal of the titled appeal is prayed for.

5. The counsel for the Respondent No.2, M/s Frontier Foundry (Private) Limited has adopted the arguments forwarded by the respondent No.1 and has placed on record a detailed submission.

6. Arguments heard record pursed.

7. Previously the Ordinance, 2007 and presently the Competition Act, 2010 promotes competition as lack of competition in marketplace can lead to arbitrary increase in prices by producers to increase their profits, leaving consumer with no choice than to accept these prices which stagnate the market. We all are consumers of some goods or services, so welfare consumers is welfare of people and welfare of people should be supreme law of the land *(Salus populi suprema lex esto).*

8. In the case at hand it is an admitted fact that the appellant produces the products from iron ore and not from re-rolling the scrap, imported or generated from ship breaking. As held in the impugned order and not denied by the appellant the products produced by the appellant are of superior quality having lower carbon content than the products produced by the re-rollers. The appellant belongs to a producer class different from the re-rollers. Being the sole producer of the products from the iron ore it enjoys the dominant position in the country. Holding of a dominant position in a relevant market place in itself does not fall foul on Competition Act. It is not dominance, but its abuse, which is prohibited in law.[1] With the appellant enjoying the dominant position, the Respondent No.1 has the jurisdiction to look in to any allegation of abuse dormient position.

9. The appellant has placed on record a detailed document approved by the Price Fixation/Review Committee which describes the terms and conditions of entering into sale contracts and other requirements for sale. Sub-clause (vi) of clause (a) of the document describes that the appellants marketing department shall offer the material to buyers in parts or full as and when received from

[1] Shri Neeraj Malhotra, Advocate vs North Delhi Power Ltd. By Competition Commission of India.

Production Department. The notice of readiness (NOR) will be served through telex/fax/courier or through personal contact to obtain Delivery Order within Seven (07) working days from the issuance of the notice and to lift the material within Seven (07) days from issuance of the D.O.[2] There is no condition of placing the notice of readiness on the appellant's website. The counsel for the appellant admitted that as per practice the appellant uploads the notice of readiness on its website but failed to do so for November and December 2008 and January 2009. He further admitted that the appellant resumed to place notice of readiness on its website from February 2009 onward.

10. The year-wise dispatches of billets grades SAE and WR series for the year 2005, 2006, 2007 and 2008 indicate that the sale of the products to 'Abbas Group' increased many folds in the year 2008, whereas nearly all other dealers / consumers including the respondent No.2 declined during the same period. However, the respondent No.2 has failed to place on record its requests for purchase of the products after November 2008, since it refused the notice of readiness by the appellant due to its closure of the mill for maintenance. The inquiry report as well as the impugned order concluded that the appellant dilapidated by not uploading the notice of readiness at its website which resulted in keeping the respondent No.2 and other customers unaware of the products available. By doing so the appellant extended an un-explained large quantity of the products, SAE 1008, 1010 and WR8, to the Abbas Group at the expense of other customers. The argument by the counsel for the appellant that the Abbas Group paid in cash and helped in relaxation of the appellant's financial crunch does not carry any weight as no equivalent offer was extended to any other customer. Nothing has been placed on record which could show that similar offer was extended to other customers. The unexplained favour of selling the products to Abbas Group resulted in depriving the other customers of the sale of the products (raw material) which resulted in drop of their business; this amounts to abuse of dominant position in terms of section 3 sub-section (2) clause (g) & (h) of the Ordinance, 2007.

[2] Annexure-A of the appeal, Selling Arrangements for Pakistan Steel 2008.

11. It is an admitted fact that the appellant, of the reasons unexplained, failed to place the notice of readiness on its website for three months i.e. from November 2008 to January 2009. This failure is the non-observance of the common practice of the appellant which was resumed. Where the law provides for more than one kind of punishments it has to be kept in mind the underlying object of law and the severity of the misconduct.[3] In terms of section 38 sub-section (2) clause (a) of the Ordinance, 2007 for a contravention of any provision of Chapter II of the Ordinance penalties amounting up to fifty million rupees or an amount not exceeding ten percent of annual turnover of the undertaking can be imposed. The quantum of imposition of the penalty is subject to the severity, length or intention of the wrong doing. In the case at hand the non-observance was for short period of three months; accordingly, we are of the opinion that the quantum of penalty of Rs. twenty-five million is disproportionate to the period of malpractice.

12. For the foregoing reasons the titled appeal is partially accepted; accordingly, the impugned order dated 22.03.2010 is modified by reducing the amount of penalty to Rupees five million only. The remaining directions as well as observations shall remain as it is.

13. There is no order as to cost. Parties be informed accordingly.

CHAIRMAN

MEMBER TECHNICAL - I

MEMBER TECHNICAL - II



Announced in open court on: 16th June, 2025.

[3] Secretary, Government of Punjab and others v. Khalid Hussain Hamdani and 2 others (2013 SCMR 817)