Through Registered Post/AD

IN THE COMPETITION APPELLATE TRIBUNAL

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No. 464(iii) /Reg./CAT/2025
Dated: 16-06-2025

M/S. 3N LIFE-MED PHARMACETICAL
Vs.
COMPETITION COMMISSION OF PAKISTAN

NOTICE

APPEAL NO. 03/2025

Chairman Secretariat
Diary No. 1287
Date Received 23.6.25
Date Forwarded 23.6.25

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **12-06-2025** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 16th day of, 2025.

(MUSTAJAB ALAM KHAN)
Registrar
REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

Office of the Registrar
Diary No. 0642
Date. 23/6/25

1. **M/s. 3N Life-med Pharmaceutical Ltd.,**
   through its Sole Proprietor, Mr. Nazir Ahmed,
   having its Head Office at 18/20-N, Gulberg-II,
   Lahore.

2. **Mr. Muhammad Faizan Saleem,**
   Advocate High Court,
   SALEEM & SALEEM
   Office No. 103, Lahore Palace Building,
   Temple Road, **Lahore.**

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

4. **M/s. Renacon Pharma Limited,**
   72-B, PECO Road, Kot Lakhpat,
   Lahore.

IN THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

(Appeal No. 03 of 2025)

M/S. 3N LIFEMED PHARMACEUTICAL

.....Appellant

Versus

COMPETITION COMMISSION OF PAKISTAN ETC.

.....Respondent

Present: Mr. Justice Sajad Ali Shah, Chairperson.
Dr. Faiz Illahi Memon, Member Technical-I.
Mr. Asim Akram Member Technical-II.

For the Appellant: Mr. Faizan Saleem, Advocate, for the appellant.

For the Respondent: Hafiz Naeem, Senior Legal Advisor, along with Mr. Haider Afzal khan, Legal Adivsor, for CCP/respondent No.1 Mr. Shahid Rafique, Advocate, on behalf of respondent No. 2.

Date of hearing: 13.05.2025
Date of Announcing Judgment: 12.06.2025

JUDGMENT

Justice Sajjad Ali Shah, Chairman.

Through the instant appeal the appellant has impugned the order dated 8-11-2024 passed by two learned members of the Competition Commission of Pakistan whereby penalty of Rs.10 million for violating the provision of Section 10(2)(a) read with Section 10(1) of the Competition Act 2010 (hereinafter referred to as Act 2010) and a further penalty of Rs.10 million for violating the provision of Section 10(2)(b) read with Section 10(1) of the Act 2010 was imposed. The Commission further directed that in case the penalty was not deposited within a period

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of 30 days an additional penalty of Rs.100,000/- per day for violating the order of the Commission would be applicable.

2. Briefly a complaint was filed alleging therein that the appellant being a pharmaceutical company has obtained a license from Drug Regulatory Authority of Pakistan (DRAP) to manufacture hemodialysis concentrate solution and in order to capture the market and run out their competitors they were selling their products with a fake "conformite Europeene" (CE mark) and Quality Management System (QMS) certification. It was alleged that on the basis of fake CE mark and QMS certification the appellant has managed to obtain number of orders for their product carrying fake certification from various hospitals of the Pakistan.

3. The Commission after evaluating the preliminary evidence authorized inquiry under section 37(2) of the Act 2010. The inquiry officers found substance in the complaint, a report consequent was submitted the effective portion of the report read as follows; -

> *"6.1 The Respondent's product, through the use of unauthorized and false CE mark and QMS certification, is in total disregard to the global standardization and certification.*
>
> *6.2 In view of the analysis, it is concluded that the conduct of the Respondent, through dissemination of false and misleading representation relating to CE mark and QMS certification on the packaging of Part-A and Part-B of hemodialysis concentrate, prima facie, has the potential to inflict harm on the business interest of the Complainant, in violation of Section 10(1) in term of Section 10(2)(a) of the Act.*

6.3 In light of the facts, it is also concluded that the Respondent, through the representation of false CE mark and QMS certification, on the packaging of Part-A and Part-B of hemodialysis concentrate, is found to be disseminating false and misleading information to consumers lacking a reasonable basis related to the character and properties of the dialysis concentrate, prima facie, in violation of Section 10 in term of Section 10(2)(b) of the Act."

4. The appellant consequently were issued a show cause notice to which they responded and the Commission after hearing the appellant passed the order impugned herein.

5. The learned Counsel for the appellant at the very outset submits that no sooner they received a notice in March 2021 from the Commission alleging fake CE and QMS certification they forth with stopped printing these certifications on their products. The learned Counsel has shown us the wrapper asserting that after March 2021 not a single batch was prepared carrying CE and QMS mark. It was contended that the applicant has purchased QMS/CE certification from a company SMIS-AGS who presented itself to be affiliated with AIAO-BAR USA and in case they have issued fake certification to the appellant then inquiry be conducted against them and punished accordingly. The learned Counsel contended that SMIS-AGS from whom the appellant has purchased the certification had presented itself to be the member of AGS-LLC-USA whose membership was terminated on 05-10-2020, therefore, SMIS-AGS who had issued such certification to the appellant need to be proceeded against.

The Counsel further submitted that these certifications were not a mandatory requirement as their products were duly approved by the DRAP. In the end it was submitted that the appellant share in the market is just four percent and the penalty imposed by the Commission was out of proportion. The learned Counsel submitted that since the appellant after receiving a notice in March 2021 did not print these certifications on their products therefore a request was made to the Commission for dropping the proceedings keeping in view such compliance oriented approach of the appellant despite a hefty penalty of twenty million which is totally out of proportion has been imposed.

6. On the other hand, learned Counsel for the Commission contended that appellants are in the business of pharmaceutical and they were fully aware that such certification could not be purchased but are awarded after carrying inspection on maintaining certain standards regarding quality of the product and production therefore the claim of the appellant that they purchased these certifications itself shows that they knew these certifications were false and so were proved ultimately. It was contended that on the basis of such certification the appellant has captured a substantial portion of the market to the detriment of the complainant. It was asserted that such certification are issued after examining the quality of the drug and the active ingredient. The appellant having

affixed fake certification was using cheap raw material and was running its competitors out of the market. The Counsel of the Commission has invited our intention to para 41 of the impugned order to demonstrate that on using such false certification the appellant has obtained 47 tenders for an accumulated amount of Rs. 113 million and on the other hand the sale of the appellant became stagnant and after the complainant stop using the fake certification a substantial growth in the business of the complainant has been noticed. In order to justify the quantum of penalty our intention was invited to para 45 which reflects that during the period when the appellant had used fake certification they made a sale of approximately 20 million which was assumed to be monitory gain achieved by the appellant at the cost of consumers and competitors and of course in violation of Section 10 (2)(a)(b) read with Section 10(1) of the Act of 2010 and consequent an accumulated penalty of rupees twenty million was imposed.

7. We have heard the learned Counsel for the parties and have perused the record.

8. Since the appellant has not pleaded any justification regarding the genuinity of the QMS and CE certification affixed on their product, except that they were bonafide purchasers and that they are neither using these marks any more nor have any intention to use. The appellant only questioned the quantum of penalty on the

ground that their use of such mark was under a bonafide believe of having purchased them.

9. In order to examine such plea we have scrutinized the entire response. Though the appellant in para 4 of their response filed before the Commission have asserted that they were ready to produce original certification issued to them by SMIS-AGS however all what they could produce was a profile of SMIS and two service specification agreement dated 29-12-2012 (at page 135) and dated 07-0-2019 (at page 142) of our file and one of its unnumbered clauses provides,

> "following assessment and authorization of approval by SMIS-AGS an approval certificate shall be issued"

payment receipt of Rs.20,000/- has also been annexed, which provides scope of assessment criteria " ISO 9001-2008" but the appellant's have not placed on record any CE or QMS certificate whatever worth it may be or fraudulently or unauthorizedly issued by SMIS-AGS enabling us to examine the claim of appellants regarding bonafide use.

10. On the other hand the respondent/complainant has pleaded & provided documentary evidence to show that such inspection cost in million and that they paid a sum of Rs. 947,646 initially for CE mark & paid a total sum of Rs. 6,921,600/- for continuous inspection and monitoring and its upto date renewal likewise more than a sum of Rs. One million was paid for QMS certification. This

lead us to conclude that the appellant were using such mark knowingly that they have no legal justification for using such mark. The appellant has laid much stress on the fact that their product has been duly approved by the DRAP and therefore affixing of such certification was not a mandatory requirement. No doubt the products of the appellant could have been sold without such certification but these certifications carry a bench mark of quality and in many tenders of procurements there was a mandatory requirement that the product should be duly approved and Should carry QMS and CE certification. The affixation of such marks by the appellant on its product despite the fact that their product was not undergone the necessary conformity assessment procedure from an acredited agency amounted to misrepresenting the consumers regarding their product of being compliant with established international standards. Consequently this act not only amounts to distribution of false or misleading information to the consumers but also capable of harming the business interest of others therefore the appellant has no doubt violated the provision of Section 10(2)(a)(b) read with Section 10(1) of the act 2010 and therefore was rightly penalized.

11. Coming to the quantum of penalty which the appellant has vehemently contested on account of its compliant oriented approach. It appears that the Commission has slapped the appellant with a penalty

amount of Rs. 20 million which was equivalent to their total sale of almost two years for the period during which they used such marks on their product.

12. In our opinion the penalty appears to be on a very high side especially when the appellant product was not spurious but duly approved by the DRAP, though the Commission in Para 51 of the impugned order has referred the matter to DRAP as the appellant imported food grade Sodium Bicarbonate instead of Pharma grade but that issue is to be taken up and decided in its own sphere of Jurisdiction. The order imposing penalty must reflect that while imposing penalty the nature and gravity of the contravention has been assessed, the potential impact of such violation on the public interest is duly taken note of, the financial capacity of the offender is considered, the need of deterrence is duly examined and lastly the approach of the offender towards the proceedings.

13. In the instant case two major factors i.e. financial capacity of the offender and compliant oriented approach of the appellant has not been taken into consideration. It has come on record that the appellant is a very small pharmaceutical company whose total turnover as recorded by the Commission for two years is approximately twenty million and even before the commencement of the proceedings the appellant has stopped using both the certifications, consequently a

lenient view while imposing penalty should have been taken on these considerations.

14. In view of what has been discussed above we while upholding the order of the Commission on all fours would reduce the penalty in terms of Section 38(2)(a) (second portion) to rupees two millions i.e. equivalent to 10 percent of the total turnover i.e. Rs. one million on each count for violating the provisions of Section 10(2)(a) and 10(2)(b). In case the appellants fails to deposit the penalty amount of rupees two million within 10 days hereof a further penalty of Rs.100,000/- per day would be levieable. The appeal with this modification to the extent of penalty stand dismissed.

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