

By Special Messenger
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IN THE COMPETITION APPELLATE TRIBUNAL

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Tel No: 051-9320208, Fax No: 051-9320203

No. 564
Dated: 18-04-2024

CENTURY ENGINEERING (PVT) LTD
VS.
COMPETITION COMMISSION OF PAKISTAN

NOTICE
Appeal No.13/2018

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **17-04-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 18th day of April, 2024.



S.W.
(SAEED AFZAL)
Registrar
REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

Century Engineering (Pvt) Ltd,
Through Kashif Ahmed, Office B-35 & 36, S.I.T.E-II,
Super Highway,
Karachi.

Ahsan Hameed Lillah,
Advocate Supreme Court of Pakistan,
2nd Floor, Old Unique Bakers building
Kashmir Road Saddar, **Rawalpindi.**

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

Lt. Col Saeed Mirza (Complainant)
312-Askari-2, **Gujranwala Cantt.**
0333-8116673

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BEFORE THE COMPETITION APPELLATE TRIBUNAL
ISLAMABAD

Appeal No. _____ /2018

Century Engineering Industries (Pvt) limited Office B-35&36, S.I.T.E-II, Super Highway, Karachi through Kashif Ahmed son of Hafiz Haji Muhammad Ali Khan.

Appellant

Versus

1. Competition Commission of Pakistan through Chairman 7th Floor, ISE Towers, 55-B, Jinnah Avenue, Islamabad.
2. Mirza Muhammad Saeed (complainant) Roshnee CNG Near Kamoki Lahore.

Respondents

APPEAL U/S 42 OF THE COMPETITION ACT 2010
AGAINST THE JUDGMENT DATED 30.03.2018

Respectfully Sheweth:-

1. That this appeal is filed through Kashif Ahmed son of Haji Muhammad Khan duly authorized by the appellant.
2. Being aggrieved and dissatisfied with the order dated 30-03-2018 passed by two member of respondent No. 1 imposing the penalty of Rs.

10,00,000/- to be paid within 60 days of

CERTIFIED TO BE A TRUE COPY

S.W.

REGISTRAR
Competition Appellate Tribunal

Dated: 11th APR 2024

**IN THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD**

M/s Millat Industries (PVT) LTD (**Appeal No. 12 of 2018**)

M/s Century Engineering Industries (PVT) Ltd. (**Appeal No. 13 of 2018**)

.....**Appellants**

Versus

The Competition Commission of Pakistan and another

.....**Respondents**

Present: Justice Mazhar Alam Khan Miankhel, Chairperson.
Muhammad Asghar Ch. Member Technical-I.
Raja Saad Sultan, Member Technical-II.

For the Appellants : Mr. Ahsan Hameed Lillah, Advocate,

For Respondent No.1: Mr. Jahanzeb Sukhera, Advocate
assisted by Mr. Haider Imtiaz Law Officer

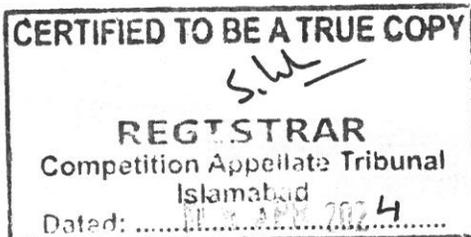
For Respondent No.2: Nemo

Date of hearing: 09.01.2024

JUDGMENT

Justice Mazhar Alam Khan Miankhel, Chairperson

This single judgment will decide the fate of Appeal No. 12 and 13 of 2018 arising out of the common order dated 30.03.2018 of the Competition Commission of Pakistan (**the Commission**).



2. A complaint by Mirza Muhammad Saeed was filed against six different undertakings including the two appellants namely Millat Industries (PVT) Ltd. (MIPL) and Century Engineering Industries (PVT) Ltd. (CEIPL). All the undertakings are the manufacturers of lead acid and dry batteries. After receipt of the complaint, the matter was accordingly referred to the inquiry committee (**Committee**) under Section 37(2) of the Competition Act, 2010 (**the Act**). The Commission after receipt of the inquiry report dated 19.04.2017, initiated the proceedings under Section 30 of the Act against all the (06) undertakings by issuing Show Cause Notices dated 22nd of August, 2017 (Since the above noted two appellants are before us we will be discussing and dealing with their cases only). The notices were replied accordingly by both the appellants. The Commission after concluding the proceedings held that all the undertakings complained against have contravened the provisions of Section 10 of the Act but while imposing penalty for the said contravention took a very lenient view because of their compliant conduct before the Commission and thereby imposed a penalty of only Rupees One Million each except TCL and were directed to submit a compliance report in the light of directions of the Commission. They were further directed that in case of failure to make the compliance, a further fine of Rupees One Hundred Thousand per day, from the date of passing of the order, would also charged.

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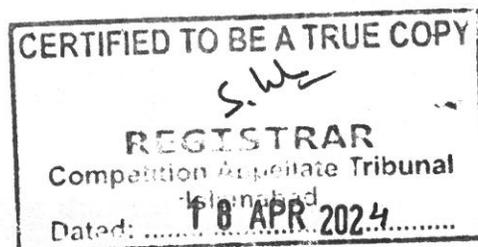
M/s Millat Industries (PVT) Ltd and another
Versus
Competition Commission of Pakistan & another
Appeal No. 12 & 13 of 2018

3. The appellants by feeling themselves aggrieved have filed their separate appeals.

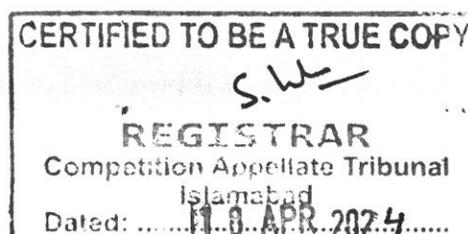
4. The learned counsel for the appellants submitted that the impugned order passed by Respondent No.1 is wrong, against the law, facts and based on no evidence. The respondent No.1 has based its decision on the inquiry report alone which too is not of worth reliance. The appellants never ever indulged themselves in the deceptive marketing practices, the inquiry report relied upon is based on foreign standards which have not been adopted by the respondent No.1 nor were notified ever for the general information of all the concerned. He further argued that the complainant was unable to produce any piece of evidence showing his deception or grievances. Lastly he asked for acceptance of appeal by setting aside the impugned order.

5. The learned law officer assisted by the learned counsel for the respondent No.1 supported the impugned order by submitting that all the undertakings including the appellants were duly heard during the proceedings. Further submitted that the provisions of the Act itself define the standards. The appellants including the other undertakings have contravened the provision of Section 10 of the Act and there are admissions on their part regarding such contraventions and as such were rightly penalized by the Commission but with a very lenient view after giving them a proper chance of defence and hearing.

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6. We have heard the learned counsel for the parties and have gone through the available record. Record of the case reveals that the main allegation against the appellants including the other undertakings is of not disclosing the capacity and utilization on the body of the batteries, packaging and the warranty cards. It was also alleged that the undertakings just printed randomly generated serial numbers on the batteries, packaging and the warranty cards which gave a general impression that all the requisite details helpful to the end-users were provided by the undertakings. The perusal of the record further reveals that the pictures of the batteries and their packaging available on the record reflects that there are no such details or information available for the end-users to help them to select the product of their choice on the basis of said information. The end users in the case of batteries are normally illiterate and non-technical persons who mostly rely on the advice of mechanics or the dealers of the product. One of the argument of the learned counsel for the appellants was that all the details were traceable through internet but we should also keep in mind that the numbers of end-users who have the access and can check the details from the internet are very less. Majority of the end-users are unable to use the internet, they simply know which battery is good for tractor, bus and truck etc. and that to, the said limited information is normally provided by the dealers or mechanics. The purpose of this law (the Act) is just to save the innocent and illiterate end-users, to provide for free competition to enhance the economic efficiency and to protect



consumers from anti-competitive behavior. If such vital information is missing the consumers would be unable to compare and differentiate the quality, suitability for use and price of the products.

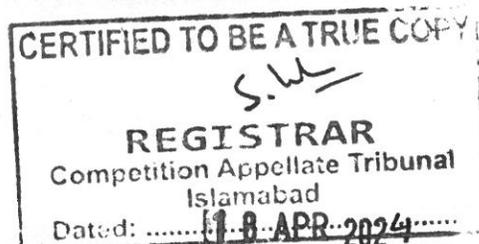
7. We have noted that the inquiry report no doubt, is referring to the standards maintained by the UK, European, Canada and USA etc. but this does not mean that said standards have been applied rather have been referred to as precedents only. The Act is in the field since 2010. The concept of law is not new for the undertakings in the Competition. Initially the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970 (V of 1970) was there in the field then Ordinances of 2007 and of 2009 came in the field. The existence of all these laws have sufficiently played a vital role for awareness of all the concerned specially in our country. When a law is there in the field then all the persons are required to comply with the same and no one can claim obliviousness of a law. The law does not accept ignorance. Besides the above, this subject is not alien to the multi-national companies who are running their businesses since centuries throughout the Globe. Many of such companies are working in Pakistan being fully aware of all the requisite standards and the Laws. They are complying with throughout the Globe. Both the appellants acquired their technologies from Austria and Korea. In the given situation one cannot make an excuse of lack of awareness. The golden principle of law is there that ignorance of law cannot be considered

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as a good excuse. Not showing the capacity and other related details on the body of the batteries and packaging material is sufficient to constitute the contravention of the provisions of the Act besides their admissions and readiness to do the needful for removing all the previous materials causing the deception. The argument of the learned counsel for the appellants that the complainant himself could not establish through a reliable evidence that he fell a victim of such deception. Legally it is not necessary that the complainant or the informer should himself be a victim of any wrong. He can just be an informer regarding any wrong being done in the society.

8. Since it has been established on the record that the appellants have been found in contravention of the relevant provisions of the law. There are admissions of the undertakings for not conveying the necessary information as discussed above and then their commitments before the Commission to rectify and provide the requisite information for the end-users were the reasons which prevailed with the Commission and resultantly a lenient view in this regard was taken. Such a leniency and the grace shown by the Commission deserved its compliance without any further delay but we have been apprised that till date no such compliance qua the directions of the Commission has been made. We in the given situation do not see any justification for any further leniency and also would not like to go for enhancing the main penalty amount which under the law would require a notice for such enhancement.

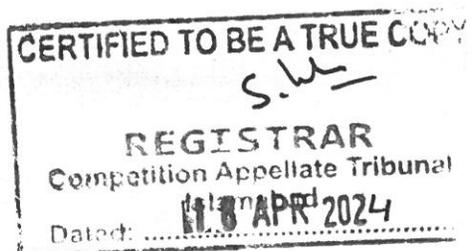


M/s Millat Industries (PVT) Ltd and another
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Appeal No. 12 & 13 of 2018

Therefore, we while maintaining the impugned order, dismiss the appeals. However, due to such non-compliance, the appellants have invited themselves to further penalty under sub-Section 3 of Section 38 of the Act. The appellants deserve to be charged with further penalty because of their non-compliant conduct but the record of the case reflects that operation of the impugned order dated 30.03.2018 was suspended on 13.06.2018 by the Tribunal till the final decision of the appeal. This order was neither vacated by the Tribunal itself nor it was challenged by the Commission by way of an appeal. So this order of the Tribunal holds the field which means that from 13.06.2018 till date, there is no order of the Commission in the field. The grace period of 60 days given by the Commission for compliance gets completed on 30.05.2018 and as such the first day of non-compliance becomes 31st May, 2018 but its life is again curtailed by the interim order of the Tribunal dated 13.06.2018. So the further penalty under sub-Section (3) Supra of the Act can only be imposed till 12.06.2018.

9. We in view of the above discussion dismiss both the appeals by maintaining the penalty amount and also maintain the further penalty under sub-Section 3 Supra of Rupees One Hundred ^{4.} Thousand from 31.05.2018 till 12.06.2018 as discussed above. The

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penalty amount including the further penalty should be deposited within a period of 60 days and in case of failure to pay, the same amount of further penalty shall continue to be charged until the full payment is made and in that situation, the date of non-compliance of this order would be reckoned from today i.e. 17-04-2024.

— Sd —

Chairperson

— Sd —

Member Technical-II

— Sd —

Member Technical-I

Announced in open court

17-04-2024

