

By Special Messenger
Through Registered Post/AD

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad
email: registrartribunal@gmail.com
Tel No: 051-9320208, Fax No: 051-9320203

No. 550
Dated: 18-04-2024

M/S Qarshi Industries (Private) Limited

Vs.

Competition Commission of Pakistan

NOTICE

Appeal No.42/2023

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 further necessary action.

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

M/s Qarshi Industries (Pvt) Ltd,
Through Mr. Sajid Farooq Hashmi duly authorized through
Board Resolution & having a registered office at
15-G, Gulberg-III, **Lahore.**

Muhammad Sohaib Sheikh,
Advocate High Court,
Corporate & Technology Law Consultants,
House No. 322, Main Nazimuddin Road,
F-11/1, **Islamabad.**

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



FORM A

BEFORE THE COMPETITION APPELLATE TRIBUNAL ISLAMABAD

Appeal No. _____/2022

M/S Qarshi Industries (Private) Limited through Mr. Sajid Farooq Hashmi duly authorized through Board Resolution and having a registered office at 15-G, Gulberg-III, Lahore.

Appellant

Versus

Competition Commission of Pakistan having registered office at 7th Floor South, ISE Towers, 55-B, Jinnah Avenue, Islamabad, Pakistan.

Respondent

APPEAL UNDER SECTION 42 OF THE COMPETITION ACT 2010

AGAINST THE ORDER DATED 18.03.2022

1. Jurisdiction of the Competition Appellate Tribunal:

The appellant states that the subject matter of the appeal falls within the jurisdiction of the Appellate Bench.



**BEFORE THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD**

**M/S QARSHI INDUSTRIES (PRIVATE) LIMITED
.... APPELLANT**

VERSUS

**COMPETITION COMMISSION OF PAKISTAN
.... RESPONDENT**

Appeal No: 42/2023

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

For the Appellant: Mr. Ali Ahmed Shah, Advocate.

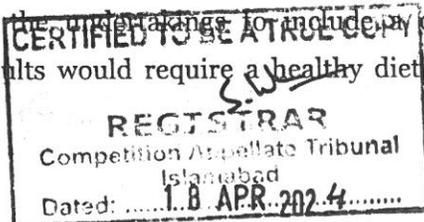
For Respondents: Mr. Hassan Ahsan Mian, Law Officer.

Dates of hearing: 25.1.2023, 02.02.2023, 06.04.2023,
09.05.2023, 23.01.2024 & 23.02.2024.

JUDGMENT

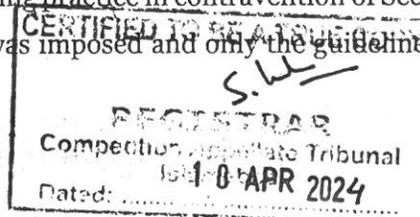
Raja Saad Sultan, Member Technical.

1. Through the instant appeal **under Section 42 of Competition Act, 2010**, the Appellant, M/S Qarshi Industries (Private) Limited, impugns the order dated 18-03-2022, passed by the learned Competition Commission of Pakistan ("**Commission**") for the contravention of Section 10 of the Act. The Appellants were ordered to comply with certain guidelines and to submit compliance report before the commission.
2. The leading facts of this appeal are that the Appellant is a manufacturer of herbal products and medicines. One of the Appellant products in question was Anti-Fat Tablets. The Commission took suo-moto action under **Section 37(1) of the Act** against different manufacturers and distributors of weight loss products and alleged that they were involved in the contravention of **Section 10 of the Act**.
3. An enquiry committee was constituted to investigate the matter, which concluded that firstly, the undertakings cannot make such high claims about their products ability to deliver results in a few days. Secondly, concluded that it is essential for the undertakings to include a clear disclaimer specifying that such results would require a healthy diet and



exercise plan, therefore an enquiry committee recommended that the proceedings may be initiated against the Appellant.

4. In view of the enquiry report, proceedings were initiated against the Appellant under Section 30 of the Act for prima facie violation of Section 10 of the Competition Act, 2010, thereafter a show cause notice dated 28th August, 2019 was issued to the Appellant. The reply to show cause notice was also submitted by the Appellant before the Commission.
5. Learned Counsel for the Appellant submitted that their product Anti-Fat tablet is a regulated drug and its registration, production and marketing is regulated by the Drug Regulatory Authority of Pakistan (DRAP). Further submits that this was approved by the Drug Regulatory Authority vide certification of products dated 12th June, 2018, and the label claim of manufacturer was also approved by DRAP, which clearly says that, "*Herbal Preparation useful in eliminating unwanted fat and controlling the excessive weight gains*". He contends that the words approved by DRAP were written on their medicine therefore, this does not fall within the jurisdiction of Competition Commission of Pakistan (Commission). He contends that the Commission cannot penalize the Appellant for something, which has been granted to them under the law.
6. Learned Counsel for the Appellant further submitted that this is a case of no evidence. The Commission has failed to carry out any lab test report or to rely on any other scientific evidence to form the basis of their case against the Appellant. He contends that in the impugned order the claim of superiority was not proved with respect to the Appellant, therefore in the presence of such finding in the impugned order, the Appellant cannot be treated as same as other respondent undertakings. He lastly submits that it is for the DRAP to investigate, if there is any violation in prescribed usage of drug approved by DRAP, therefore the impugned order is liable to be set-aside.
7. Learned law officer of the Competition Commission of Pakistan (Commission) submitted that the appeal was filed with an inordinate delay of almost one month and five days. He therefore, contends that this appeal may be dismissed as it is time barred. He further submits that the Appellant were involved in deceptive marketing practice in contravention of Section 10 of the Act. However, no penalty was imposed and only the guidelines were



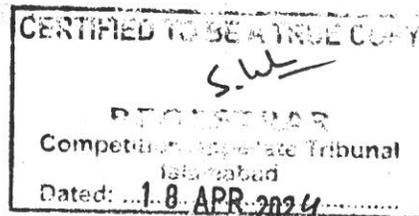
issued to the Appellant with regard to their marketing campaign. Therefore, prays that this appeal may be dismissed.

8. We have heard the arguments advanced by the learned Counsel for the parties.

9. We have examined the available record, which indicates that upon initiation of suo moto action under **Section 37(1) of the Act**, various undertakings including the Appellant were called upon to submit material regarding their product. This material was provided by the Appellant to the Enquiry Committee. The Enquiry Report Concluded as the following;

“172...it is important to note that this product has a minute effect on weight loss independently and little to no significant long-term effect on weight loss. This product can only assist in weight loss in a complementary role as an effective weight loss regime requires a proper diet and exercise plan. Whereas, the Respondent No.14 has failed to inform the public that a proper diet and exercise regime would be required to achieve desired long-term results with the use of this product as merely having an impact on digestive system and constipation does not cause substantive weight loss. Consequently, in absence of necessary and relevant disclosures, the Respondent No.12 is found in prima facie violation of Section 10(2)(a) and (b) of the Act.”

10. Perusal of the enquiry report indicates that the Appellant had submitted before the enquiry committee that their product is based on Tibbe-Unani and further a list of ingredients used in the product were also provided. In terms of **Section 33 (3) of the Competition Act, 2010**, at the Enquiry stage the Appellant was only required to provide the relevant information/documents to the Enquiry Committee for the examination. Since the Appellant was not present before the Enquiry Committee, therefore it was for the Enquiry Committee to verify the veracity of the information provided by the Appellant. However, there is no evidence available on record, which indicates that the enquiry committee has called upon any medical/scientific expert to verify the Appellants claim and also to verify the effectiveness of list of ingredients provided by the Appellant, which were used in their product. The conclusion of Enquiry Committee purely seems to be an independent analysis of the committee without obtaining any independent expert opinion or even without consulting the concerned regulatory authority, whose documents were submitted by the Appellant before the Committee.



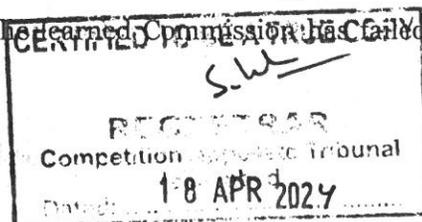
11. The learned Competition Commission of Pakistan on the findings of Enquiry Committee initiated the proceedings under **Section 30 of the Act**, and issued a show cause notice dated 28th August, 2019 to the Appellant, to which a reply was also filed by the Appellant.
12. The two issues were framed by the Commission for their consideration. The first issue was;
- i. Whether Respondent No. 12 has engaged in deceptive marketing practices in contravention of Section 10(2)(b) read with Section 10(1) of the Act?
 - ii. Whether Respondent No. 12 has engaged in deceptive marketing practices in contravention of Section 10(2)(a); was the marketing strategy/disclosed information regarding their business/product capable of harming business interests of other undertakings?
13. Before analyzing the first issue framed by the Commission, we deem it appropriate to go through the relevant parts of the Show Cause Notice, which are reproduced as under;

"4. Whereas, in terms of the Enquiry Report in general and paragraph 169 to 172 in particular, the Undertaking in order to promote the brand "Anti-Fat Tablets" launched a marketing campaign with several high-sounding claims. Furthermore, false and unsubstantiated superiority claims have also been made, and thus prima facie constitutes violation of Section 10(1) of the Act, and"

"7. Whereas, in terms of the Enquiry Report in general and paragraphs 171 to 172 in particular, the Undertaking has disseminated false and misleading information to the consumers regarding its weight loss product "Anti-Fat Tablets", lacking reasonable basis relating to the character and suitability, which constitutes a prima facie violation of clause (b) of sub-section (2) of Section 10 of the Act"

14. The Appellant along with other Undertakings of the same industry were issued a show cause notice. The learned Commission alleged that the Appellant are involved in marketing of their weight loss product "Anti-Fat Tablet" through deceptive marketing practices.

15. The learned Commission in its impugned order has held that the Appellants high sounding claims are not as specific as the claims of other undertakings. However, the Commission has still held the Appellants liable for deceptive marketing practices. The learned Commission has failed to



-sd-

provide valid reasons in the impugned order, except that the Appellant further needs to substantiate his claim.

16. In the impugned order the learned Commission has also exonerated the Appellants from the allegation of Superiority claim and therefore held them not liable for alleged violation of Section 10(2)(c) of the Act.

17. The Appellant is herbal product manufacturer and their product Anti-Fat tablet is a medicine which is regulated by the Drug Regulatory Authority of Pakistan established under the Drug Regulatory Authority Act of Pakistan, 2012.

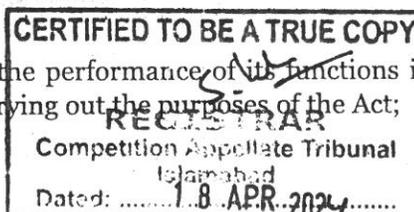
Section 1 (ii) of DRAP Act of 2012 provides that “**Alternative medicines means a product used exclusively in Homeopathic, Unani, Ayurvedic, Biochemic, Chinese, or other traditional system of treatment**”.

The Appellant product therefore, falls under the definition as provided in the **DRAP Act, 2012**. Section 7 (c) deals with the registration, licensing and advertisements regulations regarding therapeutic goods. Section 2(xxxvi) defines “Therapeutic goods” which includes “Alternative medicines”.

18. We have gone through a “Provisional Certificate for Enlistment of Products” submitted by the Appellant, which was issued by the Drug Regulatory Authority of Pakistan. It transpires from this provisional certificate that the Appellants product was enlisted with DRAP and the label claim of Appellant was also approved by the Drug Regulatory Authority. In the presence of this document the Commission was required to take up this issue before the DRAP and should have asked for their input as a sector regulator. However, the learned Commission has failed to consult the concerned regulator on the instant issue. Furthermore, the findings of enquiry committee are such that the Commission alone may not be able to decide the authenticity of the appellants claim. //

19. We are mindful that the **Competition Act, 2010** is the only special law, which provides for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. Moreover, **Section 50 of the Competition Act, 2010** provides,

“In order that information relevant to the performance of its functions is available to the Commission and for carrying out the purposes of the Act;



- a. All offices and agencies of the Federal Government and Provincial Government shall supply free of costs or charges information requested by the Commission in the discharge of its function under this Act; and
- b. The State Bank of Pakistan, Securities and Exchange Commission of Pakistan, the Central Board of Revenue, the Federal Bureau of Statistics and all regulatory authorities shall arrange to provide requisite information as permissible under their own laws to the Commission, from time to time at its requests in the discharge of its function under this Act."

20. Furthermore, **Regulation 35 of Competition Commission (General Enforcement) Regulations, 2007** provides for cooperation between the Commission and other Regulatory bodies.

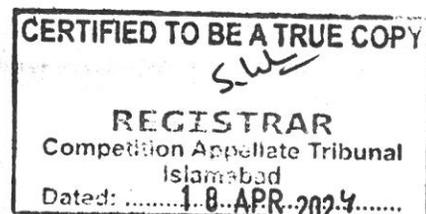
Regulation 35, Competition Commission (GER) 2007, provides,

35(1) ... "Subject to Section 48, the Commission may enter into any agreement with any regulatory authority for the purposes of;

- (a) Facilitation and cooperation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;
- (b) Avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and
- (c) Ensuring as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consist of or relates to a determination of any issue of competition between undertakings."

21. In view of **Section 50 of the Competition Act, 2010**, and **Regulation 35 of Competition Commission General Enforcement Regulations, 2007**, the Commission in order to perform its functions more effectively was required to obtain the relevant information from the concerned regulatory authority. However, the Commission has not consulted the Drug Regulatory Authority of Pakistan and gave such findings in the enquiry report, which were outside the scope and object of the Competition Act. In instances where one statute treats a subject in general terms and other deals with only part of the same subject matter, then it's advisable to interpret and reconcile the two statutes together¹.

1. Crawford's Statutory Construction Interpretation of Laws, p 430



- 22. It is recommended that, where other sector regulators are also working under their special laws, the Commission may consult them on the matters that may overlap and therefore requires mutual consultation.
- 23. Therefore, we are of the view that, the Commission as a regulator of competition in the market is expected to adopt an approach, whereby a meaningful consultation with the Drug Regulatory Authority of Pakistan should also be conducted in order to decide the case more effectively.
- 24. In view of above, the instant appeal is allowed and the matter is remanded back to the Commission to decide it afresh after consultation with the Drug Regulatory Authority of Pakistan (DRAP) within a period of two (02) months.

-sd-

Chairperson

sd

Member Technical-II

-sdc-

Member Technical-I

Announced in open court

CERTIFIED TO BE A TRUE COPY
S.W.
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 18 APR 2024