

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. 1127 /Reg./CAT/2024
Dated: 23-05-2024

M/S Neucon Pakistan Limited
Vs.
Competition Commission of Pakistan
NOTICE
Diary No.05/2023

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **21-05-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 23rd day of May, 2024.



(SAEED AFZAL)

Registrar

REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

M/S Neucon Pakistan Ltd

Authorized Representative Mr. Abdullah Naeem Khan,
C-2, Al Shams Center, B-39, Block-13/A,
Gulshan-e-Iqbal University Road, **Karachi**.

Waqar Ahmed Warraich

Advocate High Court
Sultan Law Associates
Office No. 8, 1st Floor, Rawal Arcade Plaza,
F-8 Markaz, **Islamabad**.

✓ **Competition Commission of Pakistan**

ISE Tower, 7th Floor, 55-B, Jinnah Avenue, **Islamabad**.

Feroz's sons Laboratories Ltd.

Having its registered office at 197-A, the Mall, **Rawalpindi**.

Haroon Dugal Law Chambers,

Advocates & Corporate Counselors
Office # 210, Street # 74, 1st Floor, Sector G-9/3, **Islamabad**.
(0321-4800777)

CPA # 01
2023

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BEFORE THE HONORABLE COMPETITION
APPELLATE TRIBUNAL,
ISLAMABAD

CM 01 2023
in
Appeal 2023

Neucon Pakistan Ltd.
Vs
CCP and another

APPLICATION FOR CONDONATION OF DELAY UNDER
RULE 4 OF THE COMPETITION APPELLATE TRIBUNAL
RULES, 2015 READ WITH ALL OTHER ENABLING
PROVISIONS OF LAW

Respectfully Sheweth:

1. That the Applicant/Appellant has filed the above Appeal in which no date of hearing has been fixed so far.
2. That for the purpose of this Application and for the sake of brevity, the contents of the titled Appeal may graciously be read as an integral part hereof.
3. That the Applicant during the hearing was given the impression that the proceedings have been disposed off in light of change of brand name from "BIOFREEZ" to "NEUFREEZ" by the Applicant as reflected from the Impugned Order.
4. That accordingly, the Applicant was never communicated the Impugned Order dated 24-09-2018. The Impugned Order dated 24-09-2018 only came to knowledge of the Applicant upon receiving the Impugned Recovery Notice dated 24-08-2023 on 28-08-2023. Therefore the date of knowledge of the Impugned Order shall be construed from the date when the Impugned Order was communicated to the Applicant in accordance with

CERTIFIED TO BE A TRUE COPY
S.W.
23/5/2024
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated:

**IN THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD**

Case No: Diary No.05 of 2023

M/s Neucon Pakistan Ltd

..... Appellant

Versus

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.

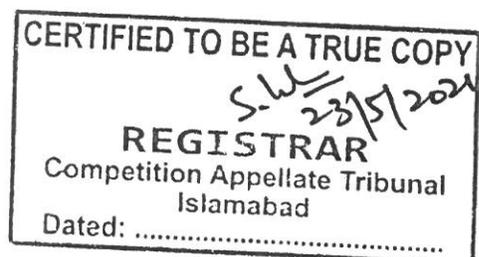
For the Appellant: Mr. Muhammad Sharukh Sheikh,
Advocate,
For Respondent No.1: Mr. Hassan Raza, Legal Officer, for
CCP/the respondent No.01
For Respondent No.2: Ms. Subhe Nasib, Advocate on behalf of
learned counsel for Respondent No.2
Date of hearing: 08.05.2024

JUDGMENT

Justice Mazhar Alam Khan Miankhel, Chairperson

CMA No:01 of 2023

Through the instant application the applicant/appellant seeks condonation of delay for filing of appeal within the stipulated period of time as the impugned order was passed on 24.09.2018 by the Competition Commission of Pakistan (**the Commission**) and then the appellant filed instant appeal on 11.10.2023.

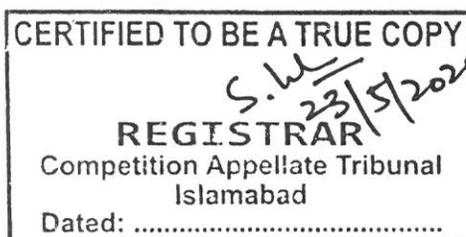


2. We have heard the learned counsel for the parties and gone through the available record.

3. The main question raised by the applicant is that the impugned order dated 24.09.2018 was never communicated to the applicant as per law and regulations and he got knowledge of the impugned order on receiving the recovery notice dated 24.08.2023. He was of the view that if the date of knowledge of the applicant is considered then filing of appeal is within the prescribed period of 60 days.

4. The other side while rebutting the arguments of the learned counsel for the applicant referred to a notice dated 07.10.2021 for compliance of the impugned order issued by the Registrar of the Commission and is also supported by the relevant entries of the dispatch register and the record of the Courier Company. He further argued that the order of the Commission is also uploaded on the website of the Commission as per law and the regulations just after its announcement. He was further of the view that the said impugned order was also published in the law journal reported as 2019 CLD 37. He was of the view that after receipt of the above compliance notice the applicant could have filed the appeal but he delayed the same till 11.10.2023 which is hopelessly time barred and the application deserves outright dismissal. Asked for dismissal of application.

5. We have heard the learned counsel for the parties and have gone through the available



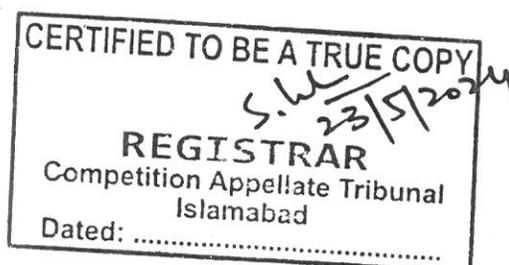
record. The record of the case reflects that after announcement of the impugned order the same was conveyed to the appellant as per law and the regulations vide letter dated 02.10.2018 and this very fact is also confirmed by the entries of the dispatch register annexed by the respondent in his reply. The learned counsel for the applicant was confronted with the said record but he was unable to deny or rebut the same. Under the Law, the official record has presumption of correctness attached to it unless rebutted through a cogent and reliable evidence. No doubt the above facts reflect that the impugned order was communicated to the appellant under the law and the regulations and similarly a fresh notice dated 07.10.2021 was also issued to the appellant for the compliance of the impugned order. This alone, on the face of it, is sufficient to establish the knowledge of the applicant on 07.10.2021, beside the publication of the impugned order in the law journal even if we ignore the fact of the uploading of the same on the website of the Commission.

6. The most important aspect of the case has been dealt with by the learned counsel for the applicant. The above noted notice dated 07.10.2021 for the compliance of the impugned order was questioned by the applicant by way of a Constitutional Petition before the Islamabad High Court and operation of the same was suspended by the High Court. This very fact very much confirms the knowledge of the applicant and as per settled precedents, the applicant was supposed to file an



appeal within the statutory period by considering this date of the notice to be the date of knowledge. But the applicant still waited for filing of appeal till 11.10.2023, for the reasons best known to him and by filing his appeal on 11.10.2023, claimed his date of knowledge on receipt of recovery notice dated 24.08.2023 but the record of the case reflects otherwise. The applicant challenged the earlier compliance noticed dated 7.10.2021 before the Islamabad High Court and got it suspended. The very filing of his constitutional petition established his date of knowledge and belated filing of appeal on 11.10.2023 is hopelessly time barred. Law favours the vigilant and not the indolent. No sufficient and plausible reasons have been given in his application for condonation of ^{delay.} appeal. As per settled law of the land the applicant was supposed to explain the delay of each and every day from the date of his knowledge. The instant application of the applicant for condonation of delay is also supported by an affidavit which on the face of it contradicts the stance of the applicant for condonation of delay as in para 4 of his application he has mentioned the date of knowledge upon receiving the recovery notice dated 24.08.2023. The record of the case falsifies his own stance and the affidavit sworn by the applicant is not based on correct facts.

7. All the above discussion makes it clear that even if the impugned order of the Commission was not communicated to the applicant under the law but he cannot deny the receipt of recovery notice dated 07.10.2021 and thereafter his deep slumber



till filing of appeal on 11.10.2023 is sufficient to deny him the relief asked for.

8. The courts of law are normally interested in the decision of cases on merits just to secure the ends of justice but in such like cases no such exception can be taken.

9. In view of the above discussion instant CMA for condonation of delay is hereby dismissed and resultantly the appeal so filed also stands dismissed for being time barred.

-sd-

-sd-	Chairperson	-sd-
Member Technical-I		Member Technical-II

-sd-

Announced in open Court
21.05.2024

