

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Civil Appeal No.1011 of 2024

(On appeal against the judgment dated 29.05.2024 of the Competition Appellate Tribunal, Islamabad passed in Appeal No. 45/2023)

M/s Options International (SMC-Pvt.) Ltd through its CEO Appellant

Versus

The Competition Commission of Pakistan through its
Registrar and another Respondents

For the Appellant: Mr. Taimoor Aslam Khan, ASC

For Respondent No. 1: Mr. Hafiz Naeem, Legal Advisor

For Respondent No. 2: Not represented

Date of Hearing: 07.08.2024

ORDER

Qazi Faez Isa, CJ. This appeal has been filed under section 44 of the Competition Act, 2010 (**'the Act'**) against the judgment dated 29 May 2024 passed by the Competition Appellate Tribunal, Islamabad (**'the Tribunal'**). The judgment of the Tribunal is unanimous; two learned Members agreeing with the learned Chairperson.

2. The Competition Commission of Pakistan (**'the Commission'**) had imposed a penalty of five million rupees on the appellant and ordered further additional penalty of one hundred thousand rupees per day from the date of passing of the order in case of non-compliance.

3. The appellant had assailed before the Tribunal the above order dated 19 December 2018 passed by the Commission. The Tribunal decided the appeal by enhancing the penalty amount from five million to six million rupees but reduced the per day penalty amount to five thousand rupees from one hundred thousand rupees with effect from 3 December 2021, which was the date from which the Tribunal had become functional. We inquired from learned counsel which judgment, whether of

the Commission or the Tribunal, favours the appellant, and he stated that the one of the Tribunal.

4. We also inquired from the learned counsel whether the appellant disputes that the name *Starbucks* and logo are registered trademarks, and he conceded that both the said name and logo are registered abroad and in Pakistan. The matter before the Commission, and then before the Tribunal, was with regard to the use of the *Starbucks* name and logo by the appellant and selling its products under such name and style. A complaint from the proprietor of the said tradename and trademark, Starbucks Corporation USA (respondent No. 2), was received by the Commission which took action on it, and passed the abovementioned order.

5. The learned counsel contended that the Act only applies to '*undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan*', as stipulated in sub-section (3) of section 1 of the Act. However, he submitted, since the respondent No. 2 does not have any outlet in Pakistan, nor has authorized anyone to use its name, logo and products in Pakistan, therefore, the appellant was not in competition with the respondent No. 2, its authorized user(s) and/or its products.

6. We cannot bring ourselves to agree with the said submission, which has no substance. The appellant had put itself forward by selling its own products under the international brand name *Starbucks* and by using its logo, which must have had the effect of *distorting competition within Pakistan* because a local vendor selling similar products, as those being sold by the appellant, would be at a serious disadvantage and not able to compete therewith since the unsuspecting public would believe, understand or perceive the same to be the genuine products of the respondent No. 2.

7. The learned counsel then objected to the levy of the said penalties. We inquired from the learned counsel whether the law authorizes the penalties which had been imposed and he conceded that it did under

section 38 of the Act. Therefore, it is not understandable how the same can be objected to.

8. No other point has been urged which may persuade us to take a view different from the one taken by the Tribunal. Therefore, this appeal is dismissed, but with no order as to costs as the respondent No. 2 did not enter appearance. Copy of this order be sent to the respondent No. 2 for information.

Chief Justice

Judge

Judge

Islamabad
7 August 2024
Atif/*

Approved for reporting