

Competition Tribunal File No: CT-2013-007

The Competition Tribunal

In the matter of an Application by Safa Enterprises Inc.

doing business as My Convenience Store

for an order pursuant to Section 103.1

of the Competition Act, RSC 1985 c. C-34, as amended

granting leave to bring an application pursuant to

Section 76 of the Competition Act

BETWEEN:

Safa Enterprises Inc.

Applicant

AND:

Imperial Tobacco Company Limited.

Respondent

| | |
|--|-----|
| COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE | |
| FILED / PRODUIT CT-2013-007 September 19, 2013 Jos LaRose for / pour REGISTRAR / REGISTRAIRE | |
| OTTAWA, ONT | # 5 |

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, ADNAN MUSTAFA of 11957 96A Avenue, Surrey BC V3V 2A5, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Manager of the Applicant and such have personal knowledge of the facts and matters hereinafter deposed to except where stated to be made on information and belief and where so stated, I verily believe them to be true.
2. I am authorized by the Applicant to make this Affidavit.

3. As the Manager of the Applicant I am authorized by the Applicant to act on its behalf if the leave granted to bring an Application before the Competition Tribunal.
4. Attached are the Financial Statements for the fiscal year ending December 31, 2012 of the Applicant.

Exhibit A (Financial Statements for the period ending 2012-12-31)

5. Attached Exhibit "A" reflects the financial position of the Applicant; the retained earnings are in deficit of \$86,933.75 for the fiscal period ending December 31, 2012.
6. Due to shareholders in Exhibit "A" is comprised of mostly borrowed capital from banks and other personal sources.
7. Applicant Safa Enterprises Inc. ("SEI") is a small family business establishment that happened to be a corporation.
8. Being a small family business I and my wife Raina K. Adnan who is the sole shareholder of the Corporation has invested all our personal and borrowed resources to establish this business.
9. I, my wife and the Applicant do not have funds to retain a legal counsel. We are unable to get any loan from banks or personal sources to retain a legal counsel.
10. I am not a member of Law Society of British Columbia but I have an educational background in business studies. I have completed my Master of Commerce degree majored in Finance from Pakistan.
11. I have and am capable of researching the Competition Tribunal Rules and Procedures necessary to ensure that the Tribunal hearing will be conducted in businesslike manner and proceed expeditiously thus being concluded within a reasonable time frame.
12. I was diagnosed with Colon Cancer in July 2011. I was unable to look after the business affairs from July to December 2011. During this period the Applicant started losing customers as the Applicant's competitor lowered the prices of Cigarettes.
13. I had to discontinue my chemotherapy as it was hard to see the business getting shut down when I and my wife had all our savings invested in the business.
14. I found out in October 2012 that Applicant's competitor was on Preferred Pricing Program by the Respondent Imperial Tobacco Company Limited ("ITCO").

15. Mr. Thierry Schmidt, the Regional Sales Manager of ITCO has acknowledged and insisted to continue the discrimination policy against the Applicant in his letter dated January 17, 2013.

Exhibit B (Mr. Schmidt Letter dated Jan 17, 2013)

16. I tried my best to convince the Respondent "ITCO" to provide us the equal business opportunity but they have not stopped their reviewable practice to date.

17. Now I am going through hard time as my health is deteriorating that my family doctor believes is due to stress I am going through. My doctor says, "First three years are most crucial in cancer treatment, as there are more chances of cancer re-lapse in first three years". The Respondent "ITCO" will be responsible for the relapse if it happens.

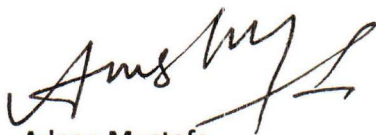
18. It will be hard for the Applicant to be in the business if the Respondent "ITCO" continues to discriminate the Applicant's business.

19. If cancer relapses then I will not be able to look after the business and my wife is also going to school so that she could financially help in future in the event something happens to me, it is very hard for her to keep up as we have a 3.5 years old daughter to look after as well.

20. All I am requesting Competition Tribunal to give us an opportunity to present Applicant's case that I believe the practice of the Respondent "ITCO" is reviewable and falls under the Section 76 of Competition Act.

21. Therefore, I seek an order from Competition Tribunal for leave to represent the Applicant in proceedings, rather than a solicitor, pursuant to Rule 120 of the Federal Rules of Court.

Dated at Vancouver, British Columbia, this 6th day of September, 2013.



Adnan Mustafa

Manager

Safa Enterprises Inc.

Declared before me at
Vancouver, British Columbia
this 6th day of SEPT. 2013.

~~Notary Public for the Province of
British Columbia~~

SAIRA KHAN

Notary Public

#213, 8334 - 128th Street

Surrey, BC V3W 4G2

Tel: 604-591-5824 Fax: 604-591-8273

saira@vannotary.com

GULZEIB AGHA.

PUBLIC ACCOUNTANTS

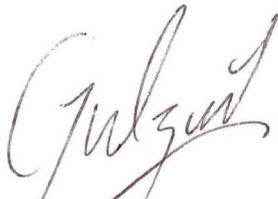
104 - 7945 132 STREET
SURREY BC, V3W 4N2
TELEPHONE: (778) 892-2560

This is Exhibit "A" to the
Affidavit/Declaration of ADNAN MUSTAFA.
Sworn/Declared before me at SURREY.
BC this 6th day of September 2013.

Saira Khan
Notary Public for the Province of
British Columbia

NOTICE TO READER

We have compiled the Balance Sheet of Safa Enterprises Inc. for the year ended December 31, 2012 and the Statement of Income and Expenses for the year then ended, from the information provided by management. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Readers are cautioned that these statements may not be appropriate for their purposes.


Gulzeib Agha

August 16, 2013

SAFA ENTERPRISES INC.
NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2012.

1. GENERAL INFORMATION

The accompanying statements reflect the revenue and expenditure for the period of twelve months from January 01, 2012 to December 31, 2012.

These financial statements reflect the assets, liabilities, revenues and expenses of and do not include any other assets, liabilities, revenues and expenses of the shareholders or the liability of the shareholders for taxes on the earnings of the company.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Operation

Financial statements have been prepared in accordance with generally accepted accounting principles.

Fixed Assets are recorded at cost.

Revenues and expenses are recorded on accrual basis.

3. CAPITAL ASSETS

Capital assets are depreciated on diminishing balance method at the following rates.

Furniture & equipment 20%-

| <u>Assets</u> | <u>Cost</u> | <u>Accumulated Depreciation</u> | <u>Net Book Value</u> |
|-----------------------|-------------|-------------------------------------|---------------------------|
| Furniture & equipment | 4,733 | - | 4,733 |

In the year of acquisition of an asset, one half of the above rates are applied.

4. FINANCIAL INSTRUMENTS

The company's financial instruments consist of cash, accounts receivable, accounts payable and long term debt. Unless otherwise noted, it is management's opinion that the company is not exposed to significant interest, currency or credit risks arising from these financial instruments. The fair values of these financial instruments approximate their carrying values, unless otherwise noted.

Gulzeib Agha

(These notes form an integral part of the Financial Statements)

5. SHARE CAPITAL

Authorized:
10,000

Common shares

Without par value

Without special rights or
Restrictions attached

Issued and fully paid:
1,000 Common shares without par value at \$1.00 each

6. DUE TO SHAREHOLDERS

Loans from Shareholders are not interest-bearing and have no fixed terms of repayment.
These have been classified as non-current.

Gulzeib Agha

(These notes form an integral part of the Financial Statements)

A

SAFA ENTERIRSES INC.

BALANCE SHEET

AS AT DECEMBER 31, 2012

(UNAUDITED)

LIABILITIES AND SHAREHOLDERS' EQUITY

| | 2012 | 2011 |
|---|--------------------|--------------------|
| | \$ | \$ |
| CURRENT | | |
| Bank overdraft | - | 4,141.82 |
| Accounts payable & accruals | 13,488.59 | 8,997.18 |
| Due to government agencies | - | 471.46 |
| Total Current Liabilities | <u>13,488.59</u> | <u>13,610.46</u> |
| Due to shareholders | 249,898.67 | 155,668.31 |
| CAPITAL | | |
| Issued and Fully paid 1000 common shares @ 1.00 each | 1,000.00 | 1,000.00 |
| Retained Earnings | <u>(86,933.75)</u> | <u>(52,453.95)</u> |
| Shareholders' Equity | <u>(85,933.75)</u> | <u>(51,453.95)</u> |
| | <u>177,453.51</u> | <u>117,824.82</u> |

APPROVED ON BEHALF OF THE BOARD

DIRECTOR

(see notice to reader)

The accompanying notes are an integral part of financial statements

SAFA ENTERIRSES INC.
BALANCE SHEET
AS AT DECEMBER 31, 2012
(UNAUDITED)

ASSETS

| | 2012 | 2011 |
|-------------------------------|-------------------|-------------------|
| | \$ | \$ |
| CURRENT | | |
| Cash and bank | 2,192.14 | 500.00 |
| Accounts receivables | 700.00 | - |
| Due from govt. agencies | 25,627.70 | 15,191.15 |
| Prepaid deposits | 11,300.00 | 6,500.00 |
| Inventory | 120,000.00 | 78,000.00 |
| Total Current Assets | 159,819.84 | 100,191.15 |
| FIXED | | |
| Furniture & equipment | 4,733.67 | 4,733.67 |
| Goodwill | 12,500.00 | 12,500.00 |
| Less accumulated depreciation | - | - |
| Total Fixed Assets | 17,233.67 | 17,233.67 |
| Organisation cost | 400.00 | 400.00 |
| | 177,453.51 | 117,824.82 |

(see notice reader)

The accompanying notes are an integral part of the financial statements.

SAFA ENTERIRSES INC.
STATEMENT OF RETAINED EARNINGS
FOR THE PERIOD ENDED DECEMBER 31, 2012
(UNAUDITED)

| | 2012 | 2011 |
|----------------------------------|--------------------|--------------------|
| | \$ | \$ |
| Balance at beginning of period | (52,453.95) | 0 |
| Net Income (Loss) for the period | (34,479.80) | (52,453.95) |
| Balance at the end of period | <u>(86,933.75)</u> | <u>(52,453.95)</u> |

(see notice to reader)

SAFA ENTERPRISES INC.
STATEMENT OF INCOME
FOR THE YEAR ENDED DECEMBER 31, 2012
(UNAUDITED)

| | 2012 | 2011 |
|--|------------------------|------------------------|
| | \$ | \$ |
| REVENUE | | |
| Sales | 324,079.83 | 198,227.84 |
| Other | 11,668.79 | 3,954.00 |
| | <u>335,748.62</u> | <u>202,181.84</u> |
| DIRECT COST | | |
| Inventory-opening | 78,000.00 | - |
| Supplies | 321,168.45 | 256,506.10 |
| Inventory-Closing | (120,000.00) | (78,000.00) |
| Cost of goods sold | <u>279,168.45</u> | <u>178,506.10</u> |
| GROSS MARGIN | 56,580.17 | 23,675.74 |
| EXPENSES | | |
| Accounting | 2,000.00 | 2,000.00 |
| Advertising and promotion | - | 100.43 |
| Automobile expenses | 1,080.66 | 4,402.59 |
| Bank charges & intrest | 3,979.70 | 3,378.05 |
| Business licence and permits | 287.00 | 281.00 |
| Entertainment | 184.73 | 503.27 |
| Office supplies and sundry | 662.57 | 431.75 |
| Rent | 57,957.14 | 43,035.71 |
| Repairs & maintenance | 1,149.11 | 3,577.30 |
| Security | 364.00 | 142.87 |
| Telephone | 4,514.27 | 3,618.11 |
| Wages & benefits | 12,880.79 | 8,658.61 |
| TOTAL EXPENSES | <u>85,059.97</u> | <u>70,129.69</u> |
| Net Income before management salary | <u>(28,479.80)</u> | <u>(46,453.95)</u> |
| Management Salary | 6,000.00 | 6,000.00 |
| Net Income after management salary | <u>(34,479.80)</u> | <u>(52,453.95)</u> |

(see notice to reader)

(The accompanying notes are an integral part of financial statements)



**IMPERIAL TOBACCO
COMPANY**

This is Exhibit "B" to the
Affidavit/Declaration of ADNAN MUSTAFA
Sworn/Declared before me at SURREY
BC this 6th day of SEPTEMBER 2013.

~~Saira Khan
Notary Public for the Province of
British Columbia~~

SAIRA KHAN
Notary Public
#213, 8334 - 128th Street
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Canada
Tel. 1-403-717-8020
Fax 1-403-531-9589
Toll free 1-888-896-6910
www.imperialtobaccocanada.com

January 17, 2013

Without Prejudice

Safa Enterprises Inc.
dba My Convenience Store (ERP # 1060295)
c/o Mr. Adnan Mustafa, Manager
450 West Hastings Street
Vancouver, BC
V6B 1L1

Dear Sir,

I am writing in response to the complaint you made recently to your Account Representative, Rob Laing, in relation with our expansion, preferred pricing program (the "PPP").

As you probably know, the main objective of this program is to ultimately offer lower retail prices to consumers on Imperial Tobacco products. The PPP is offered to selected retailers, comprised of both independent small businesses as well as corporate banners. It is legal to offer the PPP to some retailers, and not to all. We have attempted to select as many independent retailers as possible, keeping in mind that limited financial resources prevent us from offering the PPP to all customers.

Let me reassure you that we are, and continue to be, fully committed to all our customers, including those who are not participating in the PPP. We express our commitment to you and your business in various manners. First, by offering you a winning brand portfolio comprising high quality products and unique innovations. Our portfolio provides you with the leading brands that adult smokers are looking for. Our commitment to your business continues day in and day out through our DSS model, which ensures that your ITCO products are delivered to your store, hassle free and your ITCO Account representative is always available to help you with any issues that you may encounter. Finally, our commitment to your business is also to keep our prices as competitive as possible in each segment. In essence, our commitment to you is to offer popular and innovative brands, competitive prices and unique service through our DSS model.

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**IMPERIAL TOBACCO
COMPANY**

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Toll free 1-888-896-6910
www.imperialtobaccocanada.com

I understand your disappointment from the fact that your outlet is not eligible to PPP. But you should not underestimate the benefits that you derive from your participation in our Low Segment Term Program ("LST Program"). Indeed, the LST Program provides you with substantial rebates (which are equivalent to the PPP rebates) on John Player Standard which is the number 1 selling brand in Canada. In addition, if you wish to obtain higher rebates on our products, we invite you to consider the option of adopting the PAD 0 days payment term. It would award you an additional rebate of \$0.45 per carton of Premium and \$0.35 per carton of Below Premium cigarettes. Please consult with your Account Representative (Rob Laing at 778-874-7823) or your District Manager (Vincent Chai at 604-366-5085) if you wish to learn more about this option.

Thank you and regards,

Thierry Schmidt
Regional Sales Manager