



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
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Enforcement order under sub-section 3 of section 23 of the Pakistan
Telecommunication (Re-organization) Act, 1996 against Gem Internet Services (Pvt)
Limited

File No. PTA/Finance/NVCNS/Gem Internet/528/2006

Date of Issuance of Show Cause Notice: 9th February, 2010

Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 1st April, 2010

The Authority present:

S. Nasrul Karim A. Ghaznavi: Member (Finance)
Dr. Khawar Siddique Khokhar: Member (Technical)

The Issue:

“Non payment of PTA dues and failure in submitting annual audited accounts”

EX-PARTE DECISION OF THE AUTHORITY

BRIEF FACTS:

Gem Internet Services (Pvt.) Limited (the “licensee”) is a private limited Company incorporated under the Companies Ordinance, 1984 and is engaged in the business of operating non voice communication network services as an NVCNS operator pursuant to the non-exclusive license No. DIR(C)/L/PTA/95/98 dated 9th March, 2003 (the “license”) issued by the Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate non voice communication network services in Pakistan on the terms and conditions contained in the license.

2. The licensee has defaulted in payment of the Authority’s dues for the years ended 30th June, 2008 and 2009 amounting to Rs.139,973/-as well as not provided its annual audited accounts for the years ended 30th June, 2008 and 2009. In this regard the

Authority made various requests to the licensee but in vain. Hence, the Authority issued Show Cause Notice (the "Notice") dated 9th February, 2010 under section 23 of the Act whereby required the licensee to remedy the contravention by making the aforesaid payments and submission of annual audited accounts for the years ended on 30th June, 2008 and 2009 within seven days and also submit written reply to the Notice within thirty (30) days of the issuance of the Notice and explain as to why the license should not be suspended, terminated or any other enforcement order should not be passed under section 23 of the Act against the licensee. But the licensee neither submitted its reply to the Notice within the statutory period of thirty days nor deposited the Authority's dues as well as failed to submit annual audited accounts for the aforesaid period, hence committed sheer violation of the provisions of the license and the Act. Therefore, before passing an enforcement order a Hearing Notice dated 22nd March, 2010 was issued and served on the licensee whereby informed the licensee to attend the hearing dated 1st April, 2010. The show cause and hearing notice were served on the address of the company available and maintained with PTA. The show cause notice was not received back undelivered whereas hearing notice was received back undelivered. However, the licensee failed to respond to the show cause notice and also did not attend the hearing on the said date.

4. Regulation 46 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006, provided as under:

46. Communication with the licensee (1) *The licensee shall maintain on file with the Authority its current address, including telephone number, fax number and email address, and the name and designation of a contact person, for the purposes of receiving communications from the Authority. Any notice or other communication to the licensee permitted under its license or the Regulations may be delivered to it by hand, mail, facsimile or electronic mail addressed to the licensee at its current address(s) available on file with the Authority and any such delivery or communication, as the case may be, if sent on the address referred to above shall be deemed to have been delivered or communicated, as the case may be, to the licensee.*

(2) *Any change in address, telephone numbers, fax numbers or contact person as referred in sub-regulation (1) shall be communicated to the Authority within seven (7) days of such change.*

5. As the show cause notice and hearing notice has been served at the address given and maintained by the licensee with the Authority, hence, are deemed to be delivered and communicated to the licensee.

6. Therefore, the Authority has no option but to decide the matter ex-parte, on the basis of available record.

(a). The licensee was obliged under conditions 3.1 and 4.5 of the license, regulation 23 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006, and regulation 11 of Class licensing and Registration Regulations, 2007 to submit annual audited accounts within three months and to pay annual license fee to the Authority within 120 days from the close of financial year which licensee failed to comply.

(b) The Authority has been making repeated requests to the licensee vide various letters including dated 10th October, 2008, 10th November, 2008, 3rd December, 2008, 7th October, 2009, 2nd November, 2009, and 1st January, 2010 requiring the licensee to make the payments and submit annual audited accounts, but the licensee neither deposited the Authority's dues nor submitted annual audited accounts which constitute sheer disregard to the writ of the Authority. The Authority has made its reasonable efforts to contact the licensee, but failed to contact.

(c). Foregoing clearly shows that the licensee is not complying with the directions of the Authority and has closed its offices without informing the Authority. The hearing notice has been served on the address of the licensee that is available in the record but neither the licensee nor any of its representatives attended the hearing establishing an irresponsible attitude of the licensee towards the writ of the Authority.

7. ORDER

7.1. Keeping in view the above mentioned facts coupled with the available record, the Authority hereby decides to proceed *ex-parte* against the licensee by passing the following enforcement order:

- (a) License of Gem Internet Services (Pvt) Ltd is hereby SUSPENDED for a period of One Month or till paying of payable dues for the years ended 30th June, 2008 and 2009 amounting to Rs.139,973/- alongwith submission of Annual Audited Accounts for the years 2008 and 2009, which ever is earlier.
- (b). In case of failure of the licensee to deposit the Authority's dues as provided in Para 4.1 (a) above, license No. DIR(C)/L/PTA/95/98 dated 9th June, 2003 of the company shall stand TERMINATED w.e.f. 16th May, 2010 without further notice and recovery proceedings under section 30 of the Act shall be initiated by the Authority against the company for recovery of all payable dues as arrear of land revenue. While in case of payment as per 4.1(a), the license shall be restored.

- (c). PTCL is directed to forthwith terminate all telecommunication facilities extended to the licensee pursuant to the license till further orders of the Authority.

(S. Nasrul Karim A. Ghaznavi)
Member (Finance)

(Dr. Khawar Siddique Khokhar)
Member (Technical)

8. This determination signed on _____ and comprises 04 pages.