



PAKISTAN TELECOMMUNICATION AUTHORITY
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**M/s Poleax Telecom Appeal under Section 7 (2) of the Pakistan
Telecommunication (Re-Organization) Act 1996, from the Order/letter of
Director General (Finance) dated 2ND April, 2007**

Date of preferring the Appeal: 16.07.2007
Date of hearing : 13. 09 .2007
Venue of hearing : Conference Room, PTA
HQs, Islamabad

The Authority present:

S. Nasrul Karim Ghaznavi: Member (Finance)
Dr. Muhammad Yaseen: Member (Technical)

The Issue:

‘Refund of earnest money Rs.21,75000/-deposited by the Appellant for participating in auction of 479 MHz band for region NTR-1 ’

DECISION OF THE AUTHORITY

1. In the background of the facts mentioned and on the grounds raised in the memo of appeal, M/s Poleax Telecom (Pvt.) (the “Appellant”) has assailed before us the letter/decision issued vide letter No.PTA/Finance/WLL/POLEAX/286/2006 dated April 2, 2007 by DD(Finance) and AD(Finance) with the approval of DG(Finance), PTA (the “impugned letter”) purportedly under sub-section (2) of section 7 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”).

2. As mentioned above, the instant Appeal being filed under sub-section (2) of section 7 of the Act, the same is reproduced in verbatim, for ready reference, as under:

(2) A person aggrieved by any decision or order of any officer of the Authority acting under the delegated powers of the Authority may, within thirty days of the receipt of the decision or order, appeal to the Authority in prescribed manner and the Authority shall decide such appeal within thirty days. [Emphasis added]

3. Previously the Appeal was fixed for hearing on 8th August, 2007 but on that date we could not proceed with the matter and had to adjourn the hearing on the Appellant's request for non availability of its legal counsel. Hence, today's hearing.

4. Mr. Muhammad Shafi, CEO, and Mr. Jahanzeb Shafi, Director, alongwith their counsel Mr. Mohsin Akhtar Kayani, Advocate, appeared on behalf of the Appellant while for our/the Authority's assistance our officers from law, finance and wireless divisions, PTA, attended the hearing.

5. As mentioned in para 2, above, an appeal under sub-section (2) of section 7 of the Act has to be filed within thirty days of the receipt of the order/decision complained of. Though no date is mentioned on the memo of the Appeal before us, however, as per our record the same was filed/received on 16th July, 2007 while, as given above, the impugned letter is dated 2nd April, 2007.

6. Without prejudice to the merits of Appeal, particularly to the point as to whether an appeal under sub-section (2) of section 7 of the Act is maintainable against the impugned letter, we have observed that the Appeal is filed with a delay of about 104 days and is thus time barred. Therefore, without opening facts and merits of the case for our deliberation and adjudication, we are constrained to dismiss it on the ground of delay. Although we understand that no account of justifications and reasoning would change our perception of the bar the law has put on us in hearing an appeal filed beyond the period of limitation given under the Act, we still can not proceed towards converting our perception into decision of ours without first hearing the Appellant on the point of delay in filing the Appeal.

7. By hearing the Appellant on the legal point of delay despite our aforementioned perception, we not only want to discharge our obligation under clause (d) of section 6 of the Act as well as the requirement of the principle of *audi altrum partem* but also want to know from the Appellant if it could be of any assistance to us in crossing the barrier of the law of limitation for enabling us to decide the Appeal on its own merits. We, therefore, at the very outset required the Appellant to satisfy us as to how can we hear the Appeal which is clearly and undisputedly time barred.

8. The Appellant's learned counsel, while admitting the fact on record regarding the delay in filing the Appeal, submitted that since his case is exceptionally strong on merits, the technicality of delay should not be taken as a bar in deciding the Appeal on merits and he should, therefore, be allowed to open his case before the Authority. Without producing or at least mentioning a single specific case law, the learned counsel submitted that there are chains of judgments of our superior courts in support of his contention that cases of strong merits should not be dismissed on technical grounds and delay should be condoned as of right. Probably after realizing during the hearing that even a formal request for condoning the delay has not been filed, the learned counsel vehemently argued and requested that he should be given an opportunity of filing application for condonation of delay under section 5 of the limitation Act. However, when confronted when the legal proposition as to whether we i.e. the Authority can condone the delay

under section 5 of the Limitation Act when the period of limitation for filing of appeal is provided under the Act, a special statute, and not under the Limitation Act, the learned counsel could not satisfy us.

9. The Appeal is admittedly time barred by about 104 days and irrespective of the merits of the case and its effectiveness, the undeniable legal position is that we have no power to ignore or condone the delay for hearing the Appeal on merits. The Appellant's request of allowing it an opportunity for filing petition for condonation of delay is also not tenable as there is no wisdom in filing a petition which we cannot entertain.

10. For the foregoing reasons, the Appeal is dismissed being time barred.

This order is made today at this 24th day of September, 2007 and comprised 3 pages.

(S. Nasrul Karim Ghaznavi)
Member (Finance)

(Dr. Muhammad Yaseen)
Member (Technical)