



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5A ISLAMABAD
Ph: 051-9225328 Fax: 051-9225338

**Enforcement order under sub-section 3 of section 23 of the Pakistan
Telecommunication (Re-organization) Act, 1996 against M/s. 4-B Gentel
International (Pvt)Ltd**

File No. FT A/Wireline Licensing/4-B Gentel/534/2006

Date of Issuance of Show Cause Notice: 11th November 2008
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 24th December 2008

The Authority Present:

Dr. Mohammed Yaseen: Chairman.
S. Nasrul Karim Ghaznavi: Member (Finance)

The Issue:

"Change in shareholding without fulfilling mandatory regulatory requirements"

DECISION OF THE AUTHORITY

BRIEF FACTS:

M/s. 4-B Gentel (Pvt.) Limited (the "licensee") is a private limited company incorporated under the Companies Ordinance, 1984 and was awarded a Long Distance International license on 10th March 2006 bearing No. LDI-14-2006 (the "license") issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate Telecommunication System in licensed region on the terms & conditions contained in the license.

2. Succinctly stated that it came to the knowledge of the Authority through complaint vide letters dated 19th July, 2008 and 11th October, 2008 received from Mr. Muhammad Ashraf (one of Directors/shareholders of the licensee) that the licensee has changed its management and shareholding without fulfilling the mandatory

requirements under sub-rule (5) of Rule 11 of Pakistan Telecommunication Rules, 2000, regulation 21 of Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 and condition 12.4 of its license. The aforesaid letters were duly responded by PTA vide PTA letters dated 10th October, 2008 and 5th November, 2008. However, in the meanwhile record of the licensee was searched from the respective office of Security & Exchange Commission of Pakistan, which supported the fact that management of the licensee and its shareholding has been changed without fulfilling the aforesaid legal requirement of prior notice to the Authority. Hence, show cause notice No.PTA/Wireline Licensing/4-B GENTLE (Pvt.) Ltd/534/2006/443 dated 11th November, 2008 was issued. The licensee replied the notice vide its letter No.4BG/FA/PTA-LA/11-03 dated 22nd November, 2008 in the following terms:

Subject: REPLY TO SHOW CAUSE NOTICE ISSUED UNDER SECTION 23 OF PAKISTAN TELECOMMUNICATION (RE-ORGANIZATION) ACT 1996

This refers to your letter No. PTA/Wireline Licensing/4B CENTAL (Pvt.) Ltd/534/2006/443 dated 11th November 2008.

The allegation mentioned in the show cause notice referred in the subject cited above are against the law and facts. Hence vehemently denied. The show cause notice seems to have been issued on the basis of some misunderstanding of facts as well as misconception of relevant law. Factual position is that on account of resignation of Muhammad Ashraf from the office of Chief executive Officer, Mr. Muhammad Nadeem Qureshi was appointed as new Chief Executive Officer of the company duly approved by the Board of Directors. Apart from, the vacancy of a Director falling vacant due to resignation of Mr. Muhammad Ashraf was also filled by the Board of Directors in the same meeting. This change dose not come within the preview of the law governing/regulating the telecommunication systems. Neither the " Control" nor any substantial ownership interest has been changed in true sense of the terms mentioned in rule 11 sub rule 05 explanations (i & ii) of the Pakistan Telecommunication Authority rules 2000. For the purpose of convenience the same are reproduced here:

(5) If a substantial interest in or control of a licensee is proposed to be changed the licensee shall give the Authority notice of such fact in writing. That written notice shall include all relevant details of the proposed change. If the Authority is of opinion, that change shall adversely affect the ability of the licensee to provide its licensed telecommunication services, it may impose such additional conditions, in the license as shall be reasonable and directly relevant to the proposed change.

Explanation: - For the purpose of sub-rule (5):-

- (i). "Control" means the ability to direct the exercise, whether directly or indirectly and whether through one or more entities of more than fifty percent of the voting rights excisable at any general meeting of the shareholders of the licensee, and*
- (ii). "Substantial ownership interest" means more than ten percent of the issued share capital of the licensee.*

By replacing the Chief Executive Officer or a Director no change has been brought in the "Control" the ability to exercise more than 50% of the voting rights. Similarly

"Substantial ownership interest" is concerned no change in this regard has been brought so far.

One of the shareholder having shares comprising 10.74% shareholdings intended to sale his shares to another shareholder and Pakistan Telecommunication Authority was duly informed in this regard for grant of permission under the relevant rules whereas, the said transfer has not been materialized up till now. So neither the license, nor the rights conferred upon the licensee or control of the licensee has been transferred which may result in substantial change in the ownership, meaning thereby that no contravention of any prevailing regulatory laws or terms & conditions of license has been committed by the Answering Respondent. Therefore, notice in question is unwarranted and uncalled for which is liable to be withdrawn or filed.

4B Gentel is the company which is running its affairs with Pakistan Telecommunication Authority and its customers with bonafide and in a transparent manner. Since its emergence not an iota of any material can be traced suggesting even a microscopic violation or contravention of the prevailing law of the country. We cannot even think to overlook the terms and conditions of the license granted to us and have always proved our faithfulness and obedience towards the Pakistan Telecommunication Authority and we ensure the same for all the time to come.

We also expect the same reciprocally that the Authority shall not take any step beyond the scope of prevailing law causing any substantial damage to the goodwill or entity of the company.

For what has been submitted above it is humbly requested that the notice in question may kindly be filed. An opportunity of personal hearing in this regard is also solicited to clarify the matter.

3. However, prior to disposing of the aforesaid show cause notice, the licensee and one of its Director/shareholder Mr. Muhammad Ashraf were given opportunity of personal hearing vide letter No.PTA/Wireline Licensing/4-B Gentel/534/2006/492 & 493 dated 15th December, 2008 requiring them to appear before the Authority on 24th December, 2008. Mr. Muhammad Nadeem Qureshi and Mr. Sohail attended the hearing before the Authority on behalf of the licensee at the scheduled time, i.e., 1230 Hrs on the said date, whereas Mr. Muhammad Ashraf, Mr. Tariq Ehsan and Dr. Alamdar Hussain Malik appeared before the Authority later on the same date. The representatives of the licensee reiterated the same facts as mentioned in its reply to the show cause notice (referred in Para 2 above). The licensee further admitted that the plan for change in management was very much there but could not be materialized owing to the bilateral disputes between the parties concerned which resulted in civil litigation and since the issue is *sub-judice* before the court of law, hence, the licensee abstained from proceeding with the proposed change. Keeping in view the facts stated by the licensee the Authority directed the licensee to submit requisite documents in support of its stance, which was communicated to the licensee vide PTA letter No.PTA/Wireline Licensing/4B Gentel/534/2006/516 dated 30th December, 2008. Mr. Muhammad Ashraf narrated the same facts already mentioned in its letters dated July, 2008 and October, 2008. He further informed that he has already filed a civil suit before civil court Lahore and also filed CM before Lahore High Court Lahore (in which PTA has been made proforma defendants). The licensee pursuant to PTA letter dated 30th December, 2008 submitted the required documents vide its letter No.4BG/FA/PTA-LA/0901-01 dated 5th January, 2009.

FINDINGS OF THE AUTHORITY:

4. As per available record and the documents submitted by the licensee the Authority reached to the following findings:

(i). Form A dated 6th September, 2006 reveals that in the year 2006, following were the shareholders:

(Authorized share capital Rs.85,000,000 and paid up share capital 6,068,3850 and number of shares: 6,068,385 @Rs.10)

| Sr.No | Name of shareholder | No. of shares | % |
|-------|-----------------------------|---------------|-------|
| 1. | Mr. Muhammad Ashraf | 1,075,390 | 17.72 |
| 2. | Mr. Muhammad Nadeem Qureshi | 2,390,000 | 39.38 |
| 3 | Mr. Pervaiz Saleem Qureshi | 2,390,000 | 39.38 |
| 4. | Mr. Muhammad Naeem | 212,500 | 3.50 |
| 5. | Mr. Husnain Hamid Bajwa | 495 | 0.008 |

(ii). Form A dated 29th October, 2007 reveals that in the year 2007, following were the shareholders:

(Authorized share capital Rs.180,000,000 and paid up share capital 120,000,000 and number of shares: 12,000,000 @ Rs.10)

| Sr.No | Name of shareholder | No. of shares | % |
|-------|----------------------------|---------------|-------|
| 1. | Muhammad Nadeem Qureshi | 2,389,500 | 19.91 |
| 2. | Mr. Husnain Hamid Bajwa | 495 | 0.004 |
| 3 | Mr. Pervaiz Saleem Qureshi | 2,390,000 | 19.91 |
| 4. | Mr. Muhammad Ashraf | 1,772,830 | 14.77 |
| 5. | Mr. Javed Salim Qureshi | 3,309,675 | 27.58 |
| 6. | 4B Telecom | 1137,000 | 9.47 |
| 7. | Memood Qadir Khan | 1000,000 | 8.33 |
| 8. | Shahid Salim Qureshi | 500 | 0.004 |

Ch Muhammad Naeem transferred his 487,060 shares to Mr. Jawed Salim Qureshi and Mr. Nadeem Qureshi transferred his 500 shares to Mr. Shahid Saleem Qureshi on 23rd October, 2007 and 26th October, 2007, respectively.

(iii). Form A dated 31st October, 2008 reveals that in the year 2008, following were the shareholders:

(Authorized share capital Rs.180,000,000 and paid up share capital 165,000,000 and number of shares: 16,500,000 @ Rs.10)

| Sr.No | Name of shareholder | No. of shares | % |
|-------|----------------------------|---------------|-------|
| 1. | Muhammad Nadeem Qureshi | 3,285,563 | 19.91 |
| 2. | Mr. Husnain Hamid Bajwa | 495 | 0.003 |
| 3 | Mr. Pervaiz Saleem Qureshi | 2,390,000 | 14.48 |
| 4. | Mr. Muhammad Ashraf | 1,772,830 | 10.74 |
| 5. | Mr. Javed Salim Qureshi | 5,215,799 | 31.61 |
| 6. | 4B Telecom | 1,563,375 | 9.48 |
| 7. | Memood Qadir Khan | 1,375,000 | 8.33 |
| 8. | Shahid Salim Qureshi | 896,938 | 5.44 |

(a). Foregoing details reveal that the licensee has already changed its accumulative 45% shareholding in the year 2007 and transferred these shares to new shareholders namely Mr. Javed Salim Qureshi (27.58%), 4B Telecom (9.47%), Memood Qadir Khan (8.33%) and Shahid Salim Qureshi (0.004%), appearing vide serial number 5 to 8 of Para 4(ii) above, with out following the aforesaid mandatory regulatory requirements.

(b). the issues raised in the complaint of Mr. Muhammad Ashraf and Share Purchase Agreement dated 23rd October, 2007 are *sub-judice* before the civil court and the High Court at Lahore, hence, the Authority has no domain to look into it.

ORDER:

5 Keeping in view the above mentioned facts in light of the available record and pending court cases at civil court and High Court level as referred in Para 2 and 3, above, the Authority hereby dispose of the aforesaid show cause notice for the time being without issuing enforcement order in the matter under section 23 of the Act for violating rule 11 (5) of Pakistan Telecommunication Rules, 2000 on the ground that the matter is *sub-judice* before courts of law. However, the same may be processed again, if need arises, in the light of court decisions on the matter.

(S. Nasrul Karim Ghaznavi)
Member (Finance)

(Dr. Mohammed Yaseen)
Chairman

Signed on 12th day of March, 2010 and comprises 5 pages