



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, Smart Engineering (Pvt) Limited.

Date of Issuance of Show Cause Notice: 4th June, 2010
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 9th August, 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

1. BRIEF FACTS:

1. **Smart Engineering (Pvt) Limited** (the “licensee”) was awarded non-exclusive license No. DIR(C)/L/PTA/431/2002 dated 12th July,2002 (the “license”) by Pakistan Telecommunication Authority (the “Authority”), to establish, maintain and operate Card Payphone Services in Pakistan, subject to the terms and conditions contained in the license.
2. The licensee has defaulted in submission of annual audited accounts alongwith annual license fee for the years ended on 30th June, 2008 to 2009 till date. In this regard the Authority made various requests to the licensee but in vain. Hence, the Authority issued Show Cause Notice (the “Notice”) dated 4th June, 2010 under section 23 of the Act whereby required the licensee to remedy the contravention by submitting annual audited accounts alongwith annual license fee including late payment charges (@2% per month or part thereof) for the years ended on 30th June, 2008 to 2009 within seven days and also to 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.

3. But the licensee neither submitted its reply to the Notice within the statutory period of thirty days nor submitted annual audited accounts alongwith annual license fee for the aforesaid period, hence, committed sheer violation of the provisions of the license and the Act.
4. Therefore, before passing an enforcement order a Hearing Notice dated 29th July, 2010 was issued and served on the licensee whereby informed the licensee to attend the hearing dated 9th August, 2010. The show cause and hearing notice were served on the address of the company provided and maintained by the licensee with PTA. Hence, the licensee failed to respond to the show cause notice within statutory period of thirty days and also did not attend the hearing on the said date.
5. 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.

6. As the show cause and hearing notices 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.
7. Therefore, the Authority has no option but to proceed ex-parte, on the basis of available record.
 - (a). clauses **3.1, 3.2, and 4.51** of the license read with sub- regulation (1) of regulation 11 of the Class Licensing and Registration Regulations, 2007 and sub-regulations (6) and (7) of regulation 23 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 make it obligatory on the licensee to submit annual audited financial statements and summary of accounts within three months and to pay annual license fee within 120 days of the close of financial year.
 - (b) The Authority has been making repeated requests to the licensee vide various letters including letters dated **10th November, 2008, 21st November, 2008, 3rd September, 2009, 26th October, 2009 and 16th November, 2009** to submit annual audited accounts alongwith annual license fee for the years ended on 30th June, 2008 to 2009, but in vain.
 - (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.

8. ORDER

8.1. 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) The license of **Smart Engineering (Pvt.) Limited** is hereby SUSPENDED for a period of One Month or till submitting the annual audited accounts alongwith annual license fee for the years ended on 30th June, 2008 to 2009, whichever is earlier,.
- (b). In case of non-compliance of Para 8.1 (a) above, license No. DIR(C)/L/PTA/431/2002 dated 12th July,2002 of the company shall stand TERMINATED w.e.f. 5th November, 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.
- (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)

This determination signed on 4/10/2010 and comprises 03 pages.