



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department

Before

Ali Azeem Ikram, Executive Director /HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Pakistan Telecommunication Company Limited

Date of Hearing

February 07, 2019, April 30, 2019, May 20, 2019, October 30, 2019, February 19, 2020, June 29, 2020

Order-Redacted Version

Order August 11, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Pakistan Telecommunication Company Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated January 16, 2019.
2. Name of Company	Pakistan Telecommunication Company Limited
3. Name of Individual*	The proceedings were initiated against Pakistan Telecommunication Company Limited and its Chief Executive Officer.
4. Nature of Offence	Under Rule 25 of Public Sector Companies (Corporate Governance) Rules, 2013 read with Section 508 (2) of the Companies Act, 2017.
5. Action Taken	<p>I have analyzed the facts of the case, requirements of the Rules, the Ordinance and the Act and have observed the following:</p> <p>(i). The SCN states that PTCL is a public sector company as defined in clause (g) to sub-rule (1) of Rule 2 of the Rules. The key factors determining the status of a company as a public sector company is derived by direct or indirect control, beneficially owned or at least 51% of the voting securities or voting power of which are held by the Government. In case of PTCL, GOP nominates four members on the board while Etisalat nominates five members in view of the SPA effected as per provisions of the Privatization Commission Ordinance, 2000 between GOP and Etisalat, as well as under the articles of association of PTCL. It has been stated by authorized representative that this arrangement has been officially Gazetted vide S.R.O 453(1)/2006 dated May 09, 2006. It has been stated that pursuant to privatization process, GOP transferred all class B shares (each class B share has 4 voting share as compared to each Class A share held by GOP having 1 voting share) to Etisalat representing 26% of the issued share capital of PTCL along with management control of PTCL and its group companies. Owing to variation in voting rights of class B shares exercisable by Etisalat is therefore 5.304 billion as opposed to approx. 3.171 billion of GOP. The clarity on status of the PTCL as public sector company in view of the grounds stated above is focal to establish contravention alleged in SCN w.r.t non-compliance with Rules 3 (2), 24(1) and 24 (2) of the Rules.</p> <p>(ii). The respondents have also relied on the letter of the Commission dated July 20, 2018, in response to the application of PTCL dated June 07, 2018 seeking exemption from the Listed Companies Regulations w.r.t (among others) the appointment of independent directors. The letter of the Commission states that the test of independence under Section 166 of the Act read with the Rules would be considered satisfied if the nominee directors on the board of PTCL fulfill the test of independence as laid out in the subsection (2) of Section 166 of the Act. The authorized officer at the time of issuance of SCN has not</p>



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	<p>expressly mentioned or inferred that the composition of board comprising of nominee directors w.r.t the said letter was considered thereof.</p> <p>(iii). Considering the SPA and Privatization Ordinance imparts legal obligations of the GOP, it appears that comments/ response from GOP before issuance of SCN w.r.t status of PTCL as public sector company, power to nominate majority directors by GOP, direct or indirect control of GOP on PTCL and in particular issue of appointment of independent directors as per requirements of Rules or Listed Companies Regulations was not sought by C&CD.</p> <p>(iv). Authorized representative has also challenged the legal consequences of Para 6 of the SCN stating that the Rules attract penalty under Rule 25 which provides for a fine as provided in sub-section (2) of section 508 of the Act. The Rules mention section 506 of the repealed Companies Ordinance, 1984 as the Act was not promulgated at the time of notification of. the subject Rules. Section 508 of the Act invoked through the SCN has enhanced penalty as compared to Section 506 of the Ordinance. The C&CD needs to consider if enhancement of the penalty can be invoked by Commission merely because similar provision in the new law allows for a different penalty for Rules framed thereunder or amendment in Rules are inevitable.</p> <p>It is therefore viewed that owing to observations and legal impediments above, the proceedings in consequences of subject show cause notice cannot be concluded. It is imperative to note that during course of the hearing and analysis of the information and record submitted before me it appears that the underlying constituent documents that include, among others, the SPA with GOP in terms of Privatization Ordinance, composition of board pursuant to the SPA, management control of PTCL and response from GOP on non-inclusion of PTCL in its SOE report (2017) requires thorough examination by C&CD to conclude that PTCL is a public sector company in terms of the Rules. Without prejudice to the above, considering that penal clause invoked through the subject SCN under Section 508 of the Act for contravention of the Rules, i.e. with penalty enhanced as compared to penalty under comparative Section 506 (2) of the Ordinance stated in Rules requires review by C&CD with perspective for need for amendment in Rules. I, therefore, refer back the subject show cause notice to the C&CD, to reexamine the documents and information placed on record through this Order as well as the requirements of law, seek feedback from GOP on matters related to non-inclusion of PTCL as public sector company in its SOE report, assessment of letter of Privatization Commission and any response from Commission to said letter and thereafter propose adjudication proceedings as per the procedure required to be initiated on legible grounds w.r.t evident violations of Public Sector Rules, if required.</p>
6. Penalty Imposed	Nil
7. Current Status of Order	No appeal has been filed by the respondents.