

# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 83 of 2019

Pakistan Telecommunication Company Limited

...Appellant

Versus

The Assistant Director (CCD), SECP, Islamabad.

...Respondent

Date of hearing:

December 24, 2019

Present:

For Appellant:

1. Mr. Shaukat Amin Shah, FCA
2. Mr. Zahid Amin Shah, ITP
3. Mr. Furqan Mahmood, PTCL
4. Mr. Ameer Nawaz, PTCL

For Respondent:

Ms. Beenish Waqas, Assistant Director (CCD) SECP.

## ORDER

1. This order shall dispose of Appeal No. 83 of 2019 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Pakistan Telecommunication Company Limited (the Appellant), against the Order dated September 30, 2019 (the Impugned Order) issued by Assistant Director, CCD (the Respondent) on behalf of Executive Director, CCD.
2. Brief facts of the case are that for availing group taxation under Section 59AA of the Income Tax Ordinance, 2001, the Appellant, vide application dated March 14, 2018 (Application for 2018), applied for designation of companies within the Group i.e. holding company and its wholly owned

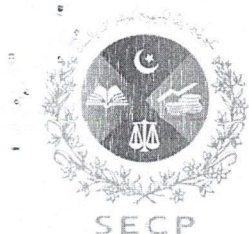


## Securities and Exchange Commission of Pakistan

subsidiaries namely, Pak Telecom Mobile Limited and DVCom Data (Pvt.) Limited, under Regulation 8 of the Group Companies Registration Regulations, 2008 (the Regulations). The Appellant had not indicated in the Application that the designation letter was being sought for the year 2018. The Application was deficient in terms of the Regulations. Therefore, the Appellant was advised, vide Securities and Exchange Commission of Pakistan (the Commission) letter dated March 21, 2018 to file the requisite certificate from the Chartered Accountant firm regarding compliance of the Regulations and to deposit the Application fee. The Appellant was again advised, vide the Commission's letter dated March 26, 2018, to file the requisite certificate and deposit the fee. The Appellant replied, vide letter dated March 27, 2018 (received by the Commission on January 30, 2019), and provided an unsigned certificate of compliance dated March 14, 2018. The Commission again vide letter dated February 27, 2019 required the Appellant to provide the application fee, affidavit, signed Compliance Certificate, updated NTN and evidence of shareholding.

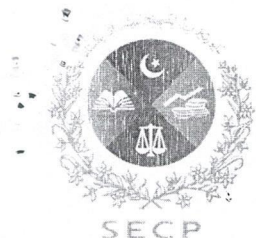
3. Accordingly, on March 19, 2019, another application was received from the Appellant for designation of the holding company and two wholly owned companies namely, Smart Sky (Pvt.) Limited and U-Micro Finance Bank Limited (Application for 2019). On May 14, 2019, the Appellant filed two paid fee challans, affidavits, copies of certificates of compliance and NTNs of directors. The Commission, vide letter dated June 12, 2019, sought clarification from the Appellant for submitting two separate applications for a different set of companies within the Group, however, no response was received from the Appellant, therefore, a reminder dated July 24, 2019 was issued in this regard. The Appellant responded, vide letter dated July 26, 2019, and clarified that designation letters for two separate years with a different set of companies are being solicited. Thereafter, the Commission communicated certain deficiencies to the Appellant vide its letter dated August 22, 2019, which were complied, vide letter dated September 13, 2019. The competent authority i.e. Executive Director (CCD), after considering the facts of the case, allowed and issued designation letter dated September 27, 2019 against Application for 2019, whereas Application for 2018 was rejected, due to late compliance with the formalities of the application by the holding company.





## Securities and Exchange Commission of Pakistan

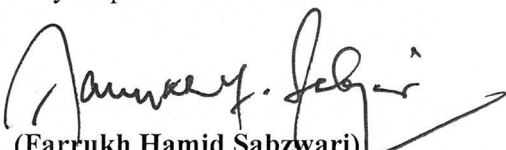
4. The Appellant has challenged the Impugned Order *inter alia* on the grounds that the Appellant is fully compliant with the regulatory requirements, therefore, the allegation of “late compliance of application formalities” is illegal. The Appellant further contended that the application for designation for 2019 was accepted and processed concurrently, whereas the application for designation for the year 2018 was rejected through the arbitrary Impugned Order. The Appellant stated that the application for designation for the year 2018 could not be rejected on the grounds of delay as various documents and clarifications were provided during the proceedings, prior to the Impugned Order. Lastly, the Appellant stated that the Impugned Order is not sustainable, as it is against the settled principle that non-jurisdictional technical objections cannot be made the basis of denial of relief, where merits of the case otherwise favor the Appellant.
5. The Respondent has rebutted the grounds of Appeal and reiterated the facts of the case, narrated in para two of this order and requested to dismissal of the instant Appeal, because the Appellant had failed to meet the requirements of the Regulation in a timely manner. The Respondent further stated that previously, the Commission had not issued year-wise designation letters, because there is no such requirement under the provisions of the Regulations. However, holding companies normally apply for a designation letter from the Commission for taxation purposes upon registration and after change in composition/alteration of the Group.
6. The Appellate Bench (the Bench) has heard the parties and perused the record with the able assistances of the Appellant’s representatives and the Respondent. The parties have reiterated their respective arguments. We have observed from the case details, stated in para two above, that the Application for 2018 was filed on March 14, 2018, however, its deficiencies were removed on September 13, 2019, that is, after a lapse of approximately seventeen (17) months. After filing of the Application for 2018, the Respondent continuously approached the Appellant for removal of the deficiencies that were in vain, until the Appellant eventually provided the requisite documents.
7. The Bench is of the view that the Respondent should have rejected Application for 2018 within a reasonable period of time upon the Appellant’s failure to remove the deficiencies. The delay in

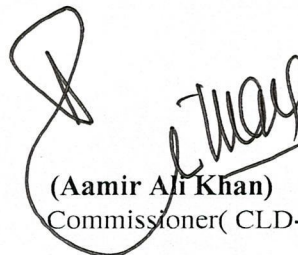


## Securities and Exchange Commission of Pakistan

disposal of the Application for 2018 was caused due to the negligent and casual conduct of the Appellant. We have minutely examined the record, and note that the Appellant's claim with regard to illegality of the allegation of "late compliance of application formalities" is false and contrary to the available record. The Appellant is a leading telecom company, therefore, its regulatory affairs team should be highly professional and vigilant.

8. The Bench has examined the contents of the Impugned Order and written comments of the Respondent. The Impugned Order indicated "late compliance" as the reason for rejection of the Application for 2018, and in the written comments the Respondent also stated "post facto", as one of the reasons for rejection of the Application for 2018. We are of the view that as per settled legal principles the Respondent cannot proceed beyond primary findings. Furthermore, the observation of "post facto" is not applicable in this case as no time limit has been prescribed in the Regulations, whereby the Application for 2018 is not timely.
9. In view of the above circumstances, subject to applicable formalities, if any, we hereby allow issuance of the designation letter for group taxation against the Application for 2018, and direct the Respondent and competent authority to issue the aforesaid designation letter with immediate effect. We also direct, the Appellant to be careful, and vigilant in compliance of regulatory and statutory requirements in future.

  
(Farrukh Hamid Sabzwari)  
Commissioner (SCD.AML)

  
(Aamir Ali Khan)  
Commissioner (CLD-CSD)

Announced on: **26 DEC 2019**