

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

**1. Shri Bhanu Bhushan, Member
2. Shri R. Krishnamoorthy, Member**

Petition No 65/2008

In the matter of

Application for grant of In-principle approval of capital cost of 2000 MW Thermal Power Project being set up by ISN International Company Ltd in Madhya Pradesh

And in the matter of

ISN International Company Ltd., Maryland **Applicant**

Vs

1. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
2. Jaipur Vidyut Vitran Nigam Ltd, Jaipur
3. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
4. Madhya Pradesh Power Trading Co. Ltd., Jabalpur.... **Respondents**

The following were present:

1. Shri Pradeep Mishra, Advocate, ISNICL
2. Ms. Roma Malkani, ISNICL
3. Shri V.K. Gupta, ISNICL
4. Shri K.K. Mittal, ISNICL
5. Shri M.K. Sharma, ISNICL
6. Shri Vinod Kashyap, ISNICL

**ORDER
(Date of Hearing: 15.5.2008)**

Heard Shri Pradeep Mishra, Advocate, Ms Roma Malkani and Shri V.K. Gupta on admission.

2. The application has been made with a substantive prayer to "grant in-principle approval of capital cost of the petitioner's project".

3. The petitioner has proposed to set up a 2000 MW thermal power project in the Sidhi District in the State of Madhya Pradesh, hereinafter referred to as “the generating station”. According to the petitioner, the States of Rajasthan and Madhya Pradesh have entered into Power Purchase Agreements (PPAs) with the petitioner for supply of 750 MW of power to be generated at the generating station, and as stated in the petition, some other States like the States of Uttar Pradesh, Haryana, Delhi, Punjab are also ready to sign PPAs. The petitioner has placed on record copies of PPAs signed with the utilities in the States of Rajasthan and Madhya Pradesh. As per the petition, the capital cost of the generating station is indicated in the PPAs. The financial closure for the generating station is proposed to be within 4-5 months after the grant of “in principle” approval by the Commission and as stated by the petitioner, the first unit of the generating station is likely to be commissioned in the following 4 years. It is further stated that the negotiations with NTPC are in progress to appoint it as Engineer and Construction Manager for the EPC stage.

4. At the hearing, it was emphasized on behalf of the petitioner that the Commission should give its approval to the tariff as per the PPAs placed on record, which is said to be indicative tariff. We are unable to accept the suggestion made. Under the Electricity Act, 2003, the regulation of tariff of the generating companies having composite scheme for generation and sale of electricity in more than one State is a function assigned to the Commission. The parties through their agreement cannot be permitted to overreach the provisions of law. Regulation 80 of the Central Electricity Regulatory

Commission (Conduct of Business) Regulations, 1999 specifically provides that the generating company proposing to enter into an agreement for supply of electricity and the buying party shall obtain the approval of the Commission for the tariff before entering into any contracts. Therefore, the question of approval of tariff as per the PPAs does not arise.

5. Now we come to the substantive question of “in principle” approval of the capital cost of the generating station, as prayed for in the petition. The petition has been filed under the first proviso to Regulation 17 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2004, [hereinafter referred to as the 2004 regulations], extracted below:

“Provided further that any person intending to establish, operate and maintain a generating station may make an application before the Commission for 'in principle' acceptance of the project capital cost and financing plan before taking up a project through a petition in accordance with the procedure specified in the Central Electricity Regulatory Commission (Procedure for making application for determination of tariff, publication of the application and other related matters) Regulations, 2004, as applicable from time to time. The petition shall contain information regarding salient features of the project including capacity, location, site specific features, fuel, beneficiaries, break up of capital cost estimates, financial package, schedule of commissioning, reference price level, estimated completion cost including foreign exchange component, if any, consent of beneficiary licensees to whom the electricity is proposed to be sold etc.

6. In the petition, no amount indicating the capital cost of the generating station has been given. The petitioner has stated that the capital cost is indicated in the PPAs signed with the utilities in the States of Rajasthan and Madhya Pradesh. However, nothing is indicated therein as regards the capital

cost. At the hearing, the representatives of the petitioner produced before the Commission, a single page document signed by Ms Roma Malkani stated to be CEO of the petitioner company, which gives break-up of the estimated capital cost and IDC, totaling up to Rs.13750.18 crore. However, the basis for the cost indicated in the document has not been made available. Therefore, this capital cost cannot be accepted.

7. As the petitioner has not given the capital cost for which the “in principle” approval has been sought, the petition is not maintainable. The petitioner may make a fresh application for “in principle” approval of capital cost in accordance with law and the Commission’s regulations on the subject, after obtaining the bids for EPC contracts through the process of competitive bidding, when a clear picture about the capital cost may emerge. We make it clear that the petitioner, if it approaches the Commission in future, shall comply with the provisions of the Electricity Act, policies notified thereunder and procedural requirements laid down under the 2004 regulations or any other regulations in force at the relevant time.

8. The petition stands disposed of at admission stage in terms of the above discussion.

Sd/-
(R KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi, dated 19th May 2008