

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**

Petition No. 37/2004

In the matter of

Application for grant of inter-state trading licence

And in the matter of

MMTC Limited

..... **Petitioner**

The following were present:

1. Shri M.G. Ramachandran, Advocate, MMTC
2. Shri A.R. Goyal, MMTC
3. Shri N.K. Bala, MMTC
4. Shri Vijay Pal, MMTC
5. Shri A.C. Triathy, MMTC
6. Shri Ashok Sharma, MMTC
7. Shri Y.N. Bhargava, MMTC
8. Shri N. Sinha, MMTC

**ORDER
(DATE OF HEARING: 22.6.2004)**

The applicant is a government company incorporated under the Companies Act, 99.33% of whose shares are held by the President of India and the remaining 0.67% by LIC Mutual Fund. The application has been made under sub-section (1) of Section 15 of the Electricity Act, 2003 (the Act) for grant of licence for inter-state trading in electricity in whole of India. The public notices in accordance with sub-section (2) of Section 15 of the Act read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2004 (the Regulations) were published by the applicant. In response to the public notices, no objections have been received.

2. We now propose to consider the eligibility of the applicant for grant of licence. One of the objects of the applicant as per the Memorandum of Association filed is “to engage, organise, undertake and carry, in domestic and global markets, trading of all goods and commodities including provision of service.” The application has been made since, according to the applicant, trading of electricity falls within the category of trading of “goods” and thus trading in electricity is covered by its Memorandum of Association. We have considered the submission. In Commissioner of Sales Tax, Madhya Pradesh Vs Madhya Pradesh State Electricity Board [(1969) 1 SCC 200], the Supreme Court had the opportunity to consider whether or not the electric energy is “goods”. The Supreme Court held as under:

“What has essentially to be seen is whether electric energy is “goods” within the meaning of the relevant provisions of the two Acts. The definition in terms is very wide according to which “goods” means all kinds of movable property. Then certain items are specifically excluded or included and electric energy or electricity is not one of them. The term “movable property” when considered with reference to “goods” as defined for the purposes of sales tax cannot be taken in a narrow sense and merely because electric energy is not tangible or cannot be moved or touched like, for instance, a piece of wood or a book it cannot cease to be movable property when it has all the attributes of such property. It is needless to repeat that it is capable of abstraction, consumption and use which, if done dishonestly, would attract punishment under Section 39 of the Indian Electricity Act, 1910. It can be transmitted, transferred, delivered, stored, possessed etc., in the same way as any other movable property. Even in Benjamin on Sale, 8th Ed. Reference has been made at p.171 to Country of Durham Electrical, etc. Co. v. Inland Revenue, in which electric energy was assumed to be ‘goods’. If there can be sale and purchase of electrical energy like any other movable object, we see no difficulty in holding that electric energy was intended to be covered by the definition of ‘goods’.”

3. Keeping in view the judgement of the Supreme Court in above noted case, we are satisfied that trading in electricity is covered under the objects of the applicant.

4. In the public notice issued by the applicant, it was stated that it proposed to undertake trading of 200-500 MUs of power during the year 2004-2005 and planned to increase it to 3000 MUs in the next 5 years. Accordingly, the applicant is to be considered for grant of licence for trading of 200-500 MUs in a year. In accordance with Regulation 6, considering the volume of inter-state trading proposed to be undertaken by the applicant, its net worth at the time of application shall not be less than Rs.7.50 crore.. The petitioner has submitted its net worth values for the last 5 years beginning from 1998-1999 to 2002-2003 as under:

(Rs. in lakh)		
Sl.No	Years	Net worth
1.	1998-1999	65290
2.	1999-2000	65670
3.	2000-2001	58620
4.	2001-2002	62030
5.	2002-2003	63530

5. The petitioner has submitted its annual reports for the years 2001-2002 and 2002-2003. The net worth values of the applicant for the years 2000-2001 2001-2002 and 2002-2003 have been worked out from the annual reports for the years 2001-2002 and 2002-2003 as detailed below:

(Rs. in lakh)			
Year	2000-2001	2001-2002	2002-2003
Paid up Capital			
Paid up equity capital	5000.00	5000.00	5000.00
Paid up redeemable preference share capital	0.00	0.00	0.00
Total	5000.00	5000.00	5000.00
Reserves and Surplus (Excluding Revaluation Reserves)			
General reserve	48763.51	52176.42	52364.24
Surplus in P/L A/c	44.01	44.01	1360.45
Total	48807.52	52220.43	53724.69
Less:			
Accumulated Losses and Intangible assets	0.00	0.00	0.00
Pre-operative Expenses Pending allocation	0.00	0.00	0.00
Misc. Expenses to the extent not written off or adjusted	2441.03	1963.16	2339.59
Net worth	51366.49	55257.27	56385.10

6. On consideration of the above details, we are satisfied that the applicant meets the requirements of net worth prescribed under the regulations for grant of licence for trading of 200-500 MUs in a year.

7. Accordingly, the applicant can be considered to have qualified for grant of licence as Category 'C' electricity trader, that is, for trading volume up to 200-500 MUs in a year. Therefore, the Commission proposes to grant a licence to the applicant for category 'C'. We direct that a notice as required under sub-section (5) of Section 15 of the Act be issued inviting suggestions or objections to the aforesaid proposal of the Commission to grant a licence for trading to the applicant.

8. List this petition for further directions on 22nd July 2004

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 28th June 2004