

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri R. Krishnamoorthy, Member**
- 2. Shri S. Jayaraman, Member**
- 3. Shri V.S.Verma, Member**

Petition No.20/2009

In the matter of

Application for grant of inter-State trading licence to 21st Century Infrastructure (India) Pvt.Ltd.

And in the matter of

21st Century Infrastructure (India) Pvt. Ltd, Mumbai **..Applicant**

The following was present:

None.

**ORDER
(DATE OF HEARING: 8.10.2009)**

The applicant has made the present application in pursuance of the order of the Appellate Tribunal for Electricity dated 29.1.2009 in Appeal Nos. 94 and 134/2007.

2. An application, taken on the file of the Commission as Petition No. 153/2005 was made by the applicant for grant of licence for inter-State trading in electricity for trading of 100 million units in a year. It was noticed that the applicant had collected an amount of Rs. 297 lakh as premium for allotment of shares but no cash balance was available in the Cash Book/Bank account representing the amount of share premium collected, implying thereby that the amount had already been utilized. The applicant clarified that the amount was being utilized in its regular business in its net fixed assets and net current assets. The applicant also clarified that the amount of share premium had not

been applied for any of the purposes specified in sub-section (2) of Section 78 of the Companies Act as the need for such an application had not arisen. The Commission decided that the share premium collected by the applicant could not be considered for determining its net worth. Accordingly, the application was dismissed by order dated 16.3.2006 holding that the applicant did not fulfill the condition of net worth of Rs. 1.50 crore, specified by the Commission.

3. Subsequently, the applicant filed a review application (No. 31/2006) seeking a review of the said order dated 16.3.2006. The Commission vide its order dated 15.3.2007 dismissed the review application. The Commission specifically observed that the facts narrated in the order raised doubt about the credibility and creditworthiness of the applicant.

4. Meanwhile, the applicant filed Appeals Nos. 94 and 134 of 2007 before the Appellate Tribunal challenging the said orders dated 16.3.2006 and 15.3.2007. In the course of proceedings before the Appellate Tribunal, the learned counsel for the applicant submitted that it wanted to make a fresh application before the Commission and prove his creditworthiness. The Appellate Tribunal vide its order dated 16.9.2008 allowed the applicant to make the fresh application before the Commission. Hence, the applicant made the present application.

5. By letter dated 9.2.2009, the applicant was informed to make the fresh application in terms of the order of the Appellate Tribunal, which mandated conformance to the provisions of the regulations, namely making of

the application in the prescribed format, publication of notice in the newspaper, etc. In response, the applicant vide its letter dated 16.3.2009 submitted that it had clarified/answered all the doubts in respect of its creditworthiness raised in the review proceedings. However, the applicable procedure was not followed.

6. In the meantime, the Commission had notified the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 (the 2009 regulations) on 16.2.2009 which prescribe the net-worth requirement of Rs. 5 crore, Rs. 25 crore and Rs. 50 crore for Category III, Category II and Category I, respectively.

7. Subsequently, the Appellate Tribunal vide its judgment dated 21.5.2009 dismissed the appeal as infructuous. The relevant portion of the judgment is extracted as under:

“(2) We are informed that the rules regarding creditworthiness have undergone changes in the meanwhile. The value of creditworthiness required has now been substantially raised. It is submitted on behalf of the Commission that the application will have to be considered in the light of the amended rules. According to the altered rules for trading licence of category III, the net worth of the applicant should be Rs. 5 crores whereas for Category-II the net worth of the applicant should be Rs. 25 crores and for Category-I, Rs. 50 crores. Since the appellant has now sought to apply for a license the same has to be considered by the Commission on its own merit.”

8. It is trite law that an application has to be decided in accordance with law applicable on the date of decision and not on the date of making the application. It is significant to note that after referring to a number of decisions

of the Hon`ble Supreme Court, the Appellate Tribunal vide its judgment dated 7.6.2007 in Appeal No. 6 of 2007 observed as under:

“31. In view of the aforesaid discussion, we hold that merely preferring an application for grant of inter-State trading licence does not confer any vested right on the applicant. The applicant must be considered and decided in accordance with the provisions applicable on the date, the application is decided by the Central Electricity Regulatory Commission. Therefore, we find no force in the submission of the learned counsel for the appellant that the application of the appellant for grant of inter-state trading licence was to be considered on the basis of the Regulations which were in force on the date of the application.

9. The applicant has not complied with the 2009 regulations, in the present proceedings, despite being so advised by the Office.

10. In the light of above, the application was listed for hearing. None appeared on behalf of the applicant.

11. The application is dismissed in default and for non-prosecution.

Sd/-
(V.S.VERMA)
MEMBER

sd/-
(S.JAYARAMAN)
MEMBER

sd/-
(R.KRISHNAMOORTHY)
MEMBER

New Delhi dated the 13th October 2009