

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri S.Jayaraman, Member**
- 3. Shri V.S.Verma, Member**

**Review Petition No. 87/2010
in
Petition No. 203/2009**

DATE OF HEARING: 15.6.2010

DATE OF ORDER: 18.6.2010

In the matter of

Review of the order dated 12.2.2010 in Petition No. 203/2009-
Grant of inter-State trading licence in electricity to Arunachal Pradesh
Power Corporation Pvt. Ltd.

And in the matter of

Petition No.203/2009

Application for grant of inter-State trading licence to Arunachal
Pradesh Power Corporation Pvt. Ltd.

And in the matter of

Arunachal Pradesh Power Corporation Pvt. Ltd , Naharlagun..
Applicant

The following was present:

1. Shri Vijay Hansaria, Senior Advocate for APPCPL
2. Shri Jatinder Kumar Bhatia, Advocate for APPCPL
3. Shri B.N.Jha, Advocate for APPCPL
4. Shri Indu Bhushan Chakraborty, APPCPL
5. Shri Niraj Sharma, APPCPL
6. Shri Karan Sharma, APPCPL
7. Shri Vijay Vyas, APPCPL
8. Shri Gaurav Sadh, APPCPL

ORDER

The applicant, a company registered under the Companies Act, 1956 (1 of 1956) has made the review application for review of the Commission's order dated 12.2.2010 in Petition No. 203/2009.

2. An application, taken on the file of the Commission as Petition No. 203/2009 was made by the applicant for grant of category 'III' licence for inter-State trading in electricity. It was noticed from the bank statement submitted by the applicant that a sum of Rs. 3.5 crore was credited into the applicant's account on 27.11.2009 and withdrawn on the same date. It was also mentioned in the certificate dated 8.1.2010 issued by the applicant's banker that a cheque bearing No. 036343 dated 26.11.2009 was submitted for collection. Therefore, the application made was dismissed by order dated 12.2.2010, review of which has presently been sought, holding that the applicant did not fulfill the condition of net worth of Rs. 5.00 crore, specified by the Commission.

3. Learned senior counsel has submitted that the outstation cheque dated 26.11.2009 amounting to Rs. 3.5 crore was presented to the applicant's bank on 27.11.2009 for collection. The cheque was initially credited on the same date but was sent for outstation collection to Guwahati on 28.11.2009. As the crediting of the amount without clearance from the outstation was incorrect, a debit entry was

subsequently made in the applicant's account. It has been further submitted by learned senior counsel that finally the amount of Rs. 3.5 crore was credited to the current account of the applicant company on 19.12.2009. It is seen from the copy of the bank statement enclosed by the applicant and the certificate dated 4.2.2010 from the applicant's banker that the amount of Rs. 3.5 crore was in fact credited to the applicant's account on 19.12.2009.

4. From the above facts it is noticed that the certificate dated 8.1.2010 issued by the applicant's bankers was patently incorrect as the amount of Rs. 3.5 crore was credited to the account on 19.12.2009. Accordingly, the order dated 12.2.2010 passed by the Commission was based on incorrect material placed before it. The certificate dated 4.2.2010 issued by State Bank of India is new material evidence. This was sent by the applicant and received by the Commission's Secretariat on 11.2.2010. However, it could not be linked with the case before issue of the order on 12.2.2010.

5. Order XLVII of the Code of Civil Procedure relating to review provides as under:

- "1. Application for review of judgment-(1) Any person considering himself aggrieved-
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
 - (b) by a decree or order from which no appeal is allowed, or
 - (c) by a decision on a reference from a Court of small causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order"

6. The case of the applicant is covered under the first ground of review i.e. discovery of new and important matter of evidence which after exercise of due diligence was not within his knowledge or could not be produced by him when the order was passed. The applicant approached the bank for a statement of account. The bank issued him a statement of account on 8.1.2010 which did not reflect credit of Rs. 3.5 crore in the account, though it was actually credited on 19.12.2009. Subsequently, the applicant obtained a correct statement dated 4.2.2010 which was received by the Commission's Secretariat on 11.2.2010 and could not be linked before issue of the order dated 12.2.2010. Thus, the applicant, despite due diligence, could not produce the material evidence regarding its net worth before passing the order dismissing his application.

7. Considering the totality of the circumstances, we consider this case fit for review of the decision contained in the order dated 12.2.2010 in Petition No. 203/2009. Accordingly, the present application for review is allowed. Having allowed review, we now proceed to examine the case of the applicant in Petition No. 203/2009 on merit.

8. In accordance with Regulation 3 (3) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of inter-State trading Licence and other related matters) Regulations, 2009 (the 2009 regulation), a person applying for Category 'III' trading licence should have net worth of Rs. 5 crore, and should have maintained minimum current ratio and liquidity ratio of 1:1, consistently for three years immediately preceding the year in which the application is made.

9. Based on the financial details submitted by the applicant, its net worth has been worked out as given below:

(Rs. in lakh)

Particulars		As on 30.11.2009
1	Share Capital	
	Paid up equity capital	500.00
2	Reserves and Surplus	
	Reserves & Surplus	6.94
	Sub Total 2	6.94
3	Misc. Expenses to the extent not written off or adjusted	3.82
	Net Worth (1 + 2 - 3)	0.00
		503.12

10. The net worth of the applicant is further represented by the following:

(Rs. in lakh)

Particulars		As on 30.11.2009
1	Fixed Assets	
	Gross Block	3.51
	Less: Depreciation	
	Net Block	3.51
	Sub-Total 1	3.51
2	Current Assets, Loans & Advances	
	Cash & Bank Balance	501.7
	Loans & Advances	49.98
	Sub-Total 2	551.68
3	Current Liabilities & Provisions	
	Current Liabilities	16.07
	Sub-Total 3	16.07
4	Loans	
	Secured loans	
	Unsecured loans	36
	Sub-Total 4	36
	Net Worth(1+2-3-4)	503.12

11. Based on the above, the net worth, current ratio and liquidity ratio work out as under:

S. No.	Particulars	As on 30.11.2009
1.	Net worth (Rs. in lakh)	503.12
2.	Current ratio	34.33
3.	Liquidity ratio	34.19

12. On consideration of the above facts, we are *prima facie* satisfied that the applicant meets the net worth, current ratio and liquidity ratio requirements specified by the Commission for grant of Category 'III' licence. Therefore, *prima facie*, based on above, the applicant qualifies for grant of Category-'III' licence for inter-State trading in Electricity in whole of India, except the State of Jammu and Kashmir

13. The main objects of the applicant include transmission of electricity. In accordance with third proviso to Section 41 of the Act, a transmission licensee cannot undertake trading in electricity. The applicant has filed an affidavit to the effect that if it is granted trading licence, it shall not apply for a transmission licence before the Central or any of the State Commissions without surrendering the trading licence. The applicant shall remain bound by the undertaking given.

14. Therefore, the Commission proposes to grant Category 'III' licence to the applicant. We direct that a notice under clause (a) of

sub-section (5) of Section 15 of the Act be issued inviting further suggestions or objections to the proposal of the Commission.

15. List this petition for further directions on 27.7.2010.

Sd/-
(V.S.VERMA)
MEMBER

sd/-
(S.JAYARAMAN)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON