

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 9/TDL/2013

Coram:
Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member

Date of Hearing: 25.6.2013
Date of order: 19.9.2013

In the matter of

Application for grant of inter-State trading licence to Pan India Network Infravest Private Limited.

**And
In the matter of**

Pan India Network Infravest Private Limited **Petitioner**

The following were present:

Shri S.Patnaik, Deloitte
Shri Mohit Bhardwaj, Deloitte

ORDER

The applicant, Pan India Network Infravest Private Limited, a company registered under the Companies Act, 1956 (1 of 1956) has made the present application under sub-section (1) of Section 15 of the Electricity Act, 2003 (36 of 2003) (hereinafter referred to as "the Act") read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading licence and other related matters) Regulations, 2009 (hereinafter referred to as "the Trading Licence Regulations") amended from time to time,



for grant of Category 'I' licence for inter-State trading in electricity in whole of India.

2. Regulation 6 of the trading licence regulations provides for the procedure for grant of trading licence as under:

“6. Procedure for grant of licence

(1) Any person desirous of undertaking inter-State trading in electricity shall make an applicant to the Commission for grant of licence in the manner specified in Form-I appended to these regulations and such applicant shall be accompanied by , -

(a) Such fee as may be prescribed by the Central Government from time to time and payable through NEFT/RTGS only as per the procedure specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 or any subsequent enactment thereof.

(b) Copies of the annual reports in case of the persons incorporated under the Companies Act, 1956 (1 of 1956) and audited accounts along with the Director's Report, Auditors' Report, the Schedules and notes on accounts for one year immediately preceding the year in which the application has been made and the special balance sheet as on any date falling within 30 days immediately preceding the date of making the application:

Provided that where the applicant has not been incorporated, registered or formed during the period of three years immediately preceding the year in which the application is made, the application shall be accompanied by the copies of the annual reports and audited accounts for such lesser period for which the applicant has been in existence.

(2) The application for grant of licence, along with annexures and enclosures shall also be submitted to the Commission on compact disc (CD).

(3) The applicant shall post complete application along with annexures and enclosures on his own website so as to facilitate access to the application by any person through internet and shall keep them on the website till the disposal of his application.

*(4) The applicant shall within 7 days after making such application, publish a notice of his application, in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper in Form II, with the following particulars, namely:-
xxxxxx*

(5) The applicant shall within 7 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published and shall also file the original complete page of the newspaper in which the notice has been published.

(6) The applicant may file his reply to the objections or suggestions received in response to the notice within 45 days of its publication in the newspapers.



(7) The Commission after consideration of the objections or suggestions received in response to the notice published by the applicant and his reply may propose to grant licence.

(8) When the Commission proposes to grant licence, it shall publish a notice of its proposal in two daily newspapers, as the Commission may consider appropriate, stating the name and address of the person to whom it proposes to issue the licence, with such other details as the Commission considers appropriate, to invite further objections or suggestions to its proposal."

3. The petitioner has made the application as per Form-I along with CD and paid the fee of ` one lakh as prescribed by the Government of India.

4. The petitioner has posted the application for grant of trading licence on its website in terms of Regulation 6 (3) of the trading licence regulations. The petitioner has placed on record the relevant copies of the newspapers in original in which notice of its application has been issued. The notices under sub-section (2) of Section 15 of the Act read with clause (4) of Regulation 6 of the trading licence regulations have been published by the applicant on 26.1.2013 in all editions of 'Times of India' and 'The Financial Express'. No objection has been received in response to the public notices.

5. The petitioner company was incorporated under the Companies Act, 1956 on 28.8.2001 in the name Playwin Infravest Private Limited. On 27.1.2013, the name of the company was changed from Playwin Infravest Private Limited to Pan India Network Infravest Private Limited by the Registrar of Companies, Maharashtra, Mumbai. Para 3 of the objects of the company reads as under:

"3. To carry on business as manufacturer, developer,, producer, processor, generator, accumulator, distributor, transferor, preserver, contractor, supplier, purchaser, sources, trader system integrator, implementer of was, gas electricity and other utilities..... hone enrgy audit and value added



services including Demand Side Management using various technologies, establish and carry on the businesses of generators, suppliers, processors, accumulators, distributors, traders, converters of an dealer in, and act as traders in the sale and purchase of electricity and electrical energy in any form and by any process..... and to do all acts and things necessary or required for doing the aforesaid business, including providing advisory and consultancy in issues related to energy markets".

6. Trading in electricity is covered under the objects of the petitioner company.

7. In accordance with Regulation 3 (3) of the Trading Licence Regulations, a person applying for Category 'I' trading licence should have net worth of ₹ 50 crore, and should have maintained minimum current ratio and liquidity ratio of 1:1, as on date of audited balance sheet accompanying the application. The applicant has submitted the special audited balance sheet as on 1.6.2013.

8. The petitioner in its application has submitted that the net worth of the company as per the audited account for the FY 2011-12 (as on 31.3.2012) is ₹ 4,786,23,79,103 and as the special balance sheet as on 31.12.2012 as ₹ 4,047,98,97,316. The petitioner has also calculated the current ratio and the liquidity ratio as on 31.3.2012 as 1:38 and as on 31.12.2012 as 1:37.

9. During the course of hearing, the representative of the petitioner submitted that the statutory auditor of the petitioner has estimated and certified the net worth of the company as ₹ 4,048 crore, including the general reserve created out of the scheme of amalgamation. These reserves are free reserves, classified as 'general reserve' under the scheme of amalgamation approved by

the Hon`ble High Court of Bombay on 14.10.2011 and can be considered for calculation of net worth of the company.

10. During the hearing on 25.6.2013, we had directed the petitioner to explain as to whether the amalgamation reserve created by transfer of excess of assets value over liabilities of ICL Rockets Sports Private Limited, the transferor company to the Pan India Network Infravest Private Limited, transferee company under the scheme of amalgamation approved by the Hon`ble High Court of Bombay should be considered as revaluation reserve in terms of 2 (1) (o) of the Trading Licence Regulations.

11. The petitioner vide its affidavit dated 3.7.2013 has submitted that the net worth of the petitioner company has been estimated in terms of Regulation 2(1) (o) of the Trading Licence Regulations as based on the audited financial statement of accounts. The Statutory Auditor of the petitioner company has certified the net worth of the company as ₹ 4,048 crore which includes the general reserve created out of the scheme of amalgamation as per the directions of the Hon'ble High Court of Bombay vide its order dated 14.10.2011. The petitioner has submitted that these reserves have been classified as general reserve under the scheme of amalgamation as these reserves are not revaluation reserves. The petitioner in its affidavit dated 9.7.2013 has placed on record the opinion from Chartered Accounts J. Singh & Associates, Crawford Bayley & Co. and Lodha & Co. regarding treatment of general reserves created out of amalgamation for the purpose of computation of net worth.

12. We have considered the submission of the petitioner with regard to net worth of the petitioner company. It is noted that ICL Rockets Sports Private Limited (Transferor Company) is a wholly owned subsidiary of Pan India Network Infravest Limited (PINIPL), the Transferee Company. The Transferor Company proposed to merge with the Transferee Company in accordance with the Scheme of Amalgamation under Sections 391 to 394 of the Companies Act, 1956. As per the scheme, the entire business and whole of the undertakings of the Transferor Company including all the debts, liabilities, duties and obligations and all properties movable as well as immovable of the Transferor Company shall be transferred to and vested in the Transferee Company with effect from the appointed date. Accordingly, treatment of the amalgamation scheme in the books of the Transferee Company has been dealt with in para 7.1 to 7.4 of the Scheme as under:

"7.1 with effect from the opening of business as on the Appointed date, all the assets and liabilities appearing in the books of accounts of the "Transferor Company including investments shall be recorded by the Transferee Company at their respective fair market values, as may be decided by the Board of Directors of the Transferee Company.

7.2 Inter-company balance, if any, will stand cancelled.

7.3 The investments in the equity share capital of the Transferor Company as appearing in the books of accounts of the transferee Company, as on effective date, shall stand cancelled and there shall be no further obligation in that behalf.

7.4 The excess, after recording the aforesaid entries in sub-clause 7.1 to 7.3 above shall be credited to General Reserve Account of the Transferee Company. the deficit, if any, shall be debited to General Reserve Account in the books of the Transferee Company."

The above scheme was presented before the Hon'ble High Court of Bombay and by order dated 14.10.2011, the Hon'ble High Court approved the said scheme subject to the condition that the excess of assets value and liabilities which is to be credited to General Reserve Accounts in terms of Para 7.4 of the scheme shall be treated as amalgamation reserve and shall not be utilized for the purpose of payment of dividend by the transferor company in future.

13. The issue for consideration is whether the amalgamation reserve created in accordance with para 7.4 of the scheme and approved by the Hon'ble High Court can be taken into consideration for the purpose of calculation the net worth of the company in accordance with Regulation 2.1 (o) of the Trading License Regulations. The Regulation 2 (1) (o) of the Trading Licence Regulations defines "net worth" as under:

"Net worth" means aggregate value of the paid-up equity capital and free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred expenditure (including miscellaneous expenses not written off and loans and advances to the associates"

14. In the said regulation, only reserves created out of 'revaluation' has been excluded for the purpose of computation of net worth. Perusal of para 7.1 of the Scheme of amalgamation clearly indicates that on amalgamation, "all the assets and liabilities appearing in the books of account of the Transferor Company including investments shall be recorded by the Transferee Company at their respective fair market values, as may be decided by the Board of

Directors of the Transferee Company". Therefore, the petitioner company has recorded the assets received from ICL Rockets at their fair value and has not revalued its own assets held prior to the amalgamation. The reserve arising on amalgamation is on account of recording of assets at fair values / acquisition of assets at fair value. This is not a case of revaluation of assets and the reserve arising on amalgamation cannot be treated as 'Revaluation Reserve'. The scheme has been approved by the Hon'ble High Court of Bombay with the only rider that the reserve shall not be utilized for the purpose of payment of dividend in future. There is no embargo either in the amalgamation scheme or in the judgment of the Hon'ble High Court to treat the said reserve for the purpose of computation of net worth. In view of the above, amalgamation reserves created out of the amalgamation scheme not being in the nature of revaluation reserve qualifies to be considered for the purpose of calculation of net worth under the Trading Licence Regulations.

15. Based on the special balance sheet as on 31.12.2012, net worth and liquidity ratios has been worked out as under:

		(₹ in crore)
	Particulars	31.12.2012
1	Share Capital	
	Paid up equity Capital	71.35
	Share Application/warrants	0.00
2	Reserve and Surplus	5192.67
	Sub- total 1	5264.02
3	Loans and Advances to associates	1216.04
4	Misc. Expenses to the extent not written off or adjusted	0.00
	Sub- total 2	1214.04
	Net worth (1+2-3-4)	4047.98

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

		(₹ in crore)
	Particulars	31-10-2012
1	Fixed /Non-current Assets	
	Net block	15.75
	Capital work in progress	0.00
	Long-term loans and advances	1214.83
	Less: Loans & Advances to associates	1211.95
	Net Loans & Advances	2.88
	Non-Current Investment	5549.99
	Sub-total 1	5568.62
2	Investments	Sub-total 2
		0.00
3	Current Assets	
	Cash and Bank Balance	0.15
	Loans and Advances	4.25
	Less: Loans and Advances to associates	4.09
	Net Loans and Advances	0.16
	Inventories	0.00
	Sundry Debtors	3.52
	Other current assets	0.00
	Sub- total 3	3.83
4	Current Liabilities & Provisions	
	Current Liabilities & Provisions	2.74
	Sub-total 4	2.74
5	Non-Current Liabilities	
	Other long term liabilities and provisions	9.72
	Preference Share Capital	33.50
	Long term Borrowings	1478.51
	Deferred tax Liabilities	0.00
	Sub-total 5	1521.73
	Net Worth (1+2+3-4-5)	4047.98

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

S. No.	Particulars	31.12.2012
1.	Net worth (₹ in crore)	4047.980
2.	Current ratio	1:40
3.	Liquidity ratio	1:40

18. On consideration of the above facts, we are ***prima facie*** satisfied that the applicant meets the net worth requirements specified by the Commission for grant of Category 'I' licence and has fulfilled other conditions for grant of

trading licence. The Commission proposes to grant Category `I` 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.

19. List this petition for further directions on 15.10.2013.

Sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S.Verma)
Member

