

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 29/TDL/2013

**Coram:
Shri Gireesh B.Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member**

**Date of Hearing: 31.10.2013
Date of Order: 13.05.2014**

In the matter of

Application for grant of inter-State trading licence to Jai International Private Limited.

**And
In the matter of**

Jai International Private Limited
75, Mittal Chambers, Nariman Point,
Mumbai-400 021

Petitioner

The following were present:

Shri Rishabh Lunawat, JIPL
Shri N.K.Rupwani, JIPL
Shri Suresh Gehani, JIPL

ORDER

The petitioner, Jai International 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

“Trading Licence Regulations”) amended from time to time, for grant of Category ‘III’ 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 payable through Bank Draft or pay order drawn in favour of Assistant Secretary, Central Electricity Regulatory Commission, New Delhi.

(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 notices on accounts for three years 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 petitioner on 8/9.3.2013 in all editions of 'Business Standard' and 'The Indian Express.' No objection has been received in response to the public notices.

5. Proviso of Regulation 3 (1) of the Trading Licence Regulations provides that the applicant should have been authorized to undertake trading in electricity by its Memorandum of Association. Relevant portion of proviso is extracted as under:

"Provided that the applicant should have been authorized to undertake trading in electricity in accordance with its constitutional/organizational documents such as the Main Objects in the Memorandum of Association (in case of a company incorporated under the Companies Act, 1956) or the Partnership Deed (in case of a partnership firm registered under the Indian Partnership Act, 1932) or the constitutional documents of Limited liability Partnerships under Limited Liability Partnership Act, 2008."

6. It is noticed that 'trading in electricity' is not explicitly prescribed in the Memorandum of Association of the petitioner company. However, one of the objects of the petitioner company as per the Memorandum of Association filed is "to trade in all kinds of general merchandise, goods and commodities". Relevant portion of the main object of the Memorandum of Association of the petitioner company reads as under:

"1. To carry on business as Exporters, Importers, Farmers, Manufacturers, Extractors, Processors, Buyers, Sellers, Distributors, Commission Agents, Indentors, Stockist or otherwise Trade and Deal in all kinds of agricultural produces, grains, creals, pulses, foodstuffs, flours, seeds, nuts ... and all kinds of general merchandises, goods and commodities.

2. To carry on business as merchants distributors, merchants, traders, dealers, buyers, sellers, importers, exporters, collectors, or in any capacity in India or elsewhere... and to export, import buy, sell or otherwise, trade and deal in goods.."

7. The petitioner in its affidavit dated 21.5.2013 has submitted that electricity also being a product which is bought and sold commercially in large quantities is also a type of commodity. Therefore, 'trading of electricity' is covered in its Memorandum of Association. We have considered the submission of the petitioner. The Hon`ble Supreme Court in *Commissioner of Sales Tax, Madhya Pradesh Vs Madhya Pradesh State Electricity Board [(1969) 1SCC 200]*, has held that "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'." Considered in the light of the judgment of the Supreme Court, trade in goods and commodities appearing in the Memorandum of Association would also include in trading in electricity. However, keeping in view the specific requirement of Trading Licence Regulations, the petitioner is directed to incorporate 'trading in electricity' in its

main objects of the Memorandum of Association in terms of Proviso of Regulation 3 (1) of the Trading Licence Regulations. The Commission would issue the licence only after production of the compliance of the above and after completion of the procedure as laid down in paragraph 12 below.

8. In accordance with Regulation 3 (3) of the Trading Licence Regulations, a person applying for Category `III` trading licence should have net worth of ₹ 5 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 petitioner has submitted the special audited balance sheet as on 31.1.2013. Vide Record of Proceedings dated 31.10.2013, the petitioner was directed to file bank statements for the period from 1.4.2012 to 31.3.2013 to verify its liquidity. The petitioner vide affidavit dated 6.3.2014 has filed the respective bank statements.

9. Based on the special balance sheet as on 31.1.2013, net worth and liquidity ratios has been worked out as under:

(₹ in lakh)

S.No.	Particulars	31.1.2013
1.	Paid up equity capital	36.03
2.	Free Reserves : Reserves and Surplus	1116.49
	Free Reserves : Profit and Loss Account	0.00
	Total Capital and Free Reserves (A)	1152.52
3.	Loans and Advances to associates (B)	3.76
	Deferred Expenditure (including Misc. Expenses) not written off (C)	0.00
	Net Worth (A-B-C)	1148.76

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

		(₹ in lakh)
S.No.	Particulars	31.1.2013
1.	Fixed /Non-current Assets	
	Net block	966.22
	Capital work in progress	0.00
	Long-term loans and advances	16.57
	Less: Loans and Advances to associates	3.76
	Net Loans and Advances	12.81
	Other Non-Current Assets (i.e. Deferred Tax assets, Non-Current Trade receivable, Advance against land)	0.00
	Investments	0.01
	Total Fixed/Non Current Assets (1)	979.04
2.	Non-Current Liabilities	
	Share application money pending allotment	225.00
	Long term Borrowings	290.95
	Deferred tax Liabilities	35.00
	Long Term Provisions	0.00
	Other long term liabilities	0.00
	Total Non-Current Liabilities (2)	550.95
3.	Current Assets	
	Cash and Bank Balance	248.68
	Short Term Loans and Advances	780.45
	Less: Loans and Advances to associates	0.00
	Net Loans and Advances	780.45
	Inventories	625.23
	Sundry debtors	3137.90
	Current portion of long term investments	0.00
	Current Investments	0.00
	Other current assets (i.e. TDS, Advance tax self assessment tax, Income tax in dispute)	347.24
	Total Current Asset (3)	5139.50
4.	Sundry Creditors / Trade Payable	2307.65
	Short Term Borrowings (Bills discounting facility from HSBC Bank secured against bills of landing and unsecured borrowings from companies as per Schedule E for Financial Year 2011-12)	588.63
	Provisions	100.66
	Other liabilities (Current maturities of long term liabilities, creditors for capital expenditures, Interest accrued but not due, creditors for expenses, Advances from customers and payable to HSBC Ltd and Yes Bank Ltd. as per Schedule G of Financial Year 2011-12)	1421.89
	Total Current Liabilities (4)	4418.83
	Net worth (1-2+3-4)	1148.76

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

S. No.	Particulars	31.1.2013
1.	Net worth (₹ in lakh)	1148.76
2.	Current ratio	1.16
3.	Liquidity ratio	1.02

12. On consideration of the above facts, we are ***prima facie*** satisfied that the petitioner meets the net worth requirements specified by the Commission for grant of Category `III` trading licence and fulfills other conditions for grant of trading licence. The Commission proposes to grant Category `III` trading licence to the petitioner. 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.

13. List this petition for further directions on 26.6.2014.

Sd/-
(A.K.Singhal)
Member

sd/-
(M.Deena Dayalan)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson