

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 10/SM/2021

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K.Singh, Member**

Date of Order: 3rd April, 2024,

In the matter of

Non-compliance of the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020.

And

In the matter of

Essar Electric Power Development Corporation Limited,
Lower Ground Floor, Hotel Conclave Boutique,
A-20, Kailash Colony,
New Delhi-110 048

.....Respondent

ORDER

By order dated 14.12.2005, Essar Electric Power Development Corporation Limited (In short 'EEDCL') was granted a Category 'C' licence under the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Trading Licence and other related matters) Regulations, 2004 for undertaking inter-State trading in electricity in the whole of India except the State of Jammu and Kashmir, up to 500 MU in a year. Consequent to the notification of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Trading Licence and other related matters) Regulations, 2009 (in short, 'the 2009 Trading Licence Regulations'), the licence granted to the Applicant stood re-categorised as Category 'III'. Based on the request of the Applicant, vide order dated 5.9.2014 in Petition No.

79/RC/2014, the licence of the Applicant was upgraded from Category 'III' to Category 'II'.

2. Essar Electric Power Development Corporation Limited, filed the Petition No. 152/TD/2021 under Regulation 15 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as 'the Trading Licence Regulations') for down-gradation of the inter-State trading licence in electricity from Category 'II' to Category 'IV'.

3. The Commission, after considering the documents placed on record in its order dated 31.7.2021, observed that as per Regulation 3(3) of the Trading Licence Regulations, a person applying for Category 'IV' trading licence should have a net worth of Rs. 10 crores and should have minimum current ratio and liquidity ratio of 1:1 on the date of special audited balance sheet accompanying the application. However, as per the audited special balance sheet as on 31.1.2021 submitted by the Respondent, it had a net worth of Rs. (-) 916.93 lakh. Therefore, the Respondent, EEPDCL, does not meet the requirements of net worth for any category of the trading licence as prescribed under Regulation 3(3) (a) of the Trading Licence Regulations. The Relevant portions of the 31.7.2021 are extracted as under:

“16. As per the Regulation 17(3) of the 2020 Trading Licence Regulations, failure to meet the specified net worth criteria constitutes a contravention of terms of conditions of license by the trading licensee. Regulation 17(3) of the 2020 Trading Licence Regulations reads as under:

*“17. Contravention by Trading Licensee
Contraventions of the provisions of the Act, Rules and Regulations framed thereunder and non-compliance of the orders of the Commission by a Trading Licensee shall cover the following:*

... (3) Failure to meet the Net Worth criteria specified in these regulations;

17. Since the licensee has failed to fulfill required net worth to hold the inter-State trading licence for any category in terms of the 2020 Trading Licence Regulations, we direct the office of the Commission to initiate appropriate proceedings against the Applicant as per the provisions of the 2020 Trading Licence Regulations.”

In terms of the above, the Commission, vide order dated 6.8.2021, directed the EEPDCL as to why penal provision be not invoked in terms of Regulation 19 of the Trading Licence Regulations for failure to maintain required net worth for holding any category of inter-State trading licence. The relevant portions of the order dated 6.8.2021 are extracted as under:

“6. Regulation 18 of the Trading Licence Regulations provides for procedure for taking cognizance of the contraventions as under:

“18. Procedure for taking cognizance of the contraventions (1) The Commission, on being satisfied on the basis of the information in its possession or on basis of the information submitted by any person that a prima facie case exists against any Trading Licensee with respect to any of the provisions of Regulation 17, may initiate suo-motu proceedings against the Trading Licensee and may direct the Trading Licensee to submit such information and explanation as may be considered necessary for the purpose of the proceedings.”

.....

8. Thus, based on documents available on record in Petition No.152/TD/2021, we are satisfied that a prima facie case exists against the Respondent with respect to contravention of Regulation 17(3) of the Trading Licence Regulations since it has failed to maintain the required net worth as prescribed under Regulations 3(3)(a) and 3(3)(b) read with Regulation 9(2) of the Trading Licence Regulations. Accordingly, we direct the Respondent to file its response within one month from the issuance of this order as to why penal provision be not invoked in terms of Regulation 19 of the Trading Licence Regulations for failure to maintain required net worth for holding any category of inter-State trading licence.”

4. In response to the above, EEPDCL, vide its affidavit dated 30.9.2021, had submitted that pursuant to the closure of books of account for the second quarter,

neither audited nor unaudited balance sheet was available immediately. EEPDCL had undertaken that it would make available the unaudited or audited balance sheet as demanded by the Commission. EEPDCL had further submitted that the unaudited balance sheet shall be available within four weeks and the audited balance sheet may take about six weeks to be made available. EEPDCL had submitted that pursuant to assignments of ICDs within the group, EEPDCL has a net worth of approximately Rs. 10 crores, and EEPDCL may be granted the liberty to file a Petition for downgrading of the licence.

5. Subsequently, EEPDCL filed a Petition No. 69/TD/2024 for the surrender of its trading licence w.e.f. 1.4.2022. Considering the submissions of the EEPDCL, the Commission, vide its order dated 30.3.2024, revoked the inter-State trading licence granted to the Petitioner. The relevant portions of the order dated 30.3.2024 are extracted as under:

“10. We have considered the request of the licensee. The trading licensee has prayed to surrender its licence on account of its inability to put the trading licence into use for the last one year. The licensee has submitted that it has not committed any breach of any of the provisions of the licence and 2020 Trading Licence Regulations and has paid all applicable fees for the financial year 2023-24. The licensee has submitted that it has paid an outstanding licence fee of Rs.24 lakh in terms of the Record of Proceedings for the hearing dated 20.3.2024.

11. With regard to the late payment surcharge, Regulation 11 of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 (Payment of Fees Regulations) provides that the late payment surcharge at the rate of one per centum (1%) shall be paid on the outstanding amount for each month or part thereof after the due dates of payment as specified in these regulations. In the present case, since the Petitioner has not been undertaking trading business for the last two years and is surrendering the trading licence, we are inclined to exercise our power to relax in order to waive the late payment surcharge. Thus, the Commission, in the peculiar facts and circumstances of the matter, in the exercise of power under Regulation 12 of the Payment of Fees Regulations, hereby relaxes the provisions of 11 of the Payment of Fees Regulations and waive the late payment surcharge on the outstanding licence fee of Rs. 24 lakh, which has

already been paid by the Petitioner on 27.3.2024. The relaxation granted in the instant Petition shall not be quoted as a precedent in the future.

12. Considering the licensee's prayer, the Commission hereby directs that the trading licence granted to Essar Electric Power Development Corporation Limited be revoked from the date of 1.4.2024."

6. Since the trading licence granted to the EEPDCL has been revoked, the proceedings initiated against it, vide order dated 6.8.2021 have become infructuous.

7. Accordingly, the Petition No. 10/SM/2021 is disposed of as infructuous.

**Sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(Jishnu Barua)
Chairperson**