

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R. Krishnamoorthy, Member**

**Petition No.14/2008**

**In the matter of**

Application for grant of inter-State trading licence in electricity to  
Chhattisgarh Energy Trading Company (P) Ltd.

**And in the matter of**

Chhattisgarh Energy Trading Company (P) Ltd, New Delhi    **...Applicant**

**The following was present:**

1.    Shri Avanash Verma, CETCPL
2.    Shri Rajeev Jain, CETCPL
3.    Shri. Sanjay Kaul, CETCPL

**ORDER  
(DATE OF HEARING: 15.7.2008)**

The applicant, a company registered under the Companies Act, 1956 has made the present application under sub-section (1) of Section 15 of the Electricity Act, 2003 (the Act) for grant of category `C` licence for inter-State trading of up to 500 Million Units (MU) of electricity in whole of India. Trading in electricity is covered under the main objects of the Memorandum of Association of the applicant. Although transmission of electricity is one of the main objects of the applicant, the applicant has vide its affidavit dated 30.1.2008 has undertaken that during the time period when it undertakes trading in electricity it will not engage in the business of transmission in electricity and will not approach this Commission or any State Commission for a transmission licence.

2. The application was earlier heard on 10.4.2008. Based on the auditor's certificate the Commission was satisfied that the applicant had the net worth of 758.50 lakh as on 31.3.2008. However, the Commission also noticed that out of the total current assets of 487.96 lakh, a sum of Rs. 453.47 lakh was in the form of investment on loans and advances. In order to ensure that the applicant had sufficient cash balance to take care of its trading activities, the Commission vide its order dated 25.6.2008 directed the applicant to furnish details of investments on loans and advances and to indicate the manner in which it will meet requirement of funds for undertaking the trading activities.

3. The applicant vide its affidavit dated 4.7.2008 submitted that all the loans and advances were short term in nature and were parked with the group companies to avoid idleness of funds till the applicant got trading licence. The applicant also confirmed that money could be made available within a short notice period. The applicant also intimated its current ratio and acid test ratio as 107.92. The applicant further claimed that it is backed by Jindal Group which has strong financials with turn over of Rs. 5,500 crores.

4. During the hearing, one of the representatives of the applicant stated that M/s Jindal Steel and Power Ltd, one of the companies in the Jindal group was granted intra-State transmission licence by Chhattisgarh Electricity Regulatory Commission in June 2008. Accordingly the applicant was directed to submit the following:

- (a) Copy of the intra-State transmission licence, details of the transmission assets covered under the licence with electrical map.

(b) Relationship between the applicant and the transmission licensee and

(c) Shareholding of the transmission licensee in the applicant.

5. The above details have been submitted vide applicant's affidavit dated 15.7.2008 wherein the applicant has stated that M/s. Jindal Steel & Power Limited has been granted licence by the Chhattisgarh State Electricity Regulatory Commission in respect of two transmission lines of 220 kV D/C lines. First of the two lines measuring 23.7 k.m. is from JSPL to Jindal Industrial park and the second measuring 19.5 k.m. is from OP Jindal Industrial Park to Jindal Power Ltd. As regards the relationship between the two companies, the applicant has intimated that M/s Jindal Steel and Power Ltd and Chhattisgarh Energy Trading Co. (P) Ltd (the applicant) are separate corporate entities incorporated under the Companies Act. 1956. From the shareholding pattern submitted by the applicant it is seen that 79.3412% of its shares are held by M/s Jindal Steel and Power Ltd. Thus the applicant is a subsidiary company of Jindal Steel and Power Ltd.

6. The above information was sought by us in the light of the third proviso to Section 41 of the Act extracted hereunder:

“Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity”

7. We have given our thoughtful consideration to the question as to whether the possession of intra-State transmission licence by the holding

company viz. M/s. Jindal Steel and Power Ltd. will have any bearing on the grant of inter-State trading licence to the subsidiary viz. the applicant. Alternatively the question for our consideration is whether the third proviso to Section 41 of the Act is applicable to the cases of this nature wherein two corporate entities belonging to the same group are holding transmission and trading licences.

8. While we do concede that the applicant and M/s. Jindal Steel and Power Ltd are two separate corporate entities, we cannot ignore the fact the former is a subsidiary of the latter. If we apply the principle of lifting of the corporate veil, it would turn out to be the same person holding both the licences. Thus we are faced with the question as to whether this is an appropriate case for lifting of the corporate veil.

9. As observed by the Hon'ble Supreme Court in Life Insurance Corporation of India Vs. Escorts Limited & Others [(1986)1SCC264], lifting of corporate veil must "necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc." We are convinced that the third proviso to Section 41 of the Act is aimed at ensuring neutral and impartial behaviour of the transmission licensee in giving 'non-discriminatory open access'. In as much that the function of scheduling and despatch is with the Load Despatch Centre, the purpose sought to be achieved through the third proviso of Section 41 of the Act cannot be defeated by the holding of transmission and trading licences by two separate corporate entities. Lifting of corporate veil

will be perfectly justified where the trading licensee has anything to do, directly or indirectly with load despatch centre. Having held so we also make it clear that we will not hesitate to apply the doctrine of lifting of corporate veil on the basis of complaints, allegations, suspicious conduct or malafide action.

10. In the light of the above, we conclude that grant of intra-State transmission licence to M/s. Jindal Steel and Power Ltd does not have a bearing on the present application which needs to be considered on merit.

11. From the certificate submitted by the applicant in support of its net worth it is seen that it has a net worth of 758.50 lakh as detailed below:

		(Rs.Lakhs)			
		2004-05	2005-06	2006-07	2007-08
1	<b>Share capital</b>				
	Paid up equity capital	1.00	1.00	1.00	760.00
	Share application pending allotment				
	<b>Sub-total 1</b>	<b>1.00</b>	<b>1.00</b>	<b>1.00</b>	<b>760.00</b>
2	<b>Reserves and Surplus</b>				
	Securities premium				
	<b>Sub-total 2</b>	-	-	-	
3	<b>Mis. Expenses to the extent not written off or adjusted</b>				
	Preliminary expenses	0.14	0.14	0.14	0.14
	Pre operative expenses	0.03	0.07	2.67	1.37
	<b>Sub-total 3</b>	<b>0.17</b>	<b>0.21</b>	<b>2.80</b>	<b>1.50</b>
	<b>Networth (1+2-3)</b>	<b>0.83</b>	<b>0.79</b>	<b>- 1.80</b>	<b>758.50</b>

12. Alternatively, net worth is also represented by the following

		(Rs.Lakhs)			
	Year	2004-05	2005-06	2006-07	2007-08
1	<b>Fixed Assets</b>				

	Gross Block				
	Less: Depreciation				
	Net Block	-	-	-	-
	Capital Work-in-Progress				
	<b>Sub-Total 1</b>	-	-	-	-
<b>2</b>	<b>Investments</b>		<b>0.10</b>	<b>0.10</b>	<b>271.52</b>
<b>3</b>	<b>Current Assets, Loans &amp; Advances</b>				
	Inventories				
	Cash and Bank Balance	0.97	0.86	0.51	34.69
	Sundry Debtors				
	Loans & Advances				453.27
	Other Current Assets				
	<b>Sub-Total 3</b>	<b>0.97</b>	<b>0.86</b>	<b>0.51</b>	<b>487.96</b>
<b>4</b>	<b>Current Liabilities &amp; Provisions</b>				
	Sundry Creditors				
	Other Liabilities	0.03	0.06	0.32	0.32
	Provisions				0.66
	<b>Sub-Total 4</b>	<b>0.03</b>	<b>0.06</b>	<b>0.32</b>	<b>0.98</b>
<b>5</b>	<b>Loans</b>				
	Secured Loans				
	Unsecured Loans	0.11	0.11	2.09	
	<b>Sub-Total 5</b>	<b>0.11</b>	<b>0.11</b>	<b>2.09</b>	-
<b>6</b>	<b>Items not considered for Net worth</b>				
	Share application Money				
	Deferred Tax Liability				
	<b>Sub-Total 6</b>	-	-	-	-
	<b>Net Worth(1+2+3-4-5-6)</b>	<b>0.83</b>	<b>0.79</b>	<b>(1.80)</b>	<b>758.50</b>

13. On consideration of the above facts, we are satisfied that the applicant meets the net worth requirements specified by the Commission for grant of licence for trading up to 500 MU of electricity during a year. Besides, the applicant has also clarified vide its affidavit dated 4.7.2008 that it will have sufficient cash for conducting its trading activities. Therefore, *prima facie*, based on its net worth, the applicant qualifies for grant of licence for inter-State trading as Category `C` electricity trader, that is, for trading a volume up

to 500 MU of electricity during a year. The Commission proposes to grant the licence to the applicant for Category `C`.

14. As regards the affidavit dated 30.1.2008 wherein the applicant has undertaken that during the time period when it undertakes trading in electricity it will not engage in the business of transmission in electricity and will not approach this Commission or any State Commission for a transmission licence, we direct that the wording of the affidavit needs slight modification. The applicant shall undertake that if it is granted trading licence it will not engage in the business of transmission in electricity and will not approach this Commission or any State Commission for a transmission licence without surrendering trading licence.

15. Pending submission of the revised undertaking as directed above, 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. We further direct that the applicant shall always maintain the necessary liquidity for conduct of smooth trading operations.

16. List this petition for further directions on 9.9.2008.

**Sd/=**  
**(R.KRISHNAMOORTHY**  
**MEMBER**

**Sd/=**  
**(BHANU BHUSHAN)**  
**MEMBER**

**New Delhi dated the 7<sup>th</sup> August 2008**