

notices were published on 28.6.2004. No objections or suggestions were received in response to the fresh notices published on behalf of the applicant. Trading in electricity is permitted under the main objects of the applicant. This leaves the question of determination of the applicant's net worth for grant of licence.

2. As per Regulation 6, the net worth of the electricity trader at the time of application should not be less than Rs.1.5 crore in case of the applicant who proposes to trade up to 100 Million Units of electricity in a year. On perusal of the details of net worth submitted by the applicant, there appeared to be some doubts in regard to its net worth. Therefore, certain additional details were called for from the applicant. On perusal of the additional details submitted by the applicant, the net worth value for the year 2003-04 is culled out as below:

(Rs. in lakh)

	Particulars	2003-04
1.	Share Capital	
	Paid up equity capital	700.05
2.	Reserves and Surplus	
	Security Premium A/C	900.00
	Surplus in P/L A/C	51.38
	Total	
	Less:	
	Misc. Expenses to the extent not written off or adjusted	2.15
	Net Worth (1+2+3)	1648.92

3. The above net worth is represented in the following assets:

(Rs. in lakh)

	Particulars	2003-04
1	Fixed Assets	3208.11
	Less: Depreciation	188.33
		3019.78
	Capital Work-in-Progress	0.00
	Total	3019.78

2	Current Assets, Loans & Advances	
	Inventory	3.61
	Cash in hand	32.20
	Balances in Banks	135.68
	Sundry Debtors	254.14
	Advances	172.71
	Total	598.34
3	Current Liabilities & Provisions	
	Sundry Creditors	419.27
	Other Liabilities	326.29
	Provision for Taxation	4.50
	Total	750.07
4	Loans	
	Secured Loans	113.24
	Unsecured Loans	0.00
	Total	113.24
5	Share Application Money	1081.11
6	Deferred Tax liability	24.79
	Net Worth	1648.92

4. The details of fixed assets for the year 2003-04 are as shown below:

	(Rs. in lakh)
Particulars	2003-04
Lease hold land	10.00
Power plant	3115.23
Office Equipment	7.02
Computers	14.16
Motor Car	57.46
Total	3203.86
Office Renovation	4.25
Capital Work-In-Progress	0.00
	3208.11

5. From the annual report for the year 2003-04, it is noted that the auditor's in the notes of accounts have mentioned that

“Fixed Assets include, power plant acquired by the company from Belgundi Cement Limited on right to use basis for a period of 30 years beginning from November, 1994 and is recorded at a value of Rs.15 crores being the securities issued by the Company of Rs.12 crores and the balance is shown under the head of current liabilities. Subsequently, an addition of Rs.7.91 crores was invested by Belgundi Cements Ltd. and the promoters

during the period 1998-2000 and same was agreed to be given on right to use basis. The consideration for this is reflected under share application for shares to be issued at par”.

“Work in progress & Revenue Expenditure incurred for the power Plant upto the date (i.e.28th October,2003) of the Power Plant becoming operational is capitalised in the Books of Accounts.”

6. At the hearing on 19.8.2004, the petitioner had submitted the following details of its net worth:

		(Rs. in Crore)
	Year	2003-04
	Share Capital	
	Paid up equity capital	7.00
	Less Shares issued for consideration other than cash	3.00
	Total	4.00
2	Reserves and Surplus	
	Security premium A/C	9.00
	Surplus in P/L A/C	0.51
	Total	9.51
	Less: Shares premium received for consideration other than cash	9.00
	Total	0.51
3	Less: Misc. Expenses to the extent not written off or adjusted	0.02
	Net Worth (1+2-3)	4.49

7. The net worth of the applicant has been examined in the light of observations made by Auditors in the note of accounts for the year 2003-04 and reproduced under para 5 above.

8. The applicant has signed three agreements with Belgundi Cement Ltd. According to the first agreement signed on 25.11.1994, Belgundi Cement Ltd has engaged the applicant “to manage the construction, commission, operation and maintenance of the power plant”, and “use” the assets for a period of 30 years.

The applicant is entitled to transmit, distribute, sell or otherwise use the power generated by the power plant. The applicant agreed to give interest free security deposit of Rs.15 crore, to be refunded by Belgundi Cement Ltd. on the expiry of the initial or the extended term of the agreement, upon the applicant handing over vacant and peaceful possession of the assets to Belgundi Cement Ltd. Out of the security deposit of Rs.15 crore, a sum of Rs.12 crore was to be paid within a period of three months and the balance of Rs.3 crore was payable in two instalments of Rs.1.5 crore each thereafter. In addition, the applicant is to pay to Belgundi Cement Ltd the annual usage charges @ Rs.1.20 crore per annum from the date of commercial operation of the power plant. Under the agreement, the applicant has the right to make alterations, modifications, additions to the assets necessary for proper management of the construction, commissioning, operation and maintenance of power plant at its own cost. However, at the end of the term, Belgundi Cement Ltd. has the first right to buy the assets belonging to the applicant in accordance with the agreed terms. It is provided that applicant has the right to create security on the assets belonging to Belgundi Cement Ltd with the written permission of the latter and on such terms and conditions as the latter may prescribe. It is expressly agreed that the applicant has been employed only for efficient and effective management of the construction, commissioning, operation and maintenance of power plant and transmission, distribution, sale or any other use of the power generated by the power plant.

9. There is a supplementary agreement dated 25.3.1995 executed between Belgundi Cement Ltd. and the applicant, according to which the deposit of Rs.12 crore was placed with Belgundi Cement Ltd in December 1994 in terms of the agreement dated 25.11.1994. The applicant is stated to have issued fully paid equity shares of face value of Rs.3 crore at a premium of Rs.9 crore, aggregating to Rs.12 crore in consideration of the security deposit of that amount. On completion of initial period of the “right to use” arrangement, the applicant is entitled to buy back the shares issued to Belgundi Cement Ltd.

10. It is seen that the assets in question have been hypothecated by Belgundi Cement Ltd to Central Bank of India. Accordingly, a fresh agreement has been executed between Belgundi Cement Ltd. and the applicant on 2.4.1998 which takes notice of hypothecation of the assets to the Bank. In terms of this agreement, the applicant has agreed to hand over without demur the assets to Bank when called upon to do so to enable the Bank to enforce its charge over the assets and to deposit the annual usage charges of Rs.1.20 crore with the Bank. The terms of this agreement can be modified, altered, substituted as may be mutually agreed to between Belgundi Cement Ltd and the applicant after obtaining prior approval of the Bank.

11. The salient provisions of the three agreements have been noted above. Under the agreements, the assets are entrusted to the applicant by Belgundi Cement Ltd for use for managing construction, commissioning, operation and

maintenance of the power plant and the applicant has a right to transmit, distribute, sell or otherwise use the power generated by the power plant. For use of the assets, the applicant is liable to pay the annual usage charges of Rs.1.20 crore per annum from the date of commercial operation of the power plant. After expiry of the term or the extended term of the agreement, the assets are to be restored to Belgundi Cement Ltd. Thus, the ownership of the assets remains with Belgundi Cement Ltd. This conclusion gets further strengthened by the fact that Belgundi Cement Ltd has separately hypothecated the assets in question to the Central Bank of India. This has been acknowledged by the applicant in the agreement dated 2.4.1998, whereby the applicant has further agreed to hand over the assets to the Bank without demur when called upon to do so for enforcement of its charge over the assets and to deposit the annual usage charges with the Bank. The applicant does not acquire any lien, apart from right to use, over the assets. The arrangement is of the nature of leave and licence. Thus, the assets worth Rs.15 Crore cannot be considered for computation of applicant's net worth. Similarly, a sum of Rs.7.91 Crore which is stated to have been invested by Belgundi Cement Ltd and promoters during 1998-2000 has also to be excluded for consideration of net worth as, in the absence of any break up the additions have been considered primarily to the account of Belgundi Cement Ltd.

12. Based on the above methodology, the net worth calculations represented by the assets have been worked out as under:

(Rs. in crore)

	Year	2003-04
1	Fixed Assets	32.08
	Less: Depreciation	1.88
	Less: Value of power plant acquired from Belgundi Cements in form of securities	12.00
	Capital work in progress	0.00
	Total	18.20
2	Current Assets, Loans & Advances	
	Inventory	0.04
	Cash in hand	0.32
	Balances in Banks	1.36
	Sundry Debtors	2.54
	Advances	1.73
	Total	5.98
3	Current Liabilities & Provisions	
	Sundry Creditors	4.19
	Payable to Belgundi Cement Ltd. as part of security deposit	3.00
	Other Liabilities	0.26
	Provision for Taxation	0.05
	Total	7.50
4	Loans	
	Secured Loans	1.13
	Unsecured Loans	0.00
	Total	1.13
5	Share Application Money	2.90
6	Investment made primarily by Belgundi Cement Ltd on power plant	7.91
7	Deferred Tax liability	0.25
	Net Worth (1 + 2 - 3 - 4 - 5 - 6 - 7)	4.49

13. The fixed assets of Rs.32.08 crore include an amount of Rs.31.15 crore towards cost of the power plant and office equipment and other movable property worth Rs.0.93 crore.

14. The computation of net worth after reducing the sum of Rs.22.91 crore attributed to Belgundi Cement Ltd and a sum of Rs.0.93 crore on account of other

fixed asset leaves the investments on power plant by the applicant at Rs.8.24 crore. There are not any doubts raised from any quarter in regard to this investment on the power plant, which as per the agreements signed by applicant with the Belgundi Cement Ltd. could be undertaken by the applicant at its cost. Accordingly, this amount has been considered for the purpose of arriving the net worth of the applicant. By doing so, the net worth of the applicant is not less than Rs.4.49 crore, submitted by the applicant at the hearing.

15. On above considerations, we are satisfied that the applicant qualifies for grant of licence in inter-state trading as category 'A' electricity trader i.e. for trading of up to 100 Million Units of electricity during a year based on the net worth requirement also, specified by the Commission.

16. Accordingly, we propose to grant the licence to the applicant for category 'A'. We direct that a notice under sub-section (5) of the Section 15 of the Act be issued inviting suggestions or objections to the above proposal.

16. List this petition on 28th September, 2004.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 6th September, 2004