

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairperson**
2. **K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**
4. **Shri A.H. Jung, Member**

Petition No.153/2005

In the matter of

Grant of licence for inter-state trading in electricity to 21st Century Infrastructure (India) Pvt. Ltd.

And in the matter of

21st Century Infrastructure (India) Pvt. Ltd.

.. **Applicant**

The following were present:

Shri Dipen Agrawal, Director

**ORDER
(DATE OF HEARING: 7.3.2006)**

The applicant, 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) for grant of licence for inter-state trading in electricity in whole of India, except the State of Jammu & Kashmir for trading of 100 Million Units in a year.

2. The applicant was incorporated on 3.2.2000. As per its Memorandum of Association its authorised capital is of rupees five lakh, divided into five thousand shares of rupees ten each, against which it has the issued share capital of rupees three lakh.

3. As per the regulation 6 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2004, the net worth of the electricity trader at the time of filing of application should not be less than Rs.1.50 crore in case an applicant proposes to trade 100 Million Units of electricity in a year. The applicant has submitted that its net worth was Rs.312.99 lakh as at 31.3.2005. The applicant has also placed on record a copy each of the annual accounts for the years 2000-01 to 2004-05, based on which the applicant's net worth works out as under:

(Rs. in lakh)

Year	2000-01	2001-02	2002-03	2003-04	2004-05
1 Share Capital					
Paid up equity capital	3.00	3.00	3.00	3.00	3.00
2 Reserves and Surplus					
Share Premium Account	297.00	297.00	297.00	297.00	297.00
Surplus in P/L A/C	1.37	2.10	2.52	2.97	13.03
Sub-Total 2	298.37	299.10	299.52	299.97	310.03
Less:					
3 Misc. Expenses to the extent not written off or adjusted	0.09	0.08	0.07	0.06	0.05
Net Worth (1 + 2 - 3)	301.28	302.02	302.45	302.92	312.99

4. It is noted that the applicant's net worth tabulated above for the years 2000-01 to 2004-05 is represented as under:

(Rs. in lakh)

Year	2000-01	2001-02	2002-03	2003-04	2004-05
1 Fixed Assets					
Gross Block	10.80	10.80	10.80	10.80	10.80
Less: Depreciation	0.16	0.27	0.37	0.48	0.59
Net Block	10.64	10.53	10.43	10.32	10.21
Capital Work-in-Progress					
Incidental expenses pending allocation					
Sub-total 1	10.64	10.53	10.43	10.32	10.21
2 Investments			-	-	-
3 Current Assets, Loans & Advances					
Inventories					29.83
Cash in hand					
Cash and Bank Balance	1.16	1.03	0.33	4.60	34.23
Sundry Debtors		18.51	106.66	61.60	290.07

	Loans & Advances	375.01	612.31	717.01	597.16	625.07
	Other Current Assets					
	Sub-total 3	376.17	631.85	823.99	663.36	979.20
4	Current Liabilities & Provisions					
	Sundry Creditors	83.84	339.94	531.74	370.42	666.23
	Other Liabilities	1.69	0.43	0.23	0.35	10.19
	Provisions	-				
	Sub-total 4	85.53	340.37	531.97	370.77	676.42
5	Loans					
	Secured Loans					
	Unsecured Loans					
	Sub-total 5	-	-	-	-	-
6	Items not considered for Net worth					
	Share Application Money					
	Deferred Tax Liability					
	Sub-total 6	-	-	-	-	-
	Net Worth (1+2+3-4-5-6)	301.28	302.02	302.45	302.92	312.99

5. On perusal of the annual accounts it is revealed that the applicant issued shares at a total premium of Rs.297 lakh, which has been shown in the share premium account. However, no cash balance is shown to be available with the applicant representing the amount of share premium collected, implying thereby that the amount of share premium collected has been utilized. Therefore, the Commission by its order dated 7.2.2006 had directed the applicant to file an affidavit, supported by the auditor's certificate to indicate the manner of utilization of share premium of Rs.297 lakh. In compliance with the above directions, an affidavit has been filed on behalf of the applicant. It has been clarified that the credit balance of Rs.297 lakh in the share premium account (shareholders' fund) in the balance sheet is the premium collected on equity shares and is being utilized in the regular business of the applicant, in its net fixed assets and net current assets along with other funds of the company. The affidavit is supported by an auditor's certificate to the same effect. The applicant has further clarified that the amount of share premium has not been applied by the applicant for any of the purposes specified in sub-section (2) of section 78 of the Companies Act, 1956 as the need for such application has not arisen so far.

6. Section 78 of the Companies Act deals with application of the premium received by a company on issue of shares/securities. Sub-section (1) provides that where a company issues shares/securities at a premium, a sum equal to the aggregate amount or value of the premium on those shares/securities is to be transferred to the securities premium account. It is further provided that the provisions of the Companies Act relating to the reduction of the share capital of a company would apply as if the securities premium account was paid up share capital of the company, except as provided in this section. According to sub-section (2), the securities premium account may be applied by the company –

- (a) in paying up unissued [securities] of the company to be issued to members of the company as fully paid bonus [securities];
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of [securities] or debentures of the company; or
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

7. In the affidavit filed on behalf of the applicant it has been clarified that the share/securities premium collected by the applicant has not been utilized for any of the purposes prescribed in sub-section (2) of section 78 of the Companies Act. This was reiterated by Shri Agrawal at the time of hearing. On the contrary, it has been stated that the amount collected has been used for advancing the business of the applicant. The mandate of law is that the share premium collected cannot be utilized for any purpose, other than those specified in sub-section (2). If, however, the amount credited to share/securities premium account is used for any other purpose or purposes, it is tantamount to reduction in share capital, which attracts the provisions of

sections 100 to 105 of the Companies Act, which lay down the elaborate procedure to be followed by a company when its share capital is to be reduced. It is not the applicant's case that these provisions were complied with while utilizing the amount standing in the share/securities premium account. Therefore, utilization of the amount in share/securities premium account is in contravention of the law. Even if the procedure laid down has been followed, the effect is of reducing the applicant's capital. Further, presuming that the amount of Rs.297 lakh is lying unutilized, the amount of Rs.297 lakh collected by the applicant as share/securities premium money is not available to the applicant for the purposes of its business, including the business of trading in electricity because it will not be covered under sub-section (2) of section 78 ibid. Therefore, this amount cannot be considered for the purpose of computation of applicant's net worth. From whatever angle the matter is considered, the applicant does not qualify for grant of licence for trading in electricity because the net worth will be less than the prescribed net worth of Rs.1.50 crore. Accordingly, the application is dismissed.

**Sd/-
(A.H. JUNG)
MEMBER**

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

**Sd/-
(K.N. SINHA)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRPERSON**

New Delhi dated the 16th March 2006