

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 8/SM/2021

- Subject : Petition for 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.
- Respondent : National Energy Trading and Services Limited (NETSL)
- Date of Hearing : 22.10.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri I.S Jha, Member
Shri P.K Singh, Member
- Parties Present : Shri Deepak Khurana, Advocate, NETSL
Shri Tejasv Anand, Advocate, NETSL
Shri Vidya Bhushan, NETSL

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Respondent, NETSL made the following submissions:

(a) NETSL had filed Petition No. 42/TD/2021 for down-gradation of its inter-State trading licence in electricity from Category 'I' to Category 'III' which was rejected by the Commission by its order dated 23.6.2021 on the ground of non-fulfillment of net worth criteria. In the said Petition, NETSL had filed Financial Statements for financial year 2019-20 and an audited special balance sheet as on 28.2.2021 for the purposes of net worth requirement prescribed under the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (the Trading Licence Regulations). On the basis of the said audited special balance sheet as on 28.2.2021, it was observed by the Commission in order dated 23.06.2021 that the net worth of NETSL is Rs. (-) 18.69 crore and, therefore, NETSL did not meet requirements of net worth for any category of trading licence as prescribed under Regulation 3(3)(a) of the Trading Licence Regulations. Accordingly, the present *suo motu* proceedings were initiated against NETSL vide order dated 08.07.2021 and NETSL was directed to file its Response and the same has filed on 05.08.2021.

(b) In the said Financial Statement as well as in the audited special balance sheet, a *bona fide* and inadvertent error has been crept wherein Lanco Solar Energy Private Limited (LSEPL) was incorrectly shown to be a fellow subsidiary of NETSL, whereas the said company had ceased to be a fellow subsidiary of

NETSL upon transfer of shares held by Lanco Infratech Limited (LIL) in NETSL to Dikon Infratech Private Limited on 17.09.2019. LIL was common parent/ holding company of both NETS and LSEPL. On account of this, the investment in LSEPL (Rs 99.61 crore) had been inadvertently and as a result of *bona fide* mistake shown under the heading “*Investment in fellow subsidiaries*”.

(c) In the Financial Statement for the financial year 2019-20 as well as in special audit balance sheet of NETSL, LSEPL has not been shown as a fellow subsidiary under the heading ‘*Related Party Disclosure as on 28th February, 2021*’, wherein list of all the subsidiary companies and fellow subsidiaries of NETSL has been provided, which shows that the mention of LSEPL as ‘fellow subsidiary’ was a result of mistake.

(d) The aforesaid mistake has since been corrected and referred to the corrected audited special balance sheet (part of the Financial Statement) of NETSL as on 28.02.2021 approved by the Board of Directors vide Resolution dated 27.07.2021 as also the Auditor Certificate dated 27.07.2021.

(e) An amount of Rs. 99.61 crore was reduced from the net worth of NETSL inadvertently, as investment made in the fellow subsidiary of NETSL (‘*Associate*’ as per the Trading License Regulations), i.e. LSEPL, on a mistaken premise i.e. LSEPL as fellow subsidiary (associate) of NETSL. However, as this mistake has now been rectified and considering the corrected audited special balance sheet of NETSL, the net worth of NETSL, within the meaning of Trading License Regulations, is Rs. 80.92 crore.

(f) The error on the part of NETSL was unintentional and inadvertent and it is settled position of law that a person who has committed a *bona fide* and inadvertent mistake should not be visited with penalty. Reliance was placed on the judgments of the Hon`ble Supreme Court and Hon`ble Bombay High Court in the cases of *Price Waterhouse Coopers (P) Ltd. v. CIT [(2012) 11 SCC 316]* and *The Commissioner of Income Tax-2 v. Sharad Fibers & Yarn Processors Ltd. [2016 SCC On Line Bom 13580]* respectively.

(g) NETSL sincerely apologises for the aforesaid inadvertent *bona fide* mistake crept in the special audit balance sheet as on 28.02.2021 and prayed for closure of the present proceeding and to downgrade its inter-State trading licence in electricity from Category ‘I’ to Category ‘III’.

3. In response to a specific query as to whether there are common Director(s) on the Board of Directors of LSEPL and NETSL, the representative of the Respondent replied in negative.

4. The Commission, after hearing the submissions of the learned counsel for the Respondent, reserved the order in the matter.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Legal)