

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 42/TD/2021

**Coram:
Shri P.K.Pujari, Chairperson
Shri I.S.Jha, Member
Shri Arun Goyal, Member
Shri P.K.Singh, Member**

Date of Order: 23rd June, 2021

In the matter of

Application for down-gradation of licence under Regulations 9(4) and 15(3)(a) 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

National Energy Trading and Services Limited
Plot No. 397, Udyog Vihar Phase-III,
Gurgaon – 122 016, Haryana

....Applicant

Following was present:

Shri Vidya Bhusan for the Applicant

ORDER

The Applicant, National Energy Trading and Services Limited, has filed the present Application for down-gradation of its inter-State trading licence in electricity from Category 'I' to Category 'III' with the following prayers:

“(a) Approve the down-gradation of the Trading Licence of National Energy Trading and Services Limited from Category I to Category III with effect from 1st April, 2020.

(b) Adjust the excess amount of Rs. 9 lakh (Rs. 15 Lakh minus Rs. 6 Lakh) Annual Licence Fees paid during financial year 2020-2021 with Annual Licence Fees to be paid in subsequent years.”

2. By order dated 23.7.2004, National Energy Trading and Services Limited (formerly known as 'Lanco Electric Utility Limited' and subsequently 'LANCO Power Trading Limited') was granted inter-State trading licence in electricity for Category 'A' to trade in electricity as an electricity trader in the whole of India in accordance with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Trading licence and other related matters) Regulations, 2004 subject to the terms and conditions contained in the licence. Based on the request of the licensee, the trading licence was later upgraded to Category 'F'. 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 '2009 Trading Licence Regulations'), the licence stood re-categorized as Category 'I', subject to the terms and conditions contained in the licence.

3. Subsequently, at the request of the licensee, the Commission vide its order dated 5.1.2010 changed the name of the licensee from "LANCO Electric Utility Limited" to "LANCO Power Trading Limited". Vide order dated 22.12.2010, the name of the licensee was further changed from "LANCO Power Trading Limited" to "National Energy Trading and Services Limited".

4. 2009 Trading Licence Regulations has since been repealed and 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 2020 Trading Licence Regulations") has been notified. However, the category of license of the Applicant is unchanged. Accordingly, as per the 2020 Trading Licence Regulations, the Applicant has approached the Commission for down-gradation of its licence with effect from 1.4.2020.

5. The Applicant has submitted that in view of change in trading licence categories and looking at the future business potential of trading, it is seeking down-gradation of its trading licence from Category 'I' to Category 'III' and is desirous to trade up to 4000 MU in a year allowed for a Category 'III' license. The Applicant has submitted that due to outbreak of Covid-19 pandemic and lockdown in the country, the Applicant could not prepare Audited Balance Sheet and the same was completed only on 14.12.2020.

Hearing dated 8.4.2021

6. The matter was heard on 8.4.2021 through video conferencing. In response to the specific query of the Commission regarding the Applicant meeting the criteria of net worth along with current & liquidity ratio as specified in the 2020 Trading Licence Regulations, the learned counsel for the Applicant submitted that for Category 'III' trading licence, the 2020 Trading Licence Regulations provide for net worth requirement of Rs. 20 crore and minimum current & liquidity ratios of 1:1 each and in case either of the said ratio is less than 1:1, the licensee is required to maintain additional net worth of 100% of the net worth stipulated for the respective category of the trading licence as per Regulation 9(2) of the 2020 Trading Licence Regulations. It was also submitted that since the current and liquidity ratios in the case of the Applicant is less than 1:1, the Applicant will be required to maintain the net worth of Rs.40 crore against which the Applicant already has net worth of Rs.81 crore.

7. Vide Record of Proceeding for the hearing dated 8.4.2021, the Applicant was directed to furnish the following information/ clarification on affidavit:

- (a) Audited special balance sheet as on any date falling within 30 days immediately preceding the date of making the application i.e. 8.2.2021 along

with Auditor`s Report, Schedules and Notes to the accounts in terms of Regulation 6(1)(b) of the 2020 Trading Licence Regulations; and

(b) Status of the investment Rs.99.62 crore in Lanco Solar Energy Private Limited (in short 'LSEPL') and plans to mitigate the risk of net worth erosion and liquidity due to uncertainty relating to recoverability of this investment. (As per the Petition, current and liquidity ratio as on 31.3.2020 is 0.73:1 and net worth is Rs.81.99 crore. However, as per Auditor Report for the financial statement as on 31.3.2020 placed on record, there are uncertainties relating to recoverability of carrying value of investment of Rs.99.62 crore in LSEPL, which is under Corporate Insolvency Resolution Process as per the National Company Law Tribunal order dated 14.6.2019. In view of the report of Auditor, there is uncertainty with regard to the value of investment of Rs.99.62 crore, which would impact the net worth and liquidity of the Applicant.).

8. The Applicant, vide its affidavit dated 17.5.2021, has submitted as under:

(a) As per special audited balance sheet, investment in LSEPL is Rs. 99.62 crore.

(b) LSEPL is undergoing Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 for resolution and revival of the Company.

(c) The Resolution Professional appointed under the Code has made invitations for Resolution Plans from prospective investors. The Resolution plans received from potential investors are being scrutinized and would be approved by the Committee of Creditors of LSEPL and the National Company Law Tribunal, Hyderabad.

(d) The final outcome is yet to be ascertained and the recoverability of the investment in LSEPL purely depends on the outcome of the CIRP of LSEPL.

(e) Therefore, pending the outcome of the CIRP of LSEPL, no adjustment has been made towards the carrying value of the Applicant's investment in LSEPL.

Analysis and Decision

9. We have considered the submissions of the Applicant. Regulation 9(4) of the 2020 Trading Licence Regulations provides as under:

“(4) The Trading Licensee shall make an appropriate application accompanied by prescribed fees for up-gradation of its licence to a higher category or down-gradation of its licence to a lower category in order to fulfill the conditions of these regulations in accordance with the procedure specified in Regulation 15 of these regulations.”

10. Further, Regulation 15(3) of the 2020 Trading Licence Regulations provides as under:

“(3) Down-gradation of licence:

(a) The Trading Licensee may file an application to the Commission for down-gradation of its licence to a lower category at any time:

Provided that the Trading Licensee shall not be allowed to apply for up-gradation of licence within the same Year.

(b) The Trading Licensee shall be required to upload the audited special balance sheet to support the compliance of Net Worth requirement for lower category licence.

(c) While applying for downgradation of licence, the Trading Licensee shall be required to pay the licence fee applicable for the category of licence for which the application is being submitted.”

11. As regards the net worth requirements for Category ‘III’ trading licence, Regulation 3(3) of the 2020 Trading Licence Regulations provides that a person applying for Category ‘III’ trading licence should have net worth of Rs.20 crore and should have maintained minimum current ratio and liquidity ratio of 1:1 on the date of special audited balance sheet accompanying the application.

12. Based on the special audited balance sheet as of 28.2.2021 submitted by the Applicant, its net worth has been worked out as under:

Net Worth Computation	Audited special balance sheet as on 28.2.2021	Audited balance sheet as on 31.3.2020
Particulars	(Rs. in lakh)	(Rs. in lakh)
A) Paid up equity capital (1)	3652.94	3652.94
B) Reserves & Surplus		
B.1. Capital Reserves	0.00	0.00
B.2. Capital Redemption Reserve	0.00	0.00
B.3. Debenture Redemption Reserve	0.00	0.00
B.4. Revaluation Reserve	0.00	0.00
B.5. Share Options Outstanding Account & Reserves other than free reserves	0.00	0.00
B.6. Securities Premium Reserve	0.00	0.00
B.7. Surplus (P & L Account)	4489.52	4545.77
B.8. Other Free Reserves (i.e. General Reserve)	0.00	0.00
Free Reserves & Surplus Considered for Net worth (2) (B6+B7+B8)	4489.52	4545.77
C) Loans & Advances given to associates/Investments in Associates (3)	10011.81	10011.81
D) Deferred Expenditure (including Misc. Expenses) not written off (4)	0.00	0.00
Net Worth (1+2-3-4)	(-)1869.35	(-)1813.10

13. The net worth of the Applicant is further represented by the following:

Net worth (Asset approach), Current Ratio & Liquidity Ratio Computation	As on 28.2.2021	As on 31.3.2020
	(Rs. in Lakh)	(Rs. in Lakh)
(A) Non-current Assets		
A.1. Net block of tangible Asset	8.96	9.81
A.2. Net Block of intangible Asset	0.00	0.00
A.3. Capital work in progress	0.00	0.00
A.4. Intangible Assets under development	0.00	0.00
A.5. Non-Current Investments	10011.81	10011.81
A.5.1 Less: Investments in associates	10011.81	10011.81
A.5.2 Net Non-Current Investments (A.5 - A.5.1)	0.00	0.00
A.6. Deferred Tax Assets	30.15	30.15
A.7. Long-term loans and advances	65.00	65.00
A.7.1 Less: Loans & Advances given to Associates included in above	0.00	0.00
A.7.2 Net Long Term Loans & Advances (A.7 - A.7.1)	65.00	65.00
A.8. Other Non-Current Asset	0.00	0.00
A.9. Deferred Expenditure (including Miscellaneous Expenses) not written off (Not considered for net worth computation)	0.00	0.00
Total Non-Current Assets	10115.92	10116.77

Total Non-Current Assets considered for net worth (1)	104.11	104.96
(B) Non-Current Liabilities, Preferential Share & Share Application money and Reserves other than free reserves		
B.1. Share application money pending allotment	0.00	0.00
B.2. Preference Share Capital	0.00	0.00
B.3. Long term Borrowings	0.00	0.00
B.4. Deferred tax Liabilities	0.00	0.00
B.5. Other Long Term Liabilities	0.00	0.00
B.6. Long Term provisions	37.19	48.24
B.7. Reserves other than free reserves	0.00	0.00
Total Non-Current Liabilities, Reserves other than free reserves considered for Net worth (2)	37.19	48.24
(C) Current Assets		
C.1. Current Investments	0.00	0.00
C.1.1 Less: Investments in associates	0.00	0.00
C.1.2 Net Current Investments (C.1 - C.1.1)	0.00	0.00
C.2. Inventories	0.00	0.00
C.3. Trade Receivables	507.36	36.15
C.4. Cash and cash equivalents	405.36	677.55
C.5. Short Term Loans & Advances	3026.25	4222.32
C.5.1 Less: Loans & Advances given to associates	0.00	0.00
C.5.2 Net Short Term Loan & Advances(C.5 - C.5.1)	3026.25	4222.32
C.6. Other current assets (including current tax assets)	129.48	66.51
C.7. Deferred Expenditure (including Misc. Expenses) not written off (not considered for net worth & Liquidity purpose)	0.00	0.00
Total Current Assets	4068.45	5002.53
Total Current Asset considered for Net worth (3)	4068.45	5002.53
(D) Current Liabilities		
D.1. Short-term Borrowings	0.00	0.00
D.2. Trade payables	2806.19	2602.05
D.3. Other Current liabilities (Including current tax liabilities)	3193.66	4265.43
D.4. Short-term provisions	4.87	4.87
Total Current Liabilities considered for Net worth (4)	6004.72	6872.35

14. Based on the above, net worth, current ratio and liquidity ratio of the Applicant are as under:

	As on 28.2.2021 (Rs. in lakh)	As on 31.3.2020 (Rs. in lakh)
Net worth	(-)1869.35	(-)1813.10
Current Ratio (Total Current Asset)/(Total Current Liability) (Minimum 1:1)	0.68	0.73
Liquid Ratio (Total Current Asset – Inventories - Prepaid expenses)/ (Total Current Liability) (Minimum 1:1)	0.67	0.73

15. It is noted that the Applicant has invested Rs.10011.81 lakh out of which Rs. 9961.76 lakh has been invested in LSEPL, fellow subsidiary of the Applicant, which is under Corporate Insolvency Resolution Process as per the order dated 14.6.2019 of National Company Law Tribunal, Hyderabad. The Independent Auditor of Applicant Company vide its report dated 15.5.2021 has given its qualified opinion stating that it is not able to comment on the adjustment, if any, that may be required towards the carrying value of the investment made by the Applicant in LSEPL amounting to Rs. 9961.96 lakh as on 28.2.2021 in the accompany financial statements.

16. The expression 'net worth' has been defined under Regulation 2(q) of the 2020 Trading Licence Regulations, which is reproduced as under:

"2.

...

(q) 'Net Worth' means aggregate value of the paid up equity share capital and compulsorily convertible preference shares and free reserves (excluding reserves created out of revaluation and write back of depreciation) reduced by the aggregate value of accumulated losses, deferred expenditure (including miscellaneous expenses) not written off and loans and advances to and investments made in Associates;"

17. Further, 'Associate' has been defined under Regulation 2(c) of the 2020 Trading Licence Regulations as under:

“2.

...

(c) ‘Associate’ in relation to an Applicant or the Trading Licensee, as the case may be, means associate company or related party as defined in sub-sections (6) and (76) of Section 2 of the Companies Act, 2013 (18 of 2013) respectively;

18. Sub-sections (6) and (76) of Section 2 of the Companies Act, 2013 define ‘associate company’ and ‘related party’ as under:

“2.(6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

.....

(76) “related party”, with reference to a company, means-

(i)

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

19. Perusal of above provisions reveals that ‘subsidiary’ and ‘fellow subsidiary’ comes under the definition of ‘associate’ as per Regulation 2(c) of the 2020 Trading Licence Regulations. Therefore, for the purpose of net worth calculation, investments in subsidiary and fellow subsidiary (i.e. Rs.10011.81 lakh as on 28.2.2021 and 31.3.2020) of the Applicant company has been reduced as per Regulation 2(q) of the 2020 Trading Licence Regulations.

20. Thus, as per audited balance sheet as on 28.2.2021, the Applicant company has a net worth of Rs.(-)18.69 crore and as per audited annual accounts for the year 2019-20, the Applicant company has a net worth of Rs.(-)18.13 crore as on 31.3.2020 (as can be seen in paragraph 12 above). Therefore, the Applicant company does not meet requirements of net worth for any Category of trading licence as prescribed under Regulation 3(3)(a) of the 2020 Trading Licence Regulations.

21. Regulation 3(3)(b) of the 2020 Trading Licence Regulations provides as under:

“The Applicant shall have Net Worth as per clause (a) above and have a minimum Current Ratio of 1:1 and a minimum Liquidity Ratio of 1:1:

Provided that the Net Worth, Current Ratio and Liquidity Ratio specified in this regulation shall be computed on the basis of the audited special balance sheet prepared in accordance with the financial reporting framework prescribed under the Companies Act, 2013.”

22. As per the audited balance sheet as on 28.2.2021, the Applicant company has the current ratio of 0.68:1 and liquidity ratio of 0.67:1 (as can be seen in paragraph 14 above). Therefore, the Applicant company does not meet requirements of current ratio and liquidity ratio for trading licence as prescribed under Regulation 3(3) (b) of the 2020 Trading Licence Regulations.

23. Accordingly, the prayer of the Applicant for down-gradation of its licence from Category ‘I’ to Category ‘III’ is rejected.

24. Further, as observed in paragraph 21 and paragraph 22, the Applicant company does not meet requirements of net worth for any Category of trading licence as prescribed under Regulation 3(3)(a) of the 2020 Trading Licence Regulations and requirements of current ratio and liquidity ratio for trading licence as prescribed under Regulation 3(3)(b) of the 2020 Trading Licence Regulations.

25. We have further considered that the Regulation 9(2) of the 2020 Trading Licence Regulations provides for an obligation of the trading licensee as under:

“9. Obligations of the Trading Licensee

The Trading Licensee shall be subject to the following obligations, namely:-

.....

9(2) The Trading Licensee shall maintain the Net Worth in accordance with Regulation 3 of these regulations at all times and shall maintain Current Ratio of 1:1 and Liquidity Ratio of 1:1 at the end of every financial year:

Provided that if the current ratio or the liquidity ratio at the end of the financial year is less than 1:1, then the Trading Licensee shall be required to maintain additional Net Worth of 100% of the Net Worth stipulated for the respective category of trading licence.”

26. As per above-mentioned provisions, trading licensee is obligated to maintain the net worth in accordance with Regulation 3 of the 2020 Trading Licence Regulations at all times and the current and liquidity ratios of 1:1 at the end of every financial year. It also provides that if the current ratio or the liquidity ratio is less than 1:1, the licensee is required to maintain additional net worth of 100% of the net worth stipulated for the respective category of trading licence. Evidently, the Applicant has failed to fulfill its obligations to maintain the net worth and current and liquidity ratios as specified in the 2020 Trading Licence Regulations. The reliance placed on the proviso to Regulation 9(2) of the 2020 Trading Licence Regulations by the Applicant while seeking the down-gradation of its trading licence to Category ‘III’ is also of no avail as not only the Applicant has current and liquidity ratio of less than 1:1, but its net worth is also in negative.

27. Further, 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;

.....”

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

29. The Petition No. 42/TD/2021 is disposed of in terms of the above discussions and findings.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson