

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 542/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S.Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Date of Order: 1st April, 2021

In the matter of

Application for revocation of inter-State trading licence granted to Jaiprakash Associates Limited.

And

In the matter of

Jaiprakash Associates Limited
JA House, 63 Basant Lok,
Vasant Vihar,
New Delhi-110 057

....Applicant

Parties Present:

Shri Abhinav Mishra, Advocate, JAL

Shri Ankit Sibbal, Advocate, JAL

ORDER

This Petition has been filed by Jaiprakash Associates Limited for revocation of its inter-State trading licence w.e.f. 1.4.2020 under Clause (3) of Regulation 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Trading licence and other related matters) Regulations, 2020 (hereinafter referred to as 'the 2020 Trading Licence Regulations').

2. By order dated 23.3.2011, Jaiprakash Associates Limited was granted Category 'I' trading licence to trade in electricity as an electricity trader in accordance with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Trading licence and other related matters) Regulations, 2009, subject to the terms and conditions contained in the licence. The said regulation has since been repealed and the 2020 Trading Licence Regulations has been enacted in its place.

3. The Applicant has submitted that owing to stiff competition, volatility and uncertainty in the power market, it has not undertaken any trading activities including any bilateral agreement and has only indulged in trading on Power Exchange i.e. Indian Energy Exchange (IEX) for its associate company in the month of February 2020. It has been submitted by the Applicant that since it does not anticipate any further trading activity in future, it is seeking revocation of its trading licence.

4. It has been further submitted by the Applicant that due to slowdown in the entire infrastructure industry and an immense impact on the financials of the Applicant, a restructuring of the Applicant is initiated by lenders and the associate company of the Applicant is selling power of its generating station directly on Power Exchanges and/or through PPAs. Therefore, the Applicant does not wish to continue with the trading business.

5. The Applicant has submitted that it does not have any undischarged liability, against its inter-State trading licence nor any claim has been raised by any party for past one year. The Applicant has submitted that there is no operative contract pending against

it. The Applicant has submitted that it has already paid licence fee for the Financial Year 2019-20.

6. Case was called out for virtual hearing on 26.3.2021. Learned counsel appearing on behalf of the Applicant submitted that due to Covid-19 pandemic and nationwide lockdown imposed by the Central Government, it could not file the Petition in the month of March 2020 and it has been filed on 16.6.2020 immediately upon easing of lockdown. It was further submitted by the learned counsel that the last trading transaction was carried out by the Applicant in the month of February 2020. The learned counsel requested the Commission to invoke Regulation 23 (Power to relax) of the 2020 Trading Licence Regulations for exemption from payment of annual licence fees applicable for 1.4.2020 to 31.3.2021.

7. We have considered the submissions of the Applicant and perused documents on record. Clause (3) of Regulation 20 of the 2020 Trading Licence Regulations provides as under:

“(3) Where the licensee makes an application for revocation of licence, the application shall contain the following information and documents:

(a) Reasons for seeking revocation;

(b) an affidavit to the effect that the licensee has deposited the licence fee for the year in which revocation is sought, that there are no undischarged liabilities against the licensee, that there are no operation contracts for trading of electricity to which the applicant is party at the time of filing the said application;

(c) an affidavit to the effect that the applicant has posted the complete application on its website and shall keep the application uploaded on its website till its disposal by the Commission;

(d) documents showing that the licensee has published the notice about its application for revocation in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi including one economic newspaper.”

8. Vide letters dated 4.10.2020, IEX, PXIL, NLDC and RLDCs were directed to submit the confirmation to the effect that the Applicant has not defaulted in making any payment in connection with the transactions made by the Applicant and no adverse information regarding the conduct and operation of the licensee has come to the notice. In response, IEX vide its letter dated 18.3.2021 has submitted that there is no default made by the Applicant while trading in electricity on Power Exchange and there is no outstanding payment for power trading transactions undertaken as on 1.3.2021.

9. The Applicant has uploaded its application on its website. The Applicant has published the notices regarding revocation of inter-State trading licence on 15.6.2020 in Indian Express (Delhi, Mumbai and Kolkata), Financial Express (Delhi, Mumbai, Kolkata and Chennai), Southern Mail (Chennai) and North East Times (Assam). However, no comments/ objections have been received from the general public.

10. We note that the Applicant has sought revocation of Category 'I' trading licence on account of its inability to use the trading licence from February 2020 due to competition and uncertainty in the power market. It has also been submitted that the Applicant has not committed breach of any of the provisions of the trading licence and 2020 Trading Licence Regulations and has paid all applicable fees for the Financial Year 2019-20.

11. The Applicant has submitted that it intended to move the present Application in the month of March 2020, but due to Covid-19 pandemic and nationwide lockdown imposed by the Central Government, it could not formally file the Petition in March 2020. The

Applicant has submitted that the Hon`ble Supreme Court in its order dated 23.3.2020 in Suo motu Writ Petition (Civil) No.(s) 3/2020 held as under:

This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w. e. f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.”

12. The Applicant has requested to waive the licence fee for Category ‘I’ licence for the financial year 2020-21 by exercising power under Regulation 23 of the 2020 Trading Licence Regulations. It is noticed that as per Regulation 7(4) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 (hereinafter referred to as ‘the Payment of Fees Regulations’), a trading licensee is required to pay annual licence fee by 30th April of each year failing which it is liable to pay late payment surcharge in terms of Regulation 11 of the Payment of Fees Regulations. Regulation 9(15) of the 2020 Trading Licence Regulations provides that “the trading licensee shall pay the licence fee by the stipulated date specified by the Commission from time to time.

13. As per Regulation 20(3)(b) of the 2020 Trading Licence Regulations, the Applicant has to give an affidavit that it has deposited the licence fee for the year in which the

revocation is sought. Therefore, the period of limitation for filing the application for revocation of licence with the licence fee paid for the financial year 2019-20 is 31.3.2020. As per Hon'ble Supreme Court order dated 23.3.2020 in Suo motu Writ Petition (Civil) No.(s) 3/2020, period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15.3.2020 till further order/s. Subsequently, the Hon'ble Supreme Court vide its order dated 8.3.2021 decided that for computing the period of limitation for any suit, application, appeal or proceedings, the period from 15.3.2020 to 14.3.2021 shall stand excluded. Therefore, the application of the Applicant having been filed during the exclusion period shall be deemed to have been filed during the financial year 2019-20. As per the Payment of Fee Regulations, a licensee is required to pay the licence fee by 30.4.2020 for the Financial Year 2020-21 without late payment surcharge and thereafter with late payment surcharge. Taking into account the special circumstances of the case arising out of pandemic and the fact that the application has been filed during the period of exclusion of limitation as per the directions of the Hon'ble Supreme Court, the Commission, in exercise of power conferred under Regulation 13 (Power to Relax) of the Payment of Fees Regulations, exempts the Applicant from depositing the licence fee for 2020-21. Further, we in exercise of power conferred under Regulation 23 (Power to Relax) of the 2020 Trading Licence Regulations, approve the revocation of the Category 'I' licence of the Applicant with effect from 1.4.2020.

14. A copy of this order be sent to the Central Government in Ministry of Power and CEA for their information and record.

15. Petition No. 542/MP/2020 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson