

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 70/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: 16th August, 2021

In the matter of

Application for grant of licence for Category 'V' inter-State trading in electricity.

And

In the matter of

Saini Power Transactor,
S.C.O. 110, Second Floor,
Sector-25, Panchkula-134 116
Haryana

..... Applicant

The following was present:

Shri S. Vallinayagam, Advocate, Saini Power Transactor

ORDER

The Applicant, Saini Power Transactor, a sole proprietorship concern, has made the present application under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") read with Regulation 6 of 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 Trading Licence Regulations") for grant of Category 'V' trading licence for inter-State trading in electricity in whole of India.

2. Case was called out for virtual hearing on 13.7.2021. The learned counsel for the Applicant prayed to take into account the appreciated value of 9 Kanal and 24 Marla land based on the valuation report of the government approved valuer instead of book value of the land to calculate the net worth of the Applicant by exercising power conferred under Regulation 23 (Power to Relax) of the Trading Licence Regulations. It was submitted by the learned counsel that in the audited balance sheet as on 31.3.2021 (as against the provisional special balance sheet as on 31.1.2021 furnished along with the Application), the auditor has already incorporated the appreciated value of land in the audited balance sheet on the basis of valuation report of the government approved valuer and the Applicant thus now meets the net worth requirement for Category 'V' inter-State trading licence prescribed under the Trading Licence Regulations. Learned counsel sought liberty to place on record the copy of the audited balance sheet as on 31.3.2021 on affidavit. Accordingly, the Applicant was directed to file the audited balance sheet as on 31.3.2021. The Applicant vide affidavit dated 13.7.2021 has submitted the audited balance sheet as on 31.3.2021.

3. We have examined the documents on record. Regulation 6 of the Trading Licence Regulations provides for the procedure for grant of trading licence as under:

“6. Procedure for grant of licence

(1) Any person desirous of undertaking inter-State trading in electricity shall make an application to the Commission for grant of licence in the manner specified in Form-I appended to these regulations and such application shall be accompanied by-

(a) Such application fee as prescribed by the Central Government from time to time and shall be paid as per the procedure specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or any statutory re-enactment thereof.

(b) Copies of the annual reports in case of the persons incorporated under the Companies Act, 1956 or Companies Act, 2013 including audited accounts along with the Directors' Report, Auditors' Report, the Schedules and notes to accounts for

one Year immediately preceding the Year in which the application has been made and the audited special balance sheet as on any date falling within 30 days immediately preceding the date of filing the application.

(2) The Applicant shall post complete application along with annexures and enclosures on its website so as to facilitate access to the application by any person through internet and shall keep them on the website till the disposal of the application.

(3) The Applicant shall within 7 days after making such application, publish a notice of its application, in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper in Form II, with the following particulars, namely:-

(4) The Applicant shall within 7 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published and shall also file the original complete page of the newspaper in which the notice has been published.

(5) The Applicant shall allow a period of 30 days to the public to file objections or suggestions to the notice of application published in the newspapers.

(6) The Applicant shall file its reply before the Commission within 30 days from the last date of receipt of objections or suggestions from the public.

(7) The Commission after consideration of the objections or suggestions received in response to the notice published by the Applicant and its reply may reject the application or may propose to grant licence.

(8) When the Commission proposes to grant licence, it shall publish a notice of its proposal in two daily newspapers, as the Commission may consider appropriate, stating the name and address of the person to whom it proposes to issue the licence and with such other details as the Commission considers appropriate, to invite further objections or suggestions to its proposal.”

4. The Applicant has submitted the application as per Form-I along with the requisite fees.

5. The Applicant has uploaded the application for grant of trading licence on its website in terms of Clause (3) of Regulation 6 of the Trading Licence Regulations and further placed on record the relevant copies of the newspapers in original in which notice of its application has been issued. The notices under Sub-section (2) of Section

15 of the Act read with Clause (4) of Regulation 6 of the Trading Licence Regulations have been published by the Applicant in various editions of Hindustan Times (Editions: Chandigarh, New Delhi, Lucknow, Gurugram, and Mumbai) and Business Standards (Editions: Ahmedabad, Bengaluru, Bhubaneshwar, Chandigarh, Chennai, Kochi, Kolkata, Lucknow, Mumbai, Pune and New Delhi). The Applicant has submitted that no objection has been received in response to the public notices.

6. The Applicant is a sole proprietorship concern and Ms. Saroj Bala Saini is the sole proprietor. The Petitioner has also filed the registration certificate issued to proprietor.

7. It is noticed that in the instant application, as per special balance sheet value of "9 Kanal and 2.4 Marla land (i.e Agricultural Land-Mulana)" is Rs.2,73,129/-. The Applicant has prayed to consider appreciated value of "9 Kanal and 2.4 Marla land", based on the valuation report of government approved valuer instead of the book value of the land, to calculate its net worth. As on 31.1.2021, the valuer has valued the value of land as Rs. 1,57,32,000/-.

8. In accordance with Clause (3) of Regulation 3 of the Trading Licence Regulations, a person applying for Category `V` trading licence should have net worth of Rs. two crore and should have maintained minimum current ratio and liquidity ratio of 1:1 as on the date of audited balance sheet accompanying the application. As per Clause (1)(b) of Regulation 6 of the Trading Licence Regulations, the Applicant is required to submit special balance sheet as on any date falling within 30 days immediately preceding the date of making the application. The Applicant has submitted audited special balance

sheet as on 31.1.2021. Subsequently, the Applicant has also submitted balance sheet as on 31.3.2021 and requested the Commission to consider the same for the purpose of calculation of its net worth as the auditor has already incorporated the appreciated value of land therein on the basis of valuation report of government approved Valuer. In the balance sheet, capital account of Proprietor has been increased by Rs. 1,54,58,871/- (difference of book value of Rs. 2,73,129/- and revalued value of agricultural land of Rs.1,57,32,000/-) as on 31.3.2021 instead of creating a revaluation reserve.

9. Based on the audited balance sheet as on 31.3.2021, net worth, current ratio and liquidity ratio have been worked out as under:

(Rs. in lakh)	
Net Worth Computation	As per Balance Sheet as on 31.3.2021
Particulars	
(A) Proprietor's Capital (1)	240.97
(B) Reserves and Surplus	
B.1. Capital Reserves	0.00
B.2. Capital Redemption Reserve	0.00
B.3. Debenture Redemption Reserve	0.00
B.4. Revaluation Reserve*	154.59
B.5. Share Options Outstanding Account and Reserves other than free reserves	0.00
B.6. Securities Premium Reserve	0.00
B.7. Surplus (P and L Account)	0.00
B.8. Other Free Reserves	0.00
Reserves and Surplus (Total) (2)	154.59
Reserve and Surplus not considered for net worth (B1+B2+B3+B4+B5) (3)	154.59
(C) Loans and Advances given to associates/investments in Associates (4)	0.00
(D) Deferred expenditure (including miscellaneous expenses) not written off (5)	0.00
Net worth as per the definition stipulated in Regulation 2 (1)(o) of the Trading Licence Regulations (1+2**-3-4-5)	86.38

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

(Rs. in lakh)	
Net worth (Asset approach), Current Ratio and Liquidity Ratio Computation	As per Balance Sheet as on 31.3.2021
(A) Non-current Assets	
A.1 Fixed Assets	234.71
A.2 Net Block of Intangible Asset	0.00
A.3 Capital work in progress (i.e. towards Machinery)	0.00
A.4 Intangible Assets under development	0.00
A.5 Non-Current investments	0.43
A.5.1 Less: Investments in associates	0.00
A.5.2 Net non-current investments (A.5 - A.5.1)	0.43
A.6 Deferred tax assets	0.00
A.7 Long-term loans and advances	0.00
A.7.1 Less: Loans and advances given to associates included in above	0.00
A.7.2 Net Long Term Loans and Advances (A.7 - A.7.1)	0.00
A.8 Other non-current asset	0.00
A.9 Deferred expenditure (including miscellaneous expenses) not written off (Not considered for net worth computation)	0.00
Total Non-Current Assets	235.14
Total Non-Current Assets considered for net worth (1)	235.14
(B) Non-Current Liabilities, Pref. Share & Share Application money and Reserves other than free reserves	
B.1 Share application money pending allotment	0.00
B.2 Preference Share Capital	0.00
B.3 Long term Borrowings (i.e. Secured loan - SBI Car loan and Un secured loan from Kashmir Singh saini)	70.95
B.4 Deferred tax Liabilities	0.00
B.5 Other Long Term Liabilities	0.00
B.6 Long Term provisions	0.00
B.7 Reserves other than free reserves*	154.59
Total Non-Current Liabilities, Reserves other than free reserves considered for Net worth (2)	225.54
(C) Current Assets	
C.1. Current Investments	0.00
C.1.1 Less: Investments in associates	0.00
C.1.2 Net Current Investments (C.1 - C.1.1)	0.00
C.2. Inventories (Nature of inventory is not provided)	2.79
C.3. Sundry debtors	14.49
C.4. Cash and cash equivalents	9.45

C.5 Short term loans and advances	61.43
C.5.1 Less: Loans and advances given to associates	0.00
C.5.2 <i>Net short term loan and advances (C.5 - C.5.1)</i>	61.43
C.6 Other current assets	0.00
C.7 Deferred expenditure (including miscellaneous expenses) not written off (not considered for net worth and liquidity purpose)	0.00
Total current assets	88.16
Total Current Asset considered for net worth (3)	88.16
(D) Current Liabilities	
D.1. Short-term Borrowings (i.e. Advance from customers)	6.57
D.2. Sundry Creditors	2.04
D.3. Other Current liabilities	0.00
D.4. Short-term provisions (Provision for TDS/ESI/ EPF Payable etc)	2.77
Total Current Liabilities considered for Net worth (4)	11.38

11. Based on the above, the net worth, current ratio and liquidity ratio work out as under:

Particulars	As per Audited Balance Sheet as on 31.3.2021
Net worth (Rs. in lakh)	86.38
Current Ratio (Total Current Asset/ Total Current Liability) (Minimum 1:1)	7.75
Liquid Ratio (Total Current Asset - Inventories- Prepaid expenses/ Total Current Liability) (Minimum 1:1)	7.50

**Profit on revaluation of agricultural land has been considered as revaluation reserve.*

***Since revaluation reserve has already been included in the capital of Proprietor, it has not been added under Sr. No. 2.*

Note: Applicant has certified that no loans and advances have been given to any associates or any other firm as defined under the provisions of the Trading License Regulations and the net worth has been calculated accordingly.

12. The expression "net worth" has been defined under Regulation 2(q) of the 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;"

As per the above definition, “revaluation reserve” does not form part of net worth. Since profit on revaluation of agriculture land of Rs, 1,54,58,871 as shown in capital account of Proprietor is essentially of the nature of “revaluation reserve”, it has been treated as revaluation reserve for calculation of net worth as on 31.3.2021.

13. As per balance sheet as on 31.3.2021, the Applicant has net worth of Rs. 86.38 lakh. Therefore, the Applicant does not meet requirements of net worth for Category ‘V’ trading licence as prescribed under Regulation 3(3)(a) of the Trading Licence Regulations.

14. The Applicant has prayed to exercise the power to relax under Regulation 23 of the Trading Licence Regulations and take into account the appreciated value of 9 Kanal and 2.4 Marla land, based on the valuation report of government approved valuer instead of the book value of the land, to calculate its net worth.

15. Regulation 23 of the Trading Licence Regulations empowers the Commission to relax any of the provisions in appropriate cases and for reasons to be recorded in writing. It reads as under:

“23. Power to relax: The Commission may in appropriate cases and for reasons to be recorded in writing relax any of the provisions of these regulations”

16. The ‘power to relax’ under the Trading Licence Regulations is in general terms and its exercise is discretionary. It is settled law that exercise of discretion must

not be arbitrary, must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case. In the case of West Bengal State Electricity Board Vs Patel Engineering Co. Ltd. [(2001) 2 SCC 451], the Hon'ble Supreme Court held that where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the rules. In the case of R.K. Khandelwal Vs State of U.P. [(1981) 3 SCC 592], the Hon'ble Supreme Court noted that:

“6. Dr. Singhvi, who appears on behalf of the appellant, raised a further contention that the ratio 1:1 was relaxed from time to time by the University and that the appellant was discriminated against by the arbitrary refusal of the authorities to relax the ratio in his favour. We are prepared to accept that if there is a power to relax the ratio, that power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some students and to disfavour some others.”

17. We are of the view that same considerations should govern the causes before the Commission as regards exercise of power to relax. When viewed in the light of the observations of the Hon'ble Supreme Court in above referred cases, the financial qualifications/eligibility specified by the Commission for grant of inter-State trading licence under the Trading Licence Regulations cannot be categorized as unreasonable, so as to justify any exercise of power to relax. The power to relax is exercisable only in exceptional circumstances. The power to relax cannot be exercised in a manner so as to nullify the relevant provisions of the Trading Licence Regulations and render them otiose or completely redundant. There cannot be any omnibus relaxation in the manner sought by the Applicant. Thus, the present application for relaxation is beyond the scope of Regulation 23 of the Trading Licence Regulations.

18. Accordingly, the prayer of the Applicant for grant of Category 'V' inter-State trading licence is rejected.

19. The Petition No. 70/TD/2021 is disallowed in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K.Pujari)
Chairperson