

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE NO. 89 of 2015

In the matter of
Suo moto review of compliance of Trading Licence conditions by Intra-State Trading
Licensees in Maharashtra

Coram

Shri Azeez M. Khan, Member
Shri Deepak Lad, Member

1. M/s. Indiabulls Power Generation Ltd., New Delhi
2. M/s. NTS Power, Pune
3. M/s. Knowledge Infrastructure Systems Pvt. Ltd., New Delhi
4. M/s. 21st Century Infrastructure (India) Pvt. Ltd., Nagpur
5. M/s. D. M. Corporation Pvt. Ltd., Kolhapur

Appearance

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| 1. For Indiabulls Power Generation Ltd. | : Shri Kiran Chavan (Rep.) |
| 2. For M/s. NTS Power | : Smt Dipali Sheth (Adv.) |
| 3. For M/s. Knowledge Infrastructure Systems Pvt. Ltd. | : Shri K. Raman (Rep.) |
| 4. For 21st Century Infrastructure (India) Pvt. Ltd. | : Shri Sharad Agarwal (Rep.) |
| 5. For M/s. D. M. Corporation Pvt. Ltd. | : None |

For Consumer Representatives: Dr. Ashok Pendse, Thane-Belapur Industries
Association
Smt Ann Josey, Prayas Energy Group

ORDER

Dated: 8 February, 2017

1. The Commission has granted the following Licences for Intra-State Trading within the State of Maharashtra:-

- i. M/s. Indiabulls Power Generation Ltd. – Licence No. 2/2008 dated 21.8.2008
 - ii. M/s. NTS Power – Licence No. 1/2011 dated 4.5.2011
 - iii. M/s. Knowledge Infrastructure Systems Pvt. Ltd. – Licence No. 2/2011 dated 2.9.2011
 - iv. M/s. 21st Century Infrastructure (India) Pvt. Ltd. – Licence No. 3/2011 dated 15.12.2011
 - v. M/s. D. M. Corporation Pvt. Ltd. – Licence No. 1/2013 dated 25.11.2013
2. The term of each of these Trading Licences is 25 years.
 3. Regulation 18 of the MERC (Trading Licence Conditions) Regulations, 2004 provides that the Trading Licensee shall provide data regarding the Trading transactions undertaken by it on a quarterly basis to the Maharashtra State Load Despatch Centre (MSLDC) and to the Commission as per the format in Annexure 3 of the Regulations. Regulation 19 requires the Trading Licensee to submit the data regarding its performance as per the format at Annexure 4 of the Regulations.
 4. On 28 May, 2014, these Licensees were asked to submit the status of compliance of the Regulations. In response, M/s. 21st Century Infrastructure (‘21st Century’) replied that, due to unavoidable reasons, there had been no trading activity. It was in discussion to finalize some trading deals in the near future and the required reports would be submitted as and when the trading activity is started. M/s. Knowledge Infrastructure Systems Pvt. Ltd. (‘Knowledge Infrastructure’) replied that no trading had been undertaken. Indiabulls has been submitting quarterly reports showing nil transactions. During subsequent follow up and correspondence, these Licensees informed that no trading activity had been started by them under their Intra-State Trading Licences.
 5. The conditions of the Trading Licences stipulate the performance of various duties, including not neglecting to undertake the business for four consecutive quarters, reporting the transactions undertaken to the Commission, and payment of Annual Licence Fees:

“5.1 (j) The Electricity Trader shall not omit or neglect to undertake the Licensed Business for four consecutive quarters;.....

8. The Electricity Trader shall furnish performance details to the Commission for such periods and in such form as may be specified.....

9. During the period that the Licence is in force, the Electricity Trader shall, by the 10th of April of every year, or such further period as the Commission may allow, pay to the Commission such licence fees as may be specified.”

6. Since it appeared that the Trading Licensees have not adhered to the conditions of their Licences, vide letters dated 17 March, 2015, the reasons for non-compliance were sought from these Licensees. Only M/s. NTS Power replied on 28 March, 2015. No response was received from other Licensees.
7. On 8 January, 2016, notices were issued to these Trading Licensees highlighting the Regulations to be complied with by them and to show cause why the procedure for

cancellation of their Trading Licences should not be initiated due to non-compliance of conditions.

8. At the hearing held on 9 February, 2016, Indiabulls admitted that, since the grant of Trading Licence in 2008, it had not undertaken any trading transaction, but was expecting the business to commence in the near future.. NTS Power contended that the Open Access Regulations in force in 2011 had many issues which resulted in uncertainty regarding the feasibility of the trading business. However, with the new draft Regulations, it anticipates that its trading business will commence. It suggested that time-bound performance conditions may be stipulated by the Commission which would be adhered to by it. NTS Power also sought two weeks' time to file its written Reply.

Knowledge Infrastructure. stated that it also held an Inter-State Trading Licence granted by the Central Electricity Regulatory Commission (CERC), and that it had undertaken substantial trading activity in other States. It had strengthened its organizational set-up for Intra-State Trading within Maharashtra and was looking forward to commence its business under the Intra-State Trading Licence from FY 2016-17.

21st Century sought time to commence trading business under its Intra-State Trading Licence, stating that it had tied up with sellers of electricity and was trying to identify prospective buyers. To a query of the Commission, it stated that quarterly reports were submitted to the Commission till FY 2012-13, but not for the subsequent periods.

None appeared for D. M. Corporation.

Smt. Ann Josey, for Prayas Energy Group ('Prayas', an authorized Consumer Representative), requested that copies of the submissions of the Trading Licensees, their Accounting Statements and data submitted by them as per Schedules III and IV of the Trading Licence Conditions Regulations, 2004 be provided to Prayas.

The Commission also directed the parties to file their respective submissions, and to comply with the Regulations regarding the submission of quarterly reports.

9. In its submission dated 25 February, 2016, NTS Power stated that:
 - 9.1 Since grant of Trading Licence, it has not undertaken any Trading business due to unfavourable market condition and an uncertain Trading business environment. The lack of business with respect to the Trading Licence was due to the issuance of various circulars by MSEDCL which were not in accordance to then Orders of the Commission which lead to chaos in the Open Access regime and created an unfavourable environment for the Trading Licensees.
 - 9.2 The Circular No. 147 and Circular No. 155 dated 27 March, 2008 and 27 May, 2008, respectively issued by MSEDCL made it difficult for the Trading Licensees to undertake any business as the said circulars were in contradiction with the laws applicable then. Various litigations pertaining to open access in the years 2011-2014 resulted in uncertainty on the feasibility of the trading business. Thereafter, due to notification of MERC (Distribution Open Access) Regulations, 2014, there was no clarity on open access. However, it seems that the draft MERC

(Distribution Open Access) Regulations, 2015 if notified will open up to many opportunities.

- 9.3 Despite the lack of business in the initial stages, it expects future business endeavors in the trading market and thus would like to continue to be a holder of the Trading Licence and be given an opportunity to conduct business with respect to the same.
 - 9.4 Even though it was unable to do trading due to unforeseen reasons, it is expecting to undertake business in the coming future and would like to continue to be in the possession of the same and explore the various business opportunities the Trading Licence would have to offer to the Licensee.
 - 9.5 It has started exploring opportunities and has been able to do some business. The Licensee has therefore made an Application for the grant of short term open access on 11 November, 2015.
 - 9.6 The Licensee will henceforth comply and perform all its duties and obligations as per the Trading Licence and Trading Regulations and is expecting good business opportunities to explore and take advantage of and in the light of the newly drafted MERC (Distribution Open Access) Regulations, 2015, the Licensee is anticipating better opportunities and much favourable market environment. In the circumstance, the Commission is requested to let it continue to hold the said Trading Licence.
10. In its submission dated 9 February, 2016, Knowledge Infrastructure Systems Pvt. Ltd. stated that:
- 10.1 Trading business was done in the State of Maharashtra with MSEDCL, BEST, RInfra, TPC-Mumbai, JSW Energy Ratnagiri, Wardha Power Ltd. But the contracts with these entities were done on the basis of Inter-State Licence issued by CERC. Intra-State Trading licence could not be used for these transactions. Knowledge Infrastructure Systems Pvt. Ltd. is a serious player in power trading area and has done substantial business in last three financial years using Inter-State Licence issued by CERC.
 - 10.2 Efforts were made to tie up contracts with some of the open access consumers, but could not conclude contract with them. But it is expected that the Trading Business would start in FY 2017 using Intra-State Licence granted by the Commission.
 - 10.3 The reports indicating 'Nil' business had been submitted every year.
 - 10.4 The Commission is requested to grant some time to start power trading operations in Maharashtra using Intra-State Licence granted by the Commission.
11. In its submission dated 9 February, 2016, 21st Century stated as follows:
- 11.1 21st Century has not been able to undertake any Trading business since grant of the Licence and, admittedly, has been unable to comply with its terms and conditions.

- 11.2 The economic viability of any trade depends on the values and prices by which the product and its distribution are governed. The pricing of electricity as well as the riders involved in the further trading of electricity was a loss-making proposition. At the time of applying for and the grant of the Licence, 21st Century was aware of the economic scenario, but had hoped that the situation would change for the better and that it would be able to trade in electricity, which unfortunately did not happen.
- 11.3 The economic scenario of electricity trading has now changed. In the present scenario, it would be able to undertake Intra-State trading of electricity profitably if the Licence is continued. Hence, 21st Century may given another chance to undertake trading and its Licence extended/ renewed with appropriate conditions.
12. A letter dated 22 June, 2016 was received from Devona Power Ltd. stating that the name of Indiabulls Power Generation Ltd. had been changed to Devona Power Ltd, and a copy of the Certificate of Incorporation recording the change of name and issued on 13 December, 2014 by the Registrar of Companies was submitted. Moreover, it intended to surrender its Intra-State Trading Licence in accordance with Section 19(2) of the EA, 2003 since it was not feasible for it to conduct trading business under the Licence. The Commission was requested to pass necessary orders under Section 19(2) accordingly.
13. No written submissions were filed by D.M. Corporation Pvt. Ltd.
14. At the hearing held on 27 September, 2016, Indiabulls (now Devona Power Ltd.) reiterated its intention to surrender its Trading Licence. The Commission directed that the surrender request be made on affidavit indicating whether it had any outstanding liability towards any party on account of the Trading Licence. 21st Century stated that it was trying to find prospective buyers for commencing its Trading Business. As regards NTS Power, Eternity Legal, the legal firm which appeared on its behalf at the earlier hearing on 9 February, 2016, informed that it would not be able to represent NTS Power as it had not received timely instructions, and sought withdrawal of its vakalatnama. None appeared on behalf of Knowledge Infrastructure and D. M. Corporation Pvt. Ltd. The Commission observed that there is no point in holding a Licence if no trading activity is being undertaken. It directed the Trading Licensees to submit their Business Plans for the trading activity, if any, proposed to be carried out over the next one year under their Licences, within three weeks.
15. None of the Trading Licensees have submitted their Business Plans, inspite of follow-up by the Commission's Secretariat.
16. Devona Power Ltd. (formerly Indiabulls Power Generation Ltd.) filed its Licence surrender request on affidavit on 17 October, 2016.

Commission's Analysis and Ruling

- 17. The Commission notes that Indiabulls Power Generation Ltd. has neither conducted any trading activity under its Trading Licence, nor did it intimate the change in its name to Devona Power Ltd. in 2014 as was required. However, vide**

its affidavit dated 17 October, 2016, it has sought to surrender its Licence. It has also confirmed that it does not have any outstanding liability towards any party on account of the Licence being surrendered, and that no recovery is pending.

Section 19(2) of the EA, 2003 reads as follows:

“Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.”

In view of the application made for surrender and the circumstances discussed above, the Trading Licence No. 2 of 2008 granted to Indiabulls Power Generation Ltd. on 21 August, 2008 for 25 years shall stand revoked from the date of this Order. The Secretariat of the Commission shall intimate the Government of Maharashtra (Energy Deptt.), the Maharashtra State Load Despatch Centre, and all Transmission and Distribution Licensees in Maharashtra of the revocation.

18. The MERC (Trading Licence Conditions) Regulations, 2004 require a Trading Licensee to submit quarterly reports of its trading transactions to the Commission:

“18.2 ...the Electricity Trader shall furnish the information as may be required from time to time, to monitor the Electricity Trader's performance and compliance of the terms and conditions of the licence and any other legislative or regulatory requirement in accordance with Schedule 3 appended to these Regulations:

Provided that the information in the prescribed form shall be furnished to the State Load Despatch Centre with a copy to the Commission, on a quarterly basis on 10th day of April, July, October and January for the quarters January to March, April to June, July to September and October to December respectively and the format for submission of information shall be duly filled up and completed in all respects and no column shall be left blank...

19. Standards of performance

...19.2 ...the Electricity Trader shall furnish the performance details for each year to the Commission on quarterly basis for the quarters ending 31st March, 30th June, 30th September and 31st December in the format prescribed in Schedule 4 appended to these Regulations by 15th day of the first month of the following quarter.”

None of the Trading Licensees has regularly submitted the required quarterly reports.

19. NTS Power has stated that various issues arising from the approach of MSEDCL and litigation on Open Access and, thereafter, the provisions of the 2014 Open Access Regulations had affected its ability to trade, but the new Regulations of 2016 had opened up new opportunities and NTS Power had applied for Short-

Term Open Access in November, 2016. According to 21st Century, issues regarding the pricing of electricity and riders in electricity trading had affected its ability to undertake trading. However, the economic scenario of electricity trading had now changed for the better. Knowledge Infrastructure has stated that it had undertaken trading under its Intra-State Trading Licence, and intended to do so under its Intra-State Licence in 2017. However, none of the Licensees had reported to the Commission any issue affecting their ability to trade, as envisaged under Regulation 16.2(b):

“The Electricity Trader shall as soon as practicable report to the Commission, -

... (b) any material breach, or likelihood thereof, of the provisions of the Act, the rules and the regulations thereunder, directions and orders issued by the Commission, agreement or the Licence, which was reasonably within his knowledge, along with the reasons therefor, as soon as practicable;...”

This requirement is also reflected in Clause 5.2 of the Licences. Indeed, admittedly, none of the Trading Licensees has undertaken any trading activity, nor have any quarterly reports indicating otherwise been received after these proceedings were initiated. The Licensees have, therefore, been consistently in breach of Regulation 16.1(j) which requires that

“The Electricity Trader shall not omit or neglect to undertake the Licensed Business for four consecutive quarters;...”

Moreover, in its Daily Order dated 27 September, 2016, the Commission had directed the Licensees to submit their trading Business Plan for the next one year, but none have done so.

20. In view of their prolonged breaches of the provisions of the MERC (Trading Licence Conditions) Regulations, 2004 and the conditions of their Licences, and their non-compliance of the Commission’s directions, as set out above, notice is given through this Order to the Trading Licensees, viz. NTS Power, Knowledge Infrastructure Systems Pvt. Ltd., 21st Century Infrastructure (India) Pvt. Ltd. and D. M. Corporation Pvt. Ltd., under Section 19(3) of the EA, 2003 to show cause within three months why their Licences should not be revoked.

Case No. 89 of 2015 stands disposed of accordingly.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member


(Ashwani Kumar Sinha)
Secretary

