

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 8/SM/2021

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

Date of Order: 3rd November, 2021

In the matter of

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.

And

In the matter of

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

....Respondent

Parties present:

Shri Deepak Khurana, Advocate, NETSL
Shri Tejasv Anand, Advocate, NETSL
Shri Vidya Bhushan, NETSL

ORDER

The Respondent, National Energy Trading and Services Limited, had filed Petition No. 42/TD/2021 under Regulation 9(4) and Regulation 15(3)(a) 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 down-gradation of its inter-State trading licence in electricity from Category ‘I’ to Category ‘III’.

2. The Commission after considering the documents placed on record, in its order dated 23.06.2021, observed that as per audited special balance sheet as on 28.02.2021, the Respondent company has a net worth of Rs.(-)18.69 crore. Also, as per audited annual accounts for the year 2019-20, the Respondent company had a net worth of Rs.(-)18.13 crore as on 31.03.2020. Therefore, the Respondent does 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 Commission while disposing of the Petition No. 42/TD/2021 vide order dated 23.06.2021 by rejecting the prayer of the Respondent for down-gradation of its trading licence from Category 'I' to Category 'III', directed to initiate appropriate proceedings against the Respondent as per the provisions of the Trading Licence Regulations. Relevant portion of the order dated 23.06.2021 is extracted as under:

“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.

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.

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.”*

3. Subsequently, in terms of above-quoted order, suo motu proceeding was initiated against the Respondent for non-fulfillment of requirement of required net worth. Vide order dated 08.07.2021 in this Petition, the Respondent was directed to file its response as to why penal provision not be invoked in terms of Regulation 19 of the Trading Licence Regulations for failure to maintain required net worth, current ratio and liquidity ratio for holding any category of inter-State trading licence. Relevant portion of the order dated 08.07.2021 is extracted as under:

“Thus, based on documents available on record in Petition No.42/TD/2021, we are satisfied that a prima facie case exists against the Respondent with respect to contravention of Regulation 17(3) of the Trading Licence Regulations since it has failed to maintain the required net worth as prescribed under Regulations 3(3) (a) and 3(3)(b) read with Regulation 9(2) of the Trading Licence Regulations. Accordingly, we direct the Respondent to file its response within one month from the issuance of this order as to why penal provision be not invoked in terms of Regulation 19 of the Trading Licence Regulations for failure to maintain required net worth, current ratio and liquidity ratio for holding any category of inter-State trading licence.”

4. In response, the Respondent, vide its affidavit dated 6.08.2021, has mainly submitted the following:

(a) In Petition No. 42/TD/2021, NETSL had filed Financial Statements for financial year 2019-20 and an audited special balance sheet as on 28.02.2021 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 28.02.2021, 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.

(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'.

5. The matter was heard on 22.10.2021 through video conferencing. During the course of hearing, the learned counsel for the Respondent reiterated the submissions made in the reply the same is not repeated for sake of brevity.

Analysis and Decision

6. We have considered the submissions of the Respondent. The Respondent is holding a Category 'I' trading licence for which the prescribed net worth is Rs.50 crore, which the Respondent is required to always maintain. The Respondent approached for down-gradation of its licence from Category 'I' to Category 'III'. On analysis of its audited special balance sheet dated 28.02.2021, it was noticed that the Respondent had invested Rs.10011.81 lakh out of which Rs.9961.76 lakh has been invested in LSEPL which was a fellow subsidiary of the Respondent and such investment cannot be considered while calculating the net worth. The net worth of the Respondent was held to be negative to hold any category of trading licence. Accordingly, the application of Respondent for down-gradation of licence was rejected and the present proceedings were initiated for revocation of licence.

7. The Respondent in its reply to the show cause notice has explained that in the financial statement and audited special balance sheet, LSEPL was inadvertently shown as a fellow subsidiary of NETSL whereas LSEPL has ceased to be a fellow subsidiary of NETSL after transfer of its shares to Dikon Infratech Private Limited on 17.02.2019. The Respondent has submitted that on account of the said inadvertent mistake, the Commission had rightly excluded the investment made in LSEPL while calculating the net worth. The Respondent has expressed apology for the said inadvertent mistake. The Respondent has placed on record 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.

8. In the light of the submissions made by the learned counsel for the Respondent and corrected audited balance sheet placed on record, we are of the view that the investment made by the Respondent in LSEPL cannot be called as investment in fellow subsidiary and cannot be excluded while calculating the net worth. However, based on the said corrected audited special balance sheet as on 28.02.2021, net worth, current ratio and liquidity ratio have been worked out as under:

Net Worth Computation	As per Corrected Audited Special Balance Sheet as on 28.02.2021
Particulars	(Rs. in lakh)
(A) Paid up equity capital (1)	3652.94
(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	0.00
B.5. Share Options Outstanding Account and	0.00

Reserves	
other than free reserves	0.00
B.6. Securities Premium Reserve	0.00
B.7. Surplus (P & L Account)	4489.52
B.8. Other Free Reserves	0.00
Free Reserves and Surplus Considered for Net worth (2) (B6+B7+B8)	4489.52
(C) Loans & Advances given to associates (3)	50.05
(D) Deferred Expenditure (including Miscellaneous Expenses) not written off (4)	0.00
Net Worth (1+2-3-4)	8092.41

9. Based on the said corrected audited special balance sheet as on 28.02.2021, the net worth of the Respondent is further represented by the following:

(Rs. in lakh)

Net worth (Asset approach), Current Ratio and Liquidity Ratio Computation	As on 28.02.2021
(A) Non-current Assets	
A.1. Net block of tangible Asset	8.96
A.2. Net Block of intangible Asset	0.00
A.3. Capital work in progress	0.00
A.4. Intangible Assets under development	0.00
A.5. Non-Current Investments	10011.81
A.5.1 Less: Investments in associates	50.05
A.5.2 Net Non-Current Investments (A.5 - A.5.1)	9961.76
A.6. Deferred Tax Assets	30.15
A.7. Long-term loans and advances	65.00
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)	65.00
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	10065.87
Total Non-Current Assets considered for net worth (1)	10065.87
(B) Non-Current Liabilities, Preferential Share and 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. compulsory convertible debentures)	0.00
B.4. Deferred tax Liabilities	0.00
B.5. Other Long Term Liabilities	0.00

B.6. Long Term provisions	37.19
B.7. Reserves other than free reserves	0.00
Total Non-Current Liabilities, Reserves other than free reserves considered for Net worth (2)	37.19
(C) Current Assets	
C.1. Current Investments	0.00
C.2. Inventories	0.00
C.3. Trade Receivables	507.36
C.4. Cash and cash equivalents	405.36
C.5. Short Term Loans and Advances	3026.25
C.5.1 Less: Loans and Advances given to associates	0.00
C.5.2 Net Short Term Loan and Advances (C.5 - C.5.1)	3026.25
C.6. Other current assets (including current tax assets)	129.48
C.7. Deferred Expenditure (including Miscellaneous Expenses) not written off (not considered for net worth and Liquidity purpose)	0.00
Total Current Assets	4068.45
Total Current Asset considered for Net worth (3)	4068.45
(D) Current Liabilities	
D.1. Short-term Borrowings	0.00
D.2. Trade payables	2806.19
D.3. Other Current liabilities (Including current tax liabilities)	3193.66
D.4. Short-term provisions	4.87
Total Current Liabilities considered for Net worth (4)	6004.72
Net worth ((1-2)+(3-4))	8092.41

10. Based on the above, net worth, current ratio and liquidity ratio of the Respondent are as follows:

	As on 28.02.2021
Net worth (Rs. in lakh)	8092.41
Current Ratio (Total Current Asset)/(Total Current Liability) (Minimum 1:1)	0.68
Liquid Ratio (Total Current Asset – Inventories - Prepaid expenses)/(Total Current Liability) (Minimum 1:1)	0.67

11. Thus, it is observed that as per the corrected audited special balance sheet, though the Respondent fulfills the requirement of net worth for present Category 'I' trading licensee, it does not meet the requirement of current ratio and liquidity ratio specified in Regulation 3(3)(b) of the Trading Licence Regulations. In cases where the current ratio and 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 in terms of proviso to Regulation 9(2) of the Trading Licence Regulations which provides as under:

“(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.”

12. As per the proviso to Regulation 9(2) of the Trading Licence Regulations, the Respondent is required to maintain a net worth of Rs.100 crore for holding Category 'I' trading licence, being 100% additional net worth. Since the Respondent has a net worth of Rs.80.92 crore, it does not fulfill the requirement of the proviso to Regulation 9(2) of the Trading Licence Regulations for holding Category 'I' trading licence. However, the Respondent may be meeting the requirement of Regulation 9(2) for holding Category 'III' trading licence.

13. In the light of above, we observe that the Respondent may be eligible to hold a Category 'III' trading licence, for which the Respondent had filed the Petition No. 42/TD/2021. The Respondent, in its submissions, has prayed for closure of the present proceedings and downgrading its trading licence from Category 'I' to Category 'III'. Considering the submissions of the Respondent and in view of the

corrected net worth of the Respondent as on 28.02.2021, the Commission closes the present proceedings for invoking the penal provision.

14. Further, considering the submissions of the Respondent to downgrade its trading licence from Category 'I' to Category 'III' and in view of the fact that the earlier Petition No. 42/TD/2021 of the Respondent was rejected by the Commission due to incorrect submissions of the Respondent, which now has been corrected, it is at liberty to file a fresh Petition within 15 days of this order for downgrading its trading licence from Category 'I' to Category 'III'.

15. The Commission has noted the qualified opinion of Chartered Accountant in its Independent Auditor's Report and Note No. 32 to the Ind AS Special Purpose Standalone Financial Statement's mentioned therein. While filing the Petition, the Petitioner will submit the status of investment of Rs.9,961 lakh in Lanco Solar Energy Private Limited which is under Corporate Insolvency Resolution Process as per order of National Company Law Tribunal dated 14.6.2019 along with 'clear net worth' free from all disputes and encumbrances.

16. In view of the above discussion and findings, the Respondent is discharged from the show cause notice and the present Petition No. 8/SM/2021 is dropped.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson