

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Present:

1. Shri Raj Pratap Singh, Chairman
2. Shri V.K. Srivastava, Member (Law)
3. Shri Sanjay Kumar Singh, Member

IN THE MATTER OF:

Grant of Distribution License to NIDP Developers Pvt. Ltd. for the Data Center Park situated at Greater Noida, Uttar Pradesh

AND

IN THE MATTER OF:

NIDP Developers Pvt. Ltd.

R/o: 514, Dalamal Towers, Nariman Point,

Mumbai - 400021

.....(Applicant)



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THE FOLLOWING WERE PRESENT:

1. Sh. MG Ramachandran, Sr. Advocate for NPCL
2. Ms. Divya Chaturvedi, Advocate NPCL
3. Ms. Srishti Rai, Advocate NPCL
4. Sh. Manoj Jain, NPCL
5. Sh. Sarnath Ganguly, NPCL
6. Sh. Abhishek Anand, NPCL
7. Sh. Sakya Chaudhuri, Advocate for NIDP
8. Ms. Shriya Gambhir, Advocate for NIDP
9. Sh. Kunal Vohra, NIDP
10. Sh. Rama Shankar Awasthi, Consumer representative
11. Shri Avadhesh Kumar Verma, Consumer representative
12. Ms. Rashi Singh, CEEW

Order

1. M/s NIDP Developers Pvt. Ltd. has filed an application before the Commission on 18th Jan 2023 under section 14 (b) and Section 15 of The Electricity Act, 2003 read with UPERC (General Conditions of Distribution License) Regulations, 2004 and Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness And Code Of Conduct) Rules, 2005, as amended on 28th November 2022, and Uttar Pradesh Data Center Policy, 2021, as amended, for grant of Distribution License to M/s NIDP Developers Pvt. Ltd.
2. The Applicant is a company incorporated under the relevant provisions of the Companies Act, 2013 and is primarily engaged in the business of developing and managing data centres, infrastructure facilities and other allied business activities in India. Applicant has executed a Lease

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- Deed dated 05.02.2021 with Greater Noida Industrial Development Authority for an area of 80961.56 sqm. of land in Sector Knowledge Park – 05, Greater Noida demarcated and numbered as Plot No. 07. The Applicant is developing a DC Park on this piece of land, which will be comprising of a total of six interconnected Data Centre buildings with a combined capacity of 30,000 racks thus requiring approximately 200-250 MW of total power, with each DC Building having an estimated load demand of around 30-40 MW. The present application has been filed pursuant to the provisions of the DC Policy, for availing a Distribution License for the area situated at Plot No. 07, Knowledge Park – V, Greater Noida, Uttar Pradesh comprising of above DC Park.
3. Applicant, vide the Commission's order dated 22nd March 2023, was directed to publish a notice under section 15(2) of the Electricity Act, in at least two Hindi and two English newspapers to invite comments/suggestions from stakeholders and also to submit NOC from concerned authorities if its system is likely to affect any cantonment, aerodrome, fortress, arsenal, dockyard or camp/building/place in the occupation of Government for defence purposes. Further, in case the system of the petitioner is affecting or is likely to affect any local authority, any central or state authority/body no objection from such authorities/bodies was also required to be submitted.
4. In pursuance to the Commission's directions, the Applicant filed an affidavit on 17th April 2023 stating that the Applicant published the public notice on 03 April 2023 in Financial Express and Business Standard (English Edition) and in Jansatta and Business Standard (Hindi Edition), having circulation in Uttar Pradesh and Delhi, thereby giving notice and inviting comments/suggestions/objections from the stakeholders and public at large. A copy of the Petition along with annexures were uploaded on the Applicant's website (www.tuco.in) and were made available at the head office of the Applicant situated at 5th Floor, Scorpio Building, Hiranandani Gardens, Powai, Mumbai for the purpose of inspection by stakeholders and public.

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5. The Applicant further submitted in its affidavit that it has submitted a letter to The Quarter Master, General Branch, Army Headquarters, Sena Bhawan, New Delhi on 30th March 2023 requesting issuance of No Objection Certificate ("NOC") within 15 days from the receipt of the letter. The Applicant has also duly annexed an undertaking along with the accompanying application under Section 15(2)(ii) of the Electricity Act, 2003 confirming that the proposed area of supply does not, in whole or in part, fall within the area of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purposes.
6. The Applicant further submitted in its affidavit that it has executed a Lease Deed dated 05 Feb 2021 with Greater Noida Industrial Development Authority ("GNIDA") for an area of 80961.56 sqm. of land situated at Sector Knowledge Park – V, Greater Noida demarcated and numbered as Plot No. 07, for the purpose of developing a Data Centre Park and associated Distribution System, which is neither affecting nor is likely to affect any local authority, any central or state authority/body. Airport Authority of India has issued NOC dated 15 March 2021 that it has no objection to the construction of the proposed structure of the distribution system of the Applicant in the area of supply.
7. Subsequently, the Commission published a public notice in The Times of India (Delhi) and Hindustan (Delhi) newspapers on 04.05.2023 seeking comments / objections from various stakeholders and informing about scheduling of public hearing in the matter on 24.05.2023.
8. The Applicant filed an affidavit dated 06 May 2023 in the Commission submitting that they had sought no objection from the Quarter Master, General Branch, Army Headquarters, Sena Bhawan, New Delhi vide its letters dated 30th March 2023 and 28th April 2023. However, no response has been received by the Applicant. The Commission also sought comments/objections from the Quarter Master, General Branch, Army Headquarters, Sena Bhawan, New Delhi vide letter

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UPERC/Secy/L&L/2023/156 dated 8th May 2023, however no response has been received by the Commission.

9. The Applicant was asked to submit an affidavit via letter UPERC/Secy/L&L/2023/155 dated 3rd May 2023 before the Commission indicating the net worth of its promoter as well as his commitment to invest atleast 30% equity on the capital investment required including working capital in accordance with 'The Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005'. The Applicant filed an affidavit dated 9th May 2023 sworn by Mr. Niranjan Lakhmal Hiranandani, the majority shareholder of the Applicant company, which apprised the Commission about his net worth and also his unambiguous commitment to invest the above required sum.
10. Subsequent to it, public hearing in the matter was held on 24 May 2023 through video conferencing.
11. During the course of hearing, Sh. Avadhesh Kumar, consumer representative, expressed his concern towards mushrooming of small licensees for small areas in the state owing to the notification by the Government with respect to the *minimum area of supply*. He further submitted that the data centre policy should be implemented in the interest of the state and should not be used as a tool for perpetuating privatisation. On this, the Commission observed that the need for data centres in the country is increasing at a quick pace as a result of digitization taking a front seat and there is an impending need for storing data within the boundaries of the country due to privacy issues and various data security policies introduced by the central government. With the tailwinds favouring the proliferation of data centres, Uttar Pradesh government has introduced the Data Centre policy to attract investment in the State. Sh. Verma further submitted that the net worth of the promoter, Sh. Niranjan Hiranandani, on whose net worth the Applicant is relying on, should be unencumbered.

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12. Sh. M G Ramachandran, Sr. Advocate, representing NPCL, initiated his submissions by stating that merely notification by the government pertaining to minimum area of supply does not automatically give the Applicant the right to distribution license. He supplemented his argument by quoting para 46 of Supreme Court's order in M/s. Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Comm. & Ors., which provided that "...By merely being authorized to operate and maintain a distribution system as a deemed licensee, would not confer the status of distribution licensee to any person". They are entitled to only develop the distribution system and come before the Commission to apply for distribution licence. The Commission clarified that sequence is otherwise that is first the Applicant applies for the distribution licence, then the Commission approves the roll out plan before the licensee starts supplying in its area. Sh. Ramachandran further submitted that the existing distribution licensee with its established network can easily and effectively supply electricity to the Applicant. Sh. Ramachandran further submitted that Commission could carve out a different tariff category for data centres and they should be allowed to operate as a distribution franchise, which will be in their better interest rather than applying for the distribution license and scouting for their energy requirement, which is a cumbersome process for a setup of such a small scale. The Commission observed that this anxiety is completely in the domain of the Applicant but if they are agreeable to working out a business model which suits their business proposition, it is their call. However, once the license is granted, a licensee has mandatory obligations to fulfil as spelled out under Electricity Act 2003 as well as under the terms and conditions of its distribution license.
13. Sh. Rama Shankar Awasthi, consumer representative, submitted that the promoter has yet not infused equity in the Applicant and they may fund it through loan and the project may get stuck somewhere in the future. Sh. Awasthi submitted that the share of equity required In the Investment should be used in developing the distribution systems only rather than civil works for constructing

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data centre park buildings. The Commission noted the concerns of Sh. Awasthi and observed that the application will be processed as per relevant ruled and regulations.

14. Sh. Sakya Chaudhuri, Advocate, representing the Applicant, NIDP Developers Pvt. Ltd. submitted that NPCL in its objections has asked for documents, which the Applicant has submitted before the Commission. The Commission observed that for the sake of transparency, the Applicant should share the relevant documents with objectors.
15. In response to the public notice issued by the Applicant, only Noida Power Company Limited (NPCL) submitted its written comments/objections dated 3rd May 2023 and 23rd May 2023, which were responded by the Applicant vide its reply dated 15th May 2023 and 31st May 2023. Salient comments of NPCL vis a vis its pointwise reply by the applicant is tabulated at Annexure 1 of the order.

Commission's view

Statutory developments with respect to parallel distribution license

16. The Applicant has applied for a parallel distribution license in the area of supply of NPCL. The relevant section governing the provision of parallel distribution license is Section 14 proviso 6 of the Electricity Act 2003; which is quoted below:

*"Provided also that the Appropriate Commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of license within the same area shall, without prejudice to the other conditions or requirements under this Act, **comply with the additional requirements relating to the capital adequacy, credit-worthiness, or code of conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence,***

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shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:"

17. Subsequent to it, the Central Government prescribed "***Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005***", notified on 23rd March 2005, which provided for additional requirements as regards to the Capital Adequacy, Creditworthiness and Code of Conduct, in accordance with Section 14 proviso 6 of the Electricity Act 2003. The Rules provide that:

"... 3. Requirements of capital adequacy and creditworthiness.-

- (1) *The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.*
- (2) *The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of net worth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.*

Explanation: - For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply.

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4. Requirement of Code of Conduct.-

The applicant for grant of licence shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of the application for the grant of licence:

(a) section 203, section 274, section 388B or section 397 of the Companies Act, 1956;

(b) section 276, section 276B, section 276BB, section 276C, section 277 or section 278 of the Income tax Act, 1961;

(c) section 15C, section 15G, section 15H or section 15HA of the Securities and Exchange Board of India Act 1992;

(d) clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act 1944;

(e) section 132 or section 135 of the Customs Act 1962,

and that the applicant is not a person in whose case licence was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:

Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443 (e) of the Companies Act, 1956 on the ground of its being unable to pay its debts."

18. However, Ministry of Power issued "Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) (Second Amendment) Rules, 2022" dated 28th Nov 2022, wherein the 'Explanation' to Rule 3 has been amended as follows:

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*“Explanation - For the purposes of this sub-rule it is hereby clarified that for grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the entire area covering either a Municipal Corporation as defined in article 243Q of the Constitution or three adjoining revenue districts, or a smaller area as may be notified by the **Appropriate Government** shall be the minimum area of supply.”*

19. It is pertinent to mention that the Government of Uttar Pradesh through the Department of IT & Electronics issued Uttar Pradesh Data Centre Policy 2021 dated 28th January 2021 and its amendment dated 7th November 2022 (hereinafter referred to as the “DC Policy”). The DC Policy aims to provide necessary support and enabling framework that is required for developing data centre parks in the State of Uttar Pradesh and aims to build a conducive policy environment for the data centre industry to flourish in the State of Uttar Pradesh with locational advantage, strong IT ecosystem, and readily employable quality talent, which are some of the key ingredients to make the state a promising destination for investment in the data centre industry. Para 6.3 & 6.4 of the said Data Centre Policy are relevant for present consideration.

20. Para 6.3 of the said DC Policy:

*“**Data Centre Park Developer** is an entity who would be responsible to build the facility of DC park covering land, park area (Water, Sewage, Road, Parking, Green Area, etc.), provision of DC essentials setup / equipment (i.e. Electricity, Network / Fibre connectivity, Mechanical Electrical and Plumbing equipment (MEP), etc.).”*

Para 8.4(iii) of the DC Policy:

*“**Distribution License: DC Park Developer(s)/ operator(s) shall be eligible for seeking licence for power distribution and consumption within the DC park as per***



**regulations issued by Uttar Pradesh Electricity Regulatory Commission (UPERC)
in this regard from time to time."**

21. Further, the Government of Uttar Pradesh, issued notification No. 444/24-P-3-2023 dated 10th March 2023 (Urja Anubhag – 3), which is reproduced below:

*"NOW, THEREFORE, in exercise of the powers under Explanation to sub-rule (2) of rule 3 of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) (Amendment) Rules, 2005, to give effect to the mandate under Paras 6.3, 8.4 (iii) and 8.4 (v) of the DC Policy, **the Governor is pleased to notify each area notified as "data centre park" within the State of Uttar Pradesh as "minimum area of supply" for the purposes of grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the said Act.**"*

22. In above backdrop, based on the relevant provision of the Electricity Act 2003 and Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, and its amendments thereof, the Commission scrutinised the application on the touchstone of following criteria for examining the eligibility of NIDP for grant of distribution licence:

- a. Minimum Area of Supply
- b. Capital Adequacy
- c. Credit Worthiness
- d. Code of Conduct

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Minimum Area of Supply

23. The Applicant is developing a DC Park in Plot no. 7, Sector Knowledge Park – V, Gautam Budh Nagar, Greater Noida, Uttar Pradesh and has applied for distribution licence in this area. Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) (Second Amendment) Rules, 2022 read with the DC Policy and notification by the Uttar Pradesh Shasan, Urja Anubhag – 3 dated 10th March 2023 mandate that area notified as data centre park within the State of Uttar Pradesh falls under "minimum area of supply" for the purposes of grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Electricity Act. Hence, the Commission is of the view that the applicant fulfils and complies with the minimum area of supply criteria with respect to Explanation to Rule 3 of the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and its amendments thereof.

Capital Adequacy

24. Compliance with 'Capital Adequacy' as per Rules 2005 for grant of license require the applicant to satisfy the Commission that on a norm of 30% equity on cost of investment for the distribution network, he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of the net worth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.
25. The Applicant estimated the total cost of its distribution network within its proposed Area of Supply to be Rs. 93.63 Crores. The breakup of the project cost as provided by the Applicant is tabulated below:

Particulars	Project Cost
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