

Jharkhand State Electricity Regulatory Commission, Ranchi

Case No. 15/2007-08

Shri P.C.Verma, Member

IN THE MATTER OF

Application for grant of Intra-State Trading License under Section 12 and 14 of the Electricity Act, 2003 read with JSERC (Procedure, Terms and Conditions for grant of Intra-State Trading License) Regulation 2005.

AND

IN THE MATTER OF

Global Energy Limited.....Applicant
22, Rakhi Mahal, Dinshaw Vacha Road,
Mumbai-400020.

For the applicant - (1) Mr.Rajiv Yadav, Advocate.
(2) Mr. Suresh V, Director.

ORDER

(24/06/2008)

M/s. Global Energy Ltd. has submitted application for grant of Intra-State Trading License under Section 14 of the Electricity Act, 2003. The applicant M/s. Global Energy Ltd., hereinafter called as GEL for brevity was directed to submit information regarding their application for grant of Inter State Trading License before CERC. The applicant submitted the required information against the aforesaid direction vide an affidavit filed on 25.04.2008 stating therein that their application submitted before CERC for grant of Inter- State Trading License has been rejected vide Hon'ble CERC order dated 28.08.2006 and in the said affidavit that they preferred an appeal against the order of Hon'ble CERC order dated 28.08.2006 before the Hon'ble Appellate Tribunal the appeal being No. 6/2007. They have further stated that the Hon'ble Appellate Tribunal has disposed of the said appeal No 6/2007 directing the Hon'ble CERC to consider fresh application of M/s. Global Energy Ltd. for the grant of Inter-State Trading License and that accordingly the application for grant of Inter-State Trading License is pending before the Hon'ble CERC.

In view of the above, the Commission requested the Hon'ble CERC, to send a copy of the order dated 28.08.2006 disposing the application of M/s Global Energy Ltd. before it for grant of Inter-Stat Trading License and the same was received on 03.05.2008. The said order of the Hon'ble CERC dated 28.08.2006 contains inter-alia the following observations:-

1 An affidavit was received from the Department of Power, Govt. of Tripura, objecting to the grant of license to the applicant M/s Global Energy Ltd, alleging that the applicant failed to arrange evacuation of power contracted and make payment of about Rs.1.04 crores to Tripura Govt. as per its commitments. It was further stated in the affidavit of Department of Power, Govt. of Tripura, that the applicant M/s Global Energy Ltd had not allowed to invoke LC for releasing the outstanding dues and instead it had filed a civil suit at Panchkula to restrain the State Bank of Patiala to invoke LC for payment to Tripura Govt. The applicant M/s Global Energy Ltd clarified in this regard that non evacuation of power by the applicant during the contract period was due to technical constraints, such as non availability of transmission corridors and etc. which qualifies as force majeure conditions under the contract terms and that the matter of non payment of dues is under arbitration.

2. It is informed that a case is registered against Mr. Harry Dhaul , Mrs. Laxmi Dhaul (wife of Mr.Harry Dhaul) and certain other unknown persons under Section 120B read with 420 of Indian Penal Code and relevant provisions of the Prevention Of Corruption Act, 1998, the FIR being registered by CBI. CBI has filed charge sheet alleging that Mr. Harry Dhaul and others entered into criminal conspiracy to cheat Central Bank of India, Mumbai main Office in the matter of sanctioning, disbursing and availing various credit facilities from the Bank in the form of terms loan, DPG etc. and cheated the Bank to the tune of more than Rs. 39 crores and that special court has taken cognizance of the charge- sheet. The applicant M/s Global Energy Ltd has filed criminal petition in the matter before the Hon'ble High Court of Karnataka and the Hon'ble High Court of Karnataka has granted ad-interim Stay on the proceedings before the Special Court.

3. We notice that Mr. Harry Dhaul who is one of the persons responsible for the management of the affairs of the applicant has been charge-sheeted by CBI of various offences involving moral turpitude. The charge-sheet has been filed in the court of competent jurisdiction

and the court has taken cognizance of the charge leveled against Mr. Harry Dhaul. Although the Hon'ble Karnataka High Court has stayed further proceedings before the Special Court, the fact remains that prima-facie a case has been made out against Mr. Harry Dhaul. Also the allegation of equally serious nature are under investigation by CBI against Mrs. Laxmi Dhaul, another person, managing the affairs of the applicant. The applicant is also involved in litigation with Karnataka Power Transmission Corporation Limited, with whom it has entered into an agreement for sale of power. It has also come on record that Belgundi Cement Ltd., the sister concern of the applicant whose management is also controlled by the persons running the applicants affairs , is sought to be declared a sick company, the proceedings of which are pending before BIFR/AAIFR. All this does not augur well with the applicant.

The application for grant of Inter State Trading License of applicant M/s Global Energy Ltd. before the Hon'ble CERC was disposed vide its ordered dated 28.08.2006 ordering- "Considering the past track record of the applicant and the persons managing its affairs, in the interest of public in general and the electricity sector in particular, we do not consider the applicant to be fit and proper person for grant of license. Therefore, we reject the application for grant of license for Inter-State Trading in electricity. Accordingly, the application stands disposed of. With the disposal of the present application, the interim orders based on which the applicant could undertake Inter-State Trading in electricity shall cease to have affect."

In view of the aforesaid order of the Hon'ble CERC dated 28.08.2006 with respect to the application of M/s Global Energy Ltd. for grant of Inter-State Trading License; (15) fifteen days notice dated 08.05.2008 is issued by the Commission to the applicant directing to show-cause as to why its application for grant of Intra-State Trading License be not rejected for the reasons for which its earlier application for grant of Inter-State Trading License is rejected by CERC as also for the reasons that the applicant has not deposited requisite fee along with the application.

The applicant submitted detailed reply to the aforesaid show-cause notice of the Commission dated 08.05.2008 in which inter-alia they have submitted that the regulations notified by the Commission do not indicate fee to be deposited along with license application and that however they have paid Rs. 2,000 (Rs. two thousand) as fee for Intra-State Trading License application as per discussion with the official of the Commission and that the Commission may expressly specify the fee to be deposited by the applicant and the applicant under takes to deposit the same. The applicant was intimated by the Commission vide its letter No. 111 dated 31.05.2008 that provisional application fee for Intra-State Trading License is Rs.10 (Rs. ten) lacs only subject to

final notification by the Govt. of Jharkhand and a notice dated 31.05.2008 was issued to the applicant for hearing in the matter on 13.06.2008. The hearing was done in the matter on 13.06.2008 in which Sri Rajiv Yadav, Advocate, Mr. Suresh.V., Director Global Energy Ltd, appeared on behalf of the applicant M/s. Global Energy Ltd. The applicant M/s. Global Energy Ltd. was heard at length.

The applicant through its written submissions and pleadings contended that the Hon'ble CERC, vide its order dated 28.08.2006, had erroneously dismissed GEL application for Inter-State Trading License and that the above noted order dated 28.08.2006 has been set aside by Hon'ble Appellate Tribunal For Electricity vide judgments dated 07.06.2007, passed in appeal No. 6 of 2007 and GEL application for Intra-State License is remanded to the Hon'ble CERC with directions to consider a fresh GEL's Intra-State License application. They submitted that the CBI has initiated proceedings against Mr. Harry Dhaul and Mrs. Laxmi Dhaul, promoters of GEL, for allegedly defrauding and cheating the Central Bank of India by taking loans for Belgundi Cement Ltd. for construction of a power plant on the basis of information received from an anonymous source, and that the Central Bank of India has never lodged any complaint with CBI. Rather, the Central Bank of India has initiated recovery proceedings, against BCL and the Directors/guarantors in the Debt Recovery Tribunal, Mumbai, meaning thereby that the liability of BCL towards repayment of the aforesaid loans is essentially a civil liability. The applicant M/s Global Energy Ltd. further submitted that GEL a sister concern of BCL to whom the assets of the power plant of BCL has been previously transferred on 'right to use' basis, entered into a Power Purchase Agreement dated 01.11.1997 with Karnataka Electricity Board. There was delay in construction and commissioning of the power plant due to circumstances entirely beyond the control of BCL. The said delay in commissioning of the Power Plant, resulted in grave financial loss to BCL, as Karnataka Power Transmission Co. Ltd., the successor entity of Karnataka Electricity Board, terminated the above noted Power Purchase Agreement with GEL, ostensibly on the ground of non-completion of the power plant. GEL challenged the termination of the PPA before the Hon'ble Karnataka High Court and the Hon'ble Karnataka High Court has stayed the termination of PPA and referred the matter to arbitration, proceedings of which are in progress. The applicant GEL further argued that the above named Directors of BCL i.e. Mr. Harry Dhaul and Mrs. Laxmi Dhaul have resigned from the Board of GEL w.e.f. 15.03.2007 and they are no more Directors of GEL and that any legal proceedings and the said CBI proceedings being contested by them in their personal capacity have no bearing on the

applicant's proposed business of Electricity Trading in the State of Jharkhand. The applicant GEL further submitted that Haryana Vidyut Prasaran Nigam Limited (HVPNL) has filed a civil suit in District Court, Panchkula, against State Bank of Patiala, Tripura Electricity Department (TED), and GEL seeking a restraint order against State Bank of Patiala for making any payment to TED or GEL upon a Letter of Credit (LC), which has been issued by HVPNL in favour of the GEL and subsequently transferred by GEL in favour of TED. The applicant further argued that the said proceeding do not really concern GEL, as encashment of Letter of Credit has never been sought by GEL and that GEL has negotiated a settlement with HVPNL, whereby, GEL has given fixed deposit of Rs. 1 crore as security for any amount which may have to be paid to TED in the event of adverse order of the Court and that GEL is only a formal party in the above said litigation. The applicant submitted that GEL has a claim of more than Rs. 4.5 crores against Tripura Electricity Department (TED) against a claim of Rs. 1.1 crore by TED against GEL and that arbitration proceeding has been initiated in the matter and that the parties are also negotiating a settlement of their dispute. The applicant further argued that the aforesaid legal proceedings are not likely to adversely affect the proposed Intra-State Trading activity within the State of Jharkhand and that the aforesaid proceedings are yet to be concluded and final orders passed in them and that therefore the instant application for Intra-State Trading License may be decided as per the Regulations without any reference to the Hon'ble CERC order dated 28.08.2006 rejecting the application for Inter-State Trading. The applicant submitted that notwithstanding the rejection of its application for Inter-State Trading License by CERC, the applicant GEL has been granted Intra-State Trading License in the State of U.P., Maharashtra, Chhattisgarh and have submitted copies of the Intra-State Trading License.

Admittedly the Belgundi Cement Ltd. (BCL) and the applicant Global Energy Ltd. (GEL) are sister concern. Mr. Harry Dhaul and his wife Mrs. Laxmi Dhaul are the promoters and major owners holding 79.88% shares of the applicant company GEL. Mr. Harry Dhaul and Mrs. Laxmi Dhaul are also promoters, major owner/shareholders and directors of the sister company BCL. Admittedly recovery proceedings has been initiated by the Central Bank of India against the BCL and its Directors for default in repayment of loans taken for construction of a power plant which has been transferred on 'right to use' basis to the applicant company by BCL and which forms the major part of the assets and net-worth of the applicant company GEL. Moreover, proceedings have also been started by CBI against Mr. Harry Dhaul and Mrs. Laxmi Dhaul for allegedly defrauding and cheating the Central Bank of India relating to taking the said

loans for BCL for construction of the said power plant which has been transferred to the applicant company and which constitute the major part of the assets and net-worth of the applicant company GEL. Further the applicant cannot evacuate power from Tripura Govt. for supplying the same to HVPNL as agreed and there is a litigation going on among the parties i.e. HVPNL, State Bank of Patiala, TED and GEL and TED has a claim against GEL and GEL a counter claim against TED. It is further admitted by the applicant that the Karnataka Power Transmission Ltd., the successor entity of KEB, terminated the Power Purchase Agreement dated 01.11.1997 with GEL as the power plant could not be constructed and commissioned in time as per agreement. The applicant has not submitted any certificate from all its bankers that its account has been classified as 'standard' by the bankers as per the Regulations. All these facts do not make the applicant credit worthy to grant Intra-State Trading License as per the Regulations. The application for Intra State Trading License is also not accompanied by requisite application fee as per the provisions of the Act and Regulations though the applicant has been specifically intimated the amount of application fee. Clause 12.6 of the Regulations of the Commission for grant of Intra-State Trading License has the provision that -**"12. Grant of License**

12.6 Any person who has his inter-state trading License revoked or suspended or any conditionality applied by the Central Electricity Regulatory Commission shall no longer be permitted to conduct trading of electricity within the State of Jharkhand." whereas in the instant case the applicant GEL has not been considered to be fit and proper person for grant of Inter-State Trading License and its application for grant of Inter State Trading License itself has been rejected by CERC vide its order dated 28.08.2006 and the temporary permission granted to undertake Inter-State Trading has ceased and as such the applicant GEL, in any case, shall not be permitted to conduct trading of electricity within the State of Jharkhand hence there arises no question of granting Intra-State Trading License. In view of the above the application of M/s. Global Energy Ltd, for grant of Intra-State Trading License is rejected and accordingly the application stand disposed of.

Sd/-
(P.C.Verma)
Member (Tech)