

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No.124 of 2008

In the matter of
Application filed by Maharashtra State Electric Power Trading Company Pvt.
Ltd., seeking grant of Intra-State Trading License.

Shri. V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri. S.B. Kulkarni, Member

Maharashtra State Electric
Power Trading Company (P) Ltd.
Prakashgad, 6th Floor,
Plot G-9, Prof. Anant Kanekar Marg.
Bandra (East),
Mumbai 400 051

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Applicant

ORDER

Dated: October 16, 2009

Maharashtra State Electric Power Trading Company (P) Ltd. (hereinafter referred to as the Applicant Company”) filed an application under affidavit, before the Commission, on 16.12.2008, for the grant of Intra State Trading License, in accordance with the MERC (Trading Licence Conditions) Regulations, 2004 as amended in 2006 (“Trading License Regulations”). In the application, it has been proposed that the volume of power intended to be traded for the first year after the grant of licence and trading plans for the subsequent five years is as follows:

- (i) 1st Year: 100MU
- (ii) 2nd Year: 200 MU
- (iii) 3rd Year: 400MU
- (iv) 4th Year: 500MU
- (v) 5th Year 700 MU



It has been stated in the application that the MSEB Holding Company Limited is the promoter of the Applicant Company and holds 100% shares in the said Applicant Company. In the application, the names, qualification, expertise and experience of the personnel who would be in-charge of the trading functions have been provided. It has also been stated therein that the Applicant Company proposes to finance the licensed business of trading fully on its own balance sheet. The equity proposed to be infused is Rs. 10.01 Crore, i.e., 100% equity. Since, the Applicant Company has been incorporated in the month of November 2007, accounting statement for the period ending 31st March 2008 alongwith Auditor's Report has been submitted alongwith the application.

2. In accordance with Regulation 6.1 of the Trading License Regulations, the Commission vide its letter dated 9.01.2009, asked the Applicant Company to provide additional information/ documents as deemed necessary for the purpose of considering the said Application. The issues, on which the Commission sought information, were:

- (i) details of trading plan including the likely sources from where the Applicant Company intends to buy power and the likely procurers to whom it intends to sell power;
- (ii) detailed profiles of the management team as mentioned in the application, certified by the individual(s) or by the authorized representative of the Applicant Company, along with the detailed organization chart;
- (iii) detailed note on the proceedings pending before the Appellate Tribunal of Electricity ("ATE"), in Appeal No. 182 of 2008, wherein the Applicant Company is the appellant which has appealed against the Central Electricity Regulatory Commission's ("CERC") Order dated 17.06.2008, dismissing the Applicant's application for the grant of Inter-State Trading License.

3. On 27.1.2009, Applicant Company submitted the relevant documents as required under the Commission's letter dated 9.01.2009. Acknowledging the receipt of Applicant Company's submission of required documents, the Commission issued



another letter dated 3.02.2009, to the Applicant Company informing it of the application being ready for consideration for the grant of license and further directing the Applicant Company to comply with the procedure for publication of Notice under Section 15(2) of the Electricity Act, 2003 (“EA 2003”), read with the Regulation 7 of the Trading License Regulations and asking it to submit the proof of compliance to the Commission along with the copy of notices published. The copy of Notice published under Section 15(2) of the EA, 2003, was served on the Commission on 11.2.2009, as required.

4. On consideration of the material available on record, the Commission caused the publication of a notice in two daily newspapers, in accordance with the requirements of Section 15(5)(a) of the EA 2003.

5. One Shri. Chandrakant G. Barbole vide his letter dated 1.05.2009, raised an objection against the grant of license to the Applicant Company, stating that the grant of licence may contradict the provisions of Sections 31(2), 39(1) and 41 of the EA, 2003, which provides that no State Load Despatch Centre (“SLDC”), State Transmission Utility (“STU”) and Transmission Licensee shall engage in the business of trading in electricity. The objector has stated that the Applicant Company is the wholly owned subsidiary of the MSEB Holding Co. Ltd., which controls the unbundled companies namely, MSPGCL, MSETCL and MSEDCL. His contention is that the management of these companies are closely inter-woven. The Managing Directors of these companies are directors in the MSEB Holding Company Ltd., and thus the MDs have interest in all these companies. The objector has also stated that the use of the word “State” in the title of the Applicant Company indicates the intention to influence the entities in power trading activities. On the above grounds, Shri. Chandrakant G. Barbole has opposed the application of the Applicant Company seeking the grant of intra-state trading licence. No other person has objected to the present application filed by the Applicant Company. The Commission has not received any suggestion, objection or recommendation from the STU as mentioned in Section 15(5)(b) of the EA 2003.



6. A hearing was held on 13.05.2009. The Applicant Company submitted that the EA 2003 does not prohibit cross holding between the companies engaged in the business of generation, distribution and trading of electricity. The 31st Report of the Standing Committee of the Parliament (Energy) was relied upon in this regard. The Applicant Company is a subsidiary of MSEB Holding Co. Ltd., but it has no linkage with STU or SLDC. It was contended that there is no reason why a subsidiary of the holding company be denied trading license. It was submitted that the objections raised by Shri. Chandrakant Barbole are extraneous and the concerns raised are not valid. It was also submitted that the present Application being for grant of Intra-State Trading License it is totally different from Inter-State Trading License. Therefore, this Commission should determine the present Application without being influenced by ATE's Judgment dated 29.4.2009 or CERC's Order dated 17.06.2008. It was also submitted that should there be any concern then this Commission is empowered to if deemed necessary, impose terms and conditions on the license. Apart therefrom this Commission has the authority to revoke or suspend the license under the EA, 2003 in case of any breach on the Applicant Company's part.

7. During the hearing the Applicant Company was directed by the Commission to file written submissions. The written submissions were filed by the Applicant Company on 1.6.2009, stating *inter alia* as under:

(i) That the Applicant Company had submitted an application for the grant of Inter-State Trading License to the CERC. The said application was rejected on 17.6.2008. An Appeal was filed before ATE against the aforesaid CERC's Order. However, APTEL upheld the Order of rejection passed by the CERC. Applicant is considering filing a second appeal before the Supreme Court of India under Section 111 of the EA, 2003.

(ii) However, the present Application is for the grant of Intra-State Trading License in accordance with MERC (Trading Licence Conditions) Regulations, 2004, which is totally different from Inter-State Trading License under the EA, 2003, read with CERC (Procedure, Terms and Conditions for grant of Trading License and other related matters) Regulations. Therefore, the Commission should determine the present



Application independently without being influenced by ATE's Judgment dated 29.4.2009 and that the CERC's said Order does not bind this Commission.

(iii) On the objections raised by Shri. Chandrakant Barbole, the Applicant Company, has stated that the trading company and the SLDC, STU and the Transmission Company are different legal entities. The Trading Company and the Transmission Company are subsidiaries of MSEB Holding Company and that the holding company and subsidiary company are separate entities having separate corporate status. MSEB Holding Co. Ltd, being a government company under the Companies Act, is a deemed licensee under Section 14 of the EA, 2003 and is thus entitled to carry on the business of transmission, distribution and trading of electricity. Such being the case, there is no reason why a subsidiary of the holding company be denied trading license. Moreover, Regulation 16.4 of the Trading License Regulations provides that, subject to certain conditions, an electricity trader may engage any of its subsidiaries or holding company or a subsidiary of such holding company to provide any goods or services to the electricity trader in connection with the licensed business.

(iv) The Applicant Company has stated that the CERC's basic contention for refusing the grant of licence was that allowing the agencies or licensees to engage in trading in electricity would hamper implementation of the provisions of non discriminatory open access and allow STU to give preferential treatment over its competitors through MSEB Holding Co. However, the Applicant states that there is complete transparency in the working of the SLDC and that the decisions of the STU are open to scrutiny by all the concerned parties and by the Appropriate Commission. And that if the Commission deems necessary, it may even impose certain terms and conditions on the license and the Commission has the authority to revoke or suspend the license under the EA, 2003, in case of any breach on the Applicant's part. The Commission may also take action under Sections 57, 142 and 146 of the EA 2003 but a mere apprehension of possibility of violation of any statutory provisions, cannot be a justifiable ground to deny the grant of license.

(v) The Applicant Company has stated that Clause 7.58 of Chapter VII of the 31st Report of the Standing Committee of the Parliament (Energy) shows that the Electricity



Bill, 2001 proposed restrictions on cross holding between the companies engaged in the business of generation, distribution and trading of electricity. Non acceptance of this particular provision while passing the Bill clears the intention of putting no such restriction on cross holding. Thus, in the present case, though the Applicant is a subsidiary company, it has no linkage with STU and SLDC and nothing in the EA 2003 prohibits a trader and a transmission licensee to be a part of a common ownership through separate legal entity.

8. We have heard the Applicant Company in this case, and considered the materials on record.

9. The Applicant Company had applied under section 15, to CERC for a trading licence under section 14 of THE ELECTRICITY ACT, 2003 (herein after referred to as “ The Act”) which was rejected on 17/6/2008 (Petition Number 8 of 2008), against which the applicant appealed to Appellate Tribunal for Electricity under Appeal No 182 of 2008 which also came to be rejected on 29/4/2009.

10. With this background the Applicant Company has now applied for a trading license under section 14 to this commission on 16.12.2008 in the prescribed format under section 15 of “The Act”.

11. The Applicant Company is a private limited company owned exclusively by MSEB Holding Company. The latter is one of the four companies incorporated on 31/5/05 as a result of unbundling of the erstwhile MSEB on 24/1/2005. The other three companies are i) Maharashtra State Power Generation Company limited (Maha Genco) ii) Maharashtra State Transmission Company limited (Maha Transco) and 3) Maharashtra State Electricity Distribution Company limited (Maha Discom). All holdings of these three companies vest in MSEB Holding Company who are in turn controlled by Government of Maharashtra and are also sole promoters and principle share holder of Applicant Company. The Applicant Company is also appointed as STU on 6/6/2005 and are entrusted with SLDC under section 39(1) and operating SLDC under section 31(2) of the Act.



12. On 01.05.2009, one Shri. Chandrakant G. Barbole has raised objection stating that granting of trading license to the Applicant Company may contradict provisions of section 31(2), 39(1) and 41 of the said Act, since the three Sections prohibit SLDC, STU and Transmission Licensee to engage themselves in business of trading of electricity and the Applicant Company is nothing but slave of the other three companies. Therefore Shri. Bardole maintains that Applicant-Company should not be granted the license.

13. The Applicant Company's main objective is carrying on purchase and sale of electric power. Since it is a private company it is not at par with other three government owned subsidiaries of MSEB Holding Company Ltd.

14 With above facts it is clear that the 5 companies are integrated organs of MSEB Holding company. Each of these companies will have power to influence the working of others. The applicant company will not be able to work in an impartial and unbiased manner which will adversely affect the electricity market.

15 The Applicant Company is neither SLDC, nor STU nor Transmission Licensee. So no direct inference can be drawn that the Applicant Company is prohibited from carrying on the business of trading of electricity. But there may be an overwhelming influence of the existing SLDC, STU and Maha Discom on the Applicant Company to hamper the smooth functioning of the systems of flows of electricity. The Applicant-Company incorporated on 24/11.2007 is a private limited company of which the MSEB Holding company is the sole promoter and principle share holder. These facts cannot be ignored.

16. The Judgment dated 29.04.2009, of the Appellate Tribunal for Electricity in Appeal No 182 of 2008, upholding the order of Central Regulatory Electricity Commission in Petition No 8 of 2008 rejecting the grant of inter-state license for trading in electricity, is binding on this Commission. Since the tribunal is a higher authority to this Commission and if this Commission rejects the Applicant Company's application, it can file an appeal before the same Appellate Tribunal for Electricity who has already rejected its similar application for trade of electricity in more than one state



which is the jurisdiction of CERC. The reasons and grounds for such rejection are not just similar or identical but are the same which are being debated by the applicant in its application praying for grant of trading license in Maharashtra. On this ground also the Applicant Company's application is rejectable.

17. The power scenario in Maharashtra reveals that Mahagenco who is a subsidiary of MSEB Holding Company and generating about 9500 MW out of the total 15650 MW generated in Maharashtra is selling it to Mahavitaran who is also a subsidiary of MSEB Holding Company and is more or less controlling the market. The new subsidiary i.e. Applicant Company will not buy the power generated by Mahagenco. Further they cannot now buy power from outside state since their application for the license is rejected by CERC. Therefore if license is granted to them they may buy power from other generating companies from within Maharashtra. This will have two fold adverse effect on the tariff structures. It will lead to monopoly with the Applicant Company and their subsidiaries and will raise the cost of power in turn affecting tariff. The Applicant Company will have thus a dominant position and may enter into combination which is likely to cause adverse effect on competition in electricity trading. This will also have a cascading effect on determination of tariff.

18. Further there is fear that the dominant position will be further strengthened since one of the subsidiaries of Applicant Company is also STU controlling the flow of electricity and MSLDC. This situation can imperceptibly result in uncontrollable monopoly making the deals in the field of electricity non-transparent. This commission is duty bound to ensure transparency while exercising its power and discharging its function.

19. One of the subsidiaries of Applicant Company which has a distribution license shall not require a license to trade. Or in fact it can trade in electricity. They can buy electricity from outside Maharashtra and bring it to Maharashtra which will help ease the situation. Giving a license to a new company which is totally dominated by MSEB HOLDING Company is not just and fair.



20. Accordingly, the application of the Petitioner for grant of the Intra State trading license under Section 14 of the Act is rejected.

Accordingly, Case No. 124 of 2008 stands disposed of.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V .P. Raja)
Chairman



Sethi

(Sanjay Sethi)
Secretary, MERC