

Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 80 of 2011

In the matter of

**Application of 21st Century Infrastructure (India) Private Limited
for grant of Trading Licence in accordance with the
MERC (Trading Licence Conditions) Regulations, 2004**

**Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member**

21st Century Infrastructure (India) Private Limited

Corporation Building, Old Motor Stand, Itwari
Nagpur-440008

..... Applicant

ORDER

Dated: December 15, 2011

M/s. 21st Century Infrastructure (India) Private Limited (*herein after referred to as TCIIPL*) submitted an application on June 2, 2011 for grant of Intra-State Trading Licence, to undertake trading of electricity, for 80 MU for the first year and gradually increase to 100 MU over a period of next five years, in the State of Maharashtra.

2. The prayers of TCIIPL, the applicant are as follows:-

“Kindly Grant Power Trading Licence as Per Maharashtra Electricity Regulatory Commission (Trading Licence Conditions) Regulations, 2004, Read with section 14 and 15 of the Electricity Act, 2003 (36 of 2003).”

3. 21st Century Infrastructure (India) Private Limited (TCIPL) in its application stated as under:
 - a) TCIPL having its Registered Office at Corporation Building, Old Motor Stand, Itwari Nagpur-440008, carry on the business of infrastructure development and services such as construction of roads, bridges, power generation & distribution and provide transportation services. TCIPL is also engaged in the business of Trading in Iron & Steel items and
 - i. Deal in all forms of electric power in all aspects.
 - ii. Plan, Promote, develop, establish transmission and distribution networks or systems, trading platforms and to acquire, in any manner, these networks or systems or trading platforms from power generating and transmission companies, Central or State Government undertakings, local authorities or statutory bodies or other persons within India or abroad.
 - b) TCIPL has the required Net worth and is looking for Business opportunities. TCIPL satisfies all the requirements of the MERC (Trading Licence Conditions) Regulations, 2004 and amendment to Trading Licence Conditions Regulations, 2006. It also satisfies the statutory requirements of EA-2003 with respect to trading.
4. TCIPL submitted the following documents along with its Application:
 - a) Memorandum and Articles of Association of TCIPL;
 - b) Audited financial statements of TCIPL for the last four years from FY 2007-08, 2008-09, 2009-10, 2010-2011 duly certified by KPRK & ASSOCIATES, Chartered Accountants.
 - c) Names, particulars and experience of the promoters of TCIPL, and persons holding key managerial positions in TCIPL;
 - d) Net-Worth Certificate as on March 31, 2010 and March 31, 2011 issued by KPRK & ASSOCIATES, Chartered Accountants.
5. Based on initial scrutiny of the application, the Commission vide letter no. MERC/ Case No. 80 of 2011/ 00785, dated June 23, 2011 directed TCIPL to submit the following additional information/documents required for considering the application:
 - i. Names of Promoters along with respective ownership percentages.
 - ii. Volume of Power Intended to be traded for the first year after grant of licence and trading plans for the subsequent five years.
 - iii. Management Information.
 - iv. Amount of Debt, if any.
 - v. To submit an undertaking that no cases/litigations are pending against the Petitioner or against any of its partners, directors or promoters as per Condition specified in Amendment to Regulations as per Regulation 4-A "Eligibility Conditions/Disqualifications" of MERC Trading Licence Conditions Regulations, 2006.

6. TCIPL vide its letter dated 22nd July, 2011 submitted the following additional information as sought by the Commission.
- a. TCIPL intends to trade in 'Category A' as per Regulation 5.4 of the MERC (Trading Licence Conditions) Regulations, 2004 and aims to undertake trading of electricity of 80 MU for the first year and gradually increase to 100 MU over a period of next five years, in the State of Maharashtra.
 - b. The Company is Debt free as of now and its present business activity is trading in iron and steel items. Further, it is in the process of setting up a 10 MW Biomass based power plant with estimated cost of about Rs. 60 Cr and the project is scheduled to be commissioned by December, 2012.
 - c. That the promoters undertake to comply with the requirement of experienced technical staff before starting the actual trading after obtaining the licence and the CVs of these recruited staff shall be submitted to the Commission in due course.
 - d. Undertaking as required under the amendment to MERC(Trading Licence Condition), Regulation, 2006 that:-
"There are no cases of conviction of the applicant or any of its directors or promoters by a court of Law or indictment / adverse order by a regulatory authority or which relates to a grave offence of such a nature that it outrages the moral sense of the community; insolvency and bankruptcy of the applicant or any of its directors or promoters: pending legal proceedings; Conviction of an offence involving moral turpitude, or any economic offence ; fraudulent and unfair trade practices or market manipulation ; financial integrity; competence; reputation and character, and any other sufficient reasons".
7. The Commission vide letter dated August 11, 2011 directed TCIPL to comply with the procedure of publication of notice in two Marathi and two English Newspapers in accordance with Section 15(2) of Electricity Act, 2003 read with Regulation 7 of the MERC (Trading Licence Conditions) Regulations, 2004 and to submit the proof of compliance to the Commission along with copy of the notice so published.
8. In response, TCIPL submitted that it had complied with the directions issued by the Commission, by publishing Public Notice in two English (*viz Indian Express and Free Press Journal*) and two Marathi newspapers (*viz. Loksatta and Navshakti*) editions dated 18th August 2011 and submitted the supporting documents with a letter dated August 20, 2011.
9. As regards the Public notice in two English (*viz. Indian Express and Free Press Journal*) and two Marathi newspapers (*viz. Loksatta and Navshakti*) edition dated 18th August 2011, no suggestions or objections were received in this regard either by the Commission or TCIPL.
10. As per the MERC (Trading Licence Conditions) Regulations, 2004, the net-worth required for trading upto 100 MUs per year for Category `A` electricity trader shall not

be less than Rs. 1.5 Crore. TCIPL produced a Net worth Certificate from M/s. KPRK & ASSOCIATES, Chartered Accountants, certifying the Net worth of TCIPL, as on March 31, 2011 is Rs 3.25 Crore (approx.) comprising of Rs. 3.00 lakhs as paid up Share Capital and Rs.3.42 Crore (approx.) as Reserves & Surplus and (minus) Pre-operative expenses to the extent not capitalised of Rs 20.16 Lakhs. Based on the said details furnished by TCIPL, it was established that TCIPL had the required net worth at the time of making of the application. The details of the professional and supporting staff engaged by TCIPL were also examined.

11. On examination of TCIPL's application for the grant of intra-State Trading License in the State of Maharashtra and additional information submitted by TCIPL in accordance with the provisions of MERC (Trading Licence Conditions) Regulations, 2004, following are the observations and findings :

Regulation 5.0 of MERC (Trading License Conditions) Regulations, 2004 specifies the following eligibility criteria with respect to Technical requirement, capital adequacy requirement and creditworthiness:

A. Technical Requirement

Regulation 5.2 The applicant shall have not less than one full-time professional having experience in each of the following disciplines, namely:-

(a) power system operations and commercial aspects of power transfer;

(b) finance, commerce and accounts

Provided that the technical requirement of staff shall be complied with before undertaking the Licensed Business notwithstanding the fact that the Commission has granted the licence.

Regulation 5.3 The applicant shall furnish to the Commission the details of the professional and supporting staff engaged by him on full time basis before undertaking the Licensed Business.

TCIPL, in its application, has submitted details of the following key persons of the organization, i.e., CMD and Director (Finance). Shri Dipen Agrawal (B.E. Electronics, MBA) is CMD of the organisation, having experience in Steel & Power and expertise in Trading and Manufacturing. Shri Sharad Agrawal is the Director Finance (B.Com., DBM), having experience in Steel & Power and expertise in Finance. TCIPL submitted that the promoters undertake to comply with the requirement of experienced technical staff before starting the actual trading after obtaining the licence and the CVs of these recruited staff shall be submitted to the Commission in due course.

B. Networth Requirement

As per Regulation 5.4 of MERC (Trading Licence Conditions) Regulations, 2004, the Net worth of TCIPL for Category 'A' license shall not be less than Rs 1.50 Crore for trading of upto 100 MU per annum. Further, the Net Worth in MERC (Trading Licence Conditions) Regulations, 2004 is defined as follows:

“Net worth means, in the case of an individual or body of individuals, the sum total of cash, bank balances and market value of investments in listed securities as reduced by the amount of any loans and liabilities owing to any person, and, in case of any other person, the sum total of paid up share capital, share premium and such of the reserves as are eligible for distribution as dividend”

The Commission is of the view that, as TCIPL is a Private Limited Company, the criteria of Net Worth as applicable to any other person shall be applicable in this case. Thus, the Net-worth of the TCIPL needs to be considered as the sum total of paid-up Share Capital and the Reserves & Surplus. TCIPL vide its letter dated November 28, 2011 submitted the Net worth Certificate from M/s. KPRK & ASSOCIATES, Chartered Accountants certifying the Net worth TCIPL, as on March 31, 2011 to be Rs 3.25 Crore (approx.) comprising of Rs. 3.0 Lakhs as paid up Share Capital and Rs 3.42 Crore (approx.) as Reserves & Surplus and (minus) Pre-operative expenses to the extent not capitalised of Rs 20.16 Lakhs.. TCIPL also submitted the Annual Accounting Statements along with Auditors Report for four financial years from FY 2007-2011.

12. TCIPL has complied with the requirement of Regulation 7.1 of MERC (Trading License Regulations, 2004 by publishing the notice of its application in two English (*viz Indian Express and Free Press Journal*) and two Marathi language news-papers (*viz. Loksatta and Navshakti*) edition dated 18th August 2011.
13. The Commission is of the view that TCIPL has submitted before the Commission all requisite information in accordance with MERC (Trading License Conditions) Regulations, 2004. TCIPL has also submitted an undertaking that no cases / litigation are pending against it and its promoters.
14. Accordingly, TCIPL *prima facie* qualified for grant of licence, for intra-State trading in electricity as a Category 'A' electricity trader. On the above considerations, the Commission had proposed to grant licence to the TCIPL for Category 'A' trading licence. Further in pursuance of clause (a) of sub-section (5) of Section 15 of the Electricity Act 2003, the Commission issued a Public Notice on October 07, 2011 in English newspapers (Times of India and Indian Express) and on October 08, 2011 in Marathi(Viz. Loksatta and Lokmat), inviting suggestions and objections to the proposal to grant trading licence to TCIPL for intra-State trading of electricity in the State of Maharashtra for trading 80 MU of electricity for the first year (FY 2011-12) and gradually increase to 100 MU's over a period of next five years as Category "A" electricity trader as per the MERC (Trading

Licence Conditions) Regulations, 2004. No suggestions or objections were received in this regard either by the Commission or TCIPL.

15. Public Hearing in the matter was held on November 17, 2011 at the Commission's office. Shri. Sharad Agarwal (CMD TCIPL) appeared on the behalf of TCIPL .The Commission asked TCIPL to briefly summarize its application for intra-state trading license, the business activities of the Company and background of the Board of Directors. TCIPL explained about the background of the application and mentioned that TCIPL is a Private Limited Company registered under the Companies Act, 1956 and is in existence since February 03, 2000. It was established with a focus on Trading in Iron and steel items. TCIPL mentioned that the Company had complied with the aforesaid Trading Licence Condition Regulations of the Commission.
16. Further, with respect to the Board of Directors, TCIPL submitted details of the following key persons of the organization, i.e., CMD and Director (Finance). Shri Dipen Agrawal (B.E. Electronics, MBA) is CMD of the organisation, having experience in Steel & Power and expertise in Trading and Manufacturing. Shri Sharad Agrawal is the Director Finance (B.Com., DBM), having experience in Steel & Power and expertise in Finance. TCIPL submitted that the promoters undertake to comply with the requirement of experienced technical staff before starting the actual trading after obtaining the licence and the CVs of these recruited staff shall be submitted to the commission in due course.
17. The Commission further enquired about the statutory reporting requirements applicable to TCIPL with respect to Annual Reports, Balance Sheet and P&L Accounts. TCIPL responded that it being a registered Private Limited Company all statutory provisions as per the Companies Act, 1956 would be applicable to it. The Commission enquired about TCIPL's trading plans and its views on assessment of power market as a trader. In response, TCIPL submitted that it intends to trade in 'Category A' as per Reg. 5.4 of the MERC (Trading Licence Conditions) Regulations, 2004 and aims to undertake trading of electricity for 80 MU for the first year and gradually increase to 100 MU over a period of next five years, in the State of Maharashtra.
18. The Commission has carried out a detailed analysis of the eligibility of TCIPL as against the technical requirement, capital adequacy pursuant to the provisions under Section 52 of the Electricity Act 2003 and MERC (Trading License Conditions) Regulations, 2004 as in force. Having considered the material placed on record, the Commission is of the view that TCIPL satisfies the technical, commercial and financial requirements to qualify for the grant of licence to undertake intra-State trading in accordance with MERC (Trading License Conditions) Regulations, 2004. TCIPL has also satisfied that it is authorized to undertake Electricity Trading in accordance with the Main Objects in the Memorandum of Association.

19. In view of the above, the Commission hereby grants licence to TCIPL for undertaking intra-State trading of electricity upto 100 MU under Category 'A' in the State of Maharashtra for a period of Twenty Five (25) years as provided under sub-section (8) of Section 15 of the 2003 Act.
20. TCIPL has submitted a trading plan for undertaking trading, starting from approx 80 MU of trading in the State of Maharashtra for the first year (FY 2011-12) and gradually increase to 100 MU's over a period of next five years. The license is being granted for a period of twenty five years to trade upto 100 MU on an annual basis, until or unless revoked earlier. Further, TCIPL should also submit the detailed trading plans before the end of every fifth year for the subsequent five years.
21. Accordingly, the Commission directs that TCIPL be issued licence by the Secretary for Intra-State trading of electricity as a Category 'A' trader within the State of Maharashtra and a copy of the same be forwarded to Government of Maharashtra, all electricity transmission and distribution utilities in the State of Maharashtra and a copy be posted on the website of the Commission. The grant of license shall be subject to the following conditions:-
- (A) TCIPL shall designate an employee as its compliance officer and before commencement of the trading activity, shall have at least one full-time professional having, qualifications and experience in each of the following disciplines, namely:
- i) Power system operations and commercial aspects of power transfer*
 - ii) Finance, commerce and accounts*
- (B) TCIPL shall comply with the applicable provisions of the 2003 Act, the rules made by the Appropriate Government and regulations as specified by the Commission from time to time in all respects.
- (C) TCIPL shall abide by such trading margin, as the Commission may fix under Section 86(1)(j) of the 2003 Act for Intra-State trading transactions in the State of Maharashtra. TCIPL shall not engage in any trading transaction which would be detrimental to the interests of the electricity consumers in the State of Maharashtra.

With the above, Case No. 80 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman

(Kuldip N. Khawarey)
Secretary