



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

I. A. No. 2 of 2016
in
O. P. No. 10 of 2015

Dated: 04.08.2016

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member
Sri. L. Manohar Reddy, Member

Between

M/s. Sundew Properties Limited,
MindSpace, Cyberabad,
Sy.No. 64 (Part). APIIC Software Layout,
Madhapur, Hyderabad – 500 081.

.... Applicant / Petitioner

AND

The Southern Power Distribution Company of
Telangana State Limited, 6-1-50, Mint Compound,
Hyderabad – 500 063.

.... Respondent

This petition came up for hearing on 16.06.2016 and 05.07.2016. Sri. P. Sri Ram, Counsel for the Petitioner appeared on 16.06.2016 and 05.07.2016. Sri. Y. Rama Rao, Standing Counsel for the Respondent along with Smt. Priya Iyengar, Advocate appeared 16.06.2016 and 05.07.2016. The application having stood over for consideration to this day, the Commission passed the following:

ORDER

This application is filed by the petitioner seeking clarification / modification of the order dated 15.02.2016 in Original Petition No. 10 of 2015.

2. The applicant / petitioner is M/s. Sundew Properties Limited (SPL) has stated as under. SPL by the present application is seeking modification and / or clarification

qua certain findings set out in the Commission's order dated 15.02.2016, passed in O. P. No. 10 of 2015 filed by SPL, seeking to be recognized as a deemed distribution licensee being a developer of a notified IT / ITES Special Economic Zone (SEZ). By the said order dated 15.02.2016, SPL has been accorded deemed distribution licensee status with effect from 01.04.2016 by the Commission. However, while doing so, the Commission has directed SPL:

- a) To obtain by 31.03.2016, a sum of Rs. 26.90 crores as equity share capital contribution, from its promoters, for its power distribution business, by way of account payee cheques. The relevant extract of para 26 (D) is provided hereunder for ease of reference.
- b) Not to mortgage or create a charge on its distribution assets, in favour of any bank or financial institution for raising any loan, either for the distribution licence business or by any of its group concerns as per paragraph 26 (L) of the order dated 15.02.2016. The relevant portion is extracted in the petition.

It is stated that, SPL is seeking modifications and / or clarifications qua the aforesaid findings of this Hon'ble Commission, inter alia, on the following grounds.

3. The applicant stated about infusion of fresh equity share capital of Rs. 26.90 crores. It is stated that the Commission has in its order dated 15.02.2016 held that, the net worth of the promoters of SPL satisfies the conditions laid down under Rule 3 (2) of the distribution of electricity licence (additional requirements of capital adequacy, creditworthiness and Code of Conduct Rules, 2005 (capital adequacy rules). However, the Commission has deemed it appropriate to direct SPL to obtain from its promoters, on or before 31.03.2016, a sum of Rs. 26.90 crores as equity share capital contribution for the power distribution business, by way of account payee cheques and not as book entries.

4. The applicant stated that without prejudice to the fact that the compliance of the capital adequacy rules are not applicable in the present case, SPL had anticipated a capital expenditure of approximately Rs. 89.53 crores for the total electrical installation in the SEZ area after including the cost to be incurred in the ongoing buildings and also the cost of consumption deposit with APCPDCL. As stated before the Commission during the hearings held in the captioned petition, SPL had already incurred a capital expenditure of Rs. 53.30 cores towards setting up the power

distribution system. Thereafter, till 29.02.2016 SPL has further incurred an amount of Rs. 11.87 crores towards setting up the power distribution system. Therefore, as on date SPL has already incurred an amount of Rs. 65.17 crores out of the projected Rs. 89.53 crores towards setting up the power distribution system.

5. The applicant stated that it is SPL's understanding that the Commission's intention qua infusion of fresh equity share capital is that, there should be demonstrable flow of monies into SPL's account, so as to account for the 30% promoter contribution, towards the power distribution business, in accordance with Rule 3 (2) of the Capital Adequacy Rules. As is stated SPL hereinabove, out of the total projected cost of Rs. 89.53 crores required, SPL has already incurred an expenditure of approximately Rs. 65.17 crores till 29.02.2016 towards setting up the power distribution business. Therefore, bringing in additional equity capital contribution of Rs. 26.90 crores, by way of account payee cheques, shall not be appropriate / productive at this stage. However, in order to demonstrate flow of monies to the tune of Rs. 26.90 crores, as 30% promoter contribution as intended by the Commission, it is stated that SPL be permitted by the Commission to capitalize a sum of Rs. 26.90 crores out of its securities premium account, for issuing bonus equity shares of the face value of Rs. 10/- each aggregating to a sum of Rs. 26.90 crores, proportionately to all the equity shareholders of SPL that is to the promoters and Andhra Pradesh Industrial Infrastructure Corporation (APIIC).

6. The applicant stated that as a direct consequence of issuance of such bonus shares, the paid-up equity share capital of SPL shall stand increased from the present amount of Rs. 1,12,68,260/- to Rs. 28,02,68,260/-, thus meeting the requirement of increase in the equity share capital of the company. Consequently, there will be no requirement on SPL to bring in funds of Rs. 26.90 crores, by way of issuance of equity shares to the promoters, since the said requirement would be met by issuance of the aforesaid bonus shares. It is pertinent to highlight that, the present balance of Rs. 65,50,45,062/- in the said securities premium account as evident from note No. 3.2 on page 22 of the audited financial statements for the year ended 31.03.2015 represents the actual sums received by SPL, in pursuance of issuance of shares made by SPL in June, 2007.

7. The applicant stated that the Commission be pleased to modify para 26 (D) of the order dated 15.02.2016 and permit SPL to capitalize a sum of Rs. 26.90 crores out of its securities premium account, for issuing bonus equity shares of the face value of Rs. 10/- each aggregating to a sum of Rs. 26.90 cores, proportionately to all the equity shareholders of SPL. This would meet the intent underlying the direction of the Commission at current para 26 (D) of its order dated 15.02.2016. It is further stated that the Commission had granted SPL time till 31.03.2016 to comply with the aforesaid direction set out in para 26 (D). However, the process of issuance of bonus equity shares, as sought by SPL, would require some time beyond the deadline of 31.03.2016 fixed by this Hon'ble Commission in para 26 (D). It also seeks an extension of six months beyond 31.03.2016 that is upto 30.09.2016 for completion of the process of issuance of the bonus equity shares having face value of Rs. 10 each aggregating to a sum of Rs. 26.90 crores, from its securities premium account, proportionally to all the equity shareholders of SPL.

8. The applicant stated about restriction on creation of mortgage or charge on the distribution assets. It is stated that the Commission in its order dated 15.02.2016 has directed that, SPL shall not create a charge on or mortgage the distribution assets, to any bank or financial institution for raising any loan either for the distribution license business or by any of its group concerns. In this regard, it is stated that, SPL had already that is prior to the Commission's order dated 15.02.2016, made borrowings from various banks and financial institutions for the construction / development of its SEZ project. While making such borrowings, SPL had created a charge on / mortgaged the buildings within the SEZ area. It is pertinent to note that the power distribution assets are a part and parcel of such buildings and as such have been consequentially mortgaged / charged in favour of the said banks / financial institutions. As on the date of creation of such mortgage / charge, SPL was not required to seek the prior approval of the Commission, as SPL's deemed distribution licensee status was not recognized then.

9. The applicant stated that as is evident from Section 17 (3) of the Electricity Act, 2003 (Act, 2003) read with Regulation 4 (2) of the A P Distribution License Regulations, the distribution licensee shall not at any time assign its licence or transfer its utility, or any part thereof, by sale, lease, exchange or otherwise without the prior

approval of the Commission. The deemed distribution licensee status of SPL has only been recognized by the Commission vide its order dated 15.02.2016 with effect from 01.04.2016. Therefore, the provisions of Section 17 (3) of the Act, 2003 read with Regulation 4 (2) of the A P Distribution License Regulations and para 26 (F) (2) of the Commissions order can only be made applicable prospectively. In this regard, it is stated that no further charge / mortgage shall be created by SPL in future, on its distribution assets, without the prior approval of the Commission.

10. The applicant stated that the Commission be pleased to clarify in its order dated 15.02.2016 that SPL has prior to the said order already mortgaged the buildings situated in the SEZ area, which includes the power distribution assets. In this regard, the Commission be pleased to modify para 26 (L) of its order dated 15.02.2016 thereby.

- a) Acknowledging the existing charge / mortgage created by SPL, on the buildings / power distribution assets, prior to 01.04.2016.
- b) Directing SPL, to seek permission of the Commission, prior to creating any other / future charge / mortgage on its distribution assets, post 01.04.2016.

11. The applicant sought clarification qua object clause of the Memorandum of Association (MoA). It is stated that the Commission in its order dated 15.02.2016 observed that, in SPL's MoA there is no clear object which permits SPL to carry on the business of distribution of power. The Commission has directed SPL to carry out amendment to the object clause of its MoA so as to include the business of distribution of power, as one of its objects in accordance with the procedure prescribed under the Companies Act, 2013 (Companies Act). The said amendment is to be carried out by 31.12.2016.

12. The applicant stated that SPL had embarked upon the business of distribution of power within the SEZ area, as a deemed distribution licensee, pursuant to a decision taken at its board of directors meeting held on 20.12.2013. During the said meeting, the board decided to adopt object clause B (41) of the MoA and apply for the deemed distribution licensee status. Therefore, SPL at the time of making the application to the Commission to take on record SPL's status as a deemed distribution licensee, was well authorized by its constitution / MoA, to pursue the business of distribution of power, within its SEZ area.

13. The applicant stated that although the MoA authorizes SPL to carry out the function of a distribution licensee, SPL shall amend its MoA, to specifically state the power / authority to carry out the business of a distribution licensee, as directed by the Commission at para 26 (C) of its order dated 15.02.2016.

14. The applicant stated that the Commission has inherent powers under clauses 38 and 39 of the TSERC (Conduct of Business) Regulations, 2015 to make such orders as may be necessary for meeting the ends of justice.

15. The applicant has sought the following prayer in the present application.

- a) Modify para 26 (D) of the Order dated 15.02.2016 and permit SPL to capitalize a sum of Rs. 26.90 crores out of its securities premium account, for issuing bonus equity shares of the face value of Rs. 10/- each aggregating to a sum of Rs. 26.90 crores, proportionately to all the equity shareholders of SPL;
- b) Modify para 26 (D) of the Order dated 15.02.2016 and also grant an extension of six months to SPL, beyond 31.03.2016 (ie. Upto 30.09.2016), for completion of the process of issuance of the bonus equity shares (having face value of Rs. 10 each) aggregating to a sum of Rs. 26.90 crores, from its securities premium account, proportionally to all the equity shareholders of SPL.
- c) Modify para 26 (L) of its Order dated 15.02.2016 thereby:
 - i) Acknowledging the existing charge / mortgage created by SPL, on the buildings / power distribution assets, prior to 01.04.2016.
 - ii) Directing SPL, to seek permission of this Hon'ble Commission, prior to creating any other / future charge / mortgage on its distribution assets, post 01.04.2016.

16. The petitioner filed additional affidavit stating as follows. It stated that in order to demonstrate flow of monies to the tune of Rs.26.90 Crores as 30% promoter contribution (as intended by this Commission). SPL had vide the captioned Interim Application prayed that this Commission:-

- a) Permit SPL to capitalize a sum of Rs. 26.90 Crores out of its Securities premium account for issuing bonus equity shares of the face value of Rs. 10/- each aggregating to a sum of Rs.26.90 Crores proportionately to

all the equity shareholders of SPL (i.e., to the promoters and Andhra Pradesh Industrial Infrastructure Corporation (APIIC).

- b) Grant an extension of 6 (six) months to SpL beyond 31.03.2016 (i.e., upto 30.09.2016) for completion of the process of issuance of the aforesaid bonus equity shares proportionally to all the equity shareholders of SPL.

17. In this regard the following is noteworthy:-

(a) The securities premium account was created out of the share premium amount received in respect of:-

i) Allotment of 1,00,665/- equity shares of Rs. 10/- each at a premium of Rs. 4124.7088 per share (amounting to Rs. 41,52,13,814/- share premium) on 21.06.2007.

ii) Allotment of 2,400 equity shares of Rs.10/- each at a premium of Rs. 99,990/- on conversion of 2400 Non-cumulative Convertible Preference Shares of Rs.1,00,000/- each (amounting to Rs. 23,99,76,000/- share premium) on 01.07.2010 to 1-5 Company (Mauritius) Limited.

(b) The aggregate share premium received was Rs. 65,51,89,814/-, which was accounted for a Securities Premium Account. The balance amount in the Securities Premium Account of Rs. 65,50,062/- is arrived at after writing-off an amount of Rs. 1,44,752/- in respect of share issue expenses and preliminary expenses from the aggregate amount of Securities Premium Account of Rs. 65,51,89,814/-.

(c) On 14.03.2016, the Board of Directors of SPL during their meeting recommended issuance of Bonus Equity Shares of Rs.10/- each in the ratio of 24:1 (i.e., for every one fully paid-up equity share of Rs.10/- each to all its equity shareholders out of SPL's Securities Premium Account). It is pertinent to highlight that although the order dated 15.02.2016 had directed for an increase in the equity share capital of Rs.26.90 Crores, for which the ratio for issuance of Bonus Shares would have been in fraction. To avoid any such fraction, the Board of Directors recommended the ratio of 24:1 Bonus Shares as aforesaid, which would result in higher increase in capital of about Rs.27.04 Crores as compared to Rs.26.90 Crores.

(d) On 26.05.2016 the Board of Directors of SPL in terms of Sec 63 of the Companies Act and pursuant to the resolution passed at the Extraordinary

General Meeting of the company held on 06.04.2016, allotted 2,70,43,824 (Two Crore Seventy Lakh Forty Three Thousand Eight Hundred Twenty Four) equity shares of Rs.10/- each of SPI to the members of the company whose name appear in the Register of Members / List of Beneficial Owners as on 19.04.2016 (the Record Date) as bonus equity shares in the proportion of 24 (Twenty Four) equity shares for every 1 (One) share held by capitalizing a sum of Rs. 27,04,38,240/- (Rupees Twenty Seven Crore Four Lakh Thirty Eight Thousand Four Hundred Twenty only) standing to the credit of the Securities Premium Account of the Company (SPL).

(e) The Board of Directors further resolved that aforesaid bonus equity share shall rank *pari pasu* in all respects with the fully paid-up equity share of the company as existing on the 'Record Date', save and except that they shall not be entitled to any dividend that may be declared before the 'Record Date'.

f) several documents signifying the actions of the board have been filed as annexures to the application.

g) The petitioner stated further that from the above it is evident that SPL has completed the process of increasing its equity share capital by allotment of bonus equity shares to all its equity shareholders. It is reiterated that the issuance of the bonus shares is out of the Securities Premium Account which represents the actual sums / funds received by SPL, in pursuance of issuance of shares made by it in 2007 and conversion in 2010 respectively. In light of the above allotment, the paid-up equity share capital of SPL has increased from Rs. 1,12,68,260/- to Rs. 28,17,06,500/- (i.e., increase due to bonus share capital of Rs. 27,04,38,240/-, 2,70,43,824 bonus shares of Rs.10/- each), thus meeting this Commission's requirement for infusion of equity share capital.

Re. steps undertaken by SPL for operationalization of its Distribution Licence

h) The petitioner stated that pursuant to this Commission granting distribution licence to SPL vide its order dated 15.02.2016, SPL has bona fide carried out the following activities to expeditiously operationalize its Distribution Licence.

Power Procurement Process

i) The petitioner stated that SPL had by its letter dated 06.05.2016 appraised the Commission qua its intention to initiate the process of power procurement of short term basis (i.e., for a period of 1 year).

j) The petitioner stated that the guidelines for short-term procurement of power have been notified by Ministry of Power (MOP), Government of India (GoI) with effect from 01.04.2016, making it mandatory for all the procurer(s) to procure short-term power by using MSTC Limited's e-Bidding portal. Accordingly, SPL has registered itself as a Utility / distribution licensee on the MSTC Limited's website.

k) The petitioner stated that MSTCL Limited has sought advice from the MoP for registering SPL as a utility. Furthermore, SPL has submitted all documents / details sought for by the Ministry of Power in this regard and final approval is awaited.

l) The petitioner stated that upon receipt of approval, SPL shall initiate the process of short-term power procurement by inviting bids through the national bidding e-portal. Pursuant to which, SPL shall file a petition before this Commission for tariff adoption of the power purchase.

B. Application to the State Transmission Utility for Connectivity on Intra-State Transmission System

m) The petitioner stated that on 07.05.2016 SPL issued a letter to the Telangana State Transmission Company Limited (TSTRANSCO) seeking grid connectivity on the intra-state transmission system. By the said letter SPL highlighted that it had entered into a Memorandum of Understanding (MoU) with M/s. Global Energy Private Limited for purchase of up to 16 MW power to provide uninterrupted power supply to the consumers of the SEZ area.

C. Bifurcation of the Electrical Assets into SEZ and Non-SEZ Area

n) The petitioner stated that on 04.05.2016, SPL issued a letter to TSSPDCL requesting it for bifurcation of the 33 KV feeders within K. Raheja IT Park campus between SEZ and Non-SEZ Area. SPL further highlighted that the entire cost of the following electrical assets were borne by the K. Raheja Corp. or its associated sister concerns:-

(i) 33 KV network and its associated bays in 132 / 33 KV Madhapur SS and 132 / 33 KV Jubilee Hills;

(b) 33 KV indoor breakers at the switching station along with the civil works in the K. Raheja IT Park campus.

SPL further stated that while restructuring the assets, it wished to retain the assets pertaining to SPL as the entire cost of the network was incurred by SPL.

o) As is evident from the above, SPL has promptly undertaken all steps to operationalize its distribution licence.

18. We have heard the counsel for the petitioner. Eventhough, no counter-affidavit is filed by the respondent yet its counsel made submissions in the matter. At the outset the counsel for the petitioner made it clear the present interlocutory application is confined to the limited prayer of extending the time for complying with the directions of the Commission while passing orders granting deemed licensee status.

19. The counsel for the petitioner sought to submit that the petition is filed for modification of the order passed by the Commission in respect of infusing the capital in the petitioner as directed by the Commission, but on a different mode. He stated that the petition is filed under sec 94 of the Act, 2003 and more particularly invoking Clauses (f) & (g). To a pertinent question by the Commission, as to which provision is being invoked by the petitioner and what is sought in the petition, the Counsel for the petitioner confirmed that the petitioner is not seeking review or amendment of the order passed by the Commission, but limiting the prayer to clarification under section 94 of the Act. However, he is at pains to explain under which authority the Commission could modify or amend the order passed earlier by it.

20. The Counsel for the petitioner squarely limited his prayer to extension of time for compliance of the order of the Commission in respect of equity infusion and continuation of power supply by the existing licensee till the time extended by the Commission for equity infusion.

21. The counsel for the respondent emphasized the fact that the Commission had already directed it not to disconnect the power supply till alternate arrangements are made and the licensee is abiding by the directions of the Commission. He sought to allay the fears of the petitioner that the existing licensee may disconnect the power supply in the absence of the directions from the Commission. On instructions from his officers the counsel endeavoured to submit that the petitioner being a licensee has to take steps for power procurement or make arrangements for supply of power in the area of operation, but until and unless such arrangement is communicated by the petitioner to the licensee, it would not take any precipitative action. He prayed that the

relief sought in the present I. A. may not be considered as all the issues have been considered and addressed in the original order itself.

22. The Commission considering that the prayer in the present I. A. is limited extension of time, has agreed to extend the time up to 30.09.2016 with specific understanding and condition that there will be no further extension in the matter for any reason in respect of equity infusion. The Commission directed the existing licensee to continue the supply till 30.09.2016 and also directed it to put the same in writing as per the direction of the Commission and communicate it to the petitioner.

23. Subject to the observations made supra, the time for compliance of the order dated 15.02.2016 in so far equity infusion and power procurement and starting of operations is concerned, is extended upto 30.09.2016. There will be no further extensions of any sort on any issue. The I. A. is disposed of but without any costs.

This order is corrected and signed on this 4th day of August, 2016.

Sd/-
(L MANOHAR REDDY)
MEMBER

Sd/-
(H SRINIVASULU)
MEMBER

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

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