

In Re: Suryachakra Power

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Court : Central Electricity Regulatory Commission CERC

Decided On : Feb-22-2006

Judge : K Sinha, B Bhushan, A Jung

Appellant : In Re: Suryachakra Power

Judgement :

1. The applicant, a company registered under the Companies Act, 1956 has made the present application under Sub-section (1) of Section 15 of the Electricity Act, 2003 (the Act) for grant of licence for inter-state trading in electricity in whole of India, except the State of Jammu & Kashmir for category `A`.

2. As per the Regulation 6, the net worth of the applicant at the time of application should not be less than Rs. 1.5 crore in case of the applicant who proposed to trade up to 100 MUs of electricity in a year.

Based on the details furnished by the applicant, it was established that the applicant had required net worth. Accordingly, the applicant qualified for grant of licence for inter-state trading in electricity as a category `A` electricity trader, that is, for trading up to 100 MUs of electricity in a year.

3. On the above considerations, the Commission proposed to grant licence to the applicant as prayed for. A notice under clause (a) Sub-section (5) of Section 15 of the Act was published inviting suggestions/objections to the above proposal of the Commission. M/s Lloyds Finance Ltd., a nonbanking finance company engaged in the business of leasing equipment had filed objections to the proposal. The

fundamental objection filed by M/s Lloyds Finance Limited (the objector) against the applicant was that Cocanada Fisheries Ltd. (earlier Suryachakara Sea Foods Ltd.) and Kalyan Marine & Agro Products Ltd., the sister concerns of the applicant had defaulted in making payments for certain equipment hired by them from the Objector.

5. The Commission by its order dated 12.1.2006 had directed the applicant to place on record certain additional information, which has been filed. We have examined the additional information filed by the petitioner.

6. It has been stated that in 1995 Dr. S.M. Manepalli, Managing Director, Suryachakra Seafoods Limited (also the Managing Director of the applicant) had agreed to hire certain equipments for rentals of Rs.50, 31,325/- for which a hire-purchase agreement was signed. Dr.

Manepalli is said to have executed a letter of guarantee in favour of the Objector to make payment in terms of the hire-purchase agreement in the event of failure of Suryachakra Seafoods Limited to do so. The promissory note for the amount was also issued by Suryachakra Seafoods Limited. Subsequently, at the instance of Dr. Manepalli, another hire-purchase agreement was executed for rentals of Rs. 26,52,752/- between the Objector and one Kalyan Marine & Agro Products Limited, of which also Dr. Manepalli was the Managing Director for hiring of steam extruder. The Objector has stated that Suryachakra Sea Foods Limited paid to the Objector a total sum of Rs.26,15,663/- and thereafter defaulted and stopped payment of rentals from April 1999 and onwards.

Kalyan Marine & Agro Products Limited is also stated to have defaulted and did not make any payment towards the rentals agreed to.

7. The Objector is stated to have filed an application before Bombay High Court against some of its clients, including the two above-named companies. It has been stated that the Bombay High Court has constituted a Special Committee to consider the Objector's claim.

Despite several notices sent by the Special Committee, Dr. Manepalli has not appeared before the Committee. The above-named two companies, which reportedly owe to the Objector an aggregate amount of Rs.1, 92, 46,299/-, have also failed to make any appearance before the Special Committee. It is alleged that the abovenamed two companies are said to have closed their offices and business with malafide intention to escape liability and defeat the legitimate claim of the Objector. Dr.

Manepalli is said to have resigned from the Directorship of the above-named two companies.

8. According to the Objector, the above named two companies as also the applicant are under the same management with Dr. Manepalli as the Managing Director and Shri M. Mangatayaru and Smt. B.P. Vijaya Rao as Directors. The registered and corporate Offices of the above-named two companies are same as that of the applicant. It has been stated that certain shareholders, namely, Dr. Manepalli, Shri Mangatayaru and Smt.

B.P. Vijaya Rao and also one Dr. S. Manepalli are common to all the three companies. The Objector has submitted that in view of their past fraudulent conduct, the applicant is not entitled for inter-state trading in electricity as its sister companies have failed to make payments for the legitimate dues of the Objector and has done everything to escape the liability.

9. The applicant in its reply dated 19.12.2005 has stated that M/s Suryachakra Sea Foods Limited, a public limited company was in the business of Aqua culture, more particularly prawn culture and it was a profit making for first four years and dividend paying company for next two years. Hon`ble Supreme Court of India prohibited prawn culture in CRZ notified areas and the conversion of agricultural lands into the fish tanks. Also, because of the widespread virus infection, the business had suffered. It is stated that liabilities of all the NBFCS except that of the objector have been settled by M/s Suryachakara Sea Foods Ltd. Some time in 1998-99, the Objector was also approached with an offer to settle the loan though there was dispute regarding accounting.

10. The applicant has further submitted that the M/s Suryachakra Seafoods Ltd. and M/s Kalyan Marine & Agro Products Ltd were having registered offices situated at Kakinada. There is absolutely a long period of silence, and unexplained complacency from the Objector Company for recovery of dues. The amounts which could have been settled between the parties have become time barred and are not recoverable. It is alleged that the objection has been filed only as a matter of exerting illegal pressure. According to the applicant, M/s Suryachakra Seafoods Ltd. and M/s Kalyan Marine & Agro Products Ltd are different corporate entities, and there is no suppression, misrepresentation or fraud involved necessitating the piercing of corporate veil to see the conduct. Suryachakra Seafoods Ltd. has changed its name to Cocanada Fisheries Limited and notified the same to ROC with the same registered office. The Board of Directors of Cocanada Fisheries Limited are T.Bhaskara Rao, B.P.Vijay Rao and J. Sai Tulasi Rao and the Board of Directors of M/s Kalyan Marine & Agro Products Ltd are T. Bhaskara Rao, B.P.Vijay Rao, J. Sai Tulasi Rao and T Upender. It is stated that as these two companies are not in active business, they have strived to get a debt clearance as much as possible. At the hearing it was stated that the parties concerned appeared before the Special Committee. It was also stated that the dues of all debtors, except those of the objector have been settled. The applicant has filed certificates to that effect.

11. It is to be noted that the Objector has initiated the proceedings before Bombay High Court for recovery of its dues from the above-named two companies (and not the applicant) and the matter is presently sub judice. These proceedings are of civil nature. There is no provision in the existing trading regulations to refuse licence in such a situation.

12. The allegations made by the Objector could be considered by lifting the corporate veil since, as the corporate veil can be lifted for detection of fraud. But the Objector has not made any serious allegations of fraud against any of the persons named in the objections filed. We have also pursued the detailed information filed by the applicant pursuant to our dated 12.1.2006. We do not find any irregularity so as to deny the licence for trading.

13. In view of the above, we direct that the applicant be issued the licence for inter-state trading in electricity as category `A` electricity trader for trading within the country, except the State of Jammu & Kashmir. We make it clear that the licence shall not entitle to undertake trading in any outside country which shall be regulated in terms of other laws in force. The issue of licence shall be subject to the applicant in future complying with the provisions of the Act, the rules framed by the Central Government and the regulations specified by the Commission from time to time in all respects.

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