



**ORDER**

**OF THE**

**WEST BENGAL ELECTRICITY REGULATORY  
COMMISSION**

**IN CASE NO. WBERC/OA-220/15-16**

IN RE APPLICATION SUBMITTED BY INDIA POWER CORPORATION LIMITED SEEKING GRANT OF LICENSE TO INDIA POWER CORPORATION LIMITED UNDER SECTION 14 OF THE ELECTRICITY ACT, 2003 FOR DISTRIBUTION OF ELECTRICITY IN PURBA MEDINIPUR DISTRICT IN THE STATE OF WEST BENGAL.

**PRESENT:**

**SRI RABINDRA NATH SEN, CHAIRPERSON**  
**SRI AMITAVA BISWAS, MEMBER**  
**SRI DURGADAS GOSWAMI, MEMBER**

**DATE: 12.12.2017**



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

| Noting by Office or Advocate | Sl. No. | Date       | Office notes, reports orders or proceedings with signature   |
|------------------------------|---------|------------|--|
|                              |         | 12.12.2017 | <p style="text-align: center;">ORDER</p> <p>1.0 India Power Corporation Limited (in short 'IPCL') has submitted an application on 18<sup>th</sup> November, 2015 in case no. OA-220/15-16 to the West Bengal Electricity Regulatory Commission (in short 'Commission') for grant of license to IPCL for distribution of electricity in Purba Medinipur district in the State of West Bengal under section 14 of the Electricity Act, 2003.</p> <p>2.0 The gist of the application as mentioned in paragraph 1.0 above, was published by IPCL in the leading newspapers viz. 'Ananda Bazar Patrika', 'The Telegraph', 'Economic Times' and 'Sanmarg' on 01.01.2016 inviting objections / suggestions / recommendations from the persons concerned to be submitted within 30 days from the date of publication of the notice. Accordingly, the Commission has received comments / objections / suggestions from WBSEDCL and 42 other persons mostly from Purba Medinipur District within the due date.</p> <p>3.0 Out of the 30 stakeholders who made their suggestions and objections on the application of IPCL within the due time, except West Bengal State Electricity Distribution Company Limited (WBSEDCL), others simply welcomed IPCL as a new distribution licensee within their area. However, WBSEDCL has raised strong objections on the points in their submission,</p> |



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>which, inter-alia says as follows:</p> <p>a) DPSCL as deemed distribution licensee in Ranigunj-Asansol area has violated the provisions of Universal Supply Obligation (USO) and other provisions of the WBERC (licensing and Conditions of Licence) Regulations, 2013, which calls for revocation of licence. USO is a duty imposed by section 43 of the Electricity Act. DPSCL has failed to fulfil the legislative mandate as is evident from the consumer profile of DPSCL in the Ranigunj – Asansol area. DPSCL ought to be directed to ensure compliance with section 43 in the existing area before being permitted to enter a new area which already has an existing distribution licensee.</p> <p>b) Proposed network roll-out of IPCL amounts to cherry-picking and is contrary to section 43 of the Electricity Act and clause 5.4.7 of the National Electricity Policy, 2005. As per the proposed rollout plan, the focus is clearly on EHV, bulk and commercial consumers specially in the initial roll-out period of three years. This is contrary to the regulation 2.7.3 of the WBERC (Licensing and Conditions of Licence) Regulations, 2013 which provides compliance with the USO under section 43 of the Electricity Act and discharge of obligations in a manner that its distribution network expansion programme provides access to a consumer mix more or less commensurate with other licensee(s).</p> <p>c) The merger and / or amalgamation between IPCL and DPSC Limited is not recognizable under the Electricity Act, 2003 and hence IPCL cannot use technical</p> |
|--|--|--|---|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>credentials of DPSC Limited in this application with an effect of not meeting eligibility criteria for grant of licence. IPCL has claimed eligibility and technical credentials on the back of the experience of DPSC as a distribution licensee with the understanding that DPSC and IPCL were amalgamated and/or merged in 2013 and comprise one single entity. However, given the fact that the Commission do not recognize the merger and / or amalgamation between IPCL and DPSC for the purposes of DPSC as a distribution licensee, IPCL cannot use the credentials of DPSC. Moreover, none of IPCL's submission regarding its technical competence and experience stands adequate and competent to the requirements of the License Regulations of the Commission. In terms of regulation 2.8.5 of the WBERC (Licensing and Conditions of Licence) Regulations, 2013, IPCL is not eligible for a distribution licence as it does not fulfil the eligibility conditions for grant of distribution licence.</p> <p>d) DPSC has failed to comply with the statutory provisions of WBERC (Licensing and Conditions of Licence) Regulations, 2013 and directions given by the Commission vide its order dated 13.08.2014. DPSC did not come up with any report or investment proposal pertaining to supply of electricity to all consumers in its existing area of supply of 618 sq. km. Violation of provisions calls for revocation of licence of DPSC in accordance with regulation 5.17 of the WBERC (Licensing and Conditions of Licence) Regulations, 2013.</p> <p>e) IPCL's basic premise of choosing Purba Medinipur district</p> |
|--|--|--|--|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>as the new area of supply is without merit.</p> <p>f) It has also been objected by WBSEDCL that the application of IPCL is incomplete for the reasons – a) Non-payment of fees along with the application and name and address of applicant missing on first page, b) incomplete submission of the draft distribution licence, c) incomplete information on land parcels, d) No submission of area details for defence establishments of Coastal Guard, e) incomplete business plan violating provisions of USO, f) incomplete financing status and g) delay in issuing public notices in newspapers. WBSEDCL also submitted that IPCL has failed to fulfil different aspects of eligibility criteria. It has also been stated that there are anomalies in business plan and network rollout plan as well as fulfilment of financial requirements.</p> <p>4.0 Upon scrutiny of the application received from IPCL, the Commission observed that the 'No Objection' certificate from the Government of India in relation to grant of distribution license required under sub-para (ii) of clause (2) of section 15 of the Electricity Act, 2003 has not been submitted by IPCL for which IPCL was advised to submit the same by 28<sup>th</sup> March, 2016 vide Commission's letter dated 22<sup>nd</sup> March, 2016.</p> <p>5.0 In reply, IPCL has submitted a 'No Objection' certificate issued by the Director General, India Coast Guard Head Quarters, New Delhi vide ICPL's letter dated 30<sup>th</sup> March, 2016. Upon receipt of the same, the Commission requested District Magistrate, Purba Medinipur vide its letter dated 15<sup>th</sup> April, 2016 to submit the list of stake holders pertaining to</p> |
|--|--|--|---|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>Defence establishments including Cantonments, Aerodrome, Fortress, Arsenal, Dockyard or Camp or any building or place in the occupation of Government for Defence purposes in the District of Purba Medinipur and its vicinity for consideration of IPCL's application. The required information, as asked for by the Commission, has been received from the Office of the District Land &amp; Land Reforms Officer (DL&amp;LRO), Purba Medinipur vide its letter dated 24<sup>th</sup> May, 2016. However, on receipt of the said letter from Office of the District Land &amp; Land Reforms Officer, the Commission requested the Defence Secretary, Ministry of Defence, Government India to ascertain whether there is no objection on the part of the Central Government to the grant of the license in favour of IPCL, required under sub-para (ii) of clause (2) of the section 15 of the Electricity Act, 2003, considering the list of stakeholders pertaining to defence establishments in Purba Medinipur district as received from DL&amp;LRO, Govt. of West Bengal. The Commission has received the relevant 'No Objection' certificate from the Ministry of Defence, Government of India through its letter dated 28.09.2016.</p> <p>6.0 On completion of the formalities, as aforesaid, the Commission expressed its apprehension vide its letter dated 7<sup>th</sup> December, 2016 as to whether IPCL is competent to establish the HT as well as LT network in order to fulfil Universal Service Obligation in the proposed licensed area in Purba Medinipur district considering the following deficiencies:</p> <p>a) IPCL being a distribution licensee has been operating in Asansol and Raniganj area for a long time, but they are still unable to fulfil the Universal Service Obligation (USO)</p> |
|--|--|--|--|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>through the required provision of network to provide electricity to all categories of consumers inspite of directives given by the Commission from time to time.</p> <p>b) IPCL as a distribution licensee at Asansol and Ranigunj area is yet to establish its LT network in their licensed area.</p> <p>c) IPCL is still not ready to supply power to the LT consumers in the above area as per provisions of the Act and Regulations made thereunder.</p> <p>d) IPCL is still supplying power to the high voltage consumers only in their licensed area in Asansol and Ranigunj.</p> <p>In view of above, IPCL was directed to establish the LT network in their existing licensed area at Asansol and Ranigunj and may, thereafter, submit to the Commission for consideration of the proposal for grant of license in Purba Medinipur district in respect of which condition for fulfilment of USO along with other applicable pre-conditions as detailed in the Electricity Act, 2003 and the Regulations made thereunder, is a must.</p> <p>7.0 IPCL was further requested by the Commission by its letter dated 17<sup>th</sup> April, 2017 to submit consumer mix comprising data / information viz., number of consumers, category wise sale in MU during the years 2013 – 2014 to 2016 – 2017 for each category of LT &amp; HT consumers. In reply, IPCL has submitted vide its letter dated 20<sup>th</sup> April, 2017 the details of category wise L &amp; MV consumers availing supply from IPCL</p> |
|--|--|--|--|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>in their existing licensed area at Asansol-Ranigunj area, which envisaged that they are supplying power to 1288 LT consumers and 435 Nos. HT consumers in their area as on December, 2016. Sale to LT consumers and HT consumers upto December, 2016 during the period 2016 – 2017 as envisaged from the report works out at 3.92 MU (0.75%) and 518.84 MU (99.25%) respectively.</p> <p>8.0 Similarly, WBSEDCL was also requested vide Commission's letter dated 29<sup>th</sup> June, 2017 to provide with their consumer mix (both in terms of number of consumers and sale in MU) during the year 2016 – 2017 in respect of Purba Medinipur. WBSEDCL was also directed to provide consumer mix (both in terms of number of consumers and sale in MU) during the year 2016 – 2017 in the common operating area of Dishergarh and Ranigunj where both IPCL and WBSEDCL operate. WBSEDCL has submitted the same vide its letter dated 12.10.2017, which envisaged that they are supplying power to 198226 Nos. L.T. consumers and 192 No. H.T. consumers in the concerned operational area of IPCL &amp; WBSEDCL (Dishergarh &amp; Ranigunj area) during the year 2016 – 2017 and the corresponding sale to HT and LT consumers were 337.93 MU (61%) and 216.498 MU (39%).</p> <p>9.0 In the meantime, IPCL filed a petition being WP No. 24987(W) of 2017 in the High Court at Calcutta against the Commission complaining that an application for grant of distribution licence for Purba Medinipur district in the State of West Bengal made on 18<sup>th</sup> November, 2015 is yet to be considered and disposed of by the Commission. Having heard the rival contentions of the parties, Mr. Justice</p> |
|--|--|--|---|





In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>Debangsu Basak requested the Commission as follows:</p> <p>“Quote:</p> <p>To consider and decide the application in accordance with law, preferably within a period of ten weeks from the date of communication of this order to the West Bengal Electricity Regulatory Commission. It will communicate its reasoned order to the petitioners forthwith thereafter. Needless to say that the West Bengal Electricity Regulatory Commission will afford a reasonable opportunity of hearing to the parties. The West Bengal Electricity Regulatory Commission is at liberty to ask for any document that may be required from the petitioners. The petitioners are also at liberty to supply such documents that they deem necessary to the West Bengal Electricity Regulatory Commission.</p> <p>Unquote”</p> <p>10.0 Hence, the Commission decided to call for a hearing where IPCL, WBSEDCL and other objectors shall be present. Accordingly, a hearing notice vide no. WBERC/OA-220/15-16/1183-1185(i) to (xxx) dated 15<sup>th</sup> November, 2017 was issued to all above convening the hearing on 28<sup>th</sup> November, 2017 at 15.00 hrs. at the office of the Commission.</p> <p>11.0 The hearing, as scheduled, was held on 28.11.2017 where Shri Sakya Singha Chaudhuri, Legal Counsel, Ms Shreya Mukerjee, Legal Counsel along with Shri Santanu Roy, VP (Legal), Mr Debashis Sarkar, Vice President (Technical), Mr Debasish Das, Vice President (Regulatory), Mr K. Pallav,</p> |
|--|--|--|---|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>Deputy General Manager (Regulatory Affairs), Mr Sandip Mitra, Consultant (Regulatory), were present on behalf of IPCL.. On behalf of WBSEDCL, Shri Amit Kapur, Partner, J Sagar Associates, Shri Janmali Manikala, Sr. Associate, J Sagar Associates along with Shri Subra Chowdhury, Sr. Manager (HR&amp;A), Shri Rajeev Nandan Sinha, SE(E), Shri Manab Das, DE(E) attended the hearing. Besides, few other persons were also present during the hearing.</p> <p>12.0 During the hearing, the representative of IPCL made their submission which covers – a) overview of proposed license area, b) enabling provision, c) compliance criteria, d) highlights of the proposal, e) advantages of parallel licensee and f) way forward.</p> <p>13.0 It is also submitted by the representative of IPCL that the Sixth Proviso of section 14 of the Electricity Act, 2003 provides that no such applicant, who complied with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose. It is further submitted that IPCL has complied with all the applicable provisions of a) Electricity Act, 2003, b) Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and c) WBERC (Licensing and Conditions of License) Regulations, 2013. IPCL submitted that parallel license will bring competition and choice of suppliers for the consumers in Purba Medinipur district.</p> <p>14.0 The representative of WBSEDCL made his submission</p> |
|--|--|--|---|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>elaborately on the points raised in their written objection on the following issues:</p> <p>a) IPCL (erstwhile DPSCL), as distribution licensee in Ranigunj-Asansol area has violated provisions of Universal Service Obligations (USO) along with applicable WBERC regulations which calls for revocation of license.</p> <p>In this connection, WBSEDCL submitted that the Commission has to decide upon the application of DPSCL in exercise of its statutory discretion which is governed by the following:</p> <p>i) 6<sup>th</sup> proviso to section 14 read with section 176(2)(b), 181(1) and (2)(d) of the Electricity Act, 2003;</p> <p>ii) Rules 3 and 4 of the Distribution of Electricity Licensee (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005;</p> <p>iii) The West Bengal Electricity Regulatory Commission (Licensing and Conditions of License) Regulations in particular regulations 2.1.1, 2.7.3, 2.7.7, 2.8.3, 2.8.5, 2.9.2, 5.1.3, 5.11, 5.11.1 and 5.11.3;</p> <p>iv) Judgement dated 06.04.2011 delivered by the Hon'ble Appellate Tribunal for Electricity in Noida Power Co. Limited vs Paschimanchal Vidyut Vitran Nigam Limited and UPERC [(2011 ELR (APTEL)686]</p> |
|--|--|--|--|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>at paragraphs 14-27, 30, 40-41, 54, 56, 57 and 59.</p> <p>It is noteworthy that in view of the constitution bench judgement in PTC vs CERC (2010) 4 SCC 603 at paragraphs 2, 17, 25, 28, 53-58 and 68, the Commission in exercise of its powers is bound by its Regulations and provisions of the Electricity Act, 2003 read with the Rules and Regulations thereunder.</p> <p>b) Roll-out plan of IPCL amounts to cherry picking and is contrary to law:</p> <p>i) It is evident from the roll-out plan for the proposed area of operation, as submitted by IPCL, that the focus of IPCL is on EHV, bulk and commercial consumers, especially in the initial roll-out period of three years. As per the regulation 2.7.3 of License Regulations of the Commission, IPCL is required to comply with the USO under section 43 of the Electricity Act and discharge its obligations in a manner that its distribution network expansion programme provides access to a consumer mix more or less commensurate with other licensee(s). Moreover, National Electricity Policy, 2005 makes it clear that an applicant for a second licence should not be allowed to cherry pick and that USO under section 43 is applicable from the outset itself.</p> <p>ii) It is also submitted that as per the judgement held by the Hon'ble Appellate Tribunal for Electricity in the case of Noida Power Company Limited vs Paschimanchal Vidyut Vitran Nigam Limited, grant of</p> |
|--|--|--|--|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>parallel licence is at the discretion of the State Commission and fulfilment of pre-conditions like capital adequacy, credit worthiness etc. will not guarantee grant of a license. The Commission has also to consider all other relevant factors.</p> <p>iii) The network rollout plan, submitted by IPCL, does not provide a detailed roadmap to serve the entire consumers base in the entire district of Purba Medinipur. Moreover, the roll-out plan has to take into consideration the consumer mix of the existing distribution licensee i.e., WBSEDCL, which IPCL has failed to do with.</p> <p>c) IPCL cannot place reliance on credentials of DPSCL to apply for distribution license.</p> <p>i) IPCL has claimed eligibility and technical credentials relying on the experience of DPSCL considering the fact that IPCL and DPSCL were amalgamated and/or merged in the year 2013. As per the order dated 07.07.2014 of the Commission, the merger / amalgamation of IPCL with DPSCL is void on the ground that DPSCL, being a deemed licensee, did not take prior approval of WBERC required under section 17 of the Electricity Act, 2003. However, in light of MAT No. 1643 of 2015 filed by the Commission before the Hon'ble High Court at Calcutta, the status as to legality of the merger / amalgamation between IPCL and DPSCL is sub-judice. It is submitted that if IPCL were to be granted the distribution license and subsequently order dated</p> |
|--|--|--|--|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>07.07.2014 of the Commission is upheld, IPCL would have been granted a license based on technical capabilities of a separate entity. Such a situation would be violation to the extant law and Regulations in as much as an entity without requisite experience and technical / financial wherewithal will be operating as a distribution licensee in Purba Medinipur district.</p> <p>d) DPSCL has failed to comply with the statutory provisions of the Act and the directions given by the Commission:</p> <p>i) Without prejudice to the submission that IPCL cannot rely on DPSCL's credentials, DPSCL itself has failed to comply with statutory provisions and orders of the Commission as per regulation 2.9.4 of the WBERC License Regulations.</p> <p>ii) DPSCL ought to have submitted a phase wise implementation program for supply of electricity to consumers at all voltage levels along with capital expenditure details and phase wise programme for implementation of Regulation 2.9.2 License Regulations within March, 2014. But, DPSCL did not submit any such implementation plan and capex estimates. DPSCL was further directed by the Commission in its order dated 13.08.2014 to submit a report regarding its readiness to supply electricity to all consumers under its area of supply along with investment proposal and to come up with its investment proposal required for building up infrastructure to give electric supply to all consumers including low and medium voltage consumers. But, DPSCL did not comply with the same.</p> |
|--|--|--|---|



In Re application submitted by India Power Corporation Limited seeking Grant of License to India Power Corporation Limited under section 14 of the Electricity Act, 2003 for distribution of electricity in Purba Medinipur district in the State of West Bengal.

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>iii) DPSCCL has failed to comply with its USO obligations which is a default of its own license terms and also failed to comply with the directions given by the Commission in its order dated 13.8.2014.</p> <p>In view of above, DPSCCL, being a deemed distribution licensee, has violated provisions of USO and other provisions of the License Regulations. The failure of DPSCCL to comply with the above calls for revocation of licence of DPSCCL in terms of regulation 5.17 of License Regulations read with section 19(a) of the Electricity Act, 2003</p> <p>e) It has no merit in IPCL's premise of selecting Purba Medinipur District for the reasons as stated below:</p> <p>It is observed that IPCL has envisaged supply of electricity obtained from its subsidiary company's generating station, i.e., IPC(H)L. However, in terms of regulation 2.7.8 of the License Regulations, the arrangement envisaged by IPCL is impermissible. IPCL will indulge in cherry picking by supplying power owned by its own subsidiary to EHV, industrial and bulk consumers at a cheaper rate which has been discouraged under regulation 2.7.8 of the License Regulations since this require prior approval of the Commission. It is submitted that without prior approval of the Commission regarding the sourcing of electricity from IPC(H)L, IPCL is precluded from citing the same as a reason to apply for distribution licence.</p> <p>15.0 The suggestions received from a few other suggestors in the hearing is regarding generating company which relates to IPC(H)L. Since the present hearing is related to grant of</p> |
|--|--|--|---|

