



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. OA-382/21-22**

IN REGARD TO THE APPLICATION SUBMITTED BY INDIA POWER CORPORATION LIMITED (IPCL) UNDER REGULATION NO. 5.15.1 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (LICENSING AND CONDITIONS OF LICENSE) REGULATIONS, 2013 SEEKING INTERPRETATION WITH RESPECT TO LICENSE AND TERMS AND CONDITIONS OF LICENSE OF IPCL.

PRESENT:

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI DURGADAS GOSWAMI, MEMBER
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 22.12.2021



Application under regulation no. 5.15.1 of the West Bengal Electricity Regulatory Commission (Licensing and Conditions of License) Regulations, 2013 seeking interpretation with respect to license and terms and conditions of license of IPCL



FACTS IN BRIEF:

- 1.0 India Power Corporation Limited (in short 'IPCL') has submitted an application on 27th October, 2021 under regulation 5.15.1 of West Bengal Electricity Regulation Commission (Licensing and Conditions of License) Regulations, 2013, (to be referred as the 'Licensing Regulations') in case no. OA-382/21-22 to the West Bengal Electricity Regulatory Commission (in short 'Commission') seeking interpretation of the Commission in respect of the license and terms and conditions of the license of IPCL and whether under the license terms, IPCL could have executed Corporate Guarantees dated 23.09.2016.
- 2.0 In the petition, it is submitted that IPCL is engaged in generation and distribution of electricity mainly to the collieries covering over 618 square kilometer area in and around Asansol – Raniganj belt.
- 3.0 The petition of IPCL inter-alia stated the following:
 - 3.1 IPCL acquired 95.07% equity share of Meenakshi Energy Limited (hereinafter "MEL") in the form of stake sale from ENGIE Global Developments B.V. by way of a Share Sale Agreement dated 29.08.2016.
 - 3.2 The financial institutions/banks, who had funded the debt portion of such investment towards the acquisition of MEL, had sought Corporate Guarantees to the tune of Rs. 3345 Crores from IPCL, being the Parent/Promoter Company.
 - 3.3 The said Corporate Guarantee dated 23.09.2016 was executed by IPCL based on assurances and legal opinions provided by the Lenders that the Corporate Guarantee being limited only to its Non - Regulated Assets and surplus amounts from the Regulated Assets as defined under the said Corporate Guarantees, there was no requirement of seeking prior approval from the Commission under Regulation 5.13.2 of the Licensing Regulations.
 - 3.4 In order to expedite the transaction and out of economic compulsion, which was unavoidable at that particular time, IPCL was constrained to execute the Corporate Guarantee, dated 23.09.2016 for the Loan facilities availed by MEL. A copy of the Corporate Guarantee dated 23.09.2016 executed by IPCL for the Phase I and Phase II loan facilities availed by



MEL has been submitted along with the petition.

- 3.5 Subsequent to the execution of the Corporate Guarantee, IPCL filed a petition under Regulation 5.13.2 of the Regulations before the Commission in Case No. WBERC/OA-260/17-18 seeking generic permission from the Commission to allow IPCL to issue Corporate Guarantee to funding agencies from time to time for business acquisition activities outside the normal area of its distribution license.
- 3.6 The Commission vide its order dated 9.11.2017 did not allow IPCL to issue Corporate Guarantee to any funding agencies and / or any other agencies as prayed for considering the fact that the proposal of business acquisition, as per the Regulations, is non-specific and that the interest of the consumers within the existing licensed area of the petitioner may hamper if the corporate guarantee is enforced by the lenders due to adverse business situation. It was, however, held that IPCL may come up with specific proposal of business acquisition for prior approval of the Commission, as per the provisions specified in the Regulations.
- 3.7 Thereafter, IPCL filed another Petition dated 15.05.2018, bearing Case No. WBERC/OA-274/18-19 seeking the permission of the Commission to grant consent for the issuance of Corporate Guarantees by IPCL to the lenders for the specific case of MEL to the tune of Rs. 3345 Crores.
- 3.8 The Commission vide its order dated 07.08.2018 held that the debt service capacity of IPCL was stressed and the corporate guarantee if extended could attract a charge on the assets of IPCL in case of default in debt servicing by MEL and subsequent inadequacy of security, if were to arise. The Commission further held that the financials of IPCL did not accommodate to extend a corporate guarantee to the lenders of MEL against a loan attributable to a project beyond the distribution license area of IPCL under the West Bengal Electricity Regulatory Commission, which could attract a charge on the assets of IPCL used for supplying power to the consumers of electricity in the state of West Bengal.
- 3.9 In view of the prior orders dated 9.11.2017 and 07.08.2018 of the Commission, IPCL has prayed before the Commission to determine whether prior consent in terms of Regulation



5.13.2 of the Licensing Regulations was required to be obtained from the Commission before execution of the Corporate Guarantee to the concerned lenders in light of Clause 2.1 and 2.2 of the Corporate Guarantee dated 23.09.2016.

OBSERVATIONS OF THE COMMISSION:

- 4.0 Going through the facts stated above, the West Bengal Electricity Regulatory Commission (WBERC) observes that –
- 4.1 IPCL has executed the Corporate Guarantee dated 23rd September 2016 without prior approval of the State Commission in spite of the regulation 5.13.2 of the WBERC Regulations (Licensing & Conditions of License), 2013 being in vogue which inter alia states, *“The licensee shall obtain prior written consent from the Commission in making any loans to, or issuing any guarantee for any obligation of any person which is beyond the normal area of business activities of the licensee in respect of its core activities.”*
- 4.2 Clause 17 of both the Guarantee documents placed at Annexure-2 and Annexure-3 to the petition state the Representations and Warranties made by IPCL therein under different clauses. Relevant extract of clause 17.1(i) states, “ Authorization: The Guarantor is empowered and authorized to execute this Guarantee.....and all regulatory and corporate authorizations and consents required in connection with execution, perfection, delivery and performance of this Guarantee have been obtained and are in full force and effect and all conditions of each such authorization and consent have been complied with”.
- 4.3 Clause 18 of the Guarantee Documents state the Covenants of the Guarantee therein under different clauses. Relevant extract of clause 18(v) states, “The Guarantor shall not sell, or otherwise dispose of, in any manner, whether by a single transaction or a series of transactions (related or not), assets or properties which would affect the ability of the Guarantor to perform its obligations under the guarantee.”.
- 4.4 It is evident that IPCL has executed the Corporate Guarantee involving covenant on its assets as at clause 18(v) and has made a warranty regarding regulatory consent as at clause 17.1(i) of such guarantee without obtaining consent of this Commission.



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- 4.5 In spite of the Orders of this state Commission dated 9th November 2017 & dated 7th August 2018 IPCL neither has withdrawn the Corporate Guarantee in question nor did they come up with any further explanation.

ORDER OF THE COMMISSION:

- 5.1 The Commission, thus, states that prior consent in terms of regulation 5.13.2 of the WBERC Regulations (Licensing & Conditions of License), 2013 was required to be obtained from the State Commission before execution of the Corporate Guarantee.
- 5.2 IPCL is, hereby, directed to explain within fourteen (14) days from the date of issuance of this Order as to why action under Section 142 of the Electricity Act 2003 shall not be initiated against them without prejudice to any other action for which the utility is liable in any other law for violation of the provision under the Electricity Act..
- 6.0 A copy of the order shall be posted in the website of the Commission.
- 7.0 IPCL shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

Dated: 22.12.2021

Sd/-
SECRETARY