

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 209/MP/2014

Coram:

**Shri Gireesh B Pradhan, Chairperson
Shri M.Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A. S. Bakshi, Member**

Date of Hearing: 9.12.2014

Date of Order : 7.01.2015

In the matter of

Petition under Section 17 (3) of the Electricity Act, 2003.

And

In the matter of

Torrent Energy Limited
Torrent House, Off Ashram Road,
Ahmedabad-380 009

...Petitioner

Vs

1. Power Grid Corporation of India
B-9, Qutab Institutional Area
Katwaria Sarai,
New Delhi-110 016
2. Gujarat Urja Vikas Nigam Ltd. (GUVNL)
Race Course Road,
Vadodara-390007
3. Torrent Power Limited
Torrent House, Off Ashram Road,
Ahmedabad-380 009
4. Western Regional Power Committee
F-3, MIDC Area, Marol,
Opp. SEEPZ, Central Road,
Andheri (East), Mumbai-400 093
5. MP Power Trading Company Ltd.
Shakti Bhawan, Rampur,
Jabalpur:482008



6. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL),
Prakashgad, Bandra (East),
Mumbai-400051
7. Chhattisgarh State Power Distribution Company Ltd. (CSPDCL),
Vidyut Seva Bhavan, P.O. Sundernagar,
Danganiya, Raipur-492013
8. Government of Goa, Electricity Department
Third Floor, Vidyut Bhavan,
Panaji, Goa-403001
9. Administration of Dadra & Nagar Haveli
Electricity Department,
Govt of UT of Dadra & Nagar Haveli,
Silvassa-396230
10. Electricity Department, Administration of Daman & Diu,
Secretariat, Fort Area, Moti Daman,
Daman-396220

Respondents

Parties present:

1. Ms. Deepa Chauhan, Advocate for the petitioner
2. Shri Deepak Dalal, TEL
3. Shri Chetan Bundela, TPL
4. Shri R.S.Negi, TEL

ORDER

The petitioner, Torrent Energy Limited (**TEL**) has filed the present petition under Section 17 of the Electricity Act, 2003 (Act) for approval of the proposed amalgamation/merger of Torrent Energy Limited with Torrent Power Limited (TPL).

2. The petitioner has submitted as under:

(a) TEL an unlisted public company, incorporated under the Companies Act, 1956 is a wholly owned subsidiary of Torrent Power Limited, a company incorporated under the Companies Act, 1956. TEL has been granted the status of a co-developer by the Ministry of Commerce and Industry and as a co-developer and is responsible for catering to the entire power requirement of



entities coming up in the SEZ. TEL is stated to be engaged in developing 1196.65 MW gas based DGEN Mega Power Project and associated transmission facility for power evacuation and the power distribution infrastructure at Dahej SEZ, apart from being a distribution licensee in the SEZ..

(b) TEL has been granted licence by the Commission for construction, operation and maintenance of DGEN-Navsari Transmission System by order dated 16.7.2013, in Petition No. 123/TL/2012.

(c) Torrent Cables Limited (TCL), incorporated under the Companies Act, 1956, is stated to be engaged in the business of manufacture and supply of , power cables since 1989 and is one of the market leaders in HT power cables segment.

(d) TPL, a listed public limited company, is stated to be an integrated utility engaged in the business of power generation and distribution of electricity with operation in the States of Gujarat, Maharashtra and Uttar Pradesh.

(e) In the proposed merger, TEL and TCL are the Transferor companies and TPL is the Transferee company. A scheme of amalgamation/merger has been proposed and approved by the respective Board of Directors of TEL, TPL and TEL whereby TEL and TCL will be amalgamated/merged with/into TPL. The proposed scheme shall be submitted for consideration of the High Court of Judicature, Gujarat under relevant provisions of the Companies Act, 1956 and/or the Companies Act, 2013 for sanction and approval. The amalgamation/merger would become effective after sanction of the said

scheme by the Hon`ble High Court and fulfillment of the conditions laid down in the scheme.

3. The petitioner has submitted that the following objectives will be achieved on account of amalgamation/merger in the interest of customers, employees and other stakeholders of the respective companies:

- (a) Alignment of various aspects of the power business of the Torrent Group in a logical group and sequence;
- (b) Synergies of operations, *inter alia*, from consolidated fuel and spares procurement, optimization of logistics costs and more refined power generation / distribution models;
- (c) Integration of business thereby providing significant impetus to the growth;
- (d) Concentrated management focus and improved organizational capability;
- (e) Integrated, rationalized and streamlined management structure of the merged business;
- (f) Strengthening of financial position with wider capital base and increased leverage capacity of the merged entity;
- (h) Pooling of resources for optimum utilization;

- (i) Pooling of human talent in terms of manpower, management, administration and marketing to result in saving of costs;
- (j) Avoiding duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances;
- (k) Synchronizing of efforts to achieve uniform corporate policy;
- (l) Improved opportunities for new ancillary business, expansion and modernization of existing ancillary business; and
- (m) Addressing the emerging challenges due to enhanced competitive scenario.

4. The petitioner has submitted that the proposed amalgamation/merger would result in merger of TEL with TPL and consequential change in the licence granted to TEL so as to incorporate name of TPL which requires prior approval of the Commission as specified under Section 17 of the Electricity Act, 2003. According to the petitioner, amalgamation/merger is not likely to affect in any manner the existing licence or increase the scope or areas of such license.

5. Against the above background, the petitioner has made the following prayers:

“Under the circumstances, the petitioner TEL requests the Hon’ble Commission to grant prior:

(1) Approval for the proposed amalgamation/merger between the transferor companies i.e the petitioner, TEL and TCL and the Transferee Company, TPL in so far as such amalgamation/merger results in the merger of TEL with TPL.

(2) Approval so as to incorporate the name of TPL as the licensee in place of TEL in the licence granted to TEL

Subject to the order and directions that may be issued by the High Court of Gujarat on the scheme of amalgamation/merger of TEL and TCL with TPL.”

6. After hearing the learned counsel for the petitioner, notices were issued to the respondents to file their replies. None of the respondents has filed any reply.

7. The matter was heard on 9.12.2014. During the course of hearing, learned counsel for the petitioner submitted that none of the respondents has filed any reply and requested to approve proposed amalgamation/merger and change of name of the transmission licensee from TEL to TPL.

Analysis and Decision:

8. We have heard learned counsel for the petitioner and perused documents on record. The following issues arise for our consideration:

(a) Whether the proposed merger will be in conflict with third proviso to Section 41 of the Act?

(b) Whether this is a fit case for according approval under Section 17 (1) (b) of the Act for amalgamation/merger of TEL? and

(c) Whether the transmission company after the merger will be required to seek assignment of licence granted to TEL?

Issue No. 1: Whether the proposed merger will be in conflict with third proviso to Section 41 of the Act?

9. According to third proviso to Section 41 of the Act, a transmission licensee cannot enter into any contract or otherwise engage in the business of trading in electricity. In the present case, TPL is having distribution business. The distribution



licensees of TPL are deemed trading licensee in terms of last proviso of Section 14 of the Act. After the merger, the transferee company, namely TPL will undertake the activity of transmission of electricity and distribution business. Therefore, the issue that needs deliberation is whether bar of third proviso to Section 41 would be attracted in case of approval for amalgamation/merger of TEL with TPL, since TPL is a deemed trading licensee.

10. The staff of the Commission asked the petitioner to clarify as to how the third proviso of Section 41 of the Act will be complied with after the proposed merger, since TPL would be carrying out the business of transmission as well as trading as a deemed trading licensee.

11. In response, the petitioner in the affidavit dated 13.9.2014, has clarified as under:

“The present case is different on following counts:

- (1) TPL is distribution licensee and has not availed of a trading licence.
- (2) TPL is allowed to undertake trading in its capacity as distribution licensee without licence as per the last proviso to Section 14 of the Act.
- (3) The trading, if any, carried out by TPL is and will be only with reference to sale of surplus power/purchase of shortfall pertaining only to its own consumers which is allowed under Section 14 of the Act. TPL would therefore not contravene the provisions of the last proviso to Section 41 of the Act.
- (4) It is also pertinent to note that the present case, the transmission licensee sought to be transferred and vested pursuant to merger/amalgamation in TPL is limited and defined as per the transmission licensee to the segment mentioned in the schedule to the transmission license granted by the Commission.”

12. There is no statutory bar for a single company to carryout generation, transmission and distribution of electricity. However, the distribution company is a



deemed trading licensee and therefore, there may be conflict of interest between the trading activity and transmission activity undertaken by TPL after the merger. The petitioner has clarified that the trading by the distribution arm of TPL will be confined to sale of surplus power or purchase of shortfall pertaining to its own consumers. We direct that the petitioner shall abide by its commitment and shall not indulge in trading by purchasing electricity from third parties for the purpose of sale to any other licensee or the consumers of other licensee. We further direct that the petitioner shall not apply for trading licence either to this Commission or any of the State Commission during the subsistence of the transmission licence.

Issue No. 2: Whether this is a fit case for according approval under Section 17 of the Act for amalgamation/merger of TEL?

13. Section 17 of the Act provides as under:

"Section 17. (1) No licensee shall, without prior approval of the Appropriate Commission-

(a) Undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) Merge his utility with the utility of any other licensee:

Provided nothing contained in this sub-section shall apply if the utility of the licensee is situated in State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmits or distributes electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission."

Under the above provisions, the licensee cannot merge his utility with any other entity without the approval of the Commission. Accordingly, the petitioner has approached the Commission for prior approval. It is therefore, necessary to see whether the proposed merger would have any adverse impact on the business of transmission of electricity presently being carried out by TEL. The petitioner has submitted that the scheme of amalgamation/merger as a whole is just, fair and reasonable and completely beneficial in terms of the positive gain which would result and be consequential upon the amalgamation/merger of TEL and TCL with TPL.

14. The main purpose of the amalgamation is stated to achieve integrated, rationalized and streamlined management structure of the merged business, strengthening of financial position with wider capital base, pooling of resources for optimum utilization and pooling of human talent in terms of manpower, management, administration and marketing. In our view, the objectives of the merger are not in conflict with carrying out the business of transmission as a regulated and licensed business by the Transferee Company. However, provisions of Section 41 of the Act and Regulation 17 of the Transmission Licence Regulations require the licensee to maintain separate account of other businesses to ensure that the transmission business neither subsidises in any way the other business undertaking nor encumbers its transmission assets in any way to support such business. It is, therefore, necessary that after the merger, the Transferee Company would be required to maintain separate account of its transmission business and shall make available the accounts of transmission business for inspection under Regulation 16 of the Transmission Licence Regulations whenever required by the Commission. Subject to these conditions, the Commission accords approval under Section 17 (1)

(b) of the Act for merger to TEL with TPL which is being processed by the petitioner in accordance with provisions of the Companies Act.

15. Since TEL is being merged with TPL, we direct that the assets and liabilities of TEL after merger shall be valued at par and shown in the books of TPL at the same value as reflected in the balance sheet of TEL and not at any premium/ discount as it will disturb the debt-equity ratio of TEL which is a regulated entity. After completion of merger, TPL shall submit a certificate (alongwith supporting documents) from the Statutory Auditor that the above directions have been complied with.

Issue No. 3: Whether the transmission company after the merger will be required to seek assignment of licence granted to TEL?

16. TEL has been granted inter-State transmission licence by the Commission. In the present petition, the petitioner has prayed for change of name of the transmission licensee from Torrent Energy Limited to Torrent Power Limited. In response to our query as to whether Torrent Power Limited after the merger would seek a fresh licence or seek assignment of licence granted to TEL in its favour, the petitioner vide its affidavit dated 13.9.2014 has submitted as under:

“The proposed amalgamation seeks to vests and transfer the Transmission Licence of TEL, to Torrent Power Limited, upon the Scheme of merger/amalgamation becoming operative and taking effect pursuant to and consequential to the proceedings being adopted and concluded before the Hon`ble High Court of Judicature, Gujarat, in the scheme of merger/amalgamation of TEL and TCL with TPL and the order and directions that may be issued by the High Court of Gujarat on the scheme of merger/amalgamation of TEL and TCL with TPL.”

17. The submission of the petitioner has been examined. It may be noted that Section 17 of the Act requires separate prior approvals for merger of the utility of the licensee in terms of Section 17 (1) (b) and the assignment of his licence under Section 17 (3) of the Act. The petitioner is pursuing the Company Law Petition before the High Court of Judicature, Gujarat for merger of the Transferor Companies with the Transferee Company for which approval of the Commission has been sought under Section 17 (1) (b) of the Act. After approval by the Hon`ble High Court, TEL will be merged with TPL and will cease to be a legal entity. Therefore, the licence issued to TEL will have to be assigned or transferred in the name of the new legal entity in terms of Section 17 (3) of the Act. Further, Regulation 18 of the Transmission Licence Regulations requires the licensee to report to the Commission any change in major shareholding, ownership or management of the licensee. Since, the merger will result in change in the shareholding, ownership or management of the licensee, it is required to be reported to the Commission. Moreover, in the light of the merger, the terms and conditions of the licence will have to be suitably modified.

18. In the light of the above, we direct TPL to file all relevant information for the purpose of assigning the licence granted to TEL in its favour.

19. With the above, the petition stands disposed of.

Sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(M.Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson