

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 29/RC/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A. K. Singhal, Member**

**Shri A. S. Bakshi, Member**

**Dr. M.K Iyer, Member**

**Date of Order : 09.03.2016**

**IN THE MATTER OF**

Regulatory Compliance Application seeking substitution of Jaiprakash Power Ventures Limited with Himachal Baspa Power Company Limited

**AND**

**IN THE MATTER OF**

Himachal Baspa Power Company Ltd  
Juit Complex  
P.O. Dumehar Bani  
Kandar Ghat-173215  
District Solan  
Himachal Pradesh

**.....Applicant**

**Vs**

1. PTC India Limited,  
NBCC Tower,  
15, Bhikaji Cama Place,  
New Delhi – 110066
2. Haryana Power Generation Corporation Limited,  
Plot No. C-7, Sector – 6,  
Panchkula, Haryana – 134109
3. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow - 226001
4. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath  
Jaipur-302005
5. Ajmer Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road, Ajmer - 305004
6. Jodhpur Vidyut Vitran Nigam Limited,  
Near Power House, Industrial Area,  
Jodhpur - 342003
7. Punjab State Power Corporation Limited,  
The Mall, Old PSEB Building,  
Patiala - 147001

**...Respondents**



## ORDER

Himachal Baspa Power Company Ltd (the applicant herein) had filed Interlocutory Application (I.A.No.29/2015) praying for substitution of its name as the petitioner, in Petition No.434/GT/2014 filed by Jaiprakash Power Ventures Limited (“the Original Petitioner”) for determination of generation tariff of Karcham Wangtoo HEP (1000 MW) for the period from COD till 31.3.2014. Thereafter, this I.A was converted as Regulatory Compliance Application based on the request of the applicant vide its letter dated 5.11.2015.

2. The applicant has submitted that pursuant to sanction of a Scheme of Arrangement between Jaiprakash Power Ventures Limited and Himachal Baspa Power Company Limited by the Hon'ble High Court of Himachal Pradesh on 25.6.2015, *inter-alia* all assets, liabilities, rights, privileges, powers, authorities, obligations, licenses and clearances of Jaypee Karcham Wangtoo Hydroelectric Plant (Karcham Wangtoo HEP) have become the assets, liabilities, rights, privileges, powers, authorities, obligations, licenses and clearances of Himachal Baspa Power Company Ltd with effect from 1.9.2015. It has further submitted that in terms of the Scheme of arrangement, with effect from 1.9.2015, all pending suits, appeals or other proceedings, by or against the Original Petitioner, are to be continued and prosecuted by the applicant herein. The applicant has therefore prayed that in view of the above development, Jaiprakash Power Ventures Limited may be substituted with Himachal Baspa Power Company Limited as the petitioner in Petition No.434/GT/2014. It has also submitted that any reference to Jaiprakash Power Ventures Limited in respect of Karcham Wangtoo HEP in any document forming part of record may also be treated as a reference to Himachal Baspa Power Company Ltd.

3. Subsequently, the applicant vide affidavit dated 26.11.2015 has enclosed the Form INC-28 filed by the applicant and Jaiprakash Power Ventures Limited before the Registrar of Companies (ROC) along with receipt. On a specific direction for submission of the certificate issued by ROC change of name, the applicant vide affidavit dated 12.2.2016 has clarified that



no certificate is issued by the ROC in response to the filing of Form No. INC-28. It has further clarified that ROC issues only a 'Memorandum Acknowledging Receipt of Documents' in response to the filing of Form No. INC-28. It has also pointed out that the transaction status of the filing Form INC-28 as downloaded from the web-site of the Ministry of Corporate Affairs show the same as approved.

4. The documents submitted by the petitioner including the Scheme of Arrangement enclosed with the copy of order of the Hon'ble High Court of Himachal Pradesh dated 25.6.2015 has been examined. Some of the provisions in the Scheme of Arrangement sanctioned by order of the High Court dated 25.6.2015 is referred to in the subsequent paragraphs.

5. In terms of Part-I (Introduction) of the Scheme of arrangement, Jaiprakash Power Ventures Limited, a public limited company incorporated under the Companies Act, 1956 and engaged *inter alia* in the business of owning and operating power generation plants in India is the "Transferor Company" and Himachal Baspa Power Company Ltd, a public limited company incorporated under the Companies Act, 1956 and a subsidiary of the Transferor Company in which the Transferor company holds 99% of the issued, subscribed and paid up share capital is the "Transferee Company".

6. Schedule -I of the Scheme of Arrangement provides as follows:

"Part A - the term "Transferred Undertaking No.1" means the entire business of Baspa Hydro electric Project Stage-II with installed capacity of 300 MW located in the district of Kinnaur in the State of Himachal Pradesh..."

"Part B - the term Transferred Undertaking No.2" means the entire business of Karcham Wangtoo Hydro Electric Project with installed capacity of 1091 MW located in the district of Kinnaur in the State of Himachal Pradesh..."

7. Part-I [1.1(c)] of the Scheme of Arrangement provides for the transfer of the "Transferred Undertaking No.1" and the "Transferred Undertaking No.2" of the Transferor Company to and vesting thereof in the "Transferee Company" in accordance with the terms of the scheme and pursuant to the provisions of Section 391 and 394 of the Companies Act, 1956 and other relevant provisions of the Act.



8. Clause 4.5 of the Scheme of Arrangement provides that from the “Appointed date” any suit, appeal or other proceedings (whether pending in any Court or before any statutory or judicial or quasi-judicial authority or tribunal) pertaining to and forming part of the Transferred Undertaking No.1 and Transferred Undertaking No.2 by or against the Transferor Company pending as on Effective date, the same shall not abate or be discontinued and all such proceedings may be continued by or against the Transferee company. It further provides that the “Transferee Company” shall get itself substituted in all such proceedings in place of the Transferor Company and take all steps as may be necessary to have the proceedings continued, prosecuted and enforced by or against the Transferee Company to the exclusion of the Transferor Company.

9. The relevant portion of the order 25.6.2015 of the Hon’ble High Court of Himachal Pradesh in Company Petition No.6/2015 wherein the Scheme of Arrangement has been sanctioned is extracted as under:

“...this Court doth hereby sanction the Scheme of Arrangement set forth in the Petition herein and in the Schedule I hereto, and doth hereby declare the same to be binding on the Shareholders and Creditors of the above named Transferor and Transferee Companies and also on the said companies...”

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“In view of the aforesaid, I am of the opinion that the Scheme deserves to be sanctioned and is accordingly sanctioned. That the said Petitioner companies are directed to file with the Registrar of Companies a certified copy of this order along with the scheme of arrangement within 30 days from the date of this order and the scheme will come into effect on it being so filed with effect from the Appointed date mentioned in the scheme.”

THIS COURT DOTH ORDER

(1) That all the properties, rights and powers of the Transferred Undertaking No.1 and 2 specified in the fourth and fifth parts of the Scheme of Arrangement and all other properties, rights and powers of the Transferor Undertaking No1 and 2 be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Undertaking No.1 and 2...

(2) That all liabilities and duties of the Transferor Undertaking No1 and 2 be transferred without further act or deed to the Transferee Company and accordingly the same shall be pursuant to Section 394(2) of the Companies Act, 195, be transferred to and become liabilities and duties of the Transferee Company.

(3) That all proceedings now pending by or against the Transferor Undertaking No.1 and 2 be continued by or against the Transferee Company;



(4) That the Transferee Company do without further application allot to the Transferor Company the Securities (Equity shares and Non-Convertible Debentures) in the Transferee Company to which they are entitled under the Scheme of Arrangement; and

(5) That the Transferor company do within **30 days** after the date of this Order cause a certified copy of this order to be delivered to the Registrar of Companies, Himachal Pradesh, for registration and on such certified copy being so delivered, the Transferred Undertaking No.1 and 2 shall be transferred to the Transferee Company.

10. The Appointed date, in terms of Clause 2.1 (b) Part-II (definitions) of the Scheme of Arrangement, is the 'Effective date' as defined in the said scheme. Clause 2.1(f) of the scheme defines 'Effective date' as under:

"(f) 'Effective date' or "coming into effect of this scheme" or effectiveness of this scheme or "scheme becoming effective" of the like expressions used in the Scheme shall be a reference to the later of the date on which;

(i) The certified copy of the order passed by the High Court under section 394 of the act of 1956 sanctioning the Scheme is filed with the Registrar of the Companies, Himachal Pradesh;

(ii) Conditions referred to in clause 8.3 are satisfied;

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11. In terms of the sanctioned Scheme of Arrangement, the entire business of Baspa Hydro Electric Project Stage-II and the entire business of Karcham Wangtoo Hydro Electric Project stands transferred and vested in the transferee company namely the "Himachal Baspa Power Company Ltd". It is observed that the petitioner has been directed to file the certified copy of its order along with the Scheme of Arrangement with the Registrar of Companies within 30 days from the date of receipt of the order and on being filed the Scheme of Arrangement was directed to come into effect from the 'Appointed date' as mentioned in the scheme.

12. The 'appointed date' has been defined in the Scheme of Arrangement as the 'effective date' on which the Scheme shall come into effect. This effective date is the date on which the certified copy of the order of the Hon'ble Court is filed with Registrar of Companies or the Conditions referred to in Clause 8.3 of the Scheme is satisfied, *whichever is later*. Clause 8.3 provides that the Scheme is conditional upon and subject to:

(i) Consents by majority of the shareholders and creditors of the Transferor company and Transferee company to the scheme

(ii) Scheme being approved by the Stock exchanges



(ii) approval of the scheme by SEBI in terms of applicable SEBI circulars, if any, and

(iv) sanction of the Scheme by the Court in terms of Section 391 and 394 of the Act of 1956 and other relevant provisions of the Act.

13. It is noticed that the Hon'ble Court vide its order dated 8.1.2015 in Company Petition No.3/2015 had directed for convening of the meetings of the shareholders and the creditors of the Transferor company and the shareholders of the Transferee Company. Pursuant to this, meeting was held on 28.2.2015 and resolution approving the scheme was unanimously passed by the Shareholders /by requisite majority Creditors of the Transferor/Transferee Company. The National Stock Exchange of India (NSE) and Bombay Stock Exchange (BSE) had accorded 'no-objection' to the draft scheme vide its letters dated 19.12.2014 and 2.1.2015 respectively. Pursuant to the sanction of the said Scheme by the Hon'ble Court, the NSE and the Securities and Exchange Board of India (SEBI) have acknowledged the same vide their letters dated 22.7.2015. Subsequently, the Transferor Company (the original petitioner) and the Transferee Company (the applicant herein) have separately filed e-Form INC-28 before the Registrar of Companies (ROC) on 1.9.2015, bringing to his notice the order dated 25.6.2015 passed by the Hon'ble High Court sanctioning the said Scheme of Arrangement and the same has been acknowledgement by the ROC.

14. The petitioner has submitted that with effect from 1.9.2015, all pending suits, appeals or other proceedings by or against the Original petitioner (Jaiprakash Power Ventures Ltd) is to be continued and prosecuted by the applicant (Himachal Baspa Power Company Ltd). As the applicant has filed the order of the Hon'ble High Court dated 25.6.2015 before the ROC on 1.9.2015 (the appointed date) and the said date being the later date as demonstrated in para 13 above, the sanctioned Scheme of Arrangement, wherein the business of Baspa HEP, Stage-II and Karcham Wangtoo HEP has been transferred to Himachal Baspa Power Company Ltd, has come into effect from 1.9.2015. Consequent upon this, Petition No.434/GT/2014 filed by Jaiprakash Power Ventures Ltd for determination of generation tariff of Karcham Wangtoo HEP for the period 2014-19 is to be continued by Himachal Baspa Power Company Limited. Accordingly, the prayer of the applicant is allowed and the substitution of the Petitioner M/s



Jaiprakash Power Ventures Limited with Himachal Baspa Power Company Limited, in Petition No.434/GT/2014 is ordered.

15. Regulatory Compliance Application is disposed of as above.

**Sd/-**  
**(Dr. M.K. Iyer)**  
**Member**

**Sd/-**  
**(A.S. Bakshi)**  
**Member**

**Sd/-**  
**(A.K.Singhal)**  
**Member**

**Sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**

