

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 12/MP/2016

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S.Bakshi, Member
Dr. M.K.Iyer, Member

Date of Hearing: 15.3.2016
Date of Order : 27.4.2016

In the matter of

Petition in compliance with the directions issued vide order dated 7.1.2015 in Petition No. 209/MP/2014 for the purpose of assigning licence granted to Torrent Energy Limited to Torrent Power Limited.

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. Western Regional Power Committee
F-3, MIDC Area, Marol,
Opp. SEEPZ, Central Road,
Andheri (East), Mumbai-400 093
3. MP Power Trading Company Ltd.
Shakti Bhawan, Rampur,
Jabalpur:482008
4. Gujarat Urja Vikas Nigam Ltd. (GUVNL)
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara-390007
5. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL),
Prakashgad, Bandra (East),

Mumbai-400051

6. Chhattisgarh State Power Distribution Company Ltd. (CSPDCL),
Vidyut Seva Bhavan, P.O. Sundernagar,
Danganiya, Raipur-492013
7. Goa Electricity Department
Govt. of Goa, Third Floor, Vidyut Bhavan,
Panaji, Goa-403001
8. Electricity Department, UT of Daman & Diu,
Secretariat, Fort Area, Moti Daman,
Daman-396220

Respondents

Parties present:

Shri Chetan Bundela, TPL
Shri S.Negi, TPL

ORDER

The petitioner, Torrent Power Limited has filed the present petition for assignment of transmission licence granted to Torrent Energy Limited (TEL) in favour of Torrent Power Limited (TPL).

2. 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.

3. 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.

4. TEL had filed Petition No. 209/MP/2014 under Section 17 of the Electricity Act, 2003 (Act) for approval of the amalgamation/merger of TEL with TPL and consequential changes in the licence to incorporate the name of TPL. The

Commission vide order dated 7.1.2015 directed TPL to file all relevant information for the purpose of assigning the licence granted to TEL in favour of TPL. Accordingly, the petitioner has filed the present petition for assignment of transmission licence granted to TEL in favour of TPL.

5. The petitioner has submitted that the Hon`ble High Court of Judicature, Gujarat vide judgment dated 13.8.2015 in Company Petitions No. 216 of 2015, 217 of 2015 and 218 of 2015 approved the scheme of amalgamation of TEL and Torrent Cables Limited (TCL) with TPL. The petitioner has placed on record the Auditor`s certificate stating that the assets and liabilities of TEL after merger has been 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. The petitioner has submitted that there is no change in the management of the licensee as compared to the original structure. The petitioner has placed on record the comparative statement of shareholding pattern post-amalgamation and pre-amalgamation of TPL as under:

S.No.	Category	Post -amalgamation		Pre-amalgamation	
		No. of shares held	%	No. of shares held	%
1.	Promoters	25,74,43,318	53.56	25,24,59,93	53.44
2.	The Governor of Gujarat & Gujarat State investment Limited	5,39,28,671	11.22	5,39,28,671	11.41
3.	LIC and its funds	3,74,81,532	7.80	3,74,81,532	7.93
4.	GIC and its subsidiaries	2,59,43,908	5.40	2,59,43,908	5.49
5.	Mutual funds	2,09,51,777	4.36	2,09,51,586	4.43
6.	FII's	2,00,87,202	4.18	2,00,87,202	4.25
7.	Banks	4,73,271	0.10	4,72,616	0.11
8.	Others	6,43,07,105	13.38	6,11,22,800	12.94
	Total	48,06,16,784	100.00	47,24,48,308	100.00

6. The petition was heard on 15.3.2015 after notice to the petitioner and the respondents. No reply has been filed by the respondents.

7. During the course of the hearing 15.3.2015, the representative of the petitioner submitted that the merger of TEL and TCL and TPL is pursuant to the scheme of amalgamation/merger approved by the Hon'ble High Court of Judicature, Gujarat. The representative of the petitioner further submitted that respective Board of Directors of TEL, TPL and Torrent Cables Limited have approved the merger/amalgamation of TEL and TCL with TPL. The representative of the petitioner requested to assign the transmission licence granted to TEL to TPL. The petitioner was directed vide ROP for the hearing dated 15.3.2015 to submit audited balance sheets of TEL, TPL and TCL prior to amalgamation and consolidated balance sheet of these companies post amalgamation.

8. The petitioner, vide its affidavit dated 25.3.2016, has submitted the details of change in shareholding pattern of TPL, TCL and TEL pre-merger and post merger as under:

Particulars		No. of shares	%
Pre-merger Paid up Capital			
TPL			
Total shares	a	47,24,48,308	100
Holding by promoters	b	25,24,38,986	53.43
TCL			
Total shares	c	85,98,395	100
Holding by promoters	d	52,45,606	61.01
TEL			
Total shares	e	1,98,82,20,000	100
Holding by TPL	F=e	1,98,82,20,000	100
Allotment of TPL Shares to TCL shareholders			
Total shares	$g=c*(19/20)$	81,68,476	100
Holding by promoters	$h=d*(19/20)$	49,83,325	61.01
Allotment of TPL Shares to TEL shareholders			
Total shares	$i=e*(0)$	NIL	
Holding by TPL	$j=i$	NIL	
Post-merger Paid up Capital			
TPL			
Total shares	$k=a+g+i$	48,06,16,784	100
Holding by promoters	$l=b+h+j$	25,74,22,311	53.56
TCL			

Total shares	m	NIL	-
Holding by Promoters	n	NIL	-
TEL			
Total shares	o	NIL	-
Holding by TPL	p	NIL	-

*All assets and liabilities as on 1.4.2014 of the transferor company (TEL) have been transferred to Torrent Power Ltd. at the book value as were recorded in the books of accounts of transferor Company as on 31.3.2014. TEL equity shares cancelled due to merger of TEL with TPL as TEL is wholly owned subsidiary of TPL.

9. The petitioner has placed on record the audited balance sheet of TEL, TPL and TCL prior to amalgamation and consolidated balance sheet thereof post amalgamation.

10. Section 17 (3) of the Act provides as under:

“(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 assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the approval of the Commission. Accordingly, the petitioner has approached the Commission for prior approval.

11. TEL had filed the petition before the Commission for approval of the amalgamation/merger of TEL with TPL under Section 17 (3) of the Act. The Commission after considering the submission of the petitioner, vide order dated 7.2.2015 directed that TEL would be merged with TPL after approval of scheme of merger/amalgamation of TEL and TCL with TPL by the Hon`ble High Court of Judicature of Gujarat. Thereafter, the licence issued to TEL would have to be assigned or transferred in the name of the new legal entity in terms of Section 17 (3)

of the Act. Accordingly, the petitioner was directed to file all relevant information for the purpose of assigning the licence granted to TEL in favour of TPL. Relevant portion of the said order dated 7.1.2015 is extracted as under:

“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.”

12. In compliance with our direction, the petitioner has filed the present petition for assignment of transmission licence granted to TEL in favour of TPL. As per our direction, the petitioner has placed on record the shareholding pattern and audited balance sheets of pre and post merger of TEL, TCL and TPL. The petitioner has submitted that there is no change in the management of licensee subsequent to the merger. Hon`ble High Court of Gujarat vide its 13.8.2015 in Company Petitions Nos. 216 of 2015, 217 of 2015 and 218 of 2015 has also approved scheme of amalgamation in terms of Sections 391 to 394 of the Companies Act,1956. Under sub-section (3) of Section 17 of the Act, a licensee is required to obtain “prior” approval of the Commission for assigning the licence or transfer of its utility. In the present case, the transmission business of TEL which is the licensee for inter-State transmission of electricity is being transferred to TPL. The licence granted to TEL has been proposed to be assigned in favour of TPL. In terms of Sub-section (3) of

Section 17 of the Act, we approve assignment of the transmission licence in favour of TPL. Consequent to the assignment of licence, all rights, assets, liabilities and obligations of TEL in respect of the transmission business shall vest in TPL which shall also remain bound by the terms and conditions of licence.

13. After transfer of the transmission business to TPL from TEL, TEL got merged into TPL and has submitted merged financial statements for the financial year 2014-15.

14. Since TPL has become a regulated business after its amalgamation and consequent assignment of licence, TPL in the event of acquiring any other business will be required to seek prior permission of the Commission in terms of Section 17 (1) of the Act.

15. It is directed that in terms of the Regulation 15 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 as amended from time to time, TPL shall maintain the account of its transmission business separately.

16. The petitioners shall submit the original licence to the Secretariat of the Commission for appropriate endorsements thereon.

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

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

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson