

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 75/MP/2017**

**Coram:**

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

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

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

**Date of Order : 1.2.2018**

**In the matter of:**

Petition for the approval of transfer of trading licence held by JSW Power Trading Company Limited to JSW Green Energy Limited.

**And**

**In the matter of**

1. JSW Power Trading Company Limited.  
JSW Center, Bandra Kurla Complex,  
Bandra (East), Mumbai 400 051.
2. JSW Green Energy Limited  
JSW Centre, Bandra Kurla Complex  
Bandra (East), Mumbai-400051.

**...Petitioners**

**Parties Present:**

Shri Ramanuj Kumar, Advocate, JPTCL and JGEL

Shri Aman Dixit, Advocate, JPTCL and JGEL

**ORDER**

The Petitioner No. 1, JSW Power Trading Company Limited (JPTCL) a Category I inter-State trading licensee, has filed the present petition seeking permission to transfer the inter-State trading licence granted to JPTCL to JSW Green Energy Limited (JGEL), Petitioner No.2 in terms of the Scheme of Arrangement approved by National Company Law Tribunal (NCLT) vide its order dated 9.3.2017.

2. JPTCL has submitted the following facts in support of its case for transfer the trading licence to JGEL.



(a) The Petitioner, JPTCL is a 100% subsidiary of JSW Energy Ltd.(JEL). JSW Green Energy Ltd. is another 100% subsidiary of JEL.

(b) A Scheme of Arrangement between JPTCL, JGEL and JEL was conceived under Sections 291 to 394 of the Companies Act, 2013 for (a) Demerger of trading business of JPTCL (demerged company) into JGEL (the Resulting Company) and (b) merger of the remaining business of JPTCL with JEL (Transferee company). The said Scheme of Arrangement has been approved by the Board of Directors and the Shareholders of all the three concerned entities, namely JPTCL, JGEL and JSW Energy Limited vide separate Board Resolutions dated 22.2.2015. The High Court of Judicature at Bombay vide its order dated 4.3.2016 disposed with the meetings of the Shareholders of the parties for the purpose of Scheme of Arrangement. The Scheme of Arrangement was presented before the High Court of Judicature at Bombay along with Company Summons for Directions No. 162/2016 as per the provisions of the Companies Act, 1956. However, on 7.1.2017, the Hon`ble High court of Judicature at Bombay transferred the said Company Scheme Petition to the National Company Law Tribunal (NCLT) due to coming in force of the provisions of the Companies Act. NCLT vide its order dated 9.3.2017 approved the Scheme of Arrangement.

(c) Under the Scheme of Arrangement, JPTCL's power trading business would be de-merged and would be transferred to JGEL and the remaining business of JPTCL (after transfer of the Power Trading Business to JGEL) would be merged with JSW Energy Limited. Consequently, the same would be deemed to be dissolved in terms of the Scheme of Arrangement with effect from the effective date and after giving effect to the Scheme in its entirety, the name of JGEL would be changed to JSW Power Trading Company Limited.



(d) In the Scheme of Arrangement, the authorized, issued, subscribed and paid-up share capital of the Demerged Company (JPTCL), Resulting Company (JGEL) and the Transferee Company (JEL) are Rs. 202 crore, Rs. 0.05 crore and Rs. 1640 crore respectively. The Petitioners have submitted that though the share capital of the JGEL is Rs. 0.05 crore prior to the effective date of the Scheme of Arrangement, JGEL would meet all the qualifications as set-out in Regulation 3 of the Trading Licence Regulations upon the Scheme of Arrangement becoming effective. Further, the Petitioners have submitted that JGEL does not attract any disqualifications as specified in Regulation 4 of the Trading Licence Regulations.

3. Against the above background, JPTCL has filed the present petition along with the following prayers:

“(a) Grant approval to transfer the Trading License held by the JPTCL to JSW Green Energy Limited, with effect from the Effective Date, in terms of the Scheme of Arrangement;

(b) Record the name change of the Transferee Company from JSW Green Energy Limited to “JSW Power Trading Company Limited”, in terms of Scheme of Arrangement, in the records of the Commission and make an endorsement to that effect in the licence certificate;”

4. JPTCL vide letter dated 17.4.2017 was directed to submit the signed copies of the Scheme of Arrangement, order of the High Court of Judicature at Bombay sanctioning the Scheme, order of National Company Law Tribunal sanctioning the Scheme of Arrangement and to clarify whether trading in electricity has been specifically mentioned in the Memorandum of Association of JGEL in terms of Regulation 3(1) of the 2009 Trading Licence Regulations.

5. JPTCL has placed on record Memorandum of Association of JGEL which mentions “trading of electricity” as a part of its Main Objects. JPTCL vide its affidavit



dated 14.6.2017 has placed on record, copy of the NCLT order dated 9.3.2017 sanctioning the Scheme of Arrangement

6. The Petitioners, vide letter dated 12.9.2017, were directed to clarify the effective date with respect to the Scheme of Arrangement and to submit the following information:

(a) Audited Special Balance Sheet in terms of Regulation 3(3) of the Trading Licence Regulation

(b) The present activities of JGEL.

(c) Audited report, Audited Balance Sheet, P & L Account along with notes and schedules for the last three years i.e. 2014-17.

(d) To clarify the effective date of Scheme of Arrangement.

7. The Petitioners vide affidavit dated 27.9.2017 have placed on record, the Audited Special Balance Sheet in terms of Regulation 3(3) of the Trading Licence Regulations and Audited report, Audited Balance Sheet, P & L Account along with notes and schedules for the last three years i.e. 2014-2017. The Petitioners have submitted that the Scheme of Arrangement will become effective only once this Commission permits the transfer of the trading licence from JPTCL to Petitioner JGEL.

8. The matter was heard on 21.12.2017 after notice. The Petitioners, vide Record of Proceedings for the hearing dated 21.12.2017 were directed to file the variations, if any, in the Net worth post the Scheme of Arrangement becoming effective and to clarify whether JGEL meets all the qualifications set out in Regulation 7 (t) of the Trading Licence Regulations. The Petitioners vide its affidavit dated 4.1.2018 have submitted that the Net worth of JGEL would be Rs. 4.02 crore and Rs. 65.98 crore prior and post implementation of the Scheme of Arrangement respectively. The Petitioners have further submitted that post the Scheme of



arrangement becoming effective, JSW Green Energy Limited would meet all the qualifications set out in Regulation 7 (t) of the Trading Licence Regulations.

### **Analysis and Decision:**

9. We have considered the submissions of the Petitioners. The present petition has been filed under Section 17(3) of the Electricity Act, 2003 read with Regulation 7 (t) of the Trading Licence Regulations for approval of transfer of the trading licence held by JPTCL to JGEL in terms of the Scheme of Arrangement. The issue that arises for our consideration is whether the petition suffers from any infirmity which prohibits the transfer of the trading licence and whether the transfer of the trading licence be allowed by the Commission.

10. JPTCL, a 100% subsidiary of JSW Energy Limited was incorporated on 8.7.2005 to *inter alia* carry on the business of generation, supply transmits, purchase, sell electrical power or any other energy by using conventional and/or non-conventional method. JGEL is another 100% subsidiary of JEL that was incorporated on 12.1.2011 to *inter-alia* carry on the business of generation, transmission, supply, purchase, sale, trading of all forms of electrical power, both conventional and non-conventional. 'Trading of electricity' is covered under the Memorandum of Association of JGEL.

11. A Scheme of Arrangement between JPTCL, JGEL and JEL was conceived and approved by the respective Boards of these Companies under Sections 291 to 394 of the Companies Act, 2013 for (a) Demerger of trading business of JPTCL (demerged company) into JGEL (the Resulting Company) and (b) merger of the remaining business of JPTCL with JEL (Transferee company) with the purpose to



achieve utmost synergy and efficiency of operations and management of the power trading business. National Company Law Tribunal vide its order dated 9.3.2017, copy of which has been placed on record by the Petitioners, has approved the Scheme in terms of Sections 230 to 232 of the Companies Act, 2013. Relevant portion of the NCLT order dated 9.3.2017 sanctioning the Scheme of Arrangement is extracted as under:

“16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 31 of 2017 and 32 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective petitions.

\* \* \* \*

21. All authorities concerned to act on a certified copy of this order along with the Scheme by duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Branch.”

12. The Petitioners have submitted that Scheme of Arrangement which has been approved by NCLT, has the following conditionality:

“22. The Scheme is and shall be conditional upon and subject to the following:

**22.1 The requisite consent, approval or permission of the Central Government or any other statutory or regulatory authority, which by law may be necessary for the implementation of this scheme.**

22.2 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the respective members and/or creditors of the Demerged Company/the Transferor Company, the Resulting Company and the Transferee Company as may be directed by the High Court.

22.3 The sanction of the High Court under Sections 391 to 394 in favour of the Demerged Company/the Transferor Company, the Resulting Company and the Transferee Company under the said provisions and to the necessary order under Section 394 of the Companies Act, 1956 of the said Act being obtained.

22.4 Certified or authenticated copy of the order of the High Court sanctioning the Scheme being filed with the Registrar of Companies, Maharashtra at Mumbai by the Demerged Company/the Transferor Company, the Resulting Company and the Transferee Company, as may be applicable;

23. Change of Name. Pursuant to the Scheme, with effect from the Effective Date and after giving effect to the Scheme in its entirety, the name of the Resulting



Company will be changed to 'JSW Power Trading Company Limited' and would be in deemed compliance with provision of Section 13 of the Act and Rule 29 of Companies (Incorporation) Rules, 2014."

13. The Petitioners have submitted that as per clause 22 of the Scheme of Arrangement, the Scheme will be effective after receiving requisite consent, approval or permission of the Central Government or any other statutory or regulatory authority. The Petitioners have submitted that since, the transfer of the trading licence along with the trading business to JGEL is a part of the Scheme of Arrangement, it is necessary for JPTCL to seek approval of the Commission prior to making the Scheme of Arrangement effective and operational.

14. Under sub-section (3) of Section 17 of the Act, the licensee is required to obtain 'prior' approval of the Commission for assigning the licence or transfer of its utility. Regulation 7 (t) of the Trading Licence Regulations further provides as under:

"7(t). The licensee shall not at any time transfer or assign its license in any manner without prior approval of the Commission:

Provided that licensee can transfer or assign its license only to such person who fulfils the conditions of Regulations 3 and 4 of the Trading License Regulations with prior approval of the Commission:

Provided further that the licensee shall make an appropriate application before the Commission containing the details of the person to whom the licence is proposed to be transferred or assigned, its eligibility to hold the licence under these regulations and an affidavit from the proposed transferee or assignee that it will abide by the terms and conditions of licence and comply with the provisions of the Act, Rules and regulations made thereunder and the orders of the Commission as may be issued from time to time:

Provided also that the licensee shall be required to publish in brief in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper about its application for transfer or assignment of its license and invite suggestions/objections within 30 days and submit the copies of the publication along with its response to the suggestions/objections, if any, within 45 days from the date of publication."



As per the first proviso to Regulation 7(t) above, licensee can transfer or assign its licence only to such person who fulfils the conditions of Regulations 3 and 4 of the Trading Licence Regulations with prior approval of the Commission. In the present case, the power trading business of JPTCL, which is the licensee of the inter-State trading of electricity, is being transferred to JGEL, which is wholly owned subsidiary of JEL through demerger.

15. With regard to Regulation 3 (1) and (2) of the Trading Licence Regulations, which deal with the qualification of domicile and technical qualification, the Petitioners have submitted that the Scheme of Arrangement contemplates the transfer of all employees of JPTCL (related to the Power Trading Business) to JGEL. Accordingly, JGEL will satisfy the requirement of technical qualification as per Regulation 3(2) of the Trading Licence Regulations.

16. Proviso to clause (1) of Regulation 3 of the Trading Licence Regulations provides that the applicant should have been authorized to undertake trading in electricity by its Memorandum of Association. Trading in electricity is covered under Main Objects of the Memorandum of Association of JGEL. Para III (A) of the Main Objects of the company reads as under:

“To transmit, distribute, purchase, sell, trade, import, export or accumulate or otherwise deal in all forms of electrical power in all aspects...”

17. Transmission of electricity is covered under the Main Objects of the Memorandum of Association of the JGEL. However, the Petitioners vide its affidavit dated 28.4.2017 have submitted that JSW Green Energy Limited does not hold any licence for transmission of electricity and shall not apply for any transmission licence before any concerned authority without surrendering the trading licence transferred to it. The affidavit has been taken on record.





18. In accordance with Regulation 3 (3) of the Trading Licence Regulations, for Category-I trading licensee should have net worth of Rs. 50 crore and should have maintained minimum current ratio and liquidity ratio of 1:1, as on the date of audited special balance sheet accompanying the application. The Petitioners have submitted that the net worth of JGEL, pre and post the Scheme of Arrangement becoming effective is as under:

		(Rs. in crore)	
S. No	Particulars	Pre Scheme of Arrangement	Post Scheme of Arrangement
1	Equity Capital - Issued, Subscribed and Paid Up Share Capital (A)	0.05	70.05
2	<b>Free Reserves</b>		
	Surplus (B)	(4.07)	(4.07)
3	<b>Total Net Worth for Equity Shareholders as on 28<sup>th</sup> February, 2017 (A+B)</b>	<b>(4.02)</b>	<b>65.98</b>

19. The Petitioners have submitted that the current ratio of JGEL, pre and post the Scheme of Arrangement becoming effective is as under:

		(Rs. in Crore)	
Sr. No	Particulars	Pre Scheme of Arrangement	Post Scheme of Arrangement
1	Current Assets (A)	0.004	692.21
2	Current Liabilities (B)	0.01	547.94
3	<b>Current Ratio as on 28<sup>th</sup> February, 2017 (A/B)</b>	<b>0.36:1</b>	<b>1.26:1</b>

20. The Petitioners have submitted that the liquidity ratio of JGEL, pre and post the Scheme of Arrangement becoming effective is as under:

		(Rs. in crore)	
Sr. No	Particulars	Pre Scheme of Arrangement	Post Scheme of Arrangement
1	Current Assets	0.004	692.21
	Less: Inventory	Nil	Nil
	Liquid Assets (A)	0.004	692.21



2	Current Liabilities (B)	0.01	547.94
3	<b>Liquidity Ratio as on 28<sup>th</sup> February, 2017 (A/B)</b>	<b>0.36:1</b>	<b>1.26:1</b>

21. The Petitioners have submitted that from and on the effective date, the proposed transferee company shall fulfill the requirements of Regulations 3 and 4 of the Trading Licence Regulations, without any further act or deed, since the Petitioner as on date, fulfills all the requirements specified in the Regulations 3 and 4 of the Trading Licence Regulations. JGEL shall comply with all the requirements pertaining to net worth, current ratio and liquidity ratio as prescribed under Regulation 3 of the Trading Licence Regulations upon the Scheme of Arrangement becoming effective.

22. As per third proviso to Regulation 7(t) of the Trading Licence Regulations, the licensee is required to publish in brief in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper about its application for transfer or assignment of its license and invite suggestions/objections within 30 days and submit the copies of the publication along with its response to the suggestions/objections, if any, within 45 days from the date of publication. JPTCL has placed on record the relevant copies of newspapers in which notice for transfer of utility has been issued. The notices under Regulation 7(t) of the Trading Licence Regulations have been published by JPTCL on 1.7.2017 in all editions of Indian Express (Ahmadabad, Vadodara, Mumbai, Kolkata, Chandigarh, New Delhi, Jaipur, Lucknow, Nagpur, Pune) and Business Standard (Ahmadabad, Bengalaru, Bhubaneswar, Mumbai, Kolkata, Kolkata, Chandigarh, Kochi, New Delhi, Hyderabad, Lucknow, Chennai and Pune). No objections have been received in response to the public notices.



23. JPTCL has submitted that JGEL shall comply with all the requirements pertaining to net worth, current ratio and liquidity ratio as prescribed under Regulation 3 of the Trading Licence Regulations upon the Scheme of Arrangement becoming effective. Accordingly, in terms of sub-section (3) of Section 17 of the Act read with Regulation 7(t) of the Trading Licence Regulations, we accord in-principle approval for the transfer of the trading licence of JPTCL to JGEL. Consequent to the transfer of trading licence, all rights, assets, liabilities and obligations of JPTCL in respect of trading business shall vest in JGEL which shall also remain bound by the terms and conditions of the trading licence.

24. After completion of transfer, JGEL shall submit on affidavit regarding compliance with Regulations 3 and 4 of the Trading Licence Regulations supported by certificate from the Statutory Auditor with regard to the assets and liabilities of JGEL.

25. JPTCL in its second prayer has prayed to record the name of the Transferee Company from “JSW Green Energy Limited” to “JSW Power Trading Company Limited” in terms of Scheme of arrangement in the records of the Commission and make an endorsement to that effect in the licence certificate. The Petitioner is granted liberty to approach the Commission for change of name of company after approval from the Registrar of Companies of the same.

26. The Petition is disposed of in terms of the above.

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

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

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

