

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 167/MP/2018

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 10th of January, 2019

In the matter of

Petition under Section 79(1) (c) of the Electricity Act, 2003 seeking permission of the Commission to transfer and /or assign the rights and obligations of Sembcorp Gayatri Power Limited under the Transmission service Agreement dated 11.06.2014 to Sembcorp Energy India Limited, as stipulated under the scheme of Amalgamation.

**And
In the matter of**

Sembcorp Gayatri Power Limited
6-3-1090, 5th Floor, A Block, TSR Towers,
Rajbhawan Road, Somajiguda,
Hyderabad -500 082, Telengana

...**Petitioner No. 1**

Sembcorp Energy India Limited
3-1090, 5th Floor, A Block, TSR Towers,
Rajbhawan Road, Somajiguda,
Hyderabad -500 082, Telengana

...**Petitioner No. 2**

Vs.

Power Grid Corporation of India Limited
B-9, Qutab Institutional Area
Katwaria Sarai, New Delhi-110 016

Respondent

Parties Present:

Shri Aasish Gupta, SGPL, Advocate, PGCIL
Shri Aditya Mkuherjee, Advocate, PGCIL, SEIL
Ms. Swapna Srivastava, Advocate, PGCIL
Ms. Nehul Sharma, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

ORDER

The Petitioners, Sembcorp Gayatri Power Limited (hereinafter referred to as 'SGPL') and Sembcorp Energy India Limited (hereinafter referred to as 'SEIL') have jointly filed the present petition under Clause (c) of sub-section (1) of Section 79 of the Electricity Act, 2003 seeking permission to transfer and/or assign the rights and obligations of SGPL under the Transmission Service Agreement dated 11.6.2014 to SEIL specified in the Scheme of Amalgamation, pursuant to and subject to sanctioning of the Scheme by the competent authority.

2. Brief facts of the case leading to filing of the present petition are discussed as under:

(a) SGPL is wholly owned subsidiary of SEIL. Initially, SGPL was incorporated in the name of "NCC Power Projects Limited". Subsequently, the name of SGPL was changed from 'NCC Power Projects Limited' to SGPL. SGPL has setup a 1320 MW coal based thermal power plant at Varakavipudi and Ananthapuram villages near Nellore district in the State of Andhra Pradesh. Unit I and II of the generating station were commissioned on 17.11.2016 and 21.2.2017 respectively. The Petitioner is supplying power to Andhra Pradesh, Telangana and Karnataka.

(b) SEIL was initially incorporated on 8.1.2008 as "Thermal Powertech Corporation India Limited". Subsequently, on 10.2.2018, the name of SEIL was changed from 'Thermal Powertech Corporation India Limited' to 'SEIL'. SEIL has set up a 1320 MW coal based thermal power plant at Pynampuram and Nuru villages in the State of Andhra Pradesh.

(c) On 11.6.2014, a Transmission Service Agreement (hereinafter referred to as “TSA”) was entered into between NCC Power Project Limited (now known as SGPL) and Power Grid Corporation of India Limited (hereinafter referred to as ‘PGCIL’) in terms of Regulation 13 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. As per Clause 17.1 of the TSA, the Agreement shall not be assigned by any party, except as provided in Clause 17.2.4. Clause 17.2.4 of the TSA provides that neither any ISTS licensee nor any DIC can relinquish or transfer its rights and obligations, without prior approval of the Commission.

(d) SGPL proposed the draft scheme of amalgamation to consolidate the business of SGPL with SEIL which was approved by its Board of Directors. As per the proposed scheme of amalgamation, after the scheme becoming effective, SGPL would be dissolved without being wound up and further it would be deemed to have been amalgamated into SEIL. The proposed amalgamation will be in the interest of the shareholders, creditors and other stakeholders, as it would result in synergetic integration of the business and increased operational efficiencies and bring in economic scale. The said amalgamation would result in the following benefits to the amalgamated company:

- (i) Consolidation of entities;
- (ii) Optimization of the operations and operational costs of the merging entities; ease of management;
- (iii) Serviceability of term loans;
- (iv) Enhancement of asset base and net worth to capitalize on future growth potential;

(v) Pooling of resources, creating better synergies, across the group, optimal utilization of resources and greater economies of scale; and

(vi) Faster and effective decision making, better administration and cost reduction.

(e) As per Clause 1.2(f) of part III of the Scheme of Amalgamation, after sanctioning of the Scheme under Sections 230 and 233 of the Companies Act, 2013, SGPL will assign its rights and obligations under TSA to SEIL.

(f) The Petitioners, namely SGPL and SEIL have already filed the Scheme of Amalgamation with the Registrar of Companies and the Official liquidator, Hyderabad and have also obtained NOC from the Official Liquidator. On receipt of NOC from the Registrar of Companies and after obtaining required approvals from the creditors and shareholders, both Petitioners will file the Scheme with the Regional Director seeking approval of the proposed merger. However, to assign or transfer any of its rights and obligations under the TSA to SEIL, prior permission of the Commission is required in terms of Clause 17.2.4 of the TSA.

3. During the course of hearing, learned counsel for the Petitioners submitted that Regional Director, South East Region, Ministry of Corporate Affairs has approved the Scheme of Amalgamation and placed on record the copy of the order approving the scheme.

Analysis and Decision:

4. We have considered the submissions of the Petitioners. The present Petition has been filed under Section 79(1) (c) of the Electricity Act, 2003 for approval of transfer and/

or assignment of the rights and obligations of SGPL under the TSA dated 11.6.2014 in favour of SEIL.

5. SGPL has entered into a TSA dated 11.6.2014 with PGCIL for use of inter-State transmission system. Clause 17.1 of the said TSA provides as under:

“17.1. This Agreement shall be binding upon, and incur to the benefit of the parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except as provided in Article 17.2.4”

Further, Clause 17.2.4 of the TSA provides as under:

“Neither any ISTS Licensee nor any DIC can relinquish or transfer its rights and obligations, without prior approval of the Commission when such encumbrance is created under clause 17.2.2.”

Clause 1.1 of the TSA defines the Commission as under:

“CERC” or “Commission” means the Central Electricity Regulatory Commission constituted under Section 76 of the Electricity Act, 2003.”

As per the above provision, no ISTS licensee and DIC can transfer its rights and obligations without prior approval of the Commission.

6. A Scheme of Amalgamation between SGPL and SEIL was conceived and approved by the Board of SGPL under Section 233 of the Companies Act, 2013 for synergetic integration of the business and increased operational efficiencies. The Official Liquidator vide its letter dated 2.4.2018 has granted No Objection Certificate for Scheme of Merger. Regional Director, South East Region, Ministry of Corporate Affairs vide its order dated 31.10.2108, copy of which has been placed on record by the Petitioners, has approved the Scheme in terms of Section 233 of the Companies Act, 2013.

7. 'Transferor Company' has been defined in the Scheme of Amalgamation as under:

"Transferor Company" means Sembcrop Gayatri Power Limited, a public limited company incorporated under the Companies Act, 1956 and having its registered office at 6-3-1090, 5th Floor, A Block, TSR Towers, Rajbhavan Road, Somajidugda, Hyderabad 500 083 and, notwithstanding anything to the contrary in this Scheme, means and includes:

(a) to (d): *****

(f) all contracts, agreements, licenses, leases, memoranda of undertakings, memoranda of agreements, memoranda of agreed points, letters of agreed bonds, arrangements, undertakings, whether written or otherwise, deeds bonds schemes, arrangements, service agreements, sales, orders, purchase orders or other instruments of whatsoever nature to which Transferor Company is a party, exclusively relating to the Transferor Company's business, activities and operations carried on by it;"

Transferor Company has been defined as 'Sembcrop Gayatri Power Limited'.

Part III of the Scheme of Amalgamation provides as under:

"1.1. Upon this Scheme becoming effective and with effect from the Appointed Date, all the assets and liabilities and the entire business of the Transferor Company shall stand transferred to and vest in the Transferee Company, as a going concern, without any further act or deed, together with all its properties, assets, rights, benefits and interest therein, subject to existing charges thereon in favour of banks and financial institutions or otherwise, as the case may be, and as may be modified by them, subject to the provisions of this Scheme, in accordance with Chapter XV of the Act and all applicable provisions of law, if any, in accordance with the provisions contained herein.

1.2 Without prejudice to the generality of the above and to the extent applicable, unless otherwise stated herein, upon this Scheme becoming effective and with effect from the Appointed Date:

(a) to (e) *****

(f) all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments, permits, rights, entitlements, licenses (including the licenses granted by any governmental, statutory or regulatory bodies) for the purpose of carrying on the business of the Transferor Company, and in relation thereto, and those relating to tenancies, privileges, power, facilities of every kind and description of whatsoever nature in relation to the Transferor Company, or to the benefit of which, the Transferor Company may be eligible and which are subsisting or having effect immediately before the effective date, shall be and remain in full force and effect

on, against or in favour of the Transferee Company and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligor thereto. If the Transferee Company enters into and/or issues and/or executes deeds, writings or confirmations or enters into any tripartite arrangements, confirmation or novation, the Transferor Company will, if necessary, also be party to such documents in order to give formal effect to the provisions of this Scheme, if so required. In relation to the same, any procedural requirements required to be fulfilled solely by Transferor Company (and not by any of its successors), shall be fulfilled by the Transferee Company as if it is the duly constituted attorney of the Transferor Company.”

8. The Scheme of Amalgamation envisaged the transfer of contracts and contractual obligations of the transferor company to the transferee company and all obligations of the transferor company has devolved on the transferee company with effect from the appointed date.

9. SEIL has undertaken that it will take over all the rights and obligations of SGPL, present or future, under the TSA upon the Scheme of Amalgamation becoming effective. SGPL in the present case is a DIC and therefore, in terms of Clause 17.2.4 of the TSA, approval of the Commission is necessary for assignment of the TSA by SGPL in favour of SEIL. Accordingly, in terms of Clause 17.2.4 of the TSA, we accord approval for the transfer of rights and obligations of SGPL under the TSA to SEIL. Consequent to the Scheme of Amalgamation coming into force, all rights, assets, liabilities and obligations of SGPL in respect of TSA would vest in SEIL. SEIL is also directed to enter into a Supplementary TSA with PGCIL.

10. The Petition No. 167/MP/2018 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson