

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Suo Motu Petition No. 6 /SM/2019

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

Date of Order: 5th of August, 2019

In the matter of:

Non-compliance of the direction of the Commission in order dated 17.5.2019 in Petition No. 211/MP/2016 by Global Energy Private Limited (GEPL).

And

In the matter of

Global Energy Private Limited
6th Floor, Le Meridien Commercial Tower
Raisina Road
New Delhi-110 001

..Respondent

ORDER

Jindal Power Limited (JPL), had filed Petition No. 211/MP/2016, under Section 19 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Regulation 14 of the Central Electricity Regulatory Commission (Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 (hereinafter referred to as the Trading Licence Regulations) for revocation of inter-State trading licence granted to the Global Energy Private Ltd. (hereinafter referred to as "GEPL").

2. The Commission, after hearing the parties on maintainability as well as on merits, in its order dated 27.2.2018 issued the following directions:

"36. We have noticed that the Respondent has not paid the outstanding dues of the Petitioner for the supply of power under Lols dated 17.4.2014 and 30.5.2015. The Respondent had given post-dated cheques for payment of the outstanding dues which could not be cashed by the Petitioner on account of



the instructions of GEPL for stopping payments against these cheques. Without prejudice to the actions pending before the Metropolitan Magistrate and High Court of Delhi for dishonor of cheques, we are of the view that failure to release payments against the post-dated cheques for outstanding dues amounts to prolonged and wilful defaults on the part of GEPL to ensure timely payment to the Petitioner for supply of power which GEPL as a trading licensee is required to comply with in terms of Regulation 7(h) of the Trading Licence Regulations. Therefore, it satisfies the conditions of Section 19 (1) (a) of the Act.

37. According to sub-section (3) of Section 19 of the Act, the Commission is required to give three months' notice to the licensee stating the grounds for revocation of licence and take a decision after considering the cause shown by the licensee. Accordingly, notice is hereby given to GEPL to show cause as to why its licence for inter-State trading of electricity should not be revoked for its failure to pay the outstanding dues of JPL for the power supplied in terms of Lols dated 17.4.2014 and 30.5.2015 and late payment surcharge there on which is in contravention of the Regulation 7(h) of the Trading Licence Regulations. The reply to the show cause notice shall be filed by GEPL by 23.3.2018. Section 19(4) of the Act provides that the Commission may instead of revoking the licence under sub-section (1) of Section 19, permit it to remain in force subject to such further terms and conditions it thinks fit to impose and such terms and conditions shall be binding on the licensee. In exercise of power under Section 19 (4), we direct that if GEPL makes the full and final payment of the outstanding dues and late payment surcharge to JPL in terms of the Lols dated 17.4.2014 and 30.5.2015 on or before 23.3.2018 and further submits an undertaking to comply with the terms and conditions of the agreements for purchase and sale of power and not make any default in payment in future, the Commission will take a view with regard to the proposed revocation of licence."

3. GEPL challenged the said order dated 27.2.2018 in the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 3061 of 2018. The Hon'ble High Court set aside the Commission's order dated 27.2.2018 and remanded the matter with the direction to revisit the issues which arise for considerations, in the Petition, filed under Section 19 of the Act.

4. After remand of the matter from the Hon'ble Delhi High Court, the matter was heard at length both on maintainability and on merit. The Commission after considering the submissions of JPL and GEPL, vide its order dated 17.5.2019 observed and directed GEPL and Power Exchanges as under:

"71. We have observed above that the Respondent has not ensured timely payment of dues to the seller and there by prima facie violated provisions of Regulation 7(h) of the Trading Licence Regulations. The Respondent did not

enter into an agreement before scheduling of power as per LOI dated 30.3.2015 in contravention to the provisions of Regulation 7(i) of the Trading Licence Regulations. There is no clarity as to whether the Respondent has charged over and above the trading margin fixed by the Commission in contravention to the provisions of Regulation 7(c) of the Trading Licence Regulations. In light of the foregoing, we are prima facie of the view that the Respondent has violated the provisions of Regulation 7 of the Trading Licence Regulations. However, in the interest of justice, the Commission has decided to undertake further enquiry for its satisfaction that the Respondent has acted in contravention to the provisions of the Trading Licence Regulations before starting any proceedings against the Respondent for revocation of licence under Section 19 of the Act.

72. We, therefore, decide as under:

(a) *In order to ascertain as to whether the Respondent has complied with provisions of Regulation 7(c) of the Trading Licence Regulations as regards LOI dated 30.3.2015 of the Petitioner, the Respondent shall furnish a copy of agreements and other relevant documents with the buyer(s) of such power; details of payments made by the buyer(s); payments received from the Petitioner; and an affidavit stating that it has not charged any amount over and above the trading margin fixed by the Commission.*

(b) *In order to ascertain as to whether the Respondent has complied with provisions of Regulation 7(h) of the Trading Licence Regulations, we direct the Respondent to furnish details of trading activity undertaken by it in the last three financial years i.e. 2016-17, 2017-18 and 2018-19. We also direct the Respondent to place on record a statement in respect of all the sellers (except the Petitioner) as to the payments made to them supported by an affidavit to the effect that it has made timely payments to them and that no payments are due, and no default has been made in making any payment in connection with the transactions made by it.*

(c) *In order to ascertain as to whether the Respondent has complied with the provisions of Regulation 7(i) of the Trading Licence Regulations, we direct the Respondent to place on record the agreements entered by it with all the seller(s) (except the Petitioner) from whom power has been purchased by the Respondent along with the dates when such power started getting scheduled.*

73. *The Respondent shall furnish the above information as soon as possible and in no case later than 30 days from the date of issue of this Order. In the event, no information is received from the Respondent within 30 days of issue of this order, action will be initiated based on available information in terms of Section 19 of the Act read with Regulation 14 and 14C of the Trading Licence Regulations.”*

74. *The Power Exchanges are in turn directed to submit details of trading activity undertaken by the Respondent on the respective Exchanges. Any complaint received from any seller or buyer shall also be brought to the notice of this Commission along with action taken by the Exchanges. The Power Exchanges are further directed to confirm that the Respondent has not defaulted in making any payment in connection with the transactions made by the Respondent Global Energy Private Limited and no adverse information regarding the conduct and operation of the licensee has come to the notice. The*

Power Exchanges shall submit all relevant information within two months of issue of this Order.”

5. No response has been filed by GEPL.
6. Power Exchanges, namely, Indian Energy Exchange (IEX) and Power Exchange India Limited (PXIL) have filed the information called for. IEX vide its affidavit has submitted relevant details as regards volume of electricity traded by GEPL under DAM (Day-ahead Market) segment from 2011 to 2019 (Up to June).
7. IEX has submitted that the following action has been taken on the issues of non-payment raised by buyer/ seller of power through GEPL as an electricity trader:

Sr. No.	Clients Name	Amount (Rs.)	Action Taken
1	Kirloskar Ferrous Industries Limited	0	Conciliation process was initiated & the pending dues of Rs. 10,41,496 have been cleared & the matter has been resolved through the conciliation committee of IEX.
2	Bajaj Hindustan Ltd.	88,00,000.00	Received request for initiation of Conciliation and arbitration proceedings by the client.
3	Heritage Foods Ltd.	20,88,167.00	
4	Triveni Engineering & Industries Ltd.	9,50,000.00	
5	Gowthami spintex india) Ltd.	1,65,967.00	
6	Sarda Metals & Alloy Ltd.	62,50,583.00	
7	Birla Sugar Ltd.	7,46,520.00	
8	Filatex India Ltd.	1,89,640.00	
Total		1,80,51,237.00	

8. We note from the above information submitted by IEX that GEPL has not made timely payments to its clients.

9. Power Exchange of India Limited (PXIL) has submitted trading activities undertaken by GEPL and submitted details of volume of electricity traded under DAM segment from 2016-17 to 2018-19.

10. PXIL has submitted that the following action has been taken on the issues of non-payment raised by buyer/ seller of power through GEPL as an electricity trader:

(a) M/s Heritage foods (P.) Ltd., the client of GEPL informed PXIL that GEPL has not transferred the amount of Rs.13.65 lakh (net obligation) to its account for the REC sessions in April and May 2018 (Rs.5.93 lakh for the REC session held on 25th April 2018 and Rs.7.72 lakh for the REC session held on 30th May 2018). GEPL has not submitted any documents to PXIL regarding transfer of the above amount from settlement account to client's account.

(b) Bajaj Hindustan Limited, client of GEPL informed PXIL that it has traded through GEPL in the REC session for the month of March 2018 for the amount Rs.3.01 crore. Out of the total amount, the client is yet to receive Rs.88.00 lakh from GEPL.

11. We note from the above submissions of PXIL that GEPL has defaulted in making payment to its clients.

12. It is evident from the information submitted by IEX and PXIL that GEPL has not made timely payments to their clients.

13. We, thus, observe that vide Order dated 17.5.2019 in Petition No. 211/MP/2016 (JPL vs GEPL), the Commission was of the view that GEPL had *prima facie* violated provisions of Regulation 7(c), 7(h) and 7(i) of the Trading

Licence Regulations as far as its conduct vis-à-vis JPL was concerned. However, the Commission decided to undertake further enquiry in the matter and accorded opportunity to GEPL by directing it to submit various documents and information such as copy of agreements and other relevant documents with the buyer(s) of power supplied by JPL; details of payments made by the buyer(s); payments received from JPL; and an affidavit stating that GEPL has not charged any amount over and above the trading margin fixed by the Commission. GEPL was directed to furnish these information and documents within 30 days of issue of the Order dated 17.5.2019.

14. Vide the same Order dated 17.5.2019 in Petition No. 211/MP/2016 (JPL vs GEPL), the Commission sought information from GEPL in respect of other sellers also and directed GEPL to furnish details of trading activity undertaken by it in the last three financial years i.e. 2016-17, 2017-18 and 2018-19. It was also directed to place on record a statement in respect of all the sellers (except JPL) as to the payments made to them supported by an affidavit to the effect that GEPL has made timely payments to them and that no payments are due, and no default has been made in making any payment in connection with the transactions made by it. GEPL was also directed to furnish agreements executed by it with all the seller(s) (except JPL) from whom power has been purchased by GEPL along with the dates when such power started getting scheduled.

15. GEPL was directed to furnish these information and documents within 30 days of issue of that Order. It was also explicitly mentioned in the Order dated 17.5.2019 that if no information was received from the Respondent, GEPL within 30 days of issue of this order, action will be initiated based on

available information in terms of Section 19 of the Act read with Regulation 14 and 14C of the Trading Licence Regulations. However, the Respondent, GEPL has not furnished any information till date though over two months have passed since the direction was issued by the Commission.

16. The Commission in its above order dated 17.5.2019 in Petition No. 211/MP/2016 (JPL vs GEPL) directed IEX and PXIL to submit details of trading activity undertaken by GEPL, to indicate complaints received from buyers and sellers against GEPL in order to confirm that GEPL has not defaulted in making any payment in connection with the transactions made, and that no adverse information regarding the conduct and operation of the licensee has come to the notice.

17. The Power Exchanges have submitted their report and have mentioned that there are a number of clients who are facing payment issues with GEPL. IEX has reported that the Conciliation Committee of IEX has resolved issue in respect of Kirloskar Ferrous Industries Limited vis-à-vis GEPL while Bajaj Hindustan Ltd., Heritage Foods Ltd., Triveni Engineering & Industries Ltd., Birla Sugar Ltd. and Filatex India Ltd. have requested for initiation of conciliation and arbitration proceedings against GEPL. Amount involved in respect of these clients of GEPL has been reported to be Rs. 1.80 crore. PXIL has reported that GEPL has not transferred Rs. 13.65 lakh to M/s Heritage foods (P.) Ltd. for REC trading done in April and May 2018 and that GEPL has not submitted any documents to PXIL regarding transfer of the above amount from settlement account to client's account. PXIL has also reported that GEPL has not paid an amount of Rs. 88 lakh (out of total trading of Rs. 3.01 crore) to

Bajaj Hindustan Limited in respect of trading in REC during March 2018 for the amount Rs. 3.01 crore.

18. Section 19 of the Act deals with the circumstances and procedure for revocation of licence and is extracted as under:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely:-

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;

(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor—

(i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or

(ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;

(d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months` notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.

(6) Where an Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.”

19. Thus, Section 19 of the Act, *inter alia*, covers the following circumstances for revocation of licence:

(a) Willful and prolonged default on the part of licensee in doing anything required of him by or under the Act or rules or regulations made thereunder.

(b) Breach of any of the terms or conditions of licence which is expressly declared to render the licence liable for revocation.

(c) Failure to establish to the satisfaction of the Commission that the licensee is in a position to fully or efficiently discharge the duties and obligations imposed under the licence.

(d) Financial conditions of the licensee which prevents the licensee to fully or efficiently discharge its duties and obligations imposed on him by his licence.

20. Regulation 14 of the Trading Licence Regulations provides as under:

“CHAPTER- V : REVOCATION OF LICENCE

14. Revocation of Licence

(1) The Commission may revoke the licence, in any of the following circumstances, namely:-

(a) Where the licensee in the opinion of the Commission, makes wilful and prolonged default in doing anything required of him by or under the Act, or the Rules or the Regulations;

(b) Where the licensee breaches any of the terms and conditions of his licence, the breach of which is expressly declared by such licence to render it liable to revocation;

(c) Where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Commission may allow therefor, to show to the satisfaction of the Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence;

(d) Where in the opinion of the Commission the financial position of the licensee is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by his licence;

(e) Where the licensee has neglected to undertake trading in electricity;

(f) Where the licensee fails to meet the qualifications specified for making an application or incurs any of the disqualifications under these regulations;

(g) Where the licensee fails to submit the information as required in accordance with the regulations 9, 10 and 11 or knowingly furnishes false and wrong information;

(h) Where the licensee has failed to pay the fees by the due date as per the Central Electricity Regulatory Commission (Payment of Fee) Regulation, 2012 or other charges required by its license or any penalty imposed by the Commission.

(2) If the Commission, after making an enquiry, is satisfied that any of the grounds as mentioned in clause (1) exists and public interest so requires, the Commission may revoke the license subject to such terms and conditions as may be deemed appropriate:

Provided that the Commission has given a notice of not less than three months to the licensee stating the grounds on which it is proposed to revoke the license and has considered the cause shown by the licensee within the period of notice against the proposed revocation:

Provided further that the Commission may, instead of revoking the license, permit the license to remain in force subject to such further terms and conditions as the Commission may consider appropriate to impose, and any further terms and conditions so imposed shall be deemed to be the terms and conditions of the license and shall be binding on the licensee.

(3) xxxxxx.

(4) xxxxxx.

(5) xxxxxx.”

21. The requirements of Section 19(1) of the Act and Regulation 14(1) read with 14(2) of the Trading Licence Regulations contain analogous provisions) is that the Commission i) needs to conduct an enquiry; and that ii) it has to be satisfied that public interest so requires before proceeding with

revocation of licence. Once these two conditions are fulfilled, the Commission may revoke licence if case of a licensee falls under Section 19(1)(a) or (b) or (c) or (d) of the Act. Further, Section 19(3) of the Act provides that “no licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months’ notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation”. First Proviso to Regulation 14(2) has analogous provisions to that of the Section 19(3) of the Act.

22. Enquiry has not been defined under the Act. The Appellate Tribunal for Electricity (APTEL) in Appeal No. 64 of 2015 & I.A. Nos. 92, 121 and 131 of 2015 (Western Eastern Electricity Supply Company of Odisha Ltd. and Others Vs Odisha Electricity Regulatory Commission and Others) has dealt with the word “enquiry” under Section 19(1) of the Act as under:

“19. We shall now analyse the above quoted provisions. The term “enquiry” used in Section 19(1) of the Electricity Act has been the subject matter of debate. It is important to note that the Electricity Act does not provide for any procedure or method of enquiry. It does not prescribe any time limit for enquiry. Since the Electricity Act does not define the term “enquiry”, we must turn to its dictionary meaning. Chamber’s 20th Century Dictionary (New Edition 1983) defines the terms inquire, enquire as to ask questions: to make an investigation. The Oxford English Reference Dictionary 1955 defines “enquiry” as the act or an instance of asking or seeking information. Black’s Law Dictionary, Eighth Edition defines “inquiry” as “factfinding”. Thus, enquiry means the act of seeking information or fact finding. Since Section 19 does not prescribe any time limit, enquiry can be an enquiry or the process of fact finding spread over or covering an antecedent timespan. The important Judgment requirement of such a process is that the material collected in such enquiry should be confronted to the licensee in the proceeding under Section 19(3) which requirement has been met in this case as we shall soon see.”

23. In Petition No. 211/MP/2016 (JPL vs GEPL), after examining all the documents placed on record, we arrived at the conclusion that GEPL had *prima facie* violated provisions of Regulation 7 of the Trading Licence Regulations. In our order, we had observed as under:

“71. We have observed above that the Respondent has not ensured timely payment of dues to the seller and there by prima facie violated provisions of Regulation 7(h) of the Trading Licence Regulations. The Respondent did not enter into an agreement before scheduling of power as per LOI dated 30.3.2015 in contravention to the provisions of Regulation 7(i) of the Trading Licence Regulations. There is no clarity as to whether the Respondent has charged over and above the trading margin fixed by the Commission in contravention to the provisions of Regulation 7(c) of the Trading Licence Regulations. In light of the foregoing, we are prima facie of the view that the Respondent has violated the provisions of Regulation 7 of the Trading Licence Regulations. However, in the interest of justice, the Commission has decided to undertake further enquiry for its satisfaction that the Respondent has acted in contravention to the provisions of the Trading Licence Regulations before starting any proceedings against the Respondent for revocation of licence under Section 19 of the Act.”

24. Opportunity was provided to GEPL to submit more information and documents and it was directed as under:

“72. We, therefore, decide as under:

(a) In order to ascertain as to whether the Respondent has complied with provisions of Regulation 7(c) of the Trading Licence Regulations as regards LOI dated 30.3.2015 of the Petitioner, the Respondent shall furnish a copy of agreements and other relevant documents with the buyer(s) of such power; details of payments made by the buyer(s); payments received from the Petitioner; and an affidavit stating that it has not charged any amount over and above the trading margin fixed by the Commission.

(b) In order to ascertain as to whether the Respondent has complied with provisions of Regulation 7(h) of the Trading Licence Regulations, we direct the Respondent to furnish details of trading activity undertaken by it in the last three financial years i.e. 2016-17, 2017-18 and 2018-19. We also direct the Respondent to place on record a statement in respect of all the sellers (except the Petitioner) as to the payments made to them supported by an affidavit to the effect that it has made timely payments to them and that no payments are due, and no default has been made in making any payment in connection with the transactions made by it.

(c) In order to ascertain as to whether the Respondent has complied with the provisions of Regulation 7(i) of the Trading Licence Regulations, we direct the Respondent to place on record the agreements entered by it with all the seller(s) (except the Petitioner) from whom power has been purchased by the Respondent along with the dates when such power started getting scheduled.

73. The Respondent shall furnish the above information as soon as possible and in no case later than 30 days from the date of issue of this Order. In the event, no information is received from the Respondent within 30 days of issue of this order, action will be initiated based on available information in terms of Section 19 of the Act read with Regulation 14 and 14C of the Trading Licence Regulations.”

25. However, GEPL has chosen not to comply with the above directions of the Commission. In our view, the detailed order in Petition No. 211/MP/2016

along with opportunity to GEPL to present its case and report of the Power Exchanges satisfies the condition of enquiry as required under Section 19(1) of the Act. More so, when GEPL has chosen not to file its reply.

26. Further, the trading in electricity is a regulated activity under the Act as trading is envisaged to promote competition and thereby serve public interest. If the trading licensees are allowed to flout the terms and conditions of the agreements for purchase and sale of electricity in the course of trading, there will be chaos in the market, shake the confidence of the generating companies and distribution licensees/ consumers and thereby will affect competition which is against public interest. Therefore, public interest demands that such practices are strongly discouraged and the licensees indulging in such practices are dealt with strictly in accordance with law.

27. In the light of the above facts, in our view, the two conditions for revocation of licence as required under 19(1) of the Act is satisfied in case of GEPL.

28. We now proceed to consider whether conduct of GEPL is covered under provisions of Section 19(1)(a) or (b) or (c) or (d) of the Act or provisions of Trading Licence Regulations that make him liable for revocation of licence.

29. Section 19(1)(a) and 19(1)(b) of the Act is being reproduced once again for sake of convenience:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely:-

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;

(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;”

30. Regulation 14A of the Trading Licence Regulations deals with serious and non-serious contraventions by a trading licensee. Relevant portion of Regulation 14A is extracted as under:

“14A. Contravention by Licensee

(1) Contraventions of the provisions of the Act, Rules and Regulations framed there under and non-compliance of the orders of the Commission by a licensee shall be grouped under two categories such as serious contraventions and non-serious contraventions.

2) Serious contraventions shall cover the following:

a) Violations and non-compliance of the provisions of the Act, Rules and the Regulations specified by the Commission, particularly, Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009, Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, Central Electricity Regulatory Commission (Grant of Connectivity, Long term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, Central Electricity Regulatory Commission (Power Market) Regulations, 2010 and as amended from time to time or any subsequent amendment thereof;

(b) Deliberate under-reporting of transaction in monthly reporting;

(c) Non-compliance of the orders of the Commission including the orders issued for contravention of any regulation of the Commission;

(d) any wilful, repeated and persistent violation of non-serious contraventions committed by the licensee.

(e) Non-payment of the licence fees and surcharge if applicable within the due date as specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

3. xxxxxx”

31. Chapter-IV of the Trading Licence Regulations contains the provisions related to terms and conditions of trading licence. The relevant portion of the regulations is extracted as under:

“CHAPTER - IV: TERMS AND CONDITIONS OF THE LICENCE

7. Obligations of the Licensee

The licensee shall be subject to the following obligations; namely: -

(a) *The licensee shall comply with the requirements of laws in force and, in particular, the Act, the Rules and the Regulations, Grid Code, orders and directions issued from time to time by the Commission and any of the State Electricity Regulatory Commissions in accordance with law.*

(b) *The licensee shall not exceed the volume of trading authorized under the licence, but may, in exceptional circumstances, undertake trading in electricity up to the maximum of 120 per cent of the volume of trade authorized under the licence granted to him:*

Provided that the licensee, on exceeding the volume of trading authorized in a year under the licence granted to him shall pay licence fee applicable to the higher category for that particular year:

Provided further that the licensee may with the prior approval of the Commission and on such terms and conditions as the Commission may decide, exceed the specified limit of 120% in a year.

(c) *The licensee shall not charge any amount exceeding the trading margin for the inter-State trading in electricity, fixed by the Commission from time to time.*

(d) *The licensee shall continue to be governed by the qualifications or disqualifications specified in these regulations for making an application for licence throughout the period of licence.*

(e) *The licensee shall establish adequate communication facilities like telephone, fax, computer, internet facilities, before undertaking trading.*

(f) *The licensee may coordinate with Regional Power Committees, the Central Transmission Utility, State Transmission Utilities, the Regional Load Despatch Centres, and the State Load Despatch Centres with regard to his trading- related activities, to the extent authorized by the concerned buyer and seller.*

(g) *The licensee shall render all assistance to any person authorised by the Commission to carry out his duties relating to the licence.*

(h) *The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.*

(i) *The licensee shall ensure that appropriate agreement for purchase and sale of electricity are entered into by him with the sellers and the buyers prior to scheduling a transaction, and that the agreement shall specify the following, namely-*

- (i) *the boundaries, that is to say, upper and lower MW limits of electricity to be purchased or sold,*
- (ii) *modalities for scheduling,*
- (iii) *persons authorized to specify the schedule, or to modify it after it has been intimated to the Regional Load Despatch Centre or the State Load Despatch Centre,*
- (iv) *whether the buyer or the seller can unilaterally advise modification of the schedule, or whether the modification can only be advised jointly by the buyer and the seller,*
- (v) *the liabilities of the parties (seller, buyer and licensee) in case the scheduled quantum (MW) and time of scheduling differs from the agreed terms, or in case of modification in schedule, and in the latter case, the party that will bear non-refundable part of short-term open access charges.*
- (j) *The licensee shall ensure that there is no discrepancy or scope for dispute in the scheduling advised to the Regional Load Despatch Centre and in case of any discrepancy or ambiguity in the scheduling advice, the decision of the Regional Load Despatch Centre on the acceptance or otherwise of such advice shall be binding.*
- (k) *The licensee shall ensure that the buyer and the seller are, either grid connected entities or represent such entities, with special energy meters on their periphery and that the mechanism for Unscheduled Interchange accounting by the appropriate authority is in place.*
- (l) *The licensee shall not purchase electricity from the entities and the associates of such entities, defaulting in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load Despatch and Communication Scheme or any other payment levied by the Commission or any of the State Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission.*
- (m) *The licensee shall regularly pay the licence fee specified by the Commission from time to time.*
- (n) *The licensee shall not omit or neglect to undertake trading activity.*
- (o) *The licensee shall not enter into any agreement for purchase or sale of electricity that may lead to abuse of his dominant position or enter into a combination which causes or is likely to cause an adverse effect on competition in electricity industry.*
- (p) *The licensee shall maintain up-to-date record of all the trading transactions undertaken by him, separately for bilateral transactions, inter State and those through the power exchange.*

(q) *The licensee shall make an appropriate application before the Commission for prior approval of the Commission whenever so required, in accordance with the Conduct of Business Regulations.*

(r) *The licensee shall, subject to settlement of commercial terms in accordance with law, not omit sale of electricity to a consumer allowed open access by the concerned State Commission.*

8. Accounts of the Licensee

x xxxxx

9. Submission of Information

xxxxxx

10. Standards of performance

xxxxxx

11. Prudential Reporting

xxxxxx

12. Amendment of Licence

xxxxxx

13. Procedure for securing compliance of terms and conditions of licence

xxxxxx”

32. We have already arrived at the conclusion in our Order dated 17.5.2019 that GEPL had *prima facie* violated the provisions of Regulation 7(c), 7(h) and 7(i) of the Trading Licence Regulations. Regulation 7 is covered under Chapter-IV of the Trading Licence Regulations that contains terms and conditions of licence. Thus, non-compliance with Regulation 7(c), 7(h) and 7(i) of the Trading Licence Regulations is violation of terms and conditions of licence and is covered under Section 19(1) (b) of the Act.

33. We had directed GEPL to produce specific information and documents as decided in Order dated 17.5.2019 in Petition No. 211/MP/2016, but GEPL has failed to do so. This is clear cut violation of provisions of Regulation 14A (2) (c) of Trading Licence Regulations which provides that “*Non-compliance of the orders of the Commission including the orders issued for contravention of any regulation of the Commission*” and is covered under serious contravention

by the licensee. By not submitting documents and thereby not complying with orders of the Commission, GEPL has also violated terms and conditions of licence as provided in Regulation 7(a) of Trading Licence Regulations. This is, therefore, covered under provisions of Section 19(1) (b) of the Act.

34. The Power Exchanges have reported that various customers of GEPL have raised arbitration and conciliation cases against GEPL which further establishes that GEPL has delayed or withheld payments to its clients in respect of trading done on Power Exchanges also. This is covered under provisions of Section 19(1) (a) of the Act, Regulation 14 (1) (a) and Regulation 7(h) of the Trading Licence Regulations.

35. Regulation 14C of the Trading Licence Regulations provides as under:

“14C. Penalties for Contravention and non-compliance

(1) Where the charge of serious contraventions is established against the licensee, the Commission may:

(a) direct that the licensee shall pay, by way of penalty, a sum which shall not exceed rupees one lakh for each contravention; and /or

b) debar the licensee, from trading in short term market or medium term or through power exchanges for a period not exceeding one year; or

(c) suspend the licence for trading in electricity for a period not exceeding one year; or

d) revoke the licence of the licensee; or

(e) issue such other directions or impose such other condition as the Commission may deem appropriate.

Provided that in case of debarment or suspension, NLDC or concerned RLDC or SLDC, as the case may be, shall take appropriate action with regard to scheduling and dispatch of electricity in respect of the transactions of the licensee.

(2) xxxxxx”

36. In view of the above, the Commission is satisfied that there are sufficient grounds for revocation of licence granted to GEPL by the Commission for violation of various provisions of the Act and the Trading Licence Regulations. Section 19(3) of the Act provides as under:

“(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months` notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.”

37. Accordingly, notice is hereby given to GEPL under Section 19 (3) of the Act to show cause as to why its licence for inter-State trading of electricity should not be revoked for the following reasons:

(a) Not ensuring timely payment of dues to Jindal Power Limited as brought out in our Order dated 17.5.2019 in Petition No. 211/MP/2016 and thereby violating provisions of Regulation 7(h) of the Trading Licence Regulations.

(b) Not entering into an agreement with Jindal Power Limited as brought out in our Order dated 17.5.2019 in Petition No. 211/MP/2016 before scheduling of power as per LOI dated 30.3.2015 in contravention to the provisions of Regulation 7(i) of the Trading Licence Regulations.

(c) Possible charging over and above the trading margin (in its trading of power vis-à-vis Jindal Power Limited) fixed by the Commission in contravention to the provisions of Regulation 7(c) of the Trading Licence Regulations.

(d) Not replying to directions of the Commission and not producing any documents as directed in our Order dated 17.5.2019 in Petition No. 211/MP/2016 and thereby violating provisions of Regulation 14A(2)(c) and 7(a) of Trading Licence Regulations.

(e) Non-payment or delay in payment, as these are covered under 'wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder' under provisions of Section 19(1) (a) of the Act, Regulation 14(1) (a) and Regulation 7(h) of the Trading Licence Regulations and makes GEPL liable to revocation of licence. Following are the instances of non-payment or delay in payment:

(i) Non-payment to various customers of GEPL, who have raised arbitration and conciliation proceedings against GEPL, as reported by the IEX as under:

Client	Amount Involved
Bajaj Hindustan Ltd.	88,00,000.00
Heritage Foods Ltd.	20,88,167.00
Triveni Engineering & Industries Ltd.	9,50,000.00
Gowthami spintex india) Ltd.	1,65,967.00
Sarda Metals & Alloy Ltd.	62,50,583.00
Birla Sugar Ltd.	7,46,520.00
Filatex India Ltd.	1,89,640.00
	1,80,51,237.00

(ii) Non-transfer of Rs. 13.65 lakh by GEPL to M/s Heritage foods (P.) Ltd. in respect of REC sessions in April 2018 and May 2018 as reported by PXIL

(iii) Non-payment of Rs. 88 lakh (out of traded amount of Rs. 3.01 crore) to Bajaj Hindustan Limited for REC session for the month of March 2018 as reported by PXIL.

38. We direct the Registry to publish the notice in terms of Regulation 13 (3) of the Trading Licence Regulations in two newspapers specifying the terms and conditions contravened by GEPL to bring the matter to the notice of the affected persons by such contravention, to invite suggestions from such persons.

39. GEPL is directed to submit its reply within 3 months of the publication of the notice as above pursuant to this order. Cause shown by GEPL shall be considered while deciding on the show cause notice of revocation of licence under Section 19(1) (a) and Section 19 (1) (b) of the Act.

Sd/-
(I.S. Jha)
Member

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

sd/-
(P. K. Pujari)
Chairperson