



**ORDER**

**OF THE**

**WEST BENGAL ELECTRICITY  
REGULATORY COMMISSION**

**FURTHER ORDER IN RE AMALGAMATION OF INDIA POWER  
CORPORATION LIMITED (IPCL) WITH DPSC LIMITED AND  
SUBSEQUENT CHANGE OF NAME OF DPSC LIMITED TO  
INDIA POWER CORPORATION LIMITED.**

**SHRI SUJIT DASGUPTA, MEMBER**

**DATE: 07.07.2014**

**Further order regarding amalgamation of India Power Corporation Limited (IPCL) with DPSC Limited and subsequent change of name of DPSC Limited to India Power Corporation Limited**

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Noting by Office or Advocate	Sl. No.	Date	Office notes, reports orders or proceedings with signature
		07.07.2014	<p style="text-align: center;"><u>ORDER</u></p> <p>1.0 M/s DPSC Limited, a deemed distribution licensee, that also generates a limited amount of power and basically engaged in distribution of power in Raniganj – Asansole belt of West Bengal, informed the Commission vide their letter dated 4.9.2013 that the name of the company 'DPSC Limited' has been changed to 'India Power Corporation Limited' with effect from 27.08.2013.</p> <p>2.0 On the other hand another company also named 'India Power Corporation Limited' with their registered office at Vishwakarma, 86C Topsia Road (South), Kolkata 700046 applied vide their letter dated 21<sup>st</sup> January, 2009 to this Commission with a proposal for obtaining distribution licence.</p> <p>3.0 In view of above, a letter vide No. WBERC/B-4/(PART)/1416 dated 14<sup>th</sup> November, 2013 was issued to DPSC Limited seeking clarification as to how two companies having identical name being 'India Power Corporation Limited' be there in existence. DPSC Limited was also requested to provide all the required documents in this regard along with (a) Copy of resolution by which name of the company was changed, (b) Memorandum of the company and/or Articles of Association, (c) Corporate Identity Number (CIN), (d) Certification of incorporation and (e) Any clarification in this regard by the Registrar of Companies.</p>

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			<p>4.0 In reply, DPSC Limited informed vide their letter dated 20.11.2013 that the erstwhile India Power Corporation Limited has been merged with DPSC Limited and thereafter DPSC Limited has been changed to India Power Corporation Limited. DPSC Limited also submitted the following documents vide their letter dated 20.11.2013:</p> <ul style="list-style-type: none"> <li>a) A copy of extracts from resolution by circulation passed on 23<sup>rd</sup> August, 2013.</li> <li>b) Memorandum of the Company and / or Articles of Association.</li> <li>c) Certificate of Incorporation.</li> </ul> <p>Regarding CIN they referred it to Certificate of Incorporation which contained the CIN. However, nothing was stated regarding any clarification from Registrar of Companies.</p> <p>5.0 After perusal of the documents, as submitted by DPSC Limited mentioned above, the Commission through its letter dated 22<sup>nd</sup> January, 2014 made the following observations and queries to DPSC Limited.</p> <ul style="list-style-type: none"> <li>a) As per approval of the Registrar of Companies, West Bengal dated 27<sup>th</sup> August, 2013, the change of name of DPSC Limited to India Power Corporation Limited (IPCL) was effected from 27<sup>th</sup> August, 2013. From the copy of the extract from the Resolution passed on 23<sup>rd</sup> August, 2013 of the Board of Directors Meeting of DPSC Limited it appeared that the scheme of amalgamation of India Power Corporation Limited with DPSC Limited followed by change of name of DPSC Limited became effective from 24<sup>th</sup> May, 2013 whereas Annual Report 2012-13 of</li> </ul>
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			<p>your company shows that the amalgamation of IPCL with DPSC Limited took effect from 1<sup>st</sup> October, 2011 (the appointed date).</p> <p>b) The extract from the Resolution passed on 23<sup>rd</sup> August, 2013 of the Board of Directors of DPSC Limited shows that Registrar of Companies, West Bengal vide its letter dated 22/08/2013 had approved the name of “India Power Corporation Limited” whereas copy of the said letter of Registrar of Companies, West Bengal shows that the letter was issued on 27/08/2013.</p> <p>c) By a letter dated 21.01.2009 addressed to the Secretary, West Bengal Electricity Regulatory Commission by Senior Vice President, India Power Corporation Limited, corporate office 3A, Hi-Tech Chambers’ 84/1B, Topsia Road (South), Kolkata-700 046, (Registered office-‘Viswakarma, 86C, Topsia Road (South), Kolkata-700 046, among other things, advice on formalities for obtaining distribution licence under the Electricity Act, 2003, was sought for. So it appears that India Power Corporation Limited (IPCL) was intending to obtain a licence under the Electricity Act, 2003.</p> <p>d) From the records it is found that no permission and/or prior approval has been taken by DPSC Limited from the WBERC for such amalgamation. In terms of Section 17 of the Electricity Act, 2003 read with Regulation 10 of West Bengal Electricity Regulatory Commission (Licensing and Condition of Licence) Regulations, 2004 and the Regulation 5.11, 5.12 and 5.13 of West Bengal Electricity Regulatory Commission (Licensing and</p>
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			<p>Condition of Licence) Regulations, 2013, prima facie, without prior approval of the Commission such amalgamation, in the capacity of a licensee under the Electricity Act, 2003 is not permissible.</p> <p>e) Further, in addition to the provisions of law mentioned above, attention of DPSC Limited was also drawn to Section 17(4) of the Electricity Act, 2003 which is quoted below:</p> <p>“(4) Any agreement relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.”</p> <p>f) DPSC Limited was also asked to ascertain the financial impact of such amalgamation and/or merging upon the consumers of the DPSC Limited. The Commission is required to ensure that liability of any other company is not passed on to the consumers of a distribution licensee indirectly.</p> <p>6.0 Under the circumstances stated in serial no. 5 above, DPSC Limited was directed through the same letter dated 22<sup>nd</sup> January, 2014 to submit the following documents:</p> <p>i) Audited Annual accounts for the years 2011-12 &amp; 2012-13 for both the companies i.e. DPSC Limited and IPCL separately before effecting the said merger of IPCL with DPSC Limited (the appointed date).</p> <p>ii) Half yearly audited / certified copy of Accounts of DPSC Limited for the year 2013-14.</p> <p>iii) All relevant certified documents relating to terms of</p>
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			<p>merger and/or amalgamation of the then IPCL with DPSC Limited.</p> <p>7.0 In reply to Commission's letter dated 22<sup>nd</sup> January, 2014, DPSC Limited, through their letter dated 27<sup>th</sup> January, 2014 intimated the following:</p> <p>a) In terms of section 21 read with section 23 of the Companies Act, 1956, the name change of a company registered under the Companies Act, 1956 is effective and complete only on and after issue of fresh certificate of incorporation pursuant to the change of name by the Registrar of Companies, Ministry of Corporate Affairs, Government of India. Accordingly the name change of DPSC Limited became effective on 27<sup>th</sup> August, 2013 on which date the Registrar of Companies issued fresh certificate of incorporation.</p> <p>b) In terms of sections 391-394 of the Companies Act, 1956 compromise, arrangement, mergers and amalgamations are only effective legally upon filing of the Form 21 within 30 days from the date of receipt of the Court Order. The date of filing / approval of the Form 21 by the Registrar of Companies is considered as 'the effective date', that is, the day on and from which the merger is considered legally effective and can be acted upon. Therefore, the merger of erstwhile India Power Corporation Limited with DPSC Limited was only effective and acted upon on and from 24<sup>th</sup> May, 2013, i.e., the date when ROC approved the Form 21 filed, with the appointed date for transfer of assets and liabilities of the amalgamating company i.e., erstwhile</p>
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			<p>India Power into DPSC Limited being 1<sup>st</sup> October, 2011. That is, upon approval of the merger after filing the form 21, the balance sheets of erstwhile India Power merged with DPSC Limited on and from 1<sup>st</sup> October, 2011 as appointed date. Therefore, for the purpose of merger, the two dates are different with their own implications, which is legally valid and an essential content of all mergers made pursuant to the Companies Act, 1956. A copy of the annual account for 2012-13 and a copy of the scheme were attached.</p> <p>c) Pursuant to the provisions of section 20 and section 21 of the Companies Act, 1956, a company desirous of changing its name has to obtain a name availability certificate from the Registrar of Companies to ensure that the name suggested is not a already registered name or undesirous. In case of DPSC Limited, the ROC had intimated availability of the name – India Power Corporation Limited on 22<sup>nd</sup> August, 2013 and upon filing form 1A for change of name, had issued the certificate allowing change of name on 27<sup>th</sup> August, 2013.</p> <p>d) The letter dated 21<sup>st</sup> January, 2009 of erstwhile IPCL with corporate office at 3A Hightech Chambers, 84/1B Tapsia Road (South), Kolkata 700 046 was a stand alone, independent exercise undertaken by erstwhile India Power Corporation Limited, which was not a distribution licensee under the Electricity Act, 2003 during 2009. It can be assumed that the company was then seeking to gain knowledge on the existing regulations governing the application of a distribution</p>
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			<p>license and thereafter, no follow up was undertaken, neither any formal application for grant of license was made.</p> <p>e) Amalgamation of India Power Corporation Limited with DPSC Limited was not in violation or under scope of section 17 of the Electricity Act, 2003, since erstwhile IPCL which was not a licensee, was merged and amalgamated with DPSC Limited which is a licensee. So, it is neither acquisition or purchase of the utility of a licensee as envisaged in section 17(1)(a) of the Electricity Act, 2003 nor it is a merger of a utility with another licensee as specified in section 17(1)(b) of the Electricity Act, 2003. The legal entity that continues to be in operation is DPSC Limited which is a licensee with just change of name as India Power Corporation Limited for greater visibility and better branding. Section 17(4) of the Electricity Act, 2003 in regard to prior approval of the appropriate Commission is not applicable in the instant case since merger of IPCL, non-licensee, with DPSC Limited, licensee, did not violate section 17(1)(a) and 17(1)(b) of the Electricity Act, 2003.</p> <p>f) Complete set of accounting records are maintained for both the two distinct and separate business activities – one for wind power activity and other for electricity licensing business. Therefore, there is no possibility of passing any liability of wind power activity to the consumers in the licensed area from the merger. DPSC Limited also submitted along with their letter dated 27<sup>th</sup> January, 2014 the following documents:</p>
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			<p>i) Audited annual accounts for 2011-12 and 2012-13 both for IPCL and DPSC Limited.</p> <p>ii) Half yearly and quarterly statements as filed before stock exchanges for 2013 – 2014.</p> <p>iii) Scheme of merger and the final drawn up order for merger.</p> <p>8.0 After perusal of the documents and / or records which DPSC Limited so far submitted, the Commission vide its letter dated 12<sup>th</sup> March, 2014 read with letter dated 1<sup>st</sup> April, 2014 intimated DPSC Limited the following observations / comments:</p> <p>a) The Commission is of the prima facie opinion that DPSC Limited which is a Licensee under the Commission has violated Section 17 and/or West Bengal Electricity Regulatory Commission (Licensing and Conditions of Licence) Regulations, 2013 read with West Bengal Electricity Regulatory Commission (Licensing and Conditions of Licence) Regulations, 2004 by not taking any prior consent and/or approval from the Commission in respect of the following corporate activities:</p> <p>i) All assets and liabilities, reserve and surplus of IPCL as stood on 01.10.2011 (being appointed date of transfer) was merged with DPSC Ltd on and from 24.05.2013 with the approval of Registrar of Companies in Form 21.</p> <p>ii) Change of name of DPSC Ltd. to India Power Corporation Limited was allowed to be effective on and from 27.08.2013 as certified by Registrar of</p>
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			<p>Companies.</p> <p>iii) Pursuant to amalgamation as well as merger between DPSC Ltd and IPCL, the shareholders of erstwhile IPCL were allotted at the rate of 11 (eleven) equity shares of the Company (DPSC Ltd.) against 100 (one hundred) shares held by them in IPCL as disclosed in the notes on financial statements of DPSC Ltd. for the year ended 31<sup>st</sup> march, 2013</p> <p>b) Prima facie, the above mentioned activities are in violation of Section 17 of the Electricity Act, 2003 in addition to violations of regulations 5.11, 5.12 &amp; 5.13 of the WBERC (Licensing and Conditions of License) Regulations, 2013. This may be mentioned that even under the earlier Regulation namely WBERC (Licensing and Conditions of Licence) Regulations, 2004 prior consent and/or approval was required.</p> <p>c) Section 17 of the Electricity Act, 2003 categorically provides certain things which cannot be done by the Licensee. Sub Section 3 says: "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 Commission".</p> <p>Sub section 4 says: "Any agreement relating to any transaction specified in sub section 1 or in sub section 3, unless made with the prior approval of the appropriate Commission, shall be void."</p> <p>d) By a letter dated 21.01.2009 to the Commission erstwhile IPCL made the following contentions which is</p>
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			<p>quoted below:</p> <p>“We take this opportunity to introduce ourselves, <b>India Power Corporation Limited</b>, a company has been incorporated <b>with the mandate of generation, transmission and distribution of electricity.</b></p> <p>The company has major Equity participation from renowned Venture Capital Funds supported by LIC and Indian Banks. IPCL has the committed support of <b>SREI Infrastructure Finance Ltd.</b> to raise resources for the projects.</p> <p><b>IPCL</b> has set up <b>35.2 MW</b> Wind Power Projects with an investment of over Rs.175 Crores in the states of Karnataka and Gujarat. Apart from this further addition of 50 MW Wind Power is under discussion.</p> <p><b>IPCL</b> is also setting up a <b>405 MW</b> coal-based Captive Thermal Power Plant in West Bengal for which Govt. of West Bengal has already allocated 200 acres of land and handed over to the Company out of 300 acres required for the project.</p> <p><b>PTC India Ltd.</b> has entered into MOU with IPCL for off-take of 200 MW power from the proposed plant. PPA is at finalization stage.</p> <p>It is stated for your information that Shristi Infrastructure Development Corporation Ltd. has taken up construction of a mega township at Asansol area requiring a huge distribution network to be built up. Based on their request, IPCL is in the process to setup and manage the distribution network of the said township. We request</p>
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			<p>you to kindly advise the formalities regarding obtaining Distribution Licence as per Electricity Act, 2003.”</p> <p>The above quoted content of the letter dated 21.01.2009 discloses that IPCL wanted to have a Licence. However, no licence application has been filed by the IPCL. Prima facie it seems also an act in disguise to get a licence without seeking a licence under the Electricity Act, 2003.”</p> <p>e) In such circumstances, the Commission is of the opinion that an enquiry should be conducted against the Licensee namely DPSC Ltd. for prima facie violation of Section 17 of the Electricity Act, 2003 and/or regulation 5.11, 5.12 &amp; 5.13 of the WBERC (Licensing and Conditions of License) Regulations, 2013 and/or WBERC (Licensing and Conditions of Licence ) Regulations, 2004.</p> <p>9.0 In view of what has been stated in serial no. 8 (a) to 8(e) above, the Commission directed DPSC Limited in its same letter dated 12<sup>th</sup> March, 2014 to make representation within a period of 3 (three) weeks in respect of these issues for the purpose of enquiry. The Commission also asked DPSC Limited to treat the instant letter dated 12<sup>th</sup> March, 2014 in respect of the issues mentioned therein for the purpose of enquiry under section 19 of the Electricity Act, 2003.</p> <p>10.0 In reply to the above noted letter of the Commission dated 12<sup>th</sup> March, 2014 read with letter dated 1<sup>st</sup> April, 2014, DPSC Limited submitted their views vide their letter dated 31<sup>st</sup> March, 2014 read with letter dated 24<sup>th</sup> April, 2014. In these letters, DPSC Limited reiterated their comments /</p>
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			<p>justification on the subject as was submitted in their letter dated 27<sup>th</sup> January, 2014 mentioned at serial no. 7.0 above. The additional submission they made in their letter dated 31<sup>st</sup> March, 2014 is “we would also hereby thankfully and humbly submit that all along the license had been with DPSC Limited and continues to be so after the merger of erstwhile IPCL with DPSC Limited. The entity with the license is DPSC Limited and the change of name of DPSC Limited to IPCL was merely a coincidence...”.</p> <p>11.0 After going through all the submissions / documents of DPSC Limited mentioned hereinabove, the Commission decided to give a hearing to DPSC Limited, the licensee. Accordingly, a hearing was held on 14<sup>th</sup> May, 2014 at 11.30 hrs. at the office of the Commission. After hearing the party, the Commission vide its order dated 16.05.2014 had passed the following directions:</p> <ol style="list-style-type: none"> <li>a) DPSC Limited is directed to produce copy of approval by the Commission for alleged amalgamation and / or merger on the next date of hearing.</li> <li>b) DPSC Limited is also directed to file a written submission on the next date of hearing.</li> <li>c) The matter shall be heard next on 10<sup>th</sup> June, 2014 at 11.30 hrs.</li> </ol> <p>12.0 Further hearing was held on 10<sup>th</sup> June, 2014 at 11.30 hrs. at the office of the Commission where the following representatives of DPSC Limited were present.</p> <ol style="list-style-type: none"> <li>a) Sri Sandip Mitra, Vice President, Regulatory Affairs,</li> <li>b) Sri Somesh Dasgupta, President (Corporate Affairs),</li> </ol>
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			<p>c) Sri Sanjay Pandey, DGM (Corporate Affairs).</p> <p>13.0 During the hearing, DPSC Limited presented a written submission in the form of an affidavit along with photo copies of different correspondences made by them on this issue till date. No further submission was made by DPSC Limited in this regard.</p> <p>14.0 On being queried by the Commission as to whether they can produce any prior approval of the Commission regarding alleged amalgamation and / or merger of the companies, in question, DPSC Limited regretted their inability to do so as they have no such approval, as asked for.</p> <p>15.0 On perusing the written submission presented by DPSC Limited on 10.06.2014, it appears that the instant submission was merely a repetition of what they have stated in their letters dated 22<sup>nd</sup> January, 2014, 12<sup>th</sup> March, 2014 and 24<sup>th</sup> April, 2014.</p> <p>16.0 In view of the above stated submissions and/or records, it is an admitted position that amalgamation and/or merger took place between IPCL and DPSC, without any approval and/or any prior intimation of the Commission. The role of the DPSC as a company is one thing and as a licensee under the Electricity Act, 2003 is a different thing. DPSC simply as a company may not have any obligation to seek approval from the Commission for merger and/or amalgamation but the same principle will not apply when DPSC is not only a company registered under the Companies Act but also a licensee under the Electricity Act, 2003. So long the DPSC is a licensee, Section 17 squarely applies to it. Under Section 17(3) it is not</p>
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			<p>permissible for a licensee to assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Commission. In the present case, the act of merger and/or amalgamation between IPCL &amp; DPSC falls under the category of 'assignment of licence', 'transfer of utility' and/or 'exchange' and/or 'otherwise' which are prohibited u/s.17(3) of the Electricity Act,2003. The act of amalgamation and/or merger is not outside the ambit of the word 'otherwise'. The interpretation of DPSC to the effect that IPCL not being a licensee, DPSC is free to merge with IPCL without any prior approval of the Commission is not correct.</p> <p>17.0 DPSC has claimed that there was no violation of Section 17(1)(a) or 17(1)(b). Interestingly, DPSC has not taken note of the specific mandate of Section 17(3) by which DPSC as a licensee cannot assign his licence nor can transfer his utility or any part thereof by sale, lease, exchange or otherwise without the prior approval of the Commission. It is immaterial whether the above is done with a licensee or non-licensee. In this case both are prohibited without the approval of Commission. It is worthwhile to mention that by a letter dated 21.01.2009 IPCL inter alia sought information for obtaining distribution licence. Subsequently, IPCL did not make any application seeking licence and instead got itself amalgamated and/or merged with an existing licensee i.e. DPSC. This is a clear case by which without seeking licence under the Electricity Act, 2003 IPCL is trying to get a licence. It seems the very act of IPCL of seeking a licence when seen with the prohibited acts under Section 17 particularly 17(3) and 17(4)</p>
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			<p>it becomes clear that this is a clear case of assignment of licence by the DPSC to IPCL in an indirect method.</p> <p>18.0 By operation of Section 17(4) of the Electricity Act, 2003, all prohibited acts falling under Section 17(3) without the prior approval of the Commission, shall be void. Admittedly, no approval was taken by DPSC for its merger and/or amalgamation with IPCL. Accordingly, by virtue of Section 17(4), the act of merger and/or amalgamation with IPCL with the DPSC, as a licensee, stands void. It is made clear that this order is specifically made for DPSC as a licensee, and not just as a company.</p> <p>19.0 Let a copy of this Order be served upon DPSC Limited.</p> <p style="text-align: right;"><b>Sd/- (S. DASGUPTA) MEMBER</b></p> <p><b>Dated : 07.07.2014</b></p>
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