

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 71 of 2023
Date of hearing: 03.01.2024
Date of Order: 03.01.2024

Application under Clause 4.12 of Appendix 3-A and Clause 4.4 of Appendix 3-C of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 seeking approval for acquisition of GVK Power (Goindwal Sahib) Limited, a power generation company.

In the matter of: Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Patiala, Punjab- 147001

..... Petitioner/Applicant

Versus

GVK Power (Goindwal Sahib) Limited (Through the Resolution Professional), Plot No.10, Paigah House, Sardar Patel Road, Secunderabad, Telangana-500003

...Respondent

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

PSPCL: Sh. Anand K Ganesan, Advocate
Ms. Harmohan Kaur, CE/ARR & TR

GVK: Ms. Suriti Chowdhary
Ms. Abiha Zaidi

ORDER

1. The Petitioner, Punjab State Power Corporation Limited (**PSPCL**), a distribution licensee in the State of Punjab, has filed the present Petition/Application for seeking approval for acquisition of 100% of

the shareholding (including the beneficial interest therein) of GVK Power (Goindwal Sahib) Limited (**'GVK Power'** or **'Target Company'**) having a 540 MW (2 Units of 270 MW each) coal based thermal power plant located at TarnTaran district, near Amritsar (Punjab). Pertinently PSPCL and GVK Power have also entered into a power purchase agreement dated May 26, 2009 (PPA) whereby PSPCL becomes the purchaser of 100% of the saleable energy of GVK's 540 MW thermal power plant. It has been submitted that:

- 1.1. Vide its order dated October 10, 2022, the Hon'ble National Company Law Tribunal, Hyderabad Bench (**NCLT**) admitted the Company Petition (IB) No. 43/7/HDB/2020 filed by Axis Bank Limited under the Insolvency and Bankruptcy Code, 2016 (**IBCode**) for default in payment of financial debt by GVK Power and initiated Corporate Insolvency Resolution Process (**CIRP**) of GVK Power.
- 1.2. Thereafter, the Resolution Professional Mr. Ravi Sethia appointed by the Committee of Creditors of GVK Power (**CoC**) invited expression for interest (**EOI**) for submission of the resolution plans with the purpose of achieving insolvency resolution of GVK Power. PSPCL submitted its EOI on January 06, 2023 and was subsequently named in the final list of the prospective resolution applicants on February 10, 2023.
- 1.3. PSPCL, along with its consultant, conducted due diligence of GVK Power taking into account the commercial off-take agreement, better fuel availability through PSPCL sources, ongoing regulatory proceedings, estimated performance of the plant in future and criticality of having the power generated from plant to be supplied for the benefit of the State. It was accordingly deliberated that the acquisition of GVK Power under

the purview of the IB Code would be a good proposition for PSPCL and would also be in the interest of power consumers of the State. Accordingly, PSPCL submitted an intimation letter dated June 10, 2023 bearing Memo No. 746/ISB-1 before the Commission (**Intimation Letter**) regarding its intention to acquire the generation company in view of Clause 4.12 of Appendix 3-A and Clause 4.4 of Appendix 3-C of the Regulations, which stipulate that a distribution licensee and a trading licensee shall not acquire any beneficial interest in any generating company or generating station without the approval of the Commission. The receipt of the Intimation Letter was acknowledged by the Commission *vide* an email dated June 12, 2023.

1.4. Thereafter, PSPCL submitted a resolution plan dated June 28, 2023. After multiple rounds of legal discussions between PSPCL and the CoC/Resolution Professional, PSPCL submitted the resolution plan dated June 28, 2023 as revised on November 20, 2023 (**Resolution Plan**) to the Resolution Professional. The Resolution Plan envisages acquisition of 100% shareholding (including the beneficial interest therein) of GVK Power through a special purpose vehicle (**SPV**) which would be a wholly owned subsidiary of PSPCL, resulting in PSPCL ultimately and effectively holding 100% of the total equity share capital of GVK Power through the SPV (**Acquisition**). Post-acquisition, SPV will merge with GVK Power which will result in GVK Power becoming a direct subsidiary of PSPCL (**Merger**). Post its proposed Acquisition and Merger, PSPCL intends to revive GVK Power in a time bound manner ensuring maximisation of value of its assets and

for the benefit of all stakeholders including the people of the State of Punjab.

1.5. Thereafter, in the 17th meeting of the CoC, held on November 21, 2023, the Resolution Plan submitted by PSPCL, being the only Resolution Plan received in the CIRP of GVK Power and being compliant with the provisions of the IB Code as determined and certified by the Resolution Professional, was put up for voting before the CoC, in accordance with the provisions of the IB Code. The voting on the Resolution Plan was completed on December 15, 2023. Pursuant to the voting, the Resolution Professional declared that the Resolution Plan was approved by the CoC by way of 100% voting share of the CoC i.e. by requisite majority under the provisions of the IB Code.

1.6. Thereafter, the Resolution Professional under the authority of the CoC issued a letter of intent to PSPCL which was acknowledged and accepted by PSPCL and it submitted the requisite performance guarantee to the Resolution Professional and the CoC of GVK Power. Subsequent to this, the Resolution Professional filed an application under Section 30(6) read with Section 31(1) of the IB Code, for approval of the Resolution Plan, before the Hon'ble NCLT. In terms of its order dated December 22, 2023 (**Plan Approval Order**), the Hon'ble NCLT has approved the Resolution Plan of PSPCL for insolvency resolution and the Acquisition of GVK Power by PSPCL.

1.7. As per the terms of the Plan Approval Order read with the Resolution Plan, PSPCL would need to complete the implementation of the Resolution Plan as per its terms in a time bound manner.

- 1.8. One of the key steps of implementation of the Resolution Plan is the Acquisition for which PSPCL seeks approval of the Commission. In this regard, we note that Clause 4.12 of Appendix 3-A (*General Conditions of Distribution Licence*) of the Regulations provides as under:

“The Distribution Licensee shall not acquire any beneficial interest in any Generating Company or Generating Station or transmission or trading undertakings without the approval of the Commission.”

Further, Clause 4.4 of Appendix 3-C (*General Conditions of Trading Licence*) of the Regulations provides as under:

“The Trading licensee shall not, without the prior approval of the Commission:

- a. acquire any beneficial interest in any Generating Company or Generating Station;”*

- 1.9. Therefore, in order for PSPCL to proceed with the Acquisition of GVK Power as per the terms of the Resolution Plan, taking prior approval of the Commission becomes a mandatory requirement in terms of the above-stated Regulations (in continuation to the Intimation Letter submitted earlier by PSPCL). Accordingly, through this application, PSPCL hereby requests the Commission to provide its formal approval for the Acquisition as per the terms of the Resolution Plan which has already been approved by the Plan Approval Order.

- 1.10. It is submitted that the Acquisition would be beneficial to the people of the State of Punjab. Further, PSPCL and GVK Power have a PPA, and PSPCL, being the sole power purchaser from GVK Power, has unmatched understanding of the business of the GVK Power and is confident that its technical abilities and understanding of the sectoral eco-system in the State of Punjab

would make the power plant potentially one of the most efficient power plants in the State and the country.

1.11. It is submitted that the process of implementation of the Resolution Plan is not complete and is currently pending. Therefore, in the interest of the parties, the Petitioner requests the Commission to not direct/ instruct any publication or release in public domain of any information/ details related to the subject matter of this application or the contents of the Resolution Plan in course of consideration of this application.

1.12. PRAYER MADE BY THE PETITIONER PSPCL

In view of the facts and circumstances stated hereinabove, it is prayed that the Commission may kindly be pleased to:

- (i) Provide approval for the Acquisition of GVK Power by PSPCL as per and pursuant to the terms of the Resolution Plan, which has already been approved by the Hon'ble NCLT, Hyderabad bench; and
 - (ii) Pass any other/ further orders that this Hon'ble Adjudicating Authority may deem fit in the facts and circumstances of the present reply and/ or in the interest of justice.
2. Considering the averments made by the Petitioner/applicant, the Petition/application was admitted and a notice dated 29.12.2023 was issued for listing the petition for hearing on 03.01.2024 at 11.30 A.M in the Commission's office with directions to the Respondent GVK (through the Resolution Professional) to file its reply to the petition before the date fixed for hearing and that it may also appear before the Commission in person or through an authorised representative /Counsel on the date fixed for the hearing.

3. On 01.01.2024, PSPCL filed an additional affidavit stating that in addition to the justification given in the Application filed for approval of the Acquisition, the Petitioner would also like to submit the following points of justification for a better appreciation of the Petition and Prayer by the Commission:

a) Tariff Benefits of coal from Pachwara Coal Mine:

- (i) During the last 7 (seven) years of its operation i.e. from April, 2016 till November, 2023, the yearly per unit tariff paid by the Petitioner to the Respondent is shown under:

| Sr. No. | FY | Declared Energy (MU) | Scheduled Energy (MU) | Amount (FC+EC) Rs. Crore | Total Rate wr.t schedule energy Rs/Unit | PLF (%) | APPC Rs/unit |
|--------------|-----------------------|----------------------|-----------------------|--------------------------|---|------------|--------------|
| 1 | 2016-17 | 197 | 175 | 93 | 5.31 | 4% | 3.97 |
| 2 | 2017-18 | 1814 | 1387 | 822 | 5.93 | 32% | 4.09 |
| 3 | 2018-19 | 2851 | 2203 | 1460 | 6.63 | 51% | 4.35 |
| 4 | 2019-20 | 4275 | 1190 | 1192 | 10.02 | 28% | 4.56 |
| 5 | 2020-21 | 3846 | 1169 | 1167 | 9.98 | 27% | 4.21 |
| 6 | 2021-22 | 2857 | 1696 | 1151 | 6.79 | 39% | 4.46 |
| 7 | 2022-23 | 2353 | 1933 | 1163 | 6.02 | 45% | 5.04 |
| 8 | 2023-24 (Till Nov-23) | 1916 | 1412 | 853 | 6.04 | 49% | - |
| Total | | 20109 | 11165 | 7902 | 7.08 | 34% | |

- (ii) The Average tariff paid by the Petitioner to the Respondent during 2023-24 (Till Nov-23) comes to about Rs. 6.04 per unit i.e. at per unit fixed rate and variable rate of Rs. 2.06 and Rs. 3.98 respectively. However, with the coal supply available from PSPCL's Pachwara coal mine under operation since December 2022, it is envisaged that the variable rate through use of high quality economical coal from this mine, as

presently calculated, would be around Rs. 3.40 per kwh. Further, due to lowering of the variable rate, the plant is expected to pick-up its PLF to about 80% from an existing level of 40-50%, thereby reducing the per unit fixed cost further.

b) Settlement of various litigations

At present, multiple cases between the Petitioner and the Respondent are pending in multiple courts. As per the estimates, these cases filed by the Respondent threaten an additional burden of more than Rs. 3000 crore out of which mere capital cost burden in Appeal No. 41 of 2020 before Hon'ble APTEL may come to Rs. 1200 crores and further, the variable charges risk in Appeal No. 349 of 2019 before the Hon'ble APTEL is more than Rs. 600 Crores. Hence, only these two cases present a risk of about Rs. 1800 Crores upon the Petitioner. Although, the exact amount would be determined only after settling/ adjudication of the cases, yet the estimated risk burden on the Petitioner from all cases pending under litigation is about Rs. 3000 crores.

Also, the Respondent's claim for a higher normative fixed charge of about Rs. 2.20 per unit, on a Capital Cost of about Rs. 4200 Crore against the approved Rs. 3058 Crore by the Commission, translates to about Rs. 3.74 per unit at a PLF of 50% and considering its claim for variable charges of about Rs 4.70 to Rs. 5.00 per unit, the total tariff shall potentially be more than Rs 8.5 per unit to the Petitioner.

However, as per the provision of the resolution plan, all the actions, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings initiated by the

Respondent against the Petitioner shall be deemed to be automatically extinguished/ withdrawn on the date of approval of the resolution plan by the Hon'ble NCLT. Also as per the "clean slate principle" under the IB Code, all such litigations against the Respondent including initiated by the Petitioner prior to the NCLT Approval Date would also be extinguished upon approval of the resolution plan by the Hon'ble NCLT. Thus, it would avoid a potential liability/ burden of about Rs. 3000 crores and increased tariff onto the Petitioner and consequently on to the consumers of the State.

c) Cost of Acquisition Vs. constructing a new plant:

The construction of a new thermal power plant of similar size is likely to cost about Rs. 8.50 Crores per MW i.e. about Rs. 4600 Crore, factoring in the time for construction. In addition, the statutory/ regulatory approvals from various courts/ Govt. offices etc. would have to be also obtained. The Petitioner on the other hand is acquiring a currently operational plant having capital cost of Rs. 3058 Crores as recognised by the Commission. Thus, it is hugely beneficial for the Petitioner to acquire the running power plant of the Respondent. In addition, the power plant of the Respondent has a total land area of 1100 acres out of which 700 acres has been utilized and 400 acres is still available for future use/ expansion.

Therefore, the cost of Acquisition is at a very competitive rate i.e. at Rs. 1080 Crore. The cost of some other acquisitions under the IB Code and the Hon'ble NCLT is placed below for comparison:

| Sr. No. | Name of Plant | Acquired by | Capacity (MW) | Operational Life (years) | Year of acquisition | Total Cost (Cr.) | Per MW cost (Cr/MW) |
|---------|----------------------------|-------------|---------------|--------------------------|---------------------|------------------|---------------------|
| 1 | Korba West | Adani | 600 | 5 years | 2019 | 1804 | 3.00 |
| 2 | Jhabua Power | NTPC | 600 | 6 years | 2022 | 1910 | 3.18 |
| 3 | Ind-Barth Utkal | JSW | 700 | 6 years | 2023 | 2248 | 3.07 |
| 4 | Lanco Amarkantak (Phase-1) | PFC/ REC | 600 | 12 years | 2023 | 1818 | 3.03 |
| 5 | GVK | PSPCL | 540 | 7 Years | 2023 | 1080 | 2.00 |

4. On 02.01.2024, the GVK Power, through the Monitoring Committee, filed its reply stating that:

“That the resolution plan of the Company as submitted by Punjab State Power Corporation Limited on 28.06.2023 and as revised on 20.11.2023 has already been approved by the Hon’ble National Company Law Tribunal, Hyderabad as per its order dated 22.12.2023.

That the Punjab State Power Corporation Limited as the successful resolution applicant is required to implement the Resolution Plan.

That post the approval of the Resolution Plan by the Hon’ble National Company Law Tribunal, Hyderabad, the Resolution Professional has demitted office and that the Company is now being managed by the Monitoring Committee comprising of representatives of Punjab State Power Corporation Limited, the secured financial creditors and the erstwhile Resolution Professional.

That the Company has no objections to Punjab State Power Corporation Limited implementing the approved Resolution Plan as per the terms of the Resolution Plan.”

5. The petition was taken up for hearing today i.e. on 03.01.2024. Wherein, the Ld. Counsel of PSPCL while reiterating its written submissions requested for an early consideration and approval of the proposal keeping in view the limited window available for implementation of the resolution plan with the submission that the Competition Commission of India (CCI) vide e-mail dated 02.01.2024 has also communicated its approval of the proposed combination U/S 31(1) of the Act. The Ld. Counsel representing GVK Power through its Monitoring Committee as per the Resolution Plan approved by NCLT also supported PSPCL's prayer. After hearing the parties the Commission allows the Prayer in the Petition as per the following detailed Order:

6. Observations and Decision of the Commission:

The Commission has examined the submissions made by the parties. The Petitioner, having a PPA for procurement of 100% power generated from the respondent's GVK Power plant, is seeking the Commission's approval for the Acquisition of the same. The Commission notes that the terms of the Resolution Plan have already been approved by the Hon'ble NCLT, Hyderabad bench vide its order dated December 22, 2023. Further, the Competition Commission of India (CCI) vide e-mail dated 02.01.2024 has also communicated its approval for the proposed combination. Therefore, the issue before the Commission is only to examine whether the proposed investment by PSPCL and the Acquisition is in the interest/benefit of the distribution licensee and the consumers of the State i.e., whether the supply of power from the impugned plant after acquisition becomes economical and more reliable or not.

The Commission observes that there are no two opinions about the reasonableness of PSPCL's bid of Rs. 1080 Crore for a project assessed to have a 'Fair Value in the range of Rs. 1785.93 Crore to Rs. 1955.42 Crore' and an 'Average Liquidation Value of Rs. 1347.97 Crore' as indicated in the Hon'ble NCLT Order after obtaining Valuation from several approved Valuers. Also, PSPCL has submitted that by use of the better quality coal available at an economical cost from its own Pachwara Mine, the variable cost, upon acquisition, is likely to be around Rs. 3.40 per unit as compared to an existing average of Rs. 3.98 per unit for FY 2023-24 (till Nov., 2023) which is also expected to rise further. It has been also pleaded that with the reduced variable charges, the plant would rank higher in the MoD and shall be able to improve its PLF resulting in a much better per unit overall procurement rate. Further, the Commission also notes that as per the Resolution Plan for the Acquisition, as approved by NCLT, would bring about a final closure to various disputes/litigations between the parties pending for adjudication in various courts in term of the 'Clean Slate' principle.

In view of the above, the Commission agrees with PSPCL's plea that the proposed acquisition of the GVK Power Plant at the stated bid of Rs. 1080 Crore would result in supply of economical and reliable power to the consumers of the State and is thus beneficial to both PSPCL and to the Consumers of the State. The Commission thus approves the Acquisition and allows the Prayer in the Petition.

The Petition/Application is allowed in terms of the above observations.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 03.01.2024