



Ref: 01:CP: RTI-6464/2014

Date: 12/04/2016



From:

The Central Public Information Officer,
NTPC Limited, NTPC Bhawan,
Core -6, 6th Floor, SCOPE Complex,
Lodhi Road,
New Delhi-110 003.

To

Shri Venkatesh Nayak,
B-117, 2nd Floor,
Sarvodaya Enclave,
New Delhi-110 017.

Sir,

**Sub: Compliance of CIC Decision, Case No. CIC/CC/A/2014/002901-
YA dated 15/02/2016 – in the case of Shri Venkatesh Nayak.**

This has reference to Central Information Commission (CIC) Decision on Case No. CIC/CC/A/2014/002901-YA dated 15/02/2016 which was received in NTPC-CPIO's Office on 31/03/2016. The Commission, in its order, directed CPIO NTPC Ltd. to furnish a copy of project synopsis of proposed 500 MW coal based Power Project in Trincomalee, Sri Lanka submitted by NTPC before the Commission to the applicant.

Thus, complying with CIC Order the Project Synopsis is enclosed at **Annexure-I.**

Thanking you,

Yours faithfully,

Pr
12/4/16
(Pramod K. Yadav)
CPIO, NTPC Ltd.

Encl: Annexure-I.

Copy to: Shri Yashovardhan Azad, Information Commissioner,
Central Information Commission, Room No. 309-B, 2nd Floor, B-Wing,
August Kranti Bhawan, Bhikaji Cama Place, New Delhi – 110066.

Further
Submission

08-21-16

11.32

Sub: Information Required under Right to Information Act-2005 pertaining to Sampur Coal Power Project in Sri Lanka.

Ref: CIC Hearing No. CIC/CC/A/2014-002901-YA held on 8th January, 2016

This has reference to the CIC hearing no. CIC/CC/A/2014/900031-YA held on 8th January, 2016 on the subject matter wherein Hon'ble Commission had directed NTPC to submit written response by 22nd January, 2016 justifying the denial of information to the applicant. In this regard, our comments are as given below:

We reiterate our position on the matter.

Further, it is submitted that the project is going through a critical phase. Environment Clearance for the project from Central Environmental Authority, Sri Lanka is awaited. The Agreements sought by the applicant are commercially sensitive documents with built-in confidentiality clause. The disclosure may harm the commercial and intellectual interests of the JV Company in Sri Lanka as well as co-promoter, Ceylon Electricity Board and may be detrimental to the Indo-Sri Lanka ties which are currently under strengthening. Thus, we seek exemption under Section 8(1) (d) of RTI Act, 2005.

We would like to justify our stand by drawing attention to CIC Order No. CIC/SG/A/2011/02664/17150 dated 30/01/2012 (copy attached) wherein it is stated that:

"In the opinion of this bench, the term 'commercial confidence' comprises of commercial financial or business or financial information which entities keep as confidential, or do not display or bring to the knowledge of the public, mostly with an intention to maintain an advantage over its competitors."

The subject documents have been prepared by investing a lot of man hours and expertise which have cost NTPC, a commercial organization, a lot of money. Our competitors through RTI applications seek these documents without investing anything. This gives them competitive advantage over NTPC. Further, we would like to add that in a similar earlier case NTPC was allowed exemption under Section 8(1)(d) vide CIC Order No. CIC/LS/A/2013/001614-SS dated 28.04.2014 (copy attached).

However, for the information of the Hon'ble Commission and the applicant, a Project Synopsis containing the background, major milestones, status, salient features of Joint Venture Agreement and snapshot of the Project has been prepared and is attached herewith.

Encl: As Above

Proposed 500MW coal based power project in Trincomalee, Sri Lanka (Project Synopsis)

NTPC Limited of India and Ceylon Electricity Board (CEB) of Sri Lanka have incorporated a 50:50 Joint Venture company by the name "**Trincomalee Power Company Limited (TPCL)**" in Colombo under the laws of Sri Lanka, to set up a 500MW coal based power project in Trincomalee, Sri Lanka (copy of Certificate of Incorporation attached). Snapshot of the Project is attached at **Annexure-I**.

1 Major Milestones of progress

- December 2005 : During State visit of President of Sri Lanka, Bilateral Understanding reached between India and Sri Lanka to set up a 500 MW coal based station in Sri Lanka
- December 2006 : Memorandum of Agreement signed between NTPC, Govt. of Sri Lanka (GoSL) and Ceylon Electricity Board (CEB)
- September 6, 2011 : Joint Venture Agreement signed in Colombo to develop 2x250 MW coal based power project in Trincomalee, Sri Lanka with equal (50:50) equity participation.
- September 26, 2011 : Joint venture company by the name "Trincomalee Power Company Limited (TPCL)" incorporated with equal (50:50) equity partnership between NTPC & CEB.
- December 2012. : Feasibility Report for project finalized
- October 7, 2013 : TPCL signed key Project Agreements like Power Purchase Agreement (PPA), Implementation Agreement (IA), Board of Investment (BoI) Agreement and Coal Supply Agreement (CSA) with respective Authorities/Parties in Sri Lanka, in the presence of Hon'ble Foreign Minister, GoI and Ministers of Sri Lanka.
- May 31, 2014 : Generation License granted to TPCL

3. Project progress

- All key Project Agreements like PPA, IA, Bol and CSA have been signed for the project.
- 500 acres of land at Muttur-East (near Sampur) in Trincomalee is under physical possession of TPCL for development of the Project. Chain link fencing is in progress.
- TPCL submitted revised Environment Impact Assessment (EIA) report after incorporating the issues raised by Technical Evaluation Committee (TEC) to Central Environment Authority (CEA) on Feb 09, 2015. Report is under approval process in CEA. EIA clearance is awaited.
- The tendering process for Plant EPC works shall be initiated immediately after obtaining Environmental Clearance.

4. Line of Credit to GoSL for the Project

During the state visit of Honorable President of Sri Lanka to New Delhi in June 2010, a concessionary line of credit of US \$ 200 million was afforded by Govt. of India to enable Govt. of Sri Lanka to fulfill its commitment under implementation agreement for construction of Jetty & transmission line and also equity contribution of CEB for 2x250 MW power Project.

5. Salient Features of the Joint Venture & Shareholders Agreement: NTPC and Ceylon Electricity Board (CEB) signed a Joint Venture and Shareholders Agreement (JVSHA) on 6th September 2011 in Colombo to develop a 2x250 MW coal based power project in Trincomalee, Sri Lanka with equal (50:50) equity participation.

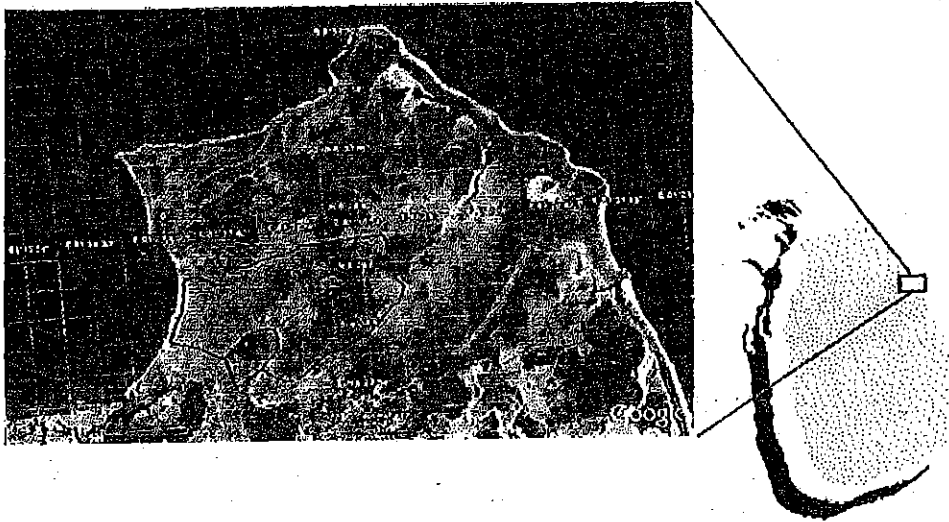
The salient features of the JVSHA are given below:

- A JV Company (JVC) shall be incorporated in Sri Lanka and the registered office of the JVC shall be located in the city of Colombo, Sri Lanka.
- JVC is a special purpose vehicle, specifically incorporated for undertaking the development, construction, establishment, operation and maintenance of a coal based electricity generating station of 2x250 MW capacity at Trincomalee, Sri Lanka.
- **Management of the JV Company and Board Structure**
 - For the initial 8 years, CEB will nominate the non-executive Chairman while NTPC will nominate the Managing Director. After that, Chairman post will be held by nominees of NTPC and CEB respectively, by rotation, for tenure of 3 years each time.

- At any time, the minimum number of Directors on the Board shall, exclusive of alternate Directors, not be less than 6 and shall not exceed 15 Directors or as otherwise prescribed by Applicable Law of Sri Lanka.
- Each Party shall be entitled to nominate Directors on the Board in the Agreed Proportion.
- **Responsibilities of CEB**
 - CEB shall at all times, take all such actions and make best efforts to ensure that the JVC obtains all Approvals required as per Applicable Law, i.e. laws of Sri Lanka.
 - Provide to the JVC free of cost all such information relating to CEB as may be required for making applications for and obtaining the Approvals from the Authorities.
 - Timely payment of equity.
- **Responsibilities of NTPC**
 - All applications required to be made in India by NTPC for obtaining all NTPC Approvals shall be made by NTPC.
 - Timely payment of equity.
 - If required by the JVC, NTPC shall provide to JVC consultancy services for overall development and implementation of the Project.
- **Common Obligations**
 - NTPC and CEB shall at all times respectively endeavor to the best of their ability to promote the Business of the JVC

Annexure I

Snapshot of Project details of 2x250 MW coal power project at Trincomalee Sri Lanka



Location	Muttur-East (near Sampoor) in Trincomalee.
Project Cost	As per the Feasibility Report dated December'2012, approx. USD 615 Mn (INR 3074.91 Crore).
Debt: Equity	70:30
Fuel	Imported coal
Coal Requirement and responsibility	2 Million Tonnes per annum to be supplied by Lanka Coal Company Limited (LCCL) of Sri Lanka.
Power Off-taker	100% power to be purchased by CEB for consumption in Sri Lanka
Power Evacuation	The power evacuation system to be developed by CEB.
Project Schedule	The Commercial operation of 1 st 250 MW unit will be 32 months from the date of Financial Closure which is expected between 6 to 8 months from the date of environment clearance. 2 nd unit at an interval of 4 months thereafter.



FORM 2C

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

No. of Company

P B 4830

2007 අංක 7 දරණ සමාගම් පනත
The Companies Act, No. 7 of 2007

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LIMITED COMPANY

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CERTIFICATE OF INCORPORATION

15 වන උපකරණ අනුච්ඡේදය
(Pursuant to Section 5)

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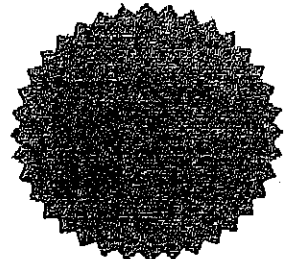
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I hereby certify that TRINCOMALEE POWER COMPANY LIMITED

is this day incorporated as a limited Company having complied with the requirements under the Companies Act, No. 7 of 2007 and that the Company is limited.

Given under my hand at Colombo, this 11th day of September Two Thousand Eleven



Handwritten signature and printed name of the Registrar-General of Companies



FLAG 'F'

reasonable dispatch provided the Party claiming force majeure has notified the other Party within seven (7) days about the circumstances constituting force majeure and its likely duration with such evidence in support thereof as may reasonably be available with it.

- (d) The Parties shall ensure and procure that each of the terms of this Agreement which are not already incorporated in the Articles at the time of incorporation, shall be specifically incorporated into the Articles at First Closing.

16.7 No Publicity etc.

No Party shall make any media or other announcements, releases, disclosures or statements relating to this Agreement and the transactions which are the subject of this Agreement without the prior consent of the other Party unless such announcement or release is required to be made by Applicable Law or Indian Applicable Law or by a Stock Exchange or is to its employees, legal advisers and other consultants and may not be disclosed to any other person except:

- (a) to the Shareholders or the Parties;
- (b) for the purpose of this Agreement;
- (c) for securing or maintaining any Approvals (and/or the CEB Approvals and the NTPC Approvals), or complying with the conditions thereof or of any other Approval (and/or any other CEB Approval and the NTPC Approvals), consent or authorisation from any government or statutory authority, agency or instrumentality;
- (d) for complying with any statutory or other regulatory requirements including requirements of a Stock Exchange where shares of the Party seeking to make such disclosures are listed;
- (e) in connection with legal proceedings relating to this Agreement; or
- (f) is otherwise not confidential.

16.8 Confidentiality

All information received by the Parties from the JVC or each other which is either marked "Confidential" or is by its nature intended to be exclusively for the knowledge of the recipient alone or of the two Parties shall be deemed confidential and exclusively for the knowledge of the Parties alone and shall be kept confidential and shall not be disclosed to any third parties (except to the NTPC's and CEB's respective employees, professional advisers, bankers and Stock Exchanges where either may be listed). The confidentiality obligation and restriction on use of Confidential Information herein contained shall not apply to:

- Information in the public domain or information, which subsequently enter into public domain without breach of this Clause 16.8 (*Confidentiality*) by the Party in default.



- Information that was lawfully in possession of the Party in default at the time of disclosure and was not acquired, directly or indirectly, from the other Party with a confidentiality obligation.
- Information which a Party is required to disclose under Applicable Law or Indian Applicable Law to any judicial or other authorities or to any Stock Exchange where such Party is listed or any regulatory authority.
- Disclosure made to consultants/professional advisors, under appropriate confidentiality undertaking/obligation in writing.
- Information received by the receiving Party from a third party which it was reasonable to believe was both lawfully in possession of the same and had not received the information directly or indirectly from the disclosing Party.
- Information required to be disclosed, but only to the extent required, for enforcement of any right or obligation under this Agreement or any of the Project Agreements in any judicial, arbitration or determinative process.

Notwithstanding the termination of this Agreement, the confidentiality obligation herein contained shall survive for two (2) years after termination of this Agreement.

16.9 Consequential Losses

Except to the extent as expressly provided in this Agreement, neither Party shall be liable to other Party for any Loss, of an indirect, consequential, remote or special nature including without limitation, loss of revenue, loss of contracts or loss of anticipated profit, and whether such loss, damage, cost or arises in contract (including breach of this Agreement), civil wrong (including negligence), breach of statutory duty or otherwise at law, and no matter when or where arising.

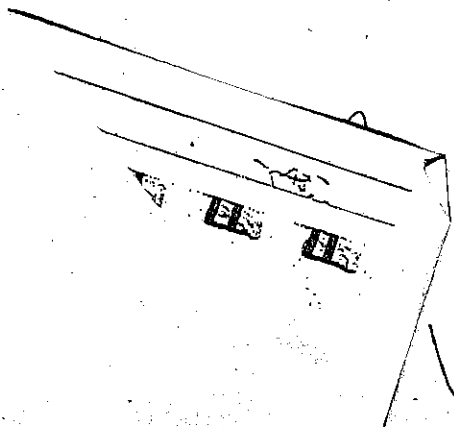
16.10 Exercise of Rights

Unless otherwise specified in this Agreement, all rights of NTPC under this Agreement shall be exercised by the Chairman and Managing Director of NTPC or a person authorized in this behalf by him and all rights of CEB under this Agreement shall be exercised by the General Manager of CEB or any person authorized in this behalf by board of directors of the CEB.

16.11 Notices

- (a) All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in Clause 16.11 (b) below or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 16.11. Any such notice may be delivered personally or by prepaid post letter with copy by electronic mail or facsimile transmission and shall be deemed to have been served if by personal delivery when delivered and if by prepaid post seven (7) days after posting.

7.



2. NTPC arguments
 • We may legitimately extend our arguments to cover any laws
 3. Relevant information to be enclosed