



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Japan Power Generation Limited

Number and date of notice:	CSD/ARN/273/2016-23-24 dated July 11, 2016
Date of hearing:	August 1, 2016; August 18, 2016; September 18, 2016; September 26, 2016; February 6, 2017; March 29, 2017; September 11, 2017 & September 25, 2017
Present:	Mr. Amjad Awan, Chief Executive Officer, Japan Power Generation Limited Mr. M. Javed Panni, Chief Executive, MJ Panni & Associates (Authorized Representative) Mr. Shahid Ali, Vice President, Faisal Bank Limited

ORDER

UNDER SECTION 309 READ WITH SECTION 305 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of proceedings in the matter of show cause notice dated July 11, 2016 (*the "SCN"*) under Section 309 read with Section 305 of the Companies Ordinance, 1984 (*the Ordinance*) issued to Japan Power Generation Limited (*the "Company"*) and the directors of the Company (*the "Respondents"*).

2. The facts leading to this case, briefly stated are that the Company was incorporated in Pakistan on September 29, 1994 as a public limited company under the Ordinance. The shares of the Company are quoted on Pakistan Stock Exchange. Principal business of the Company is to generate and supply electric power to WAPDA. The Company's business has been suspended since 2012. The auditors report to the members dated September 17, 2015 stated that the Company's accumulated losses aggregate to Rs. 7,544.66 million and its current liabilities exceeded current assets by an amount of Rs. 7,193.102 million. The Company's plant ceased operations since October, 2012. Further, no repayments have been made to lenders since July 2008, the overdue amounts inclusive of markup amounted to Rs. 5,569.107 million as at the balance sheet date.

3. The Additional Registrar of Companies, Company Registration Office, Lahore had approached for grant of sanction in terms of clause (b) of section 309 read with clause (c) of section 305 of the Ordinance to present a petition before the Honorable High Court for winding up of the Company on the grounds that the Company has suspended its business since 2012.

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4. The SCN was issued to the Company and the directors in this regard and a hearing was fixed for August 1, 2016 for which a request for adjournment was received from the Company. Later on, hearing opportunities were provided to the Company for August 18, 2016 and September 8, 2016 which were also adjourned on requests from the Company. The hearing fixed for September 26, 2016 was attended by the Mr. Amjad Awan, CEO of the Company and Mr. M. Javed Panni, Chief Executive, MJ Panni & Associates ("the authorized representatives"). The authorized representatives apart from there verbal arguments submitted written submissions as briefly stated hereunder:
- a. The Company is an IPP with installed capacity of 135MW and net contracted capacity of 120.5MW. The plant commenced commercial operations in March 2000. An investment of US\$106 million was made in the project.
 - b. The plant had to stop operation in October 2012 due to contractual disputes with WAPDA. The plant if fully operational can deliver electricity in excess of its contracted capacity to WAPDA on an immediate basis.
 - c. The sponsors/major shareholders of the Company are:

• Pak-Oman Investment Company Ltd.	19.59%
• National Logistics Cell	17.02%
• Saudi-Pak Industrial & Agricultural CO. - Ltd.	<u>7.42%</u>
Total:	44.03%
 - d. The Company and WAPDA developed differences over certain clauses of the Power Purchase Agreement, and, as provided for in the PPA, the dispute was referred to a mutually-agreed Mediation Expert. After due deliberations, the Expert ruled in the Company's favour. Both parties agreed to implement the Expert's recommendations by way of a Settlement Agreement, which was, however, never honoured by WAPDA.
 - e. Subsequently the Company referred the disputes to the International Court for Arbitration under the provisions of the PPA. The Arbitration Court announced its final award in May 2014, which largely upholds the Company's stand. The net effect of the award was Rs.1,265 million. However, WAPDA has yet to accept the Tribunal's ruling and settle with the Company. On the other hand, WAPDA has filed a suit in the District Court in Lahore disputing the Tribunal's ruling, in blatant disregard of the Power Purchase Agreement and the Implementation Agreement. This has resulted in a situation where the plant has been shut down.
 - f. To address the fuel loss (tariff deficiency in fuel cost vs. fuel revenue), the present management decided to retrofit Heat Recovery Steam Turbines at the plant which would utilize exhaust gases from the engines to produce approximately 5MW of additional electricity without incurring any additional cost, which would in turn mitigate the fuel losses being incurred. For this purpose, two refurbished steam turbines have been purchased which have been received at site. Other parts include new heat recovery boilers and other equipment and controls, which have been manufactured to our Company's specifications and are awaiting shipment from the manufacturer in China. Since the equipment has already been manufactured and partially received, minimal time would be required to complete the project. The only constraint in completing this project is the lack of funds with the Company. A total investment of US \$ 5.8 million has been made in





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Steam Turbines Project. The funds have been mobilized by the Company out of its own resources.

- g. In view of severe shortage of electricity in the country, the Company has proposed various options to the Government to restart the plant. Considering its location in a critical load center, i.e. the city of Lahore, the present management has entered into discussions with WAPDA, the Ministry of Water and Power and NEPRA, all of whom have expressed their willingness to revive the plant on mutually beneficial terms. A fresh tariff petition has been filed with NEPRA and hearings have been held to decide upon a Take-and-Pay scenario or revision of the tariff. A proposal to this effect is also pending at the Ministry of Water & Power, considering the recent fall in oil prices. The Company's plant is amongst the cheapest plants in the country to operate.
- h. The matter will hopefully be resolved in due course of time and the plant will be in operation once again in the best interest of the sponsors, lenders and the minority shareholders, and most of all, the people of Pakistan. We shall keep the Commission posted with the progress in revival of the plant.

5. In view of the submissions made in the hearing and based on the ongoing negotiations with relevant stakeholders, the Company, vide Commission letter dated September 27, 2016, was allowed a time period of 3 months for submission of evidence towards the revival of the Company and was also directed to submit fortnightly status report to the Commission for updates on the interim developments. The updates were not received from the Company. The Company, vide letter dated January 5, 2017, was advised to submit the updated report to the Commission for any developments as regards the time afforded to the Company for revival activities and for submission of evidence for such efforts and outcome thereof, if any. The reply to said letter was not received from the Company therefore a reminder was issued vide letter dated January 19, 2017 and a final hearing opportunity was fixed for February 6, 2017. The Company vide letter dated January 30, 2017 submitted a reply and informed that the Company is making every possible endeavor with all the concerned authorities of the Government of Pakistan to bring the plant back on line at the earliest possible. It was further stated that the sponsors of the Company (all government or semi government entities) and lenders continue their negotiations with other interested parties. The Company further informed that due to the multiple agencies involved, the complex nature of the negotiations and the consequent delays, the Company would be obliged if some more time be allowed to bring the matter to its logical and equitable conclusion.

6. The fortnightly report required to be submitted by the Company, as decided in the hearing held on September 26, 2017, was only once submitted by the Company as stated above. Subsequently, a hearing was fixed for March 29, 2017 wherein the authorized representatives of the Company appeared. It was informed that the Company is actively contacting the Ministries and NEPRA in relation to a NOC required from Ministry of Water & Power and it was also informed that the Company is facing liquidity issues. It was requested therein that due to ongoing efforts the Company may be allowed a further time for 3 months. The request of the company was allowed. The Company vide letter dated April 13, 2017 provided an update that the petition filed with NEPRA to adopt Take-and-Pay tariff was returned due to the lack of NOC from the Ministry of Water & Power. It was also informed that the company is in communication with PM Secretariat to formulate ways & means to restore the plant on the national grid. In an another letter dated May 8, 2017 the Company informed that in a meeting of ECC, the Ministry has been authorized to utilize on an immediate basis the generating capacity available with the captive and



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rental plants and shut- down IPPs such as the Company. No further update or communication was received from the Company subsequent to its letter dated May 8, 2017 and a final hearing opportunity was fixed for September 11, 2017.

7. The hearing fixed for attended by the authorized representatives wherein it was stated that all the things are in inertia with no movement at all. He informed that cost of production of the Company will be higher than the selling price as the tariff fixed is very low. The authorized representative was also of the view that the Commission may wind up the Company as they could not justify the request with any concrete argument that the management will be able to revive the company within a particular time. The Company was given one month time to see whether there might arise some positive revival indicators.

8. On September 11, 2017 a request was also received from Faisal Bank Limited (*the "FBL"*) for a hearing opportunity in the matter as FBL was a creditor of the Company and its representative was also on the BOD of the Company. The hearing was accordingly fixed for September 25, 2017 that was attended by Mr. Shahid Ali, Vice President, FBL. During the hearing, Mr. Shahid informed that FBL has lodged a claim of Rs.9.5 billion on the Company and have gone to the Court. FBL has filed a suit for attachment of the assets of the Company after loan default. He was informed that the bank is a secured creditor. The winding up petition will be filed with the Court and any concerns of FBL will be addressed there. Rights of the shareholders of the Company need to be protected by the Commission. The Company has failed to start operations and the Commission, after issuance of SCN, has heard the management and CEO is not hopeful of restarting the operations. Appropriate time has already been given to the Company for revival however the management could not come up with any justifications based on which the Company should be given more time for revival.

9. It is necessary to advert to the following relevant provisions of the Ordinance:

Clause (b) of section 305 of the Ordinance states that a company may be wound up by the Court if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;

Section 309 of the Ordinance states that an application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately, or by the registrar, or by the Commission or by a person authorised by the Commission in that behalf.

In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under section 309 of the Ordinance have been delegated to Executive Director (Corporate Supervision Department).

10. Before proceeding further, I would like to highlight that the position subsequent to the SCN issued shows that the Company has not submitted any viable revival plan and the operations of the Company are suspended since the year 2012. The respondents have been given due hearing opportunities. The financial statements of the Company for the year ended June 30, 2017 also state in Note 1.1 that Company's power plant could not be operated since October 2012. The Directors'



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Report for the year ended June 30, 2017 states that the plant has been completely shut down since October 2012 due to non-availability of fuel advance from WAPDA. The auditors of the Company in their audit report for the year ended June 30, 2017 have given an adverse opinion stating that accounts do not conform with approved accounting standards as applicable in Pakistan and, do not give the information required by the Ordinance in the manner so required and respectively, do not give a true and fair view of state of affairs as at June 30, 2017. It is established that the Company operations have been suspended for more than one year thus attracting provisions of Section 305 (c) of the Ordinance. I, therefore, in exercise of the powers conferred on me under section 309 of the Ordinance, hereby authorize the Additional Registrar, Company Registration Office, Lahore to present a petition for winding up of the Company.

Abid Hussain
Executive Director

Announced:
October 31, 2017
Islamabad

