

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 26/2011**

**Coram:**

1. Dr. Pramod Deo, Chairperson
2. Shri S. Jayaraman, Member
3. Shri V.S.Verma, Member
4. Shri M.Deena Dayalan, Member

**Date of Hearing: 21.4.2011**

**Date of order: 27.4.2011**

**In the matter of:**

Application for approval under Section 17 (3) of Electricity Act, 2003, for creating security in favour of Security Agent pursuant of Security agent agreement for the benefit of the lenders/security agent to the project, through execution of Indenture of Mortgage, Deed of Hypothecation, Deed of Pledge and assignment of ROW on the land, project documents and all clearances and approvals for the project of Essar Power Transmission Company Limited.

**And**

**In the matter of**

- |   |                          |
|---|--------------------------|
| 1. Essar Power Transmission Company Ltd., New Delhi     |                          |
| 2. Rural Electrification Corporation Limited, New Delhi | ..... <b>Petitioners</b> |
| Vs  |                          |
| Essar Power MP Limited, New Delhi                       | .... <b>Respondent</b>   |

**The following was present:**

1. Shri Sanjay Sen, Advocate for the petitioner
2. Shri Nitin Dahiya, Advocate for the petitioner
3. Shri Pallav Kumar, Advocate for the petitioner
4. Shri R.K.Naryaan, Essar Group
5. Shri Anand, Essar
6. Shri S.J. Bhujale, Essar



## ORDER

The first petitioner herein, Essar Power Transmission Company Ltd. has been granted transmission licence under Section 14 of the Electricity Act, 2003 (the Act), to transmit electricity as a transmission licensee and for that purpose to construct, maintain and operate the 400 kV transmission line and 400/220 kV sub-station for setting up of a dedicated transmission system between Mahan generating station and Hazira (hereinafter referred to as "the project"), the details of which are specified in the schedule attached to the licence issued on 8.4.2008. In the present application, the petitioners have made following prayers to:

- (a) Approve the creation of security in favour of Security Agent pursuant to Security Agent Agreement, by way of mortgage, hypothecation and pledge for the project by execution of Indenture of Mortgage, Deed of Hypothecation and Deed of pledge for the project; and
- (b) Pass such other relief as Hon`ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice"

2. According to the petitioners, request has been made for long-term debt through consortium of financial institutions consisting of Power Finance Corporation Ltd (PFC) as the lead member with Rural Electrification



Corporation (REC) as the other member . The lenders have agreed to make available financial assistance for an aggregate principal amount not exceeding ₹934.50 crore for the purpose of part financing the construction, development and implementation of the project and on the terms and conditions set out in the `Common Loan Agreement` executed between petitioner and lenders in addition to other documents, namely, `Inter Creditor Agreement`, `Lenders Agent Agreement`, `Security Agent Agreement` `undertaking by the Borrower` and `Sponsor Support and Retention Undertaking Agreement, (hereinafter referred to as "Financing Agreements"). For this purpose, the first petitioner and the lenders have appointed REC as Security Agent who has agreed to act as trustee for the lenders and hold the security to be created pursuant to the Financing Agreements in accordance with terms and conditions thereof for the benefit of the lenders based on Security Trustee Agreement dated 30.12.2010 entered into by the petitioners lenders and security agent.

2. It has been stated that in accordance with the conditions of the Common Loan Agreement and Security Agent Agreement, first petitioner has agreed that the facility shall be secured *inter-alia*, by the security of Security Agent Agreement by executing indenture of mortgage, deed of Hypothecation and Deed of pledge of mortgage.



3. The petitioners have submitted that in view of the provisions of sub-section (3) and sub-section (4) of Section 17 of the Act, the first petitioner, as a licensee cannot assign the licence or transfer its utility or any part thereof to any person or enter into an agreement relating to any of these transactions without approval of the Commission. Accordingly, the present petition has been filed seeking prior approval of the Commission for creating security in favour of Security Agent pursuant to Security Agent Agreement, by way of mortgage on facility together with all other amount, whatsoever stipulated in the Financing Agreements through execution of indenture of mortgage for the project.

4. The petition was heard after notice to all the parties. None was present on behalf of the respondents.

5. We have considered the submissions made by the representative of the petitioners. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans for which the recourse is against the project. Therefore, it is essential that to enable the licensee to avail the loan facility to set up the transmission project, the licensee should be able to create security over the project assets, project documents and project licenses and approvals. In the event there is default under the financing documents, the lenders can then enforce their security by substituting the licensee by their nominee. However, it would be necessary at



that point of time for the Commission to verify the credentials of such nominee of the lenders to substitute the original licensee and to take over the project because the Commission will have to be satisfied about such nominee's capabilities (financial, technical and past experience) to set up and operate the transmission project. We are thus satisfied that the Security Trustee need to be given comfort by way of mortgage. We, therefore, accord our in-principle approval allowing the applicant to create security in favour of Security Agent pursuant to Security Agent Agreement by way of mortgage on project assets by execution of indenture of mortgage for the project. We, however, make it clear that the transmission licence granted by the Commission to the first petitioner cannot be assigned in favour of the nominee of the Security Agent unless prior approval of the Commission has been obtained at the time of creating rights in favour of such nominee. Before agreeing to transfer of licence and the assets of the first petitioner to the nominee of Security Agent, the Commission has to evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and to be able to execute the project and undertake transmission of electricity. The licensee, lenders, security agent and the nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such transfer. This decision of ours accords with Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of



Transmission Licence and other related matters) Regulations, 2009 which reads as under:-

***"12. Assignment of Licence***

*In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the licence to a nominee of the lenders."*

Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lenders, security Agent and the nominee, approve the assignment of the licence to a nominee of the lenders. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of Security Trustee or transfer of any assets to them shall always be needed. Lastly, finance documents and statements may be filed by the petitioner as and when required by the Commission for any specific purpose.

6. With the above, Petition No. 26/2011 stands disposed of.

Sd/-	Sd/-	Sd/-	Sd/-
(M.Deena Dayalan) Member	(V.S.Verma) Member	(S.Jayaraman) Member	(Dr. Pramod Deo) Chairperson

