

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 136/MP/2012

Coram:

**Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

Date of Hearing: 10.7.2012

Date of order: 25.7.2012

In the matter of:

Application for approval under Section 17 (3) of Electricity Act, 2003, for creating security in favour of Security Trustee pursuant to Security Trustee Agreement, by way of Mortgage on project assets for benefit of the Lenders/security Trustee to the project, through execution of Indenture of Mortgage for "System Strengthening for WR by setting up four 765 kV S/C transmission lines from Dhule to Aurangabad, Dhule to Vadodara, Jabalpur to Bhopal, Bhopla to Indore and two 400 kV D/C transmission lines from Dhule to Dhule and Bhopal to Bhopal extending to over 1005 kms, and 2 sub-stations of 765/400 kV at Bhopal and Dhule.

And

In the matter of

1 Bhopal Dhule Transmission Company Limited, New Delhi
2 SBICAP Trustee Company Ltd., Mumbai **Petitioners**

The following were present:

1. Shri T.A.Reddey BDTCL
2. Shri Pulkit Sharma, BDTCL

ORDER

The first petitioner herein, Bhopal Dhule Transmission Company Limited (BDTCL) has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), to transmit electricity



as a transmission licensee and for that purpose to undertake the business of establishing, commissioning, operation and maintenance of the transmission systems comprising the following elements, the details of which are specified in the schedule attached to the licence issued on 12.10.2011:

Transmission lines

- (i) Jabalpur-Bhopal 765 kV S/C transmission line (ACSR/AAAC Bersemis Quad) -286 kms;
- (ii) Bhopal-Indore 765 kV S/C transmission line (ACSR/AAAC Bersemis Quad)-181 kms;
- (iii) Bhopal-Bhopal (MPPTCL) 400 kV D/C Quad transmission line (ACSR/AAAC Moose)-10 kms;
- (iv) Aurangabad-Dhule (IPTC) 765 kV S/C transmission line (ACSR/AAAC Bersemis Quad)-232 kms;
- (v) Dhule (IPTC)-Vadodara 765 kV S/C transmission line (ACSR/AAAC Bersemis Quad)-276 kms;
- (vi) Dhule (IPTC)-Dhule (MSETCL) 400 kV Quad D/C transmission line (ACSR/AAAC Moose)-20 kms.

Sub-station

- (i) Bhopal sub-station (2 x1500 MVA, 765/400 kV);
- (ii) Dhule (IPTC) sub-station (2 x 1500 MVA, 765/400 kV).

2. In the present application, the petitioners Bhopal Dhule Transmission Company Limited and SBICAP Trustee Company Ltd. have made following prayers to:

- (a) Approve the creation of security in favour of Security Trustee pursuant to Security Agent Agreement, by way of Mortgage on



project assets through execution of Indenture of Mortgage for the project.

(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"

3. According to the petitioners, BDTCL has approached a consortium of banks/financial institutions consisting of State Bank of India (SBI) as the lead member with State Bank of Hyderabad (SBH), Oriental Bank of Commerce (OBC), Indian Overseas Bank (IOB), Bank of Baroda (BOB), Corporation Bank (CB) and India Infrastructure Finance Company (UK) Limited (IIFCL-UK) as the other member for long term loan to part finance the project. The SBI, SBH, SBP, OBC, IOB, BOB, CB and IIFCL-UK (hereinafter referred to as 'lenders') have agreed to make available financial assistance for an aggregate principal amount not exceeding ₹ 12,72,00,00,000/- 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 Term Loan Facility Agreement', 'ECB Facility Agreement', 'Inter Creditor Agreement' 'Lenders Agent Agreement', 'Security Trustee Agreement' and 'Trust and Retention Account Agreement' (hereinafter referred to as "Financing Agreements"). For this purpose, the first petitioner and the lenders have appointed SBICAP as Security Trustee 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 3.5.2012 entered into by the petitioners and lenders. It has been stated that the proposed indenture of mortgage has been settled and initialed between the first petitioner and Security Trustee. The first petitioner has proposed to agree under the above documents that it shall be lawful for the Security Trustee or lenders to enter into and take possession of the mortgaged premises along with all intangibles and any future assets under the project comprised in indenture of mortgage and thenceforth, the first petitioner shall not take any action inconsistent with or prejudicial to the right of Security Trustee on behalf of lenders quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereof without any interruption or hindrance by it or by any person or persons whatsoever.

4. The petitioners have submitted that in view of the provisions of sub-sections (3) and (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 Trustee pursuant to Security Trustee Agreement, by way of mortgage on facility together with all other amounts whatsoever stipulated in the Financing Agreements through execution of indenture of mortgage for the project.



5. It has been further submitted that under clause 15.2 of the Transmission Service Agreement, the beneficiaries of the project have also allowed the BDTCL (first petitioner) to create any encumbrance over all or part of the security package or the other assets of the project in favour of the lenders or the representatives of the lenders as security for:

(a) Amount payable under the Financing Agreement; and

(b) Any other amounts agreed by the parties:

Provided that:

- (i) The lenders or the representatives of the lenders shall have entered into the Financing Agreements; and
- (ii) Any encumbrance granted by the BDTCL shall contain provisions pursuant to which the lenders or the representatives of the lenders agree unconditionally with the BDTCL to release such encumbrances upon payment by BDTCL, to the lenders, of all amounts due under the Financing Agreements.

6. 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 Trustee pursuant to Security Trustee 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 Trustee unless prior approval of the Commission is 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 Trustee, the Commission shall 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 trustee 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 Trustee 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.

7. With the above, Petition No. 136/MP/2012 stands disposed of.

SD/-	SD/-	SD/-	SD/-
(M.DEENA DAYALAN)	(V.S.VERMA)	(S.JAYARAMAN)	(Dr. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON

