

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 7/MP/2013

Coram:

Dr. Pramod Deo, Chairperson

Shri V.S.Verma, Member

Shri M.Deena Dayalan, Member

Date of Hearing: 14.3.2013

Date of order: 22.3.2013

In the matter of

Application for approval under Sections 17(3) and 17 (4) of Electricity Act, 2003 for creating Security Interest by the Western Region Transmission (Maharashtra) Pvt. Ltd, in favour of SBICAP Trustee Company Limited, Security Trustee and for the benefit of IDFC Limited and proposed working capital lender, in connection with the Package B of Western Region Strengthening Scheme-II in Maharashtra and Karnataka.

And in the matter of

1. Western Region Transmission (Maharashtra) Pvt. Ltd., Mumbai
 2. SBICAP Trustee Co. Ltd. , Mumbai
- **Petitioners**

Vs

1. Maharashtra State Electricity Distribution Company Ltd., Mumbai
 2. Gujarat Urja Vikas Nigam Ltd. Vadodara
 3. Chhattisgarh State Power Distribution Co. Ltd. Raipur
 4. Electricity Deptt., Govt. of Goa, Panaji
 5. Electricity Deptt. Administration of Daman and Diu, Daman
 6. Electricity Deptt., Govt. of UT of Dadra and Nagar Haveli, Silvass
 7. Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore
 8. M.P. Power Trading Co. Ltd., Jabalpur
 9. Adani Power Limited, Ahmadabad
 10. Heavy Water Project, Deptt. of Atomic Energy, Mumbai
 11. Power Trading Corporation of India Ltd., New Delhi
 12. Jindal Power Limited, Chhatisgah,
 13. Sugem Mega Power Project Torrent Power Ltd., Surat
 14. Power Grid Corporation of India Ltd., Gurgaon
- Respondents**

The following were present:

1. Shri Matrugupta Mishra, WRTMPL
2. Shri Anil Rawal, WRTMPL



ORDER

Western Region Transmission (Maharashtra) Pvt. Ltd., the first respondent herein 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 construct, maintain and operate the transmission assets pertaining to Western Region System Strengthening Scheme-II, package-B. The first petitioner had approached the Commission in Petition No. 207/2009 for approval under Section 17 (3) and (4) of the Act to create security in favour of the SBICAP Trustee Co. Ltd. by execution of indenture of mortgage. The Commission in its order dated 11.2.2010 had accorded the approval for creating security in favour of SBICAP Trustee Company Limited.

2. The present petition has been filed by the first petitioner and SBICAP Trustee Co. Ltd for approval under Section 17 (3) and 17 (4) of the Act for creation of security in favour of SBICAP Trustee Co. Ltd as Security Trustee for the benefit of the IDFC by way of execution and creation of Security Documents. According to the petitioner, it has availed a part financing from erstwhile lenders and has repaid the entire outstanding amount to the erstwhile lenders.

3. The petitioners have made the following prayers:

- a) Approve creation and/or perfection of Security Interest stipulated in favour of Security Trustee, acting on behalf of and for the benefit of (i) IDFC Limited; and (ii) proposed working capital lender, as the case may be;

- b) Approve the Security Documents, and execution thereof, for creation and/or perfection of aforesaid Security Interest annexed at Annexures 7, 8 and 9 hereto in favour of Petitioner No.2, the Security Trustee for the benefit of Existing Lender;
- c) Approve creation of pari passu security to secure the working capital facilities in favour of Security Trustee/proposed working capital lender as described in paragraph 14 of this petition and execution of security documents for creation of such security;
- d) Pass such other order as this Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.

4. According to the first petitioner, a consortium of financial institutions and banks led by State Bank of India had agreed to lend and advance financial assistance by way of term loans aggregating to approximately ₹ 638.40 crore for the purpose of part financing the construction, development and implementation of the Project on the terms and conditions set out in the 'Common Loan Agreement' dated May 18, 2009 and other financing /security documents. SBICAP Trustee Co. Ltd. was appointed as security trustee vide Security Trustee Agreement dated May 18, 2009 for the benefit of the Erstwhile Lenders.

5. The first petitioner has also submitted that it approached IDFC Limited (formerly known as Infrastructure Development Finance Company Limited) for part financing of the cost of the project and in place of the Rupee Loans. IDFC Limited has agreed to provide financial assistance of ₹ 601 crore (hereinafter referred to as the



“Rupee Term Loan”) for the purpose of part financing the construction, development and implementation of the project on the terms and conditions set put in the Rupee Loan Agreement dated 28.6.2012, Trust and Retention Account Agreement and other financing documents.

6. The first petitioner has further submitted that remaining funds required for the project will be arranged in accordance with the provisions of the Rupee Loan Agreement. Besides the Rupee Term Loan, it shall also be availing working capital facility from the proposed working capital lender to the maximum extent of Rs 37 crore in connection with the project.

7. The first Petitioner has also submitted that it approached prospective working capital lenders and the arrangement for working capital assistance is in the process of finalization. The Second petitioner has been appointed by the first petitioner and Existing Lender as the Security Trustee and second petitioner has agreed to act as Security Trustee and to hold the security created/to be created pursuant to the Rupee Loan Agreement and other financing/security documents in accordance with the respective terms thereof based on the Security Trustee Agreement dated 26.9.2012. The Security Interest created/to be created in favour of second petitioner acting on behalf of and for the benefit of IDFC Limited and proposed working capital Lender, shall rank pari-passu among IDFC Limited for the Rupee Term Loan of ₹ 601 crore and proposed working capital lender for working capital facility of ₹ 37 crore.

8. According to the petitioner, the proposed indenture of mortgage and memorandum of entry and Director`s declaration have been settled and initialled between the Security Trustee and First petitioner. The petitioner has proposed to



notify all the major project parties regarding the assignment of all rights, title benefits, claims and interests in favour of the Security Trustee for the benefit of lenders.

9. The first petitioner has proposed:-

- (i) To create Security Interest on assets, rights and entitlements including movable and immovable properties situated in the States of Maharashtra and Karnataka by way of mortgage by execution of Indenture of Mortgage and / or deposit of title deeds and to execute declaration and undertaking before creation of mortgage through its director/authorized person; and
- (ii) To create mortgages in favour of the Security Trustee in phases as and when further immovable assets are acquired / new contracts in respect of the transmission towers are placed.

10. The first petitioner has further stated that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, 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 wherein the petitioners have sought the Commission`s prior approval for creating security in favour of Security Trustee and give effect to the aforesaid mortgages, charges and assignments.

11. It is further stated that Implementation agreement signed between the first petitioner and Power Grid Corporation of India Limited and Power Transmission Agreement signed between the first petitioner and beneficiaries provide that the first



petitioner is free 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:

- a) The Lenders or the Lender's Representative shall have entered into the Financing Agreements; and
- b) Any encumbrance granted by the first petitioner shall contain provisions pursuant to which the lenders or the representatives of the lenders agrees unconditionally with the petitioner to release such encumbrances upon payment, to the lenders, of all amounts due under the Financing Agreements.

12. Petition was heard on 14.3.2013 after notice to all the parties. None was present on behalf of the respondents. No reply has been filed by the respondents. During the course of hearing, the representative of the petitioner submitted that the proposed working capital lenders will finalized shortly.

13. We have considered the submissions made by the petitioner. The Commission vide its order dated 11.2.2010 in Petition No. 207/2009 had already accorded approval for creating security in favour of SBICAP Trustee Company Limited, Mumbai and a part of the Rupee Loan has already been availed. Erstwhile lenders, Namely South Indian Bank, United Bank of India, Andhra Bank, India Infrastructure Finance



Company Limited, State Bank of Bikaner and Jaipur , State Bank of Hyderabad, Vijay Bank and State Bank of India have conveyed their no dues certificates. SBICAP Trustee Company as Security Trustee in its letter dated 14.3.2013 has conveyed its no objection for releasing the charge created in its favour. We, therefore, accord in principle approval allowing the applicant to create security in favour of SBICAP Trustee Company Limited as 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 and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee 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 Trustee, 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, lender, 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 follows:-

“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.

14. With the above, Petition No. 7/MP/2013 stands disposed of.

sd/-
(M.DEENA DAYALAN)
MEMBER

sd/-
(V. S. VERMA)
MEMBER

sd/-
(DR.PRAMOD DEO)
CHAIRPERSON