

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. MP/051/2014

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K Singhal, Member**

Date of Hearing: 13.5.2014

Date of Order : 01.8.2014

In the matter of

Petition for grant of approval under Section 17 (3) of the Electricity Act, 2003 for creating securities in favor of Power Finance Corporation Limited by way of hypothecation of movable and immovable assets of 400 kV D/C Muzaffarpur to Sursand section (India portion) of Indo-Nepal Cross Border Transmission line from Muzaffarpur (India) to Dhalkebar (Nepal) on behalf of Cross Border Power Transmission Company Limited.

**And
in the matter of**

1. Cross Border Power Transmission Company Limited
1st floor, Corporate Tower,
Ambience Mall Complex, Ambience Island, NH-8
Gurgaon- 122001

...Petitioner

2. Power Finance Corporation Limited
"Urjanidhi" 1, Barakhanba Lane,
Connaught Place,
New Delhi- 110001

Vs

PTC India Limited
2nd floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi- 110066

....Respondent



Following were present:

Shri V.L. Dua, CBPTCL
Shri P.N. Prasad, CBPTCL
Shri Anil R. Shah, CBPTCL
Shri Mehtab Ahmed, CBPTCL
Ms. Shelly Gupta, PFC
Shri Raheel Kohli, Advocate, PTC
Shri Bharat Sharma, PTC

ORDER

The first petitioners herein, Cross Border Power Transmission Company Limited 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 400 kV D/C transmission line between Muzaffarpur (India) and Dhalkebar (Nepal) (hereinafter referred to as 'the project'), the details of which are specified in the schedule attached to the licence issued vide order dated 1.12.2010 as amended vide order dated 30.9.2013. In the present petition, Cross Border Power Transmission Company Limited (CBPTCL) and Power Finance Corporation Limited (PFC) have made a combined petition with the following joint prayers:

"(a) In the facts and circumstances of the case, it is, therefore, most respectfully prayed to this Hon`ble Commission to grant approval under sub-section (3) and sub-section (4) of Section 17 of Electricity Act, 2003 to "Cross Border Power Transmission Company Limited" for creating securities in favour of Power Finance Corporation Limited by and to execute hypothecation Deed and declaration in the matter of Hypothecation of movables in favor of Power Finance Corporation Limited for movable assets of 400 kV Muzaffarpur to Sursand section of 400 kV D/C Indo-Nepal Cross Border Transmission line

from Muzaffarpur (India) TO Dhalkebar (Nepal) on behalf of Cross Border Power Transmission Company Limited.

- (b) give due consideration to the contents to this petition; and
- (c) to pass such order/s as this Hon`ble Commission may deem fit and proper on the facts and circumstances of this case."

2. According to the petitioners, CBPTCL has approached Power Finance Corporation (PFC) for grant of loan to the extent of ₹ 178.24 crore for the purpose of the execution of the project, on the terms and conditions set out in the "Memorandum of Agreement". Based on the said request, PFC sanctioned a loan of ₹ 175.19 crore. The "Memorandum of Agreement" signed on 12.7.2013 between the first petitioner (the borrower i.e. CBPTCL) and second petitioner (lender i.e. Power Finance Corporation) have insisted for the following security:

- (a) By way of mortgage, a first charge on all the immovable assets of the project (except the land utilization by Right to Way), both present and future.
- (b) By way of hypothecation, a first charge on all the movable assets, both present and future.
- (c) A first charge on the letter of credit, trust and retention account/escrow, DSRA and other reserves and any other bank accounts of the borrower, present and future, wherever maintained.

(d) A first charge on the revenue and receivable of the project both present and future.

3. 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 create security by way of entering into hypothecation deed and cannot assign the licence or transfer its utility or any part thereof by way of sale, lease, exchange or otherwise and 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 securities in favour of Power Finance Corporation pursuant to Memorandum of Agreement by way of hypothecation of movable assets of the project.

4. The petition was heard after notice to the respondent . During the course of hearing, the representative of the respondent submitted that it has no objection for creating security in favour of PFC.

5. We have considered the submissions made by the representative of the petitioners and respondent. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans as it is a normal practice followed by financial institutions/banking industry to ask for sufficient security from the borrower to back the loan in order to mitigate the credit



risk of the lender. In the instant case, the lender (Power Finance Corporation) has sanctioned a loan of ₹ 175.19 crore for debt funding of the project. A Memorandum of Agreement dated 12.7.2013 has been executed between PFC and the first petitioner. Item 6 of the Memorandum of Agreement deals with security of the loan which is extracted as under:

"6. The borrower has agreed to secure the Loan by way of:

- (a) a first charge, by way of mortgage, in favour of the Corporation, in a form and manner acceptable to the Corporation, over all the Borrower's immovable properties acquired for the Project (except the land utilized by Right of Way), both present and future;
- (b) a first charge by way of hypothecation in favour of the Corporation, in a form and manner acceptable to the Corporation, over all the Borrower's movable properties and assets, including tower/tower material, conductors and associated items, insulators, spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present and future, intangible, goodwill, uncalled capital present and future relating to Project;
- (c) a first charge on the letter of credit, trust and retention account/escrow, DSRA and other reserves and any other bank accounts of the Borrower, present and future wherever maintained;
- (d) a first charge on the revenue and receivable of the Project, both present and future"

In accordance with the requirement of Memorandum of Agreement, the first petitioner is required to mortgage all immovable properties of borrower acquired for the project, both present and future. Moreover, all the movable properties and assets, including tower/tower material, conductors and associated items, insulators, spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present

and future, intangible, goodwill, uncalled capital present and future relating to project, are to be hypothecated in favour of PFC. In addition, PFC will have the first charge on the letter of credit, trust and retention account/escrow, etc. and on the revenue and receivables of the project.

6. Section 17 (3) and (4) of the Electricity Act, 2003 provides as under:

" 17. (3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be valid.

7. As per above provision, licensee is required to obtain approval of the Commission for assigning his licence or transfer its utility or any part thereof by way of sale, lease, exchange or otherwise and to enter into an agreement relating to any of these transactions. We are thus satisfied that the lender i.e. Power Finance Corporation need to be given comfort by way of hypothecation of movable assets of the project. We, therefore, accord our in principle approval allowing the petitioner to create security in favour of Power Finance Corporation pursuant to Memorandum of Agreement by way of hypothecation of movable 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 Power Finance Corporation 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 lender, the Commission shall evaluate such a lender'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 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, lender and the nominee, approve the assignment of the licence to the lender subject to proper due diligence. Therefore, specific prior approval of the Commission for assigning the licence to the lender or transfer of any assets to it shall always be needed. Finance documents and statements may be filed by the petitioner as and when required by the Commission for any specific purpose.

8. The petition is disposed of with the above.

Sd/-
(A. K. Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

