

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. MP/068/2014**

**Coram:**

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

**Date of Hearing: 10.6.2014**

**Date of Order : 01.8.2014**

**In the matter of**

Petition for grant of approval under Section 17 (3) of Electricity Act, 2003 for creating securities in favour of Bank of Baroda, presently acting as Security Agent (or any other Security Agent/Trustee to be appointed by the Lenders of TPTL) for the benefits of Consortium Lenders by way of Hypothecation of Movable and Immovable assets of 400 kV D/C Transmission line from Teesta-III HEP in North District of Sikkim to sub-station at Kishanganj District in Bihar on behalf of Teestavalley Power Transmission Limited.

**And**

**In the matter of**

1. Teestavalley Power Transmission Limited  
1<sup>st</sup> Floor, 15 NBCC Tower, Bhikaji Cama Place  
New Delhi – 110066

2. Bank of Baroda  
Corporate Financial Services (Large Corporate) Branch,  
1<sup>st</sup> Floor, Bank of Baroda building, 16, Sansad Marg  
New Delhi – 110001

**.....Petitioners**

**Vs**

Teesta Urja Limited  
1<sup>st</sup> Floor, 15 NBCC Tower, Bhikaji Cama Place  
New Delhi – 110066

**.....Respondent**

**Following were present:**

Shri S.K. Gupta, TPTL  
Shri V.Vasu, TUL  
Shri Sumit Kumar, TUL

## ORDER

The first petitioner herein, Teestavalley Power Transmission Limited (TPTL) has been granted transmission license 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 400 kV D/C transmission line from Teesta III HEP in North District of Sikkim to Kisangani District in Bihar, the details of which are specified in the schedule attached to the licence issued vide order dated 14.5.2009. Teestavalley Power Transmission Limited and Bank of Baroda have filed a combined petition with following prayers:

“(a) To grant approval under Sections (3) and (4) of Section 17 of Electricity Act, 2003 to “Teestavalley Power Transmission Limited” for creating securities in favour of Bank of Baroda, presently acting as Security Agent (or any other Security Agent/Trustee to be appointed by the Lenders of TPTL) for the benefits of Consortium Lenders.

(b) To execute Hypothecation/Assignment Deed/Mortgage Deed over Movable & Immovable Assets in favor of Bank of Baroda, presently acting as Security Agent (or any other Security Agent/Trustee to be appointed by the Lenders of TPTL) of 400 KV D/C Transmission line from Teesta III HEP in North District of Sikkim to Kisangani District in Bihar on behalf of Teestavalley Power Transmission Limited.”

2. According to the petitioner, TPTL has approached a consortium of banks/financial institution consisting of Bank of Baroda (**BOB**), Rural Electrification Corporation Ltd.(**REC**), Andhra Bank, Union Bank of India (**UBI**), United Bank of India (**UTBI**) and Bank of India (**BOI**) for the grant of loan to the extent of Rs. 774.37 crore out of which loan documents for Rs. 755.50 crore have been executed for the project , on the terms and conditions set out in the “Common Loan Agreement” dated 27.3.2014. For this purpose, the petitioner and the lenders have appointed Bank of Baroda as security agent who has agreed to act as trustee for the lenders and hold security to be created pursuant to the “Common Loan Agreement” in accordance with the terms and conditions thereof for the

benefit of all the consortium lenders based on “Addendum-1 to the Security Agent Agreement” signed on 27.3.2014. The Bank of Baroda along with consortium of other lenders has sanctioned a loan of ₹ 755.50 crore under schedule I of “Addendum-1 to the Security Agent Agreement”. The Addendum-2 to Common Loan Agreement signed on 27.3.2014 between the first petitioner (the borrower i.e. TPTL) and second petitioner (lender i.e. Bank of Baroda) on behalf of the consortium lenders have insisted for the following security:

(a) By way of mortgage of Borrower’s all immovable properties, present and future.

(b) First charge by way of hypothecation of all the Borrower’s movable properties, including plant and machinery, machinery spares, equipments, tools and accessories, furniture, fixtures, vehicles, stocks and all other movable assets, present and future, all current assets including but not limited to operating cash flows, commissions, revenues of whatsoever nature and wherever arising, present and future, intangibles, goodwill, uncalled capital, present and future and also first rank pari-passu charge by way of hypothecation/ assignment of all the present and future book debts, bills, receivables, monies including bank accounts (TRA/ DSRA etc.), claims of all kinds and stocks including consumables and other general stores.

(c) A first charge by way of assignment or creation of security Interest including all rights, title, interest, benefits, claims and demands whatsoever of the Borrower :

(i) in the Project Documents/Contracts, as amended, varied or supplemented from time to time;

(ii) in the clearances relating to the Project;

(iii) in any letter of credit, guarantee, performance bond provided by any Party to the Project; and

(iv) all Insurance Contracts/ Insurance Proceeds;

3. The petitioners have submitted that in view of the provision 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 lenders pursuant to Security Agent Agreement by way of hypothecation of movable assets and mortgage of immovable 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 Bank of Baroda.

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. 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 lenders. In the instant case, the consortium of lenders lead by Bank of Baroda has insisted for security by way of hypothecation of movable assets and mortgage of immovable assets of the project. Accordingly, Security Agent Agreement dated 27.03.2014 has been executed for the loan of ₹ 755.50 crore and pending debt tie-up of ₹ 18.87 crore. Clause 14.2 of the Transmission Service Agreement deals with security package or the

other assets of the project which is extracted as under:

- "(i) Amount payable under the Financing Agreement; and
- (ii) Any other amounts agreed by the parties:

Provided that:

(a) The lenders or the representatives of the lenders shall have entered into Financial Agreement; and

(b) Any encumbrance granted by TPTL shall contain provisions pursuant to which the lenders or the representative of the lenders agree unconditionally with TPTL to release such encumbrances upon payment by TPTL, to the lenders, of all amounts due under the Financing Agreement."

In accordance with clause 14.2 of the TSA, the beneficiaries of the project have also been allowed 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. In case of default under the financing documents, the lenders can enforce their securities by taking legal possession of the assets and by substituting the licensee by their nominee which may lead to the transfer of utility and/or assignment of license.

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 the above provision, a 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 consortium lenders lead by Bank of Baroda need to be given comfort by way of hypothecation of movable assets and mortgage of immovable assets of the project along with projects documents, project licenses and approvals. We, therefore, accord in principle approval allowing the first petitioner to create security in favour of Bank of Baroda, presently acting as Security Agent (or any other Security Agent/Trustee to be appointed by the Lenders of TPTL) on behalf of the consortium lenders for their benefits by way of executing Memorandum of Agreement by way of hypothecation of movable assets, assignment deed and mortgage of immovable 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 Bank of Baroda, presently acting as Security Agent (or any other Security Agent/Trustee to be appointed by the Lenders of TPTL) on behalf of the consortium lenders 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 the Security trustee, Security agent of lenders, 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 in accordance 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 license 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, security Trustee and the nominee, approve the assignment of the license to the nominee of the lenders subject to proper due diligence of the process. Therefore, specific prior approval of the Commission for assigning the license to the nominee of the security trustee/security agents or transfer of any assets to them shall always be needed. Lastly, financial 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**