

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 163/MP/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Hearing: 15.09.2015

Date of Order: 06.10.2015

In the matter of

Petition for approval under Section 17 (3) and (4) of Electricity Act, 2003 for creation and continuation of securities in favor of the IDBI Trusteeship Services Limited (Security Trustee) for the benefit of Consortium Lenders and in favor of ICICI Bank Limited (Working Capital Lender) by way of Hypothecation and/or mortgage of Movable and Immovable Assets of Jaypee Powergrid Limited comprising of LILO of 400 kV D/C Baspa-Nathpa Jhakri transmission line at Wangtoo, 400 kV D/C Karcham-Wangtoo-Abdullapur transmission line (Quad conductor) and 400/200 kV sub-station (Extension) (PGCIL/CTU) at Abdullapur.

And

In the matter of

Jaypee Powergrid Limited
'JA House', 63, Basant Lok,
Vasant Vihar, New Delhi-110 057

...Petitioner

Vs

1. Jaiprakash Power Ventures Limited
Sector 128, District Gautam Budh Nagar,
Noida-201304, Uttar Pradesh
2. Himachal Sorang Power Limited
C-35, lane II, Sector-1,
New Shimla, Himachal Pradesh
3. Government of Himachal Pradesh
Department of Power, H.P. Secretariat,

Armsdale Building,
Shimla-171002, Himachal Pradesh

4. Himachal Pradesh State Electricity Board
Vidyut Bhawan,
Shimla-17100, Himachal Pradesh
5. Satluj Jal Vidyut Nigam Limited
Himfeb Building, New Shimla-171009
Himachal Pradesh
6. Power Grid Corporation of India Limited
'Saudmini', Plot No. – 2,
Gurgaon-122001, Haryana
7. POSOCO Limited
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016
8. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
Vidyut Bhawan, Vidyut Marg, Jaipur-302 005
9. Ajmer Vidyut Prasaran Nigam Ltd.
400 kv gss Building (Ground Floor). Ajmer Road,
Heerapura, Jaipur.
9. Jaipur Vidyut Vitran Nigam Ltd.
400 kv gss Building (ground floor). Ajmer Road,
Heerapura. Jaipur.
10. Jodhpur Vidyut Vitran Nigam Ltd.
400 kv gss Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.
11. Himachal Pradesh State Electricity Board
Vidyut Bhawan,
Kumar House Complex Building II,
Shimla-171 004
12. Punjab State Electricity Board
The Mall, Patiala - 147 001
13. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134109

14. Power Development Deptt.
Govt. of Jammu and Kashmir
Mini Secretariat, Jammu
15. Uttar Pradesh Power Corporation Ltd.
(formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226 001
16. Delhi Transco Ltd.
Shakti Sadan, Kotla Road,
New Delhi-110 002
17. BSES Yamuna Power Ltd.
BSES Bhawan, Nehru Place,
New Delhi.
18. BSES Rajdhani Power Ltd,
BSES Bhawan, Nehru Place,
New Delhi
19. North Delhi Power Ltd,
Power Trading and Load Dispatch Group
Cennet Building, Adjacent to 66/11 kV Pitampura-3
Grid Building, Pitampura,
New Delhi- 110034
20. Chandigarh Administration
Sector -9, Chandigarh
21. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road
Dehradun
22. North Central Railway
Allahabad, U.P
23. New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi-110002
24. ICICI Bank Limited
ICICI Bank Towers,
Bandra Kurla Complex,
Bandra (e),Mumbai 400051

25. IDBI Trusteeship Services Limited
Asian Building, Ground Floor, 17 R,
Kamani Marg, Ballard Estate,
Mumbai 400001

...Respondents

Following were present:

Shri Vishal Gupta, Advocate, JPL
Shri Sanjeev Kumar Goel, JPL

ORDER

The petitioner, Jaypee Powergrid Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 ('Act'), to transmit electricity as a transmission licensee and for that purpose to construct, maintain and operate the transmission system associated with evacuation of power from Karcham-Wangtoo HEP located in the State of Himachal Pradesh to Abdullapur sub-station located in the State of Haryana (hereinafter referred to as 'the project'), the details of which are specified in the schedule attached to the licence dated 1.10.2007. The petitioner has filed the present petition with the following prayers:

“(a) Grant approval under Sub- Sections (3) and (4) of Section 17 of Electricity Act, 2003 to Jaypee Powergrid Limited for creation and continuation of securities by way of Hypothecation and/ or Mortgage of assets and assignment of all Project related documents including Transmission Service Agreements, Licenses, permits, approvals, consents, contracts, rights, interests and all benefits incidental to the Project in favour of

(i) Security Trustee, presently IDBI Trusteeship Services Limited, (or any other Security Trustee to be appointed by the Lenders of Jaypee Powergrid Limited) for the benefit of Consortium Lenders as mentioned in the Instant Petition or the reconstituted consortium of lenders formed after addition/ deletion/ variation of one or more of the existing lenders; and

(ii) Working Capital Lender(s) presently being ICICI Bank Limited (or any Security Trustee to be appointed for the benefit of the Working Capital Lender(s)

(b) pass such further order or orders as this Hon'ble Commission may deem fit and proper in the circumstances of the case.”

2. The petitioner has submitted as under:

(a) The petitioner had approached a banks/financial institutions consisting of ICICI Bank Limited, Punjab National Bank, Central Bank of India, Jammu and Kashmir Bank and United Bank of India (Original Lenders) for the grant of loan to the extent of ₹ 700 crore. For this purpose, on 17.6.2008, a 'Common Facility Agreement' was entered into with the Original Lenders, ICICI Bank Limited (Facility Agent) and IDBI Trusteeship Services Limited (Security Trustee).

(b) On 20.8.2008, a 'Security Trustee Agreement' was executed with IDBI Trusteeship Services Limited (Respondent No. 26) who had agreed to act as trustee for the lenders and hold the security pursuant to the Financing Agreements in accordance with the terms and conditions thereof for the benefit of the Original Lenders.

(c) Pursuant to the 'Common Facility Agreement' and other Financing Agreements, the petitioner created first charge on 18.9.2008 by way of hypothecation of the project assets in favour of Security Trustee as a security for the due repayment of facilities availed from the lenders (secured obligations) by way of Deed of Hypothecation executed in favour of Security Trustee.

(d) On 23.10.2008, 'Common Facility Agreement' dated 17.6.2008 was novated by Novation Notice due to joining of Indian Overseas Bank as a new lender. Through this novation, the existing lender i.e. ICICI Bank Ltd. who was the original security agent and one of the original lender for ₹ 180 crore has novated ₹ 120 crore to the new lender, Indian Overseas Bank. Consequently, the existing lender, ICICI Bank Ltd. continued as Original Lender with the balance loan facility amount of ₹ 60 crore.

(e) On 9.12.2011, a 'Rupee Term Loan Agreement' was executed between State Bank of India and the petitioner for grant of 'Rupee Term Loan' of ₹ 250 crore for the purpose of takeover of existing debts of ICICI Bank Limited, United Bank of India and Indian Overseas Bank under the 'Common Facility Agreement'. State Bank of India was appointed as the 'New Facility Agent', in place of ICICI Bank.

(f) On 2.5.2012, 'Supplemental and Amendatory Agreement to Common Facility Agreement dated 17.6.2008 was executed between the Consortium Lenders, Security Trustee and the Facility Agent after joining of State Bank of India. On 2.5.2015 the petitioner signed an amended deed of Hypothecation.

(g) On 28.12.2011, a 'Working Capital Facility Agreement' (WCF Agreement) was executed between ICICI Bank Limited (Working Capital Lender) and the petitioner for working capital facility of ₹ 25 crore and temporary additional

standalone LC limit of ₹ 10 crore. Pursuant to the WCF Agreement, a Deed of Hypothecation was executed on 28.12.2011 between the petitioner and the Working Capital Lender to secure the Working Capital Facilities by way of first charge on the Assets ranking *pari passu* with the charge created in favour of the Security Trustee acting for the benefit of the Present Consortium Lender.

3. The petitioner has submitted that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Act, the 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. The petitioner has further submitted that it has not assigned its licence or transferred its utility but has merely created charge upon the assets relating to the Project, by virtue of execution of various Deed of Hypothecations. Accordingly, the present petition has been filed seeking approval of the Commission for creation and continuation of securities by way of hypothecation and/ or mortgage of assets of the Project.

4. Vide letter dated 10.7.2015, the petitioner was directed to file the following clarifications:

(a) The reasons for not seeking the prior approval of the Commission as required under Section 17 (3) of the Act;

(b) The reasons for not impleading the lenders/security trustees as co-petitioner or as the respondents in the petition; and

(c) The provisions of the TSA which authorizes the petitioner to create encumbrance on the transmission assets in the form of deed of hypothecation, etc.

5. The petitioner vide its affidavit dated 17.8.2015 has submitted as under:

(a) The petitioner inadvertently failed to seek prior approval of the Commission as required under Section 17 (3) of the Act as lenders did not ask for it and got skipped inadvertently;

(b) The petitioner has impleaded the working capital lenders and security trustee acting on behalf of the term loan lenders as the respondents of the petition;and

(c) Clause 17.2 of the Transmission Service Agreement dated 27.3.2012 executed between the petitioner and the Central Transmission Utility authorizes the petitioner to create encumbrance on the transmission assets in the form of Deed of Hypothecation, etc.

6. Reply to the petition has been filed by the Uttar Pradesh Power Corporation Ltd. UPPCL in its reply dated 8.7.2015 has submitted that the petitioner`s plea to hypothecate and/or mortgage the whole project to the head of consortium of lenders i.e. 'Security Trustee' for the benefit or financial protection of the lenders implies that the petitioner wants transferring the utility as well as defying from his legal responsibilities for further running and maintenance of the project in case of any default in future.

7. The petition was heard after notice to the respondents. None was present on behalf of the respondents.

8. We have considered the submissions made by the petitioner and UPPCL. The petitioner has filed the present petition for permission under Section 17 (3) and (4) of Act for creation and continuation of securities by way of Hypothecation and/or mortgage of assets and assignment of all project related documents including Transmission Service Agreement, licenses, permits, approvals, consents, contracts, rights, interests and all benefits incidental to the project in favour of Security Trustee (i.e. IDBI Trusteeship Services Limited and Working Capital Lender (i.e. ICICI Bank Limited). 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 lenders have provided loan of ₹ 700 crore for debt funding of the project. Accordingly, 'Security Trustee Agreement' dated 20.8.2008 has been executed with IDBI Trusteeship Services Limited in its capacity as Security Trustee and 'Working Capital Facility Agreement' dated 28.12.2011 with ICICI Bank Limited for ₹ 25 crore and temporary additional standalone LC limit of ₹10 crore .

9. 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 void.

10. As per the 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 of the view that the Security Trustee i.e. IDBI Trusteeship Services Limited acting on behalf of the lenders and Working Capital Lender i.e. ICICI Bank Limited 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 Security Trustee i.e. IDBI Trusteeship Services Limited acting on behalf of the lenders and Working Capital Lender i.e. ICICI Bank Limited pursuant to Security Trustee Agreement dated 20.8.2008, Supplementary Security Trustee Agreement 2.5.2012 and Deed of Hypothecation dated 28.12.2011 by way of hypothecation on project assets. We, however, make it clear that the transmission licence granted by the Commission to the petitioner cannot be assigned in favour of Security Trustee i.e. IDBI Trusteeship Services Limited acting on behalf of the lenders and Working Capital Lender i.e. ICICI Bank Limited 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 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, security trustee 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.

11. The petition is disposed of with the above.

**Sd/-
(Dr. M.K. Iyer)
Member**

**sd/-
(A.S. Bakshi)
Member**

**sd/-
(A.K. Singhal)
Member**

**sd/-
(Gireesh B. Pradhan)
Chairperson**