

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 72/MP/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Date of Order : 3.6.2015**

**In the matter of**

Petition for assignment of transmission license in favour of Reliance Infrastructure Limited under Section 17 (3) of the Electricity Act, 2003.

**And**

**In the matter of**

1. Reliance Infrastructure Limited  
H Block, 1<sup>st</sup> floor,  
Dhirubhai Ambani Knowledge City,  
Navi Mumbai- 400 710
2. Western Region Transmission (Maharashtra) Private Limited  
H Block, 1<sup>st</sup> floor,  
Dhirubhai Ambani Knowledge City,  
Navi Mumbai- 400 710
3. Western Region Transmission (Gujarat) Private Limited  
H Block, 1<sup>st</sup> floor,  
Dhirubhai Ambani Knowledge City,  
Navi Mumbai- 400 710

**....Petitioners**

**Vs**

1. Power Grid Corporation of India Ltd.  
Saudamini, Plot 2, Sector 29,  
Near IFFCO Chowk, Gurgaon, 122001, Haryana
2. MP Power Trading Company Limited  
Shakti Bhawan, Rampur,  
Jabalpur- 482008

3. Gujarat Urja Vikas Nigam Limited  
Sardar Patel Vidhyut Bhawan,  
Race Course Road,  
Vadodara- 390007
4. Maharashtra State Electricity Distribution Company Limited  
Prakashgad, Bandra,  
Mumbai- 400051
5. Chhattisgarh State Power Distribution Company Limited  
Vidyut Seva Bhavan, P.O. Sundernagar,  
Danganiya, Raipur- 492013
6. Government of Goa  
Electricity Department,  
3<sup>rd</sup> Floor, Vidyut Bhavan,  
Panaji, Goa- 403001
7. Electricity Department  
Administration of Daman and Diu,  
Secretariat, Fort Area,  
Moti Daman, Daman- 396220
8. Electricity Department  
Administration of Dadra and Nagar Haveli,  
Government of UT of Dadra and Nagar Haveli
9. MP Audyogik Kendra Vikas Nigam Limited  
Free Press House  
1st Floor, 3/54- Press Complex  
AB Road, Indore- 452008
10. Jindal Power Limited  
Plot No. 2, Tower-B Sector-32,  
Gurgaon, Haryana-122001
11. Power Trading Corpn. Of Inida Limited,  
NBCC Tower, 15, Bhikaji Cama Place,  
New Delhi- 110066
12. Heavy Water Project,  
Department of Atomic Energy,  
Heavy Water Board, Vikram Sarabhai Bhawan,  
Anushakti Nagar, Mumbai- 400094
13. Sugden Mega Power Project

Torrent Power Limited,  
Off. National Highway No. 8,  
Taluka-Kamrej, Dist-Surat-394155

14. Adani Power Limited  
8-A, Sambhav Building,  
Judges bungalow road,  
Bodak Dev, Ahmedabad- 380015

....Respondents

**Following were present:**

Shri Buddy A. Ranganathan, RInfra  
Shri Hasan Murtaza, RInfra  
Shri Malavika Prasad, RInfra

**ORDER**

The petitioners, Reliance Infrastructure Limited (RInfra), Western Region Transmission (Maharashtra) Pvt. Ltd. (WRTMPL) and Western Region Transmission (Gujarat) Pvt. Ltd (WRTGPL) have jointly filed this petition under Section 17(3) of the Electricity Act, 2003 ("the Act") for seeking assignment of Transmission licences granted to Western Region Transmission (Maharashtra) Private Limited and Western Region Transmission (Gujarat) Private Limited in favour of Reliance Infrastructure Ltd. (RInfra).

2. The petitioners have submitted that RInfra, as part of larger restructuring of its business proposed a scheme of amalgamation of WRTMPL and WRTGPL with RInfra. Pursuant to the scheme of amalgamation, WRTMPL and WRTGPL filed Company Petitions No. 108 of 2014 and 109 of 2014 respectively before the Hon'ble High Court of Judicature at Bombay for sanction of the arrangement embodied in the scheme of amalgamation. Hon'ble High Court by its order dated 15.7.2014 approved the scheme to be effective from 1.4.2013, subject to compliance of the certain conditions.

3. The petitioners filed Petition No. 54/MP/2014 before the Commission for prior approval in terms of Section 17 (1) of the Act for amalgamation/merger of WRTMPL and WRTGPL with RInfra. The Commission vide order dated 7.1.2015 accorded approval in terms of Section 17 (1) of the Act and further directed the petitioners to file appropriate application for assignment of transmission licences granted to WRTMPL and WRTGPL in favour of RInfra after the completion of merger/amalgamation.

4. Against the above background, the petitioners have filed the present petition with the following prayers:

“(a) Allow the present petition and assign the transmission licenses granted to WRTMPL and WRTGPL in favour of RInfra; and

(b) Pass such other the further orders as this Hon’ble Commission may deem fit under the facts of the present case.”

5. The matter was heard on 12.3.2015 after notice to the respondents. No reply has been filed by the respondents and none appeared on behalf of respondents.

6. During the course of hearing, learned counsel for the petitioners submitted that Hon’ble High Court of Judicature at Bombay vide its order dated 15.7.2014 in Company Scheme Petition Nos. 108 of 2014 and 109 of 2014 had approved the scheme of amalgamation with the condition that in case the lenders did not provide the written consents as required under the Credit Agreement dated 29.6.2011 entered into between the petitioner Companies and the ECB lenders, the merger of the petitioner companies into Rinfra would not become effective. He further submitted that the lenders have conveyed their no objection for amalgamation of WRTMPL with Rinfra subject to the petitioners obtaining and submitting the assignment of transmission licence granted

to WRTMPL in favour of RInfra. Learned counsel further submitted that that in case of WRTGPL, ECB lenders require approval for assignment of licence before issuing the No Objection.

7. The petitioners, vide ROP for the hearing dated 12.3.2015, were directed to file the following:

- (a) Amended scheme of amalgamation authenticated by the Company Registrar, High Court (O.S.), Bombay;
- (b) Confirmation that all directions of the High Court have been complied with;
- (c) Signed copy from the lenders regarding grant of No Objection to the petitioners;
- (d) Confirmation that the directions of the Commission in order dated 7.1.2015 in Petition No. 54/MP/2014 have been complied with.

8. The petitioners vide affidavit dated 27.3.2015 have submitted the following:

- (a) Amended scheme of amalgamation duly authenticated by the Company Registrar, High Court (O.S.), Bombay has been placed on record (Annexure-1 to the affidavit).
- (b) With regard to compliance of the directions of the Hon'ble High Court, the petitioners have submitted that the scheme of amalgamation approved by the Hon'ble High Court in Company Scheme Petitions No. 108 and 109 of 2014

was subject to the regulatory approvals and approval of the project lenders. The project lenders L & T Infra and IndusInd Bank have issued conditional NOC in respect of WRTMPL subject to assignment of licence by the Commission and the ECB lenders will issue NOC in respect of WRTGPL after assignment of licence by the Commission. The petitioners have submitted that they shall file the NOCs once issued by the project lenders in the Hon'ble High Court.

- (c) Signed copies of the letter dated 20.3.2015 issued by L & T Infra and IndusInd Bank have been placed on record (Annexure 2 of the affidavit).
- (d) With regard to compliance of the Commission's directions dated 7.1.2015 in Petition No. 54/MP/2014, the petitioner has undertaken to file the same after the entire process of amalgamation is complete.

9. In response to our query during the course of hearing on 31.3.2105 regarding the status of compliance with the order of Hon'ble High Court, learned counsel for the petitioners submitted that the scheme of amalgamation approved by the Hon'ble High Court of Bombay in the Company Scheme Petition was subject to the regulatory approval and the approval by the project lenders. Learned counsel submitted that the project lenders for WRTMPL have issued conditional NOCs subject to assignment of the license and the project lenders for WRTGPL have linked the issue of NOC to the assignment of the license by the Commission. Learned counsel submitted that only after assignment of licenses, the other requirements would be fulfilled and the conditions stipulated by the Hon'ble High Court would be complied with to give effect to the

merger/amalgamation. Learned counsel further submitted that the directions given in the Commission's order dated 7.1.2015 shall be complied with and an affidavit to that effect will be filed within one month from the date of amalgamation/merger.

10. We have heard learned counsel for the petitioner and perused documents on record. Assignment of the licences has been sought under the provisions of Section 17 (3) of the Act which is extracted 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."

11. Under the above provisions, a licensee cannot assign his licence without the approval of the Commission. The petitioners filed Petition No. 54/MP/2014 for approval to amalgamation of WRTMPL and WRTGPL into RInfra. The Commission vide order dated 7.1.2015 approved the transfer of utilities of WRTMPL and WRTGPL under subsection (3) of Section 17 of the Act to RInfra subject to condition that all rights, assets, liabilities and obligations of WRTMPL and WRTGPL shall vest in RInfra and directed the petitioners to file appropriate application for assignment of transmission licences granted to WRTMPL and WRTGPL.

12. In compliance with our directions, the petitioners have filed the present petition for assignment of transmission licenses granted to WRTMPL and WRTGPL in favour of RInfra.

13. It is noted that Hon'ble High Court vide order dated 15.7.2014 in Company Scheme Petition Nos. 108 of 2014 and 109 of 2014 approved the scheme of amalgamation in terms of Sections 391 to 394 of the Companies Act, 1956 subject to

the fulfillment of the undertaking given in paras 1, 8, and 9 and compliance thereof. In this connection, paras 1, 8, 9 and 15 of the order of the Hon'ble High Court are extracted as under:

"1. Heard counsel for all the parties. Learned counsel for the petitioner companies states that the Secured Creditor of the Transferor Company 1, i.e. Consortium of Lenders comprising Credit Agricole Corporate and Investment Bank and Mizuho Bank Limited, has filed their objection to the Scheme pursuant to the Creditor Agreement arose between them in respect of not taking prior approval of the lenders before filing the Scheme of Amalgamation. Learned counsel for the Petitioner/Transferor Company 1, tenders an affidavit dated 3.7.2014 dealing with the objection as mentioned hereinabove, in paragraph 2 of the said affidavit inter alia stating that the merger of the Petitioner Company into RInfra shall not become effective unit and unless there are written consents obtained from the Petitioner Company's ECB lenders viz Credit Agricole Corporate and Investment Bank and Mizuho Bank Ltd as required under the Credit Agreement dated 29<sup>th</sup> June 2011 entered into between, inter alia, the Petitioner Company and the ECB lenders. In the event that the ECB lenders do not provide the aforementioned written consents, the merger of the Petitioner in Company into RInfra shall not become effective. Learned advocate also tenders an affidavit dated 3.7.2014, of the Petitioner/Transferor Company 2 stating that the merger of the Petitioner Company into RInfra shall be effective subject to obtaining approval of the Project lenders. Learned Counsel for the Petitioner's requested the Court to accept the aforesaid undertaking. Learned counsel for the objector has also agreed with the undertaking given by the Petitioner/Transferor Company 1. In view of the above, undertaking given by the Petitioner Companies are accepted.

8. As far as observation made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the objection raised by the Regional Director in respect of the Appointed date mentioned in Scheme is required to be considered and to be changed. Hence the Petitioner Companies through their counsel undertakes that Appointed Date i.e. "Appointed Date 1" in clause 2.1 and "Appointed Date 2" as referred in clause 3.1 to be amended as April 1, 2013 instead of January 1, 2011 and seeks leave of this court to amend the same.

9. In so far as observation made in paragraph 6(b) of the Affidavit of the Regional Director, the Petitioner Companies on behalf of the Transferee Company through their counsel undertakes that the Transferee Company shall comply with the impact of transfer of said Petitioner Companies and will suitably give effect to in their holding Company viz M/s Reliance Power Transmission Limited.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 108 of 2014 filed by the Petitioner Company are made absolute in terms of prayer clauses (a) (c) and (d) and the Company Scheme Petition No. 109 of 2014 filed by the Petitioner Company is made absolute in terms of prayer clauses (a), (c) and (d) subject to undertakings given hereinabove in para 1, 8, and 9 and compliance thereof."



14. It is apparent from the above order of the Hon'ble High Court that approval for amalgamation/merger has been granted subject to the written consent obtained from the project lenders and filing the same before the High Court. The project lenders L& T Infra and IndusInd Bank have issued conditional NOC subject to assignment of transmission licence granted to WRTMPL. With regard to WRTGPL, learned counsel for the petitioners submitted during the hearing that the lenders for the project are ECB lenders who would issue NOCs after assignment of the transmission licence of WRTGPL in favour of RInfra.

15. As per the submission of the petitioners, the project lenders for WRTMPL are L&T Finance and IndusInd Bank, and for WRTGPL are ECB lenders. However, from the records of the Commission, it was noticed that no approval was granted by this Commission for creating security on the transmission assets in favour of these lenders. On the other hand, the Commission vide order dated 11.2.2010 in Petition No. 207/2009 accorded in-principle approval allowing WRTMPL to create security in favour of SBICAP Trustee Company as Security Trustee on behalf of the consortium of lenders i.e. State Bank of India, India Infrastructure Finance Company Limited, Vijay Bank, Bank of Maharashtra and State Bank of Bikaner and Jaipur, led by State Bank of India. Subsequently, the Commission vide order dated 22.3.2014 in Petition No. 7/MP/2013 accorded approval to substitute IDFC Ltd. as the lenders. Similarly, in case WRTGPL, the Commission vide order dated 11.2.2010 in Petition No. 208/2009 accorded in-principle approval to WRTGPL to create security in favour of SBICAP Trustee Company as Security Trustee on behalf of the consortium of financial institutions led by State Bank of India. The petitioners were directed to clarify the following:

- (a) Whether any loan amount was drawn from the project lenders for which in-principle approvals were granted by the Commission,
- (b) At what stage, the lenders and security trustees of WRTMPL and WRTGPL were changed, and
- (c) The reasons for not keeping the Commission informed about the change in the project lenders.

16. With regard to (a) and (b) above, the petitioners vide their affidavit dated 8.5.2015 have submitted that WRTMPL had taken part disbursement from SBI led consortium lenders and the outstanding amount as on date of repayment in June 2012 was ₹422.26 crore. The petitioners have further submitted that WRTMPL had taken disbursement of ₹601 crore from IDFC Ltd. and the outstanding amount as on date of prepayment in October 2014 was ₹567.95 crore. According to the petitioners, WRTMPL entered into financing arrangement of ₹645 crore with L&T Infra and IndusInd Bank on 30.10.2014 for refinancing the existing loan provided by IDFC Ltd. and has taken disbursement of entire sanctioned amount of ₹645 crore which was used to repay outstanding loan from IDFC Ltd. and to pay outstanding capital creditors. The petitioners have submitted that WRTMPL and said lenders appointed SBICAP Trustee Co. Ltd. as Security Trustee.

17. With regard to WRTGPL, the petitioners have submitted that WRTGPL had taken part disbursement from SBI led consortium lenders and the outstanding amount as on date of repayment in September 2011 was ₹36.03 crore. WRTGPL and lenders

appointed SBICAP Trustee Co. Ltd. as Security Trustee. The petitioners have submitted that WRTGPL entered into financing arrangement of ECB facility of USD 60 million with Credit Agricole Corporate and Investment Bank and Mizuho Corporate Bank on 29.6.2011 to replace existing financing arrangement provided by SBI led consortium. WRTGPL and lenders appointed IDBI Trusteeship Services Limited to replace SBICAP Trustee Co. Ltd. as Security Trustee.

18. With regard to the reasons for not keeping the Commission informed about the change in the project lenders, the petitioners have submitted as under:

“As per EA 2003, the Petitioner Nos. 2 and 3 are required to obtain approval from CERC prior to creation of security u/s 17 (3) and 17 (4). The Company had approached the Commission for obtaining approval u/s 17 (3) and 17 (4) for creating security for earlier financing/refinancing. It has obtained approval from CERC u/s 17 (3) and 17 (4) for SBI led consortium financing and ECB financing in WRTGPL, and SBI led consortium financing and IDFC Ltd financing in WRTMPL. True copy of the orders passed by this Hon’ble Commission in annexed hereto and marked as Annexure-1 (Colly).

It is further submitted that the petitioners have not yet created any security in favour of L&T Infra & IndusInd Bank and therefore no approval was sought from the Commission. The petitioners are in the process of filing a petition for seeking CERC approval for financing in WRTMPL shortly.”

19. The Commission has considered the submissions of the petitioners. In Petition No. 54/MP/2014, the petitioners had approached the Commission for approval under sub-section (3) of Section 17 of the Act for transfer of utilities of WRTMPL and WRTGPL to RInfra. The Commission vide order dated 7.1.2015 had accorded approval under sub-section (3) of Section 17 for transfer of WRTMPL and WRTGPL to RInfra subject to the condition that all rights, assets, liabilities and obligations of WRTMPL and WRTGPL shall invest in RInfra. As regards the assignment of transmission licences issued to WRTMPL and WRTGPL in favour of RInfra, the Commission had directed the

petitioners to approach the Commission by way of appropriate application after the amalgamation of WRTMPL and WRTGPL with RInfra. However, in the present petition, the petitioners have approached the Commission for assignment of transmission licences issued to WRTMPL and WRTGPL in favour of RInfra before completion of amalgamation, since new project lenders, namely L&T Infra and IndusInd Bank have issued conditional NOC subject to assignment of licences in favour of RInfra. It is further noted that WRTMPL has entered into a financing agreement with L&T Infra and IndusInd Bank on 30.10.2014 for refinancing existing loan taken from IDFC Ltd. Further, WRTMPL has taken disbursement of loan of ₹645 crore to repay the outstanding loan to IDFC Ltd. These facts have not been brought to the notice of the Commission. Moreover, WRTMPL has not approached this Commission for approval under Section 17 (3) and (4) of the Act to create security in favour of L&T Infra & IndusInd Bank and therefore, these banks are not the secured creditors of WRTMPL in the record of the Commission. Under the circumstances, we do not consider it appropriate to assign the licence granted to WRTMPL in favour of RInfra, as a condition to be fulfilled by WRTMPL for issue of NoC by L&T Infra & IndusInd Bank. In our view, if the L&T Infra and IndusInd Bank need security on the assets of WRTMPL for the loan advanced by them, the petitioner should first take approval of the Commission under Section 17 (3) and (4) of the Act for substitution of the lenders, and thereafter approach the Commission for assignment of transmission licence in favour of RInfra.

20. Accordingly, the present petition is disposed of with liberty to the petitioner to approach the Commission for assignment of licences after complying above stated requirements.

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

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

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