

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 169/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: 03.9.2015

Date of Order : 21.9.2015

In the matter of

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for substitution of lenders by the Borrower and to take on record appointment of the SBICAP Trustee Company Limited, the Security Trustee/Petitioner No. 3, acting on behalf of and for the benefit of (i) L&T Infrastructure Finance Company Limited and (ii) IndusInd Bank Limited, in connection with the Package B of Western Region System Strengthening Scheme-II (WRSS-II) in Maharashtra and Karnataka.

And

In the matter of

1. Reliance Infrastructure Limited
H Block, 1st floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai- 400 710
2. Western Region Transmission (Maharashtra) Private Limited
H Block, 1st floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai- 400 710
3. SBICAP Trustee Co. Ltd.
202, Maker Tower 'É',
Cuffe Parade, Mumbai-400 005.

....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,
3rd 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. Sugen 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 first petitioner herein Reliance Infrastructure Limited (RInfra) is, *inter alia*, engaged in the business of generation, transmission and distribution of electricity. The second petitioner, Western Region Transmission (Maharashtra) Private Limited (WRTML) 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 construct, maintain and operate the transmission assets pertaining to Package B of Western Region System Strengthening Scheme-II. The second 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 Ltd. Subsequently, the second petitioner approached the Commission in Petition No. 7/MP/2013 under Section 17 (3) and (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. The Commission vide order dated 22.3.2013 accorded in-principle approval allowing the second petitioner to create security in favour of SBICAP Trustee Ltd. as Security Trustee.

2. Reliance Infrastructure Limited, Western Region Transmission (Maharashtra) Pvt. Ltd. (WRTMPL) and Western Region Transmission (Gujarat) Pvt. Ltd. (WRTGPL) had jointly filed the Petition No. 54/MP/2015 for approval under Section 17(3) 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 Section 17(3) for transfer of WRTMPL and WRTGPL to RInfra subject to condition that all rights, assets, liabilities and obligations of WRTMPL and WRTGPL shall vest in RInfra. Subsequently, the petitioners approached the Commission in Petition No. 72/MP/2015 for assignment of transmission licences issued to WRTMPL and WRTGPL in favour of RInfra. The Commission vide order dated 3.6.2015 observed that WRTMPL has entered into a financing agreement with L& T Infrastructure Finance Company Ltd. and IndusInd Bank on 30.10.2014 for refinancing existing loan taken from IDFC Ltd. and WRTMPL has taken disbursement of loan of ₹ 645 crore to repay the outstanding loan to IDFC Ltd. The Commission directed the petitioners first to take approval of the Commission under Section 17 (3) and (4) of Act for substitution of the lenders and thereafter approach the Commission for assignment of transmission licence in favour of Infra.

3. Accordingly, the present petition has been filed by the petitioners for approval under Section 17 (3) and 17 (4) of the Act for substitution of lenders and creation of security in favour of SBICAP Trustee Company Ltd as Security Trustee for the benefit of L&T Infrastructure Finance Company Limited and IndusInd Bank Limited by way of execution and creation of security documents.

4. The petitioners have made the following prayers:

“(a) This Hon’ble Commission be pleased to take on record the new project lenders and the appointment of SBICAP Trustee Company Limited acting on behalf of L&T Infrastructure Finance Company Limited and IndusInd Bank Limited; and

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

5. According to the second petitioner, a consortium of financial institutions and banks led by State Bank of India which 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 implementation of laying of 1022 km of the 400 kV D/C transmission Line as part of the WRSS-II project on the terms and conditions set out in the Common Loan Agreement dated 18.5.2009 and other financing/security documents. SBICAP Trustee Co. Ltd was appointed security trustee vide Security Trustee Agreement dated 18.5.2009 for the benefit of the erstwhile lenders.

6. The second petitioner has further 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 loan. IDFC Limited had

agreed to provide financial assistance of ₹ 601 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 28.6.2012 and other financing/security documents. SBICAP Trustee Co. Ltd. was appointed as Security Trustee vide Security Trustee Agreement dated 28.6.2012 for the benefit of the erstwhile lender i.e. IDFC Limited. The Commission vide its order dated 22.3.2015 had granted approval to create security in favour of SBICAP Trustee Limited, acting on behalf and for the benefit of IDFC Limited through execution of Indenture of Mortgage.

7. The second petitioner has submitted that subsequently, it approached L&T Infrastructure Finance Company Limited and IndusInd Bank Limited (collectively referred to as the 'Current Lenders') for part financing of the cost of the Project through Rupee Term Loan. The Current Lenders have agreed to provide financial assistance of ₹ 645 crore for the purpose of refinancing of the earlier loan towards payment of dues to EPC contractor on the terms and conditions set out in the Rupee Loan Agreement dated 30.10.2014 and other financing documents.

8. The second petitioner has submitted that it has repaid the entire outstanding amount to the erstwhile lenders. The third petitioner, SBICAP Trustee Co. Ltd., has been appointed by the second petitioner and current lenders as the Security Trustee and third 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 30.10.2014. The security interest created/to be

created in favour of third petitioner acting on behalf of and for the benefit of L&T Infrastructure Finance Company Limited and IndusInd Bank Limited shall rank pari-passu among of L&T Infrastructure Finance Company Limited and IndusInd Bank Limited for the Rupee Term loan of ₹ 645 crore. Accordingly, the present petition has been filed wherein the petitioners have sought the Commission's permission for substitution of lenders and appoint SBICAP Trustee Company Limited as Security Trustee on behalf of Current Lenders.

9. Petition was heard on 3.9.2015 after notice of all the parties. None was present on behalf of the respondents. No reply has been filed by the respondents.

10. We have considered the submissions made by the petitioners. Erstwhile lender, namely IDFC Limited vide its letter dated 19.11.2013 has conveyed its 'no dues certificate' in respect of Rupee Loan Agreement dated 28.6.2012 for loan of ₹ 601 crore. We, therefore, accord in-principle approval allowing the second petitioner to create security in favour of SBICAP Trustee Company Ltd. as Security Trustee on behalf of L&T Infrastructure Finance Company Limited and IndusInd Bank Limited pursuant to Security Trustee Agreement. We, however, make it clear that the transmission licence granted by the Commission to the second 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 second petitioner to the nominee of Security Trustee, the Commission has to evaluate such 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.

11. The petition is disposed of in terms of the above.

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

sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson