

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.166/MP/2016**

**Coram:  
Shri Gireesh B. Pradhan, Chairperson  
Shri A.K.Singhal, Member  
Shri A.S.Bakshi, Member  
Dr. M.K.Iyer, Member**

**Date of order: 31<sup>st</sup> of October, 2016**

**In the matter of**

Petition under Section 17 (3) of the Electricity Act, 2003 seeking approval for creation of security in favour of the lenders of the petitioner and the Security Trustee.

**And  
In the matter of**

Patran Transmission Company Limited  
Room No, 409, 4<sup>th</sup> Floor Skipper Corner  
88 Nehru Place,  
New Delhi-110019

**....Petitioner**

1. Haryana Power Purchase Centre  
Shakti Bhawan, Energy Exchange  
Room No 446, Top Floor,  
Sector-6, Panchkula-134109  
Haryana
2. Punjab State Power Corporation Limited  
Shed No T-1-A, Thermal Design,  
Near 22 No. Phatak,  
Patiala, Punjab
3. Himachal Sorang Power Private Limited  
D-7, Sector-1, Lane-1, 2<sup>nd</sup> Floor  
New Shimla, Shimla-171009  
Himachal Pradesh
4. Adani Power Limited  
3<sup>th</sup> Floor, Achalraj  
Opposite Mayors Bungalow  
Law garden, Ahmedabad-380006, Gujarat
5. Jaipur Vidyut Vitran Nigam Limited

- Vidyut Bhawan, Janpath  
Jaipur-302005  
Rajasthan
6. Ajmer Vidyut Vitran Nigam Limited  
Old Power House, Hathi Bhata  
Jaipur Road,  
Ajmer, Rajasthan
  7. Jodhpur Vidyut Vitran Nigam Ltd  
400 kV, GSS Building,  
Ajmer Road, Heerapur,  
Jodhpur, Rajasthan
  8. Lanco Anpara Limited  
Plot No 397, Udyog Vihar  
Phase-3, Gurgaon-122016  
Haryana
  9. Power Development Department  
Govt. of Jammu & Kashmir  
SLDC Building, 1<sup>st</sup> Floor  
Gladani Power House  
Narwal, Jammu  
Jammu & Kashmir
  10. Lanco Green Power Private Ltd  
Plot No 397, Udyog Vihar  
Phase- III, Gurgaon-122016  
Haryana
  11. North Central Railway  
DRM Office  
Nawab Yusuf Road  
Allahabad  
Uttar Pradesh
  12. Ad Hydro Power Limited  
Bhilwara Towers,  
A-12, Sec-1  
Noida-201301  
Uttar Pradesh
  13. Jaiprakash Power Ventures Limited  
A Block, Sector-128  
Noida-201304  
Uttar Pradesh
  14. BSES Yamuna Power Limited  
2<sup>nd</sup> Floor, B Block

- Shakti Kiran Building  
(Near Karkardooma Court)  
New Delhi
15. BSES Rajdhani Power Limited  
BSES Bhawan, 2<sup>nd</sup> Floor  
B Block, Behind Nehru Place Bus Terminal  
Nehru Place  
New Delhi-110019
16. Tata Power Delhi Distribution Limited  
33 kV sub-station Building,  
Hudson Lane, Kingsway Camp,  
New Delhi-110019
17. New Delhi Municipal Corporation  
Palika Kendra, Sansad Marg  
New Delhi-110 001
18. Union Territory of Chandigarh  
Div-11, Opposite Transport Nagar  
Industrial Phase-1  
Chandigarh
19. Power Grid Corporation of India Limited  
B-9, Qutab Institutional Area  
Katwaria Sarai, New Delhi-110016
20. Uttar Pradesh Power Corporation Limited  
14<sup>th</sup> Floor, Shakti Bhawan  
Ext Building, 14, Ashok Marg  
Lucknow  
Uttar Pradesh
21. PTC India Limited  
2<sup>nd</sup> Floor, NBCC Tower  
15, Bhikaji Cama Place  
New Delhi-110066
22. Uttaranchal Power Corporation Limited  
Urja Bhawan, Kanwali Road  
Near Balli Wala Chowk  
Dehradun, Uttarakhand
23. Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Kumar House Complex  
Building No. 11, Shimla,  
Himachal Pradesh
24. PFC Consulting Ltd

First Floor, "Ürjanidhi",  
1, Barakhamba Lane,  
Connaught Place

25. IDBI Trusteeship Services Ltd.  
J-1, Virjanand Marg, Vikas Puri,  
New Delhi-110 018

...Respondents

**The following were present:**

Shri Anand Ganeshan, Advocate for the petitioner  
Ms. Swapna Seshadri, Advocate for the petitioner

**ORDER**

The petitioner, Patran 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 undertake the business of establishing transmission system for "Patran 400 kV sub-station" on 'Build, Own, Operate and Maintain' (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 14.7.2014.

2. Patran Transmission Company Limited has filed the present petition for creation of security in favour of IDBI Trustee Services Limited as Security Trustee pursuant to the Security Trustee Agreement and other relevant financing documents by way of mortgage/hypothecation/assignment on project assets for benefit of the lenders to the project. The petitioner has made the following prayers:

"(a) Approve the creation of Security Interest, over all the movable and immovable assets of the petitioner and to the extent as mentioned in para 8 above, in favour of Security Trustee/Lenders and for subsequent transferees, assign, novatees thereof an any refinancing lenders to the Project, acting on behalf of and for the benefit of the lenders as provided for in the Common Load Agreement and other security creating documents/Financial Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Mortgaged Properties and Project Assets.

(b) Pass such other relief as Hon`ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice. "

3. According to the petitioner, for the purpose of finance for the project, the petitioner requested the lenders for which lenders, namely YES Bank Limited, State Bank of India and M/s India Infrastructure Finance Company Limited, have agreed to make available financial assistance for amounting to Rs. 150 crore as rupee term loan for the project. In this regard, M/s YES Bank Limited has agreed to act as Lender`s Agent. For this purpose, the petitioner is required to execute a Common Loan Agreement. The petitioner and YES Bank Limited have appointed the Respondent No. 25, namely IDBI Trusteeship Services Limited as Security Trustee (hereinafter referred to as 'Security Trustee') who has agreed to act as Security Trustee for the lenders and enter into the necessary Agreements in this regard.

4. The petitioner has submitted that for the purpose of raising finances from the lenders, the loan shall be secured by the following securities, as provided for in the Common Loan Agreement:

(a) a first charge/mortgage on all the Borrower`s immovable properties (including lease hold rights over immovable property, if any), both present and future;

(b) a first charge on all the Borrower`s moveable assets, current and non-current, including moveable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles (if not funded through another bank load) and all other movable assets, both present and future;

(c) a first charge over all bank accounts of the Borrowers including without limitation, the Escrow Account and the Retention Accounts and the Sub-Accounts thereunder (including but not limited to the Debt Service Reserve Sub-Account) or any account in substitution thereof, opened pursuant to the

provisions of the Escrow Agreement or any of the Project Documents, wherein all revenues, disbursements, receivables, al cash flows related to the Project and all funds of the Borrower shall, from time to time, be deposited and all Permitted Investments or other securities representing all amounts credited thereto and a first charge on the Receivables;

(d) a first charge on all intangibles of the Borrower, including but not limited to goodwill, intellectual property rights, uncalled capital of the Borrower and undertaking, Present and future;

(e) assignment by way of security of:

(i) All the rights, titles, interest, benefits, claims and demands whatsoever of the Borrower in, to and under the Project documents, duly acknowledged and consented to by the counter parties to the Projects documents by executing the consent to assignment if such Project documents requires prior consent of such counter parties before creation of Security Interest as within-mentioned all as amended, varied or supplemented from time to time;

(ii) All the rights, titles, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all clearances pertaining to the Project (including the Transmission Licence) to the extent permissible under the applicable laws ;

(iii) All the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under the Insurance Contracts procured by the Borrower and insurance proceeds and in, to and under the insurance contracts/policies procured by any of the contractors of the Borrower favouring the Borrower, for the Project, present and future;

(iv) All the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantee including contractor guarantees and liquidated damages and performance bond provided to/in favour of the Borrower by any counter-party to the Project documents (including any security/letter of credit that may be available to the Borrower pursuant to the Transmission Service Agreement or in relation to the Project), both present and future.

(e) pledge of Shares aggregating to 30% (thirty percent) of the issued paid up and voting equity share capital of the Borrower till the final settlement date.

5. The petitioner has stated that Article 15.2.2 of the Transmission Service Agreement entered into between the petitioner and the beneficiaries of the project provide that the petitioner is free to create any encumbrance over all or part of the receivables, Letter of Credit or other assets of the project in favour of the lenders or the representative of the lenders as security for amount payable under the Financing Agreements and any other amounts agreed by the parties. The petitioner has submitted that in terms of Article 15.2.4 of the TSA, the petitioner is required to take

permission from this Commission prior to relinquish or transfer of its rights and obligations in the TSA.

6. The petitioner has stated that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, the petitioner, as a licensee cannot create security interest over all the movable and immovable assets of the first petitioner in favour of Security Trustee/Lenders without approval of the Commission. Accordingly, the petitioners have filed the present petition seeking prior approval of the Commission for creation of security in favour of Security Trustee/lenders by way of mortgage/hypothecation/assignment of mortgaged properties and projects assets through execution of Common Loan Agreement.

7. The petition was heard after notice to the petitioner and the respondents. No reply has been filed by the respondents. None was present on behalf of the respondents despite notice.

8. The petitioner was directed to file the documents, namely (i) Common Load Agreement duly signed by the parties; (ii) Provisions of the TSA which authorizes the petitioner to enter into Security Trustee Agreement; and (iii) Documentary proof showing the intention of IDBI Trusteeship Company Limited to act as security trustee. The petitioner vide its affidavit dated 19.10.2016 has submitted that Common Loan Agreement has been finalized to be executed between the lenders and the petitioner which would be executed after the Commission's approval. The petitioner has placed on record the letter of YES Bank dated 18.10.2016 stating that the Common Loan Agreement would be executed immediately upon the approval of the security to be created over the assets of the petitioner company is granted by the Commission. With



regard to provisions of the TSA which authorizes the petitioner to enter into Security Trustee Agreement, the petitioner has submitted that Article 15.2.2 of the Transmission Service Agreement provide that the TSP is free to create any encumbrance over all or part of the receivables, Letter of Credit or other assets of the project in favour of the lenders or the representative of the lenders as security for amount payable under the Financing Agreements and any other amounts agreed by the parties. With regard to documentary proof showing the intention of IDBI Trusteeship Company Limited to act as security trustee, the petitioner has placed on record the letter of IDBI Trusteeship Services Ltd. dated 13.10.2016 granting consent to act as Security Trustee for the term loan facility aggregating upto Rs. 150 crore (Tenure 10 years)

9. We have considered the submissions made by the petitioner. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans. It is normal practice followed by financial institution/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 petitioner and consortium of lenders lead by YES Bank have appointed the Respondent No. 25, namely IDBI Trustee Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the project for which Common Loan Agreement is to be executed for loan of Rs. 150 crore as rupee term. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create any encumbrance over all or part of the receivables, Letter of Credit or the other assets of the project in favour of the lenders or the representative of the lenders, as security for amounts payable under the Financing Agreements and other amounts agreed by the parties.

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

“17.(3) No licensee shall be 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.”

11. 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 satisfied that IDBI Trustee Services Limited as Security Trustee needs to be given comfort for creation of security for the benefit of banks/financial institutions/non-banking financial companies as security for the financial assistance to be provided by the lenders. We, therefore, accord in principle approval allowing the petitioner to create security in favour of IDBI Trustee Services Limited, presently acting as Security Trustee subject to condition that the Common Loan Agreement shall be signed and a copy of the Common Loan Agreement and other financial documents shall be placed on the record of the Commission within one month of the issue of the order.

12. It may be noted that the transmission licence granted by the Commission to the petitioner and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee. Before agreeing to transfer of the licence and the assets of the petitioner to the nominee of Security Trustee, 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 is 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 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 subject to proper due diligence of the process. 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 first petitioner as and when required by the Commission for any specific purpose. We direct that the petitioner shall continue to maintain its own books of accounts and balance sheet.

13. With the above, Petition No. 166/MP/2016 stands disposed of.

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

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

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

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