

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.219/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: 6<sup>th</sup> of December, 2016**

**In the matter of**

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for assignment of license by way for creation of security interest in favour of Security Trustee/Lenders and other security creating documents/Financial Agreement by way of mortgage/hypothecation/assignment of mortgage properties and project assets of Chattisgarh-WR Transmission Limited.

**And  
In the matter of**

1. Sipat Transmission Limited  
Achalraj, Opp. Mayor Bungalow, Law Garden,  
Ahmedabad-380 006

2. IDBI Trusteeships Services Limited  
Asian Building, Ground Floor,  
17, R. Kamani Marg, Ballard Estate  
Mumbai

..... **Petitioners**

**Vs**

1. Madhya Pradesh Power Management Company Limited  
Block No-11, Ground floor, Shakti Bhawan, Vidhyut Nagar, Rampur,  
Jabalpur-482 008, Madhya Pradesh

2. Chhattisgarh State Power Distribution Company Limited  
P.O Sunder Nagar, Dangania,  
Raipur-492 013, Chhattisgarh

3. Gujarat Urja Vikas Nigam limited  
Vidhyut Bhawan, Race Course,  
Vadodara-390 007

4. Maharashtra Electricity Distribution Company Limited  
Prakashgad, 4<sup>th</sup> Floor, Bandra (East), Mumbai-400051

5. Goa Electricity Department (ED),  
Govt. of Goa,  
Aquem Alto, Margao, Goa-403 601
6. Electricity Department Dadar and Nagar Haveli,  
66 kV, Amlilnd. Estate,  
Silvassa-396 230, Dadra Nagar Haveli
7. Electricity Department, Administration of Daman and Diu,  
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,  
Daman-396210
8. Chief Executive Officer,  
PFC Consulting Limited,  
First Floor, Urja Nidhi,  
1, Barakhamba Lane,  
Connaught Place,  
New Delhi-110 001
9. Executive Officer, CTU Planning,  
POWERGRID Corporation of India Limited,  
Saudamini, Plot No.2, Sector-29,  
Gurgaon-122 001

....Respondents

**The following were present:**

Shri Tanmay Vyas, STL  
Shri Narendra Jha, UPCL  
Shri Daljit Singh, IDBI

**ORDER**

The first petitioner herein, Sipat Transmission 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 "Additional System Strengthening for Sipat STPS" (hereinafter referred to as "Transmission System") 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 7.3.2016.

2. Sipat Transmission Limited and IDBI Trusteeship Services Limited have filed a combined petition for creation of security in favour of IDBI Trusteeship 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 petitioners have made the following prayers:

“(a) Assignment of the transmission licence and Utility (as defined in the Electricity Act, 2003) of the Petitioner No. 1 by way of security in favour of the Security Trustee, acting for the benefit and on behalf of the Lenders;

(b) Approve creation/and/or perfection of Security Interest in favour of the trustees of the Lenders, acting on behalf of and for the benefit of the Lenders;

(c) Approve the Security Documents, and execution thereof, for creation and/or perfection of aforesaid Security Interest in relation to the Security in favour of IDBI Trusteeship Services Limited, the Security Trustee (or any other trustees as may be appointed by the Lenders in this regard) for the benefit of Lenders;

(d) Condone any inadvertent omissions/errors/shortcomings and permit to add, change, modify, alter this filing and make further submissions as may be required at a future date;

(e) Allow any other relief, order or direction, which the Commission deems fit to be issued;

(f) Pass such other and further orders, as this Commission may deem fit and proper under the facts and circumstances of the present case;”

3. According to the first petitioner, for the purpose of finance for the project, the first petitioner requested the lenders for which lenders have agreed to make available financial assistance amounting to Rs. 461 crore as rupee term loan for the project. In this regard, IndusInd Bank Limited has agreed to act as lead bank for the consortium of lenders. For this purpose, the first petitioner and IndusInd Bank Limited have appointed the second petitioner, 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 has entered into Security Trustee Agreement and Rupee Loan Agreement on 28.9.2016.

4. The first petitioner has submitted that pursuant to the terms of the Facility Agreement, the secured obligations are secured by,

(a) A First charge by way of hypothecation on all the Petitioner No. 1's movable assets including movable plant and machinery, spares, tools and accessories, furniture, fixtures, vehicles and all other moveable assets, current and non-current, present and future.

(b) A first charge by way of hypothecation over all accounts of the Petitioner No.1, including but not limited to the Account and Sub-Account (including DSRA) (or any account in substitution thereof) that may be opened in accordance with the Transaction Documents, and in all funds from time to time deposited therein (including the reserves), all designated account opened with designated banks and the permitted investments or other securities representing all amounts credited to the account and a first charge on the receivables.

(c) A first charge on all intangible assets of the Petitioner No. 1 including but not limited to, operating cash flows, commissions, revenues of whatsoever nature, goodwill, rights and undertakings and intellectual property rights, and on uncalled capital, both present and future;

(d) A first charge on the immovable assets of the Petitioner No. 1, if any;

(e) Assignment/charge by way of hypothecation:

(i) All the rights, titles, interest, benefits, claims and demands whatsoever of the Petitioner No. 1 in the Project documents, to an under all the project documents including the Transmission Service Agreement, duly acknowledged and/or consented by the relevant counter parties to the 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, benefits, whatsoever of the Petitioner No. 1 in, to and under all the clearances pertaining to the Project (including the Transmission Licence) to the extent the same are assignable;

(iii) All the rights, titles, interest, benefits, claims and demands whatsoever of the first petitioner in letter(s) of credit, guarantee including contractor guarantees and liquidated damages, consent agreement, side letters and performance bond provided by any party to the Project Documents (including any security/letter of credit that may be available to the Petitioner No. 1 pursuant to the Transmission Service Agreement or in relation to the Project and/or guarantees issued by EPC contractors in favour of Petitioner No. 1 which may be legally assigned), and corporate guarantees, bank guarantees provided by any party to the Project documents; and ;

(iv) All the right, title, interest, benefit, claims and demands whatsoever of the Petitioner No. 1 in, to and under all insurance Contractors and insurances proceeds pertaining to the project;

5. The first petitioner has stated that Article 15.2.2 of the Transmission Service Agreement entered into between the first petitioner and the beneficiaries of the project provide that the first 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 first 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 first petitioner has submitted that assignment of the transmission licence and utility by way of security is exercisable by the lenders only on occurrence of an event of default and would entitle the lenders to appoint their nominee to exercise the rights under the transmission licence and utility or to enforce the assignment of way of security in such other manner as may be permitted by the Commission. The first petitioner has submitted that such assignment shall be subject to prior approval of the Commission in terms of evaluating such nominee's experience in development, design, construction, operation and maintenance of the relevant project as stipulated in Transmission Licence Regulations as amended from to time.

7. The first petitioner has stated that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, the first 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 Security Trustee Agreement and other financing documents for the project.

8. The petition was heard after notice to the petitioner and the respondents. No reply has been filed by the respondents.

9. During the course of hearing, the representative of the petitioner submitted that the petitioner is a separate legal entity and has its own books of accounts and balance sheet.

10. 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 first petitioner and consortium of lenders lead by IndusInd Bank Limited have appointed the second petitioner, namely IDBI Trusteeship Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Facility Agreement dated 28.9.2016 have been executed for loan of Rs. 461 crore as rupee term loan. 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.

11. 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.”

12. 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 Trusteeship 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 provided by the lenders. We, therefore, accord in principle approval allowing the first petitioner to create security in favour of IDBI Trusteeship Services Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage on project assets by execution of indenture of mortgage for the project. It is, however, made clear that the transmission licence granted by the Commission to the first 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 first 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. The representative of the petitioner during the hearing submitted that it is separate legal entity and has its own books of account and balance sheet. We direct that the petitioner shall continue to maintain its own books of accounts and balance sheet.

13. With the above, Petition No. 219/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**