

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.103/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 Hearing: 21.7.2016

Date of order: 27.7.2016

In the matter of

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest over all the movable and immovable assets of the Petitioner in favour of Security Trustee/Lenders and for any subsequent transferees, assign, novatees thereof and any refinancing lenders to the Project, acting on behalf of and for the benefit of the Lenders pursuant to Indenture of Mortgage 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, for the transmission lines, i.e. (i) Jullandhar-Samba 400 kV D/C line, (ii) LILO of both circuits of Uri-Wagrooa 400 kV D/C line at Amargarh (on multi-circuit towers) (iii) Samba-Amargarh 400 kV D/C routed through Akhnoor-Rajouri (iv) sub-station establishment of 7x105 MVA (1 ph units), with 400/220 kV GIS sub-station at Amargarh.

And

In the matter of

1. NRSS XXIX Transmission Limited
C-2, 2nd Floor, The Mira Corporate Suites1 & 2,
Ishwar Nagar, Okhla Crossing,
Mathura Road, New Delhi-110065.

2. SBICAP Trustee Company Limited
202, Maker Tower 'E', Cuffe Parade,
Mumbai – 400021

..... **Petitioner**

Vs

1. U.P. Power corporation Limited
14th Floor, Import Export & Payment Circle,
Shakti Bhawan Extn. Building,
14, Ashok Marg, Lucknow-226 001, U.P.

2. AD Hydro Power Limited
Bhilwara Towers, A-12, Sector 1,
Noida 201301, Uttar Pradesh.

3. Haryana Power Purchase Centre
Shakti Bhawan, Energy Exchange,
Room No.446, Top Floor, Sector 6,
Panchkula- 134109, Haryana

4. Punjab State Power Corporation Ltd.
Thermal Sheds,T 1-A, Thermal design,
Near 22 No. Phatak, Patiala -147001, Punjab

5. Himachal Sorang Power Pvt. Limited
901 B, 9th Floor, Time Tower, M.G.Road,
Gurgaon-122 009, Haryana

6. Adani Power Limited
3rd Floor, Achalaraj,Opp. Mayor Bunglow,
Law Garden,Ahemdabad-380 006

7. Rajasthan Discoms Power Procurement Centre
Shed No. 5/4, Vidyut Bhawan, Janpath,
Jyoti Nagar Jaipur - 302 005.

8. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan,Janpath, Jyoti Nagar,
Jaipur-302 005.

9. Ajmer Vidyut Vitran Nigam Limited
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer-305004.

10. Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur-342 003.

11. Lanco Anpara Power Limited
Plot No 397, Udyog Vihar, Phase 3,
Gurgaon-122 016 ,Haryana.

12. Lanco Budhil Hydro Power Pvt. Limited
Plot No. 397, Udyog Vihar, Phase-III,
Gurgaon-122016,Haryana.

13. Power Development Department
Govt. of J&K, Srinagar, Room No. 1/27,
Mini Block,Civil Secretariat, Jammu.

14. North Central Railway
Allahabad, DRM office, Nawab Yusuf Road,
Subedarganj, Allahabad-211 001, U.P.

15. Jaiprakash Power Ventures Limited
A Block, Sector-128, Noida-201304, U.P

16. BSES Yamuna Power Limited
2nd Floor, B Block, Shakti Kiran Building,
Near Karkadooma Court, New Delhi-110092.

17. BSES Rajdhani Power Limited
2nd Floor, B-Block, Behind Nehru Place Bus Terminal,
Nehru Place, New Delhi-110019.

18. Tata Power Delhi Distribution Limited
33 KV sub-station Building, Hudson Lane,
Kingsway Camp, New Delhi-110009.

19. New Delhi Municipal Corporation
NDMC, Palika Kendra, Sansad Marg,
New Delhi-110001.

20. Electricity Wing of Engineering Department
Union Territory of Chandigarh,
Electricity OP Circle, Chandigarh- 160011.

21. PTC (Budhil), PTC India Limited
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,
New Delhi- 110 066.

22. PTC (Everest), PTC India Limited,
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,
New Delhi-110 066.

23. Uttarakhand Power Corporation Limited
Urja Bhawan, Kanwali Road, Near Balli Wali Chowk,
Dehradun-248001.

24. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House Complex Building II,
Shimla- 171 004.

25. Power Grid Corporation of India Limited
HVDC Dadri & HVDC Rihand,
“Saudamini” Plot No-2, Sector-29, Gurgaon -122 001, Haryana Respondents

The following were present:

1. Shri Pulkit Sharma, NRSS
2. Shri T N Reddy, NRSS

ORDER

The first petitioner herein, NRSS-XXIX 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 "Northern Region System Strengthening Scheme NRSS-XXIX" 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 14.11.2014.

2. NRSS-XXIX Transmission Limited and SBICAP Trustee Company Limited have filed a combined petition for creation of security in favour of SBICAP Trustee Company 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) Approve the creation of security Interest, over all the movable and immovable assets of Petitioner No. 1 and to the extent as mentioned in paras 5 and 6 above, in favour of Security Trustee/Lenders and for subsequent transferees, assigns, novatees thereof and any refinancing lenders to the project, acting on behalf of and for the benefit of the Lenders pursuant to Indenture of Mortgage 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.

(c) Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the 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 for amounting to Rs. 2250 crore as rupee term loan for the project. In this regard, State Bank of India has agreed to act as lead bank for the consortium of lenders. For this purpose, the first petitioner and State Bank of India have appointed the second petitioner, namely SBICAP Trustee Company 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 Amended and restated Common Loan Agreement on 30.5.2016.

4. The first petitioner has submitted that pursuant to the terms of the Common Loan Agreement and Indenture of Mortgage Agreement, the secured obligations are secured by,

- (a) A first ranking mortgage and charge on all the Petitioner No. 1's leasehold land, both present and future, save and except forest and wildlife related land, for tower footings and sub-station in the State of Jammu and Kashmir;
- (b) A first ranking mortgage over all the Petitioner No. 1's immovable assets/assets attached to the ground (such as transmission systems and associated equipment), in relation to the project, including, but not limited to towers, conductors, insulators, sub-stations, etc.;
- (c) A first ranking charge on all the Petitioner No.1's tangible movable assets, including but not limited to, movable plant and machinery spares, tools and accessories, furniture, fixtures, vehicle and all other movable assets, both present and future;

- (d) A first ranking charge over all accounts of the Petitioner No. 1's, including but not limited to, the Debt Service Account, Trust and Retention Account and the sub-Account (or any account in substitution thereof) that may be opened in accordance with this Agreement and the Trust and Retention Accounts Agreement, or any of the other project documents and all funds from time to time deposited therein, the receivables, cash flows, commissions, operating cash flows, revenues of whatsoever nature and wherever arising, present and future intangibles, goodwill, uncalled capital (present and future), and all Permitted Investments or other securities;
- (e) A first ranking charge on intangible assets including but not limited to goodwill, rights, undertaking and uncalled capital, present and future, excluding the project assets 9provided that all amounts received on account of any of these shall be deposited in the Trust and Retention Account;
- (f) Assignment of way of security of :
- (i) All the rights, title, interest, benefits, claims and demands whatsoever of the first petitioner in the project documents;
 - (ii) All the rights, title, interest, benefits, claims and demands whatsoever of the first petitioner in any letter of credit, guarantee including Contractor's guarantees and Liquidated Damages and performance bond provided by any party to the Project Documents;

- (iii) All the rights, title, interest, benefits, claims and demands whatsoever of the borrowers under all Insurance Contracts, such assignment in favour of the Security Trustee, being duly acknowledged and consented to by the relevant counterparties;
- (iv) A pledge by the Promoter in favour of the Security Trustee, for the benefit of the Rupee Lenders, of such number of Equity Shares of the Borrower which constitute 51% of the total voting rights of the Borrower, in favour of the Security Trustee;
- (v) Assignment, by way of security, of the rights of the Borrowers under the transmission licence, along with the consent of the CERC for such assignment;
- (vi) A corporate guarantee from the sponsor.

5. The first petitioner has submitted that it has agreed to create security interest in favour of the representative of the lenders pursuant to Indenture of Mortgage Agreement and Financial Agreements, by way of mortgage/hypothecation/assignment in accordance with the provisions of the Indenture of Mortgage Agreement and the Financial Agreements, and has agreed that it shall be lawful for the representative of the lenders to enter into and take possession of mortgaged properties along with all movables, intangibles and any future assets under the project in financial agreement and thenceforth, the first petitioner shall take no action inconsistent with or prejudicial

to the right of Lenders Representatives/Security Trustee acting on behalf of the Lenders/Security Trustee quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereon without interruption or hindrance by it or any person or persons whosoever.

6. The first petitioner has submitted that under the financial agreements and on enforcement of the security interest, it shall be lawful for the Lenders Representative/Security Trustee, acting on behalf of and for the benefit of the Lenders/Security Trustee, to enter into and take possession of the assets/properties mortgaged/charged/assigned for their benefit and substitute themselves or any of them or its nominees for the first petitioner under any or all of the projects document(s).

7. The first petitioner has further 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. Provided that:

- (i) The lenders or the representatives of the lenders on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and
- (ii) Any encumbrance granted by the first petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on

their behalf agrees unconditionally with the first petitioner to release such encumbrances upon payment by the first petitioner to the lenders, of all amounts due under the Financing Agreements.

8. 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. 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 and for any subsequent transferees, assigns, novatees thereof and any refinancing lenders to the project, acting on behalf of and for the benefit of the lenders pursuant to Indenture of Mortgage Agreement and other security creating documents/financial Agreements and for future refinancing transactions, by way of mortgage/hypothecation/assignment of mortgaged properties and project assets 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.

9. 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.

10. 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 and the same has been confirmed by the petitioner vide its affidavit dated 21.7.2016.

11. 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 State Bank of India have appointed the second petitioner, namely SBICAP Trustee Company Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Amended and restated Common Loan Agreement dated 30.5.2016 have been executed for loan of Rs. 2250 crore. 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.

12. 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.”

13. 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 SBICAP Trustee Company 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 SBICAP Trustee Company 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. The petitioner vide its affidavit dated 21.7.2016 has 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. 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.

14. With the above, Petition No. 103/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**