

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.19/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: 08.3.2016

Date of order: 14.3.2016

In the matter of

Application 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 Debenture Trustee/Lenders pursuant to Debenture Trust Deed and other security creating documents for future financing transactions, by way of mortgage/hypothecation/assignment on project assets for benefit of the Debenture Holders/Debenture Trustee/Lenders to the project, for the transmission scheme enabling import of North Eastern Region/Eastern Region surplus power by Northern Region comprising of (i) Bongaigaon-Siliguri, 400 kV Quad D/C transmission line having a length of 217.417 kms and (ii) Purnea-Biharsharif 400 kV Quad D/C transmission line having a length of 209.893 kms.

And

In the matter of

1. East North Interconnection Company Limited
F-1, The Mira Corporate Suite,
1&2, Ishwar Nagar, New Delhi-110 065

2. IDBI Trusteeship Services Private Limited
Asain Building, Ground Floor, 17, R. Kamani Marg,
Ballard Estate, Mumbai-400 001

..... **Petitioners**

Vs

1. Jodhpur Vidyut Vitran Nigam Limited (JDVVNL)
New Power House Industrial Area
Jodhpur – 342003

2. Jaipur Vidyut Vitran Nigam Limited (JVVNL)
Vidyut Bhawan, Janpath

Jaipur – 302005

3. Ajmer Vidyut Vitran Nigam Limited (AVVNL)
Old Power House, Hathi, Bhatta,
Jaipur Road, Ajmer

4. BSES Yamuna Power Limited (BYPL)
Shakti Kiran Building, Karkardooma,
New Delhi – 110092

5. BSES Rajdhani Power Limited (BRPL)
BSEB Bhawan, Nehru Place,
New Delhi – 110019

6. North Delhi Power Limited (NDPL)
Sub-Station Building, Hudson Lines,
Kingsway Camp
New Delhi – 110009

7. New Delhi Municipal Corporation (NDMC)
Palika Kendra Building,
Opp. Jantar Mantar Building, Parliament Street,
New Delhi – 110001

8. Uttarakhand Power Corporation Limited (UTPCL)
Urja Bhawan, Kanwali Road,
Dehradun – 248001

9. Paschimanchal Vidyut Vitran Nigam Limited (Pash VVNL)
Victoria Park, Meerut – 250001

10. Poorvanchal Vidyut Vitran Nigam Limited (Poor VVNL)
Hydel Colony, Bhikaripur,
Post: DLW, Varanasi – 221004

11. Daskhinanchal Vidyut Vitran Nigam Limited
220 kV Vidyut Sub-Station,
Mathura – Agra By Pass Road
Sikandra
Agra – 282007

12. Madhyanchal Vidyut Vitran Nigam Limited
4-A, Gokhle Marg,
Lucknow – 226001

13. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)
Vidyut Bhawan, Plot No. 16-C, Sector-6,
Panchkula – 134109

14. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)
Vidyut Sadan, Vidyut Nagar,
Hissar – 125005

15. Punjab State Electricity Board (PSEB)
The Mall
Patiala – 147001

16. Power Development Department (PDD), J&K
Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu

17. Himachal Pradesh State Electricity Board (HPSEB)
Vidyut Bhawan,
Shimla – 171004

18. North Central Railway, Allahabad
North Central Railway,
Allahabad – 211033

19. The Union territory of Chandigarh
Chandigarh Administration
Sector-9, Chandigarh

..Respondents

The following were present:

Shri T.A.N. Reddy, ENICL
Shri Pulkit Sharma, ENICL
Shri Suraj Chandel IDBI

ORDER

The first petitioner herein, East-North Interconnection 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 the transmission system for the “Scheme for enabling import of North Eastern/Eastern Region surplus power by Northern Region” (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 28.10.2010.

2. East-North Interconnection Company Limited and IDBI Trusteeship Services Private Limited have filed a combined petition for creation of security in favour of IDBI Trusteeship Services Private Limited as Debenture Trustee pursuant to Debenture Trustee Appointment Agreement and Debenture Trust Deed and other security creating documents/debenture documents by way of mortgage/hypothecation/assignment on project assets for benefit of the Debenture Holders/Debenture Trustee/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 Debenture Trustee/Lenders, acting on behalf of and for the benefit of the Debenture Holder/Lenders pursuant to Debenture Trust Deed and other security creating documents/Debenture Documents for future refinancing transactions, by way of mortgage/hypothecation/assignment of Mortgaged Properties and Project Assets through execution of Debenture Trust Deed and other Debenture and Refinancing Documents in future for the project.

(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 first petitioner, for the purposes of raising finances for the project, the first petitioner requested the lenders/debenture holders for which the lenders have agreed to make available assistance amounting to ₹ 925,00,00,000 for the purpose of part financing the construction, development and implementation of the

project. Accordingly, the first petitioner issued 9,250 rated, senior, listed, taxable, secured, non-convertible debentures of a face value of Rs. 10,00,000 each to the lenders/debenture holders on the terms and conditions set out in the 'Debenture Trust Deed' and 'Debenture Documents'. For this purpose, the first petitioner and lenders have appointed the second petitioner, namely IDBI Trusteeship Services Limited as Debenture Trustee (hereinafter referred to as 'Debenture Trustee') who has agreed to act as Debenture Trustee for the lenders and has entered into Debenture Trustee Appointment Agreement and Debenture Trust Deed with the petitioners and lenders on 21.1.2016.

4. The first petitioner has submitted that pursuant to the terms of the Debenture Trust Deed and Debenture documents, the debentures are secured by,

(a) First ranking *Pari Passu* charge on all movable assets of the first petitioner including but not limited to movable plant and machinery, spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, present and future, intangible, goodwill, intellectual property, uncalled capital, present and future;

(b) First ranking *pari passu* charge and assignment on all the rights, title, interest, benefit, claims and demands whatsoever of the first petitioner in the project documents, operation and maintenance related agreements, clearances pertaining to the project, both present and future and letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee provided by any party

to the project documents (including transmission licence, Transmission Service Agreement and Revenue Sharing Agreement) and operation and maintenance related agreements.

(c) First ranking *pari passu* charge on the transaction bank accounts (and on monies lying to the credit of such transaction accounts) and all books debts, operating cash flows, receivables, commissions, revenues of whatsoever nature and wherever arising of the first petitioner, present and future.

(d) First ranking *pari passu* charge and mortgage on all of the first petitioner's immovable properties, both present and future, more particularly set out in Schedule 1 of the Debenture Trust Deed, and

(e) First ranking pledge over the shares of the first petitioner amounting to 51% paid up capital of the first petitioner, cumulatively held by the pledgors, in favour of the Debenture Trustee under the Debenture Trust Deed and the Denture Documents

5. The first petitioner has submitted that it has agreed that it shall be lawful for the lenders/Debenture Trustee to enter into and take possession of mortgaged properties along with all movables, intangibles and any future assets under the project comprised in debenture documents and thenceforth, the first petitioner shall take no action inconsistent with or prejudicial to the right of Lenders representatives/Debenture

Trustee on behalf of the lenders/debenture holders quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereon without interruption or hindrance by it or by any person or persons whatsoever.

6. The first petitioner has further stated that Article 15.2.2 of the Transmission Service Agreement entered into between first petitioner and 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 representatives of the lenders as security for amount payable under the Financing Agreement and any other amounts agreed by the parties. Provided that:

(i) The lenders or the representatives of the lenders shall have entered into the Financing Agreements; and

(ii) Any encumbrance granted by the first petitioner shall contain provisions pursuant to which the lenders or the representatives of the lenders 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.

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 assign the licence or transfer its utility or any part thereof to any person or enter into an agreement relating to any of these transactions 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 Debenture Trustee/lenders by way of mortgage/hypothecation/assignment of mortgaged properties and project assets through execution of Debenture Trust Deed and other Debenture and re-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. None was present on behalf of the respondents despite notice.

9. We have considered the submissions made by the petitioners. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans and issuance of debenture. It is a 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 lenders have appointed the second petitioner viz, IDBI Trusteeship Services Private Limited as **Debenture Trustee** for creation of security over all the movable and immovable assets of the project. Accordingly, Debenture Trustee Appointment Agreement and Debenture Trust Deed dated 21.10.2014 have been executed for loan of ₹ 925 crore and the first petitioner issued 9250 non-convertible debentures of a face value of Rs.10 lakh each (**Debenture**). In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create encumbrance over all or part of the receivables, Letter of Credit or other assets of the

project in favour of the lenders or the lender`s representatives, as security for amounts payable under the Financing Agreements and any 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 Trusteeship Services Limited as Debenture Trustee needs to be given comfort for creation of security for the benefit of the debenture holders/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 Debenture Trustee pursuant to Debenture Trust Deed by way of mortgage on project assets by execution of Debenture Trust Deed and other debenture and refinancing documents 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 Debenture 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 licence and

the assets of the first petitioner to the nominee of Debenture Trustee, the Commission shall evaluate such nominee's experience in development, design, construction, operation and maintenance of the transmission lines, and ability to execute the project and undertake transmission of electricity. The licensee, lenders, debenture trustee or its nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself about 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, lender, Debenture Trustee or its nominee, approve the assignment of the licence to a nominee of the lender subject to proper due diligence of the process. Therefore, specific prior approval of the Commission shall be necessary for assigning the licence to the Debenture Trustee or its nominee and transfer of any assets to them. Lastly, finance documents and statements shall be filed by the petitioner as and when required by the Commission for any specific purpose.

12. With the above, the Petition No. 19/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