

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 34/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: 31.3.2016**

**Date of order: 06.4.2016**

**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) Maheshwaram-Mehboob Nagar 400 kV D/C line and (ii) Nizamabad-Yeddumailaram (Shankaralli) 400 kV D/C line.

**And**

**In the matter of**

1. Maheshwaram Transmission Limited  
F-1, The Mira Corporate Suite,  
1 & 2, Ishwar Nagar,  
New Delhi – 110065

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

**..Petitioners**

Vs.

1. Tamil Nadu generation & Distribution Corporation Limited,  
NPKRR Malligai, 144 Anna Salai,  
Chennai- 600002
2. Bangalore Electricity Supply Company Limited (BESCOM)  
KR Circle, Bangalore-560001
3. Gulbarga Electricity Company Limited (GESCOM),  
Station main road, Gulbarga-585102,

4. Hubli Electricity Supply Company Limited (HESCOM),  
Navanagar, PB Road, Hubli-580025,  
Karnataka
5. Mangalore Electricity Supply Company Limited (MESCOM),  
Paradigm Plaza, AB Shetty Circle,  
Mangalore-575001
6. Chamundeshwari Electricity Supply Company Limited (CESCOM),  
#927, LJ Avenue, Ground Floor,  
New Kantharajurs Road, Sarawathipuram  
Mysore-570009
7. KERALA State Electricity Board Limited  
8th Floor, Vaidyuthi Bhawanam, Pattom,  
Thiruvanthapuram-695004
8. Electricity Department, Govt. of Puducherry,  
Electricity Department, 137, N.S.C. Bose Salai,  
Puducherry-605001
9. Electricity Department, Govt. of Goa (GED)  
Vidyut Bhawan, Panaji  
Goa-403001
10. Southern Power Distribution Company of Andhra Pradesh Limited  
D. No.-19-13-65/A, Srinivasapuram, Corporate Office,  
Tiruchanoor Road,  
Tirupati-517503
11. Eastern Power Distribution Company of Andhra Pradesh Limited,  
P&T Colony, Seethamadhara,  
Visakhapatnam-530013
12. Northern Power Distribution Company of Telangana Limited  
H. No. 2-5-3, 1/2, Vidyut Bhawan, Corporate Office  
Nakkal gutta, Hanamkonda,  
Warangal-506001
13. Southern Power Distribution Company of Telangana Limited  
#6-1-50, Corporate Office, Mint Compound,  
Hyderabad-500063
14. Power Company of Karnataka Limited (PCKL)  
5th Floor, KPTCL Building,  
Kaveri Bhawan,  
Bangalore-560009

....Respondents

**The following were present:**

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

**ORDER**

The first petitioner herein, Maheshwaram 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 of the 'transmission system for connectivity lines for Maheshwaram (Hyderabad) 765/400 k V pooling sub-station (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 19.11.2015.

2. Maheshwaram 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. 320 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 Facility Agreement on 18.1.2016.

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

(a) First 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) 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(including the transmission licence, TSA and Revenue Sharing Agreement) and operation and maintenance related agreements;

(ii) All the rights, title, interest, benefits, claims and demands whatsoever of the first petitioner in the clearances pertaining to the project, both present and future;

(iii) All the rights, title, interest, benefits, claims and demands whatsoever of the first petitioner in letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee provided by any party to the Project documents(including the transmission licence, TSA and Revenue Sharing Agreement) and operation and maintenance related agreements; and

(iv) The insurance proceeds;

(c) First ranking *pari passu* charge on the transaction bank accounts (and the monies lying to the credit of such transaction accounts) and all book 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 of the Indenture of Mortgage Agreement; and

(e) Subject to the provisions of Section 19(2) and (3) of the Banking Regulations Act, 1949, 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 Security Trustee under the Indenture of Mortgage and the financing documents.

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 of any of the 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 assignment of its rights, benefits, interests 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. 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 Facility Agreement dated 18.1.2016 have been executed for loan of Rs. 320 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.

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 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. 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.

13. With the above, Petition No. 34/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**