

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 46/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: 28.4.2016**

**Date of order: 25.5.2016**

**In the matter of**

Application for approval under Section 17 (3) and (4) of the Electricity Act, 2003

**And**

**In the matter of**

Essar Power Transmission Company Ltd.  
Lower Ground Floor, Hotel Conclave Boutique,  
A-20, Kailash Colony, New Delhi- 110 048

Rural Electrification Corporation Ltd.  
C/O Core-4, SCOPE Complex,  
7 Lodhi Road, New Delhi-110 003

**....Petitioners**

Vs

Essar Power MP Limited  
C/o Prakash Deep,  
10<sup>th</sup> Floor, 7, Tolstoy Marg,  
New Delhi-110 001

**.....Respondent**

**The following were present:**

Shri Matrugupta Mishra, Advocate, EPTCL  
Shri Akhil Mehta, Advocate, EPTCL

**ORDER**

The first petitioner herein, Essar Power Transmission Company Limited, has been granted inter-State 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 construct, maintain and operate the LILO of 400 kV

S/C Vindhyachal-Korba Transmission Line; 400 kV D/C Gandhar-Hazira transmission line and 400/220 kV GIS sub-station at Hazira (hereinafter referred to as “the project”), the details of which are specified in the schedules attached to the licence issued on 8.4.2008. The Second Petitioner, Rural Electrification Corporation Limited is the Security Agency appointed by the Lenders who shall act as an Agent of the Lenders, hold security for the benefit of the lenders as per terms and conditions of the Security Agent Agreement.

2. For part financing of the project, Petitioner No. 1 approached a consortium of Banks and Financial Institutions led by REC and consisting of REC and Power Finance Corporation Ltd. (collectively referred to as “Lenders”) and the lenders agreed to make available to the Petitioner No. 1 the financial assistance for an aggregate principal amount no exceeding ₹934.50 crore on terms and conditions set out in the Common Loan Agreement dated 30.12.2010 between the Petitioner No. 1 and Lenders.

3. The petitioners had approached the Commission in Petition No. 26/2011 for approval under Section 17 (3) and (4) of the Act to create security for ₹934.50 crore in favour of Security Agent, i.e. Rural Electrification Corporation Limited (REC). The Commission vide order dated 27.4.2011 accorded in-principle approval allowing the first petitioner to create security in favour of REC.

4. The first petitioner has submitted that pursuant to cost over-run of the project, the lenders at the request of the first petitioner had further sanctioned an additional amount of ₹149.60 crore and securities created pursuant to order dated 27.4.2011 were extended to secure the amount of ₹196.60 crore. The first petitioner has submitted that due to inordinate delay, cost over-run was caused to the project and

for the purpose of further loan facilities over and above the original facility, the first petitioner approached Axis Bank Limited for the purpose of part financing which had agreed to make available a rupee term loan of ₹115 crore. The first petitioner has submitted that REC vide its letters dated 2.3.2015 and 25.8.2015 and Power Finance Corporation vide its letter dated 27.11.2015 sanctioned additional loan to part fund the cost overrun aggregating to ₹323.43 crore and have agreed to share the security created in their favour, with Axis Bank Ltd. on *pari passu* basis. For this purpose, the first petitioner, lenders, Axis Bank Limited and REC in the capacity of Lender`s Agent and Security Agent have entered into Amended and Restated Security Agent Agreement on 5.2.2016.

5. The first petitioner has submitted that after receipt of approval from the Commission, REC as Security Agent shall create and hold the security on behalf of and for the benefit of REC, PFC and Axis Bank Ltd. on *pari-passu* basis.

6. 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 Agent/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 Agent/REC on behalf of the lenders and Axis Bank Limited to secure the aggregate term loan amounting to ₹14,64,39,00,000/- along with all interest, penal interest, etc. on *pari-passu* basis inter-se amongst the lenders and the Axis Bank Ltd.

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

8. During the course of hearing, learned counsel for the petitioner submitted that present petition has been filed only for approval under Section 17 (3) and (4) of the Act to create security in favour of REC and clarified that there is no link of cost over-run and time overrun of the project with the present petition.

9. We have considered the submission of the petitioners. Perusal of the Amended and Restated Security Agent Agreement dated 5.2.2016 amongst the Essar Power Transmission Company Limited as Borrower and Rural Electrification Corporation Limited, Power Finance Corporation Limited and Axis Bank as the Project Lenders reveals that the petitioner has availed the following loans:

<b>Senior Debt A</b>		
REC	Rupee Term Loan 1	₹898,10,30,000/- (exclusive of ₹37.547 crore adjusted towards Repayment Installments)
PFC	Rupee Term Loan 1	₹353,67,00,000/- (exclusive of ₹20.59 crore adjusted towards Repayment Installments)
Axis Bank	Axis Bank Loan	₹115,00,00,000/-
<b>Total Senior Debt A</b>		<b>₹1366,77,00,000/-</b>
<b>Senior Debt B</b>		
REC	Senior Debt B	₹69,73,00,000/-
PFC	Senior Debt B	₹27,89,00,000/-
<b>Total Senior Debt B</b>		<b>₹97,62,00,000/-</b>
<b>Total Project Loan (Senior Debt A + Senior Debt B)</b>		<b>₹14,64,39,00,000/-</b>

10. In terms of the Amended and Restated Security Agreement dated 5.2.2016, REC has been appointed as the Security Agent to create and hold the security

interest to be created in respect of the Project for the benefit of the Lenders and Axis Bank. The Petitioner and REC (Security Agent) have approached the Commission for approval under Section 17 (3) and (4) of the Act for creating security over the assets of the Petitioner No. 1 in favour of Security Agent/REC (Petitioner No. 2) on behalf of the Lenders and Axis Bank Limited for securing the aggregate term loan amounting to ₹14,64,39,00,000/-.

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 REC as Security Agent 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 REC, presently acting as Security Agent pursuant to Amended and Restated Security Agent Agreement by way of mortgage on project assets by execution of indenture of mortgage for the project. It is clear that on this account, the first petitioner shall not be entitled for cost over-run and time over run due to delay in execution of the project. It is, however, made clear that the transmission licences granted by the Commission to the first petitioner and the

underlying assets cannot be assigned in favour of the nominee of the Security Agent 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 Agent, 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 Agent 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 Agent 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. It is clarified that approval accorded to the first petitioner under Section 17 (3) and (4) of the Act to create security over the transmission assets in favour of the Security Agency for securing a term loan of ₹1464.39 crore shall not be considered as approval of the cost over-run and time over-run of the project which shall be considered strictly in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and 2014.

14. With the above, Petition No. 46/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**