

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 226/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 : 2<sup>nd</sup> May, 2017**

**In the matter of**

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for substitution of lenders by the Borrower and to take on record appointment of the SBICAP Trustee Company Limited, the Security Trustee/Petitioner No. 3, acting on behalf of and for the benefit of (i) L&T Infrastructure Finance Company Limited and (ii) IndusInd Bank Limited, in connection with the Package B of Western Region System Strengthening Scheme-II (WRSS-II) in Maharashtra and Karnataka.

**And**

**In the matter of**

1. Reliance Infrastructure Limited  
Erstwhile Western Region Transmission (Maharashtra) Private Limited  
H Block, 1<sup>st</sup> floor,  
DhirubhaiAmbani Knowledge City,  
Navi Mumbai- 400 710
2. SBICAP Trustee Co. Ltd.  
202, Maker Tower 'É',  
Cuffe Parade, Mumbai-400 005.

**....Petitioners**

**Vs**

1. Power Grid Corporation of India Ltd.  
Saudamini, Plot 2, Sector 29,  
Near IFFCO Chowk, Gurgaon, 122001, Haryana

2. MP Power Trading Company Limited  
Shakti Bhawan, Rampur,  
Jabalpur- 482008
3. Gujarat Urja Vikas Nigam Limited  
Sardar Patel Vidhyut Bhawan,  
Race Course Road,  
Vadodara- 390007
4. Maharashtra State Electricity Distribution Company Limited  
Prakashgad, Bandra,  
Mumbai- 400051
5. Chhattisgarh State Power Distribution Company Limited  
Vidyut Seva Bhavan, P.O. Sundernagar,  
Danganiya, Raipur- 492013
6. Government of Goa  
Electricity Department,  
3<sup>rd</sup> Floor, Vidyut Bhavan,  
Panaji, Goa- 403001
7. Electricity Department  
Administration of Daman and Diu,  
Secretariat, Fort Area,  
Moti Daman, Daman- 396220
8. Electricity Department  
Administration of Dadra and Nagar Haveli,  
Government of UT of Dadra and Nagar Haveli
9. MP Audyogik Kendra Vikas Nigam Limited  
Free Press House  
1st Floor, 3/54- Press Complex  
AB Road, Indore- 452008
10. Jindal Power Limited  
Plot No. 2, Tower-B Sector-32,  
Gurgaon, Haryana-122001
11. Power Trading Corpn. Of India Limited,  
NBCC Tower, 15, Bhikaji Cama Place,  
New Delhi- 110066
12. Heavy Water Project,  
Department of Atomic Energy,

Heavy Water Board, Vikram Sarabhai Bhawan,  
Anushakti Nagar, Mumbai- 400094

13. Sugen Mega Power Project  
Torrent Power Limited,  
Off. National Highway No. 8,  
Taluka-Kamrej, Dist-Surat-394155
14. Adani Power Limited  
8-A, Sambhav Building,  
Judges bungalow road,  
Bodak Dev, Ahmedabad- 380015

....Respondents

**Following were present:**

Shri Sanjay Sen, Senior Advocate, Rlnfra  
Shri Hasan Murtaza, Rlnfra  
Shri Malavika Prasad, Rlnfra

**ORDER**

The First Petitioner herein, Reliance Infrastructure Limited (Rlnfra), erstwhile Western Region Transmission (Maharashtra) Private Limited (WRTMPL) is, *inter alia*, engaged in the business of generation, transmission and distribution of electricity. WRTMPL has been granted transmission licence by the Commission to transmit electricity as a transmission licensee and for that purpose to construct, maintain and operate the 400 kV Double Circuit transmission line assets pertaining to Package B of Western Region System Strengthening Scheme-II. Pursuant to the order dated 15.7.2014 of the Hon`ble High Court of Bombay regarding approval of the scheme for merger/amalgamation of WRTMPL with Rlnfra, the Commission vide order dated 7.1.2015 in Petition No. 54/MP/2015 had accorded approval under Section 17(3) of the Act for transfer of WRTMPL to Rlnfra subject to condition that all rights, assets, liabilities and obligations of WRTMPL shall vest in Rlnfra. Subsequently, Rlnfra approached the

Commission in Petition No. 72/MP/2015 for assignment of transmission licence issued to WRTMPL in favour of Rlnfra. The Commission vide order dated 3.6.2015 had observed that WRTMPL had entered into a financing agreement with L& T Infrastructure Finance Company Ltd. and IndusInd Bank on 30.10.2014 for refinancing the existing loan taken from IDFC Ltd. and had taken disbursement of entire sanctioned amount of Rs. 645 crore to repay the outstanding loan to IDFC Ltd. The Commission directed the Petitioner to first take approval of the Commission under Section 17 (3) and (4) of Act for substitution of the lenders and thereafter approach the Commission. Subsequently, the Commission vide order dated 21.9.2015 in Petition No. 169/MP/2015 allowed substitution of lenders and assignment of licence of WRTMPL in favour of Rlnfra by order dated 22.9.2015 in Petition No 176/MP/2015.

2. The Petitioners, Rlnfra and SBICAP Trustee Co. Ltd. have filed the present petition for approval under Section 17 (3) and 17 (4) of the Act for substitution/addition of lenders and appointment of SBICAP Trustee Company Ltd as Security Trustee acting on behalf of India Infrastructure Finance Company Ltd. (IIFCL) and creation of security in favour of Security Trustee for the benefit of Indian Infrastructure Finance Company Limited along with existing lenders, namely L&T Infrastructure Finance Company Limited and IndusInd Bank Limited by way of execution and creation of security documents.

3. The Petitioners have made the following prayers:

“(a) This Hon’ble Commission be pleased to take on record the new project lender-India Infrastructure Finance Company Limited and the appointment of SBICAP Trustee Company Limited acting on behalf of India Infrastructure Finance Company Limited;

(b) Approve creation and/or perfection of Security Interest in favour of Security Trustee, acting on behalf of and for the benefit of the takeout lender and its successors, assigns, novatees and transferees;

(c) Approve the Security Documents, and execution thereof, for creation and/or perfection of aforesaid Security Interest in favour of Petitioner NO.2, the Security Trustee for the benefit of Takeout lenders; and

(d) Pass such other and further orders as this Hon'ble Commission may deem fit under the facts and circumstance of the present case.”

4. According to the First Petitioner, a consortium of financial institutions and banks, namely L&T Infrastructure Finance Company Limited and IndusInd Bank Limited led by L& T Infrastructure Finance Company Limited (original lenders) had agreed to lend and advance financial assistance by way of term loans aggregating to approximately `645 crore for the purpose of part financing the construction, development implementation of laying of 1022 km of the 400kV D/C transmission line as part of the WRSS-II Project B on the terms and conditions set out in the Rupee Loan Agreement dated 30.10.2014 and amended and restated Rupee Loan Agreement dated 5.2.2016 and other financing/security documents. The second Petitioner SBICAP Trustee Co. Ltd was appointed as security trustee vide Security Trustee Agreement dated 30.10.2014 for the benefit of the original lenders. By order dated 21.9.2015, the Commission granted approval to create security in favour of Petitioner No. 2, acting on behalf and for the benefit of the Original Lenders to secure the loans through execution of Indenture of Mortgage subject to the terms stated in the said order. Pursuant to the said order dated 21.9.2015, the First Petitioner created security under Memorandum of Entry and Director's Declaration and Undertaking executed on 29.12.2015 and Indenture of

Mortgage executed on 30.12.2015 in favour of second Petitioner, acting on behalf of and for the benefit of the Original Lenders.

5. The First Petitioner has submitted that it approached Indian Infrastructure Finance Company Limited (IIFCL) to extend a financial assistance up to an aggregate principal amount of Rs. 300 crore under the Takeout Finance Scheme of IIFCL dated 16.4.2010 as amended from time to time for the purpose of substituting/take out of the partial outstanding principal amount of the original lenders under the loans. IIFCL in its capacity as the Takeout lender has agreed to provide financial assistance to substitute/take out the partly outstanding principal amount of Rs. 285 crore of the original lenders on the terms, conditions and covenants as set out in the "Takeout Agreement' dated 23.3.2016, Accession Deed cum Amendment Agreement to the Amended and Restated Rupee Loan Agreement dated 23.3.2016 and other financing/security documents entered. Subsequent to Takeout Agreement, outstanding loan amount of (i) L& T Infrastructure Finance Company Limited, (ii) IndusInd Bank Limited and (iii) India Infrastructure Finance Company Limited is Rs. 564.3750 crore. No additional loan has been taken by Rlnfra and only the original lender's loan exposure has been replaced partly by IFFCL. SBICAP Trustee Co. Ltd. was appointed by IFFCL as Security Trustee vide Deed of Accession dated 23.3.2016, to act on behalf of and for the benefit of the IFFCL Limited. The first petitioner has also submitted that security interest created/to be created in favour of the Second Petitioner acting on behalf of and for the benefit of IFFCL/Take out lender shall rank *pari-passu* among (i) L & T Infrastructure Finance Company Limited, (ii) IndusInd Bank Limited and (iii) India Infrastructure Finance Company Limited.

6. The First Petitioner has submitted that under the terms of the Takeout Agreement, its obligations towards payment, repayment, reimbursement, as the case may be, of the principal amounts of the loans, interest, further interest, additional interest, liquidated damages, repayment premium, all costs, charges and expenses and other monies owing by, and all other present and future obligations and liabilities of the first petitioner to the takeout lender under the Takeout Agreement and/or other financing documents, all costs, charges and expenses including but not limited to the cost, legal expenses and costs of preserving the securities and/or enforcement thereof, incurred by the takeout lender under the transaction documents, the obligations pertaining to the Takeout Agreement is required to be secured by the following security interest:

- (i) A first mortgage and charge of all the projects immovable properties, present and future;
- (ii) a first charge of all the project's movable, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, present and future and of whatsoever nature;
- (iii) a first charge on project's cash flows, receivables, book debts, revenues of whatsoever nature and wherever arising, present and future;
- (iv) a first charge on all project intangibles including but not limited to goodwill and uncalled capital, present and future;
- (v) a first charge by way of assignment or creation of security interest of:
  - (a) all the rights, title, interest, benefits, claims and demands whatsoever of the borrower in the project documents (including, but not limited to Implementation Agreement, Transmission Service Agreement/Power Transmission Agreement, EPC Contract, Revenue Sharing Agreement,

Insurance Contracts) as amended, varied or supplemented from time to time;

(b) subject to applicable law, all the rights, title, interest, benefits, claims and demands whatsoever of the borrower in the clearances, licences rated to the project;

(c ) all the rights, title, interest, benefits, claims and demands whatsoever of the borrower (in relation to the project) in any letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee provided by any party to the project documents; and

(d) all insurance and insurance proceeds in respect of the project.

(vi) a first charge on the Trust and Retention Account/DSR (Debt Service Reserve) and any other reserves and other bank accounts of the borrower wherever maintained with respect to the project.

7. The First Petitioner has agreed and proposed to create security interest as stipulated above, on assets, rights and entitlements of the First Petitioner, including movable and immovable properties of the project situated in the State of Maharashtra and Karnataka by execution of Supplemental Indenture of Mortgage and / or deposit of title deeds and to execute Supplemental Declaration and Undertaking before creation of mortgage through its director/authorised person. The First Petitioner has also agreed to create mortgages in favour of the Security Trustee in phases as and when further assets are acquired.

8. The First Petitioner has further submitted that the proposed security documents in relation to the Takeout Agreement have been settled and initialed between the first and second Petitioner. The First Petitioner has submitted that under the financing



agreements and proposed security documents, it shall be lawful for the 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 project documents.

9. The First Petitioner has submitted that as per clause 14.2 of the Implementation Agreement dated 23.11.2007 entered into between Rlnfra and PGCIL, First Petitioner is free to create any encumbrance over all or part of the security package or the other assets of the project in favour of the lenders or the lender`s representative. The First Petitioner has also submitted that as per clause 14.2 of the Power Transmission Agreement dated 16.1.2009 entered into between Rlnfra and the beneficiaries of the project, the beneficiaries have allowed the First Petitioner to create any encumbrance over all or party of security package or other assets of the projects in favour of the lenders or the lender`s representative as security.

10. The First Petitioner has stated that Article 17.2.2 of the Transmission Service Agreement entered into between the First Petitioner, PGCIL and the beneficiaries of the project provide that the First Petitioner may create any encumbrance over all or part of the receivables or its transmission assets in favour of the lenders or the representative of the lenders as security for amount payable under the Financing Agreements.

Provided that:

- a) the Lenders or the Lenders Representative on their behalf shall have entered into the financing agreements; and

b) any encumbrance granted by First Petitioner shall contain provisions pursuant to which the Lenders or the Lenders Representative on their behalf agrees unconditionally with first Petitioner to release such encumbrances upon payment by first Petitioner to the Lenders of all amounts due under the financing agreements.

11. The First Petitioner has stated that in accordance with the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, prior approval of the Commission is essential and the pre-requisite for creation and perfection of security in favour of second Petitioner acting on behalf and for the benefit of the Takeout Lender, and to give effect to the Security Interest stipulated above. Accordingly, the Petitioners have filed the present petition seeking prior approval of the Commission for substitution/addition of Indian Infrastructure Finance Company Limited as one of the lenders for the project and appoint SBICAP Trustee Company Limited as Security Trustee on behalf of India Infrastructure Finance Company Limited.

12. Notices were issued to the respondents to file their replies. None was present on behalf of the respondents. No reply has been filed by the respondents. The Petitioners, vide Record of Proceedings for the hearing dated 24.1.2017, were directed to submit the following information:

(a) How would the First Petitioner pass the benefit of refinancing to the beneficiaries?

(b) The reason for going at fixed rate of interest in the proposed refinance from the existing loan at floating rate of interest, when the rate of interest is in downward trend?

(c) Whether the proposed re-financing has been considered on the transfer of assets?

13. The First Petitioner in its affidavit dated 15.2.2017 has submitted as under:

(a) With regard to passing the benefit of refinancing to the beneficiaries, the first Petitioner has submitted that it approached IIFCL in April 2015 to takeout part exposure of existing lenders, namely L&T Infrastructure Finance Company Limited and IndusInd Bank Limited under IIFCL Takeout Scheme which was approved by IFFCL in July 2015 and takeout of Rs. 285 crore loan from L& T Infrastructure Finance Company Limited and IndusInd Bank Limited was completed in March, 2016. The first Petitioner has submitted that since, the tariff determined for the Petitioner was based on the international competitive bidding and is governed by the provisions of Section 63 of the Act, the issue regarding passing of the benefit of refinancing/takeout would not arise in the present refinancing/takeout.

(b) With regard to the reason for going for fixed rate of interest in the proposed refinance from the existing loan at floating rate of interest, when the rate of interest is in downward trend, the first Petitioner has submitted that takeout loan from IFFCL has been availed at floating rate of interest, as was the case earlier.

(c) In response to the query as to whether the proposed refinancing has been considered on the transfer of assets, the first petitioner has submitted that takeout facility was sanctioned by IFFCL in July, 2015 and availed in March 2016. Discussion for transfer of assets commenced only in the financial year 2017 by which time takeout has been completed. The First Petitioner has submitted that all existing terms of loans (including from IFFCL) has been considered on the transfer of assets.

14. We have considered the submissions made by the Petitioners. We had granted approval to create security in favour of the second Petitioner SBICAP Trustee Co. Ltd, acting on behalf and for the benefit of the Original Lenders to secure the Loans through execution of Indenture of Mortgage subject to the terms stated in the order dated 21.9.2015 in Petition No. 176/MP/2015 . In the present petition, the First Petitioner has sought approval for the addition of new lender i.e. India Infrastructure Finance Company Limited as Takeout Lender and the appointment of SBICAP Trustee Company Limited, as Security Trustee, acting on behalf of India Infrastructure Finance Company Limited and creation and/or perfection of Security Interest in favour of Security Trustee, acting on behalf of and for the benefit of the Takeout Lender. As per Section 17(3) and (4) of the Act, the First Petitioner is required to obtain approval of the Commission for the same. As per clause 17.2.2 of TSA, the first Petitioner is permitted to create encumbrance on all or part of the receivables or its transmission assets in favour of the Lenders or the Lender's Representative on their behalf, as a security for amounts payable under the financing agreements. All the documents for which India Infrastructure Finance Company Limited as a new lender and creation of security

interest in favour of SBICAP Trustee Company Ltd. as Security Trustee on behalf of new lender have been placed on record. After considering the reply of the First Petitioner to our queries, we are of the view that the project being awarded to the First Petitioner through international competitive bidding, gain/loss on account of refinancing is entirely on account of the First Petitioner and therefore, sharing of benefits on account of refinancing /takeout does not arise. We have also noted the submission of the First Petitioner that all existing terms of loans (including from IFFCL) have been considered by the First Petitioner in its negotiation for transfer of assets which is subject matter of another petition.

15. In view of the above, we accord approval under Section 17 (3) of the Act for addition of IIFCL as Takeout Lender and creation of security in favour of SBICAP Trustee Company Ltd. as Security Trustee on behalf of the Takeout Lender and its successors, assigns, novatees and transferees.

16. We, however, make it clear that the transmission license 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 has been 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 Security Trustee, the Commission has to evaluate such 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, lender, 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 accords 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 follows:-

***“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. 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 petitioner as and when required by the Commission for any specific purpose.

17. The petition is disposed of in terms of the above.

Sd/-  
**(Dr. M.K. Iyer)**  
**Member**

sd/-  
**(A.S.Bakshi)**  
**Member**

sd/-  
**(A.K.Singhal)**  
**Member**

sd/-  
**(Gireesh B.Pradhan)**  
**Chairperson**