

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 151/MP/2017

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K.Iyer, Member

Date of order: 16th of August, 2017

In the matter of

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest over the project assets of the First Petitioner in favour of Security Trustee acting on behalf of 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. Axis Trustee Services Limited
Axis House, Bombay Dyeing Mills Compound,
Pandurang Budhkar Marg,
Worli, Mumbai-400 0215,

..... **Petitioners**

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 T N Reddy, RTCL
2. Ms. Saunya Sahai, RTCL

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 in Petition No. 221/TL/2014.

2. The Petitioners had approached the Commission in Petition No. 103/MP/2016 for approval under Section 17 (3) and (4) of the Act to create security of Rs. 2250 crore in favour of SBICAP Trustee Company Limited. The Commission vide order dated 27.7.2016 accorded in-principle approval allowing the Second Petitioner to create security in favour of SBICAP Trustee Ltd. as Security Trustee.

3. NRSS-XXIX Transmission Limited and Axis Trustee Services Limited have filed the present petition for creation of security interest in favour of Axis Trustee Services Limited as Security Trustee pursuant to the Security Trustee Agreement and other relevant financing documents by way of Mortgage/hypothecation/assignment of 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 6 and 6 above, in

favour of Security Trustee/Lenders, acting on behalf of and for the benefit of the Lenders pursuant to the Indenture of Mortgage Agreement and other security creating documents/Financial Agreements for future refinancing transactions, by way of mortgage/hypothecation/assignment of Project Assets through execution of Indenture of Mortgage Agreement and other Financial and Refinancing Documents in future for the Transmission Project and pursuant to Indenture of Mortgage and other security creating documents.

(c) Pass such other relief as this Commission deems fit and proper in the facts and circumstances of the case and in the interest of justice.”

4. According to the First Petitioner, for the purpose of refinancing the project, the First Petitioner requested the L & T Infra Finance, L& T Finance and Yes Bank Limited (hereinafter referred to as the 'lenders') to sanction financial assistance for which existing lenders and current lenders have agreed to extend the First Petitioner, a financial assistance amounting to Rs. 2250 crore as fresh rupee term loan for the project. The First Petitioner has submitted that the total cost of construction and development of the project was estimated to be Rs. 3000 crore which was proposed to be funded as equity contribution of Rs 750 crore and Rs. 2250 crore as facility on the terms and conditions set out in the Common Loan Agreement dated 23.6.2017. In this regard, L & T Infrastructure Finance Company Limited has agreed to act as lead bank for the consortium of lenders. For this purpose, the First Petitioner and L & T Infrastructure Finance Company Limited have appointed the Second Petitioner, namely Axis Trustee Services 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 on 23.6.2017.

5. The First Petitioner has submitted that pursuant to the terms of the Common Loan Agreement and Indenture of Mortgage Agreement, the security obligation shall be secured by,-

(a) a first charge on all immovable assets of the Borrower, both present and future, in relation to the Transmission Project, if any;

(b) a first charge on all the Borrower's tangible movable assets in relation the Transmission Project including movable plant and machinery, machinery spares, tools and accessories, furnitures, fixtures, vehicles and all other movable assets and current and non-current assets, both present and future;

(c) a first charge over all accounts of the Borrower, including but not limited to the Account, and the Sub-Accounts (including the DSRA and other Accounts) (or any account in substitution thereof) that may be opened in accordance with the Transaction Documents, and all funds from time to time deposited therein (including the reserves) all designated account opened with designated banks and the Permitted Investments or other securities representing all accounts credited to the Accounts and a first charge on the Receivables.

(d) a first charge on all intangible assets of the Borrower including but not limited to goodwill, rights and undertakings and intellectual property rights and uncalled capital, both present and future.

(e) a first charge on all the current assets of the Borrower including but not limited to receivables, operating cash flows, commissions, revenues of whatsoever nature and wherever arising, both present and future;

(f) assignment by way of Security Interest of :

(i) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all the Project Documents and Additional Project Documents (if any) including the Transmission Service Agreement,

duly acknowledged and consented to by the counter parties to the Project Documents by executing the consent to assignment if such Project Documents requires prior consent of such counter parties before creation of Security Interest as within mentioned, all as amended, varies or supplemented from time to time;

(ii) all the right, title, interest and benefits of the Borrower in, to and under all the clearances pertaining to the Project (including the Transmission License and consent of CERC and JKSERC, if applicable);

(iii) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under any letter of credit, guarantee including contractor guarantees and liquidated damages, consent agreements, side letters and performance bond provided by any party to the Project Documents and Additional Project Documents (if any) (including any security letter of that may be available to the Borrower pursuant to the Transmission Service Agreement or in relation to the Project and/or guarantees issued by EPC Contractors in favour of the Borrower); and

(iv) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all Insurance Contracts and Insurance Proceeds pertaining to the Project.

(g) pledge of equity shares by the Promoter representing at least 51% (fifty once percent) of the Equity Shares Capital (the voting rights of which do not fall below 51%) and pledge of all other instruments including but not limited to preference shares, compulsorily convertible preference shares or any other

instrument representing cumulatively 51% (fifty one percent) of the total capital infused in the Borrower by way of preference shares, compulsorily convertible debentures, compulsorily convertible preference shares or any other instrument;

(h) unconditional and irrevocable corporate guarantee by the Promoter in a form and manner acceptable to the Lenders till the creation and perfection to the Lenders till the creation and perfection of the entire Security and occurrence of COD, subject to satisfactory account conduct and performance of the Project

(i) unconditional and irrevocable corporate guarantee by the Sponsor in a form and manner acceptable to the Lenders till the creation and perfection of the entire Security subject to satisfactory account conduct and performance of the Project.

6. The First Petitioner has submitted that it has agreed to create security interest in favour of Security Trustee pursuant to Indenture of Mortgage Agreement and other Financial Agreements, by way of mortgage in accordance with the provisions of Indenture of Mortgage Agreement and the Financial Agreements, and has agreed that it shall be lawful for the Security Trustee, upon enforcement of Security Interest, to take possession of mortgaged properties (as more particularly defined in the Deed of Hypothecation) along with all intangibles and any future assets under the project comprised in Financial Agreement and thenceforth, the First Petitioner shall take no action inconsistent with or prejudicial to the right of Security Trustee acting on behalf of the Lenders 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 whatsoever.

7. The First Petitioner has submitted that under the Financial Agreements and on enforcement of the security interest, it shall be lawful for the Security Trustee, acting on behalf of and for the benefit of the lenders, to enter into and take possession of the assets charged for their benefits and substitute themselves or any of the them or its nominees for the First Petitioner under any or all of the projects document(s).

8. 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 provides 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 to 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 from such encumbrances upon payment by the first petitioner to the lenders, of all amounts due under the Financing Agreements.

9. 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, being a licensee, prior approval of the Commission is essential for creation of security interest over all the movable and immovable assets of the First Petitioner in favour of Security Trustee/Lenders pursuant to Indenture of Mortgage Agreement and other security creating documents/Financial Agreements for current and for future refinancing transactions, by way of mortgage/hypothecation/assignment of project assets for benefit of the Lenders/Security Trustee/Lenders to the Project. 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 the Project assets through execution of Indenture of Mortgage Agreement and other financial and refinancing documents in future for the project.

10. The petition was heard on 10.8.2017 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. During the course of hearing, the representative of the First Petitioner reiterated the submissions made in the Petition and requested to grant approval under Section 17 (3) and (4) of the Act to create security in favour of Security Trustee.

11. We have considered the submissions made by the Petitioners. Perusal of the Security Trustee Agreement dated 23.6.2017 reveals that the First Petitioner had

approached the lenders for refinancing and fresh finances for part construction and development of the project. The lenders had agreed to make available financial assistance for an aggregate amount of Rs. 2250 crore as rupee term loan to the First Petitioner and a Security Trustee Agreement and a Common Loan Agreement were entered into between the First Petitioner and the lenders on 23.6.2017. The total cost of construction and development of the project was estimated to be Rs. 3000 crore which was proposed to be funded as equity contribution of Rs. 750 crore and Rs. 2250 crore. The Commission vide order dated 27.7.2016 in Petition No. 103/MP/2016 accorded in-principle approval for creating security in favour of SBICAP Trustee Company Ltd. Further, the lenders have agreed to extend to First Petitioner, a fresh rupee term loan of Rs. 2250 crore on the terms and conditions set out in the Common Loan Agreement dated 23.6.2017. For this purpose, the First Petitioner and L & T Infrastructure Finance Company have appointed the Second Petitioner, namely Axis Trustee Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Common Loan Agreement dated 23.6.2017 have been executed for loan of Rs. 2250 crore.

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 Axis Trustee Services 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 Axis Trustee Services 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. However, the Petitioner must obtain no objection certificate from the existing lenders as well as the Security Trustee. The earlier approval granted vide order dated 27.7.2016 in Petition No. 103/MP/2016 shall stand withdrawn from the date of issue of this order. It is however, clarified that approval for securing loan for the additional cost incurred, if any on account of cost over-run of the project shall not be construed as approval to the First Petitioner to seek tariff adjustment. The Petitioner shall be entitled to claim the tariff strictly as per the TSA. It is further 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 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. 151/MP/2017 stands disposed of.

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

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

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

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