

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.78/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: 24th of May, 2017

In the matter of

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest by Warora-Kurnool Transmission Limited over (i) all the movable and immovable assets of the Petitioner including all movable and immovable assets of the utility to be established by the petitioner that constitute the project, (ii) the Transmission Service Agreement executed by the petitioner on January 6, 2016, (iii) its transmission licence to establish the transmission system for 'Additional inter-Regional AC link for import into Southern Region i.e. Warora-Warangal and Chilkaluripeta-Hyderabad-Kurnool 765 kV link' dated September 29, 2016, and (iv) all project documents, cash flows, receivables, bank accounts, clearance, notifications, Government approvals, orders, including but not limited to any amendments, supplements to the existing project document, etc. in relation to 'Additional inter-Regional AC link for import into Southern Region i.e. Warora-Warangal and Chilkuripeta-Hyderabad-Kurnool 765 kV link' comprising of, amongst others, in favour of IDBI Trusteeship Services Limited acting as the security trustee for the benefit of Yes Bank Limited (including their respective successors, transferees, novatees, and assigns) and enforcement thereof in accordance with the terms of the finance documents.

And

In the matter of

1. Warora-Kurnool Transmission Limited
A-26/3, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi-110 044

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

..... **Petitioners**

Vs

1. Tamil Nadu Generation & Distribution Corporation Limited
NPKRR Malligai,
144 Anna Salai, Chennai – 600 002

2. Kerala State Electricity Board Limited
Vaidyuthi Bhawanam, Pattom,
Thiruvananthapuram – 695004
 3. Southern Power Distribution Company of Andhra Pradesh Limited
D. No:19-13 – 65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati – 517 503
 4. Eastern Power Distribution Company of Andhra Pradesh Limited
P&T Colony, Seethammadhara,
Visakhapatnam-530 017
 5. Southern Power Distribution Company of Telangana Limited
#6-1-50, Mint Compound,
Hyderabad – 500 063, Telangana
 6. Northern Power Distribution Company of Telangana Limited
#2-5-31/2, Vidyut Bhawan, Nakkalgutta,
Hanamkonda, Warangal – 506 001
 7. Bangalore Electricity Supply Company Limited
KR Circle, Bangalore – 560 001
 8. Gulbarga Electricity Company Limited Station
Main Road, Gulbarga – 585 102
 9. Hubli Electricity Supply Company Limited
Navanagar, PB Road, Hubli-580 025.
 10. Mangalore Electricity Supply Company Limited
Paradigm Plaza, AB Shetty Circle,
Mangalore – 575 001 7
 11. Chamundeshwari Electricity Supply Company Limited
#927, LJ Avenue, Ground Floor,
New KantharajUrs Road, Sarawathipuram Mysore – 570 009
 12. Electricity Department, Govt. of Puducherry Electricity
137, NSC Bore Road, Electricity Department, Puducherry – 605 001
 13. Electricity Department, Govt. of Goa,
Vidyut Bhawan, Panaji, Goa – 605 001
-Respondents**

The following was present:

Shri Mohit Jain for the petitioner

ORDER

The First Petitioner herein, Warora-Kurnool 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 "Additional inter-Regional AC link for import into Southern Region i.e. Warora-Warangal and Chilakaluripeta-Hyderabad-Kurnool 765 kV link" 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 29.9.2016.

2. Warora-Kurnool Transmission Limited and IDBI Trusteeship Services Limited have filed a combined petition for creation and enforcement of security in favour of IDBI Trusteeship Limited as Security Trustee for the benefit of lender (including Yes Bank), as security for the financial assistance provided/agreed to be provided by such lender (including Yes Bank and each of the novates, transferees and assignees of the lender) for part financing the project. The Petitioners have made the following prayers:

"(a) Grant the approval to create security interest, over the immovable assets of the project, cash flows, receivables, bank accounts, TSA, the project assets, clearances, approvals and all other project documents/clearances including but not limited to any amendments, supplements to the existing project documents and the transmission licence in favour of Security Trustee, including recognition of the right to appoint the Hon1ble Commission`s approved nominee in the event of enforcement of security interest in the TSA and Transmission Licence;

(b) Approve the Security Documents execution, for creation and/or perfection of aforesaid Security Interest annexed at Annexure IV hereto in favour of IDBI Trusteeship Services Limited, in its capacity as the Security Trustee, for the benefit of the lenders including for the enforcement thereof in accordance with the terms of the finance documents.

(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, request was made to Yes Bank Limited (lender) to sanction financial assistances for part financing of the project for which lender has agreed to make available financial assistance for amounting to Rs. 2790 crore as rupee term loan with capex LC sub-limit to the extent of Rs. 1400 crore and Rs. 110 crore as performance bank guarantee. Pursuant to sanction letter dated 30.12.2016, Yes Bank Limited has also agreed to act as lead bank for the consortium, if any, of the lender. For this purpose, the First Petitioner and the lender have appointed IDBI Trusteeship Services Limited as Security Trustee who has agreed to act as Security Trustee for the lender and its novates, assignees and transferees and has entered into Security Trustee Agreement and Rupee Facility Agreement on 22.3.2017.

4. The First Petitioner has submitted that in terms of the sanction letter of the lender, and Rupee Facility Agreement entered into with Yes Bank Limited on 22.3.2017 for financing of the project, the First Petitioner is required amongst others (i) to create security interest on all its immovable and movable assets by mortgage and/or hypothecation and/or assignment and/or substitution and/or charge as the case may be, (ii) to assign by way of security the petitioner`s rights, benefits, interest under the transmission licence and the TSA, all other project documents, cash flows, receivables, bank accounts, clearance, notification, Government approvals, orders, including but not limited to any amendments, supplements to the existing project documents, etc. in relation to Additional inter-Regional AC link for import into Southern Region i.e Warora-Warangal and Chilkaluripeta-Hyderabad-Kurnool 765 kV

link', and (iii) shares held by Essar Infraprojects Limited in the First Petitioner, to the extent of fifty one percent of the issued and paid up equity share capital of the First Petitioner, in favour of Security Trustee for holding the beneficial interest of the lender.

5. 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.

6. The First Petitioner has submitted that in terms of Article 15.2.4 of the TSA, the First Petitioner is required to take permission from this Commission prior to relinquishment or transfer of its rights 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/Lender and for any subsequent transferees, assigns, novatees

thereof acting on behalf of and for the benefit of the lender. Accordingly, the present petition has been filed for seeking prior approval of the Commission for creation and enforcement of security interest by the First Petitioner over the TSA, and all assets in relation to the project and on its transmission licence in favour of Security Trustee for the benefit of the lender, including Yes Bank as security for the financial assistance provided/agreed to be provided by such lender for part financing the project.

7. 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.

8. The matter was heard on 18.5.2017, In response to our query regarding debt-equity ratio and the original project cost, the representative of the First Petitioner submitted that base equity commitment is Rs.1210 crore and the debt-equity ratio of the project is 69.75:30.25. Accordingly, based on the base equity commitment of Rs. 1210 crore and agreed debt of Rs. 2790 crore, the estimated project cost works out to Rs. 4000 crore.

9. We have considered the submissions made by the First Petitioner. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans. It is a normal practice followed by financial institutions/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 lender, Yes Bank have appointed the Second Petitioner, namely IDBI Trusteeship Services Limited as Security Trustee for creation of security over all the

movable and immovable assets of the project for financing of the project. Accordingly, Security Trustee Agreement and Rupee Facility Agreement dated 22.3.2017 have been executed for a loan of Rs. 2790 crore with capex LC sub-limit to the extent of Rs. 1400 crore and 110 crore as Performance Bank Guarantee. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create an 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 representatives of the lenders, as security for amounts payable under the Financing Agreements and 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 provisions, 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 Service 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 lender. We, therefore, accord in principle approval allowing the First Petitioner to create security in favour of IDBI Trusteeship Service Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage and/or hypothecation and/or assignment and/or substitution

and/or charge, as the case may be, 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 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. We

direct that the petitioner shall continue to maintain its own books of accounts and balance sheet.

12. With the above, Petition No. 78/MP/2017 stands disposed of.

Sd/-
(Dr. M.K.lyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson