

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 112/MP/2018

Coram:

Shri P.K.Pujari, Chairperson

Shri A. K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 13th of July, 2018

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 No. 1 in favour of the Petitioner No. 2 i.e. Debenture Trustee, acting for the benefit of the Debentures Holders and for any subsequent transferees, assign, novatees thereof pursuant to Indenture of Mortgage 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) Jabalpur-Bhopal 765 kV S/C Transmission Line from Bhopal- Indore 765 kV S/C Transmission Line, (ii) Bhopal-Bhopal 400 D/C Transmission Line, (iii) Aurangabad-Dhule 765 kV S/C Transmission Line, (iv) Dhule-Vadodra 765 kV S/C Transmission Line, (v) Dhule-Dhule Transmission Line, and (vi) Sub-station at Dhule being implemented by Bhoptal-Dhule Transmission Company Limited.

And

In the matter of:

1. Bhopal Dhule Transmission Company Limited
F -1, The Mira Corporate Suite
1 and 2, Ishwar Nagar
New Delhi – 110065
2. Axis Trustee Services Limited
Pandnrang Budhkar Marg, Worli
Mumbai – 400025

.... Petitioners

Versus

1. Chhattisgarh State Power Trading Company Limited
2nd Floor, Vidyut Sewa Bhwan
Danganiya, Raipur- 492013

2. Sterlite Energy Limited,
1st Floor, City mart Complex, Baramuda
Bhubnehwar - 751003
3. GMR Kamalanga Energy Limited
10th Floor, C & D Block,
IBC Knowledge Park,
Opposite Fire Station, Bannerughatta Road
Banglore - 560029
4. Navbharat Power Private Limited
Mahalaxmi House, 8-2 – 583, Road No -2,
Bnajara Hills,
Hyderabad – 500034
5. Monnet Power Company Limited
Monnet House, 11 Masjid Moth
Greater Kailash Part – II,
New Delhi - 110048
6. Jindal India Thermal Power Limited,
Plot No. C-16, Sector-6
Panchkula-134112, Haryana
7. Lanco Baband Power Limited
Plot No- 229, Phase -1, Floor- 1,
Udyog Vihar, Gurgaon- 122016
8. Ind Barath Energy (Utkal) Limited
Plot No- 30 A, Road No 1, Film Nagar,
Jubilee Hills, Hyderabad- 500033
9. MB Power (Madhya Pradesh) Limited,
213B Okhla Industrial Area, Phase – III,
New Delhi- 110020
10. RKM Powergen Limited
147, Gitanjali Avanti Vihar
Sector-1, Raipur
Chattisgarh – 492004
11. Athena Chhattisgarh Power Limited
Block, 5th Floor, Roxana Towers,
Greenlands, Begumpet,
Hyderabad – 500016

12. Jindal Power Limited
2nd Floor, DCM Building, Plot No- 94
Sector- 32, Gurgaon- 122001
13. SKS Power Generation (Chhattisgarh) Limited
501 B, Elegant Business Park, Andheri Kurla Road,
J. B. Nagar, Andheri (East)
Mumbai- 400059
14. Korba West Power Company Limited
6th and 7th Floor, Vatika City Point
M. G Road, Gurgaon -122002
15. DB Power Limited
813, Phase V, Udyog Vihar
Gurgaon, Haryana – 122016
16. Visa Power limited
No. 9 HLL Building, Shakespeare Sarani
Kolkata –700071
17. KSK Mahanadi Power Company Limited
8-2/293/82/A/431/A, Road No 22
Jubilee Hills, Hyderabad- 500033
18. Bharat Aluminum Company Limited
C/o Administrative Building,
Balco Nagar, Korba- 495684
19. Vandana Vidyut Limited
Vandana Bhawan, MG Road,
Raipur, Chhattisgarh- 492001
20. Lanco Amarkantak Power Limited
Plot NO 397, Udyog Vihar, Phase- 3,
Gurgaon – 122016
21. Chhattisgarh Steel and Power Limited
142, Saheed Sampark Complex, G .E Road
Raipur, Chhattisgarh
22. GMR Chhattisgarh Energy Pvt. Limited
10th Floor, Tower D, IBC Knowledge Park,
4/1, Bannerghatta Road, Near Dairy Circle
Banglore- 560029

Parties Present:

Shri Deep Rao, Advocate for the Petitioner
Shri TAN Reddy, BDTCL
Shri Pulkit Sharma, Advocate, BDTCL

ORDER

The First Petitioner, Bhopal Dhule Transmission Company 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 'System Strengthening for Western Region (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 12.10.2011.

2. Bhopal Dhule Transmission Company Limited and Axis Trustee Services Limited have filed the present petition for creation of security in favour of Axis Trustee Services Limited as Debenture Trustee pursuant to the Debenture Trust Deed and other relevant financing documents by way of mortgage/hypothecation/assignment of mortgaged properties and 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 assets including the movable and immovable assets of Petitioner No 1 and to the extent as mentioned in the Petitioner, in favour of Debenture Trustee/ Debenture Holders and for subsequent transferees, assigns, novatees thereof and any refinancing lenders to the Project, pursuant to Indenture of Mortgage, 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

and for amendment of the security documents to include the assigns, transferees and novatees of the Lenders; and

(b) Pass such other relief as Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.”

3. The First Petitioner has submitted that for the purpose of refinancing some of the existing lenders (other than the ECB Lender), the First Petitioner refinanced the total outstanding loan of Rs. 1379 crore (other than ECB lender of Rs. 280 crore for which the Commission had already accorded the in-principle approval) through issuance of the senior, listed, secured, redeemable, non-convertible debentures of Rs. 735 crore and the balance was funded through unsecured loan from Indiagrid, an Infrastructure Investment Trust constituted in accordance with the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2010. Therefore, the debt-equity ratio has been changed from 78:22 to 46:53. The First Petitioner has submitted that it has issued 7350 rated, senior, listed, taxable, secured, non-convertible debentures of face value of Rs. 10 lakh each aggregating to Rs. 735 crore on a private placement basis to eligible investors (hereinafter referred to as 'Debenture Holders') pursuant to Debenture Trust Deed dated 29.5.2017 executed between the First Petitioner and Second Petitioner, namely Axis Trustee Services Limited. For the purpose of issuance of the Debentures, the First Petitioner has appointed Axis Trustee Services Limited as Debenture Trustee who has agreed to act as Debenture Trustee for the Debentures Holders including their assigns, transferees, novatees and has entered into Debenture Trustee Agreement dated 29.5.2017.

4. The First Petitioner has submitted that it has agreed to create security in favour of Debenture Trustee acting for the benefit of the Debenture Holders pursuant to

Debenture Trust Deed, Debenture Trustee Agreement and other Financial Agreements, by way of mortgage/hypothecation/assignment in accordance with the provisions of the Indenture of Mortgage and Financial Agreement, and has agreed that it shall be lawful for Debenture Trustee, upon enforcement of Security Interest, to enter into and take possession of the Mortgaged Properties (as more particularly defined in the Indenture of Mortgage) along with movable, intangibles and any future assets under the Project comprised in Debenture Trust Deed and thenceforth, the First Petitioner shall take no action inconsistent with or prejudicial to the right of the representative of Debenture Holders/Debenture Trustee acting for the Debenture Holders and their assigns, transferees and novatees/Debenture Trustee quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereof without interruption or hindrance by the First Petitioner or by any person or persons whatsoever. The First Petitioner has submitted that under the Debenture Trust Deed and on enforcement of the Security Interest, it shall be lawful for the Debenture Trustee, acting on behalf of and for the benefit of the Debenture Holders and their assigns, transferees and novatees/Debenture Trustee, to enter into and take possession of the assets/properties mortgaged/charged/assigned for their benefit and substitute themselves or any one of them or its nominees for the First Petitioner under any or all of the Project document(s).

5. The First Petitioner has further stated that Article 15.2.2 of the Transmission Service Agreement (TSA) 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 in accordance with Article 15.2.2 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 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 Debenture Trustee/Debenture Holders 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 Debenture Holders and their assigns, transferees and novatees pursuant to Indenture of Mortgage, declaration and memorandum of entry and other security creating documents/Financial Agreements and for future refinancing transactions also, 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.

7. The petition was heard after notice to the Respondents. During the course of hearing, learned counsel for Chhattisgarh State Power Transmission Limited requested for time to file the reply. Chhattisgarh State Power Trading Company Limited (CSPTCL) has filed its reply on 5.7.2018 which has been dealt with in succeeding paras.

8. The First Petitioner, vide Record of Proceedings for the hearing dated 3.5.2018, was directed to file the following information:

(a) Flow of actual project cost, flow of promoters contribution towards paid up equity capital/loans, flow of external loan and Debt-Equity ratio starting from the first approval granted by the Commission in Petition No. 136/MP/2012 till the date of substitution of lenders by issuing the debentures in the present petition and clarify whether the equity amount is being maintained in the same ratio in line with the change in actual project cost.

(b) No Dues Certificate consists of L&T Infra Debt Fund Ltd. for an amount of Rs. 90 crore and Rs. 94 crore and there is mention of funding through loan from Indiatgrid. Whether approval under Section 17(3) and (4) of the Electricity Act, 2003 was sought from the Commission for the above loans;

(c) No dues certificate of OBC does not mention whether it was continuing in 30/MP/2016 or was repaid; and

(d) Provide lender-wise amount of loan repaid from the proceeds of the Debenture issue of amounting to Rs. 735 crore.

9. The First Petitioner has submitted the information called for which has been discussed in succeeding paragraphs

Analysis and Decision:

10. After grant of licence, the First Petitioner approached the Commission by way of Petition No. 136/MP/2012 for creation of security interest for an amount of Rs. 1272 crore in favour of Security Trustee, SBICAP Trustee Company Limited in favour of lenders. Approval was accorded vide order dated 25.7.2012. Subsequently, the First Petitioner filed Petition No. 30/MP/2016 for creation of security interest for loan amount of 1379.81 crore in favour of SBICAP Trustee Company Limited and approval was accorded by the Commission vide order 6.4.2016. The First Petitioner filed Petition No. 226/MP/2017 for creation of security interest in favour of Debenture Trustee for the benefits of debentures holders. The First Petitioner vide letter dated 7.2.2018 was directed to file the following information:

(a) Present outstanding loan against Rs. 1379.81 crore for which in-principle approval was accorded by the Commission vide order dated 6.4.2016 in Petition No. 30/MP/2016;

(b) Outstanding loan against existing lenders and how much loan of the existing lenders was re-financed/proposed to be re-financed from the proceeds of the debenture issue i.e Rs. 735 crore; and

(c) Reason for change in debt-equity ratio from 78:22 to 47:53.

Since the First Petitioner could not file the said information within specified time, the said Petition was disposed of but the First Petitioner vide order dated 27.2.2018 was granted liberty to approach the Commission with the required information. In pursuant of

liberty granted, the First Petitioner has approached the Commission by way of the present Petition.

11. In the present petition, the First Petitioner has submitted that out of the Rs. 1379.81 crore for which approval was accorded by vide order dated 6.4.2016 in Petition No. 30/MP/2016, the First Petitioner propose to refinance Rs. 735 crore from non-convertible debenture and balance through unsecured loan from Indiagrid.

12. Chhattisgarh State Power Trading Company Limited vide its reply dated 5.7.2018 has submitted that it is interested that the transmission project be made available without any hiatus or break in terms of the PPA for use by CSPTCL as well as the other respondents. CSTPCL has submitted that any order passed by the Commission in the present ought not to affect the same. The First Petitioner has filed the present petition for approval under Section 17 (3) and (4) of the Act for creation of security interest in favour of Debenture Trustee for which CSPTCL shall not be effected as tariff discovered through competitive bidding is not going to be increased.

13. The First Petitioner was directed to submit the flow of actual project cost including promoter's contribution, No Dues Certificate from L&T Infra Debt Fund Ltd for Rs. 90 crore and Rs. 94 crore and clarification regarding No Dues Certificate issued by OBC. The Petitioner vide its affidavit dated 4.7.2018 has submitted that the year-wise flow of actual project cost including promoter's contribution. As regards the No Dues Certificate from L&T Infra Debt Fund Ltd., the First Petitioner has submitted that at the time of filing

of Petition No. 30/MP/2016, its total sanctioned debt (other than the ECB of Rs. 260 crore) was as under:

- (i) State Bank of India for Rs. 920 crore;
- (ii) L&T Infrastructure Finance Company Limited for Rs. 459.81 crore

According to the First Petitioner, on 26.7.2017, SBI issued No Dues Certificate in respect of repayment of the full quantum of its sanctioned loan of Rs. 920 crore. Similarly, L&T Infrastructure Finance Company Limited issued No Dues Certificate on 27.7.2017 in respect of the repayment of the full quantum of its sanctioned loan of Rs. 459.81 crore. The First Petitioner has submitted that during the tenure of the sanctioned loans from SBI and L&T, parts of such loans were down-sold to other lenders within the overall sanctioned limits of SMI and L&T respectively. The First Petitioner has submitted that since these down sold loans were duly repaid by the First Petitioner, each of these downstream lenders also issued individual No Dues Certificates to the First Petitioner.

14. With regard to Indiagrid loan, the First Petitioner has submitted that the loan from Indiagrid is an unsecured loan with no recourse whatsoever to the First Petitioner's transmission licence or projects assets. Therefore, the loan from Indiagrid does not in any manner involve the assignment of the First Petitioner's transmission licence or transfer of its transmission project by sale, lease, exchange, or otherwise. The First Petitioner has submitted that Section 17 (3) and (4) of the Act is not attracted in respect of the Indiagrid loan. Therefore, the Commission approval was not sought for the Indiagrid loan. Since, the loan taken from Indiagrid was unsecured loan, no approval was required under Section 17 (3) and (4) of the Act.

15. With regard to no dues certificate of OBC, the First Petitioner has submitted that OBC was one of the original lenders, who was repaid as part of the refinancing carried out in the year 2015. Therefore, OBC`s original loan which was part of Petition No. 30/MP/2016 was repaid. Subsequently, OBC was again a part of the consortium banks that refinanced the original loan which was repaid by the current bond issue. The First Petitioner has submitted the NOC dated 31.3.2017 is in respect of the current repayment.

16. The First Petitioner was directed to provide lender-wise amount of loan repaid from the proceeds of the debenture issue of amounting to Rs. 735 crore. The First Petitioner vide its affidavit dated 11.5.2018 has submitted the detailed chart describing the repayment of each rupee term lender from the proceeds of issuing of current debentures and the unsecured loan from Indigrid as under:

Details of lender-wise loan repayment (Rs. in crore)		
Lenders	Outstanding balance	Paid by
L&T Infra	189.59	
L&T IDF	141	
OBC	92.16	
SBI	312.25	Issuance of 735 Non-Convertible debenture of Rs. 735 crore
Total	735 crore	
SBI	533.6	Rs. 533.6 crore unsecured loan from Indigrid

17. Perusal of the Debenture Trustee Agreement and Debenture Trust Deed dated 29.5.2017 reveals that the First Petitioner proposes to issue senior, secured, redeemable, rated, listed non-convertible debentures of face value of Rs. 10 lakh each aggregating upto to Rs. 735 crore in terms of the Information Memorandum to be issued

by the First Petitioner to Debenture Holders and the First Petitioner had approached Axis Trustee Services Limited to act as the Debenture Trustee for the benefit of the Debenture Holders. Axis Trustee Services Limited had agreed to act as the Debenture Trustee for the Debenture Holders on the terms and conditions agreed in the Debenture Trustee Agreement. The First Petitioner has sought approval of the Commission under Section 17 (3) and (4) of the Act for creation of security interest in favour of Debenture Trustee for making available proposed finance through issue of senior, secured, redeemable, non-convertible debentures of face value of Rs. 10 lakh each.

18. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through equity of the project developer and loans by the financial institutions and issuance of debentures which is a form of loan. It is a 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 lenders have appointed the second petitioner viz, Axis Trustee Services Limited as Debenture Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Debenture Trustee Appointment Agreement and Debenture Trust Deed dated 29.5.2017 have been executed for loan of Rs. 735 crore the First Petitioner issued 7350 non-convertible debentures of a face value of Rs.10 lakh each. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create encumbrance over all or part of the receivables, Letter of Credit or other assets of the project in favour of the lenders or the lender`s representatives, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

19. 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.”

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 Trusteeship Services Limited as Debenture Trustee needs to be given comfort for creation of security for the benefit of the debenture holders/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 Trusteeship Services Limited, presently acting as Debenture Trustee pursuant to Debenture Trust Deed by way of mortgage on project assets by execution of Debenture Trust Deed and other debenture and refinancing documents 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 Debenture 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 licence and the assets of the first petitioner to the nominee of Debenture Trustee, the Commission shall evaluate such nominee's experience in development, design, construction, operation and maintenance of the transmission lines, and ability to execute the project

and undertake transmission of electricity. The licensee, lenders, debenture trustee or its nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself about 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, lender, Debenture Trustee or its nominee, approve the assignment of the licence to a nominee of the lender subject to proper due diligence of the process. Therefore, specific prior approval of the Commission shall be necessary for assigning the licence to the Debenture Trustee or its nominee and transfer of any assets to them. Lastly, finance documents and statements shall be filed by the petitioner as and when required by the Commission for any specific purpose.

20. Petition No. 112/MP/2018 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/-
(P.K.Pujari)
Chairperson