

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 12/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: 27th of June, 2018

In the matter of

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation and/or perfection of security interest by the Borrower/Petitioner No.1 in favour of IDBI Trusteeship Services Ltd., the Security Trustee/Petitioner No. 2.

**And
In the matter of**

1. Raichur Sholapur Transmission Company Private Limited
(Formerly Raichur Sholapur Transmission Company Limited)
Patel Estate Road,
Jogeshwari West,
Mumbai-400102
2. IDBI Trusteeship Services Ltd.
Asian Building, Ground Floor,
17, R Kamani Road,
Ballard Estate, Fort,
Mumbai, Maharashtra-400001

.....Petitioners

1. General Manager (Commercial & Regulatory Cell)
Power Grid Corporation of India Ltd. (CTU),
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016.
2. Manager, Axis Bank Ltd. (For LER Facility)
Axis House,
Wadia International Centre
P.B. Marg, Worli,
Mumbai-400025

3. Axis Bank Ltd. (For ECB Facility)
Unit No. 701, 7th Floor,
AL FATTAN Currency House,
P.O. Box 506593
DIFC, Dubai, U.A.E.
4. Bank of India (For ECB Facility)
Jersey Branch, 35-37, New Street,
St. Helier, Jersey JE2 3RA
(Channel Island)
5. Bank of Baroda (For ECB Facility)
P.O. Box 3162
Sh. Rashid Building,
Ali Bin Abi Talib Road,
Bur, Dubai, U.A.E.

.....Respondents

The following were present:

Shri Soumyajit Nath, Advocate, RSTCPL
Shri Rakesh Sinha, Advocate, RSTCPL

ORDER

The First Petitioner herein, Raichur Sholapur Transmission Company Private 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 associated with Krishnapattanam UMPP-synchronous inter-connection between Southern Region and Western Region (Part B) 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 24.8.2011.

2. Raichur Sholapur Transmission Company Private and IDBI Trusteeship Services Ltd. have filed a combined petition for creation of security in favour of IDBI Trusteeship Services Limited as Security Trustee pursuant to the Security Trustee

Agreement and other relevant financing documents for benefit of the lenders to the project. The Petitioners have made the following prayers:

- “(a) The Commission may be pleased to approve creation and/or perfection of Security Interest as stated in the petition in favour of Petitioner No. 2/Security Trustee, acting on behalf of and for the benefit of Secured Lenders and LER Facility provider;
 - (b) The Commission may be pleased to approve Deed of Hypothecation dated 4.7.2012, 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 Secured Lender;
 - (c) The Commission may be pleased to approve the 1st Supplementary Deed of Hypothecation dated 19.2.2013, and execution thereof, for creation/extension and/or perfection of aforesaid Security Interest in favour of Petitioner No.2, the Security Trustee for the benefit of Secured Lender.
 - (d) The Commission may be pleased to approve the 2nd Supplementary Deed of Hypothecation dated 22.9.2017, and execution thereof, for creation/extension and/or perfection of aforesaid Security Interest in favour of Petitioner No.2, the Security Trustee for the benefit of Secured Lender/Axis Bank, Mumbai;
 - (e) Condone, any inadvertent omissions/errors/shortcoming and permit to add, change, modify, alter this filing and make further submissions as may be required at a future date;
 - (f) Pass such other and further reliefs as this Commission deems just and proper in the nature and circumstances of the present case.”
3. According to the First Petitioner, for financing the project through secured loan facility, the First Petitioner approached Axis Bank Ltd. (Lead Secured Lender) for which Lead Secured Lender had agreed to make available financial assistance amounting to US\$ 48,000,000/- (48 million dollars) for the purpose of financing the development and implementation of the project and on the terms and conditions set out in the ECB Facility Agreement dated 4.7.2012 entered into between the First Petitioner and Lead Secured Lender. For this purpose, the First Petitioner and Lead Secured Lender have appointed the Second Petitioner, namely IDBI Trusteeship Services Limited as Security Trustee (hereinafter referred to as 'Security Trustee') who has agreed to act as Security Trustee for the lender and has entered into Security Trustee Agreement and Deed of Hypothecation on 4.7.2012.

4. The First Petitioner has submitted that subsequent to the ECB Facility Agreement, on the request of the First Petitioner, Axis Bank agreed to grant LER facility up to Rs. 15 crore for hedging the ECB Facility. Subsequently, the Petitioner entered into a Supplementary Deed of Hypothecation dated 19.2.2013. The First Petitioner has submitted that pursuant to the Supplementary Deed of Hypothecation dated 19.2.2013, the following securities were created to secure the LER Facility by way of second ranking charge:

“2.2.1 all rights, titles, interest, benefits, claims and demands whatsoever of the Borrower, in, to under and/or in respect of the project Agreements, the Approvals, insurance contracts/policies with respect to the project, and letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee, provided by any party to the project Agreements (Contracts), including any amendments, variations and substitutions in relation to the Contracts, whether now executed/received or hereafter executed/received and delivered, including without limitation, the right to compel performance thereunder, and to substitute, or to be substituted for, the Borrower thereunder, and to substitute, or to be substituted for the Borrower thereunder and to commence and conduct either in the name of the Borrower or in its own name or otherwise any proceedings against any person in respect of any breach of the Contracts and, including without limitation, rights and benefits to all amounts owing to, or received or recovered by, the Borrower and all claims thereunder and all other claims of the Borrower under or in any proceedings against all or any such persons and together with the right to further assign any of the Contracts and/or any rights thereunder.

2.2.2 All and singular moveable properties, in relation to Transmission Lines and sub-stations, plant and machinery (whether attached or otherwise), all other tangible moveable assets (both present and future) and in particular including, without limitation, generators, furniture and fixture, hardware, computer software, interface software, wiring , electronics spares, machinery spares, tools, meters, telephones, motor vehicles, accessories, inventory and all other equipment, whether installed or not and whether lying loose or in cases or which are lying or are stored in or to be stored in or to be brought upon any of the Borrower’s premises, warehouses, stockyards and godowns or those of the Borrower’s agents, affiliates, associates or representatives or at various work sites or at any place or places wherever else situated or wherever else the same may be , whether now belonging to or that may at any time during the continuance of this Deed belong to the Borrower with respect to the Project and/or that may at present or hereafter be held by any party anywhere to the order and disposition of the Borrower or in the course of transit or delivery and all replacements thereof and additions thereof whether by way of substitution, replacement, conversion, realization or otherwise howsoever together with all benefits, rights and incidentals attached thereto which are now or shall at any time hereafter be owned by the Borrower with respect to the Project and the uncalled capital, all movable intangible assets of the Borrower relating to the Project including intellectual property/intellectual property rights, goodwill, and all the other investments, rights, title and interest in the undertakings of the Borrower and all rights, titles, interest, property,

claims and demands whatsoever of the Borrower unto and upon the same whether presently in existence, constructed or acquired hereafter.

2.2.3 All revenues, receipts, receivables, amounts owing to, and received and/or receivable by, the Borrower and/or any person on its behalf all book debts, all cash flows and receivables and proceeds (including but not limited to the receivables arising from/in connection with the Project and the Contracts), all cash-in-hand, commissions, revenues, claims and actionable claims of whatsoever nature and howsoever and wherever arising due or owing to or become due or owing to or acquired by the Borrower and the full benefit of all rights and remedies relating thereto including but not limited to fees, deposits and all claims for damages and other remedies for non-payment of the same and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to or in respect of all the aforesaid assets, both present and future.

2.2.4 All of the Project accounts, trust and retention account, escrow account, debt service reserve account, any other bank accounts relating to/connected with the project and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to under and in respect thereof and all monies including all cash flows and receivables and all proceeds arising from/in connection with implementation of Contracts and all insurance proceeds payable into the said accounts, which have been/are deposited/credited/lying therein, all investments, assets, instruments and securities which represent amounts in the said accounts, both present and future (the 'Accounts', which expression shall, as the context may permit or require, mean any or each of such Accounts)

2.3 The Borrower does hereby also create a second charge and assigns the letter of credit provided by the Borrower's long-term transmission customers, in favour of the Security Trustee for the benefits of the Axis Bank."

5. The First Petitioner has submitted that subsequently Axis Bank vide its letter dated 7.4.2013, reduced the foreign currency term loan from 48 million dollars to 45 million dollars and Lead Secured Lender downsold a part of loan to (i) Bank of Baroda, (ii) Bank of India. The ECB Facility loan was extended in the following share:

- (a) Axis Bank 22.50 million US\$
- (b) Bank of Baroda-11.25 million US\$
- (c) Bank of India-11.25 US\$

6. The First Petitioner has submitted that pursuant to above change in arrangement and for documenting the flexible structuring scheme of RBI as approved

by Independent Evaluation Committee (IEC) and lenders, original ECB Facility Agreement was amended.

7. The First Petitioner has submitted that Secured Lead Lender vide its letter dated 23.6.2017 agreed to enhance the LER Facility up to Rs. 21,50,00,000/-. The First Petitioner has submitted that pursuant to the enhanced LER Facility, second Supplementary Deed of Hypothecation dated 22.9.2017 was executed between the First Petitioner and Axis Bank to secure the enhanced LER Facility by the following security interest by way of second ranking charge:

“2.2.1 all rights, titles, interest, benefits, claims and demands whatsoever of the Borrower, in, to under and/or in respect of the project Agreements, the Approvals, insurance contracts/policies with respect to the project, and letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee, provided by any party to the project Agreements (the Contracts), including any amendments, variations and substitutions thereto.

2.2.2 all and singular moveable properties, in relation to Transmission Lines and sub-stations, plant and machinery (whether attached or otherwise), all other tangible moveable assets (both present and future) owned by the Borrower with respect to the Project and the uncalled capital, all moveable intangible assets of the Borrower relating to the Project including intellectual property/intellectual property rights, goodwill, and all the other investments, rights, title and interest in the undertakings of the Borrower and all rights, titles, interest property, claims and demands whatsoever of the Borrower unto and upon the same.

2.2.3 All revenues, receipts, receivables, amounts owing to, and received and/or receivable by, the Borrower and/or any person on its behalf, all book debts, all cash flows and receivables and proceeds (including but not limited to the receivables arising from/in connection with the Project and the Contracts), all cash-in-hand, commissions, revenues, claims and actionable claims of whatsoever nature and howsoever and wherever arising due or owing to or become due or owing to or acquired by the Borrower and the full benefit of all rights and remedies relating thereto.

2.2.4 All of the Project accounts, trust and retention account, escrow account, debt service reserve account, any other bank accounts relating to/connected with the project and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to under and in respect thereof and all monies including all cash flows and receivables and all proceeds arising from/in connection with implementation of Contracts and all insurance proceeds payable into the said accounts, which have been/are deposited/credited/lying therein, all investments, assets, instruments and securities which represent amounts in the said accounts, both present and future.

2.3 Assignment of the letter of credit, if any provided by the Borrower's long-term transmission customers, in favour of the Security Trustee for the benefit of the Enhanced LER Facility Provider.”

8. The First Petitioner has submitted that pursuant to Security Trustee Agreement dated 22.9.2017, IDBI Trusteeship Services Ltd. was appointed as Security Trustee for enhanced LER Facility and IDBI Trusteeship Services Ltd. had agreed to act as Security Trustee and to hold the security created/to be created in accordance with Security Trustee Agreement. Accordingly, the First Petitioner has proposed to obtain approval for security interest created on assets, rights and entitlements of the First Petitioner including movable properties of the project by way of Deed of Hypothecation dated 4.7.2012, Supplementary Deed of Hypothecation dated 19.2.2013 and Second Supplementary Deed of Hypothecation dated 22.9.2017 in favour of Security Trustee.

9. The First Petitioner has submitted that under the financial agreements and proposed security documents, it shall be lawful for the Security Trustee, acting on behalf of and for the benefit of the Lender, to enter into and take possession of the assets/charged/assigned for their benefit and substitute themselves or any of the them or its nominees for the First Petitioner under any or all of the projects document(s) in case of default by the First Petitioner.

10. 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 and Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009, 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 acting on behalf of and for the benefit of the lender pursuant to Deed of Hypothecation, Supplementary Deed of Hypothecation and Second Supplementary Deed of Hypothecation and

project assets without approval of the Commission. Accordingly, the Petitioners have filed the present petition seeking approval of the Commission for creation of security interest, over all assets including the movable and immovable assets in favour of Security Trustee by way of execution of security documents for the project.

11. 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.

12. The First Petitioner, vide Record of Proceedings for hearing dated 14.3.2018 was directed to submit the following information/clarification:

- (a) Documentary evidence for the original estimate project cost and auditor certificate on actual cost and debt-equity ratio for the project cost as on COD and as on date along with the flow of outstanding loan till date;
- (b) Shareholding pattern in support of the compliance of equity commitment as per Article 18.1 of the Transmission Service Agreement; and
- (c) Justification for not taking prior approval for creating security interest for earlier loan raised i.e 48 million US\$ borrowed through ECB Facility Agreement dated 4.7.2012.

13. The First Petitioner, vide its affidavit dated 4.4.2018, has submitted as under:

- (a) With regard to documentary evidence for the original estimate project cost, the First Petitioner has submitted that the original estimated cost of the project was around Rs. 320 crore and in this regard, the First Petitioner has placed on record the letter of Axis Bank dated 2.4.2018 indicating the original estimate project cost. The First Petitioner has submitted the letter of Chartered Accountant dated 14.5.2015 certifying the final cost incurred on the project around Rs. 330.67 crore (approximately).

(b) With regard to debt-equity ratio for the project cost as on COD and as on date along with flow of outstanding loan till date, the First Petitioner has submitted that it has worked out the debt-equity ratio on the basis of its finalized accounts as on financial year ending on 31.3.2014, 31.3.2015, 31.3.2016 and 31.3.2017. The account for the financial year 2017-18 has not been prepared/finalized. The First Petitioner has undertaken that it would submit the debt-equity ratio as on 31.3.2018, if desired, once its accounts for financial year 2017-18 is finalized. The First Petitioner has placed on record the debt-equity ratio as on financial years ending on 31.3.2014, 31.3.2015, 31.3.2016 and 31.3.2017 along with the flow of loan.

(c) With regard to shareholding pattern, the First Petitioner has submitted that the consortium consisting of Patel Engineering Limited (Lead Member), Simplex Infrastructures Limited and B.S. Limited are the shareholders of the First Petitioner and holds 33.34% shares, 33.33% shares and 33.33% shares respectively.

(d) With regard to justification for not taking prior approval for creating security interest for earlier loan raised i.e 48 million US\$ borrowed through ECB Facility Agreement dated 4.7.2012, the First Petitioner has submitted that it has only availed the loan of 45 million US\$ against the sanctioned amount of 48 million US\$. The error was discovered at the time of documentation of the Flexible Structuring Scheme of RBI as approved by Independent Evaluation Committee by the Petitioner and lenders, and immediately after, the Petitioners decided to approach the Commission for obtaining permission. The First

Petitioner has requested to condone the delay in filing the application for grant of approval under Section 17 of the Act for creation of security interest in favour of the Second Petitioner.

14. The First Petitioner, vide Record of Proceedings for the hearing dated 19.4.2018, was directed to submit the following information/clarification:

- (a) Is it a syndicate loan? Provide documentary proof in this regard;
- (b) How the exchange rate variation has been funded and how the original debt equity ratio is maintained subsequently, and
- (c) Clarify how the interest on FD is considered as means of finance for the actual project cost.

15. The First Petitioner vide its affidavit dated 11.5.2018 has submitted the information called for which has been discussed in succeeding paras.

Analysis and Decision

16. We have considered the submissions made by the Petitioners. The First Petitioner vide Record of Proceedings for the hearing dated 14.3.2018 was directed to submit the justification for not taking prior approval for creating security interest for earlier loan raised i.e. 48 million US\$ borrowed through ECB Facility Agreement dated 4.7.2012. The First Petitioner has submitted that it has only availed the loan of 45 million US\$ against the sanctioned amount of 48 million US\$. Although all necessary documentations were executed by the First Petitioner with the lenders and the security trustee and security interest in its assets was created, however, no approval under Section 17 of the Act could be taken due to oversight. The error was discovered at the time of documentation of the Flexible Structuring Scheme of RBI as approved by Independent Evaluation Committee by the Petitioner and lenders, and

immediately after, the Petitioners decided to approach the Commission for obtaining permission. The First Petitioner has requested to condone the delay in filing the application for grant of approval under Section 17 of the Act for creation of security interest in favour of the Second Petitioner. The Commission is of the view that the First Petitioner cannot claim ignorance of law and proceed with creating charges on the movable and immovable assets of the regulated transmission business without the approval of the Commission. We take a serious view in the matter and warn the First Petitioner to comply with the provisions of the Act failing which it would be considered as breach of terms and conditions of the licence. Since, the First Petitioner has admitted its fault for not taking prior approval and is not seeking the approval though after a prolonged delay, we condone the delay as an exception.

17. The First Petitioner was directed to clarify whether it is a syndicate loan and provide documentary proof in this regard. The First Petitioner vide its affidavit dated 11.5.2018 has submitted that the Facility Agreement was signed by the First Petitioner with AXIS Bank for the entire loan amount. Subsequently, Axis Bank down sold a portion of the facility to Bank of Baroda and Bank of India. The Petitioner has placed on record the copy of the letter dated 7.4.2013 issued by Axis Bank to the First Petitioner intimating down selling by Axis Bank. As per the said letter dated 7.4.2013, Axis Bank's share of facility US\$ 22500000 has been sold to two lenders, namely Bank of Baroda (US\$ 11250000) and Bank of India (US\$ 11250000). We have analyzed the submissions of the First Petitioner. It is observed that the First Petitioner initially signed Facility Agreement with Axis Bank for loan of US\$ 45 million and drawn the entire loan in two tranches (on 10.10.2012 and 28.3.2013). Subsequently, on 7.4.2013, Axis Bank down sold part of the load to the Bank of Baroda and Bank of India. Though the First Petitioner has not confirmed whether the loan is syndicate,

since the loan is shared by more than one lender, it would be construed as syndicate loan.

18. The First Petitioner was directed to clarify how the exchange rate variation has been funded and how the original debt equity ratio is maintained subsequently. The First Petitioner vide its affidavit dated 11.5.2018 has submitted that exchange rate variations are disclosed in each balance sheet date by increasing/decreasing the value of assets/liabilities in foreign currency which is notional in nature. As per Indian Accounting Standard (Ind AS) 21 issued by Institute of Chartered Accountants of India, all monetary assets and liabilities in foreign currency are to be restated at the prevailing exchange rate as on the date of balance sheet. With regard to long term foreign currency monetary items, the First Petitioner has submitted that any foreign exchange difference due to restatement of assets and liabilities restated as above as on balance sheet date is adjusted in the cost of depreciable asset (i.e capitalized) and corresponding effect in the loan amount against these assets. Therefore, the unrealized exchange rate variation as capitalized as on 31.3.2017 of Rs. 40.39 crore does not represent any actual increase in loan amount. It is a notional book entry for compliance of the Accounting Standard and does not represent any cash flow. The above foreign currency rate variation would not materialize unless repayment of foreign currency is made. Quarterly repayments were being made at the prevailing exchange rate out of cash-in-flows of the project. Therefore, any loss due to foreign currency fluctuation at the time of repayment of loan is generally funded out of cash inflow of the project. Accordingly, the original debt equity ratio of 3:1 without considering the above unrealized (notional) foreign currency variation has been maintained for financial years 2013-14, 2014-15, 2015-16 and 2016-17.

19. We have considered the submission of the First Petitioner. As per the statement showing the receipt and repayment of ECB loan, the loan of Rs.450,00,000 US\$ has been initially drawn during the year 2012-13 and the actual repayment started from the year 2014-15. The year-wise drawl and repayment as submitted by the First Petitioner are summarized as under:

Year	Drawl in USD	Repayment in USD	Balance in USD	Exchange rate on end of the year	Loan in INR at the year end. (Rs. in crore)
2012-13	45000000		45000000	54.28	244.26
2013-14	0	0	45000000	59.91	269.60
2014-15	0	3105000	41895000	62.47	261.72
2015-16	0	2770000	39125000	66.25	259.20
2016-17	0	2994500	36130500	64.85	234.31
2017-18 (as on 31.12.2017)	0	841500	35289000	63.83	225.25

20. It is noted that date of commercial operation of the project is 4.7.2014. It is observed from the submission of the First Petitioner that the booking of forex fluctuation does not lead to actual cash outflow and only the actual repayment require the cash flow. Perusal of above drawal and repayment data reveals that the drawal was made during the construction period. However, the repayment was started after date of commercial operation of the project (during the operating period). Therefore, the claim of the First Petitioner towards actual payment was made out of the project cash inflow is appears to be correct.

21. According to the First Petitioner, the original debt equity ratio was 3:1 which converted into 75:25. However, as per the First Petitioner`s affidavit dated 4.4.2018, the overall debt to promoter contribution ratio has been worked out as under:

Particulars	(Rs. in crore)			
	31-3-2014	31-3-2015	31-3-2016	31-3-2017
Debt				
Long term borrowings excluding	244.26	221.01	209.98	193.91

exchange difference				
Promoters Contribution				
Share Capital	72	80	80	80
Share application money	2.67	0	0	0
Reserve & surplus	-0.74	-1.49	-5.08	-8
Total of Promoters Contribution	73.93	78.51	74.92	72
Total Fund Infused (Debt+Promoter contribution)	318.19	299.52	284.9	265.91
External Debt%	76.77%	73.79%	73.70%	72.92%
Promoters Contribution in %	23.23%	26.21%	26.30%	27.08%

Perusal of the above reveals that the estimated debt-equity ratio was 75:25 i.e estimated equity contribution is 25% against which the Petitioner has maintained the promoters contribution in the range of 23.23% (during construction period) and 26.21% after the date of commercial operation of the project. Accordingly, the promoters have maintained the Promoter`s contribution of 25% for all the years after date of commercial operation greater than 25%.

22. Clause 18.2.1 of the TSA provides for equity lock-in commitment. Relevant portion is extracted as under:

“18.2.1 The aggregate equity shareholding of the Selected Bidder in the issued and paid up equity share capital of Raichur Sholapur Transmission Company Limited shall not be less than the following;

- (a) Fifty one percent (51%) up to a period of two (2) years after COD of the Project; and
- (b) Twenty six percent (26%) for a period of three (3) years thereafter.

* * * * *

Provided further, that in case the Selected Bidder is a Bidding Consortium, Lead Member shall continue to hold equity of at least twenty six percent (26%) upto a period of five (5) years after COD of the Project and any Member of such Bidding Consortium shall be allowed to divest its equity as long as the other remaining Member (which shall always include the Lead Member) hold the minimum equity specified in (a) and (b) above.”

With regard to the above, the First Petitioner vide its affidavit dated 4.4.2018 has placed on record a certified copy of shareholding pattern of the company dated 27.3.2018 signed by Company Secretary stating that the consortium consisting of

Patel Engineering Limited, Simplex Infrastructure Limited and B.S. Limited are the shareholders in the First Petitioner Company. As per the shareholding pattern, Patel Engineering Limited holds 33.34% shares and Simplex Infrastructure and BS Limited hold 33.33% shares each in the First Petitioner Company. Since, the consortium of the bidder collectively holds the 100% of the shares, the First Petitioner has complied with the requirement of clause 18.2.1 of the TSA.

23. With regard to clarification regarding how the interest on fixed deposit is considered as means of financing for the actual project cost, the First Petitioner has submitted that the entire loan sanctioned by the lenders for the project was disbursed in two tranches (first in October, 2012 and second tranche in March, 2013) to be utilized over the entire construction period. According to the First Petitioner, since the funds disbursed were not utilized immediately and were spent on the project during the entire construction period, the idle fund from time to time was parked in fixed deposits temporarily to generate some income. The interest income of Rs. 10.21 crore on investment in fixed deposit of such idle fund also helped in absorbing the increase of around Rs. 10.67 crore in actual project cost. Therefore, the interest of around Rs. 10.21 crore has been utilized as means of finance for the actual project cost. We have considered the submissions of the First Petitioner, in support of actual project cost, the First Petitioner has submitted the Auditor Certificate dated 14.5.2015 certifying the total cost of the project as Rs. 330.67 crore and the means of financial are as under:

Means of Finance	
Particulars	Rs. in crore
Equity Capital	80.00
Long Term ECB Loan (Gross)	240.46
Interest on FD	10.21
Total	330.67

It is noted from the above that the ECB loan was actually drawn during the year 2012-13 and deployed over a period of time and Rs. 10.21 crore was generated by the First Petitioner by temporary parking of the ECB loan. Therefore, the means of finance to fund the project cost appears to be correct.

24. 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 the Secured Lead Lender 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. Accordingly, Facility Agreement and Deed of Hypothecation dated 4.7.2012 have been executed for a loan of Rs. 48 million dollars. Subsequent to ECB Facility Agreement, on the request of the First Petitioner, Secured Lead Lender agreed to grant LER facility not exceeding Rs. 15 crore for hedging the ECB facility and executed Supplementary Deed of Hypothecation dated 19.2.2013. Subsequently, Secured Lead lender vide its letter dated 7.4.2013 reduced the loan amount from Rs. 48 million dollars to 45 million dollars. Accordingly, a part of the loan was downsold by the Secured Lead Lender to Bank of India and Bank of Baroda and ECB facility loan was extended in Axis Bank (22.5 million dollars), Bank of Baroda (11.25 million dollars) and Bank of India (11.25 million dollars) and executed an Amendment Agreement dated 22.9.2017 amending the ECB Facility Agreement dated 4.7.2012. Subsequently, Secured Lead Lender vide its letter dated 23.6.2017, agreed to enhance the LER facility by an amount not exceeding Rs. 21,50,00,000 and executed second supplementary Deed of Hypothecation dated 22.9.2017. The First Petitioner and Secured Lead Lender by

way of Security Trustee Agreement dated 22.9.2017 appointed IDBI Trusteeship Services Limited as Security Trustee for enhanced LER Facility who has agreed to act as Security Trustee. 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.

25. 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.”

Further, Article 15.2.2 of the TSA provides as under:

“15.2.2. However, the TSP may create any 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 Lenders’ Representative on their behalf, as security for amounts payable under the Financing Agreements and any other amounts agreed by the Parties.

Provided that:

- i. The Lenders or the Lenders’ Representative 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 TSP in accordance with this Article 15.2.2 shall contain provisions pursuant to which the Lenders or the Lender’s Representative on their behalf agrees unconditionally with the TSP to release from such encumbrances upon payment by the TSP to the Lenders of all amounts due under the Financing Agreements.”

Article 15.3 of the TSA provides as under:

“15.3 Substitution Rights of the Lenders

15.3.1 The TSP would need to operate and maintain the Project under the provisions of the Transmission License granted by the Appropriate Commission and the provisions of this Agreement and cannot assign the Transmission License or transfer

the Project or part thereof to any person by sale, lease, exchange or otherwise, without the prior approval of the Appropriate Commission.

15.3.2 However, in the case of default by the TSP on debt repayments, the Appropriate Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfillment of the qualification requirements and provisions of the Central Electricity Regulatory Commission (Procedure, terms and Conditions for grant of Transmission License and other related matters) Regulations, 2006 or as amended from time to time.”

26. As per Section 17 (3) and (4), 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. As per the TSA, the TSP which is an inter-State transmission licensee can create any encumbrances over all or part of the receivables, Letter of Credit or the other assets of the project. Moreover, the TSP cannot assign its licence or transfer the project or part thereof by sale, lease, exchange or otherwise without prior approval of the Commission. IDBI Trusteeship 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 IDBI Trusteeship Services Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement and other Financing documents by way of hypothecation and equitable mortgage on project assets. 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. We direct that the petitioner shall continue to maintain its own books of accounts and balance sheet. The petitioner has submitted that the total project cost Rs. 330.67

crore out of which Rs. 80 crore is equity capital, Rs. 240.46 crore is Long term ECB loan and Rs. 10.21 crore is interest on fixed deposit. 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.

27. With the above, Petition No. 12/MP/2018 stands disposed of.

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

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

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

**sd/-
(P.K.Pujari)
Chairperson**