

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 14/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 under Section 17 read with Section 79 (1) (c) of the Electricity Act, 2003 for creation of security interest by Western Transco Power Limited in favour of SBICAP Trustee Company Limited acting on behalf of IDFC Bank Limited, IDFC Infrastructure Finance Limited and seeking approval of substitution of lenders, namely L&T Infra Debt Fund Limited, IndusInd Bank Limited & India Infrastructure Finance Company Limited, with IDFC Bank Limited and IDFC Infrastructure Finance Limited.

And

In the matter of

Western Transco Power Limited
601, 6th Floor, Hallmark Business Plaza,
Opp Guru Nanak Hospital,
Bandra (East), Mumbai-400 051

....**Petitioner**

Vs

1. Power Grid Corporation of India
"Saudamini"
Plot No.2, Sector 29,
Gurgaon 122001
2. MP Power Trading Company Ltd. (MP Tradeco)
Shakti Bhawan, Rampur,
Jabalpur 482008
3. Gujarat Urja Vikas Nigam Ltd. (GUVNL)
Race Course Road,
Vadodara 390007



4. Maharashtra State Electricity Distribution Company Ltd (MSEDCL),
Prakashgad, Bandra (East)
Mumbai 400051
5. Chhattisgarh State Power Distribution Company Ltd (CSPDCL)
Vidyut Seva Bhavan, P.O. Sunder Nagar,
Danganiya, Raipur 492013
6. Government of Goa, Electricity Department,
Third Floor, Vidyut Bhavan
Panaji, Goa 403001
7. Electricity Department,
Administration of Daman & Diu Secretariat,
Fort Area Moti Daman,
Daman 396220
8. Administration of Dadra and Nagar Haveli,
Electricity Department,
Govt. of UT of Dadra and Nagar Haveli
Silvassa-396230
9. MP Audyogik Kendra Vikas Nigam Ltd (MPAKVNL)
Free Press House,
1st Floor, 3/54 Press Complex
A.B. Road, Indore 452008
10. Adani Power Limited,
8-A Sambhav Bldg
Judges Bungalow Road, BodakDev
Ahmadabad 380015
11. Heavy Water Project,
Deptt.of Atomic Energy, Mumbai
12. Power Trading Corporation of India Ltd.,
NBCC Tower, 15, Bhikaji Cama Place
New Delhi 1100066
13. Jindal Power Ltd.,
Second Floor, DCM Building,
Plot No. 94, Sector 32, Near Exit-9
Gurgaon 122001



14. Sugen Mega Power Project Torrent Power Ltd.
Torrent Power Limited, Off. National Highway No. 8
Taluka Kamrej, Dist. Surat 394155
15. SBICAP Trustee Co. Ltd.,
Appejay House, 6th Floor,
3, DinshawWachha Road, Church gate,
Mumbai400020

.....Respondents

Following were present:

Shri TanmayVyas, WTPL
Shri Bijetri Roy, SBICAP Trustee

ORDER

The present Petition has been filed by Western Transco Power Limited (WTPL) for approval under Section 17 (3) and 17 (4) of the Electricity Act, 2003 for substitution of erstwhile lenders, namely L&T Infra Debt Fund Limited, IndusInd Bank Limited and India Infrastructure Finance Company Limited, who were financing the project during the period when WTPL was vested with M/s RInfra, with IDFC Bank Limited and IDFC Infrastructure Finance Limited who shall be financing the project after WTPL was acquired by Adani Transmission Limited. The Petitioner has also sought approval for creation of security in favour of SBICAP Trustee Company Limited, acting on behalf of IDFC Bank Ltd and IDFC Infrastructure Finance Limited by way of Common Rupee Loan Agreement dated 27.11.2017. The Petitioner has made the following prayers in the petition:

“(a) Approve the substitution of lenders, namely L & T Infra Debt Fund Limited, IndusInd Bank Limited and India Infrastructure Finance Company Limited, with IDFC Bank Limited and IDFC Infrastructure Finance Limited, in terms stated in the present petition; and

(b) Allow the Petitioner to create security in favour of lenders in terms of Common Loan Agreement.”

2. The Petitioner has submitted that as per Clause No. 3.1 of the Common Rupee Loan Agreement dated 27.11.2017, the secured obligations shall be secured by creation of security interest in favour of lenders over all rights, title and interest of the Petitioner, both present and future, over and in respect of (i) all immovable properties and assets of the borrower including but not limited to civil structures, towers and cables, office buildings, both present and future, including right of way/land, if any for the Project; (ii) all the movables assets of the borrower's including but not limited to movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles, and all other movable assets both present and future, (iii) a first charge on borrower's current assets including book debts, receivables, operating cash flows, commissions, revenues of whatsoever nature and wherever arising, (iv) a first charge on all intangible assets of the borrower including but not limited to goodwill and uncalled capital, present and future, (v) the Transmission Service Agreement executed by the Petitioner on 17.10.2017, (vi) The transmission licence dated 30.12.2008 for the development of transmission system under the Project; and (vii) all the Project Documents (as defined & listed in the Common Rupee Loan Agreement) as well as the cash flows, receivables, bank accounts, clearance(s), notifications, Government approvals, orders, both present and future and including but not limited to any amendments, supplements to the existing project documents etc., under the Project, pursuant to the refinancing of the existing project lenders of Petitioner through the loans availed from the lenders, and (vii) pledge of at least 51% (fifty one percent) of the fully paid up and voting equity share capital of the borrower held by ATL. The Petitioner has submitted that in terms of Section 17 (3) and (4) of the Electricity Act, 2003, prior

approval of the Commission is necessary for creating security over the transmission assets covered under the licence. Accordingly, the Petitioner has approached the Commission by way of the present petition for substitution of lenders and for creation of security interest in favour of the security trustee.

3. The petition was heard after notice to the Petitioner and the Respondents. No reply has been filed by the Respondents. The Petitioner was directed to submit the following information:

(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; and

(b) Copy of TSA indicating the relevant clause dealing with debt equity ratio and/or equity lock in commitment to be maintained by the licensee.

4. The Petitioner, vide its affidavit dated 30.3.2018, has submitted that as per the Rupee Loan Agreement dated 28.6.2012 entered into between WT MPL and IDFC Ltd. estimated project cost is ₹1020 crore with debt-equity ratio of 59:41. As per the Commission's order dated 12.10.2017 in Petition No. 15/RP/2015 in Petition No. 146/MP/2014, date of commercial operation of the project is 5.12.2013. In accordance with Independent Auditors Report dated 17.5.2014 on the Financial Statements for the year ended on 31.3.2014, gross block at Note No. 2.9 : Fixed assets, the value of gross asset is ₹1155.36 crore. Therefore, the actual project cost is ₹1155.36 crore. The Petitioner has submitted that based on the balance sheet as on 31.3.2014, equity with

reserve is ₹182.90 crore with unsecured subordinated debt brought in by sponsor of ₹246.58 crore making total promoter's contribution of ₹429.48 crore, while long term borrowing is ₹564.91 crore and current maturity of ₹42.07 crore making total debt as ₹606.98 crore. Therefore, debt promoter's contribution ratio derived is 59:41. The Petitioner has submitted that based on financial statement as on 31.12.2017, equity with reserve is ₹134.43 crore along with unsecured sub-debt brought in by sponsor of ₹72.95 crore making total sponsor contribution of ₹207.38 crore along with current maturity of ₹45.99 crore, making total debt as ₹546.77 crore with debt equity ratio of 73:27 as on 31.12.2017.

5. With regard to provision of the TSA indicating the relevant clause dealing with debt equity ratio and/or equity lock in commitment to be maintained by the licensee, the Petitioner has submitted that as per Power Transmission Agreement dated 16.1.2009, there is no clause dealing with debt-equity ratio and/or equity lock-in-commitment to be maintained by the licensee. The Petitioner has submitted that the project has been discovered through competitive bidding process and the risk and reward of the project implementation is to be absorbed by the Petitioner qua financials of the project viz, capital cost, outstanding loan and debt equity ratio. Therefore, there is no implication on tariff and consumer in view of the variations in financial of the project.

Analysis and Decision

6. Western Transmission (Maharashtra) Pvt. Ltd., 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 construct,

maintain and operate the transmission assets pertaining to Western System Strengthening Scheme-II, package-B. Western Transmission (Maharashtra) Pvt. Ltd. had approached the Commission in Petition No. 207/2009 for approval under Section 17 (3) and (4) of the Act to create security in favour of the SBICAP Trustee Co. Ltd. by execution of indenture of mortgage with WRTML and lenders. The Commission in its order dated 11.2.2010 in Petition No.207/2009 had accorded the approval for creating security in favour of SBICAP Trustee Company Limited. Subsequently, Western Region Transmission (Maharashtra) Pvt. Ltd. approached the Commission in Petition No. 7/MP/2013 for approval of creation of security in favour of SBICAP Trustee Company Limited acting for the benefit of the IDFC. The Commission in its order dated 22.3.2013 had accorded the approval for creating security in favour of SBICAP Trustee Company Limited. The Commission vide order dated 21.9.2015 in Petition No. 169/MP/2015 had granted approval to create security in favour of the SBICAP Trustee Co. Ltd. acting on behalf and for the benefit of the original lenders to secure the loans through execution of Indenture of Mortgage. Subsequently, the Commission in its order dated 2.5.2017 in Petition No. 226/MP/2017 accorded approval for the addition of new lender, i.e. India Infrastructure Finance Company Limited as Takeout lender and for creation of security in favour of SBICAP Trustee Company Ltd. as Security Trustee on behalf of the Takeout Lender. Meanwhile, RInfra approached the Commission in Petition No. 31/MP/2017 for approval under Section 17 (3) of the Act for transfer of assets of WRSSS B to SPV, namely WTGL alongwith assignment of the transmission licence in favour of SPV and thereafter, for transfer of its entire equity shareholding in SPV to ATL. The Commission in its order dated 7.8.2017 approved the same. In the present



petition, the Petitioner has sought approval for the substitution of erstwhile lenders, namely L&T Infra Debt Fund Limited, IndusInd Bank Limited and India Infrastructure Finance Company Limited, who were financing the project during the period when the same was vested with M/s RInfra, with IDFC Bank Limited and IDFC Infrastructure Finance Limited who shall be financing the project after SPV has been acquired by ATL and for creation of security in favour of SBICAP Trustee Company Limited, acting on behalf of IDFC Bank Ltd. and IDFC Infrastructure Finance Limited by way of Common Loan Agreement dated 27.11.2017.

7. After approval vide order dated 2.5.2017 in Petition No. 226/MP/2016, the revised lenders were L&T Infrastructure Finance Company Limited, IndusInd Bank Limited and IIFCL. However, in the present petition, the Petitioner is seeking approval to substitute one of the existing lenders, namely L&T Infra Debt Fund Limited. It was noted that L&T Infrastructure Finance Company Limited had been substituted by L&T Infra Debt Funds Limited for which no approval was sought from the Commission. The Petitioner was directed to clarify the gap along with lender-wise outstanding balance as on date of substitution with new lenders as well as status of approval of L&T Infra Debt Limited with L&T Infrastructure Finance Company Limited and their Security Trustee with supporting documents. The Petitioner vide its affidavit dated 10.5.2018 has submitted that First Deed of Accession to Amended and Restated Security Trustee Agreement (Deed of Accession) was entered into with L& T Infrastructure Finance Company Limited and assigned its outstanding loan of ₹151.16 crore was assigned in favour of L&T Infra Debt Fund. L&T Infrastructure Finance Company Limited (assignor), unconditionally and irrevocably transferred to L&T Infra Debt Fund (assignee) who

acquired and took over the assigned loan together with all the obligations, rights, interest, title and benefit from L&T Infra Finance Company Ltd. along with the underlying security interest on “AS IS Where IS” basis. Accordingly, L&T Infra Debt Fund Limited substituted L&T Infrastructure Finance Limited as lender for this project.

8. The Petitioner has submitted that Security Trustee continued to be SBICAP Trustee Company Limited without any change in terms and conditions of Security Trustee Agreement along with Rupee Term Loan Agreement. The Deed of Accession of Transferee i.e. L&T Infra Debt Fund Ltd. was incorporated as integral part of Security Trustee Agreement. The relevant para of the Deed of Accession is extracted below:

“2.1 Pursuant to Article 12 of the Security Trustee Agreement, upon execution of this Deed of Accession, the New Lender hereby covenants and agrees with each of the Beneficiaries that it shall to the extent applicable to it as a Lender in respect of its facility of:

Name of the New Lender	Nature of Facility	Amount of Facility (in ₹)
L&T Infra Debt Fund Limited	Term Loan Facility	151,15,60,283/-
Total		151,15,60,283/-

be entitled to, assume and acquire all the rights and benefits and be bound by and comply with all the obligations expressed to be assumed by it as a “Lender” under the Security Trustee Agreement with effect from the Effective Date.

.....

2.3 This Deed of Accession is hereby incorporated and shall be an integral part of the Security Trustee Agreement.....”

The Petitioner has submitted that L&T Infra Debt Fund Ltd become lender of the Petitioner on 1.11.2017 in view of the assignment of loan by L&T Infrastructure Finance Company Limited and subsequently ceased to be lender of the Petitioner on 30.11.2017 pursuant to substitution of lenders with IDFC Bank Limited and IDFC Infrastructure Limited. The Petitioner has submitted that the Commission’s approval was not taken as

loan was assigned by L&T Infrastructure Finance Company Limited on the same terms and conditions of loan and Security Trustee also remained the same.

9. We have considered the submission of the Petitioner. The Commission in its order dated 2.5.2017 in Petition No. 226/MP/2017 granted approval under Section 17 (3) and (4) of the Act for modification in Security Trustee Agreement owing to substitution of lender i.e. IIFCL to take out of part loan from existing lenders, namely L&T Infrastructure Finance Ltd and IndusInd Bank Limited. Subsequently, L&T Infra Debt Fund took over the loan from L&T Infrastructure Finance Ltd. However, the Petitioner did not approach the Commission for approval on the ground that the accession of loan has been made with the same terms and conditions. The Commission is of the view that the 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 Petitioner to comply with the provisions of the Act failing which it would be considered as breach of terms and conditions of the licence.

10. As per Section 17 (3) and (4) of the Act, the Petitioner is required to obtain prior approval of the Commission for the same. As per the Common Loan Agreement dated 27.11.2017, the new lenders, namely IDFC Bank Limited and IDFC Infrastructure Finance Limited have agreed to provide loan of ₹550 crore out of which ₹492 crore are for refinancing the outstanding amount of the existing loan facility and the balance ₹58 crore is for the purpose of reimbursement of the promoters contribution and project related expenses/transactions expenses. According to the Petitioner, as on 31.10.2017,



₹495.44 crore (₹151 crore, ₹94.09 crore and ₹250.20 crore against L&T Infra Debt Fund Limited, IndusInd Bank Limited and IIFCL respectively) is outstanding which is required to be refinanced from the proceeds of the loan facility of ₹492 crore as agreed by the lenders. In the present case, Security Trustee, namely SBICAP Trustee Company Limited already approved vide order dated 22.3.2013 in Petition No. 7/MP/2013 and would be continued without any change in terms and conditions of Security Trustee Agreement along with Rupee Term Loan Agreement. We, therefore, accord in principle approval allowing the Petitioner for substitution of lenders, namely L&T Infra debt Fund Limited, IndusInd bank Limited and India Infrastructure Finance Company Limited with IDFC Bank Limited and IDFC Infrastructure Finance Limited and accord approval for creation of security in favour of the lenders in terms of Common Loan Agreement dated 27.11.2017. It is further clarified that the Commission`s direction in the order dated 7.8.2017 in Petition No. 31/MP/2017, regarding financing of the project shall continue to be complied with by the Petitioner.

11. We, however, make it clear that the transmission licence of the 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 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 Petitioner as and when required by the Commission for any specific purpose.

12. The Petition is disposed of in terms of the above.

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

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

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

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

