

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 203/MP/2018**

**Coram:  
Shri P.K.Pujari, Chairperson  
Dr. M.K. Iyer, Member**

**Date of Order: 14<sup>th</sup> of November, 2018**

**In the matter of:**

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 read with Article 15.2.2 and 15.2.4 of the Transmission Service Agreement dated 6.8.2013, seeking approval for creation of Security Interest in favour of IDBI Trusteeship Services Limited, as Debenture Trustee acting for the benefit of the debenture holders of Petitioner No. 1 in relation to the secured, senior, listed, rated, redeemable, non-convertible debentures to be issued by the Petitioner No. 1, in the form of Separately Tradable and Redeemable Principal Parts of a face value of Rs.10,00,000 each for cash at par aggregating to Rs.860,00,00,000 on a private placement basis for refinancing the existing loans of existing lenders as set out in Schedule VII of the Debenture Trust Deed, executed between Darbhanga-Motihari Transmission Company Limited and IDBI Trusteeship Services Limited dated 21.12.2017.

**And  
In the matter of:**

Darbhanga-Motihari Transmission Company Limited  
6th floor, Plot No. 19 & 20, Film City, Sector 16-A,  
Gautam Buddha Nagar, Noida, Uttar Pradesh - 201301

IDBI Trusteeship Services Limited,  
Asian Building, Ground Floor, 17, R. Kamani Marg,  
Ballard Estate, Mumbai, Maharashtra – 400001

**...Petitioners**

**Versus**

1. Bihar State Power Transmission Company Limited,  
Vidyut Bhawan, Bailey Road,  
Patna 800001

2. Maithan Power Limited,

MA-5, Gogna Post office Distt- Dhanbad,  
Jharkhand-828207

3. Grid Corporation of Orissa Limited,  
Shahid Nagar, Bhubaneshwar-751007

4. Power Grid Corporation of India, Limited,  
HVDC Pusauli, Saudamini,  
Plot No. 02, Sector-29, Near IFFCO Chowk,  
Gurgaon (Haryana) - 122 001

5. Damodar Valley Corporation,  
DVC Tower, Maniktala, Civic Tower,  
VIP Road, Kolkata-700054

6. Power Deptt, Govt of Sikkim,  
Kazi Road, Gangtok-737101

7. Jharkhand State Electricity Board,  
In Front Main Secretariat Doranda,  
Ranchi-834002 Jharkhand

8. West Bengal State Electricity, Distribution Company Limited,  
Bidyut Bhawan, Bidhan Hagar, Block DJ,  
Sector-II, Salt Lake City, Kolkata-70009

9. Bihar State Power Holding Company Limited,  
Vidyut Bhawan, Bailey Road, Patna 800001

....**Respondents**

**Parties Present:**

Shri Tushar Srivastava, DMTCL  
Shri Niraj Vema, DMTCL  
Shri Neeraj Kumar, DMTCL

**ORDER**

The First Petitioner, Darbhanga-Motihari 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 'Eastern Region System Strengthening- VI' (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 30.5.2014.

2. Darbhanga-Motihari Transmission Company Limited and IDBI Trusteeship Services Limited have filed the present petition for creation of security in favour of IDBI Trusteeship 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) This Commission be pleased to take on record the new Project lenders i.e. the Debenture Holders and the appointment of IDBI Trusteeship Services Limited as the Debenture Trustee acting on behalf of Debenture Holders; and ii. IDFC Bank Limited (the “Lender”) and its assignees/transferees/novatees and the appointment of IDBI Trusteeship Services Limited (“Petitioner-II” / “Security Trustee”) acting on behalf of Lenders.
- (b) Approve creation and/or perfection of Security Interest as stated in para 24 and para 25 over the TSA, the Project documents, Working Capital facility, its assets including in relation to the Project and on its transmission license and such other assets as mentioned in the Debenture Trust Deed and in favour of Debenture Trustee, acting on behalf of and for the benefit of the Debenture  *Holders*;
- (c) Approve the Security Documents, and execution thereof, for creation and/or perfection of aforesaid Security Interest as stated in para 23 in favour of Petitioner No. II, the Debenture Trustee for the benefit of Debenture Holders; and
- (d) Approve creation and/or perfection of Security Interest as stated in para 24 and para 25 in favour of the Security Trustee, acting on behalf of and for the benefit of the Lenders and its successors, assigns, novatees and transferees; and
- (e) Approve the security documents and execution thereof, for creation and/or

perfection of Security Interest as stated in para 24 and para 25, in favour of the Security Trustee for the benefit of the Lenders.”

3. The First Petitioner has submitted that for the purposes of raising finances for the Project during construction period, First Petitioner requested the consortium led by IDBI Bank Limited to sanction financial assistance for an amount not exceeding Rs. 605.00 crore and the consortium led by IDBI Bank Limited granted the approval to the First Petitioner vide sanction letter dated 13.6.2014. The First Petitioner, thereafter approached the Commission vide Petition No. 548/MP/2014 for approval under Section 17 (3) and (4) of the Act to create security in favour of IDBI Trusteeship Services Limited acting as the security trustee for the benefit of the consortium led by IDBI Bank Limited, for execution of indenture of mortgage. The Commission in its order dated 18.3.2015 had accorded the approval for creation of security in favour of IDBI Trusteeship Services Limited.

4. The First Petitioner in order to reduce the interest cost of the term loan and to raise additional debt to fund the increase in project cost, requested IDFC Bank Limited to sanction financial assistances, inter-alia, for refinancing of the existing loan for the Project. Pursuant, to the request of the First Petitioner, IDFC Bank Limited, agreed to provide financial assistance as requested for an amount not exceeding in aggregate Rs.840 crore by way of rupee term loan facility to the tune of Rs.800 crore and working capital facility of Rs. 40 crore (hereinafter collectively referred to as the “Facilities”) on the terms and conditions contained in the Common Loan Agreement dated 31.8.2017 executed by and amongst the Borrower, the Lender and IDFC Bank Limited in relation

to the rupee term loan facility (hereinafter referred to as the “Common Loan Agreement”) and the Master Working Capital Facility Agreement dated 31.8.2017 executed by and amongst the Borrower and the Lender, in relation to the working capital facility as amended and restated from time to time (hereinafter referred to as the “Master Working Capital Facility Agreement”).

5. Thereafter, the First Petitioner in accordance with the mandate letter dated 19.12.2017 issued by the IDFC Bank Ltd, issued senior, listed, secured, redeemable, non-convertible debentures in the form of STRPPs of face value of Rs. ten lakh each aggregating to Rs. 860 crore (hereinafter referred to as the “Debentures”) on a private placement basis for refinancing the existing loans of existing lenders as set out in Schedule VII of the Debenture Trust Deed dated 21.12.2017, executed between the First Petitioner and Second Petitioner and for creation of debt service reserve and for general corporate purposes including payment of fees and expenses of the issuance of Debentures.

6. Pursuant to the terms of the Debenture Trustee Agreement, Second Petitioner agreed to act as debenture trustee for the Debenture Holders and enter into all relevant debenture documents pursuant thereto. The Debenture Trust Deed dated 21.12.2017 has been executed between the First Petitioner and Second Petitioner.

7. The First Petitioner has submitted that the outstanding loan of Rs. 800.00 crore of the consortium of lenders led by IDFC Bank Limited, other than the working capital

facility has been paid and after issuance of the Debentures, only the Debentures of the Debenture Holders and the working capital facility of Rs. 15 crore given by the lenders will continue.

8. The First Petitioner has submitted that pursuant to the terms of the Debenture Trust Deed, the First Petitioner is required to, amongst others (i) 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) assign by way of security, Darbhanga-Motihari Transmission Company Limited, rights, benefits, interest under the Transmission Licence and the TSA all other Project documents, including but not limited to any amendments, supplements to the existing Project documents etc., in relation to “Eastern Region System Strengthening Scheme – VI”, (iii) pledge shares held by Essel Infraprojects Limited in Darbhanga-Motihari Transmission Company Limited, to the extent of 51% (fifty one) percent of the issued and paid up equity share capital of Darbhanga-Motihari Transmission Company Limited, in favour of the Debenture Trustee for holding the beneficial interest of the Debenture Holders and other security as mentioned in the Debenture Trust Deed.

9. The First Petitioner has further submitted that Article 15.2.2 of the Transmission Service Agreement (TSA) entered into between the First Petitioner and the beneficiaries of the project provides that the First Petitioner is free to create any encumbrance over all or part of the receivables, Letter of Credit or other assets of the project in favour of

the lenders or the representative of the lenders as security for amount payable under the Financing Agreements and any other amounts agreed 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.

10. 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 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 Act, 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, novates 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.

11. The petition was heard after notice to the Respondents. No reply has been filed by the respondents. None appeared on behalf of the respondents.

12. The First Petitioner, vide Record of Proceedings for the hearing dated 21.8.2018, was directed to file the following information:

(a) The certificate issued by Company Secretaries of the First Petitioner, showing Equity Share premium of Rs. 22745.33 lakh. Clarify, being a single project company how the shares were issued on premium and also submit its valuation basis; and

(b) Whether the original Debt Equity has been maintained in the same ratio in line with the change in actual project cost alongwith the reasons.

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

**Analysis and Decision:**

14. After grant of licence, the First Petitioner approached the Commission by way of Petition No. 548/MP/2014 for creation of security interest for an amount of Rs. 605 crore in favour of Security Trustee, namely IDBI Trusteeship Services Limited in favour of lenders. Approval was accorded vide order dated 18.3.2015. Subsequently, the First



Petitioner filed Petition No. 235/MP/2017 for creation of security interest for re-financed loan amount of Rs. 800 crore in favour of IDBI Trusteeship Services Limited. The First Petitioner vide letter dated 1.6.2018 sought permission to withdraw the petition with liberty to approach the Commission with all relevant documents. Accordingly, the Commission vide order dated 6.6.2018 disposed of the Petition as withdrawn and liberty was granted to the First Petitioner to file fresh petition along with all requisite documents. In pursuant of liberty granted, the First Petitioner has approached the Commission by way of the present Petition.

15. The First Petitioner was directed to submit that the certificate issued by Company secretary showing Equity Share premium of Rs. 22745.33 lakh and clarify, being a single project company how the shares were issued on premium and submit its valuation basis. The Petitioner vide its affidavit dated 31.8.2018 has submitted that as per the TSA, the revenue of the project is fixed for 35 years and for determination of the fair value of the equity shares of the company, the Discounted Cash Flow (DCF) method has been used. According to the First Petitioner, as per the Valuation Report dated 14.8.2014 issued by Practicing Chartered Accountants, the value of each equity share is Rs. 157.52. Based on this, the First Petitioner has issued 1,62,96,667 equity shares having face value of Rs. 10. Out of these shares, 1,62,46,667 equity shares were issued at a premium of Rs. 140. The details of equity share capital submitted by the First Petitioner are as under:

<b>Sl. No.</b>	<b>No. of Equity Share</b>	<b>Face Value of Equity Share (Rs.)</b>	<b>Premium on Equity Share (Rs.)</b>	<b>Total Share Capital + Premium (Rs.)</b>
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2014-15 at beginning	50,000	10	Nil	5,00,000
2014-15	1,26,50,000	10	140	1,89,75,00,000
2015-16	23,00,000	10	140	34,50,00,000
2016-17	12,96,667	10	140	19,45,00,050
<b>Total</b>	<b>1,62,96,667</b>			<b>243,75,00,050</b>

According to the First Petitioner, the above equity capital has been infused in cash by Essel Infraprojects Ltd.

16. With regard to information in relation to the maintenance of the original Debt Equity ratio in line with the change in actual project cost along with the reasons, the First Petitioner has submitted the detailed break up of flow of actual project cost, flow of term loan, flow of share capital and debt equity ratio starting from approval granted by the Commission in Petition No. 548/MP/2014 to substitution of lenders by issuing of debentures in the present petition, as under:

**Capital Structure at each stage of Financing**

Particulars	Initial term loan (Rs. in crore)	Refinancing through term loan of Rs. 800 crore	Refinancing through issue of NCD of Rs.860 crore
Term Loan/NCD	605.00	800.00	860.00
Sub-ordinate debt	81.25	0.00	0.00
Share Capital and Share Premium	243.75	243.75	243.75
<b>Total Asset</b>	<b>930.00</b>	<b>1043.75</b>	<b>1103.75</b>
<b>Debt Equity ratio</b>	74:26	77:23	78:22

The First Petitioner has placed on record the Auditor Certificate dated 11.6.2018 certifying the flow of actual debt-equity in the project as under:

<b>Particulars</b>	<b>31-Mar-15</b>	<b>31-Mar-16</b>	<b>31-Mar-17</b>	<b>31-Mar-18</b>
Share capital + Share premium	189.80	224.30	243.75	243.75
Sub-ordinate debt	3.96	68.55	119.95	-
Term Loan/NCD	148.09	512.55	568.82	860.00
<b>Total Asset</b>	<b>341.85</b>	<b>805.40</b>	<b>932.52</b>	<b>1103.75</b>

Based on the above, the debt and promoter contribution ratio has been worked as under:

<b>Particulars</b>	<b>31-Mar-15</b>	<b>31-Mar-16</b>	<b>31-Mar-17</b>	<b>31-Mar-18</b>
Term Loan/NCD	43.32%	63.64%	61.00%	77.92%
Promoter contribution towards equity and subordinate debt	<b>56.68%</b>	<b>36.36%</b>	<b>39.00%</b>	<b>22.08%</b>

17. According to the First Petitioner, there is increase in project cost and additional debt was used to fund the additional project cost and payment of sub-ordinate debt. As evident from above table, the Debt Equity ratio of 74:26 at the time of approval granted by the Commission in Petition No. 548/MP/2014 has been changed to 78:22 at present. However, the amount of equity share capital is constant and Essel Infraprojects Ltd. still holds 100% of Equity in Darbhanga-Motihari Transmission Company Limited. This 100% equity holding of Essel Infraprojects Ltd., which was at the time of acquisition of the project, remained same till date.

18. Further, First Petitioner has submitted that as per Article 18.2.1 of the TSA, the equity share capital of Essel Infraprojects Limited in the issued and paid up equity share capital of Darbhanga- Motihari Transmission Company Limited will not be less than 51% up to a period of 2 years after COD of the project and 26% for a period of 3 years

thereafter. The First Petitioner has submitted that the equity holding has not been diluted and Essar Infraprojects Ltd. holds 100% of equity in the First Petitioner Company and the proposed financing does not deviate for the equity lock-in commitment as provided in Article 18.2.4 of the TSA.

19. The Commission vide order dated 18.3.2015 in Petition No. 548/MP/2014 granted approval for creation of Security Trustee for the loan of Rs. 605 crore. Subsequently, the First Petitioner entered into a Common Loan Agreement dated 31.8.2017 with IDFC Bank for loan of Rs. 800 crore towards refinancing and to raise additional funds. The Petitioner has paid outstanding loan of Rs. 605 crore availed from original lenders, namely IDBI Bank Limited, India Infrastructure Finance Company Limited, PTC India Financial Services Limited and Union Bank and in this regard, the First Petitioner has placed on record the No Dues Certificate thereof.

20. The First Petitioner has issued senior, secured, redeemable, rated, listed non-convertible debentures of face value of Rs. 10 lakh each aggregating upto to Rs. 860 crore on a private placement basis for refinancing the existing loan of existing lender, namely IDFC Bank Ltd. The First Petitioner had approached IDBI Trusteeship Services Limited to act as the Debenture Trustee for the benefit of the Debenture Holders. IDBI Trusteeship 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. It is noted that the First Petitioner has paid the entire loan of Rs. 800 crore availed from the IDFC Bank and has placed on record the No Dues Certificate thereof. The First Petitioner and IDBI Trusteeship Services Limited have filed the present

petition seeking approval for creation of security interest in favour of Debenture Trustee for raising Rs. 860 crore through debenture to refinance the term loan from IDFC Bank.

21. 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, IDBI Trusteeship 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 21.12.2017 have been executed for loan of Rs. 860 crore the First Petitioner issued 8600 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.

22. 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 prior 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.

23. The First Petitioner has approached for approval for creation of security interest in favour of IDBI Trusteeship Services Limited as Debenture Trustee. In our view, IDBI 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 approval allowing the First Petitioner to create security in favour of IDBI 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 for an amount not exceeding Rs. 860 crore.

24. 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 assignment 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.

25. This approval is issued in supersession of all earlier approvals including approval dated 18.5.2013 in Petition No. 548/MP/2014 under Section 17 (3) and (4) of the Act to the First Petitioner.

26. Petition No. 203/MP/2018 is disposed of in terms of the above.

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

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