

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 226/MP/2017

Coram:

Shri A. K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 27.2.2018

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 in favour of Debenture Trustee, acting on behalf of and for the benefit of the Debentures Holders and for any subsequent transferees, assign, novatees thereof and any refinancing lenders to the project, by way of hypothecation and equitable mortgage on project assets, pursuant to Indenture of Mortgage, Declaration and Undertaking and other Financing Agreements, for the transmission lines i.e. /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.

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 TAN Reddy, BDTCL
Shri Pulkit Sharma, Advocate, BDTCL
Ms. Swapna Seshadri, Advocate, CSPTCL
Ms. Neha Garg, Advocate, CSPTCL
Ms. Rhea Luthra, Advocate, CSPTCL

ORDER

The First Petitioner herein, 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. The First Petitioner had approached the Commission in Petition Nos.136/MP/2012 and 30/MP/2016 for approval under Section 17(3) and (4) of the Electricity Act, 2003 to create security over the project assets of the Petitioner in favour of the SBICAP Trustee Company Ltd. for loan of Rs. 1272 crore and 1659.06 crore respectively. According to the First Petitioner, the total cost of construction and development of the project was estimated to be Rs. 1696 crore and Rs. 2115.19 crore respectively which was proposed to be funded as equity contribution of Rs. 456.13 crore



and Rs. 1659.06 crore as Facility (including the part financing of ECB facility of USD 44,615,061.61) respectively. The Commission vide orders dated 25.7.2012 and 6.4.2016 accorded in-principle approval to create security in favour of SBICAP Trustee Ltd. as Security Trustee.

3. 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 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 paras 5 and 6 above, in favour of Debenture Trustee/ Debenture Holders and for subsequent transferees, assigns, novatees thereof and any refinancing lenders to the Project, acting on behalf of and for the benefit of the Debenture Holders 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.

(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.”

4. According to the First Petitioner, for the purpose of refinancing for the project, the First Petitioner has issued 7350 rated, senior, listed, taxable, secured, non-convertible debentures of face value of Rs. 10 lakh aggregating to Rs. 735 crore on a private placement basis to eligible investors (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.

5. The First Petitioner has submitted that pursuant to the terms of the Debenture Trust Deed, the secured obligations are secured by:

(a) First ranking pari passu charge overall immoveable properties of the First Petitioner including but not limited to right of way/ land, civil structures, towers and cables, office buildings, present and future, if any for the Project excluding the sub-stations at Bhopal and Dhule ('First Secured Assets').

(b) First ranking pari passu charge on all the First Petitioner's tangible moveable assets in relation to the Project, including moveable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets and current assets in relation to the Project, both present and future ('Second Secured Assets').

(c) First ranking pari passu charge over all accounts of the First Petitioner, both present and future including but not limited to Transaction Accounts (including the Debt Service Reserve Account to the extent of the Debt Service Reserve Amount but excluding the Debenture Redemption Reserve) (or any account in substitution thereof) that may be opened in accordance with the



Transaction Documents, and in all funds from time to time deposited therein (including the reserves) and the Permitted Investments or other securities representing all amounts credited to the Transaction Accounts. (“Third Secured Assets”). The charge over Debt Service Reserve Account for the Debentures shall be exclusively for the benefit of the Debenture Holders and shall not be shared with any other lender.

(d) First ranking pari passu charge on all intangible assets of the First Petitioner including but not limited to goodwill, rights and undertakings and intellectual property rights, and on uncalled capital, both present and future (Fourth Secured Assets)

(e) First ranking pari passu charge on all book debts, operating cash flows, receivables, commissions, revenues of whatsoever nature and wherever arising, of the First Petitioner whether under the Transaction Documents or otherwise, present and future (Fourth Secured Assets)

(f) Assignment of way of security of, both present and future :

(i) All the rights, title, interest, benefits, claims and demands whatsoever of the First Petitioner in the project documents duly acknowledged and consented to by the counter parties to the Project documents if such Project documents requires prior consent of such counter parties before creation of Security Interest as within-mentioned, all as amended, varied or supplemented from time to time;



(ii) All the rights, title, interest, benefits, claims and demands whatsoever of the First Petitioner in the clearances pertaining to the project.

(iii) all the light, title, interest, benefits, claims and demands whatsoever of the first petitioner in letter of credit, guarantee including contractor guarantees and liquidated damages, consent agreements, side letters and performance bond provided by any party to the Project documents (including any security that may be available to the Petitioner pursuant to the Transmission Service Agreement; and

(iv) All the right, title, interest, benefits, claims and demands whatsoever of the First Petitioner in, to and under all insurance contracts and insurance proceeds pertaining to the Project with the Debenture Trustee as the loss payee in the insurance policies (together 'Sixth Secured Assets).

(g) Pledge of 51% of the fully paid up equity share capital of the First Petitioner (Seventh Secured Assets)

6. 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 Agreement 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.

7. 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).

8. 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 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.

9. 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.



10. 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. CSPTCL was directed to file its reply by 5.1.2018. However, CSPTCL has filed its reply vide affidavit dated 16.1.2018.

11. CSPTCL in its reply dated 16.1.2018 has submitted that the Commission vide order dated 25.7.2012 and 6.4.2016 in Petitions No. 136/MP/2012 and 30/MP/2016 respectively granted in-principle approval under Section 17 (3) and (4) of the Act for creating security trustee which needs to be cancelled so that there should not be any conflict of interest of the various lenders. CSPTCL has submitted that the transmission project be made available without any hiatus or break in terms of the TSA for use by the procures. Therefore, any orders passed by the Commission in the present petition ought not to affect the same.

12. The First Petitioner, vide Record of Proceedings for the hearing dated 21.12.2017, was directed to place on record the revised project cost, debt-equity ratio and outstanding loans to be refinanced. The First Petitioner, vide its affidavit dated 5.1.2018, has submitted that the total project cost is estimated to be Rs. 2115.19 crore and the total facility is Rs. 995 crore which includes Rs. 260 crore FCB and balance Rs. 735 crore senior, listed, secured, redeemable, non-convertible debentures pursuant to Debenture Trust Deed. The balance is promoter's contribution which is Rs. 1120.19 crore. Therefore, debt-equity ratio is 47:53. The First Petitioner has further submitted that there is no provision under TSA to maintain any specific debt-equity ratio for the Tariff Based Competitive Bidding (TBCB) projects.



13. Since, the First Petitioner had not submitted the complete information, it was further directed to submit the following information by 16.2.2018:

(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.

14. The First Petitioner has not submitted the above information, despite giving number of opportunities. The Petition being incomplete, it is not possible to take a view on the prayers of the Petitioners. However, the Petitioners are granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/information.

15. With the above, the Petition No. 226/MP/2017 stands disposed of.

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

Sd/-
(A.S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

