

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 266/MP/2017**

**Coram:**

**Shri A.K.Singhal, Member**

**Shri A.S.Bakshi, Member**

**Dr. M.K.Iyer, Member**

**Date of Order: 8<sup>th</sup> of March, 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 Security Trustee, acting on behalf of and for the benefit of the lenders 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 unattested deed of Hypothecation, 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) Koteshwar pooling Station-Rishikesh 400 KV D/C (HTLS) line, (ii) 2 nos. of bays at 400 KV Rishikesh Sub-station of PTCUL, (iii) LILO of one Ckt. of 400 KV D/C Sikar (PG)- Neemrana (PG) line at Babai (RRVPNL), (iv) Babai (RRVPNL)- Bhiwani (PG) 400 KV D/C line, (v) 2 Nos. of bays at 400 KV Babai (RRVPNL) sub-station for LILO of one Ckt. of 400 KV D/C Sikar (PG) – Neemrana (PG) line at Babai (RRVPNL), (vi) 2 Nos. of bays at 400 KV Babai (RRVPNL) sub-station for Babai (RRVPNL)- Bhiwani (PG) 400 kV D/C line.

**And**

**In the matter of**

1. NRSS XXXVI Transmission Limited  
B-10, Essel House, Lawrence Road,  
New Delhi -110035

2. PTC India Financial Services Limited  
7th Floor, Telephone Exchange Building, 8,  
Bikaji Cama Place, New Delhi - 110066

..... **Petitioners**

**Vs**

1. U.P Power Corporation Limited,  
14th Floor, Shakti Bhawan Extension,  
14 - Ashok Marg, Lucknow- 226001

2. Punjab State Power Corporation Limited,

D-3, Shakti Vihar, Patiala – 147 001

3. Electricity wing of Engineering Deptt.,  
Union Territory of Chandigarh, Electricity Operation Circle,  
UT Secretariat Building, 5th floor,  
Sector 9-D, Chandigarh – 160009

4. BSES Yamuna Power Limited,  
2nd Floor, Shakti Kiran Bldg.,  
Karkardooma, New Delhi - 110092

5. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi - 110 019

6. Tata Power Delhi Distribution Limited,  
NDPL House, Hudson Lines, Kingsway Camp,  
Delhi - 110 009

7. New Delhi Municipal Council,  
NDMC, 5th Floor, Palika Kendra,  
New Delhi-110001

8. Himachal Pradesh State Electricity Board Limited ,  
Vidyut Bhawan,  
Shimla - 171 004

9. Haryana Power Purchase Centre ,  
Shakti Bhavan Energy Exchange Room No. 446,  
Top Floor, Sector - 6,  
Panchkula - 134 109

10. Power Development Department, Govt. of Jammu & Kashmir,  
Principal Secretary to Government, Room No.-1/27,  
Mini Block, Civil Secretariat,  
Srinagar - 190009

11. Uttarakhand Power Corporation Limited,  
Urja Bhawan Kanwali Road,  
Dehradun- 248001

12. Ajmer Vidyut Vitran Nigam Limited  
(Rajasthan Discoms Power Procurement Centre),  
Shed No. 5/4, Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur - 302 005

13. Jodhpur Vidyut Vitran Nigam Limited  
(Rajasthan Discoms Power Procurement Centre),  
Shed No. 5/4, Vidyut Bhawan, Janpath, Jyoti Nagar

Jaipur - 302 005

14. Jaipur Vidyut Vitran Nigam Limited,  
(Rajasthan Discoms Power Procurement Centre),  
Shed No. 5/4, Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur - 302 005

.....Respondents

**The following were present:**

1. Shri Amit Kumar, NTL
2. Shri Mohit Jain, NTL

**ORDER**

The First Petitioner, NRSS XXXVI Transmission 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 for "System Strengthening Scheme in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 KV D/C line at Babai (RRVPNL)" 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 7.12.2016.

2. NRSS XXXVI Transmission Limited and PTC India Financial Services Limited have jointly filed the present petition for creation of security interest over all the movable and immovable assets of the First Petitioner both present and future, TSA, transmission licence and all project documents, cash flows, receivables, bank accounts, clearance, notifications, Government approvals, orders, including but not limited to any amendments, supplements to the existing project documents, etc., in relation to the project comprising of, amongst others, in favour of PTC India Financial

Services Limited as Security Trustee pursuant to the Security Trustee Agreement and Common Facility Agreement, on project assets for the benefit of the lenders to the project. The Petitioners have made the following prayers:

“(a) Grant the approval to create security interest over the immovable, movable assets, intangible and current assets of the Applicant pertaining to the Project, cash flows, receivables, bank accounts, TSA, clearances, approvals and all other project documents/clearances including but not limited to any amendments, supplements to the existing project documents and the Transmission License in favour of Security Trustee, including recognition of the right to appoint Hon’ble Commission’s approved nominee in the event of enforcement of security interest in the TSA and Transmission License ;

b) Approve the Security Documents execution, for creation and/or perfection of aforesaid Security Interest annexed at Annexures IV hereto in favour of PTC India Financial Services Limited, in its capacity as the Security Trustee, for the benefit of the Lenders including the enforcement thereof in accordance with the terms of the finance documents;

c) Pass such other order/orders, as may be deemed fit and proper in the facts & circumstances of the case;”

3. According to the First Petitioner, for the purpose of part finance for the project, the First Petitioner requested PTC India Financial Services Limited (hereinafter referred to as ‘lender’) for which lender has agreed to make available financial assistance amounting to Rs. 306 crore as rupee term loan with debt equity ratio of 75:25 pursuant to sanctioned letter dated 6.9.2017 and on the terms and conditions set out in the Common Facility Agreement dated 7.11.2017 and Security Trustee Agreement (hereinafter referred to as the Financing Agreements). For this purpose, the First Petitioner and lender have appointed the Second Petitioner, namely PTC India Financial Services Limited as Security Trustee (hereinafter referred to as ‘Security Trustee’) who has agreed to act as Security Trustee for the lender including its assigns, transferees and novatees and has entered into Security Trustee Agreement and Common Facility Agreement on 7.11.2017.

4. The First Petitioner has submitted that pursuant to the Common Facility Agreement, the secured obligations are secured by:

- (a) A first charge all the immovable assets of the borrower pertaining to the Project, both present and future;
- (b) a first charge over all of the borrower's movable properties and all other assets (including plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles, and all other movable assets of the borrower) pertaining to the Project, both present and future;
- (c) a first charge by way of assignment of the Transmission Licence for the Project as per the provisions of the Transmission Service Agreement;
- (d) a first charge on all of the borrower's intangible assets pertaining to the Project, both present and future, including but not limited to the goodwill, rights, undertakings and uncalled capital;
- (e) a first charge on all the current assets of the borrower pertaining to the Project including but not limited to the bank accounts, receivables, operating cash flows, commissions, book debts, revenues of whatsoever nature and wherever arising, both present and future;
- (f) a first charge by way of assignment of:
  - (i) All the rights, title, interest, benefits, claims and demands whatsoever of the borrower pertaining to the project under the Project Documents including but not limited to O&M Contract,

insurance contracts/policies, letter of credit, guarantees, warranties, construction contracts duly acknowledged and consented to by the relevant counter-parties to such Project Documents, all as amended, varied or supplemented from time to time.

(ii) Subject to applicable law, all the rights, title, interest, benefits, claims and demands whatsoever of the borrower in the clearances pertaining to the Project.

- (g) a first charge on all the bank accounts of the borrower related to the Project, the Trust and Retention Account (including the Debt Service Reserve Account and Permitted Investments), letters of credit and other reserves and any other bank accounts of the borrower wherever maintained, including in each case, all monies lying credited/deposited into such accounts;
- (h) Corporate guarantee of Promoter till release date; and
- (i) a pledge upto 51% (fifty one percent) of the share capital of the borrower including preference share capital, preference shares, CCDs, CCPS, subject to the prevailing Applicable Law.

5. The First Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement 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.

6. The First Petitioner has submitted that in terms of Article 15.2.4 of the TSA, the Petitioner is required to take permission from this Commission prior to relinquishment or transfer of its rights 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 Security Trustee/Lender 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 lender pursuant to Common Facility Agreement and Security Trustee Agreement and other security creating documents/Financial Agreements and for future refinancing transactions without approval of the Commission. Accordingly, the

Petitioners have filed the present petition seeking prior approval of the Commission for creation of security interest, over all assets including the movable and immovable assets for the project in favour of Security Trustee pursuant to Security Trustee Agreement and Common Facility Agreement and other Financing Agreements.

7. The petition was heard on 30.1.2018 after notice to the respondents. Uttar Pradesh Power Corporation Limited (UPPCL) has filed its reply vide affidavit dated 30.1.2018.

8. UPPCL has submitted that Second Petitioner is acting as lender as well as Security Trustee. In the event of default made by the First Petitioner, the First Petitioner's transmission licence as well as his assets will be transferred to the Security Trustee who will manage the payment of arrears to the lender. The Second Petitioner has agreed to act as Security Trustee on the request of the First Petitioner. Therefore, the Second Petitioner is the promoter of the First Petitioner and in the event of default made by the First Petitioner, the Second Petitioner will play the role of lender as well as Promoter, which is not permissible under as per the Scheme of Takeout Financing.

9. The First Petitioner in its rejoinder dated 5.2.2018 has submitted that the appointing of lender as Security Trustee is a usual market practice. At present, the Second Petitioner is only a lender, but in terms of Common Facility Agreement dated 7.11.2017 executed between the First Petitioner and the Second Petitioner, the Second Petitioner may transfer/ assign its whole/ part of the loan to the other Banks and Financial Institutions. Therefore, the Second Petitioner has been appointed as Security Trustee to have better control, monitoring and operational efficiency.



10. During the hearing on 30.1.2018, the representative of the First Petitioner submitted that the First Petitioner is a separate legal entity and has its own books of accounts and balance sheet.

11. The First Petitioner vide Record of Proceedings for the hearing dated 30.1.2018, was directed to submit the following information:

(a) In case, the First Petitioner infuses 75% of the equity amount in the form of CCDs and interest free unsecured loan, how the requirement of Article 18.2 of TSA would be complied with.

(b) The status of the commissioning of the project.

12. The First Petitioner has submitted the information called for. In response to query (a), the First Petitioner has clarified that Essel Infraprojects Limited holds 100% equity in NRSS XXXVI Transmission Limited as on date and is accordingly, in compliance with the provisions of Article 18.2 of the TSA. Further, as per the sanction letter of PTC India Financial Services Limited dated 6.9.2017, the promoters contribution in the form of equity share capital should be 25% of the Promoters contribution of Rs. 102 crore and the promoter may infuse upto 75% of the promoters contribution in the form of CCDs and interest free unsecured loan which is different from the Equity Share Capital as defined under the TSA. The First Petitioner has submitted that as defined under TSA, equity share capital of Essel Infraprojects Limited in the issued and paid up equity share capital of NRSSS XXXVI Transmission Limited shall not be less than 51% upto a period of 2 years after COD of the project and 26% for a period of 3 years thereafter.

13. In response to query (b), the First Petitioner clarified that Assets I and II of the project are under execution and has been rescheduled to June 2019, Assets III and IV has been deemed to be commissioned on 30.10.2017 due to non- readiness of RVPN Babai Sub- station and Assets V and VI are under execution and the commissioning has been re-scheduled to December 2019.

14. We have considered the submissions made by the Petitioners and UPPCL. The First Petitioner vide Record for Proceedings for hearing dated 30.1.2018 was directed to clarify that in case, the First Petitioner infuses 75% of the equity amount in the form of CCDs and interest free unsecured loan, how the requirement of Article 18.2 of TSA would be complied with. The First Petitioner has placed on record the letter dated 6.9.2017 of PTC India Financial Services regarding loan assistance on the following terms and conditions:

<b>Means of Finance</b>	<b>Particulars</b>	<b>Total (Rs. in crore)</b>	<b>%</b>
	Debt	286.00	70%
	Sub-debt (PFS)	20.00	5%
	Promoter's contribution	102.00*	25%
	<b>Total</b>	<b>408.00</b>	<b>100%</b>

- Upto 75% of the promoter contribution may be brought in the form of convertible debenture (CCD) and/or interest free unsecured loan.

Any increase in the project cost shall be brought in by the promoter/ sponsor in the form of equity/unsecured loans without recourse of project assets. Undertaking to be submitted in this regard.

15. As per Common Facility Agreement dated 7.11.2017, equity means the issued and subscribed capital of the borrower, including the security premium aid in relation thereto and shall also include CCDs. Clause 18.3 (m) of the Common Facility Agreement dated 7.11.2017 deals about the undertakings given by the borrower as it

shall agree that at least 25% of the shareholder`s contribution at all times shall be in the form of paid equity share capital.

16. UPPCL has submitted that Second Petitioner is the promoter of the First Petitioner and in the event of default made by the First Petitioner, the Second Petitioner will play the role of lender as well as Promoter, which is not permissible as per the Scheme of Takeout Financing. Second Petitioner, PTC India Financial Services Limited, vide its affidavit dated 20.2.2018 has submitted that it has sanctioned a rupee term loan to the extent of Rs. 306 crore to finance the project. The present arrangement is not Takeout financing and it is term loan between the PTC India Financial Services Limited and NRSS XXXVI Transmission Limited with option to part downsell to other Bank/financial institutions. Second Petitioner has submitted that it is acting as Security Trustee as per Indian Trusts Act, 1882 to hold the security interest for the benefit of lenders, which is a usual market practice in the projects sanctioned by PTC India Financial Services Limited under syndication. Second Petitioner has submitted that PTC India Financial Services Limited is acting as Security Trustee pursuant to Security Trustee Agreement dated 7.11.2017 executed between NRSS XXXVI Transmission Limited and PTC India Financial Services Limited for the benefit of the lenders of the project. Second Petitioner has submitted that at present, PTC India Financial Services Limited is the only lender in the project but in terms of the Common Loan Agreement dated 7.11.2017, it may transfer/assign its whole/part of the loan to other Banks/financial institutions to which securities will be shared with new lenders on pari-passu basis through Security Trustee. Therefore, to have a better control, monitoring and operational efficiency, PTC India Financial Services Limited has been appointed as Security Trustee. In view of the submissions of the Second Petitioner, the

objection made by the UPPCL is not tenable.

17. 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 lender have appointed the Second Petitioner, namely PTC India Financial Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Financing Agreement dated 7.11.2017 have been executed for a loan of Rs. 306 crore. 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.

18. 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.”

19. As per the above provision, a licensee is required to obtain approval of the Commission for assigning his licence or transfer its utility or any part thereof by way of

sale, lease, exchange or otherwise and to enter into an agreement relating to any of these transactions. We are satisfied that PTC India Financial 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 lender. We, therefore, accord in principle approval allowing the First Petitioner to create security interest over the immovable and movable assets, intangible and current assets of the project, cash flows, receivables, bank accounts, TSA, clearances, approvals and other projects documents/clearances including but not limited to any amendments, supplements to the existing project documents and the transmission licence in favour of PTC India Financial Services Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement and Common Facility Agreement subject to compliance of the provisions of the Article 18.2 of the TSA. The First Petitioner shall also maintain the debt equity ratio as specified in Schedule V of the Common Facility Agreement dated 7.11.2017 and shall maintain the undertaking given in clause 18.3 (m) of the Common Facility Agreement dated 7.11.2017 to the effect that the borrower shall agree that at least 25% of the shareholder's contribution at all times shall be in the form of paid up equity capital. The First Petitioner shall also comply with the conditions of PTC letter dated 6.9.2017 regarding financing, in case any increase in project cost shall be brought in by the promoter/sponsor in the form of equity/unsecured loans without recourse of 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. The

Representative of the First Petitioner during the hearing submitted that the Petitioner company is a separate legal entity and has its own books of account and balance sheet. We direct that the First Petitioner shall continue to maintain its own books of accounts and balance sheet. 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, lender, Security Trustee and the 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 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.

20. With the above, Petition No. 266/MP/2017 stands disposed of.

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

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

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