

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 349/MP/2018

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

Date of order 9th of July, 2019

In the matter of

Petition under Section 17(3) and (4) of the Electricity Act, 2003 read with Clause 15.8.3 of the Rupee Loan Agreement dated 29.6.2016 along with Clause 11.9 of the Security Trustee Agreement dated 29.6.2016 along with Article 15 of the Transmission Service Agreement dated 23.6.2015, for the purpose of recognition by this Commission of the change in the constitution of the consortium of existing lenders, which were already approved by this Commission vide order dated 16.8.2016 in Petition No. 109/2016.

And

In the matter of

Chhattisgarh-WR- Transmission Limited

C-105, Anand Niketan,
New-Delhi - 110019.

..... **Petitioner**

Vs

1. Madhya Pradesh Power Management Company Limited
Block No-11, Ground floor, Shakti Bhawan,
Vidhyut Nagar, Rampur,
Jabalpur-482 008, Madhya Pradesh
2. Chhattisgarh State Power Distribution Company Limited
P.O. Sunder Nagar, Dangania,
Raipur-492 013, Chhattisgarh
3. Gujarat Urja Vikas Nigam limited
Vidhyut Bhawan, Race Course,
Vadodara-390 007
4. Maharashtra Electricity Distribution Company Limited
Prakashgad, 4th Floor, Bandra (East),
Mumbai-400051



5. Goa Electricity Department (ED),
Govt. of Goa,
Aquem Alto, Margao, Goa-403 601
6. Electricity Department, Dadar and Nagar Haveli,
66kV, Amlilnd. Estate,
Silvassa-396 230, Dadra Nagar Haveli
7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,
Daman-396 210
8. Chief Executive Officer,
PFC Consulting Limited,
First Floor, Urja Nidhi,
1, Barakhamba Lane, Connaught Place,
New Delhi-110 001
9. Chief Executive Officer, CTU Planning,
Powergrid Corporation of India Limited,
Saudamini, Plot No.2, Sector-29,
Gurgaon-122 001
10. L&T Infrastructure Finance Company Limited
3rd Floor, Brindavan, Plot No. 177, CST Road,
Kalina Santacruz East, Mumbai 400098
11. L&T Fin Corp Limited
3rd Floor, Brindavan Plot No. 177, CST Road,
Kalina Santacruz East, Mumbai 400098
12. IDBI Trusteeship Services Limited
Asian Building, Ground Floor
17, R Kamani Marg, Ballard Estate Mumbai
13. Punjab National Bank
Large Corporate Branch, Neelkamal Building, Opp,
Sales India, Ashram Road, Ahmedabad-380009
14. IFCI Limited
Continental Chambers, 2nd Floor,
142 Mahatma Gandhi Road, Nungambakkam
Chennai-600034
15. Indian Overseas Bank
7th Floor, Naman Corporate Link, Plot No.31,



The following was present:

Shri Hemant Singh, Advocate, CWRTL

ORDER

The Petitioner, Chhattisgarh-WR- Transmission Limited (CWRTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) to establish transmission system for " Additional System Strengthening for IPPs in Chhattisgarh and other Generation Projects in Western Region” (hereinafter referred to as ‘the Project’) on Build, Own, Operate & Maintain (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 29.2.2016 in Petition No. 288/TL/2015.

2. The Petitioner had approached the Commission in Petition No. 109/MP/2016 for approval under Section 17(3) and (4) of the Act to create security over all the movable and immovable assets of the project in favour of IDBI Trusteeship Services Limited. The Commission in its order dated 16.8.2016 in Petition No.109/MP/2016 accorded in-principle approval allowing the Petitioner to create security in favour of Security Trustee, namely, IDBI Trusteeship Services Limited. Accordingly, Security Trustee Agreement and Rupee Loan Agreement dated 29.6.2016 have been executed for loan of Rs. 755 crore as Rupee Term Loan.

3. The Petitioner has filed the present Petition seeking approval under Section 17(3) and 17(4) of the Act for change of constitution of the consortium of existing lenders through down selling of part of Rupee term loan of Rs 755 crore by the original lenders, namely L&T

Infrastructure Finance Company Ltd. and L&T Fincorp Ltd. to new lenders, namely Punjab National Bank, IFCI Limited and Indian Overseas Bank to the tune of Rs. 200 crore, Rs.200 crore and Rs. 155 crore respectively. The Petitioner has made the following prayers:

“(a) To acknowledge the appointment of Punjab National Bank, Respondent No. 14, IFCI Limited, Respondent No. 15 and Indian Overseas Bank, Respondent No. 16, as the Acceding Lenders/ New Lenders granting Rupee Term Loan to the Petitioner for development of the Transmission Project to the tune of Rs. 200 crore, Rs.200 crore and Rs. 155 crore, respectively; and

(b) To grant approval for change in the constitution of consortium of Existing Lenders (Respondent Nos. 11 and 12), with the addition of New Lenders (Respondent Nos. 14, 15 and 16), in line with the approval granted by this Commission vide its order dated 16.08.2016 in Petition No. 109/2016 whereby this Commission approved the creation of security interest in favour of IDBI Trusteeship acting as the Security Trustee for the benefit of the Lenders, the Security Trustee, the Account Bank and the Facility Agent; and

4. The Petitioner has entered into Rupee Loan Agreement dated 29.6.2016 with the original lenders, namely L&T Infrastructure Finance Company Ltd. and L&T Fincorp Ltd. for grant of Rs. 755.00 crore as Rupee Term Loan facility for the project. Out of the total commitment of Rs 755.00 crore, L&T Infrastructure Finance Company Ltd. and L&T Fincorp Ltd sanctioned Rs 650 crore and Rs 105 crore respectively. The Petitioner has submitted that Article 15.8.1, read with Article 15.8.3, of the Rupee Loan Agreement dated 29.6.2016 and Article 11.9.1 of Security Trustee Agreement dated 28.9.2016 empowers the original lenders to syndicate the facility by way of inclusion of consortium members and transfer, assign, novate all or part of its rights, interest, benefits and obligations under the Financing Documents to any new Lender in accordance with the terms contained in the Rupee Loan Agreement and other Financing Documents. Accordingly, as per the Petitioner, the original lenders, L&T Infrastructure Finance Company Ltd. and L&T Fincorp Ltd. have taken a commercial decision to down size the original debt of Rs. 755.00 crore granted to the

Petitioner by inclusion of new lenders, namely Punjab National Bank, IFCI Limited and Indian Overseas Bank in the Consortium of lenders in the following manner.

Sr. No.	Name of Rupee Lenders	Commitment (Rs. in crore)
1.	IFCI Ltd.	200.00
2.	Punjab National Bank	200.00
3.	L&T Infrastructure Finance Company Ltd.	175.00
4.	L&T Finance Limited (formerly known as L&T Fincorp Ltd.)	25.00
5.	Indian Overseas Bank	155.00
	Total	755.00

5. The Petitioner has submitted that through the separate Assignment Deeds, Inter-creditor Agreements and Novation Deeds entered into between L & T Infrastructure Finance Company Limited and Punjab National Bank dated 27.12.2016, L & T Infrastructure Finance Company Limited and IFCI Ltd. dated 28.3.2017, the original lenders, namely L&T Infrastructure Finance Company Ltd. and L&T Fincorp Ltd. have novated their obligation in terms of Rupee Term Loan to individual lenders to the extent of aforementioned amounts. Further, through execution of separate Novatee Deeds of Accession executed between the Security Trustee, namely IDBI Trusteeship Services Limited, the Petitioner, L & T Infrastructure Finance Company Limited and L & T Fin Corp Limited dated 27.12.2016, IDBI Trusteeship Services Limited, the Petitioner and L & T Infrastructure Finance Company Limited dated 28.3.2017 and IDBI Trusteeship Services Limited, the Petitioner, L & T Infrastructure Finance Company Limited and L& T Finance Corporation Limited dated 28.3.2017, the new lenders have agreed to abide by all the terms and conditions as applicable to the lenders and become entitled to all the rights and benefits of the lenders under the Security Trustee Agreement.

6. The Petitioner has submitted that pursuant to the terms of Rupee Loan Agreement, the Petitioner is under obligation to provide security in terms of,

(a) A first charge on all tangible/movable assets of the Petitioner, including movable equipment, machinery, spares, tools and accessories, present and future, in relation to the Project;

(b) A first charge on all immovable assets of the Petitioner, including civil structures, towers and cables, office buildings, present and future, in relation to the Project;

(c) A first charge on all intangible assets of the Petitioner, including but not limited to goodwill, Intellectual Property Rights, uncalled capital of the Petitioner and undertakings, and all other assets including book debts, operating cash flows, receivables, commission revenues of whatsoever nature and wherever arising, present and future, in relation to the Project;

(d) Further, a first charge by way of assignment or creation of Security interest of the following:

(i) All the rights, titles, interest, benefits, claims and demands whatsoever of the Petitioner in the Project documents, duly acknowledged and/or consented by relevant counter parties to such Project documents (if required) all as amended, varied or supplemented from time to time;

(ii) All the rights, titles, interest, benefits, claims and demands whatsoever of the Petitioner in the clearances pertaining to the Project (to the extent permitted under the Applicable Law);

(iii) All the rights, titles, interest, benefits, claims and demands whatsoever of the Petitioner in letters of credit, guarantee, performance bond, corporate guarantees bank guarantees provided by any party to the Project

documents;

(iv) All insurance contracts/proceeds under the insurance contracts;

(e) First charge on all bank accounts of the Petitioner wherever maintained, present and future, in relation to the Project including without limitation, the trust and retention account, and the sub-accounts (including but not limited to Debt Service Reserve Account or any account in substitution thereof, opened pursuant to the provisions of the trust and retention account agreement, wherein all revenues, disbursements, receivables and all funds of the Petitioner shall, from time to time, are be deposited and all permitted investments or other securities representing all amounts credited thereto);

7. The Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement (hereinafter referred to as the "TSA") provide that the 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. The 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.

8. The Petitioner has stated that in view of the provisions of sub-section (3) of Section 17 of the Act, the Petitioner, as a licensee cannot assign its licence or transfer its utility by sale and lease, etc. without prior approval of the Appropriate Commission. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for change in consortium of lenders.



9. The Petitioner, vide letter dated 25.4.2019, was directed to submit information in respect of the Project as per the format prescribed by the Commission. The Petitioner vide its affidavit dated 2.5.2019 has submitted the required information.

10. The Petition was heard on 7.5.2019 after notice to the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice. The Petitioner vide Record of Proceedings for the hearing dated 7.5.2019 was directed to submit the details of terms and conditions of unsecured subordinated loan provided by the promoters. The Petitioner vide its affidavit dated 20.5.2019 has submitted the information called for.

Analysis and Decision

11. We have considered the submissions made by the Petitioner. The Commission in its order dated 16.8.2016 in Petition No. 109/MP/2016 granted approval under Section 17(3) and (4) of the Act for creation of security in favour of IDBI Trusteeship Services Limited. The original lenders, namely L&T Infrastructure Finance Company Ltd. and L&T Fincorp Ltd. made available financial assistance of Rs. 755.00 crore (Rs. 650 crore and Rs. 105 crore respectively) as rupee term loan for the project. As per the Rupee Loan Agreement dated 29.6.2016, the original estimated project cost and financing plan is as under:

Particular	Rupee (in crore)	Percentage
Debt	755.00	70%
Equity	323.00	30%
Total	1078.00	100%

12. The Petitioner vide affidavit dated 2.5.2019 has submitted that the scheduled COD of the project was 23.3.2019. As regards actual COD, it has been submitted that the Petitioner

has filed Petition No 81/MP.2019 seeking extension of COD by three months on account of Force Majeure event. With the above mentioned affidavit dated 2.5.2019, the Petitioner has also submitted Auditor Certificate dated 27.4.2019 certifying the following details regarding means of finance and application of fund as on 31.12.2018.

Means of Finance as on 31.12.2018	Rs in crore	Application of fund as on 31.12.2018	Rs. in crore
Equity share capital	68.00	Property Plant and Equipment	604.00
Equity Share Premium	0.00	Capital Work in Progress	246.00
Loan/debenture from promoters, group companies	204	Other Non-Current Assets	10.00
Secured loan/debt from external source	596.00	Current Assets	36.00
Other (current liabilities, deficit in P & L account, etc.)	28.00	-	
Total	896.00	Total	896.00

13. Considering compulsory convertible debentures and unsecured subordinated loan as part of promoter contribution, the ratio between external debt: the Promoter contribution works out about 70:30 as on 31.12.2018.

14. The Petitioner has submitted that loan/debenture from promoters and group companies of Rs. 204 crore comprises of 0% compulsory convertible debentures of Rs. 186 crore and unsecured subordinated loan from promoter of Rs 18 crore. Vide affidavit dated 20.5.2019, the Petitioner has submitted that the unsecured subordinated loan from promoter has been availed at the rate of interest of 11% per annum and the terms of repayment of the unsecured subordinated loan was in accordance with Clause 11.22 of the Rupee Loan Agreement dated 29.6.2016. As per Clause 11.22 of the Rupee Loan Agreement, such amount shall rank subordinated to the facility, and interest, if any, shall be

paid only upon compliance of Restricted Payment Conditions. The definition for the term 'Equity' as mentioned in the Rupee Loan Agreement dated 29.6.2016 includes the sub-ordinated loan.

15. According to the Petitioner, the original lenders, namely L&T Infrastructure Finance Company Ltd. and L&T Fincorp Ltd. have approached Punjab National Bank, IFCI Limited and Indian Overseas Bank for down selling of part of Rupee term loan of Rs 755.00 crore and they were agreed for the same. After execution of the Novation Deeds with the new lenders, the agreed commitment among all the external lenders and the actual loan as on 31.12.2018 as submitted by the Petitioner is as under:

Sr. No.	Name of Rupee Lenders	Sanctioned loan (as per Loan Agreement) (Rs. in crore)	Actual loan as on 31.12.2018 (Rs. in crore)
1.	IFCI Ltd.	200.00	103.00
2.	Punjab National Bank	200.00	157.00
3.	Indian Overseas Bank	155.00	143
4.	L&T Infrastructure Finance Company Ltd.	175.00	173.00
5.	L&T Finance Limited (formerly known as L&T Fincorp Ltd.)	25.00	20.00
	Total	755.00	596

16. In the present case, Security Trustee, namely, IDBI Trusteeship Services Limited already approved by the Commission in its order dated 16.8.2016 in Petition No. 109/MP/2016 would be continued without any change in terms and conditions of Security Trustee Agreement and Rupee Term Loan Agreement. We, therefore, accord in principle approval to the Petitioner for appointment of Punjab National Bank, IFCI Limited and Indian

Overseas Bank as the new Lenders granting Rupee Term Loan to the Petitioner to the tune of Rs. 200 crore, 200 crore and 155 crore respectively.

17. 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.

18. The Petition No. 349/MP/2018 is disposed of in terms of the above.

Sd/-
(I.S Jha)
Member

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

sd/-
(P.K. Pujari)
Chairperson

