

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 3/MP/2019

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S.Jha, Member

Date of order 4th of July, 2019

In the matter of

Petition under Section 17 (3) and (4) of the Electricity Act 2003 read with Clause 17.8.3 of the Rupee Loan Agreement dated 17.5.2016 along with Clause 11.9 of the Security Trustee Agreement dated 17.5.2016 along with Article 15 of the Transmission Service Agreement dated 24.6.2015 for grant of approval in relation to change of the constitution of the consortium of existing lenders already approved by this Commission vide its order dated 28.7.2016 in Petition No. 87/MP/2016.

And

In the matter of

Raipur-Rajnandgaon-Warora Transmission Limited
Achalraj, Opp. Mayor Bungalow, Law Garden
Ahmedabad-380006

...Petitioner

Vs.

1. Madhya Pradesh Power Management Company Limited
Block No.11 Ground Floor, Shakti Bhawan,
Vidhyut Nagar Rampur,
Jabalpur-482008, Madhya Pradesh
2. Chhattisgarh State Power Distribution Company Limited
P.O Sunder Nagar, Dangania,
Raipur-492013, 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-403601
6. Electricity Department Dadar and Nagar Haveli
66kV, Amlilnd. Estate,
Silvassa- 396230
Dadar Nagar Haveli
7. Electricity Department Administration of Daman and Diu,
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,
Daman-396210
8. PFC Consulting, Urja Nidhi,
Barakhamba Lane,
Connaught Place,
New Delhi-110001
9. POWERGRID Corporation of India Limited,
Saudamini, Plot No. Sector-29,
Gurgaon-122001
10. AXIS Bank Limited
Corporate Banking Branch, 3rd Eye
One, 2nd Floor, Near Panchwati Circle,
C.G Road, Ahemedabad-380009
11. AXIS Trustee Services Limited
2nd Floor, E Axis House,
Bombay Dyeing Mill Compound,
Pandurang Budhkar Marg, Worli,
Mumbai-400 025
12. IFCI Limited
2nd Floor, Continental Chambers, 142
M.G Road, Chennai-600034
13. PTC India Financial Services Limited
7th Floor, Telephone Exchange Building, 8
Bhikaji Cama Place, New Delhi 110066
14. United Bank of India
Corporate Finance Br, Mumbai
2nd Floor, United Bank of India Building
25, Sir Pheroz Shah Mehta Road,
Fort, Mumbai- 400001



15. Vijaya Bank I F B Mumbai
New Excelsior BLDG
2nd Floor, Wallace Street
Fort, Mumbai,
Maharashtra-4000
16. IndusInd Bank Limited
2401 Gen. Thimmayya Road,
Pune -411001
17. IDBI Trusteeships services limited
Asian Buliding, Ground Floor, 17,
R.Kamani Marg, Balard estate
Mumbai
18. Industrail and Commercial Bank of China Limited
8th Floor, A-Wing, One BKC (E)
Mumbai, Maharashtra - 400051
19. Tata Cleantech Capital Limited
One Forbes, Dr. V B Gandhi Marg,
Fort Mumbai - 40001
20. Export- Import Bank of India
Centre One Building, Floor 21
World Trade Centre Complex, Cuffe Parade
Mumbai - 40005

...Respondents

ORDER

The Petitioner, Raipur-Rajnandgaon-Warora, 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 Scheme for Chhattisgarh IPPs-Part B" (hereinafter referred to as 'the Project') 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 29.2.2016 in Petition No. 287/TL/2015.

2. The Petitioner had approached the Commission in Petition No. 87/MP/2016 for approval under Section 17(3) and (4) of the Act for assignment of licence by way for



creation of security interest in favour of Security Trustee/Lenders and other security creating documents/Financial Agreement by way of mortgage/hypothecation/assignment of mortgage properties and project assets of Raipur-Rajnandgaon-Warora Transmission Limited. The Commission in its order dated 28.7.2016 in Petition No.87/MP/2016 accorded in-principle approval allowing the Petitioner to create security in favour of Security Trustee, namely, Axis Trustee Services Limited. Accordingly, Security Trustee Agreement and Rupee Loan Agreement dated 17.5.2016 have been executed for loan of Rs. 969.38 crore as Rupee Term Loan and LER facility to the extent of Rs. 50 crore.

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. 969.38 crore by the original lender, namely Axis Bank Ltd. to new lenders, namely IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank to the tune of Rs. 300.38 crore, Rs. 219 crore, Rs. 75 crore and Rs. 75 crore respectively. The Petitioner has made the following prayers:

"(a) To acknowledge the appointment of IFCI Limited, PTC India Financial Services Limited, United Bank of India, and Vijaya Bank, as the New Lenders granting Rupee Term Loan to the Petitioner for development of the Transmission Project to the tune of Rs. 300 crore, 130 crore, 75 crore and 75 crore respectively; and

(b) To grant approval for change in the constitution of consortium of Existing Lenders, AXIS Bank Limited, with the addition of New Lenders, PTC India Financial Services Limited, United Bank of India and Vijaya Bank IFB Mumbai."

Submissions of the Petitioner

4. The Petitioner has entered into Rupee Loan Agreement dated 17.5.2016 with Axis Bank Ltd. for grant Rs. 969.38 crore as Rupee Term Loan facility and Rs 50 crore as Loan Equivalent to Risk (LER) facility. The Petitioner has submitted that Article 17.8.1 of the Rupee Loan Agreement dated 17.5.2016 and Article 11.9 of Security Trustee Agreement

dated 17.5.2016 empowers the original lender, Axis Bank to 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 lender, Axis Bank has taken a commercial decision to down size the original debt of Rs. 969.38 crore granted to the Petitioner by inclusion of new lenders, namely, IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank in the Consortium of lenders in the following manner:

Sr. No.	Name of Rupee Lenders	Commitment (Rs. in crore)
1.	Axis Bank Limited	300.38
2.	PTC India Financial Services Limited	219.00
3.	IFCI Limited	300.00
4.	United Bank of India	75.00
5.	Vijaya Bank	75.00
	Total	969.38

5. The Petitioner has submitted that through the separate Novation Deeds entered into between the Petitioner, Axis Bank Limited and IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank dated 8.11.2016, 15.12.2017, 30.12.2016 and 3.2.2017 respectively, Axis Bank Ltd. has novated its 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 Axis Bank Limited and IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank dated 8.11.2016, 15.12.2017, 30.12.2016 and 3.2.2017 respectively, 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 but not limited to movable plant and 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 but not limited to 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) A first charge by way of assignment or creation of Security interest on 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 the 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 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 (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 28.3.2019, was directed to submit information in respect of the Project as per the format prescribed by the Commission. The Petitioner vide its affidavit dated 2.4.2019 has submitted the required information.

10. The Petition was heard on 4.4.2019 after notice to the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice. During the hearing, the Commission observed that the Petitioner has not submitted the complete information as per prescribed format. Accordingly, the Petitioner was directed to file the complete information as per prescribed format. The Petitioner vide its affidavit dated 12.4.2019 has submitted the required information.

Analysis and Decision

11. We have considered the submissions made by the Petitioner. The Commission in its order dated 28.7.2016 in Petition No. 87/MP/2016 granted approval under Section 17(3) and (4) of the Act for creation of security in favour of Security Trustee, namely Axis Trustee Services Limited. The original lender, namely Axis Bank Ltd. made available financial assistance amounting to Rs. 1019.38 crore comprising of Rs. 969.38 crore as Rupee Term Loan and Rs. 50 crore as Loan Equivalent to Risk (LER) for the project. As per the Rupee Loan Agreement dated 17.5.2019, the original estimated project cost and financing plan is as under:

Particular	Rupee (in crore)	Percentage
Equity	415.44	30%
Debt	969.38	70%
Total	1384.82	100%

12. The Petitioner vide affidavit dated 12.4.2019 has submitted that the scheduled COD of the project was 23.11.2018. As regards actual COD, it has been submitted that the date of charging is 27.3.2019 and COD certificate from WRLDC is awaited. The Petitioner has also submitted Auditor Certificate dated 10.4.2019 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	91.00	Property Plant and Equipment	12.00
Equity Share Premium	0.00	Capital Work in Progress	1151.00
Loan/debenture from promoters, group companies	354.00 [#]	Other Non-Current Assets	12.00
Secured loan/debt from external source	721.00	Current Assets	19.00
Other	28.00		
Total	1194.00	Total	1194.00

This includes 0% compulsory convertible debentures amounting to Rs. 259 crore and unsecured subordinated loan from promoter of Rs. 95 crore.

13. Considering loan/debenture from promoters and group companies as part of equity, the External Debt:Promoter`s contribution ratio of `Actual Means of Finance` as on 31.12.2018 works out to 60:40.

14. According to the Petitioner, the original lender, namely, Axis Bank Ltd. has approached IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank for down selling of part of Rupee Term Loan of Rs. 969.38 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 Lenders	Sanctioned loan		Actual loan as on 31.12.2018
		Rupee Commitment (Rs. in crore)	LC Commitment (as a sub limit) (Rs. in crore)	
1.	Axis Bank Limited	300.38	279.75	258.00
2.	PTC India Financial Services Limited	219.00	164.25	184.00
3.	IFCI Limited	300.00	225.00	164.00
4.	United Bank of India	75.00	56.00	60.00
5.	Vijaya Bank	75	-	56.00
	Total	969.38	725.00	721.00

15. In the present case, Security Trustee, namely, AXIS Trustee Services Limited already approved by the Commission in its order dated 28.7.2016 in Petition No. 87/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 IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank as the new lenders granting Rupee Term Loan to the Petitioner to the tune of Rs. 300.38 crore, Rs. 219 crore, Rs. 75 crore and Rs. 75 crore, respectively.

16. 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.

17. The Petition No. 3/MP/2019 is disposed of in terms of the above.

Sd/-
(I.S Jha)
Member

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

sd/-
(P.K. Pujari)
Chairperson