

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 451/MP/2014

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Date of Hearing: 24.3.2015

Date of order: 01.4.2015

In the matter of

Application for approval under Section 17 (3) of the Electricity Act, 2003 for creating security in favour of Security Trustee pursuant to unattested Deed of hypothecation, by way of hypothecation on project assets for benefit of the lenders/security trustee to the project, for the transmission system for "Eastern Region System Strengthening Scheme-VII".

And

In the matter of

1. Purulia & Kharagpur Transmission Company Limited
C-2, 2nd Floor, The Mira Corporate Suites"1 & 2 Ishwar Nagar,
Okhla Crossing, Mathura Road,
New Delhi-110065

2. SBICAP Trustee Company Limited
424-425, 4th Floor,
World Trade Centre, Babar Lane,
New Delhi-110 001

..... **Petitioners**

Vs

1. Bank of India
Pune Large Corporate Branch,
C.T.S No. 1290, Plot No. 675,
Backside of Gandharv Restaurant,
Shivajinagar, Pune-411 005

2. Maithan Power Limited
MA-5, Gogna Colony,
Maithan Dam Post Office,
Distt: Dhanbad, Jharkhand- 828207.



3. Grid Corporation of Orissa Limited
Shahid Nagar,
Bhubaneshwar- 751 007.

4. Bihar State Electricity Board
Vidhut Bhawan, 4th Floor,
Bailey Road, Patna,
Bihar - 8000212.

5. Power Grid Corporation of India Limited
HVDC Pusauli, 5th Floor, Alankar Palace,
Boring Road, Patna- 800 001.

6. Damodar Valley Corporation
DVC Tower, Maniktala Civic Tower,
VIP Road, Kolkata-700 054.

7. Power and Energy Department
Govt. of Sikkim,
Kazi Road, Gangtok-737 101.

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

9. West Bengal State Electricity Distribution Company Limited
Bidyut Bhawan, Bidhan Nagar, Block DJ,
Sector -II, Salt Lake City,
Kolkata- 700 091

..Respondents

The following were present:

Shri T.A.N. Reddy, RAPP
Shri Pulkit Sharma, RAPP
Shri Harshit Gupta, RAPP

ORDER

The first petitioner herein, Purulia & Kharagpur 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 the transmission system for "**Eastern Region System Strengthening Scheme-VII**" (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 31.5.2014.

2. Purulia & Kharagpur Transmission Company Limited and SBICAP Trustee Company Limited have filed a combined petition for creation of security in favour of SBICAP Trustees Company Limited as Security Trustee pursuant to Security Trustee Agreement by way of hypothecation on project assets for benefit of the lenders/security trustee to the project. The petitioners have made the following prayers:

"(a) Approve the creation of security in favour of Security Trustee pursuant to Security Trustee Agreement, by way of hypothecation on Project Assets through execution of unattested deed of hypothecation for the project;

(c) Pass such other relief as Hon`ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice;"

3. According to the first petitioner, request has been made for long-term debt through banks/financial institutions (Bank of India) and Bank of India (hereinafter referred to as 'lenders') has agreed to make available assistance amounting to ₹ 380,00,00,000 for the purpose of part financing the construction, development and implementation of the project and on the terms and conditions set out in the 'Facility Agreement', 'Security Trustee Agreement', 'Trust and Retention Account Agreement', 'Sponsor Support Agreement', 'Non Disposal Agreement' and 'Promoter Support

Agreement'(hereinafter referred to as 'Financing Agreements') . For this purpose, the first petitioner and lender have appointed the second petitioner viz, SBICAP Trustee Company Limited as Security Trustee (hereinafter referred to as 'Security Trustee') who has agreed to act as Security Trustee for the lender and has entered into Security Trustee Agreement with the petitioners and lenders on 21.10.2014. The first petitioner has submitted that the proposed unattested deed of hypothecation has been settled and initialed between the first petitioner and Security Trustee.

4. The first petitioner has submitted that it has proposed to agree under unattested deed of hypothecation that it shall be lawful for the Security Trustee or lender to enter into and take possession of hypothecated premises along with all intangibles and any future assets under the project comprised in unattested deed of hypothecation and thenceforth, the first petitioner shall take no action inconsistent with or prejudicial to the right of Security Trustee on behalf of the lender quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereon without interruption or hindrance by it or by any person or persons whosoever.

5. The first petitioner has further stated that Article 15.2 of the Transmission Service Agreement entered into between first petitioner and beneficiaries of the project provide that the first petitioner is free to create any encumbrance over all or part of the security package or other assets of the project in favour of the lenders or the representatives of the lenders as security for (a) amount payable under the Financing Agreement; and (b) any other amounts agreed by the parties subject to the following conditions:

- (i) The lenders or the representatives of the lenders shall have entered into the Financing Agreements; and
- (ii) Any encumbrance granted by the petitioners shall contain provisions pursuant to which the lenders or the representatives of the lenders agree unconditionally with the petitioner to release such encumbrances upon payment, to the lenders, of all amounts due under the Financing Agreements.

6. 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 assign the licence or transfer its utility or any part thereof to any person or enter into an agreement relating to any of these transactions without approval of the Commission. Accordingly, the petitioners have filed the present petition seeking prior approval of the Commission for creation of security in favour of Security Trustee by way of hypothecation on Facility together with all other amounts whatsoever stipulated in the Financing Agreements through execution of unattested deed of hypothecation for the project.

7. The petition was heard after notice to the petitioner and the respondents. No reply has been filed by the respondents. None was present on behalf of the respondents despite notice.

8. We have considered the submissions made by the petitioners. 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

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, SBICAP Trustee Company Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement dated 21.10.2014 has been executed for loan of ₹ 380 crore. 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.

9. 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.”

10. 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 SBICAP Trustee Company Limited as Security Trustee needs to be given comfort for creation of security for the benefit of the banks/financial institutions/non-banking financial companies as security for the financial assistance provided by the lenders. We, therefore, accord in principle approval allowing

the first petitioner to create security in favour of SBICAP Trustee Company Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage on project assets by execution of indenture of mortgage for the project. 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. Before agreeing to transfer of licence and the assets of the first petitioner to the nominee of Security 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, security 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, Security 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 Security 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.

11. With the above, the Petition No. 451/MP/2014 stands disposed of.

Sd/-
(A.S.BAKSHI)
MEMBER

sd/-
(A.K. SINGHAL)
MEMBER

sd/-
(GIREESH B. PRADHAN)
CHAIRPERSON