

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 548/MP/2014

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Date of Hearing: 26.2.2015

Date of order: 18.3.2015

In the matter of

Application for approval under Sections 17 (3) and 17 (4) of the Electricity Act, 2003 for creating security in favour of IDBI Security Trusteeship Service Ltd. over (i) all the movable and immovable assets of the petitioner including all movable and immovable assets of the utility to be established by the petitioner that constitute the project, (ii) on its transmission licence granted vide order dated 30.5.2014 in Petition No. 324/2013, (iii) the Transmission Service Agreement executed by the petitioner on 6.8.2013, (iv) all project documents, strengthening Scheme-VI comprising of, amongst others, (a) Muzaffarpur-Darbhanga 400 kV D/C line, (b) LILO of both Ckts of Barh-Gorakhpur 400 kV D/C line at Mothihari, (c) creation of 400/220 kV GIS sub-station of Darbhanga, and (d) creation of 400/132 kV GIS sub-station at Mothihari and associated works required for the successful commissioning thereof.

And

In the matter of

1. Darbhanga- Motihari Transmission Company Limited
Essel House, B-10, Lawrence Road,
Industrial Area,
New Delhi-110 035

2. IDBI Trusteeship Services Limited
Asian Building, Ground Floor,
17, R.Kamani Marg, Ballard Estate,
Mumbai-400 001

..... **Petitioners**

Vs

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



2. Grid Corporation of Orissa Limited
Shahid Nagar,
Bhubaneshwar- 751007

3. Bihar State Electricity Board
Vidyut Bhawan, Bailey Road,
Patna- 800001

4. Power Grid Corporation of India Limited
HVDC Pusauli, 5th Floor,
Alankar Palace, Boring Road,
Patna- 800001

5. Damodar Valley Corporation, DVC Tower
Maniktala, Civic Tower,
VIP Road, Kolkata- 700054

6. Power Department, Govt. of Sikkim
Kazi Road, Gangtok- 737101

7. Jharkhand State Electricity Board
in front of Main Secretariat,
Doranda, Ranchi- 834002

8. West Bengal State Electricity Distribution Company Limited
Bidyut Bhawan,
Bidhan Nagar, Block DJ,
Sector II, Salt Lake City, Kolkata- 700091

.... Respondents

The following were present:

1. Shri Mohit Jain, DMTCL
2. Shri Sudip Dutta, DMTCL

ORDER

The first petitioner herein, Darbhanga-Motihari 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-VI (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 30.5.2014. Darbhanga-Motihari Transmission Company Limited and IDBI Trusteeship Services Limited have filed a combined petition for creation of security in favour of IDBI Trusteeship Services Limited as Security Trustee for the benefit of the banks/financial institutions/non-banking financial companies led by IDBI Bank Limited, including its successors transferees, Novatees and assignees, as security for the financial assistance of an aggregate amount of ₹ 605 crore provided by IDBI Bank Ltd., India Infrastructure Finance Company Limited, PTC India Financial Services Limited and Union Bank of India (lenders) for part financing the project and performance bank guarantee facility of an amount of ₹ 22 crore from IDBI Bank Limited. The petitioners have made the following prayers:

“(a) Grant the approval to create security interest over the TSA, the project assets, clearances, approvals 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 Annexure IV hereto in favour of IDBI Trusteeship Services Limited, in its capacity as the Security Trustee, for the benefit of the Lenders;

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

2. According to the first petitioner, in relation to financing of the project, financial assistance of ₹ 605 crore was sanctioned by IDBI Bank Ltd., India Infrastructure

Finance Company Limited, PTC India Financial Services Limited and Union Bank of India on 13.6.2014, 19.8.2014, 15.10.2014 and 11.11.2014 respectively for part financing the project and performance bank guarantee facility of ₹ 22 crore was received on 13.6.2014 from IDBI Bank Limited. For this purpose, the petitioner and the lenders have appointed IDBI Trusteeship Services Limited as Security Trustee who has agreed to act as Security Trustee for the lenders and has entered into Security Trustee Agreement and other financing/security agreement with lenders on 3.12.2014. The first petitioner has submitted that in terms of the sanction letters of the lenders, the petitioner is required, amongst others, (a) to create security over all the movable and immovable assets of the first petitioner including all movable and immovable assets of the project; (b) to assign by way of security the petitioner's rights, benefits, interest under the transmission licence and the TSA; and (c) to create pledge of shares held by Essel Infraprojects Limited in the first petitioner to the extent of fifty one percent of the issued and paid up equity share capital of the petitioner, in favour of the Security Trustee for the beneficial interest of the lenders. The first petitioner has submitted that it is also required to create some of the above security interest prior to the first disbursement of funds and in the event such security interest is not created within the stipulated time, the petitioner would be required to pay an additional one percent interest per annum (compounded quarterly) over and above the applicable interest rate.

3. According to the petitioners, Article 15.2 of the Transmission Service Agreement provides that the first petitioner is free to create any encumbrance over all or part of the security package or the other assets of the project in favour of the lenders or the

representatives of the lenders as security. However, 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. Accordingly, the present petition has been filed seeking prior approval of the Commission for creation and enforcement of security interest by the first petitioner over the TSA, the assets of the first petitioner and all assets in relation to the project and on its transmission licence in favour of Security Trustee for the benefit of the lenders.

4. 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.

5. The petitioner, vide Record of Proceedings for the hearing dated 26.2.2015, was directed to submit the current status of transmission project along with the expected completion time line. The first petitioner, vide its affidavit dated 2.3.2015 has submitted the information called for. The first petitioner has stated that the major milestone have been achieved and project is expected to be completed by 9.8.2016.

6. 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 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 consortium of lenders led by IDBI Trusteeship Services Limited has insisted for creation of security over all the

movable and immovable assets of the project. Accordingly, Facility Agreement dated 2.12.2014 has been executed for the loan of ₹ 605 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 the other assets of the project in favour of the lenders or the lender`s representatives on their behalf, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

7. 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.”

8. 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 IDBI Trusteeship Services Limited as Security Trustee need to be given comfort for creation of security for the benefit of the banks/financial institutions/non-banking financial companies led by IDBI Bank Limited as security for the financial assistance provided by lenders. We, therefore, accord in principle approval allowing the first petitioner to create security in favour of IDBI Trusteeship Services 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 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.

9. With the above, the Petition No. 548/MP/2014 stands disposed of.

Sd/-
(A.S.BAKSHI)
MEMBER

sd/-
(A.K. SINGHAL)
MEMBER

sd/-
(GIREESH B. PRADHAN)
CHAIRPERSON