

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 79/MP/2015

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Date of Hearing: 09.04.2015

Date of order: 15.04.2015

In the matter of

Application for approval under Sections 17 (3) and 17 (4) of the Electricity Act, 2003 for creation and enforcement of security interest by NRSS XXXI (B) Transmission Limited 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) the Transmission Service Agreement executed by the petitioner on 2.1.2014 (iii) its transmission licence for development of inter-State Transmission System under “Northern Region System Strengthening Scheme NRSS-XXXI (Part B)” dated 25.1.2014, (iv) 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 “Northern Region System Strengthening NRSS-XXXI (Part B)” comprising of, amongst others in favour of IDBI Trusteeship Services Limited acting as the security trustee for the benefit of lenders, as security for the financial assistance provided agreed to be provided by such lenders for part financing the project envisaging establishment of inter-State transmission system under “Northern Region System Strengthening Scheme NRSS-XXXI (Part B)” comprising of, amongst others, (i) Kurukshetra-Malerkotla 400 kV D/C line and (ii) Malerkota-Amritsar 400 kV D/C line and associated works required for the successful commissioning thereof.

And

In the matter of

1. NRSS XXXI (B) Transmission Limited
5th Floor, 18, Ramnath House,
Community Centre, Yusuf Sarai,
New Delhi-110 049
2. IDBI Trusteeship Services Limited
Asian Building, Ground Floor,



17, R.Kamani Marg, Ballard Estate,
Mumbai-400 001

..... **Petitioners**

Vs

1. U.P. Power Corporation Limited (UPPCL)
Import Export Payment Circle, 14th Floor,
Shakti Bhawan Extn. Building,
14 , Ashok Marg, Lucknow, UP
2. AD Hydro Power Limited
Bhilwara Towers, A-12,
Sector-1, Noida - 201 301
3. Haryana Power Purchase Centre
Shakti Bhawan Energy Exchange Room No. 446,
Top Floor, Sector - 6,
Panchkula - 134 109, Haryana
4. Punjab State Power Corporation Limited
Shed No. T-1 A, Thermal Design,
Near 22 No. Phatak, Patiala, Punjab
5. Himachal Sorang Power Pvt. Ltd.
901 B, 9th Floor, Time Tower,
M. G. Road, Gurgaon – 122009, Haryana
6. Adani Power Limited,
Mundra, 3rd Floor, Achalraj, Opp. Mayors Bungalow,
Law Garden, Ahmedabad - 380006
7. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath,
Jaipur - 302 005
8. Ajmer Vidyut Vitran Nigam Limited
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer – 305004
9. Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur – 342003
10. Lanco Anpara Power Limited



Plot No. 397, Udyog Vihar, Phase 3,
Gurgaon – 122016

11. Power Development Deptt., Govt. of Jammu and Kashmir
SLDC Building, 1st Floor, Gladani Power House,
Narwal, Jammu
12. North Central Railway
Subedar Ganj, Allahabad
13. Jaiprakash Power Ventures Limited
A Block, Sector -128, Noida - 201 304, UP
14. BSES Yamuna Power Limited
2nd Floor, B Block, Shakti Kiran Building,
Karkardooma, New Delhi – 110092
15. BSES Rajdhani Power Limited
BSES Bhawan, 2nd Floor, B Block,
Nehru Place, New Delhi - 110 019
16. Tata Power Delhi Distribution Limited
NDPL House, Hudson Lines, Kingsway Camp,
Delhi - 110 009
17. New Delhi Municipal Corporation
NDMC, Palika Kendra, Sansad Marg,
New Delhi – 110 001
18. Electricity Wing of Engineering Department
Union Territory of Chandigarh,
Electricity OP Circle, UT, Chandigarh
19. Power Grid Corporation of India Limited
“Saudamini”, Plot No. 2, Sector 29, Near IFFCO Chowk,
Gurgaon - 122 001, Haryana
20. PTC India Limited
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi
21. Uttarakhand Power Corporation Limited
UPCL, Urja Bhawan, Dehradun, Uttarakhand
22. Lanco Budhil Hydro Power Pvt. Limited

Plot No. 397, Udyog Vihar, Phase 3,
Gurgaon – 122016, Haryana

23. Himachal Pradesh State Electricity Board Limited
Vidyut Bhawan, Kumar House Complex Building II,
Shimla - 171 004, Himachal Pradesh

Respondents

The following were present:

1. Shri Mohit Jain for the petitioner
2. Shri Sudip Dutta for the petitioner

ORDER

The first petitioner herein, NRSS XXXI (B) 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 the transmission system for 'Northern Region System Strengthening Scheme NRSS-XXXI, Part-B (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 25.8.2014.

2. NRSS XXXI (B) Transmission Limited and IDBI Trusteeship Services Limited have filed a combined petition for creation and enforcement of security in favour of IDBI Trusteeship Services Limited as Security Trustee for the benefit of ICICI Bank Limited (ICICI), Indian Infrastructure Finance Company Limited (IIFCL), PTC India Financial Services Ltd. (PTC), and the banks/financial institutions/non-banking financial companies (hereinafter referred to as "the lenders"), as security for the



financial assistance provided/agreed to be provided by such lenders for part financing the project. The petitioners have made the following prayers:

“(a) Grant the approval to create security interest over the immovable and movable assets of the project, cash flows, receivables, bank accounts, TSA, the project assets, clearances, approvals and all other project documents/clearances including but not limited to any amendments, supplements to the existing projects documents and the transmission licence 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 Licence;

(b) Approve the Security Documents execution, for creation and/or perfection of aforesaid Security Interest annexed at Annexure III 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;”

3. According to the first petitioner, requests were made to ICICI Bank Limited, India Infrastructure Finance Company Limited and PTC India Financial Services Limited to sanction financial assistance for part financing of the project. The lenders have agreed to make available financial assistance as per the following details:

(a) ICICI Bank Limited vide its letter dated 30.9.2014 has agreed to sanction ₹ 272.50 crore as rupee term loan with capex LC sub-limit to the extent of ₹ 176 crore and ₹ 27.50 crore as Performance Bank Guarantee;

(b) India Infrastructure Finance Company Limited has agreed vide its letters dated 30.12.2014 and 28.1.2015 to sanction ₹ 135 crore;

(c) PTC India Financial Services Limited vide its letter dated 29.1.2015 has sanctioned ₹ 65 crore.

4. Pursuant to sanction letter dated 30.9.2014, ICICI Bank Limited has also agreed to act as lead bank for the consortium of the lenders. 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 with lenders on 14.11.2014.

5. The first petitioner has submitted that in terms of the sanction letters of the lenders, and Rupee Facility Agreement, Master Facility Agreement, Adherence-cum-Amendment Agreement-I entered into with ICICI, PFS and IIFCL on 11.10.2014 and 5.2.2015 for part financing of the project, the first petitioner is required, amongst others, (a) to create security over all the movable and immovable assets of the first petitioner by mortgage and/or hypothecation and/or assignment and/or substitution and/or charge as the case may be (b) to assign by way of security the petitioner's rights, benefits, interest under the transmission licence and the TSA, all other 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.; 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 first petitioner, in favour of the Security Trustee for the beneficial interest of the lenders.

6. 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, and all assets in relation to the project and on its transmission licence in favour of Security Trustee for the benefit of the lenders, including ICICI as security for the financial assistances provided/agreed to be provided by such lenders for part financing 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. During the course of hearing, the representative of the petitioner submitted that in terms of sanction letter of ICICI Bank Limited dated 30.9.2014, ICICI Bank has novated its commitment/available commitment of ₹ 100 crore to National Bank for Agriculture and Rural Development (NABARD) in accordance with Deed of Adherence to the Inter-Creditor Agreement, Novation-cum-Amendment Agreement-II

and Deed of Accession dated 27.3.2015. Accordingly, the commitment/available commitment of ICICI Bank Limited has been reduced to ₹ 172.50 crore including ₹123.48 crore as LC facility. The representative of the petitioner submitted that copies of Deed of Adherence to the Inter-Creditor Agreement, Novation-cum-Amendment Agreement-II and Deed of Accession dated 27.3.2015 have been submitted vide affidavit dated 6.4.2015 and requested to take these documents on record.

9. 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 ICICI Bank Limited has insisted for creation of security over all the movable and immovable assets of the project for part financing of the project. Accordingly, Rupee Facility Agreement dated 11.10.2014, Masters Facility Agreement dated 11.10.2014, Security Trustee Agreement dated 31.10.2014 and Adherence-cum-Amendment Agreement dated 5.2.2015 have been executed for the loan amount of ₹ 472.50 crore. The petitioner has placed on record the Deed of Adherence Agreement dated 27.3.2015 including for NABARD as one of the lenders. The consortium led by ICICI Bank will finance of ₹ 472.50 crore (₹172.50 crore by ICICI Bank, ₹ 135.00 crore by IFFCL, ₹ 65,00 crore by PTC and ₹ 100 crore by NABARD).

10. 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.

11. 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.”

12. 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 ICICI 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 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, 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 first petitioner as and when required by the Commission for any specific purpose.

13. With the above, the Petition No. 79/MP/2015 stands disposed of.

Sd/-
(A.S.BAKSHI)
MEMBER

sd/-
(A.K. SINGHAL)
MEMBER

sd/-
(GIREESH B. PRADHAN)
CHAIRPERSON