

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 138/MP/2017**

**Coram:**

**Shri Gireesh B.Pradhan, Chairperson**

**Shri A.K.Singhal, Member**

**Shri A.S.Bakshi, Member**

**Dr. M.K.Iyer, Member**

**Date of order: 9<sup>th</sup> of August, 2017**

**In the matter of**

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest over the project assets of the Petitioner in favour of Security Trustee/Lenders and for any subsequent transferees, assigns, novatees thereof and any refinancing lenders to the Project, acting on behalf of and for the benefit of the Lenders pursuant to Deed of Hypothecation and other security creating documents/Financing Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Project Assets, for the transmission line, i.e. RAPP Shujalpur 400 kV D/C line.

**And**

**In the matter of**

1. RAPP 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, 4<sup>th</sup> 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. Haryana Power Purchase Centre  
Shakti Bhawan, Energy Exchange,  
Room No 302, 2<sup>nd</sup> Floor, Sector 6,  
Panchkula- 134109.

3. Punjab State Power Corporation Ltd.

D-3 Shakti Vihar, PSPCL Patiala -147001.

4. Himachal Sorang Power Pvt. Limited  
Ashirwad Building, D-7, Sector- I,  
Lane-1, 2nd Floor, New Shimla,  
Shimla- 171009, Himachal Pradesh.

5. Adani Power Limited  
4<sup>th</sup> Floor, Achalaraj, Opposite to Mayor's Banglow,  
Law Garden, Ahemdabad, Gujarat-380006.

6. Jaipur Vidyut Vitran Nigam Limited  
Shed No. 5/5, Vidyut Bhawan,  
Janpath, Jyoti Nagar, Jaipur-302 005.

7. Ajmer Vidyut Vitran Nigam Limited  
Shed No.5/5,Vidhyut Bhawan, Janpath,  
Jyoti Nagar, Jaipur-302 005.

8. Jodhpur Vidyut Vitran Nigam Limited,  
Shed No.5/5,Vidhyut Bhawan,  
Janpath, Jyoti Nagar, Jaipur-302 005.

9. Lanco Anpara Power Limited  
Plot No 397, Udyog Vihar, Phase 3,  
Gurgaon-122016 (Haryana).

10. Lanco Green Power Pvt. Limited  
Plot No. 397, Udyog Vihar, Phase-III,  
Gurgaon-122016 (Haryana).

11. Power Development Department, Govt. of J&K,  
Srinagar, Bemina Complex,  
Srinagar-190018.

12. North Central Railway  
Allahabad, DRM office, Nawab Yusuf Road,  
Allahabad-211 001.

13. AD Hydro Power Limited  
Bhilwara Towers,  
A-12, Sector-1, Noida-201301, U.P.

14. Jaiprakash Power Ventures Limited  
A Block, Sector-128, Noida-201304 (Uttar Pradesh).

15. BSES Yamuna Power Limited  
2nd Floor, B Block, Shakti Kiran Building,  
Near Karkadooma Court, New Delhi-110092.

16.BSES Rajdhani Power Limited  
BSES Bhawan, Nehru Place,  
New Delhi-110019.

17. Tata Power Delhi Distribution Limited  
33 KV sub-station Building, Hudson Lane,  
Kingsway Camp, New Delhi-110009.

18. New Delhi Municipal Corporation  
Room No.1706, Palika Kendra, Sansad Marg,  
New Delhi-110001.

19. UTC-Chandigarh  
Div-11, Opposite Transport Nagar,  
Industrial Ph-I, Chandigarh-160011.

20. Power Grid Corporation of India Limited  
HVDC Dadri, B-9, Qutab Institutional Area,  
Katwaria Sarai,  
New Delhi-110 016

21. Power Grid Corporation of India Limited  
HVDC Rihand, B-9, Qutab Institutional Area,  
Katwaria Sarai,  
New Delhi-110 016

22. U.P. Power corporation Limited  
14th Floor, Shakti Bhawan Extension Building,  
14, Ashok Marg, Lucknow-226 001. U.P.

23. PTC (Budhil), PTC India Limited  
2nd Floor, NBCC Tower,  
15, Bhikaji Cama Place, New Delhi- 110 066.

24. PTC (Everest), PTC India Limited  
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,  
New Delhi-110 066.

25. Uttaranchal Power Corporation Limited  
Urja Bhawan, Kanwali Road,  
Near Balli Wali Chowk,  
Dehradun-248001.

26. Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla-171 001.

**..Respondents**

**The following were present:**

1. Shri T N Reddy, RTCL
2. Ms. Saunya Sahai, RTCL
3. Shri Tarun Ahuja, RUVNL
4. Shri S.K.Jain, RUVNL

**ORDER**

The First Petitioner herein, RAPP 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 "Part ATS of RAPP U-7 & 8 in Rajasthan" (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 31.7.2014.

2. The Petitioners had approached the Commission in Petition No. 452/MP/2014 for approval under Section 17 (3) and (4) of the Act to create security of Rs. 220 crore in favour of SBICAP Trustee Company Limited. The Commission vide order dated 1.4.2015 accorded in-principle approval allowing the Second Petitioner to create security in favour of SBICAP Trustee Ltd. as Security Trustee.

3. RAPP Transmission Company Limited and SBICAP Trustee Company Limited have filed the present petition for creation of security in favour of SBICAP Trustee Company Limited as Security Trustee pursuant to the Security Trustee Agreement and other relevant financing documents by way of

Mortgage/hypothecation/assignment of project assets for benefit of the lenders to the project. The petitioners have made the following prayers:

“(a) Approve the creation of security Interest, over all the movable and immovable assets of Petitioner No. 1 and to the extent as mentioned in paras 6 and 7 above, in favour of Security Trustee/Lenders, acting on behalf of and for the benefit of the Lenders pursuant to Deed of Hypothecation Agreement and other security creating documents/Financial Agreements for future refinancing transactions, by way of hypothecation of Project Assets through execution of Deed of Hypothecation Agreement and other Financial and Refinancing documents in future for the project.

(c) Pass such other relief as this Commission deems fit and proper in the facts and circumstances of the case and in the interest of justice.”

4. According to the First Petitioner, for the purpose of refinancing and raising fresh finance for the project, the First Petitioner requested the lenders to sanction financial assistance for which existing lenders and current lender have agreed to extend the First Petitioner, a financial assistance amounting to Rs. 257 crore as fresh rupee term loan for the project whereby additional Rs. 37 crore has been granted on the terms and conditions set out in the Common Loan Agreement dated 20.3.2017. For this purpose, the First Petitioner and HDFC Bank have appointed the Second Petitioner, namely SBICAP Trustee Company Limited as Security Trustee (hereinafter referred to as ‘Security Trustee’) who has agreed to act as Security Trustee for the lenders and has entered into Security Trustee Agreement on 20.3.2017.

5. The First Petitioner has submitted that pursuant to the terms of the Common Loan Agreement and Deed of Hypothecation, the security obligation shall be secured by,-

(a) A first mortgage and charge on all the Borrower`s immovable properties (including without limitation the transmission system);

(b) A first charge by way of hypothecation on all the Borrower`s tangible movable assets (including but not limited to towers, conductors, insulators, movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present and future;

(c) A first charge on all intangible assets of the Borrower including but not limited to goodwill, rights and undertakings and intellectual property rights, and on uncalled capital, both present and future;

(d) A first charge on all the Borrower`s current assets and Receivables, both present and future;

(e) A first charge over all accounts and reserves of the Borrower, wherever maintained, including but not limited to the Account, the Retention Accounts and the Sub-Accounts (including the DSRA) (or any account in substitution thereof) that may be opened in accordance with the transaction documents, and in all funds from time to time deposited therein (including the reserves) and the Permitted Investments or other securities representing all amounts credited to the Account

(f) A first charge by way of assignment or creation of charge on:

(i) All the rights, title, interest, benefits, claims and demands whatsoever of the borrower in, to and under all the projects documents, duly acknowledged and consented to by the counter parties to the project documents, all as amended, varied and supplemented from time to time.

(ii) All the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all the clearances pertaining to the project (including the transmission licence) to the extent the same are assignable;

(iii) All the rights, title, interest, benefits, claims and demands whatsoever of the borrower in, to and under any letter of credit, guarantee including contractor guarantee and liquidated damages consent agreements, side letters and Performance bond provided by any party to the project documents (including any letter of credit or other security provided by the LTTCs or any security that may be available to the Borrower pursuant to the Transmission Service Agreement); and

(iv) All the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all Insurance Contracts and Insurance proceeds pertaining to the project;

(g) Subject to the provisions of Section 19 (2) and (3) of the Banking Regulation Act, 1949 and other applicable laws, a pledge of 51% (fifty one percent) of the Equity Share Capital of the Borrower by the Pledgor.

6. The First Petitioner has submitted that it has agreed to create security interest in favour of Security Trustee pursuant to Deed of Hypothecation and other Financial Agreements, by way of hypothecation in accordance with the provisions of the Deed of Hypothecation and the Financial Agreements, and has agreed that it shall be lawful for the Security Trustee, upon enforcement of Security Interest, to take possession of

Hypothecated properties (as more particularly defined in the Deed of Hypothecation) along with all intangibles and any future assets under the project comprised in financial agreement and thenceforth, the First Petitioner shall take no action inconsistent with or prejudicial to the right of Security Trustee acting on behalf of the Lenders/Security Trustee quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereon without interruption or hindrance by it or any person or persons whatsoever.

7. The First Petitioner has submitted that under the financial agreements and on enforcement of the security interest, it shall be lawful for the Security Trustee, acting on behalf of and for the benefit of the lenders, to enter into and take possession of the assets charged for their benefits and substitute themselves of any of the them or its nominees for the First Petitioner under any or all of the projects document(s).

8. The First Petitioner has further stated that Article 15.2.2 of the Transmission Service Agreement entered into between the First Petitioner and the beneficiaries of the project provide that the First 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. Provided that:

- (i) The lenders or the representatives of the lenders on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and
- (ii) Any encumbrance granted by the first petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on



their behalf agrees unconditionally with the first petitioner to release such encumbrances upon payment by the first petitioner to the lenders, of all amounts due under the Financing Agreements.

9. The First 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 assignment of its rights, benefits, interests and obligations in the TSA. 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, being a licensee, prior approval of the Commission is essential for creation of security interest over all the movable and immovable assets of the first petitioner in favour of Security Trustee/Lenders pursuant to Deed of Hypothecation and other security creating documents/financial Agreements and for future refinancing transactions, by way of mortgage/hypothecation/assignment of project assets for benefit of the Lenders/Security Trustee/Lenders to the Project. Accordingly, the petitioners have filed the present petition seeking prior approval of the Commission for creation of security in favour of Security Trustee/lenders by way of hypothecation of Project assets through execution of Deed of Hypothecation Agreement and other financial and refinancing documents in future for the project.

10. The petition was heard on 27.7.2017 after notice to the Petitioners and the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice. During the course of hearing, the First Petitioner was directed to place on record, the revised project cost and the debt equity ratio after refinancing.

11. The First Petitioner, vide its affidavit dated 31.7.2017, has submitted that the revised project cost is 285 crore and debt equity ratio is Rs. 257 crore: Rs. 28 crore which is approximately 90:10. In this regard, the First Petitioner has placed on record, Audited certificate dated 17.3.2017. The First Petitioner has further submitted that there is no obligation under TSA to maintain any specific debt equity ratio for the Tariff Based Competitive Bidding (TBCB) projects.

12. We have considered the submissions made by the Petitioners. Perusal of the Security Trustee Agreement dated 20.3.2017 reveals that the First Petitioner had approached the lenders for refinancing and fresh finances for the project. The lenders had agreed to make available financial assistance for an aggregate principal amount of Rs. 257 crore as rupee term loan to the First Petitioner and a Security Trustee Agreement was entered into between the first petitioner and the lenders on 20.3.2017. The Commission vide order dated 1.4.2015 in Petition No. 452/MP/2014 accorded in-principle approval for creating security in favour of SBICAP Trustee Company Ltd. Further, the lender HDFC Bank has agreed to extend to First Petitioner a fresh rupee term loan of Rs. 257 crore including a LOC Facility for an aggregate amount not exceeding Rs.84,79,59,097 for the purpose of (i) refinance/takeover of the existing facilities from the existing project lenders, (ii) repay the subordinate debt availed from the borrower`s promoters/subsidiaries/group companies; or (iii) reimburse capital expenditure cost incurred in relation to the project on the terms and conditions set out in the Common Loan Agreement dated 20.3.2017. For this purpose, the First Petitioner and HDFC Bank have appointed the Second Petitioner, namely 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 and Common Loan Agreement dated 20.3.2017 have been executed for

loan of Rs. 257 crore. As regards the maintenance of debt equity ratio, the First Petitioner has submitted that there is no specific obligation under the TSA to maintain any specific debt equity ratio. We have gone through the TSA and find that as per Article 18.2.1 of the TSA, the selected bidder is mandated to hold the aggregate equity shareholding of 51% upto 2 years from the date of commercial operation and thereafter 26% of the equity shareholding for a period of three years. However, there is no provision in the TSA which mandates the selected bidder to maintain any specific debt-equity ratio.

13. 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.”

14. 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 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 hypothecation of project assets by execution of Deed of Hypothecation for the project. The earlier approval granted vide order dated 1.4.2015

in Petition No. 452/MP/2014 shall stand withdrawn from the date of issue of this order. It is however, clarified that approval for securing loan for the additional cost incurred, if any on account of cost over-run of the project shall not be construed as approval to the First Petitioner to seek tariff adjustment. The Petitioner shall be entitled to claim the tariff strictly as per the TSA. It is further 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

15. With the above, Petition No. 138/MP/2017 stands disposed of.

**Sd/-**  
**(Dr. M.K.Iyer)**  
**Member**

**Sd/**  
**(A.S. Bakshi)**  
**Member**

**Sd/-**  
**(A. K. Singhal)**  
**Member**

**sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**