

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 67/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 : 16th of May, 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 all the movable and immovable assets of the Petitioner No. 1 in favour of security trustee/lenders pursuant to Rupee Facility Agreement and other security documents, by way of mortgage/hypothecation/assignment on the project assets for benefit of the security interest/lenders by Prabati Koldam Transmission Company Ltd. and to take on record appointment of IDBI Trusteeship Services Limited, the security trustee/Petitioner No. 2 acting on behalf of and for the benefit of (i) IDFC Bank Limited and (ii) IDFC Infrastructure Finance Limited(formerly known as IDFC Infra Debt Fund Limited).

And

In the matter of

1. Parbati Koldam Transmission Company Limited
B9, Qutub Institutional Area,
Katwaria Sarai, New Delhi-110 016
2. IDBI Trusteeship Services Limited
Asian Building, Ground Floor,
17, R. Kamani Marg, Ballard Estate,
Mumbai-400 001

....Petitioners

Vs

1. BSES Rajadhani Power Ltd.
BSES Bhawan, Nehru Place,

New Delhi-110019

2. BSES Yamuna Power Ltd.
Shakti Kiran Building, Karkardooma,
Delhi-110092
3. Jaipur Vidyut Vitran Nigam Ltd.
Vidyul Bhawan, Janpath,
Jyothi Nagar, Jaipur-302006
4. Ajmer Vidyut Vitran Nigam Ltd.
Old Power House, Hathi Bata,
Jaipur Road, Ajmer-305001
5. Haryana power Purchase Centre
Shakti Bhawan, Sector-6,
Panchkula-134109
6. Jodhpur Vidyut Vitran Nigam Ltd.
New Power House, Industrial Estate, Jodhpur
7. Uttar Pradesh Power Corporation Ltd.
14th Floor, Shakti Bhawan Ext.
14, Ashok Marg, Lucknow-226001
8. Punjab State Electricity Board
SLDC Building, PSEB, Ablowal, Patiala-147001
9. North Delhi Power Ltd.
Grid Sub-Station Building, Hudson Lines,
Kingsway Camp, Delhi-110009
10. Chandigarh Administration
Circle UI of Chandigarh, Secretariat Office,
Sec-9-p, Chandigarh-160009
11. Himachal Pradesh State Electricity Board
Vidyut Bhawan, HPSEB, Shimla-171004
12. Uttarakhand Power Corporation Ltd.
Urja Bhawan, kanwali Road, Dehradun-248001
13. Power Development Department,
Government of Jammu & Kashmir
GLADNI, Narval, Jammu-180004
Bemina, Srinagar-190008

....Respondents

Following were present:

None

ORDER

The First Petitioner herein, Parbati Koldam Transmission Company Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "Act") to transmit electricity as a transmission licensee and for that purpose to undertake the business of establishing, commissioning, operation and maintenance of 400 kV transmission lines for evacuation of power from Parbati-II Hydroelectric Project (Parbati-II HEP) and Koldam Hydroelectric Project (Koldam HEP) in the State of Himachal Pradesh for its onward transmission to the beneficiary States in the Northern Region, the details of which are specified in the schedule attached to the licence issued vide order dated 15.9.2008.

2. The First Petitioner and Power Finance Corporation Limited (PFC) had approached the Commission in Petition No. 292 /2010 for approval under Section 17 (3) and (4) of the Act to create security of Rs. 771.18 crore in favour of Power Finance Corporation Limited. The Commission vide order dated 17.2.2011 accorded in-principle approval allowing the First Petitioner to create security in favour of PFC as Security Agent.

3. Parbati Koldam Transmission Company Limited and IDBI Trusteeship Services Limited have filed the present petition for creation of security in favour of IDBI

Trusteeship Services Limited as Security Trustee pursuant to the Rupee Facility Agreement and other financing/security documents by way of mortgage/hypothecation/assignment of the project assets for the benefits of the lenders to the project. The Petitioners have made the following prayers:

“(a) To take on record (i) IDFC Infrastructure Finance Limited (formerly known as IDFC Infra Debt Fund Limited) and (ii) IDFC Bank Limited as the new project lenders and the appointment of IDBI Trusteeship Services Limited acting on behalf of IDFC Infrastructure Finance Limited (formerly known as IDFC Infra Debt Fund Limited) and IDFC Bank Limited as the Security Trustee; and

(b) Approve creation and/or perfection of security interest in favour of Security Trustee, action on behalf of and for the benefit of (i) IDFC Infrastructure Finance Limited (formerly known as IDFC Infra Debt Fund Limited) and (ii) IDFC Bank Limited and proposed working capital lenders (to the extent and amounting to Rs. 25 crore); and

(c) Approve the Indenture of Mortgage, and execution thereof, for creation, and/or perfection of aforesaid security interest in favour of Petitioner No.2, the Security Trustee for the benefit of lenders; and

(d) Pass such other and further orders as the Commission may deem fit and under the facts and circumstances of the present case.”

4. According to the First Petitioner, as on 14.10.2016, Rs. 558.66 crore loan was outstanding. The First Petitioner has submitted that for the purpose of refinancing the outstanding loan aggregating to Rs. 558.66 crore and refinancing the undisbursed portion under the earlier loan meant for payments to capital creditors aggregating of Rs. 35 crore and meeting the financial expenses and transaction costs towards refinancing of erstwhile loan aggregating to Rs. 51.34 crore, the First Petitioner requested IDFC Infrastructure Finance Limited (formerly known as IDFC Infra Debt Fund Limited) and IDFC Bank Limited (hereinafter referred to as ‘lenders’) to make available financial assistance amounting to Rs. 645 crore as rupee term loan for the

project and lenders have agreed to provide the same. For this purpose, the lenders have appointed the Second Petitioner, namely IDBI Trusteeship Services 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 Rupee Facility Agreement and Security Trustee Agreement on 13.10.2016. The First Petitioner has submitted that the entire outstanding amounts under the erstwhile loans has been repaid to the erstwhile lenders, namely PFC and REC.

5. The First Petitioner has submitted that security interest created/to be created in favour of the Second Petitioner acting on behalf of and for the benefit of (i) IDFC Infrastructure Finance Limited (formerly known as IDFC Infra Debt Fund Limited) and IDFC Bank Limited, shall rank *pari passu* among IDFC Infrastructure Finance Limited and IDFC Bank Limited for the rupee term loan of Rs. 645 crore. The First Petitioner has submitted that under the terms of the financing documents, its obligations towards payment, re-payment, reimbursement, as the case may be, of the principal amounts along with interest and any other amount due and payable to the lenders including proposed working capital lenders under the Rupee Facility Agreement is required to be secured by the following security interest in favour of the Security Trustee acting on behalf of the lenders:

- (i) A first *pari passu* charge by way of mortgage over all immovable properties, present and future;
- (ii) A first *pari passu* charge by way of assignment/hypothecation/mortgage on all the movables plant and machinery, machinery spares, tools and

accessories, furniture, fixtures, vehicles and all other movable assets, present and future and of whatsoever nature;

- (iii) A first *pari passu* charge by way of assignment/hypothecation/mortgage on project's cash flows, receivables, book debts, revenues of the First Petitioner of whatsoever nature and wherever arising, present and future;
- (iv) A first *pari passu* charge by way of assignment/hypothecation/mortgage over all the intangibles including but not limited to goodwill, intellectual property and uncalled capital, present and future;
- (v) A first *pari passu* charge by way of assignment/hypothecation/mortgage or creation of security interest of :
 - (a) All the rights, title, interest, benefits, claims and demands whatsoever of the First Petitioner in the project documents {including, but not limited to, the Transmission License, the Transmission Services Agreement (TSA), the Power transmission Agreement (PSA), EPC Contract, Revenue Sharing Agreement (RSA), self-insurance fund or equivalent};
 - (b) All the rights, title, interest, benefits, claims and demands whatsoever of the First Petitioner in the clearances, licences and;
 - (c) All the rights, title, interest, benefits, claims and demands whatsoever of the First Petitioner (in relation to the project) in any letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee provided by any party to the project documents;
 - (d) All insurance and insurance proceeds in respect of the project; and

- (e) A first charge on the Trust and Retention Account/and Escrow Account (including Debt Service Reserve Account, Insurance Reserve Account) and any other reserve and any other bank accounts of the First Petitioner (including but not limited to the permitted investments) wherever maintained, including in each case, all monies lying credited/deposited into such accounts; and
- (vi) A first *pari passu* charge by way of pledge of shares held by R-Infra in dematerialized form in the equity and preference share capital of the First Petitioner representing 51% of the total paid up equity share capital of the First Petitioner.
- (vii) The above security shall rank *pari-passu* with the proposed working capital lenders (to the extent and amounting to Rs. 25 crore).

6. The First Petitioner has agreed to create security in favour of security trustee/lenders pursuant to Rupee Facility Agreement and other financing documents, by way of mortgage/hypothecation/assignment in accordance with the provisions of the Rupee Facility Agreement and other financing documents and had agreed that it shall be lawful for the lenders/security trustee, upon enforcement of security interest, to enter into and take possession of the mortgaged properties either through itself or its nominee, along with all movables, intangibles and any future assets under the project comprised the Rupee Facility Agreement and other financing documents and henceforth Petitioner No.1 shall take no action inconsistent with or prejudicial to the rights of lenders/security trustee acting for the lenders/security trustee quietly to possess, use

and enjoy the same and to receive the income, profits and benefits thereof without interruption or hindrance by Petitioner No. 1 or by any person or persons whatsoever.

7. The First Petitioner has proposed to create security interest as stipulated above, on assets, rights and entitlements of the First Petitioner, including movable and immovable properties of the project by way of mortgage by execution of Indenture of Mortgage through its Director/authorized person. Accordingly, the proposed security documents in relation to the Rupee Facility Agreement have been settled and initialed between the First Petitioner and Second Petitioner.

8. The First Petitioner has stated that in accordance with the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, prior approval of the Commission is essential for creation of security interest. Accordingly, the Petitioners have filed the present petition seeking prior approval of the Commission for creation of security interest, by way of mortgage/hypothecation/assignment on project assets in favour of Second Petitioner.

9. Notices were issued to the respondents. None was present on behalf of the parties. No reply has been filed by the respondents.

10. We have considered the submissions made by the Petitioners. We had granted approval to create security in favour of Power Finance Corporation Limited, acting on behalf and for the benefit of the erstwhile lenders to secure the loans through execution of Security Trustee Agreement subject to the terms stated in the order dated 17.2.2011 in Petition No. 292/2010. The Petitioners have stated that as on 14.10.2016, Rs. 558.66 crore erstwhile loan was outstanding and the First Petitioner desires to borrow monies

towards refinancing the outstanding erstwhile loan of Rs. 558.66 crore, refinancing the undisbursed portion under the erstwhile loans meant for payment to capital creditors aggregating to Rs. 35 crore and the balance of Rs.51.34 crore for meeting the financial expenses and transaction costs towards refinancing of erstwhile loans for which lenders have agreed to provide Rs. 645 crore as rupee term loan. For this purpose, the First Petitioner and lenders have appointed the Second Petitioner, namely IDBI Trusteeship Services Limited as Security Trustee for creation of security interest by way of mortgage/hypothecation/assignment on project assets. Accordingly, Rupee Facility Agreement and Security Trustee Agreement dated 13.10.2016 have been executed for loan upto Rs. 645 crore.

11. The Petitioners have submitted that the First Petitioner has repaid the entire outstanding erstwhile loan to the erstwhile lenders, namely Power Finance Corporation Ltd and Rural Electrification Corporation Limited. The Petitioners have placed on record the copy of 'No Due Certificate' from PFC and REC (Annexure 3 Colly). In our view, IDBI Trusteeship Services 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 approval under Section 17 (3) of the Act 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/hypothecation/assignment on project asset by execution of indenture of mortgage for the project. The earlier approval granted vide order dated 17.2.2011 in Petition No. 292/2010 shall stand withdrawn from the date of issue of this order.

However, the First Petitioner shall pass the benefits arising from refinancing to the beneficiaries of the project.

12. We, however, make it 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 has been 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 has to evaluate such 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, lender, 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 accords 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 follows:-

“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. 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.

13. The petition is disposed of in terms of the above.

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

sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson