

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION No. 184/MP/2017

Coram:

Shri A. K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 27th of February, 2018

In the matter of:

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for substitution of lenders by the Borrower and to take on record appointment of the Axis Trustee Services Limited, the Debenture Trustee/Petitioner No. 2, acting on behalf of and for the benefit of (i) Axis Bank Limited, and (ii) Aditya Birla Finance Limited, and creation and enforcement of security interest in favour of Debenture Trustee for the benefit of lenders (i) 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) Transmission Licence for development of Inter State Transmission System under “Northern Region System Strengthening Scheme NRSS- XXI (Part B)” dated 25.8.2014 and (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 document, etc., under “Northern Region System Strengthening Scheme NRSS- XXI (Part B).

And

In the matter of:

1. NRSS XXXI (B) Transmission Limited
A – 26/3, Mohan Cooperative Industrial Estate
Mathura Road, New Delhi- 110044

2. Axis Trustee Services Limited
Axis House, Bombay Dyeing Mills Compound,
Pandurang Budhkar Marg, Worli,
Mumbai – 400025

...Petitioners

Versus

1. AD Hydro Power Limited,



Bhilwara Towers, A-12,
Sector-1, Noida - 201 301

2. Haryana Power Purchase Centre
Shakti Bhawan Energy Exchange Room No. 446,
Top Floor, Sector - 6,
Panchkula - 134 109, Haryana
3. Punjab State Power Corporation Limited
D-3, Shakti Vihar, PSPCL,
Patiala- 147001
4. Himachal Sorang Power Pvt. Ltd.
901 B, 9th Floor, Time Tower, M. G. Road,
Gurgaon – 122009, Haryana
5. Adani Power Limited, Mundra,
3rd Floor, Achalraj, Opp. Mayors Bungalow,
Law Garden, Ahmedabad – 380006
6. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan,
Janpath, Jaipur - 302 005
7. Ajmer Vidyut Vitran Nigam Limited
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer – 305004
8. Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur – 342003
9. Lanco Anpara Power Limited 147,
Plot No. 397, Udyog Vihar, Phase 3,
Gurgaon – 122016
10. Lanco Budhil Hydro Power Pvt. Ltd
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
Subedarganj, Allahabad
 13. Jaiprakash Power Ventures Limited
A Block, Sector -128,
Noida - 201 304,
 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
Victoria Cross Vijyeta Gabar Singh Bhawan
Kanwali Road, Balliwala Chowk,
Dehradun – 248001
 22. Himachal Pradesh State Electricity Board Limited
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Vidyut Bhawan, Shimla – 171004

Parties Present:

Shri Mohit Jain, NRSS XXXI (B) TL

Shri Abhishek Upadhyay, NRSSXXXI (B) TL

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. The First Petitioner had approached the Commission in Petition No.79/MP/2015 for approval under Section 17 (3) and (4) of the Act to create security of Rs. 472.50 crore in favour of IDBI Trusteeship Services Limited. The Commission, vide order dated 15.4.2015, accorded in-principle approval to create security in favour of IDBI Trusteeship Services Limited.



3. NRSS XXXI (B) Transmission Limited and Axis Trustee Services Limited have jointly filed the present petition for approval under Section 17 (3) and 17 (4) of the Electricity Act, 2003 for creation of security interest in favour of Axis Trustee Services Limited as Debenture Trustee pursuant to the Debenture Trustee Agreement, Common Loan Agreement and other relevant financing documents for the benefits of the Debenture Holders of the First Petitioner in relation to Rs. 680 crore senior, listed, unsecured, redeemable, non-convertible debentures issued by the First Petitioner in the form of STRPPs of face value of Rs. 10 lakh each aggregating to Rs. 680 on a private placement basis for refinancing the existing loans as per the Common Loan Agreement dated 31.5.2017. The Petitioners have made the following prayers:

“(a) This Commission be pleased to take on record the new project lenders i.e. Debenture Holders and the appointment of Axis Trustee Services Limited as the Debenture Trustee acting on behalf of Debenture Holders;

(b) Approve creation and/or perfection of Security Interest over the TSA, the Project documents, its assets including in relation to the Project and on its transmission license and such other assets as mentioned in the Debenture Trust Deed in favour of Debenture Trustee, acting on behalf of and for the benefit of the Debenture Holders;

(c) Approve the Security Documents, and execution thereof, for creation and/or perfection of aforesaid Security Interest in favour of Petitioner No.2, the Debenture Trustee for the benefit of Debenture Holders;

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

4. According to the First Petitioner, for the purpose of refinancing of the project, the First Petitioner requested the Axis Bank Limited to sanction financial assistance of Rs. 603.21 crore as rupee term loan and non-fund based limits for repayment of the existing



loan sanctioned by a consortium of lenders led by ICICI Bank on such terms and conditions as specified in the Common Loan Agreement dated 31.5.2017 executed between the First Petitioner and Axis Bank Ltd. Axis Bank Ltd. assigned/novated its part financial assistance exposure to the extent of Rs. 200 crore to Aditya Birla Finance Ltd. by way of Deed of Assignment dated 28.7.2017 amongst Axis Bank Limited and Aditya Birla Finance Ltd. and related documents.

5. The First Petitioner has submitted that it has issued 680 crore senior, listed, unsecured, redeemable, non-convertible debentures in the form of STRPPs of face value of Rs 10 lakh each aggregating to Rs. 680 crore to specific eligible investors on a private placement basis (Debenture Holders) for refinancing the existing loan sectioned by a consortium of lenders. Pursuant to Debenture Trustee Agreement dated 19.7.2017, Axis Trustee Services Limited has agreed to act as Debenture Trustee for the Debenture Holders and to enter into all relevant debenture documents thereof and in this regard, the First Petitioner and Axis Trustee Services Limited have entered into Debenture Trust Deed dated 19.9.2017.

6. The First Petitioner has submitted that pursuant to the terms of the Debenture Trust Deed, the First Petitioner is required to, amongst others (i) create security interest on all its immovable and movable assets by mortgage and/or hypothecation and/or assignment and/or substitution and/or charge, as the case may be, (ii) assign by way of security the First Petitioner's rights, benefits, interest under the transmission licence and the TSA, all other project documents, cash flows, receivables, bank accounts,



clearances, notifications, Government approvals, orders, including but not limited to any amendments, supplements to the existing project documents, etc. in relation to the project, (iii) shares held by Essel Infraprojects Limited in the First Petitioner`s project , to the extent of 51% of the issued and paid up equity share capital of the First Petitioner, in favour of the Debenture Trustee for the benefit of the Debenture Holders and other security as mentioned in the Debenture Trust Deed.

7. The petition was heard after notice to the Petitioners and the Respondents. None was present on behalf of the Respondents. UPPCL has filed reply to the Petition and the First Petitioner has filed rejoinder to UPPCL reply vide its affidavit dated 5.1.2018.

8. UPPCL in its reply dated 30.12.2017 has submitted that before approving the First Petitioner`s request, the security agent nominated by the group of lenders is required to affirm its consent to the proposal in writing. UPPCL has further submitted that the First Petitioner may be directed to place on record the Mortgage Agreement, Hypothecation Agreement and Transfer of Assets Agreement. UPPCL has raised the following issues:

(i) Has the Commission withdrawn in-principle approval dated 15.4.2015 allowing the First Petitioner to create Security in favour of IDBI Trusteeship Services as Security Trustee?

(ii) Has the Security Trustee Agreement with IDBI Trusteeship Services been executed?

(iii) Has the earlier Security Trustee returned the documents of mortgaged property to the First Petitioner?



(iv) Have the financial institutions concerned given its consent to substitute Axis Trustee Services Limited as a new Security Trustee pursuant to the New security Trustee Agreement dated 31.5.2017 ?

(v) Has Axis Trustee Services Limited agreed to act as Security Trustee for the lenders to accept the trust created and to hold the Security to be created pursuant to the Security Documents?

9. The First Petitioner in its rejoinder has submitted that the financial institution concerned has already agreed to make Axis Trustee Services Limited as new Security Trustee for which Security Trustee Agreement dated 31.5.2017 has been executed. With regard to UPPCL`s contention that why the First Petitioner wants to change the Security Trustee from IDBI Trusteeship to Axis Trustee Services Limited, the First Petitioner has submitted that the new lender i.e. Axis bank is having ancillary business of Trusteeship which will have a better control, monitoring and operational efficiency. With regard to UPPCL`s contention pertaining to additional financial impact due to change in the rate of interest in case of present proposal of new set of lenders, the First Petitioner has submitted that the refinance of the existing loan/ debentures has been issued to reduce the cost of the debts and not having any additional financial impact. The First Petitioner has submitted that it will continue to maintain the books of accounts as per the accounting standards. The First Petitioner has placed on record Debenture Trustee Agreement, Debenture Deed Agreement, Common Loan Agreement, Sponsor Undertaking and Trust and Retention Account Agreement.



10. The First Petitioner, vide Record of Proceeding for the hearing dated 21.12.2017 was directed to submit the details of project cost and debt equity ratio. The First Petitioner vide its affidavit dated 2.1.2018 has submitted that the revised project cost is 686.5 crore and debt equity ratio is 5.03:1 and outstanding loan as on date is Rs. 680 crore. In this regard, the First Petitioner has placed on record, Audited Certificate dated 30.12.2017.

11. We have considered the submissions made by the Petitioners. Initially, the Petitioners had filed the petition for seeking approval for substitution of existing lenders and appointment of Axis Trustee Services Limited as Security Trustee. Subsequently, the Petitioners amended its application and prayed for approval for substitution of existing lenders and appointment of Axis Trustee Services Limited as Debenture for the benefits of Debenture Holders for refinancing of existing loans.

12. Since, the First Petitioner had not submitted complete information, vide letter dated 2.2.2018, it was further directed to file the following information:

(a) Project cost and debt equity ratio as per the Finance Closure;

(b) Present outstanding loan against Rs. 472.50 crore for which in-principle approval was accorded vide order dated 15.4.2015 in Petition No. 79/MP/2015;

(c) According to the First Petitioner, revised project cost is Rs. 686.50 crore duly certified by Auditor dated 30.12.2017 (Promoter`s equity i.e Rs. 135.17 crore + NCD loan i.e Rs. 680 crore =Rs. 815.17 crore). It is noted that the revised



funding of project is in excess of revised project cost and the difference (i.e. Rs. 128.67 crore) has been indicated as that utilized for funding current assets, refinancing charges and repayment penalty paid to old lender and other corporate purpose. It appears that the Petitioner seems to dilute its equity by raising the loan over and above the revised project cost.

(d) As per Article 18.2.1 of the TSA, the equity shareholding of the selected bidder in the issued and paid up capital of NRSS XXXI (B) Transmission Limited shall not be less than 51% upto a period of 2 years after the CoD and 26% for a period of 3 years thereafter. Therefore, the issued and paid up capital of NRSS XXXI (B) Transmission Limited as on the date of acquisition of the project, as on the date of the CoD, if achieved, as on today be placed on record. Confirmed that the proposed financing does not deviate for the equity Lock-in-commitment as provided in Article 18.2.4 of the TSA.

13. The First Petitioner vide its affidavit dated 12.2.2018 has submitted the following information/clarification:

(a) With regard to Project cost and debt equity ratio as per the Financial Closure, the First Petitioner has submitted that the debt equity ratio as per financial closure was 2:29 (including sub debt as part of equity). However, the condition for unsecured sub debt was that it should be non-interest bearing and should be repaid only after the secured senior debt is repaid. Considering sub-debt as debt, the debt equity works out to 4:11.



(b) With regard to present outstanding loan against Rs. 472.50 crore for which in principle approval was accorded vide order dated 15.4.2015 in Petition No. 79/MP/2015, the First Petitioner has submitted that the outstanding loan of Rs. 472.50 crore has been fully repaid.

(c) With regard to revised funding of project in excess of revised project cost and the difference (i.e Rs. 128.67 crore) that has been indicated as that utilized for funding current assets, refinancing charges and repayment penalty paid to old lender and other corporate purpose, and that the First Petitioner seems to dilute its equity by raising the loan over and above the revised project cost, First Petitioner has submitted that the equity holding is not diluted and Essel Infraprojects Ltd. holds almost 100% of equity in NRSS XXXI (B) Transmission Limited. This 100% equity holding of Essel Infraprojects Ltd., which was at the time of acquisition of the project, remained same till date. The First Petitioner has placed on record the Certificate dated 8.2.2018 issued by the Company Secretary showing the shareholding pattern at various stages of execution of the project and concluding that there is no dilution of shares and Essar Infraprojects Limited continues to hold 100% of shares. The First Petitioner has submitted that the project was funded by unsecured sub-debt of Rs. 72.82 crore from promoters, which are on-interest bearing and could only be repaid after payment of secured debt. The First Petitioner has submitted that it has not availed any additional working capital finance and the upsizing of the debt is utilized in the



business of the company. The First Petitioner has placed on record the revised project of Rs. 686.50 crore duly certified by Chartered Accountant.

(d) With regard to issued and paid up capital as on date of the acquisition of the project, as on the date of COD (if achieved), as on today and confirmation to the effect that the proposed financing does not deviate for the equity lock-in-commitment as provided in Article 18.2.4 of the TSA, the First Petitioner has submitted that as per the TSA, the equity share capital of Essar Infraprojects Limited in the issued and paid up equity share capital of NRSSS XXXI (B) Transmission Limited will not be less than 51% upto a period of 2 years after COD of the project and 26% for a period of 3 years thereafter. The First Petitioner has submitted that the proposed financing does not deviate for the equity lock-in-commitment as provided in Article 18.2.4 of the TSA. In this regard, the First Petitioner has placed on record the Certificate dated 8.2.2018 issued by the Company Secretary showing the shareholding pattern at various stages of execution of the project and concluding that there is no dilution of shares and Essel Infraprojects Limited continues to hold 100% of shares.

14. We have considered the submissions of the First Petitioner. As per Adherence cum amendment agreement dated 5.1.2015, the original project cost and financing plans is as under:

Particular	Rupee (in crore)	Percentage
Debt	472.50	70.00
Equity	205.50	30.00



Total	678.00	100.00
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15. It is noted that the First Petitioner has not submitted information with regard to project cost as on financial closure but has re-submitted the Auditor Certificate dated 30.12.2017 showing the revised project cost of Rs. 686.50 crore and envisaged project cost as Rs. 678 crore. However, the First Petitioner has not submitted any supporting documents regarding debt-equity ratio as on financial closure. The First Petitioner has submitted the Auditor Certificate dated 30.12.2017 containing the following project cost and funding details:

Total expenditure incurred		
Particulars	Envisaged Amount	Revised Project Cost incurred
a) EPC Cost	555.60	556.15
b) Preliminary and Pre-operative expenses consultancy, advisory and other misc. fee	17.00	17.00
c) Financing charges & Interest during construction	60.89	60.89
d) Contingency	44.51	52.46
Total Cost	678.00	686.50

Means of Finance		
Particulars	Envisaged Amount	Amount incurred up to 29.12.2017 on completion of COD & after upsizing of loan
a) Share capital and share premium	132.68	137.00
b) Reserves & Surplus	0.00	(1.83)
c) Net equity	132.68	135.17
d) Other loan	72.82	0.00
e) Bank loan/Stock/NCD	472.50	680.00
Total	678.00	815.17



16. Perusal of the Auditor Certificate reveals that the difference of Rs. 128.67 crore is to be utilized for funding current assets, re-financing charges and pre-payment penalty paid to old lender and other corporate purpose. It is noted that as per Adherence cum Amendment Agreement dated 5.2.2015, the equity of the project was Rs. 205.50 crore. However, as per Auditor Certificate dated 30.12.2017, the equity has been decreased to 135.17 crore. The First Petitioner has not explained the reasons for such deviation and whether it is permissible as per the terms and condition of the TSA. Further, the First Petitioner has issued senior, listed, unsecured, redeemable, non-convertible debentures of Rs. 680 crore on a private placement basis without any further details. The Petition being incomplete, it is not possible to take a view on the prayers of the Petitioners. However, the Petitioners are granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/information.

17. 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

