

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 262/MP/2018

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member**

Date of order: 4th of February, 2019

In the matter of

Petition under Section 17(3) and (4) of the Electricity Act, 2003 read with Article 14.2 of the Power Transmission Agreement dated 16.1.2009 and Article 17.2.2 of the Transmission Service Agreement dated 17.10.2017 as well as Articles 19.1.14 and 10.1.2015 of the debenture trust deed dated 18.6.2018 entered into between the WTGL and Catalyst Trusteeship Limited acting for the benefit of the debenture holders and also Article 6.1.14 and 6.1.25 of the Common Rupee Loan Agreement dated 27.12.2017 entered into between, inter alia, the WTGL and HDFC Bank Limited, seeking approval for creation of security interest in favour of Catalyst Trusteeship Limited acting as Common Security Trustee for the benefit of inter alia the debenture holders, the term lenders and the working capital lender for the Project 'Western Region System Strengthening Scheme-Part C'.

**And
In the matter of**

Western Transmission (Gujarat) Limited
601, 6th Floor, Hallmark Business Plaza,
Opp. Guru Nanak Hospital, Bandra (East),
Mumbai-400 051

...Petitioner

Vs.

1. Power Grid Corporation of India
"Saudamini"
Plot No.2, Sector 29,
Gurgaon 122001
2. MP Power Trading Company Ltd. (MP Tradeco)
Shakti Bhawan, Rampur,
Jabalpur 482008
3. Gujarat Urja Vikas Nigam Ltd. (GUVNL)
Race Course Road,
Vadodara 390007
4. Maharashtra State Electricity Distribution
Company Ltd (MSEDCL),
Prakashgad, Bandra (East)

Mumbai 400051

5. Chhattisgarh State Power Distribution Company Ltd (CSPDCL)
Vidyut Seva Bhavan, P.O. Sunder Nagar,
Danganiya, Raipur 492013
6. Government of Goa, Electricity Department,
Third Floor, Vidyut Bhavan
Panaji, Goa 403001
7. Electricity Department,
Administration of Daman & Diu
Secretariat, Fort Area
Moti Daman,
Daman 396220
8. Administration of Dadra and Nagar Haveli
Electricity Department,
Govt. of UT of Dadra and Nagar Haveli
Silvassa-396230
9. MP Audyogik Kendra Vikas Nigam Ltd (MPAKVNL)
Free Press House,
1st Floor, 3/54 Press Complex
A.B.Road, Indore 452008
10. HDFC Bank Limited
HDFC Bank House,
Senapati Bapat Marg,
Lower Parel, Mumbai-400 013
11. Catalyst Trusteeship Limited
GDA House, First Floor, Plot No. 85,
S.NO. 94 AND 95, Bhusari Colony (Right)
Kithrud (Pune)-411 038

...Respondents

Parties Present:

Shri Hemant Singh, Advocate, WTGL
Shri Tushar Srivastava, Advocate, WTGL
Shri Bhavesh Kundalia, WTGL

ORDER

Western Transmission (Gujarat) Pvt. Ltd., 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 construct, maintain and operate the transmission assets pertaining to Western Region System Strengthening Scheme-II, package-C (WRSSS-C). Western Region Transmission (Gujarat) Pvt. Ltd. (WRTGPL) and SBICAP Trustee Company Ltd. had approached the Commission in Petition No. 208/2009 for approval under Section 17 (3) and (4) of the Act to create security in favour of SBICAP Trustee Co. Ltd. by execution of indenture of mortgage. The Commission in its order dated 11.2.2010 had accorded the approval for creating security in favour of SBI CAP Trustee Company Limited. Subsequently, Western Region Transmission (Gujarat) Pvt. Ltd. and IDBI Trusteeship Services Ltd. approached the Commission in Petition No. 173/MP/2011 for approval of creation of security in favour of IDBI Trusteeship Services Limited acting on behalf of the Credit Agricole Corporate and Investment Bank and Mizuho Corporate Bank (CA-CIB). The Commission in its order dated 5.1.2012 had accorded the approval for creating security in favour of IDBI Trusteeship Services Limited. Subsequently, WRTGPL approached the Commission for assignment of licence in favour of RInfra consequent to the merger of WRTGPL with RInfra. The Commission in its order dated 22.9.2015 in Petition No. 176/MP/2015 approved the assignment of the transmission licence of WRTGPL in favour of RInfra.

2. With a strategy to divest its transmission business, RInfra proposed to sell its transmission assets under WRSSS C Project to Adani Transmission Limited (ATL) and incorporate WTGL for the purpose of holding the assets of WRSSS C through execution of Business Transfer Agreement between RInfra and the SPVs. After transfer of the assets of WRSSS C to WTGL, RInfra was required to transfer its

100% equity shareholding in WTGL to ATL. Accordingly, Rlnfra approached the Commission in Petition No. 31/MP/2017 for approval under Section 17 (3) of the Act for transfer of assets of WRSSS C to WTGL alongwith assignment of the transmission licence in favour of this SPV and thereafter, for transfer of its entire equity shareholding in this SPV to ATL. The Commission in its order dated 7.8.2017 approved the same. Since, Credit Agricole Corporate and Investment Bank (CA-CIB) was transferring its loan to others, the Petitioner approached the Commission in Petition No. 268/MP/2017 for creation of security in favour of IDBI Trusteeship Services Ltd. for the benefit of Standard Chartered Bank who provided loan to repay the loan of CA-CIB and financing the Project by way of Amendment and Restatement Deed dated 2.11.2017. The Commission in its order dated 8.3.2018 rejected the Petition on account of non-submission of latest annual accounts of 2016-17, Auditor Certificate certifying the actual project cost and actual debt-equity ratio, signed copy of the executed Agreements, project cost and debt-equity ratio and granted liberty to the Petitioner to approach the Commission with all relevant documents and information.

3. The Present Petition has been filed by Western Transmission (Gujarat) Limited (WTGL) under Section 17(3) and (4) of the Electricity Act, 2003 for approval of substitution of the erstwhile lender Standard Chartered Bank with HDFC Bank Limited (acting in the capacity of Term Lender and Working Capital Lender) which has provided the Loan Facility and Working Capital Facility in order to re-finance the project loan, and Catalyst Trusteeship Limited, in the capacity of the Debenture Trustee acting for the benefit of the debenture holders subscribing to the Debentures in order to securitise the cash flows of the project. The Petitioner has also sought

approval for creation of security in the favour of Catalyst Trusteeship Limited acting as the Security Trustee on behalf of HDFC Bank Limited and as Security/Debenture Trustee acting on behalf of debenture holders as provided under the Debenture Trust Deed. The Petitioner has made the following prayers in the petition:

“(a) Approve the substitution of the earlier lender i.e. Standard Chartered Bank with the Respondent No. 10 (acting in the capacity of Term Lender and Working Capital Lender) which has provided the Loan Facility and Working Capital Facility in order to re-finance the project loan, and the Respondent No. 11, in the capacity of the Debenture Trustee, which is acting for the benefit of the debenture holders subscribing to the Debentures in order to securitise the cash flows of the project;

(b) To grant approval for creation of security in the favour of Respondent No. 11 acting as the security trustee on behalf of Respondent No. 10 (acting in the capacity of Term Lender and Working Capital Lender), as stated in the present petition;

(c) To grant approval for creation of security in the favour of Respondent No. 11 acting as the security trustee/ debenture trustee acting on the behalf of debenture holders as provided under the Debenture Trust Deed, as stated in the present petition.”

4. The Petitioner has submitted that for the purpose of financing the Project, the Petitioner requested the HDFC Bank Ltd. for which HDFC Bank Ltd. vide its letter dated 19.12.2017 has agreed to make available rupee term loan of Rs. 300 crore and working capital to the tune of Rs. 10 crore and has entered into Common Rupee Loan Agreement dated 27.12.2017 and Working Capital Financing documents. At the request of the Petitioner and HDFC Bank Ltd., Catalyst Trusteeship Limited (hereinafter referred to as ‘Security Trustee’) has agreed to act as Security Trustee for the HDFC Bank Ltd. and has entered into Security Trustee Agreement dated 27.12.2017.

5. The Petitioner has submitted that subsequently, the Petitioner requested HDFC Bank Ltd. to grant sanction for raising the funds for issuance of rated,

secured, and non-convertible debentures of face value of Rs. ten lakh each aggregating to Rs. 165 crore (hereinafter referred to as the “Debentures”) on a private placement basis. HDFC Bank Ltd. vide its letter dated 12.6.2018 accorded approval for raising the funds for the Project through issuance of the debentures. Pursuant to above sanction, term lender, namely HDFC Bank Ltd. vide its letter dated 14.6.2018 cancelled its part commitment in relation to the loan facility amounting to Rs. 165 crore and accordingly, the commitment of the HDFC in its capacity as the term lender was reduced to Rs. 135 crore. Subsequently, the Petitioner and Catalyst Trusteeship Limited executed Debenture Trustee Agreement dated 15.6.2018 for the benefit of the debenture holders. Pursuant to the terms of the Debenture Trustee Agreement, Catalyst Trusteeship Limited agreed to act as Debenture Trustee for the Debenture Holders and enter into all relevant debenture documents pursuant thereto. The Debenture Trust Deed dated 18.6.2018 has been executed between the Petitioner and Catalyst Trusteeship Limited.

6. The Petitioner has submitted that as per Security Trustee Agreement dated 27.12.2017, the Secured Obligations are to be secured by first charge (i) on all the immovable properties of the Petitioner, both present and future; (ii) by way of hypothecation/ mortgage of all the movables of the Petitioner, including but not limited to movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets both present and future, in the form and manner satisfactory to the Lenders; (iii) on Petitioner’s current assets including book, debts, receivables, operating cash flows, uncalled capital, commissions, revenues of whatsoever nature and wherever arising, present and future; (iv) on all intangible assets of Project Transmission Limited including but not limited to goodwill, present and future; (v) by way of assignment or creation of

Security Interest, present and future, in terms of all the right, title, interest, benefits, claims and demands whatsoever of the Petitioner in the Project documents, under all the Clearances in relation to the Project, in any letter of credit, guarantee, performance bond provided by any party to the Project Documents; and under all Insurance Contracts and Insurance Proceeds. (vi) on letter of credit if any or such other security provided by the Long Term Transmission Customer(s), present and future (vii) over all bank accounts of the Petitioner, including but not limited to the Debt Service Reserve Sub-Account, Escrow Account and any other bank account of the Petitioner wherever maintained, present and future (viii) pledge of at least 51% of the fully paid up and voting equity share capital of the Petitioner held by the Promoter i.e ATL, in the form and manner satisfactory to the Lenders, provided that the Promoter has to furnish a non-disposal undertaking for additional 25% (twenty five percent) equity shareholding in the Petitioner.

7. The Petitioner has submitted that in terms of Article 5.1 of the Debenture Trust Deed dated 18.6.2018 the Secured Obligations are to be secured by a first charge (i) on all the immovable properties of the Petitioner, both present and future, in the form and manner satisfactory to the Debenture Trustee; (ii) by way of hypothecation/mortgage of all the movables of the Petitioner, including but not limited to movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets both present and future, in the form and manner satisfactory to the Debenture Trustee; (iii) on Petitioner's current assets including book, debts, receivables, operating cash flows, uncalled capital, commissions, revenues of whatsoever nature and wherever arising, present and future, in the form and manner satisfactory to the Debenture Trustee; (iv) on all intangible assets of Project Transmission Limited including but not limited to

goodwill, present and future, in the form and manner satisfactory to the Debenture Trustee (v) by way of assignment or creation of Security Interest, present and future, in the form and manner satisfactory to the Debenture Trustee in terms of all the right, title, interest, benefits, claims and demands whatsoever of the Petitioner in the Project documents, under all the Clearances in relation to the Project, in any letter of credit, guarantee, performance bond provided by any party to the Project Documents and under all Insurance Contracts and Insurance Proceeds. (vi) by way of assignment or Security Interest on letter of credit, if any or such other security provided by the Long Term Transmission Customer(s), present and future, in the form and manner satisfactory to the Debenture Trustee (vii) over all bank accounts of the Petitioner, including but not limited to the Escrow Account and any other bank account of the Petitioner wherever maintained, present and future, in the form and manner satisfactory to the Debenture Trustee (Provided however DSRAs and DRR shall be excluded from the charge created hereunder) (viii) an exclusive charge over the Debenture DSRA (other than the DRR) and all amounts laying therein in the form and manner satisfactory to the Debenture Trustee (ix) a first ranking pledge of at least 51% of the fully paid up and voting equity share capital of the Petitioner held by the Promoter (x) A non-disposal undertaking of the Promoter for additional 25% equity shareholding in the Petitioner in the form and manner satisfactory to the Debenture Trustee shall be executed upfront.

8. The Petitioner has submitted that in accordance with Article 14.2.1 of the Power Transmission Agreement (PTA) dated 16.1.2009 and Article 17.2.2 of the Modal Transmission Services Agreement dated 17.10.2017 (Model TSA), the Petitioner is permitted to create any encumbrance over all or part of the Security Package or the other assets of the Project in favour of the Lenders as security for

amounts payable under the Financing Agreements and any other amounts agreed by the parties as well as to create encumbrance over all or part of receivables or its transmission assets in the favour of the Lenders as security for amounts payable under the Financing Agreements, respectively.

9. The Petitioner has submitted that in terms of Article 6.1.14 of the Common Rupee Loan Agreement and Article 10.1.14 of the Debenture Trustee Deed, the Petitioner is under obligation to submit all financing documents to the Commission for obtaining approval and for creation of security. Further the Petitioner has submitted that in terms of Section 17 (3) and (4) of the Electricity Act, 2003, prior approval of the Commission is necessary for creating security over the transmission assets covered under the licence. Accordingly, the Petitioner has approached the Commission by way of the present petition for substitution of lender and for creation of security interest in favour of the security trustee.

10. The petition was heard after notice to the Petitioner and the Respondents. No reply has been filed by the Respondents. The Petitioner vide ROP for the hearing dated 15.11.2018 was directed to submit the following information:

- (a) Flow of loans availed for the instant project starting from the Commission's earlier approval for creation of Security Trustee as granted vide order dated 5.1.2012 in Petition No. 173/MP/2011 to till date by clearly mentioning the change in the lenders and the Security Trustee and corresponding approval of the Commission;
- (b) Annual accounts of 2016-17 and 2017-18, Auditor's Certificate certifying the actual project cost and actual debt-equity ratio at the time of availing loan from HDFC Bank and issue of debentures; and
- (c) No Dues Certificate for the loan amount from Standard Chartered Bank;

11. The Petitioner, vide its affidavit dated 7.12.2018, has submitted the information called for. With regard to Annual accounts for 2016-17 and 2017-18, the Petitioner has placed on record the Report dated 22.6.2017 issued by Chartered Accountant, Divisional accounts consisting balance sheet and profit and loss account as division of Rinfra for the period ending 31.3.2017 and audited account of WTGL for the year ending 31.3.2018. As regards actual project cost and actual debt-equity ratio at the time of availing loan from HDFC Bank and issue of debentures, the Petitioner has stated that the Petitioner completed the drawl of loan from HDFC Bank and Non-convertible Debentures by 30.6.2018. The Petitioner has submitted that after availing loan and issuance of debentures, the debt-equity ratio as on 30.6.2018 was 74:26 and the actual project cost incurred and reflected as on 31.3.2016 was Rs. 669.51 crore. In this regard, the Petitioner has submitted Auditor's Certificate dated 7.12.2018. As regards No Dues Certificate for the loan amount from Standard Chartered Bank, the Petitioner has provided the letter dated 27.6.2018 issued by the Standard Chartered Bank certifying that the loan facility granted to the Petitioner pursuant to Facility Agreement has been repaid in full and no dues remain under the Facility Agreement.

Analysis and Decision

12. The Petitioner approached the Commission in Petition No. 173/MP/2011 for approval of creation of security in favour of IDBI Trusteeship Company Limited acting on behalf of the Credit Agricole Corporate and Investment Bank and Mizuho Corporate Bank. The Commission vide order dated 5.1.2012 had accorded the approval for creating security in favour of IDBI Trusteeship Company Limited. Thereafter, the Commission vide order dated 7.8.2017 in Petition No. 31/MP/2017

accorded its approval to RInfra for transfer of assets of WRSSS C to the Petitioner (the SPV) and thereafter, for transfer of its entire equity shareholding in the Petitioner to ATL. During the process of finalization of the transaction between RInfra and ATL, the Creditors/ Lenders, namely, Credit Agricole Corporate and Investment Bank and Mizuho Corporate Bank (Original lenders), expressed their desire to be relieved of their obligations as creditors/lenders. Consequently, during the pendency of Petition No. 31/MP/2017, ATL arranged financial assistance for an aggregate principal amount of USD 23.35 Million from Standard Chartered Bank (SCB) to pay-off the existing original lenders. The Petitioner then approached the Commission through the Petition No. 268/MP/2017 seeking approval for creating security in favour of Standard Chartered Bank for securing the aggregate term loan amounting to USD 25.35 million together with all interest, penal interest, etc. on pari-passu basis inter-se. However, while disposing of the Petition, the Commission in its order dated 8.3.2018 observed that it was not possible to take a view on the prayer of the Petitioner in the absence of latest annual accounts of 2016-17, Auditor Certificate certifying the actual project cost and actual debt-equity ratio, signed copy of the executed Agreements, project cost and debt-equity ratio. The Petitioner has now in the present Petition placed on record the No Dues Certificate dated 27.6.2018 issued by Standard Chartered Bank.

13. The Petitioner has submitted that it took the decision to substitute earlier lender i.e. SCB as the financial assistance from SCB was in the form of External Commercial Borrowing and the same was maturing on 16.5.2018. Therefore, the Petitioner requested HDFC Bank Limited to sanction rupee term loan amounting to Rs. 300 crore and Working Capital to the tune of Rs 10 crore. Subsequently, HDFC Bank Ltd. granted the approval to the Petitioner vide sanction letter dated

19.12.2017 and executed a Common Rupee Loan Agreement dated 27.12.2017, including the WC Financing Documents, for Loan Facility of Rs. 300 crore and Working Capital Facility of Rs. 10 crore, respectively. The Petitioner and HDFC Bank Ltd. have appointed Catalyst Trusteeship Limited as the Security Trustee and entered into Security Trustee Agreement dated 27.12.2017. Thereafter, on the request of the Petitioner, HDFC Bank Ltd. vide its letter dated 12.6.2018 allowed the Petitioner to raise funds to the tune of Rs 165 crore through issuance of secured, redeemable, non-convertible debentures on private placement basis. Pursuant to the aforementioned sanction, HDFC Bank Ltd. vide its letter dated 14.6.2018, cancelled its part commitment in relation to the Loan Facility amounting to Rs. 165 crore and consequently reduced its commitment as the Term Lender to Rs 135 crore.

14. Pursuant to the issuance of the debentures, Catalyst Trusteeship Limited agreed to act as Debenture Trustee for the Debenture Holders and to enter into all relevant debenture documents thereof. Accordingly, the Petitioner and Catalyst Trusteeship Limited in its capacity as the Debenture Trustee entered into a Debenture Trustee Agreement dated 15.6.2018 and Debenture Trust Deed dated 18.6.2018.

15. Further, the Common Secured Parties i.e. HDFC Bank Ltd. (acting in the capacity of the Term Lender and Working Capital Lender), debenture holders, escrow bank and lenders agent requested the Catalyst Trusteeship Limited to act as the Common Security Trustee (Common Security Trustee) on the behalf of Common Secured Parties. According to the Petitioner, the above requirement was also necessary to empower the Common Secured Trustee to accept the Security Interest created/ agreed to be created pursuant to the Common Security Documents

(including the Common Rupee Loan Agreement, WC Financing Documents and the Debenture Trust Deed) from the Petitioner and to enter into the Common Security Documents and to exercise certain rights and perform certain duties in relation thereto. Accordingly, HDFC Bank Ltd., Catalyst Trusteeship Limited (acting in the capacity of the Security Trustee, Debenture Trustee and the Common Security Trustee) and the Petitioner entered into Common Security Trustee Agreement dated 19.6.2018.

16. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through equity of the project developer and loans by the financial institutions and issuance of debentures which is a form of loan. It is a 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, HDFC Bank Ltd has agreed to provide loan of Rs. 135 crore to the Petitioner and secured, redeemable, non-convertible debentures to the tune of Rs.165 crore have been issued for which necessary financing documents have been entered into for creation of security over all the movable and immovable assets of the project. In accordance with Article 17.2.2 of the Model TSA, the Petitioner has been allowed to create encumbrance over all or part of the Security Package or the other assets of the Project in favour of the Lenders as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties as well as to create encumbrance over all or part of receivables or its transmission assets in the favour of the Lenders as security for amounts payable under the Financing Agreements, respectively.

17. Section 17 (3) and (4) of the Act provides as under:

“17(3). No licensee shall 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.”

As per the above provision, a licensee is required to obtain approval of the Commission for assigning its 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.

18. The Petitioner has approached for approval (a) for substitution of the present lender, namely Standard Chartered Bank by HDFC Bank Ltd. (b) for creation of security interest in favour of Catalyst Trusteeship Limited on behalf of HDFC Bank Ltd. and (c) for creation of security/debenture trustee in favour of Catalyst Trusteeship Limited on behalf of debenture holders. In our view, HDFC Bank Ltd. as the substituted lender and Catalyst Trusteeship Limited acting as Common Security Trustee on behalf of the lender/debenture holders need to be given comfort for creation of security for the benefit of the lenders as security for the financial assistance provided by the lenders. We, therefore, accord approval allowing the Petitioner to substitute the lender, namely Standard Chartered Bank with HDFC Bank Ltd. and for creation of security in favour of Catalyst Trusteeship Limited on behalf of the lender in terms of Common Loan Agreement dated 27.12.2017 and Debenture Trust Deed dated 18.6.2018.

19. It is, however, made clear that the transmission licence of the Petitioner and the underlying assets cannot be assigned in favour of the nominee of the Lenders or 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 the licence and the assets of the 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.

20. 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 shall be filed by the Petitioner as and when required by the Commission for any specific purpose.

21. This approval is issued in supersession of all earlier approvals including approval dated 8.3.2018 in Petition No. 173/MP/2011 under Section 17 (3) and (4) of the Act to the Petitioner.

22. Petition No. 262/MP/2018 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson