

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 36/MP/2019

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

Date of order 11th of July, 2019

In the matter of

Petition under Section 17(3) and 17(4) of Electricity Act 2003 read with Clauses 10.1.1 of the Facility Agreement dated 28.9.2016 along with Clause 10.6.1 of the Security Trustee Agreement dated 28.9.2016 along with Article 15 of the Transmission Service Agreement dated 23.6.2015, for grant of approval in relation to change of the constitution of the consortium of existing lenders in line with the order dated 6.12.2016 passed by the Commission in Petition No. 219/MP/2016.

**And
In the matter of**

Sipat Transmission Limited
Achalraj, Opp. Mayor Bungalow, Law Garden,
Ahmedabad- 380 006.

..... **Petitioner**

Vs

1. Madhya Pradesh Power Management Company Limited
Block No-11, Ground floor, Shakti Bhawan,
Vidhyut Nagar, Rampur,
Jabalpur-482 008, Madhya Pradesh.
2. Chhattisgarh State Power Distribution Company Limited
P.O. Sunder Nagar, Dangania,
Raipur-492 013, Chhattisgarh.
3. Gujarat Urja Vikas Nigam limited
Vidhyut Bhawan, Race Course,
Vadodara-390 007.
4. Maharashtra Electricity Distribution Company Limited
Prakashgad, 4th Floor, Bandra (East),
Mumbai-400051.



5. Goa Electricity Department,
Govt. of Goa,
Aquem Alto, Margao, Goa-403 601.
6. Electricity Department, Dadar and Nagar Haveli,
66 kV, Amlilnd Estate,
Silvassa-396 230, Dadra Nagar Haveli
7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,
Daman-396 210.
8. Chief Executive Officer
PFC Consulting Limited,
First Floor, Urja Nidhi,
1, Barakhamba Lane, Connaught Place,
New Delhi-110 001.
9. Chief Executive Officer, CTU Planning
Powergrid Corporation of India Limited,
Saudamini, Plot No.2, Sector-29,
Gurgaon-122 001.
10. IndusInd Bank Limited
2401 Gen. Thimmayya Road,
Pune- 411001
11. IDBI Trusteeships Services Limited
Asian Building, Ground Floor,
17, R. Kamani Marg, Ballard Estate,
Mumbai
12. IFCI Limited
IFCI Tower, 61 Nehru Place,
New Delhi-110019
13. Industrial and Commercial Bank of China Limited
8th Floor, A Wing, One BKC,
Plot No. C-66, G-Block, Bandra (E),
Mumbai, Maharashtra -400051.
14. Tata Cleantech Capital Limited
One Forbes, Dr. V B Gandhi Marg,
Fort Mumbai-40001
15. Export-Import Bank of India



Centre One Building, Floor 21,
World Trade Centre Complex, Cuffe Parade,
Mumbai-400005

..... Respondents

The following was present:

Shri Hemant Singh, Advocate, STL

ORDER

The Petitioner, Sipat Transmission Limited (STL), had been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) to establish transmission system for "Additional System Strengthening for Sipat STPS” (hereinafter referred to as ‘the Project’) 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 7.3.2016 in Petition No. 289/TL/2015.

2. The Petitioner had approached the Commission in Petition No. 219/MP/2016 for approval under Section 17(3) and 17 (4) of the Act to create security over all the movable and immovable assets of the project in favour of IDBI Trusteeship Services Limited. The Commission in its order dated 6.12.2016 in Petition No.219/MP/2016 accorded in-principle approval allowing the Petitioner to create security in favour of IDBI Trusteeship Services Limited. Accordingly, Security Trustee Agreement and Common Facility Agreement dated 28.9.2016 had been executed for loan of Rs. 461 crore as Rupee Term Loan.

Submissions of the Petitioner

3. The Petitioner has filed the present Petition seeking approval under Section 17(3) and 17(4) of the Act for change of constitution of the consortium of existing lenders through down selling of part of Rupee term loan of Rs 461.00 crore by the original lender, namely IndusInd Bank Ltd. to new lenders, namely IFCI Limited, Industrial and Commercial Bank of



China Limited, TATA Cleantech Capital Limited and Export-Import Bank of India to the tune of Rs. 100 crore, Rs.100 crore, Rs. 85 crore and Rs. 75 crore respectively. The Petitioner has made the following prayers:

“(a) To acknowledge the appointment of IFCI Limited, Respondent No. 12, ICBC, Respondent No. 13, Tata Cleantech, Respondent No. 14, and EXIM, Respondent No. 15, as the New Lenders granting Rupee Term Loan to the Petitioner for development of the Transmission Project to the tune of Rs. 100 Crore, 100 Crore, 85 Crore and 75 Crore respectively; and

(b) To grant approval for change in the constitution of consortium of Existing Lenders (Respondent Nos. 9), with the addition of New Lenders (Respondent Nos. 12, 13, 14 and 15).”

4. The Petitioner has entered into Common Facility Agreement dated 28.9.2016 with IndusInd Bank Ltd. for grant of Rs. 461.00 crore as Rupee Term Loan facility for the project. The Petitioner has submitted that Article 10.1.1 of the Facility Agreement dated 28.9.2016 and Article 10.6.1 of Security Trustee Agreement dated 28.9.2016 empowers the original lender, namely, IndusInd Bank Ltd. to transfer, assign, novate all or part of its rights, interest, benefits and obligations under the Financing Documents to any new lender in accordance with the terms contained in the Rupee Loan Agreement and other Financing Documents. Accordingly, as per the Petitioner, the original lender, IndusInd Bank Ltd. has taken a commercial decision to down size the original debt of Rs. 461.00 crore granted to the Petitioner by inclusion of new lenders, namely, IFCI Limited, Industrial and Commercial Bank of China Limited, TATA Cleantech Capital Limited and Export-Import Bank of India in the Consortium of Lenders in the following manner:

Sr. No.	Name of Rupee Lenders	Commitment (Rs. in crore)
1.	IndusInd Bank Limited	101.00
2.	IFCI Limited	100.00
3.	Industrial and Commercial	100.00



	Bank of China Limited	
4.	TATA Cleantech Capital Limited	85.00
5.	Export-Import Bank of India	75.00
	Total	461.00

5. The Petitioner has submitted that through execution of separate Assignment Deeds, Novation Deeds and Deeds of Adherence to Lender's Agent Agreement dated 16.12.2016 and 21.11.2017 between the IndusInd Bank Limited and IFCI Limited, Industrial and Commercial Bank of China Limited, Tata Cleantech Capital Limited and Export-Import Bank of India, IndusInd Bank Ltd. has novated its obligation in terms of Rupee Term Loan to individual lenders to the extent of aforementioned amounts. Further, through execution of separate Deeds of Adherence to Security Trustee Agreement dated 16.12.2016 and 21.11.2017 with the Petitioner and the Security Trustee, namely, IDBI Trusteeship Services Limited, the new lenders have agreed to abide by all the terms and conditions as applicable to the lenders and become entitled to all the rights and benefits of the lenders under the Security Trustee Agreement.

6. The Petitioner has submitted that pursuant to the terms of Common Facility Agreement 28.9.2016, the Petitioner is under obligation to provide security in terms of,-

(a) A first charge on all tangible/movable assets of the Petitioner, including but not limited to movable plant and machinery, spares, tools and accessories, present and future, in relation to the Project;

(b) A first charge on all immovable assets of the Petitioner, including but not limited to civil structures, towers and cables, office buildings, present and future, in relation to the Project;

(c) A first charge on all intangible assets of the Petitioner, including but not limited to goodwill, Intellectual Property Rights, uncalled capital of the Petitioner and

undertakings, and all other assets including book debts, operating cash flows, receivables, commission revenues of whatsoever nature and wherever arising, present and future, in relation to the Project;

(d) A first charge by way of assignment or creation of Security interest on the following:

(i) All the rights, titles, interest, benefits, claims and demands whatsoever of the Petitioner in the Project documents, duly acknowledged and/or consented by the relevant counter parties to such Project documents (if required) all as amended, varied or supplemented from time to time;

(ii) All the rights, titles, interest, benefits, claims and demands whatsoever of the Petitioner in the clearances pertaining to the Project (to the extent permitted under the Applicable Law);

(iii) All the rights, titles, interest, benefits, claims and demands whatsoever of the Petitioner in letters of credit, guarantee, performance bond, corporate guarantees bank guarantees provided by any party to the Project documents;

(iv) All insurance contracts/proceeds under the insurance contracts;

(v) First charge on all bank accounts of the Petitioner wherever maintained, present and future, in relation to the Project including without limitation, the trust and retention account, and the sub-accounts (including but not limited to Debt Service Reserve Account or any account in substitution thereof, opened pursuant to the provisions of the trust and retention account agreement, wherein all revenues, disbursements, receivables and all funds of the Petitioner shall, from time to time be deposited and all permitted investments or other securities representing all amounts credited thereto);

7. The Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement (TSA) provide that the 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. The 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 relinquishment or transfer of its rights and obligations in the TSA.

8. The Petitioner has stated that in view of the provisions of sub-section (3) of Section 17 of the Act, the Petitioner, as a licensee cannot assign its license or transfer its utility by sale and lease, etc. without prior approval of the Appropriate Commission. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for change in consortium of lenders.

9. The Petitioner, vide letter dated 28.3.2019, was directed to submit information in respect of the Project as per the format prescribed by the Commission.

10. The Petition was heard on 4.4.2019 after notice to the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice. During the hearing, the Commission observed that the Petitioner has not submitted the complete information as per prescribed format. The Commission directed the Petitioner to file the complete information as per prescribed format. The Petitioner vide its affidavit dated 12.4.2019 has submitted the same.

Analysis and Decision

11. We have considered the submissions made by the Petitioner. The Commission in its order dated 6.12.2016 in Petition No. 219/MP/2016 has granted approval under Section 17(3) and (4) of the Act for creation of security in favour of IDBI Trusteeship Services Limited. The original lender, namely IndusInd Bank Ltd. made available financial assistance amounting to Rs. 416.00 crore as Rupee Term Loan for the project. As per the Common Facility Agreement dated 18.9.2016, the original estimated project cost and financing plan is as under:

Particular	Rupee (in crore)	Percentage
Debt	461.00	70%
Equity	197.10	30%
Total	658.10	100%

12. The Petitioner vide affidavit dated 12.4.2019 has submitted that the scheduled COD of the project was 23.3.2019. As regards actual COD, it has been submitted that the date of charging is 20.3.2019 and COD certificate from WRLDC is awaited. The Petitioner has also submitted Auditor Certificate dated 10.4.2019 certifying the following details regarding means of finance and application of fund as on 31.12.2018.

Means of Finance as on 31.12.2018	Rs in crore	Application of fund as on 31.12.2018	Rs in crore
Equity share capital	44.00	Property Plant and Equipment	61.00
Equity Share Premium	0.00	Capital Work in Progress	457.00
Loan/debenture from promoters, group companies	136.00 [#]	Other Non-Current Assets	0.00
Secured loan/debt from external source	334.00	Current Assets	4.00
Other (current liabilities, deficit in P & L account, etc.)	8.00		
Total	522.00	Total	522.00



#This includes 0% compulsory convertible debentures of Rs. 132 crore and unsecured subordinated loan from promoter of Rs. 4 crore.

13. Considering the compulsorily convertible debenture and the unsecured subordinate loan as part of Promoter`s contribution, the ratio between External Debt: Promoter`s Contribution works out as about 66:34 based on the actual means of finance as on 31.12.2018.

14. According to the Petitioner, the original lender, IndusInd Bank Ltd. has approached IFCI Limited, Industrial and Commercial Bank of China Limited, TATA Cleantech Capital Limited and Export-Import Bank of India for down selling of part of Rupee term loan of Rs 461.00 crore and they were agreed for the same. After execution of the Novation Deeds with the new lenders, the agreed commitment among all the external lenders and the actual loan as on 31.12.2018 as submitted by the Petitioner is as under:

Sr. No.	Name of Rupee Lenders	Sanctioned loan (Rs. in crore)	Actual loan as on 31.12.2018
1.	IndusInd Bank Ltd.	101.00	67.00
2.	IFCI Limited	100.00	63.00
3.	Industrial and Commercial Bank of China Limited	100.00	70.00
4.	TATA Cleantech Capital Limited	85.00	59.00
5.	Export-Import Bank of India	75.00	75.00
	Total	461.00	334.00

15. In the present case, the Commission in its order dated 6.12.2016 in Petition No. 219/MP/2016 has already approved the Security Trustee, namely IDBI Trusteeship Services Limited and the same would be continued without any change in terms and conditions of Security Trustee Agreement along with Rupee Term Loan Agreement. We, therefore, accord in principle approval to the Petitioner for appointment of IFCI Limited,

Industrial and Commercial Bank of China Limited, TATA Cleantech Capital Limited and Export-Import Bank of India as the new lenders granting Rupee Term Loan to the Petitioner to the tune of Rs. 100 crore, Rs. 100 crore, Rs. 85 crore and Rs. 75 crore respectively.

16. We, however, make it clear that the transmission licence of the 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 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. 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 Petitioner as and when required by the Commission for any specific purpose.

17. The Petition No. 36/MP/2019 is disposed of in terms of the above.

Sd/-
(I.S Jha)
Member

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

Sd/-
(P.K. Pujari)
Chairperson

