

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 135/MP/2021

- Subject : Petition seeking approval under Section 17 (3) and 17(4) of the Electricity Act, 2003 read with Article 15 of the Transmission Service Agreement dated 6.1.2016 for creation of security interest in the transmission project assets and other relevant documents of Warora Kurnool Transmission Limited in favour of new Security Trustee.
- Date of Hearing : 6.8.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Warora Kurnool Transmission Limited (WKTL)
- Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) Limited and 13 Ors.
- Parties Present : Shri Amit Kapur, Advocate, WKTL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Pinkesh, WKTL
Shri Bhavesh Kundalia, WKTL
Dr. R. Kathiravan, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Shri R. Srinivasan, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner, WKTL submitted that the present Petition has been filed seeking in-principle approval for creation of security interest in favour of new Security Trustee i.e. SBICAP Trustee Company Limited ('SBI Trustee') acting for the benefit of State Bank of India ('SBI') i.e. new lender of the Petitioner. Learned counsel mainly submitted the following:

(a) For the purpose of refinancing the existing Yes Bank facility availed from original lenders, the Petitioner has secured the funding from SBI, which *inter alia* includes (i) rupee term loan facility of upto Rs.2254 crore with a letter of credit upto Rs. 1300 crore as sub-limit of the rupee facility, (b) performance bank guarantee of upto Rs. 110 crore, and (c) Hedging facility of upto Rs.4 crore. The Petitioner has also entered into Facility Agreement dated 30.1.2021 with SBI.

(b) SBI Trustee has been appointed as the Security Trustee for securing the rights of SBI under the financing documents.

(c) No dues certificates issued by the original lenders have been placed on record. The earlier Security Trustee, namely, IDBI Security Trustee Limited has also issued no-objection certificate for releasing the charge created over the assets of the Petitioner, which has also been placed on record.

(d) Under the Facility Agreement dated 30.1.2021, the facilities need to be secured by first *pari passu* security interest on the movable and immovable assets of the Petitioner. For creation of such trust, a Security Trustee Agreement dated 7.4.2021 has been executed between the Petitioner, SBI and SBI Trustee authorizing SBI Trustee to act as the New Security Trustee for the benefit of SBI pursuant to the trust created under the said agreement and other security creating documents.

3. Learned counsel for the Respondent, TANGEDCO submitted that as per the Transmission Service Agreement ('TSA'), the Scheduled Commercial Operate Date of the Project was 5.11.2019 and the Petitioner was required to provide the Project Execution Plan to lead LTTC within 180 days from signing of TSA. However, neither the Project has achieved the commercial operation till date nor such Project Execution Plan has been submitted by the Petitioner. As per Article 3.1.3 of the TSA, an additional performance guarantee of around Rs. 5.24 crore is required to be furnished by the Petitioner. The Petitioner is required to abide by the timelines specified in the TSA regardless of acquisition of the Petitioner company/ change in the lenders, etc. While the Commission may allow the present Petition, the concerns of LTTCs regarding delay in implementation of the project ought to be addressed. Accordingly, the learned counsel prayed for time to file reply to the Petition.

4. In response, the learned counsel for the Petitioner submitted that issues raised by the learned counsel for the Respondent are not relevant to the subject matter of the present case. In any case, grant of the prayers under the present Petition will not prejudice the rights and interest of the parties under the TSA.

5. After considering the submissions of the learned counsels for the parties, the Commission directed the Respondent, TANGEDCO to file its reply to the Petition by 12.8.2021 after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by 18.8.2021.

6. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**