

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 101/MP/2021

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri P. K. Singh, Member

Date of order: 10th July, 2021

In the matter of:

Petition under Section 17, read with Section 79(1)(c) of the Electricity Act, 2003 for creation of security interest by Western Transco Power Limited in favour of Catalyst Trusteeship Limited, acting on behalf of ICICI Bank Limited, and seeking approval of substitution of lenders, namely, IDFC First Bank Limited and NIIF Infrastructure Finance Limited (erstwhile IDFC Infrastructure Finance Limited).

And

In the matter of

Western Transco Power Limited,
Adani Corporate House, Adani Shantigram,
Near Vaishno Devi, Ahmedabad – 382 421.

....Petitioner

Versus

1. Power Grid Corporation of India Limited,
“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. Adani Power Limited,
8-A Sambhav Bldg Judges Bungalow Road,
BodakDev Ahmadabad 380015.

11. Heavy Water Project,
Deptt.of Atomic Energy,
Mumbai.

12. Power Trading Corporation of India Ltd.,
NBCC Tower, 15, Bhikaji Cama Place,
New Delhi 1100066.

13. Jindal Power Ltd., Second Floor,
DCM Building, Plot No. 94,
Sector 32, Near Exit-9,
Gurgaon 122001.

14 Sugen Mega Power Project Torrent Power Ltd.
Torrent Power Limited,
Off. National Highway No. 8 Taluka Kamrej,
Dist. Surat 394155.

15. Catalyst Trusteeship Limited,
GDA House, Plot No. 85, Bhusari Colony (Right),
Kothrud, Pune-411 038,
Maharashtra.

16. ICICI Bank Limited,
ICICI Bank Tower, Nr. Chakli Circle,
Old Padra Road, Vadodara, Gujarat – 390007.

17. Axis Bank Limited,

Trishul, 3rd Floor,
Opp. Samarteshwar Temple,
Law Garden, Ellisbridge,
Ahmedabad, Gujarat – 380006.

Parties Present

Shri Hemant Singh, Advocate for the Petitioner
Shri Tushar Srivastava, Advocate for the Petitioner

ORDER

The Petitioner, Western Transco Power Limited (erstwhile Western Region Transmission (Maharashtra) Pvt. Ltd.) has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") by the Commission vide order dated 30.12.2008 for establishment of "Western Region System Strengthening Scheme (WRSSS) Project B" (hereinafter referred to as 'WRSSS B') on Build Own Operate Transfer (BOOT) basis. Western Region Transmission (Maharashtra) Pvt. Ltd. was incorporated as 100% subsidiary of a successful bidder, namely Reliance Infrastructure Limited (In short, "RInfra").

2. Thereafter, RInfra had approached the Commission in Petition No. 31/MP/2017 for approval under Section 17(3) of the Act for transfer of the assets of WRSSS B to the Petitioner, Western Transco Power Limited (WTPL) along with assignment of the transmission licences in favour of WTPL and thereafter for transfer of its entire equity shareholding in WTPL to Adani Transmission Ltd (ATL). By order dated 7.8.2017, the Commission, *inter-alia*, allowed RInfra to transfer entire equity shareholdings of RInfra in WTPL to ATL.

3. Subsequently, the Petitioner approached the Commission in Petition No. 14/MP/2018 for approval under Sections 17(3) and 17(4) of the Act for substitution of erstwhile lenders, namely, L&T Infra Debt Fund Limited, IndusInd Bank Limited and India Infrastructure Finance Company Limited, who were financing the project during the period when WTPL was vested with M/s RInfra, with IDFC First Bank Limited and IDFC Infrastructure Finance Limited who were going to finance the project after WTPL was acquired by ATL. The Commission, in its order dated 27.6.2018, accorded in-principle approval for substitution of lenders, namely, L&T Infra debt Fund Limited, IndusInd bank Limited and India Infrastructure Finance Company Limited with IDFC First Bank Limited and IDFC Infrastructure Finance Limited and accorded approval for creation of security in favour of the lenders in terms of Common Loan Agreement dated 27.11.2017. The Commission also noted that Security Trustee, namely, SBICAP Trustee Company Limited, as already approved vide order dated 22.3.2013 in Petition No. 7/MP/2013, would be continued without any change in terms and conditions of Security Trustee Agreement along with Rupee Term Loan Agreement.

4. The Petitioner has filed the present Petition for approval under Sections 17(3) and 17(4) of the Act for substitution of erstwhile lenders, namely, IDFC First Bank Limited and NIIF Infrastructure Finance Limited (erstwhile IDFC Infrastructure Finance Limited), with ICICI Bank Limited and Axis Bank Limited who have refinanced the projects/ transmission assets and for creation of security interest in favour of the Security Trustee, namely Catalyst Trusteeship Limited for the benefit of lender(s). The Petitioner has made the following prayers:

“(a) Approve the substitution of lenders namely, IDFC First Bank Limited and NIIF Infrastructure Finance Limited with ICICI Bank Limited and Axis Bank Limited, in terms stated in the present petition;

b) Allow Petitioner to create Security in favour of the Security Trustee for the benefit of the Lenders (and their agents and trustees) in terms of Facility Agreement.

c) Approve the assignment of facility by the Existing Lender in favour of New Lender, in terms as stated in the present petition.”

5. It has been submitted by the Petitioner that for the purpose of refinancing of the project, the Petitioner requested ICICI Bank Limited to sanction financial assistance of Rs. 450 crore as Rupee Term Loan. ICICI Bank Limited vide its letter dated 24.1.2021 has sanctioned loan facility of Rs. 450 crore as Rupee Term Loan for refinancing of the project of the Petitioner. In pursuance of the sanction letter issued by the ICICI Bank Limited, the Petitioner has entered into a Facility Agreement dated 25.2.2021 with the lenders to avail loan of Rs. 450 crore on the terms and conditions contained in the Facility Agreement and other financing documents. Further, at the request of the Petitioner, Catalyst Trusteeship Ltd. has agreed to act as the Security Trustee for the benefit of the secured party i.e. lender(s) including their assignees, transferees, novatees and to enter into all relevant financing documents pursuant thereto. Accordingly, the Petitioner has also entered into a Security Trustee Agreement with Catalyst Trusteeship Ltd. and ICICI Bank Ltd. on 25.2.2021.

6. It has been further submitted that subsequently ICICI Bank Limited, in terms of Clause 25.19 of the Facility Agreement dated 25.2.2021, approached Axis Bank Limited for novating and assigning of financial assistance to the tune of Rs. 100 crore and for seeking the participation of Axis Bank Limited in rupee term loan of Rs.

450 crore sanctioned by ICICI Bank Limited. Accordingly, Axis Bank Ltd. agreed to provide financial assistance to the Petitioner to the tune of Rs. 100 crore.

7. Pursuant to Clause 27.12 of the Facility Agreement, ICICI Bank Limited issued a Novation and Assignment Notice dated 31.3.2021 to Axis Bank Limited thereby novating and assigning its part financial obligation to the tune of Rs. 100 crore to Axis Bank Limited out of Rs. 450 crore agreed to be provided to the Petitioner in terms of the aforesaid Facility Agreement dated 25.2.2021. Vide said Novation and Assignment notice dated 31.3.2021, ICICI Bank Limited also informed the Security Trustee, namely Catalyst Trusteeship Ltd, about addition of Axis Bank Limited as another lender providing financial assistance to the Petitioner as per the Facility Agreement.

8. Further, as per Clause 6 of the Novation and Assignment Notice dated 31.3.2021, Schedule II, VI, VII and Part A of Schedule XI of the Facility Agreement was required to be amended. Accordingly, the Facility Agreement dated 25.2.2021 was amended and the Petitioner, Security Trustee and lenders (ICICI Bank Limited and Axis Bank Limited) by way of execution of Amended Facility Agreement dated 27.5.2021.

9. As per clause 10.1 of Amended Facility Agreement dated 27.5.2021, the Petitioner is required to create security over the facility together with all obligations in relation thereto which shall be secured by the following (collectively referred to as the "Security"):

"a. First charge on all the Borrower's movable assets, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and

all other movable assets, both present and future in relation to the Project until the final settlement date;

b. a first charge over all accounts, the Existing Escrow Account and all other back accounts of the Borrower including the Trust and Retention Account and the sub-accounts, including the Debt Service Reserve Account (or any account in substitution) thereof) that may be opened in accordance with this Agreement, the TRA Agreement or any of the other Transaction Documents and full funds from time to time deposited therein and all funds arising from the Project, the Project Proceeds and all Permitted investments or other securities both present and future in relation to the Project until the final settlement date;

c. a first charge over the current assets of the Borrower, both present and future, in relation to the Project until the final settlement date.;

d. a first charge on all revenues and receivables of the Borrower whether or not deposited in the Accounts, the book debts of the Borrower, the operating cash flows of the Borrower and all other commissions and revenues and cash of the Borrower of whatsoever nature, both present and future in relation to the Project until the final settlement date;

e. a first charge on all intangibles assets of the Borrower including but not limited to goodwill, rights, undertaking and uncalled capital of the Borrower, both present and future in relation to the Project until the final settlement date

f. a first charge by way of hypothecation until the final settlement date, on:

(i) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in the Project Documents (including the Transmission Service Agreement);

(ii) the rights, title, interests and benefits of the Borrower in, to and under all the Clearances (including the Transmission License for the Project) to the extent permissible by Applicable Law;

(iii) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantee (including contractor guarantees and bank guarantees) and liquidated damages (including Contractual Damages) and performance bond provided by any Project participant;

(iv) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower under all Insurance Contracts;

g. a first charge on the letter of credit, if any, on such other security provided by the long term transmission customers directly in favour of the Borrower until the final settlement date;

h. a pledge of the pledged securities held by the Pledgor until the final settlement date; and

i. a non-disposal undertaking on the NDU Securities by the Sponsor until the Pledge Enhancement Date or the final settlement date, whichever is earlier to the satisfaction of the lenders.”

The aforesaid security shall in all respects rank pari-passu inter-se amongst the lenders without any preference or priority to one over the other.”

10. The Petitioner has submitted that prior approval of the Commission, under Sections 17(3) and 17(4) of the Act, is required for creation of Security over the transmission assets in accordance with Clause 10.1 of the Amended Facility Agreement dated 27.5.2021.

11. The matter was called out for virtual hearing on 25.6.2021 after notice to the Petitioner and the Respondents. None was present on behalf of the Respondents despite notice. Also, no reply has been filed by the Respondents. The Commission, vide Record of Proceedings for the hearing dated 25.6.2021 directed the Petitioner to file auditor certificate mentioning the means of finance in reconciliation with utilization of the funds as on application date i.e., 16.3.2021 (any date 7 days prior to the filing of petition) along with utilization/ proposed utilization of the proceeds of loan sanctioned by ICICI Bank Limited and Axis Bank Limited. In response, the Petitioner has filed auditor certificate dated 30.6.2021 vide its affidavit dated 30.6.2021. The Petitioner has submitted that due to practical difficulties in getting the certificate in the middle of the month, the certificate has been submitted for position as on 31.3.2021 providing all the requisite details.

Analysis and decision

12. We have considered the submission of the Petitioner. The Commission in its order dated 27.6.2018 in Petition No. 14/MP/2018 granted approval to the Petitioner under Sections 17(3) and 17(4) of the Act for substitution of lenders, namely L&T Infra debt Fund Limited, IndusInd bank Limited and India Infrastructure Finance

Company Limited with IDFC First Bank Limited and IDFC Infrastructure Finance Limited and also accorded approval for creation of security interest in favour of SBICAP Trustee Company Limited on behalf of the lenders in terms of Common Loan Agreement dated 27.11.2017.

13. The Petitioner has filed the present petition for seeking substitution of erstwhile lenders, namely IDFC First Bank Limited and IDFC Infrastructure Finance Limited (now named as NIIF Infrastructure Finance Limited) with ICICI Bank Limited and Axis Bank Limited and for approval for creation of security interest in favour of Security Trustee, Catalyst Trusteeship Limited for the benefit of the lenders. For the purpose of refinancing the entire existing loans, the Petitioner approached ICICI Bank Limited, which agreed to sanction a rupee term loan for Rs. 450 crore and for this purpose, the Petitioner, ICICI Bank Limited and Security Trustee, Catalyst Trusteeship Limited have executed the Facility Agreement dated 25.2.2021. At the request of the Petitioner, Catalyst Trusteeship Ltd. has agreed to act as the Security Trustee for the benefit of the secured party i.e. lender including their assignees, transferees, novatees and to enter into all relevant financing documents pursuant thereto. Accordingly, the Petitioner, lender and Catalyst Trusteeship Ltd. have also entered into a Security Trustee Agreement on 25.2.2021. Subsequently ICICI Bank Limited approached Axis Bank Limited for novation and assignment of financial assistance of Rs. 100 crore, who agreed to provide the same subject to the terms and conditions set out in the Facility Agreement. Pursuant to this, Amendment Facility Agreement dated 27.5.2021 has been executed between the Petitioner, Security Trustee, ICICI Bank Limited and Axis Bank Limited.

14. Estimated cost of the project and means of finance as on the date of financial closure (original financing plan agreed by the lenders as per the Common Loan Agreement) are as under:

Original estimated project cost (As per Agreement)	Rs. in crore	Means of finance (As per Agreement)	Rs. In crore
Hard cost	675.71	Equity share capital	10.00
IEDC	-	Equity share premium	0.00
IDC	-	Loan/Debenture from promoters, group companies	183.21
Contingency	-	Secured loan/debt from external source	443.35
WC and DSRA	-	Others	39.15
Total	675.71	Total	675.71

15. Details of lenders after refinancing of existing loan are as under:

Sr. No.	Lenders	Commitment under Rupee Facility Agreement (Rs. in crore)
1.	ICICI Bank Limited	350.00
2.	Axis Bank Limited	100.00
	Total	450.00

16. The Petitioner vide its affidavit dated 30.6.2021 has submitted auditor's certificate dated 30.6.2021 certifying the following utilisation of the proceeds of the sanctioned loan of Rs. 450 crore by the lenders:

Particular	Rs. in crore
Repayment of existing term loan	412.64
Repayment of the sponsor loan (including interest)	36.03
Transactional expenses in relation to the facility transaction fees, legal fees and prepayment penalty, if applicable.	1.33
Total	450.00

17. Further, the auditor in its certificate dated 30.6.2021 has certified the means of finance in reconciliation with utilisation of funds as on 31.3.2021 as under:

Utilization of Funds	Rs. in crore	Means of Finance	Rs. in crore
Financial Asset (SCA Receivables)	569.61	Total Equity	167.75
Trade Receivables	8.10	Borrowings (including Current Maturities & Loan from promoters)	462.77
Cash and Bank Balance	39.12		
Current investments	20.47	Other Liabilities	20.44
Other Assets	13.66		
Total	650.96	Total	650.96

18. The auditor in its certificate dated 30.6.2021 has certified that purpose of the rupee term loan of Rs. 450 crore availed from ICICI Bank Limited and Axis Bank Limited are (a) repayment of existing facilities, (b) repayment of the sponsor facility, and (c) meeting transactional expenses in relation to the facility (transaction fees, legal fees and prepayment penalty, if applicable).

19. We have considered the submissions made by the Petitioner. Sub-sections (3) and (4) of Section 17 of the Act provide 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 his licence or transferring its utility or any part thereof by

way of sale, lease, exchange or otherwise and entering into an agreement relating to any of these transactions.

20. The transmission projects are capital intensive projects requiring large capital investment. These projects are financed through loans. It is 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, ICICI Bank Limited and Axis Bank Limited have agreed to provide loan of Rs. 450 crore and for the said purpose have entered into Facility Agreement dated 27.2.2021 read with Amendment thereto dated 27.5.2021 with the Petitioner for, *inter-alia*, refinancing of the existing loan. In the instant case, the Petitioner and lenders have appointed the Respondent No. 15, namely, Catalyst Trusteeship Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project pursuant to Security Trustee Agreement dated 25.2.2021. In our view, lenders and Catalyst Trusteeship Limited needs to be given comfort for creation of security for the benefit of lender as security for the financial assistance provided by the lender. We, therefore, accord approval for substitution of erstwhile lenders, namely, IDFC First Bank Limited and NIIF Infrastructure Finance Limited (erstwhile IDFC Infrastructure Finance Limited), with ICICI Bank Limited and Axis Bank Limited who have agreed to refinance the projects/ transmission assets and accord in principle approval for creation of security interest in favour of Security Trustee, namely, Catalyst Trusteeship Limited for the benefit of lender(s).

21. It is, however, made clear that the transmission licence granted by the Commission to 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 of 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.”

22. Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lender, Security Trustee and the nominee, approve the assignment of the licence to a nominee of the lender 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.

23. With the above, Petition No. 101/MP/2021 is disposed of in terms of the above findings and restrictions.

Sd/-
(P.K.Singh)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson