

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 153/MP/2022

Subject : Petition for approval for creation of security interest under Sections 17(3) & 17(4) of Electricity Act, 2003 over Petitioner No. 1's Assets in favour of Petitioner No. 2 (including its assignees, transferees, novates) for the purpose of Petitioner No.1's Transmission Project.

Date of Hearing : 27.9.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioners : Khargone Transmission Ltd. (KTL) and Anr.

Respondents : M.P Power Management Co. Ltd. (MPPMCL) and 6 Ors.

Parties Present : Ms. Mandakini Ghosh, Advocate, KTL
Shri Aditya Singh, Advocate, MPPMCL
Shri Anup Jain, Advocate, MSEDCL
Shri Akshay Goel, Advocate, MSEDCL

Record of Proceedings

Learned counsel for the Petitioners submitted that the present petition has been filed seeking approval for creation of security interest over the Petitioner No.1's assets in favour of the Petitioner No.2 for the purpose of the Petitioner No.1's transmission project. Learned counsel submitted that pursuant to Record of Proceedings for the hearing dated 15.7.2022, the Petitioners have impleaded CTUIL and BPC as party to the Petition and has filed amendment memo of parties to that effect. Learned counsel submitted that the Petitioner has filed rejoinders to the replies filed by the Respondents No 1 & 4. She added that the Respondents have primarily contested that the various elements over which the Petitioner No.1 has sought to create security interest (for instance pledge of 51% of equity share etc.) are not covered under the TSA. However, the Commission has already allowed the various Petitions with the similar prayers as made by the Petitioners in the present Petition. In this regard, learned counsel placed the reliance on the order dated 18.6.2022 in Petition No.100/MP/2022 in the matter of WRSS XXI (A) Transco Ltd. v. AGEL & Ors. and order dated 11.3.2020 in Petition No. 456/MP/2019 in the matter of Odisha Generation Phase-II Transmission Ltd. v. NBPDC and Ors.

2. Learned counsel for the Respondent No.1 submitted that the right of lenders is already protected under Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 ('Transmission Licence Regulations'), which provides that in case of default by the licensee in debt repayment, the Commission may on application made by lenders assign the licence to nominee of lender and hence, creation of security interest at the present stage is not warranted since the entire case is covered under the Transmission Licence Regulations. Learned counsel

further submitted that creation of security interest over the goodwill, project documents, clearances as sought by the Petitioner No.1 is totally in variance with the provisions of TSA which, at Article 15.2.2, provides that encumbrance to be created by the Petitioner No.1 for the benefits of lenders shall be restricted to only receivable and other assets of the project and ought not to be extended to other parameters of the project as claimed and contended by the Petitioner No.1 as it would render the Article 15.2.3 meaningless. Learned counsel submitted that reliance placed by the Petitioner No. 1 on the earlier orders of the Commission is misplaced as the question regarding inclusion of items in the relevant clause of TSA was not under consideration therein.

3. Learned counsel for the Respondent No.4 submitted that the provisions of TSA only provide the Petitioner No.1 to create encumbrance over all or part of the receivables, letter of credit or other assets of the project in favour of lenders and does not extend to the other parameters/elements of the project as claimed by the Petitioner No.1. He further submitted that the expression "other asset" of the project has to be read in context of receivable and letter of credit and not independently as sought by the Petitioner No.1 to include therein various elements/ parameters which are not allowed in TSA. Learned counsel referred to the order of Maharashtra Electricity Regulatory Commission dated 24.8.2022 in Case No. 30 of 2022 stipulating certain conditions while allowing the licensee to create security interest and submitted that the Commission may also consider specifying such conditions while permitting the Petitioner No.1 to create the security interest.

4. In rebuttal, learned counsel for the Petitioners submitted that it is only after recognizing the provisions of Regulation 12 of the Transmission Licence Regulations, the Commission in its various orders has allowed the transmission licensee(s) to create the security interest in favour of Security Trustee for the benefits of the lender(s). She vehemently submitted that similar prayers including aspect of the creation of security interest over the various elements as sought by the Petitioner No.1 in line with the general business practices, has been allowed by the Commission in such earlier orders.

5. The Commission observed that creation of security interest over the Share Capital did not appear to be in consonance with the Act or TSA and directed the Petitioner to clarify as to how it is permissible under the Act or Regulations or TSA.

5. After hearing the learned counsel for the Petitioners and the Respondents, the Commission directed the Respondent No.4 to provide the copy of the order of MERC as referred to during the course of hearing and the Petitioners shall file its brief submissions (not exceeding five pages) addressing the concerns/contentions of the Commission and Respondents including various stipulations/conditions as referred to by the Respondent No.4 within two weeks.

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

By order of the Commission

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