

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 160/MP/2022**

- Subject : Petition under Sections 79(1)(c), 79(1)(d) and 79(1)(k) of the Electricity Act, 2003 read with Regulation 4 of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 for giving prior intimation of undertaking the telecommunication business by the Petitioners in compliance with the Commission's letter dated 4.5.2022.
- Date of Hearing : 5.7.2022
- Coram : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioners : Khargone Transmission Limited (KTL) and 3 Ors.
- Respondents : Madhya Pradesh Power Management Co. Limited (MPPMCL) and 19 Ors.
- Parties Present : Shri M. G. Ramachandran, Sr. Advocate, KTL  
Shri Deep Rao, Advocate, KTL  
Shri Arjun Agarwal, Advocate, KTL  
Shri Ravi Sharma, Advocate, MPPMCL  
Shri Anindya Khare, MPPMCL  
Shri Swapnil Verma, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Ranjeet Singh Rajput, CTUIL

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioners submitted that the present Petition has been filed for giving prior intimation of undertaking the telecommunication business by the Petitioners in accordance with Regulation 4 of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulations, 2020 ('Sharing of Revenue Regulations'). Learned senior counsel submitted that the Petitioners intend to optimise the utilisation of unutilised capacity on spare pairs of optical ground wire containing optical fibre ('OPGW') of existing OPGW fibre assets owned by the respective Petitioners for services to be provided to interested entities including Infrastructure Providers Category-I registration holding entities ('entities') that are engaged in the business of providing/ utilising telecommunication infrastructure. Learned senior counsel referred to the Petition and submitted that the Petitioner has already furnished all relevant details such as the Petitioners' proposed model, salient features of the draft agreement to be executed between the Petitioners and the entities, compliance with the Sharing of Revenue Regulations, proposed Revenue Sharing and role of entities, etc. Learned senior counsel submitted that the ultimate ownership and control of the involved



transmission assets shall continue to be with the Petitioners themselves and no encumbrance whatsoever will be created on any of the transmission assets.

3. Learned counsel for the Respondent No.1, MPPMCL objected to the maintainability of the Petition. Learned counsel submitted that the similar Petition filed by the parent company of the four Petitioners/licensees herein, on their behalf, bearing No. 544/MP/2020 has already been rejected by the Commission vide order dated 18.1.2022. Accordingly, the present Petition now filed by such licensees is hit by the principle of *res-judicata*, in particular explanation 6 to Section 11 of the Code of Civil Procedure, 1908 and by the doctrine of waiver. In this regard, learned counsel placed reliance on the judgment of Hon'ble Supreme Court in the case of Ram Gobinda v. Bhakta bala [AIR 1971 SC 664]. Learned counsel pointed out that the order dated 18.1.2022 was passed by the coram of four members whereas the present case is being heard by the coram of only three members. Learned counsel sought liberty to file its reply on the maintainability of the Petition.

4. In response, learned senior counsel for the Petitioners submitted that the Petition No. 544/MP/2020 was not dismissed on the merits but on two primary grounds of (i) maintainability and (ii) perceived creation of encumbrance of transmission assets. Learned senior counsel submitted that while filing the present Petition, the Petitioners have taken due notice of the Commission's reservations as regards the earlier Petition inasmuch as the Petitioners have directly approached this Commission instead of through their common parent company and in the present proposal of the Petitioners as such no licensing/leasing of vacant space of transmission towers, duct spaces, vacant spaces on transmission sub-station and RoW is involved. Learned senior counsel submitted that the present proposal of the Petitioners is completely different from the earlier one and is squarely covered under the Sharing of Revenue Regulations. Learned senior counsel further requested that the notice may be issued in the matter and the objections with regard to the maintainability of the Petition may be taken up along with the merits of the case.

5. After hearing the learned senior counsel for the Petitioners and the learned counsel for the Respondent, MPPMCL, the Commission ordered as under:

- (a) Admit. Issue notice to the Respondents.
- (b) The Petitioner to serve copy of the Petition on the Respondents including CTUIL and the Respondents and CTUIL to file their reply within four weeks after serving copy of the same to the Petitioner, who may file its rejoinder within three weeks thereafter.
- (c) The Respondent, MPPMCL is directed to file a combined reply on the maintainability as well as on merits of the case.
- (d) The Petitioner to submit the following details/information on affidavit within two weeks with copy to the Respondents:
  - (i) Proposed business model and detailed modalities for carrying out of telecommunication business.
  - (ii) Whether the proposed business shall be undertaken by a separate SPV / transmission licensee owing the transmission lines.

- (iii) Estimated revenue to be derived from proposed business.
  - (iv) Details of OPGW available with the Petitioners vis-à-vis spare capacity proposed to be utilized for other business.
  - (v) Specify the revenue sharing mechanism for the business model proposed by the petitioner.
- (e) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

6. The Petition shall be listed for hearing in due course for which separate notice will be issued.

**By order of the Commission**

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