

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 267/MP/2021

- Subject : Petition seeking approval of this Commission under Section 17(3) and 17(4) of the Electricity Act, 2003 read with Article 15.3 of the Transmission Service Agreement dated 13.1.2016, Article 17.3 of the Supplementary TSA dated 3.7.2017 and Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009.
- Date of Hearing : 24.2.2022
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioners : 1. NRSS XXXVI Transmission Limited (NRSS XXXVI)
2. PTC India Financial Services Limited (PFS)
3. Resurgent Power Ventures Pte. Limited (Resurgent Power)
- Respondents : U P Power Corporation Limited and 13 Ors.
- Parties Present : Shri Venkatesh, Advocate, Resurgent Power
Shri Ashutosh K. Srivastava, Advocate, Resurgent Power
Shri Neil Chatterjee, Advocate, Resurgent Power
Shri Jayant Bajaj, Advocate, Resurgent Power
Ms. Mandakini Ghosh, Advocate, PFS
Ms. Ritwika Nanda, Advocate, Essel Infra
Ms. Akshita Salampuria, Advocate, Essel Infra
Shri Randolph Dsouza, Resurgent Power
Shri Vishal Goyal, PFS
Ms. Shikha Jain, PFS

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner No. 3, Resurgent Power Ventures Pte. Limited (Resurgent Power) submitted that the present Petition has been jointly filed by the Petitioners, NRSS XXXVI (licensee), PFS (lender) and Resurgent Power (nominee of lender) under Section 17(3) of the Electricity Act, 2003 ('the Act') read with Article 15.3 of the Transmission Service Agreement ('TSA') dated 13.1.2016, Article 17.3 of the Supplementary TSA dated 3.7.2017 and in terms of the liberty granted by the Commission in its order dated 8.3.2018 in Petition No. 266/MP/2017 seeking prior approval of the Commission for transfer of equity shareholding and management control of NRSS XXXVI in favour of the nominee of lender i.e. Resurgent Power. Learned counsel mainly submitted the following:

(a) Pursuant to the admission of the Petition vide Record of Proceedings for the hearing dated 11.1.2022, notice was issued to the Respondents to file their reply, if any, by 30.1.2022. However, no reply has been filed by the Respondents.

(b) Licensee, NRSS XXXVI had defaulted in the interest payment and repayment of its debts to the lender and it was not in position to raise resources on its own and complete the Project. Essel Infra was also not in position to provide further financial assistance to the licensee to complete the Project and to arrange for the required finance.

(c) In view of the continuous defaults on interest as well as on debt repayment, the lender, PFS decided to exercise its right of substitution under Article 15.3.1 and 15.3.2 of the TSA to appoint lender's nominee and conduct a global competitive bidding process for finalizing its nominee for transfer of 100% shareholding/ any other securities held by Essel Infra or its affiliate in NRSS XXXVI in favour of lender's nominee.

(d) Essel Infra granted its concurrence for initiating the process for appointment of the new nominee vide Board Resolution dated 16.6.2020.

(e) Accordingly, in order to revive NRSS XXXVI and complete the Project, lender appointed an Independent Consultant (ABPS Infrastructure Advisory Private Limited), which issued a single stage RfP on 17.11.2020 for selection of bidder to act as lender's nominee and acquire the entire shareholding of NRSS XXXVI and execute and operate all works associated with the Project under the TSA.

(f) Pursuant to the detailed evaluation of technical and financial bids received in response to the RfP, Resurgent Power emerged as the successful bidder and was issued the Letter of Intent (LoI) on 11.11.2021.

(g) In Petition No. 266/MP/2017 filed by NRSS XXXVI seeking approval of the Commission under Section 17(3) and 17(4) of the Act read with Article 15.2.2 of the TSA for creation of security interest over all its assets in favour of PFS, the Commission by its order dated 8.3.2018 had observed that 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 licence to a nominee of the lender subject to due diligence of the process. The Commission had also observed that the 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. Accordingly, the present Petition has been filed seeking prior approval of the Commission.

(h) The Petitioners have also prayed to issue directions to restrain the beneficiaries of the transmission system/ Project from taking any coercive actions under the TSA and the Supplementary TSA including encashing of CPG (Contract Performance Guarantee) till the completion of the Project so that the transmission system/ Project can be expeditiously developed by the lenders' nominee.

(i) Since the lender's nominee would undertake the Project upon the approval of the Commission, it is imperative that a reasonable protection is accorded to such nominee. Resurgent Power to undertake implementation works and commission the Project post acquisition of shareholding. In this

regard, the reliance was also placed on the Commission's order dated 7.2.2021 in Petition No. 334/MP/2020 in the case of Warora Kurnool Transmission Limited v. TANGEDCO and Ors.

3. In response to the query of the Commission regarding actual commissioning date of the Project as anticipated by Resurgent Power, learned counsel for Resurgent Power expressed his inability to give such date without assessing the actual status or progress of the Project by Resurgent Power prior to taking over of the Project.
4. None was present on behalf of the Respondents despite notice.
5. Considering the submissions made by the learned counsel for the Petitioner, Resurgent Power, the Commission reserved the order in the matter.

By order of the Commission

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