

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.87/MP/2016**

**Coram:**

**Shri Gireesh B.Pradhan, Chairperson**

**Shri A.K.Singhal, Member**

**Shri A.S.Bakshi, Member**

**Dr. M.K.Iyer, Member**

**Date of Hearing: 26.7.2016**

**Date of order: 28.7.2016**

**In the matter of**

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for assignment of license by way for creation of security interest in favour of Security Trustee/Lenders and other security creating documents/Financial Agreement by way of mortgage/hypothecation/assignment of mortgage properties and project assets of Raipur-Rajnandgaom-Warora Transmission Project.

**And**

**In the matter of**

1. Raipur-Rajnandgaon-Warora Transmission Limited  
Achalraj, Opp. Mayor Bungalow, Law Garden,  
Ahmedabad-380 006.

2. AXIS Trustee Services Limited  
2<sup>nd</sup> Floor, É'Axis House,  
Bombay Dyeing Mill Compound,  
Pandurang Budhkar Marg, Worli,  
Mumbai-400 025

**..... Petitioners**

**Vs**

1. Madhya Pradesh Power Management Company Limited  
Block No-11, Ground floor, Shakti Bhawan, Vidhyut Nagar, Rampur,  
Jabalpur-482 008, Madhya Pradesh

2. Chhattisgarh State Power Distribution Company Limited  
P.O Sunder Nagar, Dangania,  
Raipur-492 013, Chhattisgarh

3. Gujarat Urja Vikas Nigam limited  
VidhyutBhawan, Race Course,  
Vadodara-390 007

4. Maharashtra Electricity Distribution Company Limited  
Prakashgad, 4<sup>th</sup> Floor, Bandra (East), Mumbai-400051

5. Goa Electricity Department (ED)  
Govt. of Goa,  
Aquem Alto, Margao, Goa-403 601
6. Electricity Department Dadar and Nagar Haveli  
66kV, Amlilnd. Estate,  
Silvassa-396 230, Dadra Nagar Haveli
7. Electricity Department, Administration of Daman and Diu  
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,  
Daman-396210
8. Shri C.Gangopadhyay, Chief Executive Officer,  
PFC Consulting Limited, First Floor, UrjaNidhi,  
1, Barakhamba Lane, Connaught Place,  
New Delhi-110 001
9. Chief Executive Officer, CTU Planning,  
POWERGRID Corporation of India Limited,  
Saudamini, Plot No.2, Sector-29,  
Gurgaon-122 00, Haryana

..... Respondents

**The following were present:**

Shri Jignesh Langalia, RRWT  
Shri Kumar Ritu Raj, PFFCL  
Shri Sanjay Nayak, PFFCL

**ORDER**

The first petitioner herein, Raipur-Rajnandgaon-Warora Transmission Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to transmit electricity as a transmission licensee and for that purpose to undertake the business of establishing transmission system for "Additional System Strengthening for Chhattisgarh IPPs-Part-B" on 'Build, Own, Operate and Maintain' (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 29.2.2016.

2. Raipur-Rajnandgaon-Warora Transmission Limited and AXIS Trustee Services Limited have filed a combined petition for creation of security in favour of AXIS Trustee Services Limited as Security Trustee pursuant to the Security Trustee Agreement and other relevant financing documents by way of mortgage/hypothecation/assignment on project assets for benefit of the lenders to the project. The petitioners have made the following prayers:

“(a) Assignment of the transmission licence and Utility (as defined in the Electricity Act, 2003) of the Petitioner No. 1 by way of security in favour of the Security Trustee, acting for the benefit and on behalf of the Lenders;

(b) Approve creation/and/or perfection of Security Interest in favour of the trustees of the Lenders, acting on behalf of and for the benefit of the Lenders;

(c) Approve the Security Documents, and execution thereof, for creation and/or perfection of aforesaid Security Interest in relation to the Security in favour of Axis Trustee Services Limited, the Security Trustee (or any other trustees as may be appointed by the Lenders in this regard) for the benefit of Lenders;

(d) Condone any inadvertent omissions/errors/shortcomings and permit to add, change, modify, alter this filing and make further submissions as may be required at a future date;

(e) Allow any other relief, order or direction, which the Commission deems fit to be issued;

(f) Pass such other and further orders, as this Commission may deem fit and proper under the facts and circumstances of the present case;”

3. According to the first petitioner, for the purpose of finance for the project, the first petitioner requested the lenders for which lenders have agreed to make available financial assistance for amounting to Rs. 1019.38 crore comprising of Rs. 969.38 crore as rupee term loan and Rs. 50 crore as Loan Equivalent to Risk (LER) for the project. In this regard, Axis Bank has agreed to act as lead bank for the consortium of lenders. For this purpose, the first petitioner and Axis Bank have appointed the second petitioner, namely AXIS Trustee Services Limited as Security Trustee (hereinafter referred to as ‘Security Trustee’) who has agreed to act as Security

Trustee for the lenders and has entered into Security Trustee Agreement and Amended and Rupee Loan Agreement on 17.5.2016.

4. The first petitioner has submitted that pursuant to the terms of the Rupee Loan Agreement, the secured obligations are secured by,

- (a) First charge on all movable assets of the Petitioner No. 1, including but not limited to movable plant and machinery, spares, tools and accessories, furniture, fixtures, vehicles and all other moveable assets, present and future, intangible goodwill, intellectual property, uncalled capital, present and future;
- (b) A first charge on all immovable assets of the Petitioner No. 1, including but not limited to civil structures, towers and cables, office buildings, present and future, including right of way/land, if any in relation to the project;
- (c) A first charge, on all intangible assets of the Petitioner No. 1, including but not limited to goodwill, intellectual property rights, uncalled capital of the Petitioner No. 1 and undertakings, and all other assets including books debts, operating cash flows, receivables, commissions, revenues of whatsoever nature and wherever arising, present and future, in relation to the Project;
- (d) A first charge by way of assignment or creation of Security Interest of:
  - (i) All the rights, titles, interest, benefits, claims and demands whatsoever of the first petitioner in the project documents, duly acknowledged and/or consented by the relevant counter parties to such project documents (if required) all as amended, varied or supplemented from time to time;

- (ii) All the rights, titles, interest, benefits, claims and demands whatsoever of the first petitioner in the clearances pertaining to the Project (to the extent permitted under the applicable law) ;
  - (iii) All the rights, title, interest, benefits, claims and demands whatsoever of the first petitioner in letter(s) of credit, guarantee, performance bond, corporate guarantees, bank guarantees provided by any party to the project documents;
  - (iv) All insurance contractor/proceeds under the insurance contracts.
- (e) First charge on all the bank accounts of the first petitioner wherever maintained, present and future, in relation to the project, including without limitation, the trust and retention account, and the sub-accounts (including but not limited Debt Service Reserve Account or any account in substitution thereof, opened pursuant to the provisions of the trust and retention account agreement, wherein all revenues, disbursements, receivables and all funds of the first petitioner shall, from time to time, be deposited and all permitted investments or other securities representing all amounts credited thereto).

5. The first petitioner has stated that Article 15.2.2 of the Transmission Service Agreement entered into between the first petitioner and the beneficiaries of the project provide that the first petitioner is free to create any encumbrance over all or part of the receivables, Letter of Credit or other assets of the project in favour of the lenders or the representative of the lenders as security for amount payable under the Financing Agreements and any other amounts agreed by the parties. The first petitioner has submitted that in terms of Article 15.2.4 of the TSA, the petitioner is required to take

permission from this Commission prior to relinquish or transfer of its rights and obligations in the TSA.

6. The first petitioner has submitted that assignment of the transmission licence and utility by way of security is exercisable by the lenders only on occurrence of an event of default and would entitle the lenders to appoint their nominee to exercise the rights under the transmission licence and utility or to enforce the assignment of way of security in such other manner as may be permitted by the Commission. The first petitioner has submitted that such assignment shall be subject to prior approval of the Commission in terms of evaluating such nominee's experience in development, design, construction, operation and maintenance of the relevant project as stipulated in Transmission Licence Regulations as amended from time to time.

7. The first petitioner has stated that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, the first petitioner, as a licensee cannot create security interest over all the movable and immovable assets of the first petitioner in favour of Security Trustee/Lenders without approval of the Commission. Accordingly, the petitioners have filed the present petition seeking prior approval of the Commission for creation of security in favour of Security Trustee/lenders by way of mortgage/hypothecation/assignment of mortgaged properties and projects assets through execution of Security Trustee Agreement and other financing documents for the project.

8. The petition was heard after notice to the petitioner and the respondents. No reply has been filed by the respondents. None was present on behalf of the respondents despite notice.

9. During the course of hearing, the representative of the petitioner submitted that the petitioner is a separate legal entity and has its own books of accounts and balance sheet.

10. We have considered the submissions made by the petitioner. The transmission projects are capital intensive projects requiring huge 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, the first petitioner and consortium of lenders lead by Axis Bank have appointed the second petitioner, namely AXIS Trustee Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Rupee Loan Agreement dated 17.5.2016 have been executed for loan of Rs. 1019.38 crore comprising of Rs. 969.38 crore as rupee term loan and Rs. 50 crore as LER. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create any encumbrance over all or part of the receivables, Letter of Credit or the other assets of the project in favour of the lenders or the representative of the lenders, as security for amounts payable under the Financing Agreements and other amounts agreed by the parties.

11. Section 17 (3) and (4) of the Electricity Act, 2003 provides as under:

“17.(3) No licensee shall be 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.”

12. As per the above provision, a licensee is required to obtain approval of the Commission for assigning his licence or transfer its utility or any part thereof by way of sale, lease, exchange or otherwise and to enter into an agreement relating to any of these transactions. We are satisfied that AXIS Trustee Services Limited as Security Trustee needs to be given comfort for creation of security for the benefit of banks/financial institutions/non-banking financial companies as security for the financial assistance provided by the lenders. We, therefore, accord in principle approval allowing the first petitioner to create security in favour of AXIS Trustee Services Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage on project assets by execution of indenture of mortgage for the project. It is, however, made clear that the transmission licence granted by the Commission to the first 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 first 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.”*

Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lenders, Security Trustee and the nominee, approve the assignment of the licence to a nominee of the lenders 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 first petitioner as and when required by the Commission for any specific purpose. The representative of the petitioner during the hearing submitted that it is separate legal entity and has its own books of account and balance sheet. We direct that the petitioner shall continue to maintain its own books of accounts and balance sheet.

12. With the above, Petition No. 87/MP/2016 stands disposed of.

**sd/-**  
**(Dr. M.K.Iyer)**  
**Member**

**sd/-**  
**(A.S. Bakshi)**  
**Member**

**sd/-**  
**(A. K. Singhal)**  
**Member**

**sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**