

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 246/MP/2017

Coram:

Shri A. K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 5th of March, 2018

In the matter of:

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest over all the movable and immovable assets of the Petitioner in favour of Debenture Trustee, by way of mortgage.

And

In the matter of:

Kudgi Transmission Limited
TCTC Building, 1st Floor,
P.B. No. 979, Mount Poonamallee Road,
Manapakkam, Chennai-600 089

..... **Petitioner No. 1**

IDBI Trusteeship Services Limited
Ground Floor, Asian Building,
17 R.Kamani Marg,
Mumbai-400 001

.... **Petitioner No. 2**

Vs

1. Bangalore Electricity Supply Company Limited (BESCOM),
K.R.Circle, Bangalore-560 001
2. Gulbarga Electricity Supply Company Limited (GESCOM),
Station Main Road, Gulbarga
3. Hubli Electricity Supply Company Limited (HESCOM),
Navanagar, PB Road, Hubli
4. Mangalore Electricity Supply Company Limited (MESCOM),
Paradigm Plaza, AB Shetty Circle, Mangalore-575 001



5. Chamundeshwari Electricity Supply Company Limited (CESCOM),
927, LJ Avenue, Ground Floor, New Kantharaj Urs Road,
Saraswatipuram, Mysore-570 009
6. Northern Power Distribution Company of Andhra Pradesh Limited
(APNPDCL), H.No. 2-5-3 1/2, Vidyut Bhawan, APNPDCL, Corporate Office,
Nakkal Gutta, Hanamkonda, Warangal-506 001
7. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL),
3rd Floor, Corporation Office P & T Colony, Seethmmadhara,
Vishakhapatnam-530 013
8. Southern Power Distribution Company of Andhra Pradesh Limited
(APSPDCL), Srinivassa Kalyana Mandapam Backside, Tiruchanoor Road,
Kesavayan Gunta, Tirupati-517 501
9. Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL),
6-1-50, Corporate Office, Mint Compound, Hyderabad- 500 063
10. Kerala State Electricity Board (KSEB)
Vaidyuti Bhavanam, Pattom,
Trivandrum-696 004
11. Power Company of Karnataka Limited
Cauvery Bhawan, K.G. Road,
Bangalore-560 001
11. Tamil Nadu Generation and Distribution Company Limited (TANGEDCO),
NPKRR Malligai, 144, Anna Salai, Chennai 600 002 .. Respondents

Parties Present:

Shri Alok Shanker, Advocate, KTL

ORDER

The First Petitioner herein, Kudgi Transmission Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to undertake the business of establishing, commissioning, operation and



maintenance of the “Transmission system required for evacuation of power from Kudgi TPS (3 x 800 MW in Phase-I) of NTPC Limited (hereinafter referred to as “transmission system”) 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 7.1.2014.

2. As per Part C of the Common Loan Agreement dated 24.2.2014, the total cost of construction and development of the project is Rs. 1350 core. For the purpose of part financing, the First Petitioner approached the Bank of India, Dena Bank, Exim Bank, Indian Bank, IDBI Bank and united Bank of India (erstwhile lenders) for rupee term loan of Rs 1029 crore and which was agreed by the erstwhile lenders. Accordingly, Common Loan Agreement was executed between the First Petitioner, Security Trustee, namely IDBI Trusteeship Services Limited and erstwhile lenders on 24.2.2014.

3. Kudgi Transmission Limited and IDBI Trusteeship Services Limited have filed the present petition for creation of security in favour of IDBI Trusteeship Services Limited as Debenture Trustee pursuant to the Debenture Trust Deed dated 27.6.2017 and by way of mortgage on project assets to the project. The Petitioners have made the following prayers:

“(a) Admit the present petition;

(b) Approve the creation of security interest, over the immovable assets of Petitioner No. 1 in favour of the Debenture Trustee i.e Petitioner No. 2 by way of mortgage.

(b) Pass such other and further orders/directions as the Hon’ble Commission may deem appropriate in the facts and circumstances of the case.”



4. According to the First Petitioner, for the purpose of refinancing of the entire loan of the project, the First Petitioner has issued 15000 rated, secured, listed, redeemable non-convertible debentures having face value of Rs. 10 lakh of the aggregate face value of Rs. 1500 crore only pursuant to Debenture Trust Deed dated 27.6.2017 executed between the First Petitioner and Second Petitioner, namely IDBI Trusteeship Services Limited. For the purpose of issuance of the Debentures, the First Petitioner has appointed Axis trustee Services Limited as Debenture Trustee who has agreed to act as Debenture Trustee for the Debentures Holders.

5. The First Petitioner has submitted that pursuant to the terms of the Debenture Trust Deed, the secured obligations are secured by:

(a) Subject to the terms and conditions stipulated in the project Documents, the Company shall create in terms thereof, a first ranking *pari passu* mortgage on the Immovable Property, in favour of the Debenture Trustee, to secure the obligations of the Company towards the Debenture Holders in respect of the Debentures including the obligation to redeem the Debentures including payment of the Principal Amount, Coupon, Default Interest, cost and charges, expenses and all other monies and all other amounts payable to the Debenture Holders, under the Transaction Documents (**“Secured Obligations”**):

(b) The Company shall not be entitled to create any further Security Interest over the Secured Assets, without procuring the prior written consent of the Debenture Trustee, provided that the upfront consent of the Debenture Trustee



and the Debenture Holders is provided for the creation of first ranking *pari passu* or subordinate Security Interests, over the Secured Assets, to secure the obligations of the Company in relation to the Working Capital Facility and/or the Additional Facility, provided that (a) at the time of creation of such Security Interest to secure the Working Capital Facility and the Additional Facility, there is no Event of Default outstanding in relation to the Debentures and (b) any Security Interests created by the Company over the Escrow Account shall be subject to the escrow mechanism set out in this Deed and the provisions set out in the Escrow Agreement.

(c) In addition to the mortgage created by the Company in terms thereof, the Company shall create and perfect such other Security Interest, which are required to be created by the Company in favour of the Debenture Trustee, in terms of the other Transaction Documents including without limitation the Information Memorandum, which Security Interest shall be required to be created and perfected in the manner and upon the terms and conditions set out in the respective documents. Further, the Company shall ensure that the Sponsor executes the Sponsor Undertaking and the Sponsor POA in favour of the Debenture Trustee, within 90 (Ninety) calendar days from the Deemed Date of Allotment, which Sponsor Undertaking and sponsor POA shall be executes in such manner and shall contain such provisions as set out in the Information Memorandum. It is further agreed that in the event of the occurrence of an Enforcement Event, without prejudice to the other rights of the Debenture



Holders, the Debenture Trustee shall be entitled to require the Sponsor to perform its obligations as contemplated under the Sponsor undertaking, in the manner set out in Clause 18 (*Consequences of an Event of Default*) below;

(d) The Debentures and the due discharge by the Company of the Secured Obligations shall be *inter alia* secured by a first ranking *pari passu* mortgage created by the Company over the Immovable Property in favour of the Debenture Trustee under the terms hereof by way of a registered mortgage.

(e) For the consideration aforesaid and as security for discharge of the Secured Obligations, the Company convey, assign, assure and transfer unto the Debenture Trustee for the benefit of the Debenture Holders, by way of a first ranking *pari passu* mortgage the Immovable Property being all and singular the premises more particularly described in **Schedule VII** to this Deed written and all the right, title, interest, immovable property, claim and demand whatsoever of the Company into and upon the same, to have and to hold all and singular the aforesaid premises unto and to the use of the Debenture Trustee absolutely upon trust and subject to the powers and provisions herein contained and subject also to the proviso for redemption hereinafter mentioned; Provided that the Company has not given possession of the Immovable Property to the Debenture Trustee and has also not agreed to give the possession of the Immovable Property to the Debenture Trustee.



6. The First Petitioner has submitted that it has agreed to create security in favour of Debenture Trustee acting for the benefit of the Debenture Holders pursuant to Debenture Trust Deed by way of mortgage in accordance with the provisions of the Debenture Trust Deed, and has agreed that it shall be lawful for Debenture Trustee, upon enforcement of Security Interest, to enter into and take possession of the Mortgaged Properties along with movable, intangibles and any future assets under the Project comprised in Debenture Trust Deed and thenceforth, the First Petitioner shall take no action inconsistent with or prejudicial to the right of the representative of Debenture Holders/Debenture Trustee acting for the Debenture Holders quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereof without interruption or hindrance by the First Petitioner or by any person or persons whatsoever.

7. The First Petitioner has further 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. Provided that:

- (i) The lenders or the representatives of the lenders on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and



(ii) Any encumbrance granted by the first petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on their behalf agrees unconditionally with the first petitioner to release such encumbrances upon payment by the first petitioner to the lenders, of all amounts due under the Financing Agreements.

8. 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 assignment of its rights, benefits, interests and obligations in the TSA. 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 Debenture Trustee/Debenture Holders acting on behalf of and for the benefit of the Debenture Holders by way of mortgage of mortgaged properties and projects assets through execution of Security Trustee Deed for the project.

9. The petition was heard after notice to the Petitioners and the Respondents. No reply has been filed by the Respondents. The First Petitioner, vide Record of Proceedings for the hearing dated 21.12.2017, was directed to submit the following information:

(a) Whether the present petition is for refinancing the exiting loan? If yes, provide the status of existing loan including outstanding amount, revised project cost and debt.



- (b) Reasons for not taking prior approval under Section 17 (3) 17 (4) of the Electricity Act, 2003 for the loan availed under Common Loan Agreement dated 24.2.2014; and
- (c) Reconciliation of existing loan balance as per Common Loan Agreement and amount of debentures issued.
10. The First Petitioner, vide its affidavit dated 10.1.2018, has submitted as under:
- (a) With regard to status of existing loan including outstanding amount, revised project cost and debt, the First Petitioner has submitted that after construction of the project, the risks associated with execution of the project were substantially reduced and looking at the credit rating of KTL, debt at lower interest rate was available to the First Petitioner. Therefore, it was considered prudent to refinance the original debt of the First Petitioner. The First Petitioner has further submitted that the total amount available to be drawn down to it under the existing facility is total of Rs. 1500 crore. The First Petitioner has submitted that the total outstanding loan as on 31.12.2017 is Rs. 1602,45,40,905/-. The project cost has not been impacted by the instant refinancing which is the issuance of redeemable and non-convertible debentures having face value of Rs. 1500 crore which are redeemable progressively from 25.4.2018 to 25.4.2040.
- (b) With regard to not taking prior approval under Section 17 (3) of the Act for the loan availed under Common Loan Agreement dated 24.2.2014, the First Petitioner has submitted that clause 4 of the Common Loan Agreement entered into between the First Petitioner and the original lenders of the project



restricted the security to only project assets and receivables of the Project. Therefore, neither charge was created on the licence granted to the First Petitioner nor any agreement was signed for transfer of utility. The First Petitioner has submitted that since the Common Loan Agreement did not trigger either the provisions of Section 17 (1) or Section 17 (3), prior approval under Section 17 (4) was not required.

(c) With regard to reconciliation of Common Loan Agreement and Debenture Trust Deed, the First Petitioner has submitted that entire amount due under the Common Loan Agreement has been duly repaid and nor amounts are due under the same.

11. Since, the First Petitioner did not give satisfactory reply, it was given one more opportunity to file its reply. Accordingly, the First Petitioner was directed to file the following information/clarification on or before 15.2.2018.

(a) As per affidavit dated 10.1.2018, the project cost (revised) is Rs. 1350 crore and outstanding loan is Rs. 1602 crore. However, the First Petitioner has issued debenture of Rs. 1500 crore. It is noted that project cost is lesser than outstanding loan/debenture issued. The difference clarifying the gap between the project cost and proposed restructuring may be provided;

(b) Reasons for not taking prior approval under Section 17 (3) and 17 (4) of the Electricity Act, 2003 for the loan availed under Common Loan Agreement dated 24.2.2014; and



(c) Reconciliation of existing loan balance as per the Common Loan Agreement and amount of debentures issued.

12. Despite number of opportunities, the Petitioner has not submitted the information called for. The Petition being incomplete, it is not possible to take a view on the prayers of the Petitioners. However, the Petitioners are granted liberty to approach the Commission for in-principle approval along with justification and all requisite documents.

13. The Petition No. 246/MP/2017 stands disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

