

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 71/MP/2020 along with IA No.30/2020

- Subject : Petition seeking approval under Section 17(3) and 17(4) of the Electricity Act, 2003, read with Article 15.3 of the Transmission Service Agreement dated 6.1.2016 and Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 and in the matter of Lender's right to substitute performance of the Borrower with the Nominee of the Lenders and consequent assignment of transmission licence and assignment of other financing documents and movable and immovable projects assets of Warora Kurnool Transmission Limited in favour of the Nominee of the Security Trustee/Lenders.
- Petitioner : 1. Warora Kurnool Transmission Limited
2. Yes Bank Limited
3. IDBI Trustee Services Limited
- Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Ors.
- Date of Hearing : 12.5.2020
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
- Parties present : Shri Amit Kapur, Advocate, Petitioners
Ms. Aparajita Upadhyay, Advocate, Petitioners
Shri Vivek Singla, Petitioners
Shri Mehul Desai, Yes Bank
Shri VinodBahety, Yes Bank
Shri T. D. Sivakumar, Exim Bank
Shri S. Vallinayagam, Advocate, TANGEDCO

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Petitioners submitted that the present Petition has been filed by Warora Kurnool Transmission Limited (WKTL), and its lead lender, Yes Bank Limited along with Security Trustee, IDBI Trusteeship Services Limited *inter-alia*, seeking approval of the Commission to transfer 100% shareholding of WKTL



held by Essel Infra in favour of Adani Transmission Limited (ATL) by execution of Share Purchase Agreement as approved by WKTL's lenders under Section 17(3) and 17 (4) of the Electricity Act, 2003 ("the Act"); Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009; Article 15.3 of the Transmission Service Agreement (TSA) and in-principle approval granted by the Commission in order dated 24.5.2017 in Petition No. 78/MP/2017. Learned counsel for the Petitioners further submitted as under:

(a) WKTL is an inter-State transmission licensee which was acquired by Essel Infra after being selected as the successful bidder through Tariff Based Competitive Bidding. WKTL is implementing the "Additional inter-Regional AC link for import into Southern Region i.e. Warora-Warangal and Chilakaluripeta-Hyderabad-Kurnool 765 kV Link" (Transmission Project).

(b) For funding of the transmission project, WKTL had availed Rupee Term Loan facility for Rs. 2790 crore (including letter of Credit Facility of Rs.1400 crore) from the Petitioner No. 2, Yes Bank Limited and for that purpose had entered into Security Trustee Agreement with Petitioner 3, IDBI Trustee Services Limited, for creating security interest in its favour for the benefit of lenders. The Commission in its order dated 24.5.2017 in Petition No. 78/MP/2017 granted in-principle approval for creation of security interest in favour of the Security Trustee.

(c) Out of Rs.2790 crore loan facility, WKTL has been disbursed Rs.1200 crore so far. However, on account of the deteriorating financial conditions of Essel Infra, there has been continuous default by WKTL in its debt repayment to lenders and WKTL is unable to execute the project. Hence, the lenders have decided to exercise their "Lenders Substitution Right" under Article 15.3 of the TSA and appoint a nominee who shall acquire management control and shareholding of WKTL. Article 15.3 of the TSA empowers the lenders to exercise their substitution rights in case of default of repayment by WKTL with the prior approval of the Commission. The Commission in its order dated 24.5.2017 in Petition No.78/MP/2017 had granted leave to WKTL and its lenders to approach the Commission for approval for assignment of assets of WKTL in favour of lenders' nominee in case of default in loan repayment by WKTL.

(d) Pursuant to the filing of the Petition on 19.12.2019, the lead lender, Yes Bank has identified Adani Transmission Limited (ATL) as the nominee to acquire the shares of WKTL to which the other lenders, namely, Exim Bank and IREDA have given their in-principle approval.

(e) ATL is already in the business of transmission of electricity and is operating inter-State and intra-State transmission lines of 400 kV to 765 kV and is also constructing and operating various transmission systems under competitive bidding.

(f) Substitution of Essel Infra by ATL as the holding company of WKTL does not prejudice any interest or benefits of the beneficiaries of WKTL or in any way weaken the obligations of WKTL under the transmission licence or project documents.



(g) Transfer of management control and shareholding of WKTL in favour of ATL would not only improve the financial position of WKTL but is also necessary for completion of the critical inter-regional Transmission System to be set up by WKTL.

2. Learned counsel for the Respondent, TANGEDCO objected to the maintainability of the Petition and submitted that Section 17(3) of the Act read with Article 15.3.2 of the TSA provide for assignment of transmission licence and not transfer of the management control and shareholding of WKTL in favour of ATL which has been sought in the present Petition. Learned counsel submitted that in case of failure of the licensee to perform its obligations on account of financial difficulty, the licence ought to be revoked and the utilities of the licensee sold as per the provisions of Sections 19 and 20 of the Act. He further pointed out that there is no document/letter of Essel Infra indicating its stand despite being taken over and that Essel Infra should be party before the Commission. Learned counsel submitted that there is no clarity as to whether the existing tariff as bid out by Essel Infra would continue and be accepted by ATL since the implementation of the Project has already been considerably delayed. Learned counsel requested for a week's time to file reply on the maintainability of the Petition.

3. In its rebuttal, learned counsel of the Petitioners submitted that the Petitioners are seeking approval for transfer of shares and management control of WKTL, and not Essel Infra as contended by TANGEDCO. He submitted that Essel Infra has already been made party to the present Petition and it is only Essel Infra, which presently owns 100% shares in the Petitioner, WKTL. Learned counsel further submitted that while there is no assignment of transmission licence, the exercise of the substitution rights by the lender would amount to an indirect transfer of ownership of WKTL and accordingly, the Petitioners have deemed it appropriate to seek the prior approval of the Commission under Section 17 (3) and 17 (4) of the Act read with Article 15.3 of the TSA.

4. The representative of the Petitioner No. 2, Yes Bank Limited submitted that on account of inability of Essel Infra to continue with the Project, the lenders have decided to exercise their rights of substitution in terms of Article 15.3 of the TSA and have selected ATL as nominee of lenders after following the due process. He further clarified that transfer of shares and management control of WKTL in favour of ATL would help in implementation of the Project and would not adversely affect the tariff discovered through competitive bidding and the beneficiaries/LTTCs of the Project.

5. In response to the specific query of the Commission as to whether the lenders of WKTL have been changed subsequent to the Commission's order dated 24.5.2017 in Petition No. 78/MP/2017, learned counsel for the Petitioners submitted that subsequent to the said order, Yes Bank transferred certain commitments under Facility Agreement to the new lenders, namely, Exim Bank (200 crore) and IREDA (Rs. 200 crore). He further added that WKTL's outstanding dues towards payment of interest to Yes Bank is Rs. 52.33 crore (as on 2.3.2020), Exim Bank is Rs. 5.09 crore (as on 31.1.2020) and IREDA is Rs. 6.37 crore (as on 31.1.2020) and Exim Bank and IREDA have also given their in-principle approval to appoint ATL as their nominee for substitution subject to final approval from respective sanctioning authorities.



6. In response to the Commission`s further query regarding approval of transfer of 100% shareholding/any other security as held by Essel Infra or its affiliates in WKTL in favour of ATL by execution of Share Purchase Agreement, learned counsel submitted that in terms of Section 17 (3) of the Act and Article 15.3 of the TSA, prior approval of the Commission is required for assignment of transmission licence or transfer of the Project or part thereof to any person by sale, lease, exchange or otherwise. Learned counsel submitted that since the transaction is an indirect transfer of a transmission licensee from one promoter to another, the Petitioners decided to seek approval of the Commission before proceeding with the transactions.

7. After hearing the learned counsels for the parties and the representative of the Petitioner No.2, the Commission directed the Respondent, TANGEDCO to file its reply on maintainability of the Petition by 20.5.2020 with advance copy to the Petitioners, who may file their rejoinder thereof, if any, by 26.5.2020. The Commission directed the Petitioners to provide the following information/details by 26.5.2020:

- (a) Process adopted by the lenders for selection of nominee.
- (b) Resolution of lenders regarding selection of ATL as lender's nominee.

8. The Commission directed that due date of filing of reply, rejoinder and information should be strictly complied with.

9. The Petition shall be listed for hearing in due course for which notice will be issued separately.

By order of the Commission

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

