

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N. Sinha, Member**

Petition No. 92/2003

In the matter of

Transmission Licence dated 13.12.2003 granted to Power Links Transmission Limited ("Company")

And in the matter of

Representation of the Company in respect of the Tala-Delhi Transmission Project

And in the matter of

Sections 17, 19, 20, 21 and 22 of the Electricity Act, 2003 ("Act")

And in the matter of

Power Links Transmission Limited ... **Petitioner**

Vs

1. Power Grid Corporation of India Limited, Gurgaon
2. International Finance Corporation, Washington
3. Infrastructure Finance Division, Philippines
4. Infrastructure Development Finance Co. Ltd., Mumbai
5. SBI Project Finance, Mumbai **Respondents**

The following were present:

1. Shri Suresh Sachdev, PTL
2. Shri S. Das, PTL
3. Shri S.K. Jain, PTL
4. Shri S. Datta, PTL
5. Shri R.K. Agarwal, PTL
6. Shri Utpal Dhar, PTL
7. Shri B.A. Chaudhari, PTL
8. Shri S. Tandon, PTL
9. Shri Umesh Chadra, ED (Comml), PGCIL
10. Shri U.K. Tyagi, PGCIL
11. Shri C. Kannan, PGCIL
12. Shri Pawan Singh, PGCIL
13. Shri Arun Gautam, PGCIL
14. Shri A.K. Behl, PGCIL

15. Shri P.C. Pankaj, PGCIL
16. Shri R.P. Padhi, PGCIL
17. Shri S. Garg, DGM (JV), PGCIL
18. Shri Arun Kumar, PGCIL
19. Shri TSP Rao, PGCIL
20. Shri Sanjay Rai, PGCIL

ORDER
(DATE OF HEARING: 23.12.2003)

The applicant herein has been granted transmission licence under Section 14 of the Electricity Act, 2003 (the Act), to transmit electricity as a transmission licensee and for that purpose to construct, maintain and operate the transmission system associated with evacuation of power from Tala Hydro electric project, the details of which are specified in the schedule attached to the licence issued on 13.12.2003. In the present application, the applicant has made the prayers to the Commission to:

- “ (a) grant its approval under sections 17(3) and 17(4) of the Act and Regulation 20(e) of the Transmission Licence Regulations to the taking of security by the Lenders over the License and the Company’s utility/assets;
- (b) grant its approval under Section 17 (3) and 17(4) of the Act to the Lenders’ enforcing their security following the occurrence of an event of default under the Financing Documents in accordance with the terms to be set out in the IA and TSA without requiring any further application to be made to this Hon’ble Commission but subject to such directions as the Commission may give to Powergrid as to how it should exercise its rights under the IA and TSA, or its statutory powers as CTU under the Act, in the event of any enforcement by the Lenders of their security rights;
- (c) grant it’s approval to the sale of the COMPANY’S utility/assets pursuant to the buyout provisions contained in the IA and TSA and approved by Powergrid without requiring any further application be made to this Hon’ble Commission;

- (d) clarify whether the Financing Documents are required to be filed with this Hon'ble Commission for its record; and
- (e) pass such orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case.

2. The total debt component of the project to be undertaken by the applicant is stated to be approximately 8533.3 crore representing approximately 70% of the total estimated project cost. According to the applicant, for arranging the loans from Respondents No. 2 to 5, the applicant is required to collaterally assign the Implementation Agreement (IA) and the Transmission Service Agreement (TSA) signed between the applicant and Respondent No.1, the licence issued by the Commission in favour of the applicant and create a charge by way of mortgage/hypothecation or lien over the project assets in favour of Respondents No. 2 to 5, the lenders, as security for the loans. The security is to remain in force until the applicant has repaid all their amounts due to the lenders. The applicant has stated that in view of the provisions of sub-section (3) and sub-section (4) of Section 17 of the Act, the applicant, as a licensee cannot assign the licence or transfer his utility or any part thereof to any person or enter into an agreement relating to any of these transactions without approval of the Commission. Accordingly, the present application has been filed wherein the applicant has sought the Commission's approval to make an agreement with Respondents No 2 to 5 to assign its licence to them and to transfer its utility and the assets, following the occurrence of any of the event of default defined in the Financing Documents signed between the applicant and Respondents No. 2 to 5. In the event of applicant defaulting in the repayment of loans, Respondents No.2 to 5 will invoke

their right to invoke their security by transferring the licence and the utility and the assets of the applicant to their nominee, having financial and technical ability to operate the transmission system covered under the licence.

3. It is further stated that Implementation Agreement and the Transmission Service Agreement signed between the applicant and Respondent No.1 in its capacity as the Central Transmission Utility provides that on occurrence of certain events of default by either party or a prolonged event of force majeure affecting the project, Respondent No.1 may or in some cases, must acquire the project assets on payment of buy out price specified in the relevant agreements. On such an event, Respondent No.1, would acquire the applicant's assets free and clear of all security interests in favour of Respondents No.2 to 5. Accordingly, the applicant has sought the Commission's approval to the sale of its utility/assets to Respondent No.1, pursuant to the provisions contained in the Implementation Agreement and Transmission Service Agreement at the buy out price agreed to in these agreements, without requiring any further application to be made to the Commission. Further, a direction has been sought whether the financing documents are required to be filed with the Commission for its record.

4. We have heard the representatives of the applicant; Shri Atulya Sharma, Advocate assisted by Shri S. Tandon on behalf Respondents No 2 to 5. We have also heard Shri T.P.S. Rao, General Manager (Law) on behalf of Respondent No 1, though no formal reply on its behalf has been filed.

5. It was submitted on behalf of Respondents No 2 to 5 that they were unable to release loans in favour of the applicant without adequate guarantee of security over its assets. Therefore, they have sought assignment of the licence in their favour and also mortgage /hypothecation of the assets and for this purpose, the applicant is required to enter into an agreement with them. According to the Respondents No 2 to 5, this will serve the following three purposes:

- (a) It will ensure that the lender's right to repayment gets higher priority over the claims of all other creditors.
- (b) It will allow the lenders to control the applicant's cash flow to ensure that it is properly applied to meet the borrower's obligations.
- (c) It will also allow the lenders to foreclose on their security after the borrower defaults and to transfer the whole of the borrower's undertaking to a new entity nominated by lenders which will carry on the project in place of the applicant and generate revenues that can be used to repay the loans, with reference to Clause (e) of Regulation 20 of the Central Electricity Regulatory Commission [Procedure, Terms & Conditions for grant of transmission licence and related matters] Regulations, 2003.

6. Respondents No 2 to 5 have filed affidavits which narrate the events of default of the applicants, enabling them to enforce the security.

7. We have considered the submissions made on behalf of the parties. We are satisfied that Respondents No 2 to 5 need to be given comfort by way of security for the loan to be advanced by them to the applicant, particularly when the applicant is a company limited by shares. We, therefore, in principle allow the petitioner to enter into agreement with Respondents No 2 to 5 to assign the licence or to transfer of the utility or assets to the extent of loan and other dues recoverable. Lenders had indicated during the hearing that they are in the process of appointing one of them (Respondents 2 to 5) as security trustee. Lenders should complete this at the earliest. We, however, make it clear that the transmission licence granted by the Commission to the applicant cannot be assigned in favour of the nominee of Respondents No 2 to 5. Before agreeing to transfer of licence or the utility and the assets of the applicant to the nominee of Respondents No 2 to 5, the Commission has to evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines in order to be satisfied that it will be able to execute the project and/or undertake transmission of electricity. Therefore, before transferring the utility or assets of the applicant by Respondents No 2 to 5 to their nominee, they shall be required to approach the Commission for its approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such transfer. This decision of ours accords with the proviso to Clause (e) of Regulation 20 of the Central Electricity Regulatory Commission (Procedure, Terms & Conditions for grant of transmission licence and related matters)

Regulations, 2003 according to which, in case of default by the licensee in debt repayment, the Commission may, in consultation with the Central Transmission Utility, assign the licence to the nominee of the lenders. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of Respondents No.2 to 5 or transfer of any assets to them shall always be needed. So far as the provisions for buy out of the assets of the applicant by Respondent No.1 are concerned, we consider it sufficient to state at this stage that such an action must conform to sub-section (1) and sub-section (2) of Section 17 of the Act since Respondent No.1 in its capacity as the Central Transmission Utility is a deemed transmission licensee. Lastly, the Finance Documents may be filed by the applicant as and when required for some specific purpose.

9. With the above, Petition No. 92/2003 stands disposed of.

Sd/-
(K.N. SINHA)
MEMBER

New Delhi dated 5th February, 2004

Sd/-
(ASHOK BASU)
CHAIRMAN