

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 384/MP/2019

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S. Jha, Member

Date of order: 29th January, 2020

In the matter of:

Petition for approval for creation of security interest under Sections 17(3) & 17(4) of Electricity Act, 2003 over Petitioner No. 1's Assets in favour of Catalyst Trusteeship Limited for the benefit of Lenders and their assignees, transferees, novatees for the purpose of Petitioner No. 1's Transmission Project.

And

In the matter of

1. NER II Transmission Limited
F-1, The Mira Corporate Suite
1&2, Ishwar Nagar
New Delhi-110 065
2. Piramal Trusteeship Services Private Limited
320, Tower-B, DLF Towers, Jasola
New Delhi-110 025
3. Catalyst Trusteeship Limited
810, 8th Floor, Kailash Building,
26 Kasturba Gandhi Marg,
New Delhi – 110 001

....Petitioners

Versus

1. Assam Electricity Grid Corporation Limited
4th Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati-I, Assam-781 001
2. Tripura State Electricity Corporation Limited
Bidyut Bhawan, Banamalipur, Agartala, Tripura – 799 007
3. Meghalaya Power Distribution Company Limited
Lum Jingshai, Sort Round Road, Shillong,
Meghalaya-793 001
4. Manipur State Power Distribution Company Limited
Electricity Complex, Patta No. 1293 under 87(2)

Khwai Bazar, Keishampat
District-Imphal West,
Manipur-795 001

5. Department of Power
Government of Arunachal Pradesh
Vidyut Bhawan, Itanagar,
Arunachal Pradesh-791 111
6. Department of Power
Government of Nagaland
A.G. Colony, Kohima, Nagaland-797 005
7. Power and Electricity Department
Kawlphetha Building,
New Secretariat Complex,
Khatla, Aizwal, Mizoram – 796 001

....Respondents

Parties Present

- 1) Shri Dinesh Pardasani, Advocate, NER-II TL and PTSPL
- 2) Shri Shantanu Singh, Advocate, NER-II TL and PTSPL
- 3) Shri Ashray Chopra, Advocate, NER-II TL and PTSPL
- 4) Shri TAN Reddy, NER-II TL
- 5) Ms. Anisha Chopra Batra, NER-II TL

ORDER

The First Petitioner, NER II 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 of the transmission system under 'NER System Strengthening Scheme II (Part B) and V' (hereinafter referred to as 'Transmission System') on Build, Own, Operate and Maintain basis, the details of which are specified in the schedule attached to the licence issued vide order dated 20.6.2017.

2. The First Petitioner had approached the Commission in Petition No. 113/MP/2018 for approval under Section 17(3) and (4) of the Act to create security interest for Rs.2200 crore in favour of Security Trustee, namely, Piramal Trusteeship

Services Private Limited. Out of Rs. 2200 crore, Piramal Finance Limited was lending Rs. 480 crore and the balance amount of Rs. 1720 crore was to be funded through issuance of debentures to be subscribed by Piramal Enterprises Limited for which Piramal Trusteeship Services Private Limited has also agreed to act as a Debenture Trustee. Since, in the said Petition, the First Petitioner had not prayed for creation of security interest in favour of Debenture Trustee for making available proposed finance through issue of unlisted, unrated, secured redeemable, non-convertible debentures aggregating to Rs. 1720 crore, the Commission vide order dated 8.10.2018, accorded in-principle approval allowing the First Petitioner to create security for Rs. 480 crore only in respect of lending by Piramal Finance Limited in favour of Piramal Trusteeship Services Private Limited as Security Trustee. However, the First Petitioner was granted liberty to approach the Commission by filing appropriate application for creation of security interest in favour of Debenture Trustee. Subsequently, the First Petitioner approached the Commission in Petition No. 347/MP/2018 to create security interest for the balance amount of Rs. 1720 crore lent by the lenders, namely, Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited), Tata Cleantech Capital Limited, PTC India Financial Services Limited, Indian Renewable Energy Development Agency Limited and India Infrastructure Finance Company Limited in favour of Piramal Trusteeship Services Private Limited, by way of mortgage/ hypothecation/ assignment on Project assets by execution of Indenture of Mortgage and other financing documents for the Project. The Commission in its order dated 1.1.2019 accorded in-principle approval allowing the First Petitioner to create security in favour of Piramal Trusteeship Services Private Limited as Security Trustee.

3. NER II Transmission Limited, Piramal Trusteeship Services Private Limited and Catalyst Trusteeship Limited have jointly filed the present Petition for creation of security interest in favour of Catalyst Trusteeship Limited as Security Trustee. The Petitioners have made the following prayers:

“(a) Approve the change in the Security Trustee and allow Catalyst Trusteeship Limited to act as the Security Trustee for the benefit of the Lenders by the execution of Letter of Accession to the Security Trustee Agreement;

(b) Approve the transfer of the security interest created in terms of the indenture of mortgage dated 20.6.2019 executed by and amongst the Petitioner No.1 and the Piramal Trusteeship Services Private Limited, to the Catalyst Trusteeship Limited by the execution of proposed draft Memorandum Recording Change Of Trusteeship; and

(c) Approve the extension of security interest, created in terms of the indenture of mortgage dated 20.6.2019 executed by and amongst the Petitioner No.1 and the Piramal Trusteeship Services Private Limited, in favour of the New Lenders and allow the creation of the security interest by Petitioner No. 1 over Petitioner No. 1’s Assets to the extent described in the Petition to secure the total commitment of the Lenders aggregating to Rs. 2200,00,00,000/- (Rupees Twenty Two Hundred Crores Only), in favour of Catalyst Trusteeship Limited for the benefit of the Lenders and for their subsequent transferees, assignees, novatees thereof and any refinancing lenders to the Project, by way of mortgage/ hypothecation/ assignment, pursuant to the Security Trustee Agreement, draft Deed of Hypothecation along with the Power of Attorney, draft Memorandum of Entry read with the draft Declaration and Undertaking and other security creating documents/ financing agreements (Financing Agreements).”

4. The First Petitioner has submitted that when Petition No. 347/MP/2018 was decided, Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited) and India Infrastructure Finance Company Limited had not executed the Deeds of Adherence to the Facility Agreement for the additional commitment in the total Facility and had only filed Sanction Letters.

5. The First Petitioner has submitted that subsequent to the Commission’s order dated 1.1.2019 in Petition No. 347/MP/2018, the following developments took place:

(a) Tata Cleantech Capital Limited, an existing lender agreed to lend an additional Rs. 50 crore out of the total Facility and executed Deed of Adherence to the Facility Agreement with First Petitioner and Second

Petitioner (in its capacity as the Lenders' Agent) and Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited) on 15.3.2019. By way of Deed of Adherence to the Facility Agreement, Tata Cleantech Capital Limited, subject to the terms of the Facility Agreement and other financing documents, agreed to lend to the First Petitioner additional Rs. 50 crore to fund part of the balance debt requirement. Pursuant to the Deed of Adherence, the commitment of Tata Cleantech Capital Limited in the total Facility became Rs. 150 crore.

(b) On 11.6.2019, Piramal Capital & Housing Finance Limited entered into a Deed of Accession with the existing lenders to replace the Second Petitioner, Piramal Trusteeship Services Private Limited as the Lenders' Agent.

(c) On 11.6.2019, considering that Tata Cleantech Capital Limited had increased its share in the total loan amount as provided under the Facility Agreement, Piramal Capital & Housing Finance Limited and India Infrastructure Finance Company Limited entered into Deeds of Adherence to the Facility Agreement and agreed to lend to the First Petitioner, additional facility of Rs. 565 crore and Rs. 455 crore respectively, out of the total Facility. Subsequent to entering into the Deed of Adherence to the Facility Agreement as mentioned above, the total commitment of Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited) in the total Facility became Rs. 1045 crore and total commitment of India Infrastructure Finance Company Limited in the Facility became Rs. 455 crore. As on 11.6.2019, the commitment for the entire Facility amount of Rs. 2200 crore was tied up.

(d) On 20.6.2019, First Petitioner executed the Indenture of Mortgage in favour of Second Petitioner to secure the total Facility pursuant to the in-principle approval accorded by the Commission in its order dated 8.10.2018 in Petition No. 113/MP/2018 and order dated 1.1.2019 in Petition No. 347/MP/2018.

(e) On 20.6.2019, Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited) assigned and novated its entire commitment in the Facility of Rs. 1045 crore to L&T Finance Limited and L&T Infrastructure Finance Company Limited (New Lenders) by executing Deed of Assignment and Novation and Transfer Notice. By way of the Deed of Assignment, L&T Finance Limited took over the commitment of Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited) to the extent of Rs. 145.75 crore which had already been disbursed to the First Petitioner. Further, by way of the Novation and Transfer Notice, L&T Finance Limited and L&T Infrastructure Finance Company Limited took over Rs. 445 crore and Rs. 454.25 crore respectively. Pursuant to the above assignment and novation, Piramal Capital & Housing Finance Limited ceased to be a Lender in the Facility.

(e) Subsequently, at the request of the First Petitioner, the lenders, namely, L&T Finance Limited, L&T Infrastructure Finance Company Limited, Tata Cleantech Capital Limited, PTC India Financial Services Limited, Indian Renewable Energy Development Agency Limited and India Infrastructure Finance Company Limited (Lenders) have proposed to change the Lender's Agent from Piramal Capital & Housing Finance Limited to L&T Infrastructure Finance Company Limited.

(f) Further, on the request of the First Petitioner, the Lenders have also proposed to change the Security Trustee from Piramal Trusteeship Services Private Limited to Catalyst Trusteeship Limited. Accordingly, the First Petitioner has approached seeking permission for change of the Security Trustee and for transfer of existing security/ creation of new security by the First Petitioner in favour of New Security Trustee, namely, Catalyst Trusteeship Limited in place of Piramal Trusteeship Services Private Limited.

6. The First Petitioner has submitted that pursuant to the terms of the Facility Agreement, the secured obligations of the First Petitioner shall be secured by the following security package:

“10.1 Security

The Facility together with all Interest, Liquidated Damages, Additional Interest, fees, costs, charges, expenses, all other monies and Obligations payable to the Secured Parties shall be secured by (the “Security”):

(a) *a first ranking charge, on all the Borrower's immovable properties of the Borrower, both present and future;*

(b) *a first ranking charge on all the Borrower's moveable assets, including moveable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present and future;*

(c) *a first ranking charge over all Accounts and all other bank accounts of the Borrower including the Trust and Retention Account, DSRA and other reserves and the sub-accounts (or any account in substitution thereof) that may be opened in accordance with this Agreement, the Trust and Retention Account Agreement or any of the other Transaction Documents and all funds from time to time deposited therein and all funds arising from the Project, the Project Proceeds and all Permitted Investments or other securities, both present and future;*

(d) *a first ranking charge over all the current assets of the Borrower, both present and future;*

(e) *a first ranking charge on all revenues and receivables of the Borrower whether or not deposited in the Accounts, the book debts of the Borrower, the operating cash flows of the Borrower and all other commissions and revenues and cash of the Borrower of whatsoever nature, both present and future;*

(f) *a first ranking charge on all intangibles assets of the Borrower including but not limited to goodwill, rights, undertaking, intellectual property rights and uncalled capital, both present and future;*

(g) assignment by way of security, of:

(i) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in the Project Documents, both present and future, including the Transmission Service Agreement, duly acknowledged and consented to by the counterparties to the Project Documents by executing the consent to assignment if such Project Document requires prior consent of such counterparties before creation of such Security Interest, all as amended, varied or supplemented from time to time;

(ii) the rights, title, interests and benefits of the Borrower in, to and under all the Clearances (including the Transmission License for the Project), both present and future, to the extent permissible by Applicable Law;

(iii) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantee, warranty (including contractor guarantees) and liquidated damages (including Contractual Damages) and performance bond provided by any counter-party to the Project Documents, both present and future (including any security/ letter of credit that may be available to the Borrower pursuant to the Transmission Service Agreement or in relation to the Project and/or guarantees issued by the EPC Contractors in favour of the Borrower, which may be legally assigned);

(iv) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower under all Insurance Contracts and Insurance Proceeds pertaining to the Project, both present and future.”

7. The First Petitioner has submitted that as per Clause 10.1 and Clause 12.10 of the Facility Agreement, security to be created for the benefit of the lenders will be shared on a *pari passu* basis. Accordingly, the First Petitioner has agreed to create security interest in favour of Security Trustee pursuant to the Security Trustee Agreement, Indenture of Mortgage, and other Financing Agreements. The security is proposed to be created by way of mortgage/ hypothecation/ assignment in accordance with the provisions of the Indenture of Mortgage, including Clause 13.2 thereof, and the Financing Agreements, and has agreed that it shall be lawful for the Security Trustee, upon enforcement of security, to under all activities/ actions mentioned at Clause 13.2 of the Indenture of Mortgage. Relevant portions of Clause 13.2 of the Indenture of Mortgage are extracted as under:

“(a) declare all or part of the Mortgage Debt to be immediately due and payable, whereupon they shall become so due and payable;

(b) enter into and take possession of the Mortgaged Property and henceforth the Borrower shall take no action inconsistent with or prejudicial to the right of the Secured Parties to possess, use and enjoy the benefits thereof without interruption or hindrance by the Borrower or by any person or persons whomsoever, and upon the taking of such action, the Secured Parties shall also be indemnified from and against all former and other estates, titles, claims, demands and encumbrances whatsoever in, to or upon the Mortgaged Property.

(c) sell, call in, collect, convert into money or otherwise deal with or dispose of the relevant Mortgaged Properties or any part thereof on an instalment basis or otherwise and generally in such manner and upon such terms whatever as the Lenders may consider fit;

(d) exercise any and all powers which a receiver could exercise hereunder or by Applicable Laws;

(e) appoint any person or persons to be a receiver(s) of all or any part of the Mortgaged Properties, from time to time, determine the remuneration of the receiver(s) and remove the receiver (except where an order of the courts is required therefor) and appoint another in place of any receiver, whether such receiver is removed by the Security Trustee/Lenders or an order of the court or otherwise ceases to be the receiver or one or more receivers;

(f) substitute their assignee or designee for the Borrower under any or all of the Project Documents/exercise the rights of the Borrower under any or all of the Second Mortgaged Property and to commence and conduct either in the name of the Borrower or in its own name or otherwise any proceedings against any Person in respect of any breach of the Project Documents or the Clearances; and/or

(g) take all such other action as may be permitted under this Indenture and/or under Applicable Laws.”

8. The First Petitioner has submitted that under Clause 15(a) of the Indenture of Mortgage, it shall be lawful for Security Trustee, at any time without any further consent of the First Petitioner to do as follows:

“15. Sale without Intervention of Court

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN IT IS HEREBY AGREED AND DECLARED as follows:

Subject to Clause 15(b) (Sale without Intervention of Court), upon the occurrence of an Event of Default/Potential Event of Default, it shall be lawful for the Security Trustee, at any time without any further consent of the Borrower, to sell, assign or concur with any other person in selling, assigning the relevant Mortgaged Properties or any part thereof, either by public auction or private contract, the land, leasehold estate, buildings and structures or separately therefrom with liberty to make any arrangements as to removal of the plant, machinery, fixtures, fittings and other implements from the land, the plant, machinery, fixtures, fittings and other implements from the land, building and structures and with liberty also be make such conditions or stipulations respecting title or evidence of title or other matters as the (Sale without Intervention of Court) may deem proper. The Security Trustee may empower any person to buy or obtain assignment of the Mortgaged Properties at any sale and to resell or reassign

the Mortgaged Properties at any sale by auction or to rescind or vary any contract for sale and to resell or reassign the Mortgaged Properties without being answerable or accountable for any loss of diminution occasioned thereby and to execute assurances and give effectual receipts for the purchase money and do all other acts and things for completing the sale/assignment which the person or persons exercising the power of sale/assignment shall and concur in selling the relevant Mortgaged Properties without the intervention of the Court in accordance with the provisions of Section 69 of the Transfer of Property Act, 1882.”

9. The First Petitioner has submitted that Article 15.2.2 of the TSA 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 its receivables, Letters of Credit of 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.

10. The First Petitioner has submitted that in terms of Article 15.2.4 of the TSA, the First 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 Act, prior approval of the Commission is essential for creation of security interest over the Project assets.

11. The First Petitioner has submitted that after grant of approval for change in Security Trustee by the Commission, the First Petitioner and the Lenders would execute the security documents, namely (i) Letter of Accession to the Security Trustee Agreement for the change in the Security Trustee for completion of the transaction, (ii) Memorandum of change in the Security Trustee for transfer of the security interest created in terms of the Indenture of Mortgage dated 20.6.2019 executed by and amongst the First Petitioner and Piramal Trusteeship Services Private Limited, to Catalyst Trusteeship Limited, (iii) Deed of Hypothecation, and (iv) Memorandum of Entry along with the Declaration and Undertaking.

12. The matter was heard on 12.12.2019 after notice to the Respondents. None was present on behalf of the Respondents despite notice. No reply has been filed by the Respondents.

13. The First Petitioner, vide Record of Proceedings for the hearing 12.12.2019, was directed to implead New Security Trustee, namely, Catalyst Trusteeship Limited as party to the Petition and to file revised memo of parties. The Petitioner was further directed to submit the following details/clarification:

(a) Date of financial closure, indicative cost of the Project as communicated by CEA, status of actual loan/Project cost and equity shareholding pattern as on the date of filing of the Petition along with auditors certificate with regard to the actual means of finance as on COD and as on application date as per prescribed format.

(b) Reason for the difference in the rate of interest as per 'Deed of adherence to facility agreement' with IIFCL dated 11.6.2019 i.e. 11.20%; and rate of interest as per Schedule XIII of 'Novation and Transfer notice' dated 20.6.2019 executed with L&T Finance/L&T Infrastructure Finance Company Limited i.e. 16.7%.

(c) As Piramal Capital & Housing Finance Limited has assigned and novated its entire commitment in the Facility of Rs. 1045 crore to L&T Finance Limited and L&T Infrastructure Finance Company Limited, statement showing interest rate of both the lenders (existing and new i.e., Piramal Finance Ltd. and L&T Finance Limited, L&T Infrastructure Finance Company Limited) as on date of assignment and novation of the loan and if the interest rate increased due to novation of loan, the reason of changing the lender with higher interest rate and not taking the approval of the Commission in this regard.

(d) Reason for difference in the particulars of the lenders and Facility in the Schedule-I of the draft 'Memorandum recording change of trusteeship' and the submission made in the instant Petition.

14. The First Petitioner has submitted the revised memo of parties impleading Catalyst Trusteeship Limited as party to the Petition. The First Petitioner, vide affidavit dated 2.1.2020, has submitted the information called for.

Analysis and decision

15. After grant of transmission licence, the First Petitioner approached the Commission by way of Petition No. 113/MP/2018 for creation of security interest for Rs.2200 crore in favour of Security Trustee, namely, Piramal Trusteeship Services Private Limited acting as Security Trustee for the benefits of lenders. Out of Rs. 2200 crore, Piramal Finance Limited was lending Rs. 480 crore and the balance amount of Rs. 1720 crore was to be funded through issuance of debentures to be subscribed by Piramal Enterprises Limited for which Piramal Trusteeship Services Private Limited had also agreed to act as a Debenture Trustee. However, since the First Petitioner had not prayed for creation of security interest in favour of Debenture Trustee, approval of Rs. 480 crore was accorded by the Commission vide order dated 8.10.2018 with liberty to the First Petitioner to approach the Commission for creating the security interest for the balance amount of Rs. 1720 crore by filing appropriate application. Subsequently, the First Petitioner approached the Commission in Petition No. 347/MP/2018 to create security interest in favour of Security Trustee, Piramal Trusteeship Services Private Limited for balance amount of Rs. 1720 crore lent by Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited), Tata Cleantech Capital Limited, PTC India Financial Services Limited, Indian Renewable Energy Development Agency Limited and India Infrastructure Finance Company Limited. In-principle approval was accorded by the Commission vide order dated 1.1.2019.

16. Subsequently, on 20.6.2019, Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited) assigned and novated its entire commitment in the Facility of Rs. 1045 crore to L&T Finance Limited and L&T Infrastructure Finance Company Limited by executing Deed of Assignment and Novation and Transfer Notice. By way of the Deed of Assignment, L&T Finance Limited took over the commitment of Piramal Capital & Housing Finance Limited (erstwhile Piramal Finance Limited) to the extent of Rs. 145.75 crore which has already been disbursed to the First Petitioner. Subsequently, by way of the Novation and Transfer Notice dated 20.6.2019, L&T Finance Limited and L&T Infrastructure Finance Company Limited took over the commitment of Rs. 445 crore and Rs. 454.25 crore respectively. Pursuant to the above Assignment and Novation, Piramal Capital & Housing Finance Limited ceased to be a Lender in the Facility.

17. Subsequently, New Lenders, namely, L&T Finance Limited, L&T Infrastructure Finance Company Limited, Tata Cleantech Capital Limited, PTC India Financial Services Limited, Indian Renewable Energy Development Agency Limited and India Infrastructure Finance Company Limited have proposed to change the lenders agent from Piramal Capital & Housing Finance Limited to L&T Infrastructure Finance Company Limited. On the request of the First Petitioner, the lenders proposed to change the Security Trustee from 'Piramal Trusteeship Services Private Limited' to 'Catalyst Trusteeship Limited'. Accordingly, Catalyst Trusteeship Limited agreed to act as Security Trustee on behalf of the lenders.

18. The First Petitioner has submitted equity shareholding pattern and status of actual loan/ Project cost along with the Chartered Accountant's Certificate as under:

(a) Original estimated Project cost and means of finance

Original Estimated Project cost (as per agreement)	Rs. in crore	Means of Finance (as per agreement)	Rs. in crore
Hard Cost	2500	Equity Share capital	3
IEDC	0.00	Equity Share Premium	453
IDC	349	Loan / debenture from promoters, group companies	267
Debt Service Reserve Account (DSRA)	77	Secured loan / debt from External source	2200
Other Expenses	7		
Total	2933	Total	2933

(b) Actual Project cost-Gross block of fixed assets and means of finance as on 30.11.2019:

Actual Project cost	Rs. in crore	Means of Finance	Rs. in crore
EPC Cost	1355	Sponsor Contribution	733
SPV Acquisition Cost	21	Secured loan/ debt from External source	1246
Land	6		
Statutory Expenses	-		
Expenses for Bay Extension	28		
Forest Area Related Costs	76		
Right of Way Cost	8		
Total Hard Cost	1494		
IDC & Financing Charges	190		
Debt Service Reserve Account (DSRA)	-		
Preliminary & Pre-operative	2		
Contingency	-		
Total Soft Cost	192		
Total Project Cost	1686	Total	1686

(c) Details of identified lenders

S. No.	Lender's Name	Sanctioned loan (as per loan agreement)	Actual loan as on 30.11.2019
1	L&T Infrastructure Finance Company Limited	454.25	445
2	L&T Finance limited	590.75	413
3	Indian Renewable Energy Development Agency Limited	300	108
4	PTC Financial Services Limited	250	130

S. No.	Lender's Name	Sanctioned loan (as per loan agreement)	Actual loan as on 30.11.2019
5	Indian Infrastructure Finance Company Limited	455	0
6	Tata Cleantech Capital Limited	150	150
	Total	2200	1246

19. With regard to interest rate of both the lenders i.e. existing and New lenders as on date of assignment and novation of the loan, the First Petitioner has submitted that there has been an increase in rate of interest by 0.30% in the process of down selling from Piramal Capital & Housing Finance Limited to the New Lenders, namely, L&T Finance Limited and L&T Infrastructure Finance Company Limited. The First Petitioner has submitted that in response to its Notice of Disbursement dated 11.3.2019, it was informed that Piramal Capital & Housing Finance Limited could not disburse the requisite amount owing to bad market conditions which resulted into the First Petitioner amassing large number of creditors in completion of the Project. After approaching to various lenders, L&T Finance Limited and L&T Infrastructure Finance Company Limited have agreed to take over the entire lending commitment of Piramal Capital & Housing Finance Limited and have executed Deed of Assignment dated 20.6.2019 and Novation and Transfer Notice dated 20.6.2019. According to the First Petitioner, the New Lenders within 10 days of signing of the Agreements as mentioned above had released Rs. 290 crore to it, which was used to clear the entire having credit against the Project. The First Petitioner has submitted that New Lenders have cumulatively disbursed Rs. 480 crore to the First Petitioner from 20.6.2019 and the same has been used for execution work of the Project. Therefore, in view of the immediate disbursal of the funds, the New Lenders insisted on a 0.30% increase in the rate of interest and the rate of interest being charged by the New Lenders is not exorbitant and is (a) based on the lending rates followed by the New

Lenders, and (b) in line with the rate of interest being charged by the other lenders of this Project.

20. The transmission Projects are capital intensive Projects requiring huge capital investment. These Projects are financed through equity of the Project developer and loans by the financial institutions and issuance of debentures which is a form of loan. It is a 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 Commission, in its order dated 1.1.2019 in Petition No. 347/MP/2018, had granted in-principle approval for creation of security interest in favour of Second Petitioner, namely, Piramal Trusteeship Services Private Limited pursuant to the Security Trustee Agreement and Facility Agreement dated 22.9.2017 for Rs. 2200 crore for the benefit of the lenders, namely, Piramal Finance Limited for Rs. 1070 crore, Tata Cleantech Capital Limited for Rs. 100 crore, PTC India Financial Services Limited for Rs. 250 crore, Indian Renewable Energy Development Agency Limited for Rs. 300 crore and India Infrastructure Finance Company Limited for Rs. 480 crore. Subsequently, the amount disbursed by the certain lenders, namely, Tata Cleantech Capital Limited, Piramal Housing & Finance Limited and India Infrastructure Finance Company Limited were changed and thereafter L& T Finance Limited and L & T Infrastructure Finance Company Limited took over the entire commitment of Piramal Housing & Finance Limited. Pursuant to the above change, the Third Petitioner, namely Catalyst Trusteeship Limited has agreed to act as Security Trustee on behalf of the new lenders. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create encumbrance over all or part of the receivables, Letter of Credit or other assets of the Project in favour of the lenders or the lender`s representatives, as

security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

21. Section 17 (3) and (4) of the Act provides as under:

“17 (3). No licensee shall 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.”

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.

22. In our view, change of Security Trustee from Piramal Trusteeship Services Private Limited to New Security Trustee, namely, Catalyst Trusteeship Limited acting as Security Trustee on behalf of the New Lenders needs to be given comfort for creation of security for the benefit of the lenders/ banks/ financial institutions/ non-banking financial companies as security for the financial assistance provided by the lender. We, therefore, accord in-principle approval allowing change of Security Trustee from ‘Piramal Trusteeship Services Private Limited’ to New Security Trustee, namely, ‘Catalyst Trusteeship Limited’ acting as Security Trustee on behalf of the lenders for Rs. 2200 crore being lent by L&T Finance Limited, L&T Infrastructure Finance Company Limited, Tata Cleantech Capital Limited, PTC India Financial Services Limited, Indian Renewable Energy Development Agency Limited and India Infrastructure Finance Company Limited, by way of mortgage/ hypothecation/ assignment on Project assets by execution of Indenture of Mortgage and other financing documents for the Project. The First Petitioner is directed to submit copy of

signed copies of Indenture of Mortgage and refinancing documents for the Project immediately after their execution.

23. 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 assignment of licence and the assets of the First Petitioner to the nominee of lenders, the Commission shall evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and ability 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.”

24. Accordingly, 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 the licence to a nominee of the lender 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.

25. With the above, Petition No. 384/MP/2019 stands disposed of.

Sd/-
(I. S. Jha)
Member

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

sd/-
(P. K. Pujari)
Chairperson