

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 456/MP/2019**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I.S. Jha, Member**

**Date of Order: 11<sup>th</sup> March, 2020**

**In the matter of**

Approval under Section 17(3) and 17(4) of the Electricity Act, 2003, for assignment of licence by way of creation of security interest in favour of Security Trustee/Lenders (defined below) and other security creating documents/financing agreements by way of mortgage/hypothecation/assignment of mortgage properties and Project assets of Odisha Generation Phase-II Transmission Limited.

**And**

**In the matter of**

Odisha Generation Phase-II Transmission Limited  
F-1, The Mira Corporate Suites,  
Ishwar Nagar, Okhla Crossing,  
Mathura Road, New Delhi – 110065

**...Petitioner**

**Vs**

1) North Bihar Power Distribution Company Limited  
2nd Floor, Vidyut Bhawan, Bailey Road,  
Patna-800 001.

2) South Bihar Power Distribution Company Limited  
2<sup>nd</sup> Floor, Vidyut Bhawan, Bailey Road,  
Patna-800 001.

3) Jharkhand Bijili Vitran Nigam Limited  
Engineer's Building, Dhurwa,  
Ranchi-834 004.

4) Damodar Valley Corporation  
DVC Head Quarters, DVC Towers,  
VIP Road, Kolkata-700 054.

5) GRIDCO Limited  
Grid Corporation of Orissa Limited, Janpath,  
Bhubneshwar-751 011.

6) Energy and Power Department, Govt. of Sikkim  
Power Secretariat, Sonam Gyatso Marg,  
Gangtok, Sikkim-737 101.

7) West Bengal State Electricity Distribution Company Limited  
Bidyut Bhawan, A-Block, 3rd Floor,  
Bidhannagar, Kolkata-700 091.

8) Axis Trustee Services Limited  
2<sup>nd</sup> Floor, The Ruby House, 29, SW,  
Senapati Bapat Marg, Dadar West,  
Mumbai-400 028.

.....Respondents

**Parties Present:**

Shri Arijit Maitra, Advocate, OGPTL  
Ms. Kritika Angirish, Advocate, OGPTL  
Shri TAN Reddy, OGPTL  
Shri Himanshu Shekhar, JBVNL  
Shri Anbnas Parimal, JBVNL

**ORDER**

The Petitioner, Odisha Generation Phase-II Transmission Limited (OGPTL), 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 "Common Transmission System for Phase-II Generation Projects in Odisha and immediate evacuation system for OPGC (1320 MW) project in Odisha" 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 30.6.2016.

2. The Petitioner has submitted that for part finance of the Project, the Petitioner had requested lenders, namely, L&T Infrastructure Finance Company Limited, L&T Finance Limited and L&T Fincorp Limited (hereinafter referred to as "Prior Lenders") to provide financial assistance amounting to Rs.954.00 crore (Prior Loans) as rupee term loan for construction, development and implementation of the Project on the terms and conditions set out in the Common Loan Agreement, Security Trustee Agreement, Lenders' Agent Agreement, Trust and Retention Account Agreement

and Unattested Deed of Pledge of Shares. The Petitioner, thereafter, approached the Commission in Petition No. 123/MP/2016 for approval under Section 17(3) and (4) of the Act to create security over all movable and immovable assets of the Project in favour of SBICAP Trustee Company Limited, acting for the benefit and on behalf of the Prior Lenders. The Commission in its order dated 20.9.2016 in Petition No.123/MP/2016 accorded in-principle approval allowing the Petitioner to create security in favour of Security Trustee, namely, SBICAP Trustee Company Limited.

3. The Petitioner has filed the present Petition under Section 17(3) and 17(4) of the Act for creation of security interest in favour of new Security Trustee, i.e. Respondent No.8, Axis Trustee Services Limited/Lenders for assignment of transmission licence by way of creation and/or perfection of security interest by way of mortgage/charge/hypothecation/assignment, etc., over all the movable and immovable assets of the Petitioner for the benefits of the lender. The Petitioner has made following prayers:

“(a) Approve the assignment by way of security creation of the Transmission License and creation and/or perfection of security interest by way of mortgage/charge/hypothecation /assignment etc. over all the movable and immovable assets of the Petitioner as provided for in Para 11 of this Petition to secure the Outstanding (as defined in the Facility Agreement)/ Utility (as defined in the Electricity Act, 2003) of Petitioner by way of security in favour of Respondent No. 8, Axis Trustee Services Limited as Security Trustee, acting for the benefit and on behalf of the Lenders; and

(b) 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.”

4. The Petitioner requested Axis Bank Limited for refinancing the outstanding loan of Rs. 550 crore. Pursuant to the request of the Petitioner, Axis Bank Limited, agreed to provide financial assistance as requested for an amount not exceeding Rs. 550 crore by way of rupee term loan in the sanction letter No.

AXISB/CO/CRG/SCG/CP/2019-20/190 dated 18<sup>th</sup> June, 2019 read with subsequent amendments dated 21<sup>st</sup> June, 2019 and 4<sup>th</sup> July, 2019 on such terms and conditions as specified therein. For this purpose, the Petitioner and lender, Axis Bank Limited have appointed the Axis Trustee Services Limited who has agreed to act as Security Trustee for the lender and has entered into Security Trustee Agreement and Facility Agreement on 4.7.2019.

5. The Petitioner has submitted that pursuant to the terms of Facility Agreement dated 4<sup>th</sup> July, 2019, the Petitioner has agreed to provide *inter alia* the following security to secure the secured obligations and any and all amounts due under the Facility Agreement, in favour of the Security Trustee acting on behalf of the Present Lender. Clause 10.23 of the Facility Agreement provides as under:

**“10.23A Security**

(A) The Rupee Loan Facility together with all Interest, Additional Interest, Default Interest, principal amounts of the Rupee Loan Facility, and any other amounts due and payable to the Lenders hereunder, premia on prepayment, any fee, costs, charges, expenses and other monies whatsoever stipulated in or payable under this Agreement or the Financing Documents and all amounts payable to the Secured Parties under the Financing Documents shall be secured in favour of the Security Trustee for the benefit of the Lenders by

(a) a first charge on all the Borrower’s tangible moveable assets, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets and current and non – current assets, both present and future;

(b) a first charge over all accounts of the Borrower (including but not limited to the Account and the Sub-Accounts (including the DSRA) (or any account in substitution thereof) that may be opened in accordance with the Transaction Documents, and in all funds from time to time deposited therein (including the reserves), all designated account opened with designated banks and the Permitted Investments or other securities representing all amounts credited to the Account and a first charge on the Receivables;

(c) a first charge on all intangible assets of the Borrower including but not limited to goodwill, rights and undertakings and intellectual property rights and uncalled capital, book debts, current assets, operating cash flows, commissions, revenues of whatsoever nature, both present and future;

(d) a first charge on all the immovable assets of the Borrower, present and future, if any;

(e) To the extent permitted by CERC a first charge by way of assignment/ hypothecation or creation of security interest, present and future of

(i) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all the Project Documents including the Transmission Service Agreement, duly acknowledged and consented to by the counter parties to the Project Documents by executing the consent to assignment if such Project Documents requires prior consent of such counter parties before creation of Security Interest as within-mentioned, all as amended, varied or supplemented from time to time;

(ii) the right, title and interest and benefits of the Borrower in, to and under all the Clearances pertaining to the Project (including the Transmission License) to the extent the same are assignable;

(iii) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under any letter of credit, guarantee including contractor guarantees and liquidated damages, consent agreements, side letters and performance bond provided by any party to the Project Documents and additional Project Documents (if any) (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 EPC Contractors in favour of the Borrower, which may be legally assigned);

(iv) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all Insurance Contracts and Insurance Proceeds pertaining to the Project.

(f) Pledge of shares representing at least 51% (fifty one percent) of the total paid up equity share capital of the Borrower held by Sterlite Grid 3 Limited (if Axis is the sole Lender, the share pledge shall be restricted to 30% (thirty percent) and balance 21% (twenty one percent) shall be under non disposal undertaking). The shares to be pledged shall be free from any restrictive covenants/lien or other encumbrance under any contract/arrangement including shareholder agreement/ joint venture agreement/ financing arrangement with regard to pledge/transfer of the shares including transfer upon enforcement of the pledge and shall have full voting rights.

(g) Debt Service Reserve Account for an amount equal to Debt Service Reserve Amount. For bullet repayment Debt Service Reserve Account requirement will not be applicable.

These shall be collectively referred to as the “**Security**” which shall include any further or additional Security Interest created in terms of Clause 10.23(E) below. The Security shall be created in favour of the Security Trustee and shall be in a form and manner satisfactory to the Lenders.

### **10.23(B) Ranking of Security**

(i) The beneficial interest in the Security created or to be created for the benefit of the Lenders in terms of the Financing Documents shall have first ranking pari passu charge inter se between the Lenders (except for the charge created / to be created for the benefit of the guarantee provider providing the guarantee facility for creating Debt Service Reserve Account in favour of the Existing Lenders/ the debenture holders, and for any Working Capital Facility. Charge permitted to be created only up to 90 days receivables with prior intimation to Security Trustee/Lenders).

(ii) Second charge ceding on other assets for Working Capital Lenders will be with prior approval of Lenders.

**10.23(C) Time Frame for Creation and Perfection of Security**

Notwithstanding anything contained herein or in any other Financing Document the Borrower shall create, perfect, register the Security on or before the Stipulated Security Creation Date; at any time after the Stipulated Security Creation Date, as and when any additional moveable property is allotted or made available to the Borrower, the Borrower shall take expeditious steps to create and perfect Security Interest, including assignment on them for the benefit of the Lenders.

The Borrower shall obtain the approval from Central Electricity Regulatory Commission ("CERC") and Security to be created and perfected on all movable assets if any, rights title, interest in Project documents, transmission lines and immovable assets belonging to the Borrower, within 6 (six) months from the date of first Drawdown in a manner and to the extent permitted by CERC.

The Borrower shall maintain the Security, as envisaged and create pursuant to this Agreement, and shall execute the corresponding Security Documents in a form and manner satisfactory to the Lenders; such Security Documents shall always be kept in full force and effect.

In the event the Borrower fails to create the Security within the Stipulated Security Creation Date, the Borrower shall pay to the Lenders an Additional Interest in accordance with Section 4.4 hereof."

7. The Petitioner has submitted that Article 15.2.2 of the TSA dated 20.11.2015 entered into between the Petitioner and the beneficiaries of the Project provides that the 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.

8. The 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 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 and in order to tie up the necessary financing.

9. The Petition was heard after notice to the Respondents. No reply has been filed by the Respondents.

10. The Petitioner, vide Record of Proceedings for the hearing 14.1.2020, was directed to submit the following details/clarification:

a) Duly filed Part-B of the prescribed format together with auditor certificate with regard to 'Actual Project Cost' and the 'Actual means of finance' as on COD of the project i.e., 6.4.2019. 'Gross Block of Fixed Assets' and 'Actual means of finance' as on application date.

b) Reason for non-matching of 'total debt and equity' with 'total project cost' submitted vide 'Actual statement of Flow of Project cost, flow of promoters contribution towards paid up equity capital/loans, flow of External loan and Debt-Equity Ratio', as submitted vide affidavit dated 16.12.2019, with reconciliation statement of the same.

c) Details of terms and conditions of 'Loan from Holding' and 'Loan from IGT' mentioned in the 'Actual statement of Flow of Project cost, flow of promoters contribution etc.', as submitted vide affidavit dated 16.12.2019.

d) Details about change in lenders subsequent to the Commission's approval vide order dated 20.9.2016 in Petition No. 123/MP/2016 and the prior approval, if any, taken in this regard.

11. The Petitioner, vide affidavit dated 22.1.2020, has submitted the information called for which has been discussed in succeeding paragraphs.

## **Analysis and Decision**

12. We have considered the submissions of the Petitioner. We have also perused the documents available on record. After grant of transmission licence, the Petitioner approached the Commission by way of Petition No. 123/MP/2016 for creation of security interest for Rs.954 crore in favour of Security Trustee, namely, SBICAP Trustee Company Limited acting as Security Trustee for the benefits of Prior Lenders, namely, L&T Infrastructure Finance Company Limited, L&T Finance Limited and L&T Fincorp Limited. The Commission in its order dated 20.09.2016 accorded in-principle approval allowing the Petitioner to create security in favour of SBICAP Trustee Company Limited.

13. The Petitioner has subsequently approached Axis Bank Limited for refinancing the outstanding loan not exceeding to Rs.550 crore. Axis Bank Limited has agreed for the same through its Sanction Letter No. AXISB/CO/CRG/SCG/CP/2019-20/190 dated 18<sup>th</sup> June, 2019 read with subsequent amendments dated 21<sup>st</sup> June, 2019 and 4<sup>th</sup> July, 2019. Consequently, the Petitioner has entered into Facility Agreement with Axis Bank Limited on 4.7.2019 for Rs.550 crore as rupee term loan.

14. The Petitioner has submitted the status of commissioning, cost and financing plan of the Project as under:

(a) Date of Commercial operation (COD):

<b>Assets</b>	<b>Effective date</b>	<b>Scheduled COD</b>	<b>Actual COD</b>
Jharsuguda- Raipur Line	8.4.2016	8.8.2019	6.4.2019
OPGC-Raipur Line	8.4.2016	31.7.2017	30.8.2017



(b) Original estimated project cost and means of finance:

Original Financing plan agreed by the lenders as per Common Loan Agreement			
Original Estimated Project Cost (as per agreement)	Rs in crore	Means of Finance (as per agreement)	Rs in crore
Hard Cost	963	Equity Contribution	269
IEDC	119	Secured loan/External Debt	954
IDC	141		
<b>Total</b>	<b>1,223</b>	<b>Total</b>	<b>1,223</b>

(c) Actual Project cost-Gross Block of fixed assets and means of finance as on COD of Jharsuguda-Raipur transmission line i.e. 6.4.2019 and as on the date of application i.e. 20.11.2019:

Actual Project Cost duly certified by Auditor Certificate (Rs in crore)		
Particulars	As on COD (6.4.2019)	As on the date of Application (20.11.2019)
Gross Block of Fixed Assets	1241	1241
Actual Means of Finance of the above cost duly certified by Auditors Certificate (Rs in crore)		
Particulars	As on COD	As on the date of Application
Equity Share Capital	1	1
Equity Share Premium	133	133
Loan/Debenture from promoters, group companies	181	585
Secured Loan/Debt from External Source	913	549*
Others (Capex Creditors, Cash profit & Net Working Capital)	13	-27
<b>Total</b>	<b>1241</b>	<b>1241</b>

\*Outstanding loan from Axis Bank is Rs. 550 crore. However, due to accounting adjustment of upfront fees, it has been shown as Rs 549 crore in books.

(d) Actual statement of flow of Project cost, flow of promoter's contribution towards paid up equity capital/loans, loans from promoters and flow of external loan:

	As on 31.3. 2016	As on 31.3. 2017	As on 31.3.2018	As on 31.3.2019	As on 6.4.2019	As on 20.11.2019
<b>PROJECT COST</b>						
Gross Block	1	616	1,110	1,240	1,241	1,241
Capital Advances for construction of fixed assets	-	123	27			
<b>Total Assets</b>	<b>1</b>	<b>740</b>	<b>1,137</b>	<b>1,240</b>	<b>1,241</b>	<b>1,241</b>
<b>MEANS OF FINANCES</b>						
<b>Equity</b>						
Share capital	0	1	1	1	1	1
Share premium / allotment	-	124	124	133	133	133
<b>Total Equity</b>	<b>0</b>	<b>125</b>	<b>125</b>	<b>134</b>	<b>135</b>	<b>135</b>
<b>Promoter Loan*</b>						
Loan from SGL 3 (Holding Company)	1	11	86	181	181	
Loan from India Grid Trust (Promoter Company)						585
<b>Total Promoter Loan</b>	<b>1</b>	<b>11</b>	<b>86</b>	<b>181</b>	<b>181</b>	<b>585</b>
<b>Total Equity +Promoter Loan (A)</b>	<b>1</b>	<b>136</b>	<b>211</b>	<b>316</b>	<b>316</b>	<b>719</b>
<b>External Debt</b>						
External Debt from Bank(s)/Financial Institutions (B)	-	345	630	913	913	549
<b>Other Liabilities</b>						
Net Working Capital & Bank Balance	-	-13	-1	-13	-12	-59
Cash profit/ (Losses)	-	-0	-4	-7	-7	16
Creditor for Capex Payables	-	272	303	31	31	16
<b>Total Other Liabilities (C)</b>	<b>-</b>	<b>259</b>	<b>297</b>	<b>12</b>	<b>13</b>	<b>-27</b>
<b>Total External Debt+ Other Liabilities (D = B+C)</b>	<b>-</b>	<b>603</b>	<b>927</b>	<b>924</b>	<b>926</b>	<b>522</b>
<b>Total Means of Finances (E = A+D)</b>	<b>1</b>	<b>740</b>	<b>1,137</b>	<b>1,240</b>	<b>1,241</b>	<b>1,241</b>

15. With regard to details regarding change in lenders after approval of the Commission vide order dated 20.9.2016 in Petition No. 123/MP/2016, the Petitioner has submitted that after execution of the financing documents with regard to the Prior Loan, namely, Rs.954 crore with the Prior Lenders, namely, L&T Infrastructure Finance Company Limited, L&T Finance Limited and L&T Fincorp Limited, the Prior Lenders have assigned/ novated the part of their respective Prior Loans aggregating to Rs.751 crore to certain banks/ financial institutions, namely, L&T Infrastructure Finance Company Limited, Union Bank of India Limited, IFCI Limited, Dena Bank and Oriental Bank of Commerce.

16. The Petitioner has submitted that the Prior Loan as on the date of Facility Agreement was Rs. 9,22,44,92,089/-, which was entirely repaid by way of the Rupee Loan Facility of Rs. 550 crore and the infusion of Rs. 400 crore by the Promoter of the Petitioner, namely, India Grid Trust on 5.7.2019. Accordingly, as on date, there is no prior outstanding loan against the Petitioner. The Petitioner has placed on record the 'No due Certificates' issued by earlier Security Trustee, namely, SBICAP Trustee Company Limited and the Prior lenders, namely, Union Bank of India Limited, IFCI Limited, Dena Bank and Oriental Bank of Commerce.

17. 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 accordance with Article 15.2.2 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.

18. 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.”

19. 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 lender(s). We, therefore, accord in-principle approval allowing the Petitioner to create security in favour of Axis Trustee Services Limited for Rs. 550 crore, acting as Security Trustee pursuant to Security Trustee Agreement by way of hypothecation on Project assets by execution of unattested Deed of Hypothecation for the Project. The Petitioner is directed to place on record the copy of financing documents, namely, Deed of Hypothecation after execution.

20. It is, however, made clear that the transmission licence granted by the Commission to the 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 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 License and other related matters) Regulations, 2009 which reads as under:

**“12. Assignment of License**

In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the license to a nominee of the lenders.”

21. 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 Petitioner as and when required by the Commission for any specific purpose.

22. With the above, Petition No. 456/MP/2019 stands disposed of.

Sd/-  
**(I.S. Jha)**  
**Member**

sd/-  
**(P.K. Pujari)**  
**Chairperson**