

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.113/MP/2018**

**Coram:**  
**Shri P.K.Pujari, Chairperson**  
**Shri A.K.Singhal, Member**  
**Dr. M.K.Iyer, Member**

**Date of order: 8<sup>th</sup> of October, 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 Security Trustee/Lenders and for any subsequent transferees, assign, novatees thereof and any refinancing lenders to the Project, acting on behalf of and for the benefit of the Lenders pursuant to Indenture of Mortgage declaration and Memorandum entry and other security creating documents/Financial Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Mortgaged Properties and Project Assets, for the transmission lines, i.e. (i) Biswanath Chariyalli (POWERGRID)-Itanagar 132 kV D/c line (ii) 2 nos. 132 kV line bays at Itanagar for termination of Biswanath Chariyalli (POWERGRID)-Itanagar 132 kV D/C line (iii) LILO of one circuit of Biswanath Chariyalli (POWERGRID)-Itanagar 132 kV D/C (Zebra Conductor) line at Gohpur (AEGCL) (iv) Silchar (POWERGRID)-Misa (POWERGRID) 400 kV D/C (Quad) line (v) 400/132 kV, 2X315 MVA S/S at Surajmninagar (vi) 400/132 kV, 2X315 MVA S/s at P.K. Bari (vii) Surajmaninagar-P.K. Bari 400 kV D/c line (viii) 2 no. 400 kV line bays at Palatana GBPP switchyard for termination of Palatana-Surajmaninagar 400 kV D/C line (ix) AGTPP (NEEPCO)-P.K. Bari (TSECL) 132 kV D/C line with high capacity HTLS Conductor (equivalent to single moose ampacity at 85°C) (x) 2 nos. 132 kV line bays at AFTPP generation switchyard for termination of AGTPP (NEEPCO)-P.K. Bari (TSECL) 132 kV D/C line (xi) 2 no. 132 kV line bays at P.K. Bari (TSECL) S/S for termination of AGTPP (NEEPCO)-P.K. Bari (TSECL) 132 kV D/C line.

**And**  
**In the matter of**

1. NER II Transmission Limited  
F-1, The Mira Corporate Suites1 & 2,  
Ishwar Nagar, Okhla Crossing,  
Mathura Road, New Delhi-110065.

2. Piramal Trusteeship Services Private Limited  
320, Tower, B-DLF Towers, Jasola,  
New Delhi-110 025

..... **Petitioners**

**Vs**

1. Assam Electricity Gird Corporation Limited

4<sup>th</sup> Floor, Bijulee Bhawan, Paltan Bazar,  
Guwahati-I, Assam-781 001

2. Tripura State Electricity Corporation Limited  
Bidyut Bhawan, Banamalipur,  
Agartala, Tripura

3. Meghalaya Power Distribution Corporation 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  
Government of Mizoram  
Mizoram Secretariat, Annexure-II,  
Treasury, Square Aizwal,  
Mizoram

..... Respondents

**The following were present:**

1. Shri Sitiesh Mukherjee, Advocate, NER-II
2. Shri Vishal Binod, Advocate, NER-II
3. Shri T N Reddy, NER-II
4. Shri Pulkit Sharma, NER-II

**ORDER**

The First Petitioner herein, NER-II Transmission Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish Transmission System for "NER System Strengthening Scheme-II (Part-B) and V" (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 20.6.2017.

2. NER-II Transmission Limited and Piramal Trusteeship Services Private Limited have filed a combined petition for creation of security in favour of Piramal Trusteeship Services Private Limited as Security Trustee pursuant to the Security Trustee Agreement and other relevant financing documents by way of mortgage/hypothecation/assignment on project assets for benefit of the lenders to the project. The petitioners have made the following prayers:

“(a) Approve the creation of security Interest, over all assets including the movable and immovable assets of Petitioner No. 1 and to the extent as mentioned in paras 5 and 6 above, in favour of Security Trustee/Lenders and for subsequent transferees, assigns, novatees thereof and any refinancing lenders to the project, acting on behalf of and for the benefit of the Lenders pursuant to Indenture of Mortgage Agreement, the declaration and memorandum of entry and other security creating documents/Financing Documents and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Mortgaged Properties and Project Assets and for amendment of the security document to include the assign, transferees and novatees of the Lenders.

(c) Pass such other relief as the Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.”

3. According to the First Petitioner, for the purpose of financing the project, the First Petitioner requested the lender for which lender has agreed to make available financial assistance amounting to Rs. 2200 crore as rupee term loan with a letter of credit/letter of comfort sub-limit upto Rs. 1540 crore for the project. At the request of the First Petitioner, Piramal Trusteeship Services Private Limited (hereinafter referred to as ‘Security Trustee’) has agreed to act as Security Trustee for the lenders and has entered into Security Trustee Agreement and Facility Agreement on 22.9.2017.

4. The First Petitioner has submitted that pursuant to the terms of the Facility Agreement, the secured obligations are secured by,

- (a) A first ranking charge on all the First Petitioner`s immovable properties, both present and future;
- (b) A first ranking charge on all the First Petitioner`s moveable assets, including movable plant and machinery, machinery spares, tools and accessories furniture, fixtures, vehicles and all other movable assets, and non-current assets both present and future;
- (c) A first ranking charge over all Accounts and all other bank accounts of the First Petitioner 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 the 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 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 First Petitioner, both present and future;
- (e) A first ranking charge on all revenues and receivables of the First Petitioner whether or not deposited in the Accounts, the book debts of the First Petitioner, the operating cash flows of the First Petitioner and all other commissions and revenues and cash of the First Petitioner of whatsoever nature, both present and future;
- (f) A first ranking charge on all intangible assets of the First Petitioner including but not limited to goodwill, rights, undertaking, intellectual property rights and

uncalled capital, booked debts, operating cash flows, revenues of whatsoever nature, both present and future;

(g) A first charge/assignment by way of security, in:

- (i) All the rights, title, interest, benefits, claims and demands whatsoever of the First Petitioner in the Project Documents, both present and future, 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 Document requires prior consent of such counter parties before creation of such security interest, all as amended, varied or supplemented from time to time;
- (ii) All the rights, title, interests and benefits of the First Petitioner in, to and under all the clearances (including the transmission licensee 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 First Petitioner 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 First Petitioner pursuant to the Transmission Service Agreement or in relation to the Project and/or guarantees issued by the EPC Contractors in favour of the First Petitioner, which may be legally assigned);

(iv) All the rights, title, interests, benefits, claims and demands, whatsoever of the First Petitioner under all Insurance Contracts and Insurance Proceeds pertaining to the Project, both present and future;

The aforesaid Security shall in all respects rank *pari-passu inter-se* amongst the Lenders without any preference or priority to one over the other or others.

5. The First Petitioner has submitted that it has agreed to create security interest in favour of the representative of the lenders/Security Trustee pursuant to Indenture of Mortgage Agreement and Financial Agreements, by way of mortgage/hypothecation/assignment in accordance with the provisions of the Indenture of Mortgage Agreement and the Financial Agreements, and has agreed that it shall be lawful for the representative of the lenders to enter into and take possession of mortgaged properties along with all movables, intangibles and any future assets under the project comprised in financial agreement and henceforth, the First Petitioner shall take no action inconsistent with or prejudicial to the right of Lenders Representatives/Security Trustee acting on behalf of the Lenders/Security Trustee quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereon without interruption or hindrance by it or any person or persons whatsoever.

6. The First Petitioner has submitted that under the financial agreements and on enforcement of the security interest, it shall be lawful for the Lenders Representative/Security Trustee, acting on behalf of and for the benefit of the Lenders/Security Trustee, to enter into and take possession of the assets/properties

mortgaged/charged/assigned for their benefit and substitute themselves or its nominees for the first petitioner under any or all of the projects document(s).

7. The First Petitioner has further stated that Article 15.2.2 of the Transmission Service Agreement (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 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 relinquishment or transfer of its rights 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, the First Petitioner, as a licensee cannot create security interest over all the movable and immovable assets of the First Petitioner in favour of Security Trustee/Lenders and for any subsequent transferees, assigns, novatees thereof and any refinancing lenders to

the project, acting on behalf of and for the benefit of the lenders pursuant to Indenture of Mortgage Agreement, declaration and memorandum of entry and other security creating documents/financial Agreements and for future refinancing transactions, by way of mortgage/hypothecation/assignment of mortgaged properties and project assets without approval of the Commission. Accordingly, the petitioners have filed the present petition seeking prior approval of the Commission for creation of security in favour of Security Trustee/lenders by way of mortgage/hypothecation/assignment of mortgaged properties and projects assets through execution of Security Trustee Agreement and other financing documents for the project.

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

**Analysis and Decision:**

10. The Petitioners have filed the present petition for creation of security interest in favour of Security Trustee, namely, Piramal Trusteeship Services Pvt. Ltd. The First Petitioner filed Petition No. 256/MP/2017 for creation of security interest for Rs. 2200 crore in favour of Security Trustee. Vide order dated 27.2.2018, Petition No. 256/MP/2017 was disposed of as Petition being incomplete. However, the Petitioners were granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/information. In pursuant to the liberty granted, the First Petitioner has approached the Commission by way of the present Petition.

11. The First Petitioner vide Record of Proceedings for the hearing dated 3.5.2018 was directed to place on record the details of identified acceding lenders and to



confirm that equity lock-in-requirement in terms of Article 18.2.1 of the TSA shall remain undiluted after raising Rs. 2200 crore through Security Trustee.

12. The First Petitioner vide its affidavit dated 5.6.2018 has submitted that it has identified lenders and tied up the entire loan of Rs. 2200 crore. The First Petitioner has submitted that out of the total Rs. 2200 crore loan, M/s Piramal Finance Limited is lending Rs. 480 crore and identified lenders for the balance of Rs. 1720 crore is Piramal Enterprises Limited at present which has agreed to subscribe the debentures to be issued by the First Petitioner for Rs. 1720 crore pursuant to the Debenture Subscription Agreement dated 4.6.2018 executed between the First Petitioner, Piramal Enterprises Limited and Piramal Trusteeship Services Private Limited. The First Petitioner has submitted that it is presently in discussions with other lenders who are desirous of acceding to the Facility Agreement dated 22.9.2017 on the very same terms and conditions as they presently stands. The accession of an new lenders will not alter the First Petitioner`s total debt requirement of Rs. 2200 crore and will be carried out by replacing existing lenders to the extent of the participating of any new acceding lender.

13. With regard to equity lock-in-requirement in terms of Article 18.2.1 of the TSA, the First Petitioner has submitted that in terms of the TSA, selected bidders was Sterlite Grid 4 Limited which acquired the Petitioner Company on being declared successful in the competitive bidding process. The selected bidder acquired 100% of the equity shareholding in the Petitioner Company and selected bidders currently holds 100% equity share holding. The First Petitioner has confirmed that it will abide

by the equity lock-in-requirements in terms of Article 18.2.1 of the TSA even after raising Rs. 2200 crore through Security Trustee.

14. We have considered the submissions made by the Petitioners. Perusal of the Security Trustee Agreement dated 22.9.2017 reveals that the First Petitioner had approached the lenders for financial assistance for construction and development of the project. Lender, namely Piramal Finance Limited and acceding lenders had agreed to make available financial assistance of Rs. 480 crore and Rs. 1720 crore (total Rs. 2200 crore) respectively as rupee term loan to the First Petitioner and a Security Trustee Agreement was entered into between the First Petitioner, Security Trustee and lender on 22.9.2017. Subsequently, First Amendment Agreement to the Facility Agreement dated 22.2.2018 was entered into between the First Petitioner, Security Trustee and confirming party, namely Piramal Enterprises Limited. As per amended Facility Agreement dated 22.2.2018, the First Petitioner had requested the lenders to make available rupee facilities for an aggregate principal amount of Rs. 2200 crore with a letter of credit/letter of comfort sub-limit of upto Rs. 1540 crore and each lender had agreed to provide to make draws under the facility by way of non-revolving rupees loans upto amounts not exceeding, in aggregate their respective commitments.

15. The First Petitioner vide Record of Proceedings for the hearing dated 30.8.2018 was directed to clarify that the approval under Section 17 of the Act shall related to security interest to be created in favour of the identified lender, namely Piramal Trusteeship Services Private Limited. The First Petitioner vide its affidavit dated 14.9.2018 has submitted that security over the First Petitioner's transmission

assets in respect of the entire Rs. 2200 crore debt is proposed to be created in favour of the Security Trustee, namely Piramal Trusteeship Services Private Limited who, in accordance with the Security Trustee Agreement dated 22.9.2017 has contractually agreed to hold the security interest and act for the benefit of the lenders of the First Petitioner. Therefore, the security interest over the assets of the First Petitioner is being created in favour of its identified lenders through the Security Trustee. The First Petitioner has submitted the details of identified lenders and the value of debt from each as under:

(a) Piramal Finance Limited: Rs. 480 crore through the First Amendment Agreement to the Facility Agreement dated 22.2.2018;

(b) Primal Enterprises Limited: Rs. 1720 crore through the Debenture Subscription Agreement dated 4.6.2018.

16. Perusal of the Debenture Subscription Agreement entered into between the First Petitioner, Security Trustee and Debenture Subscriber, namely, Piramal Enterprises Limited reveals that the First Petitioner proposes to issue unlisted, secured, redeemable, non-convertible debentures of face values as mutually agreed aggregating to Rs. 1720 crore in multiple tranches on a private placement basis to the Debenture Subscriber in terms of this Agreement and the First Petitioner had approached Piramal Trusteeship Services Private Limited to act as the Debenture Trustee for the benefit of the Debenture Subscriber. Piramal Trusteeship Services Private Limited had agreed to act as the Debenture Trustee for the Debenture Subscriber on the terms and conditions agreed in the Security Trustee Agreement dated 22.9.2017, amended Facility Agreement dated 22.2.2018 and Debenture Subscription Agreement dated 4.6.2018. As per Clause 2.1 of the Debenture Subscription Agreement, commitment of the debenture subscriber to subscribe to

debentures aggregating to the debenture amount shall stand reduced to the extent of the commitment of the acceding lenders who have executed the Deed of Adherence under the Facility Agreement. However, the total amount of the debenture issued together with the total amount facility to be provided by the lenders [including acceding lenders who have executed the Deed of Adherence(s)] to the First Petitioner under Facility Agreement shall not exceed Rs. 2200 crore. It is noted that as per the available record, the First Petitioner has not executed the Deed of Adherence with the acceding lenders till date.

17. The First Petitioner has sought approval of the Commission under Section 17 (3) and (4) of the Act for creation of security interest in favour of Security Trustee for making available proposed finance of Rs. 2200 crore. Out of Rs. 2200 crore, Piramal Finance Limited is lending Rs. 480 crore and the balance amount of Rs. 1720 crore to be funded through Piramal Enterprises Ltd for which Second Petitioner, Piramal Trusteeship Services Private Limited has agreed to act as a Debenture Trustee. However, in the Petition, the First Petitioner has 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. Therefore, in the present petition we are not inclined to grant in-principal approval for creation of security interest in favour of Debenture Trustee. However, the Petitioners are granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/information for creation of security interest in favour of Debenture Trustee.

18. 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 First Petitioner and lender have appointed the Second Petitioner viz, Piramal Trusteeship Services Private Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Facility Agreement dated 22.9.2017 have been executed for loan of Rs. 480 crore and the lender, namely Piramal Finance Limited has agreed to provide loan of Rs. 480 crore to the First Petitioner. 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.

19. Section 17 (3) and (4) of the Act 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.”

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 Piramal Trusteeship Services Private Limited as Security Trustee 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 the First Petitioner to create security for an amount of Rs. 480 crore only lending by Piramal Finance Limited in favour of Piramal Trusteeship Services Private Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage on project assets by execution of Security Trustee Agreement, Facility Agreement and refinancing documents for the project. 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 transfer of licence and the assets of the First Petitioner to the nominee of Security Trustee, the Commission shall evaluate such nominee's experience in development, design, construction, operation and maintenance of the transmission lines, and ability to execute the project and undertake transmission of electricity. The licensee, lender, security trustee or its nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself about 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.”

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 or its 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 shall be necessary for assigning the licence to the Security Trustee or its nominee and transfer of any assets to them. Lastly, finance documents and statements shall be filed by the petitioner as and when required by the Commission for any specific purpose.

20. With the above, Petition No. 113/MP/2018 stands disposed of.

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

**sd/-**  
**(A.K.Singhal)**  
**Member**

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