

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.256/MP/2017**

**Coram:**  
**Shri A.K.Singhal, Member**  
**Shri A.S.Bakshi, Member**  
**Dr. M.K.Iyer, Member**

**Date of order: 27.2.2018**

**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

..... **Petitioner**

**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 State 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  
Government of Mizoram  
Mizoram Secretariat, Annexure-II,  
Treasury, Square Aizwal,  
Mizoram

..... Respondents

**The following were present:**

1. Shri T N Reddy, NER-II
2. 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 finance for 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 First Petitioner 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;
- (ii) 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);
- (iii) 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 thenceforth, 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 of any of the them 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 relinquish 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. The Commission vide Record of Proceedings for the hearing dated 21.12.2017 observed that while approval has been sought for creating security charge on Rs. 2200 crore in favour of security trustee, the identified lenders lending only Rs. 480 crore and the balance amount of Rs. 1720 crore would be given by the acceding lenders. The details of the acceding lenders have not been placed on record. The Commission directed the First Petitioner to submit on affidavit by 15.1.2018, the details of the identified lenders for the entire amount for which approval under Section 19 (3) of the Electricity Act, 2003 has been sought. The Petitioner vide its affidavit dated 19.1.2018 has submitted that out of the total Rs. 2200 crore loan, M/s Piramal Finance Limited is lending Rs. 480 crore and the balance Rs. 1720 crore, initially will be lended by M/s Piramal Enterprise Limited as 'Acceding Lenders". The First Petitioner has placed on record the Board Resolution of M/s Piramal Enterprise Limited approving the said lending. The First Petitioner has submitted that in future, M/s Piramal Enterprise Limited may further down sell some of the said amount to other acceding lenders as and when identified.

11. Since, the First Petitioner had not submitted the complete information along with requisite documents, the First Petitioner, vide letter dated 1.2.2018 was further directed to submit the following information and clarification on or before 9.2.2018:



(a) As per affidavit dated 19.1.2018, out of the total Rs. 2200 crore loan, M/s Piramal Finance Ltd. is lending Rs. 480 crore and the balance Rs. 1720 crore initially will be lended by M/s Piramal Enterprise Ltd. as “Acceding Lenders” . However, in future M/s Piramal Enterprise Ltd. may further down sell some amount out of Rs. 1720 crore to other acceding lenders as and when identified. Documentary Proof in this regard may be provided.

(b) Submit the composition/details of Board of Directors of M/s Piramal Enterprise Ltd. and M/s Piramal Finance Ltd.

12. The First Petitioner has not submitted the above information, despite giving number of opportunities. The Petition being incomplete, it is not possible to take a view on the prayers of the Petitioners. However, the Petitioners are granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/information.

13. With the above, Petition No. 256/MP/2016 stands disposed of.

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

**sd/-**  
**(A.S. Bakshi)**  
**Member**

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