

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 86/MP/2018

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

Date of order: 10th of April, 2018

In the matter of

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for the purpose of bringing on record the appointment of Axis Trustee Services Limited/Petitioner No. 2 as the new Security Trustee which in the process of replacing the earlier Security Trustee i.e. Petitioner No. 3 so as to ensure that the new Security Trustee continues to function seamlessly and swiftly on behalf and for benefits of the lenders.

**And
In the matter of**

1. Alipurduar Transmission Limited
Plott No. 101, Part-III, GIDC Estate,
Sector-28, Gandhinagar-382 02, Gujarat
2. Axis Trustee Services Limited
Axis House, Bombay Dyeing Mill Compound,
Pandurang Budhkar Marg,
Worli, Mumbai-400 025
3. Unit Trust of India Investment Advisory Services Limited
Unit No. 2, Block B, 1st Floor, JVPD Scheme,
Gulmohar Cross Road No. 9,
Andheri (West), Mumbai-400 049

..... **Petitioners**

Vs

1. South Bihar Power Distribution Company Limited
2nd Floor, Vidyut Bhawan, Bailey Road,
Patna-800 001
2. Assam Electricity Grid Corporation Limited
1st Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati-781 001.
3. Manipur State Power Distribution Company Limited
Electricity Complex, Patta No. 1293 under 82 (2),

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

4. Department of Power, Govt. of Nagaland
New Sectt. Complex,
Kohima-797 001, Nagaland
 5. North Bihar Power Distribution Company Limited
2nd Floor, Vidyut Bhawan, Bailey Road,
Patna-800 001.
 6. Gridco Limited
Grid Corporation of Orissa Limited, Janpath,
Bhubneshwar-751 011
 7. West Bengal State Electricity Distribution Company Limited
Bidyut Bhawan, (A-Block, 3rd Floor) Bidhannagar,
Kolkata-700 091
 8. Energy and Power Department, Govt. of Sikkim
House No. 1, Power Secretariat, Sonam Gyatso Marg,
Gangtok, Sikkim-737 101
 9. Jharkhand Bijli Vitran Nigam Limited
Engineer`s Building,
Dhurwa, Ranchi-834 004.
-Respondents**

The following were present:

Shri Aniket Prasoon, Advocate, ATL
Shri Ishaan Mukherjee, Advocate, ATL

ORDER

The First Petitioner herein, Alipurduar 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 transmission system for "Transmission System strengthening in Indian system for transfer of power from new HEPs in Bhutan (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 21.3.2016.

2. Alipurduar Transmission Limited, Axis Trustee Services Limited and Unit Trust of India Investment Advisory Services Limited have filed a combined petition for substitution of Security Trustee from Unit Trust of India Investment Advisory Services Limited to Axis Trustee Services Limited for benefit of the lenders to the project. The Petitioners have made the following prayers:

“(a) Take on record the substitution of the Petitioner No. 3/Unit Trust of India Investment Advisory Services Limited by Petitioner No.2/Axis Trustee Services Limited and execution of appropriate agreement/addendums, including without limitation, those documents as mentioned in Para 8 to complete the process of substitution;

(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; and

(e) Pass such other order(s), relief or direction as this Commission may deem fit and proper under the facts and circumstances of the present case;”

3. According to the First Petitioner, for the purpose of finance for the project, the First Petitioner had requested the lenders for which consortium of lenders comprising of ICICI Bank Limited, HDFC Bank Limited, Corporation Bank, IDBI Bank Limited and India Infrastructure Finance Company Limited (lenders) had agreed to make available financial assistance amounting to Rs. 837 crore as rupee loan for the project (Loan Facility) which includes non-fund based facilities of Rs. 393 crore as sub-limits. In this regard, ICICI Bank Limited had agreed to act as facility agent for the consortium of lenders. For this purpose, Common Rupee Loan Agreement was entered into between the First Petitioner and the lenders on 14.10.2016. At the request of the First Petitioner and the lenders, Unit Trust of India Investment Advisory Services Limited had agreed to act as Security Trustee in accordance with Security Trustee Agreement

and to enter into all relevant financing documents to hold the security interest for and on behalf of the lenders.

4. The First Petitioner has submitted that the Commission vide orders dated 28.4.2017 and 18.5.2017 in Petition No. 17/MP/2017 accorded the in-principle approval to the First Petitioner to create security interest in favour of Unit Trust of India Advisory Investment Limited and to act as Security Trustee pursuant to the Common Rupee Loan Agreement dated 14.10.2016. The First Petitioner has submitted that pursuant to said order dated 28.4.2017, the First Petitioner entered into the Deed of Hypothecation and Power of Attorney on 12.5.2017 with Unit Trust of India Investment Advisory Services Limited. The First Petitioner has submitted that First Petitioner executed the Security Trustee Agreement on 27.1.2017 to put the necessary mechanism in place with a clear understanding that the actual security interest would be created post execution of the Deed of Hypothecation after getting approval from the Commission and the above executed Security Trustee Agreement was based on the draft submitted to the Commission along with the Petition.

5. The First Petitioner has submitted that Unit Trust of India Investment Advisory Services Limited vide its letter dated 3.11.2017 informed the First Petitioner that the Management of Unit Trust of India Advisory Investment Limited has decided to withdraw the activity of trusteeship and the company will cease to be trustee w.e.f. 31.3.2018. Unit Trust of India Investment Advisory Services Limited requested the First Petitioner to take necessary steps to appoint a successor Security Trustee to enable it to complete the formalities including execution of documents.

6. The First Petitioner has submitted that it approached Axis Trustee Services Limited to act as the new Security Trustee and to act in accordance with the terms of the Security Trustee Agreement and to enter into all the relevant financing agreements which were earlier entered into with the Unit Trust of India Investment Advisory Services Limited and to hold security interest for and on behalf of the lenders. Axis Trustee Services Limited has agreed to act as Security Trustee on behalf of the existing lenders. The First Petitioner has submitted that there is no change in any of the lenders, borrowings or any of the terms of conditions of any of the agreements signed by erstwhile Security Trustee, namely Unit Trust of India Investment Advisory Services Limited. The First Petitioner has submitted that in order to update and convey the Commission, the present petition has been filed under Section 17 (3) and (4) of the Electricity Act, 2003 for substitution of Security Trustee from Unit Trust of India Investment Advisory Services Limited to Axis Trustee Services Limited by way of entering into appropriate addendum agreements to the relevant financing agreements including without limitation, the Security Trustee Agreement and the Deed of Hypothecation.

7. The Petition was heard on 3.4.2018 after notice to the Respondents. None was present on behalf of the Respondents. No reply has been filed by the Respondents.

8. We have considered the submissions made by the Petitioners. Erstwhile Security Trustee, namely Unit Trust of India Investment Advisory Services Limited vide its letter dated 3.11.2017 informed the First Petitioner that its Management has decided to exit the business of trusteeship after 31.3.2018 and has accordingly, resigned from the Security Trusteeship for the loan of Rs. 837 crore. New Security Trustee, namely Axis Trustee Services Limited vide its letter dated 19.1.2018 has

conveyed its acceptance to act as Security Trustee in respect of loan of Rs. 837 crore. According to the First Petitioner, there is no change in any of the lenders, borrowings or in any of the terms and conditions of any of the earlier financing agreements. We, therefore, accord in principle approval allowing the First Petitioner to substitute Security Trustee from Unit Trust of India Investment Advisory Services Limited to Axis Trustee Services Limited. All other terms and conditions of orders dated 28.4.2017 and 18.5.2017 in Petition No. 17/MP/2017 remain unaltered.

9. 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 the licence and the assets of the first petitioner to the nominee of Security Trustee, the Commission shall evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and to be able 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.”

Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lenders, Security Trustee and the nominee, approve the assignment of the licence to a nominee of the lenders 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. We direct that the Petitioner shall continue to maintain its own books of accounts and balance sheet separately.

10. With the above, Petition No. 86/MP/2018 stands disposed of.

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

SD/-
(A.S. Bakshi)
Member

SD/-
(A. K. Singhal)
Member

SD/-
(P.K.Pujari)
Chairperson