

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 347/MP/2018

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

Date of order: 1st January, 2019

In the matter of

Petition for approval for creation of security interest under Section 17 (3) and (4) of the Electricity Act, 2003 over Petitioner 1`s assets in favour of the Petitioner No. 2, the Security Trustee, for the benefit of lenders and their agents for the purpose of financing Petitioner 1`s transmission project.

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
4th 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 Jingshaj, 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 Sitesh Mukherjee, Advocate, NER-II
2. Shri T.A.N. Reddy, 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. 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 of Rs.2200 crore in favour of 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 Piramal Enterprises Ltd for which Piramal Trusteeship Services Private Limited agreed to act as a Debenture Trustee. Since, in the said Petition, the First Petitioner 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 an amount of Rs. 480 crore only in respect of lending by Piramal Finance Limited in favour of Piramal Trusteeship Services Private Limited as Security Trustee. The First Petitioner was granted liberty to approach the Commission by filing appropriate application.

3. 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. The Petitioners have made the following prayers:

“(a) Admit the captioned Petition and list the same for hearing on an urgent basis.

(b) Approve the creation of security Interest, over Petitioner No. 1`s Assets to the extent described in the Petition, in favour of Petitioner No. 2, collectively for the benefit of the lenders and the lender`s agent 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 Security Trustee Agreement, the draft Indenture of Mortgage, 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) 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 Petitioner No.2.”

4. According to the First Petitioner, for the purpose of financing the project, the First Petitioner requested the lenders for which lenders have agreed to make available financial assistance for financing the project 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.

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

(a) a first ranking charge, on all the Petitioner No.1's immovable properties, both present and future;

(b) a first ranking charge on all the Petitioner No.1's moveable assets, including moveable 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 Petitioner No.1 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 Petitioner No.1, both present and future;

(e) a first ranking charge on all revenues and receivables of the Petitioner No.1 whether or not deposited in the Accounts, the book debts of the Petitioner No.1, the

operating cash flows of the Petitioner No.1 and all other commissions and revenues and cash of the Petitioner No.1 of whatsoever nature, both present and future;

f) a first ranking charge on all intangibles assets of the Petitioner No.1 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, interests, benefits, claims and demands whatsoever of the Petitioner No.1 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 Petitioner No.1 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 Petitioner No.1 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 Petitioner No.1 pursuant to the Transmission Service Agreement or in relation to the Project and/or guarantees issued by the EPC Contractors in favour of the Petitioner No.1, which may be legally assigned);

(iv) all the rights, title, interests, benefits, claims and demands whatsoever of the Petitioner No.1 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.

6. The First Petitioner has submitted that it has agreed to create security of Rs. 2200 crore in favour of Lenders Representative/ Security Trustee acting on behalf of lenders, namely Piramal Capital and Housing Finance Limited (erstwhile Piramal Finance Limited), Tata Cleantech Capital Limited, PTC India Financial Services Limited and India Infrastructure Finance Company Limited, pursuant to the draft Indenture of Mortgage, draft Deed of Hypothecation along with the Power of Attorney, draft Memorandum of Entry read with the draft Declaration and Undertaking and Financing Documents, by way of mortgage/hypothecation/assignment in accordance with the provisions of the draft Indenture of Mortgage, draft Deed of Hypothecation along with the Power of Attorney, draft Memorandum of Entry read with the draft Declaration and Undertaking and the Financing Documents. The First Petitioner submitted that it has agreed that it shall be lawful for the lenders Representative, upon enforcement of Security Interest, to enter into and take possession of the Mortgaged Properties

along with all movables, intangibles and any future assets under the Project comprised in Financing Documents.

7. 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 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 Agreement and any other amounts agreed by the parties.

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 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 is essential for creation of security interest over the project assets and to tie up the necessary financing.

9. The First Petitioner has submitted that there is a grave urgency in the instant matter as the entire Project has come to a stand-still because lenders are not disbursing funds to the Petitioner's Project for want of security creation beyond Rs. 480 crore. The First Petitioner has submitted that the total debt in respect of which security is required to be created for the purpose of timely disbursements is Rs. 2200 crore.

10. 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:

11. After grant of transmission licence, the Petitioner approached the Commission by way of Petition No. 256/MP/2017 for creation of security interest for an amount of Rs. 2200 crore in favour of Security Trustee, namely Piramal Trusteeship Services Private Limited. The Commission vide order dated 27.2.2018 disposed of the Petition No. 256/MP/2017 as Petition was incomplete. However, the Petitioners were granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/information. Pursuant to the liberty granted, the First Petitioner approached the Commission by way of Petition No. 113/MP/2018 seeking creation of security interest in favour of Security Trustee for making available finance of Rs. 2220 crore. Out of Rs. 2220 crore, Piramal Finance Limited was lending Rs. 480 crore and the balance amount of Rs. 1720 crore was to be funded through Piramal Enterprises Ltd. for which Second Petitioner agreed to act as a Debenture Trustee. Since, the First Petitioner had not prayed for creation of security interest in favour of Debenture Trustee, the Commission vide order dated 8.10.2018, accorded in-principle approval allowing the First Petitioner to create security for an amount of Rs. 480 crore only in respect of lending by Piramal Finance Limited in favour of Piramal Trusteeship Services Private Limited. However, the Petitioners were granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/information for creation of Security Trustee.

12. The First Petitioner and Piramal Trusteeship Services Private Limited have filed the present petition for seeking approval of the Commission 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. 1070 crore and the balance amount of Rs. 1130 crore was to be funded through the following identified lenders who have executed Financing Documents with the First Petitioner for an amount of Rs. 2200 crore:

Sr. No.	Name of the Lenders	Total Commitment (Rs in crore)
1.	Piramal Capital and Housing Finance Limited (Erstwhile Piramal Finance Limited) (Note: Out of Rs. 1070 crore, security creation for Rs. 480 crore has already been approved by the Commission in Petition No. 113/MP/2018. Therefore, additional security creation of Rs. 590 crore is being sought in the present Petition)	1070.00
2.	TATA Cleantech Capital Limited.	100.00
3.	PTC India Financial Services Limited	250.00
4.	Indian Renewable Energy Development Agency Limited	300.00
5.	India Infrastructure Finance Company Limited	480.00
Total		2200.00

13. 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 lenders 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. 2200 crore and the lenders, namely Piramal Finance Limited has agreed to provide loan of Rs. 1070 crore, Tata Cleantech Capital Limited has agreed to provide loan of 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 to the First Petitioner. In view of the above, it is clear that the lenders have been identified and the security has been created for the entire sum of Rs. 2200 crore. 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.

14. 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.

15. The First Petitioner has approached for approval to creation for security interest in favour of Piramal Trusteeship Services Private Limited. In our view, Piramal

Trusteeship Services Private Limited acting as Security Trustee on behalf of the 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. The Commission, vide order dated 8.10.2018 in Petition No. 113/MP/2018 has already accorded approval allowing the First Petitioner to create security for an amount of Rs. 480 crore lending by Piramal Finance Limited in favour of Security Trustee, namely Piramal Trusteeship Services Private Limited. We, therefore, accord in-principle approval allowing the First Petitioner to create security for an additional amount of Rs. 1720 crore lending by Piramal capital and 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 First Petitioner is directed to submit copy of signed copies of Indenture of Mortgage and refinancing documents for the project immediately after their execution.

16. 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, lenders, Security Trustee or its 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 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.

17. With the above, Petition No. 347/MP/2018 stands disposed of.

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

sd/-
(P.K.Pujari)
Chairperson