

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 135/MP/2021**

**Coram:  
Shri P.K.Pujari, Chairperson  
Shri I.S.Jha, Member  
Shri Arun Goyal, Member  
Shri P.K.Singh, Member**

**Date of Order: 31<sup>st</sup> August, 2021**

**In the matter of**

Petition seeking approval under Sections 17(3) and 17(4) of the Electricity Act, 2003 read with Article 15 of the Transmission Service Agreement dated 6.1.2016 for creation of security interest in the transmission project assets and other relevant documents of Warora Kurnool Transmission Limited in favour of new Security Trustee.

**And  
In the matter of**

Warora Kurnool Transmission Limited,  
C 105, Anand Niketan,  
New Delhi-110021

**...Petitioner**

**Vs.**

1. Tamil Nadu Generation and Distribution Corporation Limited,  
144, Anna Salai,  
Chennai-600 002

2. Southern Distribution Company of Andhra Pradesh Limited,  
D.No. 19-13-65/A, Srinivasapuram, Tiruchhanur Road,  
Kesavayana Gunta,  
Tirupati - 517 503, Andhra Pradesh

3. Eastern Distribution Company of Andhra Pradesh Limited,  
P&T Colony, Seethmmadhara,  
Vishakhapatnam - 530013, Andhra Pradesh

4. Southern Distribution Company of Telangana Limited,  
2<sup>nd</sup> Floor, H. No. 6-1-50, Mint Compound,  
Hyderabad - 500063

5. Northern Power Distribution Company of Telangana Limited,  
H. No. 2-5-31/2, Corporate Office,



Vidyut Bhavan, Hanamkonda,  
Warangal – 506001

6. Bangalore Electricity Supply Company Limited,  
Krishna Rajendra Circle,  
Bangalore - 560001

7. Gulbarga Electricity Supply Company Limited,  
Station Road, Kalaburagi,  
Karnataka - 585102

8. Hubli Electricity Supply Company Limited,  
Corporate Office, P.B. Road, Navanagar,  
Hubli - 580025

9. Mangalore Electricity Supply Company Limited,  
Paradigm Plaza, A. B Shetty Circle,  
Pandeshwar,  
Mangalore - 575001

10. Chamundeshwari Electricity Supply Company Limited,  
No. 29, CESC Corporate Office,  
Hinkal, Vijaynagar 2<sup>nd</sup> Stage,  
Mysuru - 570017

11. Kerala State Electricity Supply Company Limited,  
Vydyuthi Bhawanam, Pettom,  
Tiruvananthapuram,  
Kerala - 695 004

12. Electricity Department,  
Govt. of Puducherry 137, NSC Bose Salai,  
Puducherry - 605001

13. Electricity Department, Government of Goa,  
Vidyut Bhavan, Near Mandvi Hotel,  
Panaji, Goa – 403001

14. SBICAP Trustee Company Limited,  
202, Maker tower, 'E', D Cuffe Parade, Colaba,  
Mumbai 400005, Maharashtra

**Following were present:**

Shri Amit Kapur, Advocate, WKTL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Pinkesh, WKTL  
Shri Bhavesh Kundalia, WKTL  
Dr. R. Kathiravan, TANGEDCO  
Ms. R. Ramalakshmi, TANGEDCO

## **ORDER**

The Petitioner, Warora-Kurnool Transmission Limited ('WKTL'), 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 "Additional inter-Regional AC link for import into Southern Region i.e. Warora-Warangal and Chilakaluripeta-Hyderabad-Kurnool 765 kV link" (in short, 'The Project') on Build, Own, Operate and Maintain basis, the details of which are specified in the schedule attached to the licence issued vide order dated 29.9.2016.

### **Backdrop**

2. WKTL was a fully own subsidiary of Essel Infraprojects Ltd (hereinafter referred to as 'Essel Infra') which was selected as a successful bidder through the Tariff Based Competitive Bidding process conducted by PFC Consulting Limited to establish the Project.

3. The Petitioner had approached the Commission by filing Petition No. 78/MP/2017 for approval under sub-sections (3) and (4) of Section 17 of the Act read with Article 15.2.2 of the Transmission Service Agreement ('TSA') to create security interest over all movable and immovable assets of the Project in favour of IDBI Trusteeship Services Limited, acting for the benefit and on behalf of the lender, namely, Yes Bank Limited ('Yes Bank'). Yes Bank had agreed to grant financial assistance of Rs. 2,790 crore as rupee term loan with capital expenditure letter of credit sub-limit to the extent of Rs. 1,400 crore and Rs. 110 crore as Contract

Performance Bank Guarantee ('CPBG'). The Commission in its order dated 24.5.2017 in Petition No. 78/MP/2017 accorded in-principle approval for creation of security interest in favour of IDBI Trusteeship Services Limited, acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage and/or hypothecation and/or assignment and/or substitution and/or charge, as the case may be, on assets of the Project by execution of indenture of mortgage for the Project. Accordingly, the Petitioner entered into a Deed of Hypothecation with IDBI Trusteeship Services Limited on 29.6.2017 creating a first charge in favour of IDBI Trusteeship Limited. Subsequently, Yes Bank transferred its commitment to the extent of Rs. 200 crore each to Export-Import Bank of India ('EXIM Bank') and Indian Renewable Energy Development Agency Limited ("IREDA").

4. Subsequently, Yes Bank, the Petitioner and IDBI Trusteeship Services Limited approached the Commission in Petition No. 71/MP/2020 under Sub-sections (3) and (4) of Section 17 of the Act read with Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Transmission Licence and other related matters) Regulations, 2009 and Article 15.3 of the TSA dated 6.1.2016 seeking approval of the Commission to transfer the shares and management control of WKTL in favour of the nominee of WKTL's lenders, namely, Adani Transmission Limited (ATL). The lenders had decided to exercise 'Lender's Substitution Rights' as per Article 15.3 of the TSA in view of default in debt repayment by Essel infra and its deteriorating financial condition which made it impossible for Essel Infra to complete the Project. The Commission vide order dated 27.1.2021 allowed transfer of shareholding of WKTL from Essel Infra to ATL under Article 15.3.2 of the TSA read with sub-section (3) of Section 17 of the Act.

5. The Petitioner entered into Novation Agreement dated 27.3.2021 with EXIM Bank, IREDA and Essel Infra to novate/ transfer the facility aggregating to Rs. 492.26 crore (“Novated Facility”) along with interests due thereon and other obligations (out of the total facility outstanding of Rs. 1,194.26 crore due to original lenders) to Essel Infra. Accordingly, Essel Infra became the new borrower of the Novated Facility. Pursuant to such novation/ transfer, WKTL has been released from the liabilities and obligations in connection with the Novated Facility. However, the remaining facility aggregating to Rs. 702 crore remained with WKTL.

6. The Petitioner has filed the present Petition for approval under sub-sections (3) and (4) of Section of the Act read with Article 15 of the TSA dated 6.1.2016 for substitution of erstwhile lenders, namely, Yes Bank, EXIM Bank and IREDA, with State Bank of India (‘SBI’) who have refinanced the projects/ transmission assets and for creation of security interest in favour of the Security Trustee, namely, SBICAP Trustee Company Limited for the benefit of the new lender. The Petitioner has made the following prayers:

*“(a) Allow the present Petition;*

*(b) Take on record the new project lender-State Bank of India and the appointment of SBICAP Trustee Company Limited acting as Security Trustee for the benefit of secured party i.e., State Bank of India and its respective successors, assignees, novatees and transferees as per Facility Agreement; and*

*(c) Grant in principle approval for creation of security over all movable and other immovable assets of WKTL (including over WKTL’s benefits, rights, title and interest under the Transmission Service Agreement dated 06.01.2016, the transmission license dated 29.09.2016 and other Transmission System documents) by execution of relevant security creating documents in favour of SBICAP Trustee Company Limited acting as Security Trustee for the benefit of secured party i.e., State Bank of India and its respective successors, assignees, novatees and transferees as per Facility Agreement;”*

7. It has been submitted by the Petitioner that for the purpose of refinancing, it approached SBI for availing fresh debt facility. Pursuant to the request made by it, SBI vide its letter dated 11.8.2020 has sanctioned the following facilities:

(a) Term loan facility of Rs. 2,254 crore;

(b) PBG facility of Rs. 110 crore. (Current outstanding PBG of Rs. 105 crore from the original lenders to be taken over by SBI and balance of Rs. 5 crore BG facility to be available for the transmission system during construction phase.); and

(c) Hedge facility of Rs. 4 crore for import of transmission system component of Rs. 200 crore.

8. In pursuance to the sanction letter issued by SBI, the Petitioner has entered into a Facility Agreement dated 30.1.2021 to avail rupee term loan facility of amounts not exceeding in the aggregate Rs. 2,254 crore ('Rupee Facility') with a letter of credit of up to Rs. 1,300 crore as sub-limit of the Rupee Facility, CPBG facility of Rs. 110 crore and Hedge facility of Rs 4 crore. Thereafter, SBICAP Trustee Company Limited ('SBICAP Trustee') vide its letter dated 23.2.2021 agreed to act as new Security Trustee for the facilities aggregating to Rs. 2,368 crore sanctioned by SBI to the Petitioner. Accordingly, the Petitioner, SBI and SBICAP Trustee executed a Security Trustee Agreement dated 7.4.2021 authorizing SBICAP Trustee to act as the New Security Trustee for the benefit of SBI/ secured party pursuant to the trust created under the said Agreement and other financing documents.

9. According to the Petitioner, in terms of the Facility Agreement dated 30.1.2021, the proceeds i.e. Rs. 508 crore from the new facilities (of Rs. 2,254 crore) by SBI shall be utilised towards repayment of the sustainable debt portion (i.e., Rs. 702 crore) of the loan obligations to the original lenders as full and final settlement. This full and final settlement shall be of the original loan obligations of the Petitioner. The balance facility of Rs. 1,746 crore out of total facility of Rs. 2,254 crore

sanctioned by SBI is the additional debt available for drawdown for completion of the Project.

10. As per the terms of the Facility Agreement executed by the Petitioner with SBI, the facilities along with the outstanding payable to SBI and its trustees and agents (if any) and the bank account as stipulated under the said Agreement or the other documents entered/to be entered into in relation to the facilities designated by SBI or the facility agent of SBI and as amended and/or supplemented from time to time (“Financing Documents”) shall be secured by first *pari passu* security interest on the movable and immovable assets of the Petitioner. The relevant clause i.e. clause 8.1 of the Facility Agreement is extracted as under:

**“8.1 Security**

*The Facility together with all the Outstandings payable to the Lenders and their trustees and agents (if any) and the Account Bank as stipulated under this Agreement or the other Financing Documents, shall be secured by*

*(a) First pari passu Security Interest over the immovable assets including but not limited to towers, conductors, insulators etc. and the Project Land acquired for the Substation, both present and future, of the Borrower;*

*(b) First pari passu Security Interest in favour of the Security Trustee, on entire moveable assets, both present and future, of the Borrower;*

*(c) First pari passu Security Interest in favour of the Security Trustee on the entire Current Assets including but not limited to all operating accounts, deposits, inventory, investments, book debts, operating cash flows, receivables, commissions, revenues of whatsoever nature and whenever arising, both present and future, of the Borrower;*

*(d) First pari passu Security Interest in favour of the Security Trustee on all the accounts of the Borrower (including the Accounts opened and maintained pursuant to the Trust and Retention Account Agreement), the Debt Service Reserve Account and the monies credited or deposited therein, to the extent of Borrower’s interests thereon, both present and future;*

*(e) First pari passu Security Interest in favour of the Security Trustee on:*

*(i) all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower in the Project Documents, Clearances, loss protection covers, if any;*

*(ii) all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower in any letter of credit, guarantee, performance bond*

*provided by any counterparty to the Project Documents, in relation to the Project, if any;*

*(iii) all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower in the insurance contracts, policies, insurance proceeds, procured by the Borrower or procured by any of its contractors favoring the Borrower in relation to the Project;*

*(iv) all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower on the Transmission License, subject to approvals to be obtained from CERC.*

*(f) First pari passu Security Interest in favour of the Security Trustee on all intangible assets including but not limited to goodwill, rights, undertakings and uncalled capital, both present and future, of the Borrower;*

*(g) Pledge of 51% (fifty one percent) of the Shares of the Borrower held by the Promoter;*

*(h) Non disposal undertaking with respect to 25% (twenty five percent) of the Shares of the Borrower held by the Promoter (other than the shares pledged in accordance with sub clause (g) above.*

*The security detailed above shall be collectively referred to as the “**Security**”. The Security shall be duly created and perfected by the Borrower and/or Promoter, as applicable in the form and manner acceptable to the Lenders within the timelines stipulated by the Lenders. The Security created in favour of the Lenders/Security Trustee shall be in a form and manner satisfactory to the Lenders.”*

11. The Petitioner has submitted that as per Article 15.2.2 and Article 15.2.4 of TSA, the Petitioner is required to take prior approval of the Commission, before creating any encumbrance over all or part of the receivables, letter of credit or other assets of the transmission Project, in favour of its lenders or the representative of the lender.

### **Submissions by Respondents and Rejoinder of the Petitioner**

12. The matter was called out for virtual hearing on 6.8.2021 after notice to the Petitioner and the Respondents. During the hearing, learned counsel for the Respondent, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) submitted that while the Commission may allow the present Petition, the concerns of LTTCs regarding delay in implementation of the Project ought to be addressed. Based on the request, the Respondent, TANGEDCO was directed to file



its reply by 12.8.2021. TANGEDCO has submitted its reply on 12.8.2021 and the Petitioner has submitted its rejoinder on 16.8.2021.

13. TANGEDCO vide its reply dated 12.8.2021 has submitted that, as per Article 3.1.3 of the TSA, the Petitioner is required to submit the Project execution plan within 180 days from the effective date and the same has not been furnished by the Petitioner to LTTCs. In case of failure of the Petitioner to fulfil the conditions under Article 3.1.3 of the TSA, the Petitioner is liable to furnish additional Contract Performance Bank Guarantee of Rs 5.247 crore on weekly basis. It has been submitted by TANGEDCO that since Scheduled Commercial Operation Date of 5.11.2019 has already lapsed, the Petitioner is liable to pay the liquidated damages as per Article 6.4 of the TSA for delay in achieving COD of the Project. TANGEDCO has relied on Article 15.2.3 of the TSA to contend that the Petitioner should not be allowed to securitize/ create encumbrances on CPBG issued in favour of the LTTCs. It has been further contended that there shall be no encumbrance on the liability of the Petitioner on account of non-compliance of the obligations of the Petitioner under the TSA.

14. The Petitioner vide its rejoinder has submitted that the objections raised by TANGEDCO regarding delay in SCOD are irrelevant and outside the purview of the present Petition, which is limited to approval of creation of security interest. Further, WKTL had filed Petition No. 334/MP/2020 for extension of SCOD of the Project and seeking protection against any coercive action by LTTCs until the Project is completed. The Commission while disposing of the said Petition No. 334/MP/2020 vide order dated 7.2.2021 directed WKTL to approach the Commission when the Project is completed. LTTCs were directed not to take any precipitative action till

completion of the Project. As regards contention of TANGEDCO regarding creation of security on CPBG, it has been submitted that CPBG is not included in the assets over which security is sought to be created for the benefit of the lender. The same is evident from the definition of 'Security' in the sanction letter dated 11.8.2020 and Article 8.1 of the Facility Agreement dated 30.1.2021. Further, the assets and liabilities over which security is sought to be created have been finalised by the said lender and not by the Petitioner. The Petitioner has also submitted that grant of prayers under the present Petition will not prejudice the rights and interest of the parties under the TSA.

### **Analysis and Decision**

15. We have considered the submissions of the Petitioner and the Respondent, TANGEDCO. The Commission in its order dated 21.1.2021 in Petition No. 71/MP/2020 granted approval to the consortium of original lenders led by Yes Bank to substitute Essel Infra with lender`s nominee, namely, ATL through transfer of shareholding of WKTL from Essel Infra to ATL under Article 15.3.2 of the TSA read with sub-section (3) of Section 17 of the Act.

16. Subsequently, the Petitioner entered into Novation Agreement dated 27.3.2021 with original lenders and Essel Infra to transfer the facility aggregating to Rs. 492.26 crore along with the interests due thereon along with other obligations to Essel Infra. Accordingly, out of the total facility outstanding of Rs. 1,194.26 crore of original lenders, the facility corresponding to Rs 492.26 crore along with interest was transferred to Essel Infra and the remaining facility aggregating to Rs. 702 crore

remained with the Petitioner. Consequently, the amount of the credit facilities availed from the original lenders was revised as under:

Name of Original Lenders	Amount of Facility Sanctioned (Rs. in crore)	Outstanding as on 10.4.2020 (Rs. in crore approximately)	Sustainable Debt remaining with WKTL (in Rs. crore)	Contract Performance Bank Guarantee (Rs. in crore)	Outstanding Contract Performance Bank Guarantee as on 10.4.2020
YES Bank	2,390	1,067.00	628.58	110	104.90
EXIM	200	43.90	24.39	-	-
IREDA	200	83.40	49.01	-	-
<b>Total</b>	<b>2,790</b>	<b>1,194.30</b>	<b>701.98</b>	<b>110</b>	<b>104.90</b>

17. The Petitioner has filed the present Petition for seeking substitution of erstwhile lenders, namely, Yes Bank, EXIM Bank and IREDA with SBI and for approval for creation of security interest in favour of Security Trustee, SBICAP Trustee Company Limited for the benefit of the lender. For the purpose of refinancing the entire existing loans, the Petitioner approached SBI, which agreed to sanction a term loan facility of Rs. 2,254 crore, CPBG of Rs. 110 crore and Hedge facility of Rs. 4 crore. As per the Petitioner, Rs. 508 crore from the new facility of Rs. 2,254 crore shall be utilised towards repayment of the sustainable debt portion (i.e., Rs. 702 crore) of the loan obligations to the original lenders as full and final settlement and the balance Rs. 1,746 crore is the additional debt to be drawn for completion of the Project. CPBG of Rs. 110 crore shall be utilised to repay outstanding CPBG of Rs. 105 crore of original lenders and balance Rs. 5 crore CPBG facility shall be available for the transmission system during the construction phase. Hedge facility of Rs. 4 crore shall be utilised for import of components of transmission system of Rs. 200 crore. For this purpose, the Petitioner and SBI Limited have executed the Facility Agreement dated 30.1.2021. In this regard, SBICAP Trustee Company Limited has

agreed to act as the Security Trustee for the benefit of the secured party i.e. lender including their assignees, transferees, novatees and to enter into all relevant financing documents pursuant thereto. Accordingly, the Petitioner, lender and SBICAP Trustee Company Limited have entered into a Security Trustee Agreement on 7.4.2021.

18. The Respondent, TANGEDCO has raised objection on the creation of encumbrance over CPBG and liability of the Petitioner on account of non-compliance of the obligations of the Petitioner under the TSA. The Petitioner has clarified that the Petitioner has not sought creation of security on CPBG as per the terms of sanction letter dated 11.8.2020 and Article 8.1 of the Facility Agreement dated 30.1.2021. Since the Petitioner cannot avail loan facility more than the loan component of cost of the Project, its request with regards to CPBG and Hedge facility is not being considered.

19. Existing facility lenders have accorded their approval for implementation of resolution plan submitted by ATL. Accordingly, the Petitioner has entered into a Facility Agreement with SBI on 30.1.2021 and as per the said Facility Agreement estimated cost of the Project and means of finance as on the date of financial closure is as under:

<b>Original estimated cost of the Project (as per Agreement)</b>	<b>Amount (Rs. in crore)</b>	<b>Means of finance (As per Agreement)</b>	<b>Amount (Rs. in crore)</b>
Hard cost	3,023	Equity share capital	241.50
IEDC	-	Equity share premium	-
IDC	183	Loan/Debenture from promoters, group companies	724.50
Contingency	-	Secured loan/debt from external source	2,254.00

WC and DSRA	14	Others	-
<b>Total</b>	<b>3,220</b>	<b>Total</b>	<b>3,220.00</b>

20. Details of lenders after re-financing of existing loan is as under:

<b>Sr. No.</b>	<b>Lenders</b>	<b>Sanctioned loan (Rs. in crore) (as per loan Agreement)</b>
1	State Bank India (RTL)	2,254
2	State Bank India (PBG)	110
3	State Bank India (LER)	4
	<b>Total</b>	<b>2,368</b>

21. The Petitioner has placed on record the copy of the 'no objection certificates' issued by original lenders. The outgoing Security Trustee, namely, IDBI Trusteeship Services Limited has also issued 'no objection certificate' for release of charge over the assets of the Petitioner.

22. We have considered the submissions made by the Petitioner. Sub-sections (3) and (4) of Section 17 of the Act provide 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 transferring its utility or any part thereof by way of sale, lease, exchange or otherwise and entering into an agreement relating to any of these transactions.

23. As per Article 15.2.2 of TSA, the Petitioner is required to take prior approval of the Commission before creating any encumbrance over all or part of the receivables,

letter of credit or other assets of the transmission Project, in favour of its lenders or the representative of the lenders. Article 15.2.2 is extracted as under:

*"15.2.2. However, the TSP may create any encumbrance over all part of receivables, letter of credit or the other assets of the Project in favour of the Lenders or the Lender's representative on their behalf as security for amounts payable under the financing agreements and any other amounts agreed by the parties.*

*Provided that:*

*i. The lenders or the lenders' Representative 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 TSP in accordance with this Article 15.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the TSP to release from such encumbrances upon payment by the TSP to the Lenders of all amounts due under the Financing Agreements."*

24. The transmission projects are capital intensive projects requiring large 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 the instant case, State Bank of India has agreed to provide loan of Rs. 2,254 crore and for the said purpose has entered into Facility Agreement dated 30.1.2021 with the Petitioner for, *inter-alia*, refinancing of the existing loan and additional loan for completion of the Project. In the instant case, the Petitioner and the new lender have appointed the Respondent No. 14, namely, SBICAP Trustee Company Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project pursuant to Security Trustee Agreement dated 7.4.2021. In our view, the lender and SBICAP Trustee Company Limited need to be given comfort for creation of security for the benefit of lender as security for the financial assistance provided by the lender. During the hearing, the learned counsel for the Respondent,

TANGEDCO has submitted that the Commission may allow the present Petition. However, the concerns of LTTCs regarding delay in implementation of the Project ought to be addressed. *Per contra*, the learned counsel for the Petitioner submitted that issue raised by the learned counsel for the Respondent is not relevant to the subject matter of the present case and that grant of the prayers under the present Petition will not prejudice the rights and interest of the parties under the TSA.

25. It is noticed that the instant Petition has been filed for grant of in-principle approval for creation of security interest in favour of new Security Trustee (SBICAP Trustee Company Limited) and the issues raised by the Respondent, TANGEDCO with regard to delay in implementation of the Project under TSA are not related with the present Petition. However, we take on record the submission of the Petitioner that grant of in-principle approval for creation of security interest in favour of Security Trustee in the present Petition will not in any way prejudice the rights and interests of the parties under the TSA, which should, in our view, allay concerns of LTTCs regarding delay in implementation of the Project. Accordingly, we, accord approval for substitution of erstwhile lenders, namely, Yes Bank, EXIM Bank and IREDA, with State Bank of India who has agreed to refinance of Rs. 2,254 crore for the projects/ transmission assets and accord in principle approval for creation of security interest in favour of Security Trustee, namely SBICAP Trustee Company Limited for the benefit of lender i.e. SBI.

26. 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

transfer of the licence and the assets of the 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.”*

27. 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.

28. In terms of the above discussion, Petition No. 135/MP/2021 is allowed.

Sd/-  
**(P.K.Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

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

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