

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 177/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: 23<sup>rd</sup> October, 2021**

**In the matter of**

Approval under Sections 17(3) and 17(4) of the Electricity Act, 2003 read with clause 11.6 of the Security Trustee Agreement dated 28.12.2020 along with Article 15 of the Transmission Service Agreement dated 22.09.2015 for grant of approval in relation to change of the constitution of the consortium of existing lenders already approved by the Commission vide order dated 10.4.2018 in Petition No. 86/MP/2018.

**And  
In the matter of**

Alipurduar Transmission Limited,  
Adani Corporate House,  
Adani Shanti Gram, Near Vaishno Devi,  
Ahmedabad-382 421.

**....Petitioner**

**Vs**

- 1) South Bihar Power Distribution Company Limited,  
2nd Floor, Vidyut Bhawan, Bailey Road,  
Patna-800001.
- 2) Assam Electricity Grid Corporation Limited,  
1<sup>st</sup> Floor, Bijulee Bhawan, Paltan Bazar,  
Guwahati-781001.
- 3) Manipur State Power Distribution Company Limited,  
Electricity Complex, Patta No. 1293 under 82 (2),  
Khawal Bazar, Keishampat,  
District-Imphal West,  
Maniur-795001.

- 4) Department of Power, Govt. of Nagaland,  
New Secretariat Complex, Kohima-797001,  
Nagaland
- 5) North Bihar Power Distribution Company Limited,  
2<sup>nd</sup> Floor, Vidyut Bhawan, Bailey Road,  
Patna-800001,
- 6) Grid Corporation of Orissa Limited ,  
Janpath, Bhubneshwar-751011,  
Odisha.
- 7) West Bengal State Electricity Distribution Company Limited,  
Bidyut Bhawan(A-Block, 3<sup>rd</sup> Floor), Bidhannagar,  
Kolkata-700091.
- 8) Energy and Power Department, Government of Sikkim,  
House No.1, Power Secretariat,  
Sonam Gyatso Marg, Gangtok,  
Sikkim-737101.
- 9) Jharkhand Bijli Vitran Nigam Limited,  
Engineer's Building, Dhurwa,  
Ranchi-834004.
- 10)HDFC Bank Limited,  
Investment Banking, Peninsula Business Park,  
4<sup>th</sup> Floor, Tower B, Senapati Bapat Marg, Lower Parel,  
Mumbai-400013.
- 11)Catalyst Trusteeship Limited,  
810, 8<sup>th</sup> Floor, Kailash Building, 26, Kasturab Gandhi Marg,  
New Delhi-110001.

.....Respondents

**Parties Present:**

Shri Hemant Singh, Advocate, ATL  
Shri Harshit Singh, Advocate, ATL  
Ms. Supriya Rastogi Agarwal, Advocate, ATL  
Shri Jagat Bhushan, Nidhi, BSPHCL

## ORDER

The Petitioner, Alipurduar 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 strengthening in Indian system for transfer of power from new HEPs in Bhutan" (hereinafter referred to as "the Transmission System" or "the Project") 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 21.03.2016 in Petition No. 6/TL/2016.

2. The Petitioner has filed the present Petition under Sub-sections (3) and (4) of Section 17 of the Act, read with Clause 28.12 of Facility Agreement, Clause 11.6 of the Security Trustee Agreement and Article 15 of the Transmission Service Agreement dated 22.09.2015, for grant of approval for change in the constitution of existing lenders with new lenders namely, HDFC Bank Limited, Aseem Infrastructure Limited, NIIF Infrastructure Finance Limited, ICICI Bank Limited and for change of Security Trustee and assignment of licence by way of creation of security interest over all the movable and immovable assets of the Petitioner, in favour of new Security Trustee, namely, Catalyst Trusteeship Limited (Respondent No. 11). The Petitioner has made the following prayers:

*“(a) To acknowledge/ approve the appointment of HDFC Bank Limited, Respondent No. 10, Aseem Infrastructure Limited, Respondent No. 11, NIIF Infrastructure Finance Limited, Respondent No. 12, and ICICI Bank Limited, Respondent No. 14 as the New Lenders granting Rupee Term Loan to the Petitioner for development of the Transmission Project according to their respective Commitments as more particularly set out in schedule which is enclosed and marked as ANNEXURE P-1;*

*(b) To grant approval for appointment and change of the existing Security Trustee viz. Axis Trustee Services Limited, to Catalyst Trusteeship Limited acting on the behalf and for the benefit of the New Lenders, as well as the Petitioner Company;*

*(c) Allow the assignment of the Transmission License and Utility (as defined in the Electricity Act, 2003) of the Petitioner by way of security in favour of the Catalyst Trusteeship Limited as Security Trustee, acting for the benefit and on behalf of the Secured Parties;*

*(d) Approve the creation and/ or perfection of security interest in favour of the Catalyst Trusteeship Limited as Security Trustee, acting on behalf of and for the benefit of the Secured Parties as provided under the Facility Agreement;*

*(e) Approve the Security Documents (as defined in the Facility Agreement), and execution thereof, for creation and/ or perfection of aforesaid security interest in relation to the aforesaid security in favour of Catalyst Trusteeship Limited as Security Trustee acting on behalf of and for the benefit of the Secured Parties;*

*(f) 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*

*(g) Pass any such other or further orders as the Commission deems fit in the facts and circumstances of the case.”*

3. For the purpose of raising finance for the development of the Project, the Petitioner had approached the consortium of lenders comprising of ICICI Bank Limited, HDFC Bank Limited, Corporation Bank, IDBI Bank Limited and India Infrastructure Finance Company Limited (hereinafter referred to as ‘existing lenders’). The consortium of existing lenders agreed to make available to the Petitioner financial assistance to the extent of Rs. 837 crore as a rupee term loan facility for the Project in terms of Common Rupee Loan Agreement dated 14.10.2016.

4. Subsequently, the Petitioner approached the Commission vide Petition No. 17/MP/2017 for grant of approval under Sections 17(3) and 17(4) of the Act for

creation of security interest by way of mortgage, hypothecation, charge or assignment over all the movable and immovable assets of the Petitioner and assignment of transmission license in favour of the previous Security Trustee being the Unit Trust of India Investment Advisory Services Ltd, acting on behalf of the lenders. The Commission vide order dated 28.04.2017 allowed the Petitioner to create security in favour of Unit Trust of India Investment Advisory Services Limited in accordance with the terms of the Common Rupee Loan Agreement dated 14.10.2016, by way of mortgage by execution of an indenture of mortgage.

5. Further, the Commission granted approval to the Petitioner for substitution of Security Trustee from Unit Trust of India Investment Advisory Services Limited to Axis Trustee Services Limited vide order dated 10.04.2018 in Petition No 86/MP/2018.

6. On 27.11.2020, Adani Transmission Ltd (ATL) acquired 49% stake in the Petitioner Company from Kalpataru Power Transmission Limited (KPTL) with agreement to acquire balance 51% stake after obtaining requisite regulatory and other approvals in a manner consistent with TSA dated 22.09.2015. For this purpose, KPTL, ATL and the Petitioner company have entered into Share Purchase and Holders Agreement dated 05.07.2020 and its amendment dated 17.11.2020.

7. It has been submitted by the Petitioner that it had requested HDFC Bank Limited, Aseem Infrastructure Finance Limited, NIIF Infrastructure Finance Limited and ICICI Bank Ltd (hereinafter collectively referred to as 'the new lenders') to avail

financing for the Project. Pursuant to the request of the Petitioner, the new lenders have sanctioned financial assistance which shall not exceed the overall debt amount of Rs. 985 crore on the terms and condition set out in the amended and restated Facility Agreement dated 28.12.2020 as amended/ modified/ supplemented from time to time. The Petitioner has submitted that HDFC Bank Limited has agreed to act as the lender's new Agent, for purposes and on the terms and conditions set forth under the Facility Agreement and in the other Financing Documents.

8. The Petitioner has appointed Catalyst Trusteeship Limited as Security Trustee (hereinafter referred to as "the Security Trustee") who has agreed to act as the new Security Trustee for the lenders by entering into amended and Restated Security Trustee Agreement on 28.12.2020.

9. In light of the above, the Petitioner approached the Commission in Petition No. 69/MP/2021 under Sub-section (3) of Section 17 of the Act for approval to create the security interest in favour of the New Security Trustee i.e. Catalyst Trusteeship Limited (Respondent No. 13) and the change in existing lenders to the new lenders, in accordance with the term of the financing and security documents entered into by the Petitioner in relation to the facilities.

10. The Commission vide its order dated 8.4.2021 disposed of the said Petition on the ground that there were certain data/ information gaps in the Petition filed by the Petitioner. However, the Commission granted liberty to the Petitioner to file a fresh Petition with complete data/ information. The Commission had held as under:

“11. We have examined the documents placed on record by the Petitioner. It is observed that the Petitioner has not submitted the following information/ documents to decide the matter:

*(a) The Petitioner is seeking creation of security in favour of Catalyst Trusteeship Limited for the benefit of the new lenders. However, the Petitioner has not indicated that earlier the security was created in favour of Axis Trustee Services Limited on 10.4.2018 in Petition No. 86/MP/2018 and that the existing lenders are also being substituted by new lenders.*

*(b) Adani Transmission Ltd. vide its letter dated 8.12.2020 has informed the Commission that it has acquired 49% stake in the Petitioner Company, Alipurduar Transmission Limited. HDFC Bank Ltd. vide its letter dated 9.11.2020 which is placed on record, has submitted that Adani Transmission Ltd. (ATL) is in the process of acquiring the Petitioner company and that ATL is in the process of raising financing for re-financing the existing debt of Alipurduar Transmission Limited and part reimbursement of the capital expenditure funded from the unsecured loans of sponsor/ promoter. However, the Petitioner has not submitted the information regarding change in its holding company and/or the status of the remaining stake of 51%.*

*(c) As per Auditor Certificate dated 31.8.2020, the total cost of the Project as on 30.6.2020 is Rs. 1137.99 crore. The Petitioner vide prescribed format has submitted the funding/ means of finance as on 30.6.2020 for Rs. 1176 crore. The actual cost of the Project and means of finance as on 30.6.2020 submitted by the Petitioner in prescribed format is different from the cost of the Project and means of finance reflected in Auditor Certificate, which has not been explained by the Petitioner.*

11. With regards to (a) in the above-quoted order in paragraph 10, the Petitioner has clarified that the security was created in favour of Axis Trustee Services Limited on 10.4.2018 in Petition No. 86/MP/2018. Further, the Petitioner has sought approval of substitution of existing lenders with new lenders.

12. With regards to (b) in the above-quoted order in paragraph 10, the Petitioner has submitted the following:

(a) ATL approached the Respondent No. 10, HDFC Bank Limited for obtaining financial assistance for completing the process of acquisition of the Petitioner Company from KPTL. Accordingly, HDFC Bank Limited issued a sanction letter No. HDFC/IB/PSF/APTL/11/01 dated 09.11.2020 as amended/

modified/ supplemented from time to time. Thereafter, ATL acquired 49% stake in the Petitioner Company with agreement to acquire balance 51% after obtaining requisite regulatory and other approvals and in a manner consistent with the terms of Article 15 of the Transmission Service Agreement dated 22.9.2015.

(b) Clause 20.9 of the Facility Agreement dated 28.12.2020 provides for the methodology for transfer of shares from the Petitioner to any other person. The relevant extract of the said clause is reproduced herein below:

*“20.9 Transfers*

*The Borrower shall not recognize or register any sale, transfer or disposal, in any manner whatsoever, of any Shares, preference shares or any instruments convertible into Shares, until the Final Settlement Date, without the prior written approval of the Lenders’ Agent, except the transfer by KPTL (i) after 2 (two) years from COD, 25% (twenty five percent) of the Equity Share Capital of the Borrower to the Sponsor post approval from LTTCs and; (ii) after 5 (five) years from COD, another 26% (twenty six percent) of the Equity Share Capital of the Borrower to the Sponsor post approval from LTTCs and balance 49% (forty nine percent) of the Shares of the Borrower held by KPTL can be pledged in favour of the Sponsor as envisaged under the Share Purchase Agreement, subject to it being permitted under the Project Documents.”*

(c) In view of the above, it is evident that the Petitioner company, which is the borrower as per the terms of the Facility Agreement, is prohibited from selling, transferring or disposing of the shares or any other instruments convertible into shares before the final settlement date without the prior approval of the Facility Agent. However, there are certain exceptions provided to the aforesaid restriction imposed upon the Petitioner company from transferring the shares. The said exception provides that 25% equity shares of the Petitioner Company can be transferred by KPTL after two years from the commercial operation date to ATL, which is the sponsor in terms of the Facility Agreement subject to approval of the LTTCs. Another 26% of the equity share can also be transferred by the Petitioner Company after five years from the commercial operation date to ATL, which is again subject to the approval of the LTTCs.



(d) Apart from the above, in the last exception provided in Clause 20.9 of the TSA, transfer of 49% of the shares of the Petitioner company held by KPTL in the favour of ATL is permitted in accordance with the provisions of the Share Purchase Agreement. Further, the said transfer of 49% of the shares of the Petitioner company to ATL can be undertaken without any approval of the LTTCs, as nothing to this effect is mentioned in the above exception.

(e) Therefore, in terms of the sanction letter issued by the Respondent No. 10 read with Clause 20.9 of the Facility Agreement dated 28.12.2020, ATL was under the obligation to obtain/ acquire at least 49% stake in the Petitioner company for obtaining the financial assistance from the New Lenders.

(f) Hence, ATL, at present, has acquired only 49% stake of the Petitioner Company from KPTL and also has agreed to acquire remaining 51% share from KPTL after obtaining regulatory approvals from the Commission and in accordance with the terms of the aforementioned Facility Agreement.

13. As regards (c) in the above-quoted order in paragraph 10, the Petitioner has submitted that it furnished Auditor's Certificate with regards to the cost of the Project as on 30.06.2020, wherein it is mentioned that the said cost of the Project is Rs. 1137.99 crore. However, the Petitioner chose to top up the loan by Rs 38.57 crore along with earlier debt liabilities of Rs. 943.894 crore. Therefore, the total debt liabilities increased to Rs. 982.464 crore, and the total cost of the Project increased to Rs. 1176 crore from Rs. 1137.99 crore. It has been further submitted that since the certificate was issued before refinancing exercise, there is change in debt amount in the prescribed format due to the said refinancing exercise.

14. The Petitioner has submitted that in terms of Article 15.2.4 of the TSA, the Petitioner is required to take permission from the Commission prior to relinquishment or transfer of its rights and obligations in the TSA. The Petitioner has stated that in view of the provisions of Sub-sections (3) and (4) of Section 17 of the Act, the Petitioner, as a licensee, cannot create security interest over all the movable and immovable assets of the Petitioner in favour of Security Trustee acting on behalf of and for the benefit of the lenders pursuant to the amended and restated Facility Agreement and Security Trustee Agreement without approval of the Commission. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for creation of security interest, over all assets including the movable and immovable assets for the Project in favour of Security Trustee pursuant to Security Trustee Agreement and Facility Agreement.

15. The Petitioner has submitted information in respect of its Project as per the format prescribed by the Commission.

16. The matter was called out for virtual hearing on 12.10.2021 after notice to the Petitioner and the Respondents. During the hearing, the representative of Bihar State Power Holding Company Ltd (BSPHCL) submitted that BSPHL has no objection to prayers of the Petitioner. None was present on behalf of the other Respondents despite notice. No reply has been filed by the Respondents.

## **Analysis and Decision**

17. We have considered the submissions made by the Petitioner. The Commission vide order dated 10.4.2018 in Petition No. 86/MP/2018 granted in-principle approval for creation of security interest in favour of Axis Trustee Services Limited acting as the Security Trustee for the benefit of the existing lenders, namely ICICI Bank Limited, HDFC Bank Limited, Corporation Bank, IDBI Bank Limited and India Infrastructure Finance Company Limited.

18. The Petitioner has filed the present Petition for seeking substitution of erstwhile lenders, namely ICICI Bank Limited, HDFC Bank Limited, Corporation Bank, IDBI Bank Limited and India Infrastructure Finance Company Limited with new lenders, namely, HDFC Bank Limited, Aseem Infrastructure Limited, NIIF Infrastructure Finance Limited, ICICI Bank Limited and for approval for creation of security interest in favour of Security Trustee, Catalyst Trusteeship Limited for the benefit of the new lenders who are going to substitute the existing Security Trustee, namely Axis Trustee Services Limited. For the purpose of refinancing the entire existing loans, the new owner, ATL, approached HDFC Bank Limited for obtaining financial assistance for completing the process of acquisition of the Petitioner company from KPTL. HDFC Bank Limited took note of the fact that ATL is in the process of raising finance for refinancing the existing debt of the Petitioner company and part reimbursement of the capital expenditure funded from the unsecured loans of sponsor/ promoter and sanctioned a term loan amounting to Rs. 915 crore and Working Capital Facility amounting to Rs. 30 crore to the Petitioner. Subsequently,

NIIF Infrastructure Finance Limited vide sanction letter dated 17.12.2020 and Aseem Infrastructure Finance Limited vide sanction letter dated 18.12.2020 sanctioned term loan of upto Rs. 250 crore each. The Petitioner and the new lenders have entered into a Facility Agreement dated 28.12.2020. At the request of the Petitioner, Catalyst Trusteeship Limited has agreed to act as the Security Trustee for the benefit of the secured party i.e. new lenders including their assignees, transferees, novatees and to enter into all relevant financing documents pursuant thereto. Accordingly, the Petitioner, new lenders and Catalyst Trusteeship Limited have also entered into a Security Trustee Agreement on 28.12.2020.

19. Pursuant to the terms of Facility Agreement dated 28.12.2020, the Petitioner has agreed to provide, *inter-alia*, the following security to secure the obligations (as defined in the Facility Agreement) in favour of the Security Trustee acting on behalf of the Secured Parties:

*“(a) a first charge, by way of mortgage, in a form and manner satisfactory to the Lenders, on all the Applicant/Petitioner's immovable properties, both present and future, until the Final Settlement Date;*

*(b) a first charge on all the Applicant/Petitioner's tangible movable fixed assets, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets of the Borrower, both present and future, until the Final Settlement Date;*

*(c) a first charge over all Accounts and all other bank accounts of the Borrower including the Escrow Account and the sub-accounts including the Debt Service Reserve Account (or any account in substitution thereof) that may be opened in accordance with the Facility Agreement, the Escrow Agreement or any of the other Transaction Documents and all funds from time to time deposited therein and all funds of the Applicant/Petitioner, the Project Proceeds and all Permitted Investments or other securities of the Applicant/Petitioner, both present and future, until the Final Settlement Date;*

*(d) a first charge over the current assets of the Applicant/Petitioner, both present and future, until the Final Settlement Date;*

(e) a first charge on all revenues and receivables of the Applicant/Petitioner whether or not deposited in the Accounts, the book debts of the Borrower, the operating cash flows of the Applicant/Petitioner and all other commissions and revenues and cash of the Applicant/Petitioner, both present and future, until the Final Settlement Date;

(f) a first charge on all intangibles assets of the Applicant/Petitioner including but not limited to goodwill, rights, undertaking and uncalled capital of the Applicant/Petitioner, both present and future, until the Final Settlement Date;

(g) a first charge and/or assignment by way of security, until the Final Settlement Date in over: (i) all the rights, title, interests, benefits, claims and demands whatsoever of the Applicant/Petitioner in the Project Documents, both present and future; (ii) the rights, title, interests and benefits of the Applicant/Petitioner in, to and under all the Clearances, to the extent permissible by Applicable Law, both present and future; (iii) all the rights (including right of way, if any, for transmission line up to the delivery point for electricity in relation to the Project), title, interests, benefits, claims and demands whatsoever of the Applicant/Petitioner in any letter of credit, guarantee and liquidated damages (including Contractual Damages) and performance bond provided by any party to the Project Documents, both present and future; and (iv) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower under all Insurance Contracts, both present and future until, the Final Settlement Date;

(h) a first charge on letter of credit, if any or such other security provided by the Long-Term Transmission Customers directly in favor of the Applicant/Petitioner, both present and future, until the Final Settlement Date; and

(i) a first ranking pledge of 51 % (fifty one percent) of the Equity Share Capital (including voting rights) of the Borrower on a fully diluted basis till Final Settlement Date, and a Non Disposal Agreement on the balance 49% (forty nine percent) Equity Share Capital of the Borrower (over and above the aforesaid 51 % (fifty one percent) Shares pledged to be pledged in favour of the Security Trustee for the benefit of the Lenders) till the NDU Cessation Event, to the satisfaction of the Lenders, until the Final Settlement Date.”

20. Estimated cost of the Project and means of finance as on the date of financial closure and original financing plan agreed by the existing lenders as per the Common Loan Agreement are as under:

| Original estimated cost of the Project (As per Agreement) | Rs. in crore | Means of Finance (As per Agreement)            | Rs. in crore |
|---|--------------|--|--------------|
| Hard cost   | 937.00       | Equity share capital                           | 194.00       |
| IEDC  | 17.00        | Equity share premium                           | 0.00         |
| IDC   | 98.00        | Loan/Debenture from promoters, group companies | 49.00        |
| Contingency   | 26.00        | Secured loan/debt from external                | 837.00       |

|              |                |              |                |
|--------------|----------------|--------------|----------------|
|              |                | source       |                |
| WC and DSRA  | 2.00           | Others       |                |
| <b>Total</b> | <b>1080.00</b> | <b>Total</b> | <b>1080.00</b> |

21. The Petitioner has submitted the cost of the Project and means of finance as on COD and on the date of application as under:

(Rs. in crore)

| Particulars   | As on COD      | As on the date of Application |
|---|----------------|-------------------------------|
| <b>Gross Block of Fixed Assets</b>                                      | <b>1138</b>    | <b>1137.80</b>                |
| <b>Loans and Advances to Promoter</b>                                   |                | <b>38.60</b>                  |
| Actual means of finance of the above cost duly certified by the auditor |                |                               |
| Particulars   | As on COD      | As on the date of Application |
| Equity share capital  | 194.00         | 55.40                         |
| Equity share premium  | -              | -                             |
| Accumulated Profit  | -              | 139.00                        |
| Loan/Debenture from promoters, group companies                          | 108.00         | -                             |
| Secured loan/debt from external source                                  | 837.00         | 982.00                        |
| Others  | -0.48          | -                             |
| <b>Total</b>  | <b>1138.52</b> | <b>1176.40</b>                |

22. Details of new lenders after refinancing of existing loan are as under:

| Lender-wise details (Rs. in crore) |                                   |                                  |   |
|------------------------------------|-----------------------------------|----------------------------------|---|
| Sr. No.                            | Lender's name                     | Sanction loan (as per agreement) | Actual loan disbursed as on date (31.08.2021) |
| 1.                                 | HDFC Bank Ltd.                    | 397                              | 386.93  |
| 2.                                 | ICICI Bank Ltd.                   | 175                              | 170.5594                                      |
| 3.                                 | Aseem Infrastructure Finance Ltd. | 205                              | 155.94  |
| 4.                                 | NIIF Infrastructure Finance Ltd.  | 205                              | 243.65  |
|                                    | <b>Total</b>                      | <b>982</b>                       | <b>957</b>                                    |

23. 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 subsection (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.

24. 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.”*

25. 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, the consortium of new lenders comprising of HDFC Bank Limited, Aseem Infrastructure Limited, NIIF Infrastructure Finance Limited and ICICI Bank Limited have agreed to provide rupee term loan not exceeding Rs. 985 crore and for the said purpose have entered into Facility Agreement dated 28.12.2020 with the Petitioner for, *inter-alia*, refinancing of the existing loan. In the instant case, the Petitioner and new lenders have appointed the Respondent No. 11, namely, Catalyst Trusteeship Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project pursuant to Security Trustee Agreement dated 28.12.2020. In our view, lenders and Catalyst Trusteeship Limited needs to be given comfort for creation of security for the benefit of lenders as security for the financial assistance provided by the lenders. We, therefore, accord approval for substitution of existing lenders, namely, ICICI Bank Limited, HDFC Bank Limited, Corporation Bank, IDBI Bank Limited and India Infrastructure Finance Company Limited with new lenders, HDFC Bank Limited, Aseem Infrastructure Limited, NIIF Infrastructure Finance Limited, ICICI Bank Limited who have agreed to refinance the projects/ transmission assets and accord in principle approval for creation of security interest in favour of Security Trustee, namely, Catalyst Trusteeship Limited for the benefit of lender(s).

26. It is, however, made clear that the transmissions 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. The Petition No. 177/MP/2021 is disposed of in terms of the above findings.

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

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

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

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