

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 184/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:**

Petition for approval under Section 17(3) and (4) of the Electricity Act, 2003 for creation of security interest over the Petitioner's Assets in favour of Respondent No. 14 (acting for the benefit of the lender) in respect of the Petitioner's Transmission Project.

**And**

**In the matter of**

Udupi Kasargode Transmission Limited,  
F-1, The Mira Corporate Suite,  
1&2, Ishwar Nagar,  
New Delhi-110 065.

**....Petitioner**

**Versus**

1. Southern Power Distribution Company of Andhra Pradesh Limited,  
#19-13-65/A Srinivasapuram Tiruchanoor Road,  
Chittoor District, Tirupati – 517503,  
Andhra Pradesh.
2. Eastern Power Distribution Company of Andhra Pradesh Limited,  
APEPDCL Corporate Office, C/o 50-27-5/1, TPT Colony,  
Seethammadhara, Visakhapatnam-530013,  
Andhra Pradesh
3. Bangalore Electricity Supply Company Limited,  
Corporate Office, BESCOM, K.R. Circle,  
Bangalore-560001.
4. Gulbarga Electricity Company Limited,  
Gulbarga Electricity Supply Company,  
Gulbarga-585102.

5. Hubli Electricity Supply Company Limited,  
Corporate Office, HESCOM, Navanagar, P.B Road,  
Hubali-580025
6. Mangalore Electricity Supply Company Limited,  
1st Floor, MESCOM Bhavan, Corporate Office,  
MESCOM, Kavoor Cross Road, Bejai,  
Mangalore – 575 004
7. Chamundeshwari Electricity Supply Company Limited,  
CESC Mysore, Corporate Office,  
#29, Vijayanagara 2nd Stage, Hinkal,  
Mysuru.
8. Tamil Nadu Generation & Distribution Corporation Limited,  
TANTRANSCO Building,  
144, Anna Salai,  
Chennai - 600 002
9. Kerala State Electricity Board Limited,  
Vidyuthi Bhavanam, Pattom,  
Thiruvananthapuram- 695004, Kerala
10. Southern Power Distribution Company of Telangana Limited,  
Corporate Office: # 6-1-50, Mint Compound,  
Hyderabad-500 063.
11. Northern Power Distribution Company of Telangana Limited,  
H.No: 2-5-31/2, Corporate Office,  
Vidyut Bhavan, Nakkalgutta, Hanamkonda,  
Warangal-506001, Telangana
12. Electricity Department, Government of Puducherry,  
No. 100, North Vellalar Street,  
Ambagarathur, Thirunallar Commune,  
Karaikal-609 601
13. Electricity Department, Government of Goa,  
Vidyut Bhavan, Panaji,  
Goa.
14. Catalyst Trusteeship Limited,  
GDA House, Plot No. 85,  
Bhusari Colony (Right), Kothrud,  
Pune – 411038.

....Respondents

## **Parties Present**

Ms. Mandakini Ghosh, Advocate, UKTL

Ms. Ritika Singhal, Advocate, UKTL

## **ORDER**

The Petitioner, Udupi Kasargode Transmission Limited (UKTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish transmission system for "400 kV Udupi (UPCL)- Kasargode D/C transmission line" (hereinafter referred to as "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 24.1.2020 in Petition No. 335/TL/2019.

2. The Petitioner has filed the present petition seeking approval for creation of security interest by way of hypothecation/ mortgage/ charge/ assignment, etc. over all assets including movable and immovable assets, accounts and documents (including assignment of transmission licence) etc. of the Petitioner in terms of the loan Agreement and in favour of lender/ security trustee to secure the secured obligations and for their subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project by executing deed of hypothecation and power of attorney in relation thereto, indenture of mortgage, mortgage by deposit of title deeds and such other security documents as per law, for Rs.580.05 crore. The Petitioner has made the following prayers:

*“(a) Approve the creation of Security Interest by way of hypothecation/mortgage/charge/assignment etc., over all assets including the movable and immovable assets, accounts, Project documents (including assignment of transmission licence) etc. of Petitioner in terms of the Loan Agreement and to the extent as mentioned in paras 5 and 6 above, in favour of Lender/Security Trustee to secure the Secured Obligations and for their subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project by*

*executing deed of hypothecation and power of attorney in relation thereto, Indenture of Mortgage, Mortgage by deposit of title deeds and such other security documents as per law; and*

*(b) Pass any other order/directions that the Commission may deem fit and appropriate under the circumstances”*

3. The Petitioner has submitted that it approached REC Limited (hereinafter also referred to as ‘the lender’) for financial assistance in the form of rupee term loan. REC Limited vide its letter dated 26.11.2020 sanctioned rupee term loan to the extent of Rs.580.05 crore (including LoC limit of Rs.406.035 crore) for financing the Project. In pursuance of the sanction letter issued by REC Limited, the Petitioner entered into a Rupee Term Loan Agreement dated 9.4.2021 for availing loan of Rs. 580.05 crore.

4. The Petitioner has appointed the Respondent No. 14, namely, Catalyst Trusteeship Limited (hereinafter also referred to as “the Security Trustee”) who has agreed to act as Security Trustee for the lender by entering into Security Trustee Agreement on 9.4.2021. The Petitioner has submitted that as on date, the lender has disbursed amounts equivalent to Rs.100 crore.

5. In pursuance of the Rupee Term Loan Agreement read with the Security Trustee Agreement, the Petitioner has agreed to provide *inter-alia*, the following securities to secure the secured obligations in favour of the Security Trustee acting on behalf of the lender:

*“(i) A first charge by way of mortgage of all the immovable properties present and future, of the Petitioner. It is clarified that the Project envisages one GIS substation at Kasargode district in Kerala. However, in later stage, if any more immovable property (land) is involved, the same will also be mortgaged;*

*(ii) A first charge by way of hypothecation of all the movable properties, including plant and machinery, machinery spares, equipment’s, tools and accessories, furniture, fixtures, vehicles, stocks and all other movable assets, present and future, of the Petitioner;*

(iii) *A first charge on the book debts, operating cash flows, receivables, commissions, revenues of whatsoever nature and wherever arising, present and future, intangibles, goodwill, uncalled capital, present and future, of the Petitioner;*

(iv) *a first charge over all accounts of the Petitioner, including, the Trust and Retention Account (as defined in the Loan Agreement) and the sub-account(s), or any account created for any reserve(s) to be created and maintained (or any account in substitution thereof) that may be opened in accordance with the Trust and Retention Account Agreement (as defined in the Loan Agreement) and the Financing Documents, or any of the other Project Documents and all funds from time to time deposited therein, the receivables and all Permitted Investments or other securities representing all amounts credited to the Trust and Retention Account, any letter of credit and other reserves of the Petitioner present and future wherever maintained;*

(v) *Assignment or creation of charge of the Project:*

a. *all the right, title, interest, benefit, claims and demand whatsoever of the Petitioner in the Project Documents (including but not limited to the TSA/ Transmission License, Engineering Procurement & Construction/ Other contracts, O&M related agreements if any, service contracts, etc., duly acknowledged consented by the relevant counter parties to such Project Documents if so required), all as amended, varied or supplemented from time to time;*

b. *all the rights, title, interest, benefits, claims and demands whatsoever of the Petitioner in the Clearances/tie-ups/ approvals/ Permission/ RoW pertaining to the Project;*

c. *all the rights titles, interest, benefits, claims and demands, whatsoever of the Petitioner in any letter of credit, guarantee, performance bond provided by any party to the Project documents; and*

d. *all Insurance contracts/Insurance Proceeds;*

(vi) *Pledge of 51 % of the Quasi-Equity Instruments held / subscribed or arranged by the promoters in the Petitioner;*

(vii) *An irrevocable and unconditional corporate guarantee of the promoter of Petitioner. The corporate guarantee shall be for the entire amount of the Rupee Term Loan and shall be valid till creation and perfection of Security in favour of the Lender within the stipulated time period in terms of this Agreement or commissioning of the Project, whichever is later. The corporate guarantee will automatically fall off after creation and perfection of Security in favor of the Respondent No. 14;"*

6. It has been submitted by the Petitioner that Article 15.2.2 of the Transmission Service Agreement (TSA) entered into between the Petitioner and the beneficiaries of the Project provide that the 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 lender or the representative of the lender as security for amount payable under

the Financing Agreements and any other amounts agreed by the parties provided that:

a) the lender or the lender's agent on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of the TSA; and

b) Any encumbrance granted by the Petitioner in accordance with Article 15.2.2 shall contain provisions pursuant to which the lender or the representative of the lenders on their behalf agrees unconditionally with the Petitioner to release from such encumbrances upon payment by the Petitioner to the lender of all amounts due under the Financing Agreements.

7. The 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 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 lender pursuant to Rupee Term Loan 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 Rupee Term Loan Agreement.

8. The Petition was called out for hearing on 14.10.2021 through video conferencing after notice to the Respondents. None was present on behalf of the Respondents despite notice. No reply has been filed by the Respondents.

## **Analysis and Decision**

9. We have considered the submissions made by the Petitioner. The Petitioner approached the lender, namely, REC Limited for a rupee term loan for the purpose of financing the Project. The lender has agreed to grant rupee term loan of Rs.580.05 crore (including LoC limit of Rs.406.035 crore) to the Petitioner subject to the terms and conditions set out in the Rupee Term Loan Agreement dated 9.4.2021.

10. As per the Rupee Term Loan Agreement, estimated cost of the Project is Rs. 773.40 crore. In terms of financing plan enclosed as Schedule 1 of the Loan Agreement, the Project shall be funded through the debt of Rs. 580.05 crore and equity of Rs. 193.35 crore. The Petitioner has submitted the Auditor's Certificate dated 17.8.2021 for capital expenditure of Rs. 160.04 crore incurred for its under construction Project till 16.8.2021.

11. The Petitioner has submitted original estimated cost of the Project and means of finance as on the date of financial closure as under:

<b>Original estimated Project cost (as per agreement)</b>	<b>Rs. in crore</b>	<b>Means of finance (as per agreement)</b>	<b>Rs. in crore</b>
Hard Cost	694.51	Equity share capital/ Share Premium	50.27
IEDC	78.89	Compulsorily Convertible Debentures from Promoters	143.08
		Secured loan/debt from external sources	580.05
<b>Total</b>	<b>773.40</b>	<b>Total</b>	<b>773.40</b>

12. The Petitioner has submitted lender-wise details as under:

<b>Name of lender</b>	<b>Sanctioned loan (as per loan Agreement)</b>	<b>Actual loan disbursed as on date of application</b>
REC Limited	580.05	100.00
	580.05	100.00

13. The transmission projects are capital intensive projects requiring huge capital investment and are financed through loans. It is a normal practice followed by financial institutions/ 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 lender, namely, REC Limited has agreed to provide loan of Rs.580.05 crore (including LoC limit of Rs.406.035 crore) to the Petitioner. 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. 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."*

15. As per the above provisions, a licensee is required to obtain approval of the Commission for assigning its 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.

16. The Petitioner and the lender have appointed the Catalyst Trusteeship Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, Security Trustee Agreement and Rupee Term Loan Agreement dated 9.4.2021 have been executed for a loan of Rs.580.05 crore



(including LoC limit of Rs.406.035 crore). As per the Security Trustee Agreement dated 9.4.2021, at the request of the Petitioner, the lender has agreed to provide a loan of Rs.580.05 crore (including LoC limit of Rs.406.035 crore) for the Project on the terms and conditions contained in the Rupee Term Loan Agreement and Security Trustee Agreement. In our view, Catalyst Trusteeship Limited needs to be given comfort for creation of security for the benefit of lender as security for the financial assistance provided by the lender. We, therefore, accord in-principle approval allowing the Petitioner to create security interest in favour of Catalyst Trusteeship Limited, by way of mortgage/ hypothecation on Project assets by execution of Indenture of Mortgage and financing documents of the Project. The Petitioner is directed to submit signed copy of Indenture of Mortgage for the Project immediately after its execution.

17. 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 assignment of licence and the assets of the Petitioner to the nominee of lender, the Commission will evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and ability 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.”*

18. 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, financial documents and statements may be filed by the Petitioner as and when required by the Commission for any specific purpose.

19. The Petition No. 184/MP/2021 is disposed of in terms of the above.

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

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

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

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