

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 191/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: 23rd October, 2021

In the matter of

Petition for seeking approval under Section 17(3) and (4) of the Electricity Act, 2003 for creation/ extension of security interest by way of charge, hypothecation or assessment over all the movable and immovable assets of Kohima-Mariani Transmission Ltd. and for approval of documents creating security and of other documents in relation to the financing of working capital requirements of the transmission project build, owned, operated and maintained by Kohima Mariana Transmission Limited.

And

In the matter of

1. Kohima-Mariani Transmission Limited,
Plot No. 101, Part-III, GIDC Estate, Sector-28,
Gandhinagar-382028.

2. Axis Trustee Services Limited,
Axis House, Bombay Dyeing Mills Compound,
Pandurang Budhkar Marg, Worli,
Mumbai-400 025.

...Petitioners

Versus

1. Department of Power,
Government of Arunachal Pradesh,
Vidyut Bhawan, Itanagar,
Arunachal Pradesh-791 112.

2. Assam Electricity Gird Corporation Limited,
4thFloor, Bijulee Bhawan,Paltan Bazar, Guwahati-I,
Assam-781 0013.

3. Manipur State Power Distribution Company Limited,
Electricity Complex, Patta No. 1293 under 87(2),
Khwai Bazar, Keishampat, District-Imphal West,
Manipur-795 0014.

4. Meghalaya Energy Corporation Limited,
Through Meghalaya State Power Distribution Company Limited,
Lum Jingshai, Sort Round Road, Shillong 793 011,
Meghalaya.

5. Power and Electricity Department,
Government of Mizoram,
Kawlphetra Building,
New Secretariat Complex, Khatla,
Aizwal-796 001, Mizrom

6. Department of Power,
Government of Nagaland,
New Secretariat Complex,
Kohima-797 001, Nagaland

7. Tripura State Electricity Corporation Limited,
Kunjaban, Agartala-799 006,
Tripura.

The following were present:

Shri Hemant Singh, Advocate for the Petitioners
Shri Tushar Srivastava, Advocate for the Petitioners
Shri Shruti Gupta, Advocate for the Petitioners

ORDER

The First Petitioner, Kohima-Mariani 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 "transmission of electricity for North Eastern Region Strengthening Scheme-VI" (in short, '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 10.7.2017.

2. The First Petitioner had approached the Commission for approval under Sub-sections (3) and (4) of Section 17 of the Act to create security interest for Rs. 994.67 crore in favour of the second Petitioner i.e. Security Trustee, namely, Axis Trustee Services Limited. The Commission by its order dated 12.3.2019 in Petition No. 381/MP/2018 accorded in-principle approval allowing the First Petitioner to create security in favour of Security Trustee, namely, Axis Trustee Services Limited.

3. The Petitioners, Kohima-Mariani Transmission Limited and Axis Trustee Services Limited, have jointly filed the present Petition for creation and extension of the security interest by way of mortgage, hypothecation, charge or assignment over all movable and immovable assets of the First Petitioner in relation to the Project comprising of, amongst others, in favour of Second Petitioner, Axis Trustee Services Limited as Security Trustee pursuant to the Security Trustee Agreement and Facility Agreement, on Project assets for the benefit of the working capital lenders to the Project. The Petitioners have made the following prayers:

“(a) Creation, extension and/or perfection of further security interest in terms of Sanction Letter No. AB/LC-AHD-VB/20-21/065 dated 19.2.2021 by way of (i) mortgage, hypothecation, charge or assignment over all movable and other immovable assets of the Petitioner No. 1 (including over the Petitioner No1`s benefits, rights, title and inters under the TSA)

(b) The security documents (and other documents relating to the financing of working capital requirements of the Projects of Petitioner No. 1) and execution thereof for creation and/or perfection of the aforesaid security interest in favour of Petitioner No. 2 (acting as the security trustee of the Working Capital Lenders and the agent of the WC Security Trustee); and

(c) 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.”

4. According to the First Petitioner, for the purpose of financial assistance by way of working capital facility, the First Petitioner requested Axis Bank Limited

(hereinafter referred to as 'working capital lender') for which working capital lender vide its letter dated 19.2.2021 agreed to make available financial assistance of Rs. 22 crore as working capital facility, on the terms and conditions set out in the Working Capital Security Trustee Agreement (hereinafter referred to as 'the WC Security Agreement') dated 24.3.2021.

5. The First Petitioner and working capital lender have appointed the Second Petitioner, namely, Axis Trustee Services Limited as Security Trustee (hereinafter referred to as 'Security Trustee') who has agreed to act as Security Trustee in terms of the letter dated 22.6.2021 whereby Security Trustee has agreed to hold the security interest created over the leasehold rights of the first Petitioner, in all piece and parcels of a plot of land measuring an area of 28.2621 acres.

7. The First Petitioner has submitted that as per sanction letter from working capital lender dated 19.2.2021, the First Petitioner has agreed to provide the following security to secure the obligations under the loan facility:

(a) A first *pari-passu* charge by way of hypothecation in favour of lenders of all borrower`s movables including machinery, spares, tools and accessories, furniture, fixtures, vehicles, present and future in relation to the Project;

(b) A first *pari* charge by way of mortgage in favour of lenders on all of borrower`s immovable properties including but not limited to civil structures, towers and cable, office buildings, present and future, including ROW/land, if any for the Project;

(c) A first *pari-passu* charge on all intangible assets of the Company including but not limited to goodwill, uncalled capital, present and future in relation to the Project;

(d) A first *pari-passu* charge by way of assignment or creation of security interest, present and future,

-all the rights, title, interest, benefits, claims and demands whatsoever of the Company in the Project documents, (including but not limited to the Transmission Supply Agreements/Transmission Licence, engineering procurement & construction/other contracts, O & M related Agreements, if any, Land Lease Agreement and Service Contracts, etc., duly acknowledged consented by the relevant counter parties to such Project documents if so required, all as amended, varied or supplement from time to time.

-all the rights, title, interest, benefits, claims and demands whatsoever of the Company in the permits, approvals and clearances pertaining to the Project as may be permitted under the regulation in force;

-all the rights, title interest, benefits, claims and demands whatsoever of the Company in letter of credit, guarantee, performance bond, corporate guarantee and bank guarantee provided by any party to the Project documents;

-all Insurance contracts/Insurance proceeds.

(e) A first charge on the Escrow Account, Trust & Retention Account, Debt Service Reserve Account and other reserves and any other bank accounts of the company wherever maintained, present and future in relation to the Project; and

(f) A first charge on all book debts, operating cash flows, receivable, commissions, revenues of whatsoever nature and wherever arising, of the company, present and future in relation to the Project.

8. The First Petitioner has submitted that the above security shall be shared on first *pari-passu* basis among the lenders participating in the term loan facility/ working

capital lenders/ bank guarantee lenders/ lenders giving derivative/ LER limits for the Project.

9. It has been submitted by the First Petitioner that the Petitioners have created and extended the security in the following manner:

(i) by way of mortgage, hypothecation, charge or assignment over all the movable and immovable assets of Kohima-Mariani Transmission Limited, other than as stated in below, (ii) and assignment of transmission licence, in favour of Second Petitioner acting as working capital Security Trustee of Axis Bank Limited, and

(ii) by way of mortgage, over leasehold rights of the First Petitioner, in all piece and parcels of a plot of land admeasuring an area of 28.2621 acres located at Kohima, Nagaland together with buildings, cables and structures thereon and all plant and machineries attached to the earth or permanently fastened to anything attached to the earth including right of way thereto in favour of Second Petitioner.

10. The First Petitioner has submitted that under the financial agreements and on enforcements of the security interest, it shall be lawful for the Security Trustee (the Second Petitioner), acting on behalf of and for the benefit of working capital lender, to enter into and to take possession of the assets/ properties, mortgaged/ charged/ assigned for their benefits and substitute themselves of any of the them or its nominees for the First Petitioner under any or all the Project document(s).

11. The First Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement (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 Agreements and any other amounts agreed by the parties provided that:

(i) The lenders or the representatives of the lenders 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 First Petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on their behalf agrees unconditionally with the First Petitioner to release such encumbrances upon payment by the First Petitioner to the lenders, of all amounts due under the Financing Agreements.

12. 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 relinquishment or transfer of its rights 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, the First Petitioner, as a licensee cannot create security interest over all the movable and immovable assets of the First Petitioner in favour of Security Trustee acting on behalf of and for the benefit of the working capital lender pursuant to the WC Security Agreement without approval of the Commission. Accordingly, the Petitioners have filed the present Petition seeking prior approval of the Commission for creation and extension of security interest, over all assets including the movable and immovable assets for the Project in favour of Working Capital Security Trustee pursuant to the WC Security Agreement and Facility Agreement.

13. The First Petitioner was directed to submit information in respect of the Project

as per the format prescribed by the Commission. The Petitioner has submitted the required information as per prescribed format.

14. The Petition was heard on 12.10.2021 through video conferencing after notice to the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice. The First Petitioner vide Record of Proceedings for the hearing dated 12.10.2021 was directed to submit the following information:

- (a) Copy of signed/draft copy of the WC Security Agreement/Facility Agreement, and
- (b) Statement of sources of funds (sanctioned amount and actual loans), including working capital loan, if any and application of funds as on application date i.e. 27.7.2021 (any date 7 days prior to filing of the application).

15. The First Petitioner vide its affidavit dated 19.10.2021 has submitted the information called for.

Analysis and Decision

16. We have considered the submissions made by the Petitioners. We have also perused the documents available on record. The Petitioner has submitted that the Project has achieved the commercial operation date (COD) on 31.12.2020. After grant of transmission licence, the First Petitioner approached the Commission by way of Petition No. 381/MP/2018 for creation of security interest in favour of Security Trustee, namely, Axis Trustee Services Limited (prior Security Trustee) acting as Security Trustee for the benefits of lenders for the loan availed from the lenders of Rs. 994.67 crore. The Commission in its order dated 12.3.2019 accorded in-principle

approval allowing the First Petitioner to create security in favour of Security Trustee, namely, Axis Trustee Services Limited. The details of lenders are as under:

Sr. No.	Name of the Lenders	Total Commitment (Rs. in crore)
1.	Axis Bank Limited	359.84
2.	Bank of Baroda	359.83
3.	Aditya Birla Finance Limited	150.00
4.	Tata Cleantech Capital Limited	125.00
Total		994.67

17. The First Petitioner approached the working capital lender, namely Axis Bank Limited for working capital facility of Rs. 22 crore for the purpose of further financial assistance for the Project on the terms and conditions contained in the WC Facility Agreement dated 24.3.2021 entered into between the First Petitioner and the working capital lender which details are as under:

Particulars		Limits (Rs. in crore)
Working Capital	Overdraft	22.00
	Total working capital	22.00

18. The working capital lender has agreed to grant financial assistance by way working capital facility of Rs. 22 crore to the First Petitioner subject to the terms and conditions set out in the working capital financing documents.

19. Perusal of the Petition and WC Facility Agreement dated 24.3.2021 entered into between First Petitioner and the working capital lender reveals that the working capital lender, namely Axis Bank Limited has agreed to provide the working capital facility of Rs. 22 crore to the Petitioner.

20. The transmission projects are capital intensive projects requiring huge capital investment. These projects 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 working capital lender, namely Axis Bank Limited has agreed to provide working capital facility of Rs. 22 crore to the First 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.

21. Sections 17(3) and (4) of the Electricity Act, 2003 provide as under:

“17.(3) No licensee shall be 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.”

22. As per the above provision, 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. As per the TSA, the TSP, which is an inter-State transmission licensee can create any encumbrances over all or part of the receivables, Letter of Credit or the other assets of the project, but cannot assign its licence or transfer the project or part thereof by sale, lease, exchange or otherwise without prior approval of the Commission.

23. The First Petitioner and the working capital lender have appointed the Second Petitioner, namely, Axis Trustee Services Limited as Working Capital

Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, WC Security Trustee Agreement and Facility Agreement dated 24.3.2021 have been executed for a loan of Rs. 22 crore. As per the WC Security Trustee Agreement dated 24.3.2021, at the request of the First Petitioner, the lender has agreed to provide a working capital facility in the aggregate not exceeding Rs. 22 crore for the Project on the terms and conditions contained in the Working Capital Facility Agreement and other Financing Documents. In our view, Axis Trustee Services Limited needs to be given comfort for creation of security for the benefit of working capital lender as security for the financial assistance provided by the lender. We, therefore, accord in-principle approval allowing the First Petitioner to create security interest in favour of Axis Trustee Services Limited, for the purpose of providing working capital facility not exceeding Rs. 22 crore by way of mortgage on project assets by execution of WC Security Trustee Agreement/ Facility Agreement. The First Petitioner is directed to submit signed copy of WC Security Trustee Agreement/ Facility Agreement for the Project immediately after its execution.

24. 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 creation of rights in favour of such nominee. Before agreeing to assignment of licence and the assets of the First petitioner to the nominee of lender, the Commission shall 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.”

25. 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 First Petitioner as and when required by the Commission for any specific purpose.

26. With the above discussion and findings, Petition No. 191/MP/2021 stands disposed of.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson