

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 456/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Shri Prakash S. Mhaske, Member (Ex-officio)

Date of Order: 6th April, 2021

In the matter of

Petition seeking approval under Section 17(3) and 17(4) of the Electricity Act, 2003 read with Article 15 of the Transmission Service Agreement dated 24.6.2015 for creation of security interest in the transmission project assets and other relevant documents of Raipur- Rajnandgaon Warora Transmission Limited in favor of the security trustee.

And

In the matter of

1. Raipur-Rajnandgaon Warora Transmission Limited

Adani Transmission Ltd., Achalraj
Opp. Mayor Bungalow,
Law Garden, Ahmedabad
Gujarat – 380 006

...Petitioner No. 1

2. Catalyst Trusteeship Limited

GDA House, Plot No. 85
Paud Road,
Pune – 411 038

...Petitioner No. 2

Vs

1. Maharashtra State Electricity Distribution Company Limited

Prakashgad, 4th Floor, Bandra (East),
Mumbai - 400 051

2. Chhattisgarh State Power Distribution Company Limited

P.O. Sunder Nagar, Dangania,
Raipur - 492 013, Chhattisgarh

3. Gujarat Urja Vikas Nigam Ltd.

Vidyut Bhawan, Race Course,
Vadodara – 390 007

4. Madhya Pradesh Power Management Company Limited

Block No. 11, Ground Floor, Shakti Bhawan,
Vidyut Nagar, Rampur,
Jabalpur – 482 008, Madhya Pradesh

5. Electricity Department of Goa,

Govt. of Goa,
Aquem Alto Margaon
Goa - 403 601

6. DNH Power Distribution Corporation Limited

66kV, Amli Ind. Estate,
Silvassa - 396 230,
Dadar Nagar Haveli

7. Electricity Department, Administration of Daman and Diu

Plot No. 35, OI DC Complex,
Near Fire Station, Somnath
Daman - 396 210

8. Power Grid Corporation of India Limited

Saudamini, Plot No. 2, Sector 29,
Gurgaon - 122 001

..Respondents

The following were present:

Shri Amit Kapur, Advocate, RRWTL
Ms. Poonam Verma, Adocate, RRWTL
Ms. Aparajita Upadhyay, Advocate, RRWTL
Ms. Sakshi Kapoor, Advocate, RRWTL
Shri Bhavesh Kundalia, RRWTL
Shri Prashant Soni, RRWTL

ORDER

The First Petitioner, Raipur-Rajnandgaon Warora Transmission Limited (RRWTL) 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 the transmission system for 'Additional System Strengthening for Chhattisgarh IPPs-Part B' (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 29.2.2016.

2. The First Petitioner had approached the Commission in Petition No.87/MP/2016 for approval under Sub-sections (3) and (4) of Section 17 of the Act to create security of Rs. 1019.38 crore, comprising of Rs. 969.38 crore as rupee term loan and Rs. 50 crore as Loan Equivalent to Risk (LER) facility, in favour of Axis Trustee Services Limited for the benefit of consortium of lenders led by Axis Bank. The Commission, vide order dated 28.7.2016, accorded in principle approval to create security in favour of Axis Trustee Services Limited by way of mortgage/ hypothecation/ assignment of mortgage properties and Project assets of the First Petitioner.

3. Thereafter, vide order dated 4.7.2019 in Petition No. 3/MP/2019, the Commission accorded in principle approval to the First Petitioner under Sub-sections (3) and (4) of Section 17 of the Act for change in constitution of the consortium of existing lenders through down selling of part of rupee term loan of Rs. 969.38 crore by the original lender, namely, Axis Bank Ltd. to new lenders, namely, IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank to the tune of Rs.300.38 crore, Rs.219 crore, Rs.75 crore and Rs.75 crore respectively.

4. Raipur-Rajnandgaon Warora Transmission Limited (the First Petitioner) and Catalyst Trusteeship Ltd. (the Second Petitioner) have jointly filed the present Petition for approval under Sub-sections (3) and (4) of Section 17 of the Act for creation of security interest in favour of Catalyst Trusteeship Ltd. for the benefit of secured parties i.e. USPP Note Holders, Hedge Counterparties, other secured parties, and their respective successors, assignees, novatees and transferees as per Master Note and Guarantee Agreement dated 4.3.2020 (as amended and supplemented), First Supplement and Amendment to the Master Note and Guarantee Agreement dated 20.3.2020, Hedging Agreements (as amended and supplemented), Security and Trustee and Inter-creditor Deed dated 6.3.2020 (as amended, supplemented and acceded to) and Accession Memorandum to the Security Trustee and Inter-creditor Deed dated 23.3.2020. The Petitioners have made the following prayers:

“(a) Allow the present Petition;

(b) Grant in principle approval for creation of security by way of mortgage, hypothecation and charge or assignment over all movable and other immovable assets of RRWTL (including over RRWTL’s benefits, rights, title and interest under the a Transmission Service Agreement dated 24.6.2015, the transmission license dated 29.2.2016 and other Transmission Project documents) by execution of the Unattested Deed of Hypothecation and/or Deed of Mortgage and/or any other security creating document;

(c) Take on record the appointment of Catalyst Trusteeship Limited as the Security Trustee acting on behalf of Secured Parties i.e. USPP Note Holders, Hedge Counterparties, other secured parties, and their respective successors, assignees, novatees and transferees as per Master Note and Guarantee Agreement dated 4.3.2020, (as amended and supplemented), First Supplement and Amendment to the Master Note and Guarantee Agreement dated 20.3.2020, Hedging Agreements (as amended and supplemented), Security and Trustee and Inter-creditor Deed dated 6.3.2020 (as amended, supplemented and acceded to) and Accession Memorandum to the Security Trustee and Inter-creditor Deed dated 23.03.2020; and

(d) Grant exemption to the Petitioners from filing duly attested Affidavit supporting the present Petition, in view of the nation-wide lockdown due to the spread of COVID-19.”

5. The Petitioners have submitted that the First Petitioner has issued Senior Secured Notes (in short, “USPP Notes”) on 4.3.2020 to eligible investors by way of private placement and entered into a Master Note and Guarantee Agreement with the USPP Note Holders for the purpose, *inter alia*, of refinancing the rupee term loan as per the terms of the agreement. In terms of the said Agreement, the First Petitioner (along with other issuers) has authorised the issue and sale of US\$ 127 million aggregate principal amount of 5.20% Series A Guaranteed Senior Secured Notes. Thereafter, the First Petitioner (along with other issuers) authorised the issue and sale of US\$ 36 million aggregate principal amount of 5.20% Series B Guaranteed Senior Secured Notes by entering into First Supplement and Amendment to Master Note and Guarantee Agreement with the USPP Note Holders on 20.3.2020. Therefore, according to the Petitioners, the USPP Note Holders agreed to provide the financial assistance not exceeding US\$ 163 million in terms of the aforesaid agreements. It has been submitted by the Petitioners that USPP Notes have tenure of 30 years and shall mature in March 2050.

6. It has been submitted by the Petitioners that the proceeds from the USPP Notes shall be utilised for repayment of the entire loan obligations to the rupee lenders under the Rupee Loan Agreement dated 17.5.2016 and related financing documents. Pursuant to Security Trustee Appointment Agreement dated 6.3.2020, Catalyst Trusteeship Ltd. has agreed to act as Security Trustee for the benefit of the secured

parties and to enter into all relevant security documents thereof. In this regard, the First Petitioner, Catalyst Trusteeship Ltd. and the USPP Note Holders have entered into the Security Trustee and Inter-creditor Deed dated 6.3.2020. Pursuant to the Security Trustee and Inter-creditor Deed, an Accession Memorandum to the Security Trustee and Inter-creditor Deed dated 23.3.2020 has also been executed. It has been further submitted by the Petitioners that the First Petitioner will be entering into Hedging Agreements with various banks and financial institutions (“Hedge Counterparties”) to manage the risk of adverse interest rate or currency movements in the short or medium term in its business or funding in accordance with the Security Trustee and Inter-creditor Deed (“the Hedging Agreements”).

7. The Petitioners have submitted that, upon receiving approval of the Commission, the First Petitioner shall enter into an Unattested Deed of Hypothecation and/ or Deed of Mortgage and/ or any other security creating document(s) with Catalyst Trusteeship Ltd. as per its obligations under the Financing Documents i.e. Master Note and Guarantee Agreement (along with all its amendments and supplements), Hedging Agreements (along with its amendments and supplements), Security Trustee Appointment Agreement and Security Trustee and Inter-creditor Deed (along with the amendments, supplements and accessions made thereto). The Petitioners have submitted that pursuant to the terms of such security creating agreements, the First Petitioner is required to create a first ranking security interest on the following properties of RRWTL in favour of Catalyst Trusteeship Ltd for the benefit of the Secured parties:

“(a) all and singular beneficial rights, title and interest of RRWTL in respect of the land, together with all buildings, erections, godowns, constructions, permanently fastened fixtures and fittings thereto, of every description which are standing, erected or attached to the aforesaid land or any part thereof in present and future, and all rights to use common areas and facilities and incidentals attached thereto, together with all trees, fences, hedges, ditches, ways, sewers, drains, waters, watercourses, liberties, privileges, easements and appurtenances whatsoever to the said lands, hereditaments or premises or any part thereof, whether presently in existence or in future belonging to or in any way appurtenant thereto or usually held, occupied or enjoyed therewith or expected to belong or be appurtenant thereto and all the estate, right, title, interest, property, claims and demands whatsoever of RRWTL in and upon the same;

(b) all its rights, title, interest and benefit in all and singular, RRWTL’s movable plant and machinery, as also all tangible movable assets (both present and future) and in particular including, without limitation, all movable plant and machinery (whether attached or otherwise), electrical systems, hardware, wiring, tanks, transmission lines, panels, electronics spares, machinery spares, tools, meters, motor vehicles, furniture and fixtures, accessories and computer software and all other equipment, whether installed or not and whether lying loose or in cases or which are lying or are stored in or to be stored in or to be brought into any of RRWTL’s premises, warehouses, stockyards and godowns or those of RRWTL’s agents, subsidiaries, associates or representatives or at various work sites or wherever else the same may be or be held by any party to the order or disposition of RRWTL or in the course of transit or on high seas or on order or delivery or at any place or places wherever else situated and all Intellectual Property Rights, of RRWTL, whether now belonging to or that may at any time belong to RRWTL and/or that may at present or future be held by any party anywhere to the order and disposition of RRWTL or in the course of transit or delivery, and all replacements thereof and additions thereof whether by way of substitution, replacement, conversion, realisation or otherwise howsoever together with all benefits, rights and incidentals attached thereto which are now or shall at any time in future hereafter be owned by RRWTL and all estate, right, title, interest, property, claims and demands whatsoever of RRWTL unto and upon the same which description shall include all properties of the above description whether presently in existence, constructed or acquired;

(c) all and singular rights, title, interest, benefits, claims and demands whatsoever of RRWTL in, to and under the project documents each as amended, varied or supplemented from time to time, and all assignments and concessions thereunder, licenses, permits, approvals and consents obtained by RRWTL, all letter of credit, guarantees including contractor guarantees and liquidated damages, consent agreements, side letters and performance bonds provided by any party to the Project Documents and the right to compel performance thereunder, and to substitute, or to be substituted for, RRWTL thereunder, and to commence and conduct either in the name of RRWTL or in its own name or otherwise any proceedings against any person in respect of any breach of, any

agreement (including the project documents) and all claims of RRWTL under or in any proceedings against all or any such persons and insurance contracts together with all proceeds, monies, revenues and receivables in relation thereto or arising thereunder, and all the estate, benefit, property whatsoever of RRWTL unto and upon the same, both present and future, and shall also include, without limitation, rights and benefits to all amounts owing to, or received by, RRWTL, and all other claims of RRWTL under or in any proceedings against all or any such persons and together with the right to further assign any of these properties, which description shall further include all properties of the above description, whether presently in existence or acquired in future;

(d) all the rights, title, interest, benefits, claims and demands whatsoever of RRWTL in, to, under and/or in respect of the Insurance Contracts both present and future (along with the "agreed bank clause" in favour of the Security Trustee in a manner acceptable as per Applicable Law) and all rights, claims and benefits to all monies receivable thereunder and all other claims thereunder;

(e) all rights, title, interest, benefit, claims and demands whatsoever of RRWTL, in, to, under and/or in respect of the all amounts owing to and/or receivable by the RRWTL and/or any person on its behalf under its Transmission Service Agreement including claims and actionable claims of whatsoever nature due or owing to or become due to or owing to or acquired by the RRWTL under any Transmission Service Agreement and the full benefit of all rights and remedies relating thereto including but not limited to fees, deposits and all claims for damages and other remedies for non-payment of the same;

(f) all right, title, interest, benefits, claims and demands whatsoever of RRWTL in, to, under and in respect of its accounts, including the accounts, and all the sub-accounts thereunder and of the accounts to be created by RRWTL under any project document (including but not limited to the Transmission Service Agreement) or contract including all operating cash flows and all receivables of RRWTL, and all other assets and securities which represent all amounts on such accounts and all the moneys, securities, instruments, investments, and other properties deposited in, credited to or required to be deposited in or credited to or lying to the credit of such accounts or liable to be credited to such accounts and all other bank accounts together with permitted investments and all other assets, moneys, securities, instruments, investments, and other properties and securities which represent all amounts on such accounts and all the moneys lying to the credit of such accounts or liable to be credited to such accounts;

(g) all right, title, interest, benefits, claims and demands whatsoever of RRWTL in, to, or in respect of all amounts owing to, and received by, RRWTL, which description shall include all properties of the above description whether presently in existence or acquired in future;

(h) all right, title, interest, benefits, claims and demands whatsoever of RRWTL in, to, or under, or in respect of all amounts owing to, and received by, RRWTL under the ATRL loan;

(i) all rights, title, interest, benefit, claims and demands whatsoever of RRWTL in the USPP Early Prepayment Proceeds Accounts, all the sub-accounts thereunder and all the moneys, securities, instruments, investments, and other properties deposited in, credited to or required to be deposited in or credited to or lying to the credit of the such accounts or liable to be credited to such accounts (which, for the avoidance of doubt, shall be charged exclusively for the benefit of the USPP Note Holders);

(j) all rights, title, interest, benefits, claims and demands whatsoever of RRWTL, in, to, or in respect of all other assets of RRWTL including, both present and future (other than the property effectively charged pursuant to the provisions of (a) to (i) above), including RRWTL's current assets, cash in hand and uncalled capital, cash in hand, intellectual property rights, goodwill, and also including without limitation, the rights, title and interest in undertakings of RRWTL (collectively, the "General Assets") to have and to hold by way of security all and singular, the General Assets unto and to the use of the Security Trustee. Provided that the charge created over the General Assets shall be a floating charge;

(k) all the current assets of RRWTL and intangible movable assets other than the property described in (a) to (j) (above) (both inclusive), both present and future, including without limitation the receivables, cash in hand, investments classified as held for trading, raw materials, semi-finished and finished goods, goodwill, uncalled capital, revenues of whatsoever nature, consumable stores and spares and other current assets including trade and other receivables including receivables by way of cash assistance and/or cash incentives or any claims by way of refund of customs/excise duties, book debts, operating cash flows, commissions and stock in trade, whether installed or not and whether lying loose or in cases or which are lying or are stored in or to be stored in or to be brought into or upon RRWTL's premises, warehouses, stockyards and godowns or the premises, warehouses, stockyards and godowns of RRWTL's agents, subsidiaries, associates or representatives or at various work sites or at any place or places wherever else situated or wherever else the same may be, which description shall include all properties of the above description whether presently in existence, constructed or acquired in future (collectively, the "Current Assets")."

8. The Petitioners have submitted that in terms of Articles 15.2.2 and 15.2.4 of TSA, the First 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 Project, in favour of its lenders or the lender's representative. The Petitioners have stated that in view of the provisions of Sub-sections (3) and (4) of Section 17 of the Act,

prior approval of the Commission is essential for creation of security interest over the Project assets and in order to tie up the necessary financing.

9. The First Petitioner vide affidavit dated 7.7.2020 has submitted the information regarding the Project and financial information, including details of cost of the Project and debt-equity ratio. It has been submitted by the First Petitioner that as on 31.3.2020, the actual cost of the Project is Rs.1409.58 crore with debt-equity ratio of 88.79:11.21 and outstanding loan from external source as on 31.3.2020 is Rs.1222 crore in addition to other liabilities of Rs.29 crore. In this regard, the First Petitioner has placed on record, Auditor Certificate dated 3.7.2020.

10. The matter was called out for virtual hearing on 25.8.2020 after notice to the Petitioners and the Respondents. None was present on behalf of the Respondents despite notice. The First Petitioner, vide Record of Proceeding for the hearing dated 25.8.2020, was directed to clarify the discrepancies in Project related details and loan amount from PTC India Financial Services Limited submitted with the Petition and as mentioned in the prescribed format submitted vide affidavit dated 7.7.2020. The First Petitioner vide affidavit dated 8.9.2020 has clarified the above discrepancies as an inadvertent error on the part of the First Petitioner and made appropriate corrections in paragraph 29 of the Petition and submitted the affidavit dated 7.7.2020. The matter was called out for virtual hearing on 19.3.2021. During the course of hearing, it was submitted by the learned counsel for the Petitioners that the Petitioners have filed the requisite information/ details and have placed on record the no dues certificate issued by the prior lenders and Security Trustee.

Analysis and Decision

11. We have considered the submissions made by the Petitioners and perused the documents available on record. The Commission in its order dated 28.7.2016 in Petition No. 87/MP/2016 granted approval under Sub-sections (3) and (4) of Section 17 of the Act for creation of security in favour of Security Trustee, namely, Axis Trustee Services Limited. The original lender, namely, Axis Bank Limited made available financial assistance to Rs.1019.38 crore comprising of Rs.969.38 crore as rupee term loan and Rs.50 crore as Loan Equivalent to Risk (LER) for the Project. Thereafter, the Commission vide order dated 4.7.2019 in Petition No. 3/MP/2019 accorded in-principle approval to the First Petitioner for change of constitution of the consortium of the then existing lenders through down selling of part of rupee term loan of Rs.969.38 crore by the original lender, namely, Axis Bank Ltd. to new lenders, namely, IFCI Limited, PTC India Financial Services Limited, United Bank of India and Vijaya Bank to the tune of Rs.300.38 crore, Rs.219 crore, Rs.75 crore and Rs.75 crore respectively.

12. Subsequently, on 4.3.2020 and 20.3.2020, the First Petitioner issued Senior Secured Notes to eligible investors by way of private placement (USPP Notes) for refinancing the entire loan obligations to the rupee lenders under the Rupee Loan Agreement dated 17.5.2016. In this regard, the First Petitioner has entered into Master Note and Guarantee Agreement dated 4.3.2020 with the USPP Note Holders for issue and sale of US\$ 127 million aggregate principal amount of 5.20% Series A Guaranteed Senior Secured Notes and First Supplement and Amendment to Master Note and Guarantee Agreement dated 20.3.2020 for issue and sale of US\$ 36 million aggregate

principal amount of their 5.20% Series B Guaranteed Senior Secured Notes. In terms of the above Financing Agreements, the USPP Note Holders agreed to provide the financial assistance not exceeding US\$ 163 million to the First Petitioner. The First Petitioner and Catalyst Trusteeship Ltd. have entered into a Security Trustee Appointment Agreement dated 6.3.2020, whereby Catalyst Trusteeship Ltd. has agreed to act as Security Trustee for the benefit of the Secured Parties and to enter into all relevant security documents thereof.

13. The First Petitioner, vide its affidavit dated 8.9.2020 in compliance to the hearing dated 25.8.2020, has submitted that the Scheduled Commercial Operation Date (SCoD) of the Project was 23.11.2018 and the Project achieved the commercial operation on 31.3.2019. The First Petitioner vide affidavit dated 7.7.2020 has submitted original estimated Project cost and means of finance as under:

Original Estimated Project cost	Rs. in crore	Means of finance	Rs. in crore
Hard Cost	983	Equity Share Capital	104
IEDC	162	Loan/ Debenture from promoters, group companies	312
IDC	157	Secured loan/debt from external source	969
Other Cost (Contingency and WC)	83		
Total	1385	Total	1385

14. The First Petitioner has submitted the means of finance for the actual Project cost of Rs.1409 crore (as on 31.3.2020) as under:

Particulars	Rs. in crore	Means of finance	Rs. in crore
	1409	Equity Share Capital	91

Actual Project cost		Accumulated Profit	47
		Loan/ Debenture from promoters, group companies	20
		Secured loan/ debt from external source	1222
		Others	29
Total	1409	Total	1409

15. The lender-wise details submitted by the First Petitioner is as under:

Lender's Name	Actual loan as on 31.3.2020 (Rs. In crore)
Purchasers of Senior Secured Notes - USD denominated Notes (USD 163 Million)	1222

16. It has been submitted by the Petitioners that upon refinancing of the entire existing rupee term loan, the obligations of the First Petitioner under the Rupee Term Loan Agreement shall irrevocably and unconditionally be fulfilled to the satisfaction of the rupee lenders and the trust or the security interest created in favour of Axis Trustee Services Limited shall automatically come to an end. The First Petitioner has placed on record the 'No due Certificates' issued by earlier Security Trustee, namely, Axis Trustee Services Limited and the prior lenders, namely, Axis Bank, United Bank of India, Bank of Baroda, IFCI Limited and PTC India Financial Services Ltd.

17. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through equity of the project developer and loans by the financial institutions and/or issuance of debentures and/or issuance of Senior Secured Notes which is a form of loan. It is a normal practice followed by

financial institution/ banking industry to ask for sufficient security from the borrower to back the loan in order to mitigate the credit risk of the lenders. In the instant case, the Commission, in its order dated 28.7.2016 in Petition No. 87/MP/2016, had granted in-principle approval for creation of security interest in favour of Security Trustee, namely, Axis Trustee Services Limited. Subsequently, vide order dated 4.7.2019 in Petition No. 3/MP/2019, the Commission granted in principle approval for change in consortium. The First Petitioner has now decided to refinance the entire rupee term loan by issuing of USPP notes for which Catalyst Trusteeship Ltd has agreed to act as Security Trustee for the benefit of the Secured Parties i.e. USPP Note holders. 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. Further, as per Articles 15.2.4 of the TSA, the First Petitioner is required to take prior approval of this Commission before creating any encumbrance over all or part of the receivables, letter of credit or other assets of the Project, in favour of its lenders or the lender`s representative. The relevant extract of the Article 15 is 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.

15.2.4 Neither the TSP nor any of the Long Term Transmission Customer can relinquish or transfer its rights and obligations, without prior approval of the Appropriate Commission”

18. Sections 17(3) and (4) of the Act provide as under:

“(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 subsection (3), unless made with the prior approval of the Appropriate Commission, shall be void.”

As per the above provisions, 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.

19. In our view, change of Security Trustee from Axis Trustee Services Limited to New Security Trustee, namely, Catalyst Trusteeship Limited acting as Security Trustee on behalf of New lenders needs to be given comfort for creation of security for the benefit of the lenders/ banks/ financial institutions/ non-banking financial companies as security for the financial assistance provided by the lenders. We, therefore, accord in-principle approval to the First Petitioner to create security interest in favour of Catalyst Trusteeship Limited acting as Security Trustee on behalf of the Secured Parties i.e. USPP Note Holders, Hedge Counterparties, other secured parties, and their respective successors, assignees, novatees and transferees as per Master Note and Guarantee Agreement dated 4.3.2020 (as amended and supplemented).

20. It is, however, made clear that the transmission licence granted by the Commission to the First Petitioner and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee. Before agreeing to assignment of licence and the assets of the First Petitioner to the nominee of lenders, 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.”

21. 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.

22. With the above, Petition No. 456/MP/2020 stands disposed of.

Sd/- (P.S. Mashke) Member (Ex-Officio)	sd/- (P.K.Singh) Member	sd/- (Arun Goyal) Member	sd/- (I.S.Jha) Member	sd/- (P.K.Pujari) Chairperson
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