

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 69/MP/2021**

**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: 8<sup>th</sup> April, 2021**

**In the matter of**

Approval under Section 17(3) and 17(4) of the Electricity Act, 2003 to create security interest in favour of Security Trustee/ Lenders by way of mortgage/ hypothecation/ assignment of rights, title, interest, claims, demands, benefits, mortgage properties, project assets, clearance, project documents, agreement, approvals and right of Alipurduar Transmission Limited in accordance with the terms of the Financing Documents

**And**

**In the matter of**

Alipurduar Transmission Limited  
Adani Corporate House  
Adani Shanti Gram  
Near Vaishno Devi  
Ahmedabad-382421

**.... 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 Sectt. Complex, Kohima-797001  
Nagaland
- 5) North Bihar Power Distribution Company Limited  
2<sup>nd</sup> Floor, Vidyut Bhawan, Bailey Road  
Patna-800001
- 6) Gridco Limited  
Grid Corporation of Orissa Limited  
Janpath, Bhubneshwar-751011
- 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, Govt. 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 Margh  
New Delhi-110001

.....Respondents

**Parties Present:**

Shri Bhavesh Kundalia, ATL

## 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 21.3.2016 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 for assignment of licence by way for creation of security interest over all the movable and immovable assets of the Petitioner, in favour of Catalyst Trusteeship Limited (Respondent No. 11) as Security Trustee pursuant to the Amended and Restated Security Trustee Agreement and Facility Agreement, for the benefit of the lenders. The Petitioner has made the following prayers:

*"a. Allow the assignment of the Transmission License and Utility (as defined in the Electricity Act, 2003) of 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.*

*b. 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.*

*c. 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;*

*d. 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.*

e. *Allow any other relief, order, or direction, which the Commission deems fit to be and proper under the facts and circumstances of the present case.”*

3. It has been submitted by the Petitioner that it had requested HDFC Bank Limited, Aseem Infrastructure Finance Limited and NIIF Infrastructure Finance Limited (hereinafter collectively referred to as ‘the lenders’) to avail financing for the Project. Pursuant to the request of the Petitioner, the 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 Ltd. has agreed to act as the lender’s Agent for the lenders, for purposes and on the terms and conditions set forth under the Facility Agreement and in the other Financing Documents.

4. The Petitioner has appointed the Respondent, namely, Catalyst Trusteeship Limited as Security Trustee (hereinafter referred to as “the Security Trustee”) who has agreed to act/ continue as Security Trustee for the lenders by entering into amended and Restated Security Trustee Agreement on 28.12.2020.

5. 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 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.”

6. The Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement 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 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 Petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on their behalf agrees unconditionally with the Petitioner to release such encumbrances upon payment by the Petitioner to the lenders of all amounts due under the Financing Agreements.

7. The Petitioner has submitted that in terms of Clause 10.2(f) of Facility Agreement, it is under the obligation to create and perfect security interest within 6 months from the initial disbursement date. It has been further submitted that the Petitioner need to submit all the transaction documents to the Commission for approval of security creation under Sub-sections (3) of Section 17 of the Act within 40 days of the initial disbursement date as per Clause 16.7 of the Facility Agreement.

8. 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 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.

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

10. The matter was called out for virtual hearing on 19.3.2021 after notice to the Petitioners and the Respondents. None was present on behalf of the Respondents despite notice. No reply has been filed by the Respondents.

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-refinancing 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%.

(d) 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.

12. In absence of above information, it is not possible to take a view on the prayers of the Petitioner. However, the Petitioner is granted liberty to approach the Commission by filing appropriate application complete with all relevant documents/ information.

13. With the above, Petition No. 69/MP/2021 is disposed of.

Sd/-  
**(P. S. Mhaske)**  
Member

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

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

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

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