

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 152/MP/2022

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 30th August, 2022

In the matter of

Petition for approval under Section 17(3) and Section 17(4) of the Electricity Act, 2003 read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009 for creation of security interest by way of mortgage, hypothecation, charge or assignment over all the movable and immovable assets including over rights, title, interest, claims, demands, benefits under mortgaged properties, project assets, clearance, project documents, agreements and approvals of Kohima-Mariani Transmission Limited in favour of the Security Trustee, i.e., Axis Trustee Services Limited (Respondent No. 8) and for approval of documents creating security and of other documents in relation to the financing of long term loan requirements of the Transmission Project build, owned, operated and maintained by Kohima-Mariani Transmission Limited.

And

In the matter of

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

...Petitioner

Versus

1. Department of Power,
Government of Arunachal Pradesh,
Vidyut Bhawan, Itanagar,
Arunachal Pradesh-791 1112.

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.

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

The following were present:

Shri Aniket Prason, Advocate, KMTL
Shri Nimesh Jha, Advocate, KMTL
Ms. Akanksha Tanvi, Advocate, KMTL
Shri Rishabh Bhardwar, Advocate, KMTL
Ms. Stuti Tadon, KMTL
Ms. Bitika Kaur, KMTL

ORDER

The 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 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. Subsequently, the Petitioner had further approached the Commission for creation of security interest of Rs. 22 crore in favour of Axis Trustee Services Limited for the working capital lender as security for the financial assistance provided by the lender, Axis Bank Limited. The Commission in its order dated 23.10.2021 in Petition No. 191/MP/2021 allowed the same.

3. The Petitioner has filed the present Petition for assignment of the transmission licence by way of security in favour of Security Trustee and creation of security interest by way of mortgage, hypothecation, charge or assignment over all movable and immovable assets including over rights, title, interest, claims, demands, benefits under mortgage properties, project assets, clearance, project documents, agreements and approval of the Petitioner in favour of the Security Trustee, Respondent No.8 i.e. Axis Trustee Services Limited. The Petitioner has made the following prayers:

“(a) Approve the assignment of the Transmission Licence of the Petitioner by way of security in favour of the Respondent No. 8 as Security Trustee, acting for the benefit and on behalf of the Project Lenders;

(b) Creation and perfection of security interest in terms of the Rupee Facility Agreement and the Debenture Trust Deed by way of mortgage, hypothecation, charge or assignment over all movable and other immovable assets of the Petitioner including over rights, title, interest, claims, demands, benefits under mortgaged properties, project assets, clearance, project documents, agreements and approvals, and under the Transmissions Service Agreement; under the TSA)

(c) The security documents and other documents relating to the financing of long terms loan recruitments of the Project of the Petitioner and execution thereof for creation and perfection for the aforesaid security interest in favour of the Respondent No.8 (acting as the security trustee of the Project Lenders); and

(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.”

4. According to the Petitioner, for the purpose of refinancing of the outstanding dues of the lenders, namely Axis Bank Limited, Bank of Baroda, Aditya Birla Finance Limited, Tara Cleantech Capital Limited and Indian Bank (in short ‘existing lenders’) the Petitioner requested HDFC Bank Limited, Axis Bank Limited and NIIF Infrastructure Finance Limited (new lenders) to provide rupee term loan of Rs. 1050 crore for which new lenders vide their letters dated 27.1.2022, dated 12.1.2022 and dated 16.11.2021 agreed for the same. The Petitioner further requested Axis Bank Limited (‘Debenture holder’) to subscribe for up to 3,000 unlisted, fully secured, freely transferrable, redeemable, non-convertible debentures to be issued by the Petitioner each with a face value of Rs. ten lakh at par, for the purpose of refinancing of the dues of the existing lenders for which Debenture holder vide its letter dated 13.1.2022 provided the terms sheet and on 27.1.2022 issued consent letter to act as Debenture Trustee for the same.

5. The Petitioner and new lenders have appointed the Respondent No.8, namely, Axis Trustee Services Limited as Security Trustee (hereinafter referred to as ‘Security Trustee’) who has agreed to act as Security Trustee for the new lenders and

have entered into Security Trustee Agreement, Rupee Facility Agreement, Debenture Trust Deed and Debenture Trustee Agreement dated 28.1.2022. The Petitioner has submitted that outstanding dues of the existing lenders, namely Axis Bank Limited, Bank of Baroda, Aditya Birla Finance Limited, Tara Cleantech Capital Limited and Indian Bank have been repaid from the disbursement availed by the Petitioner under the project facilities and the existing lenders have issued no dues certificates in this regard.

6. The Petitioner has submitted that as per Rupee Facility Agreement and the Debenture Trust Deed, the Petitioner has agreed to provide the following security to secure the obligations under the Project facilities:

- (a) A first ranking security interest by way of hypothecation, over all the tangible and movable properties owned by the Petitioner including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present and future;
- (b) A first ranking security interest on all of the Petitioner's immovable properties, both present and future including the leasehold rights in connection with the sub-station land and the superstructures built thereon;
- (c) A first ranking security interest on all of the Petitioner's present and future intangible assets, including but not limited to its goodwill, undertaking and uncalled capital, both present and future, all pertaining to the Project;
- (d) Assignment by way of security or charge by way of a hypothecation on:
 - (i) all the right, title, interest, benefits, claims and demands whatsoever of the Petitioner in the project documents duly acknowledged by the relevant counterparties to such project documents, as amended, varied or supplemented from time to time
 - (ii) all the rights, title, interest, benefits, claims and demands

whatsoever of the Petitioner in the clearances in respect of the Project including the transmission license; (iii) all the rights, title, 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 including any letter of credit or any other security provided by the long term transmission customers directly in favour of the Petitioner; and (iv) all insurance contracts and insurance proceeds related to the Project and/or endorsed in favour of the Respondent No. 8 / the Project Lenders by the Petitioner and the insurance proceeds thereunder;

(e) A first ranking security interest on all the book debts, operating cash flows, receivables, all other current and non-current assets, commissions, revenues of the Petitioner of whatsoever nature and wherever arising, both present and future; and

(f) A first ranking security interest on all the accounts and sub-accounts under the escrow account (other than the distribution escrow sub-account) including the debt service reserve escrow sub-account and all other reserves and bank accounts of the Petitioner and each account required to be opened by the Petitioner under the project documents.

7. The Petitioner has submitted that under the financial agreements and on enforcements of the security interest, it shall be lawful for the Security Trustee (the Respondent No.8), acting for the benefit of Project lenders, to enter into and to take possession of the assets/ properties, mortgaged/ charged/ assigned for their benefits or its nominees for the Petitioner under any or all the Project document(s).

8. The Petitioner has stated 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 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.

9. 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 seeking approval for creation of security for the benefit of in favour of and/ or for the benefit of the Project lenders.

10. The Petition was heard on 29.7.2022 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. Subsequently, the Petitioner was directed to submit the details of the source of funds and the application of funds as on the date. The Petitioner has submitted the information called for.

Analysis and Decision

11. We have considered the submissions made by the Petitioner. 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 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 existing lenders of Rs. 994.67 crore. The Commission in its order dated 12.3.2019 accorded in-principle approval allowing the Petitioner to create security in favour of Security Trustee, namely, Axis Trustee Services Limited. The details of existing 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

12. Subsequently, for the purpose of financial assistance by way of working capital, the Petitioner requested Axis Bank Limited (working capital lender) to make financial assistance of Rs. 22 crore for which working capital lender was agreed. The Petitioner approached the Commission through the Petition No.191/MP/2021 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 Working Capital Security Trustee Agreement/ Facility Agreement. The Commission in its order dated 23.10.2021 accorded in-principle approval allowing the

working capital facility by way of mortgage on project assets.

13. The Petitioner had subsequently approached the lenders, namely, HDFC Bank Limited, Axis Bank Limited and NIIF Infrastructure Finance Limited (in short, New Lenders) for refinancing the project assets and for outstanding loan of Rs. 1050 crore. New Lenders have agreed for the same through their sanction letters dated 27.1.2022, 12.1.2022 and 16.11.2021. Consequently, the Petitioner has entered into Common Security Trustee Agreement and Rupee Facility Agreement on 28.1.2022 for Rs. 1050 crore as rupee term loan. The details of Rupee term loan are as under:

Sr. No.	Name of the Rupee lender	Amount of commitment of rupee lenders for the rupee facility (Rs.in crore)
1.	HDFC Bank Limited	400
2.	Axis Bank Limited	350
3.	NIIF Infrastructure Finance Limited	300
Total		1050

14. Subsequently, the Petitioner proposes to issue 3000 INR denominated, fully secured, senior, rated, redeemable, non-convertible debentures each having face value of Rs. 10,00,000/- at par, up to an aggregate subscription amount of Rs. 300 crore for each in dematerialised form on a private placement basis pursuant to Information Memorandum dated 28.1.2022. The Petitioner has obtained the consent of Debenture Trustee, namely, Axis Trustee Services Limited to act as Debenture Trustee for the debenture holders by letter dated 27.1.2022 and has entered into a Debenture Trust Deed on 28.1.2022.

15. The Petitioner has submitted the status of commissioning, cost and financing

plan of the project as under:

(a) Date of Commercial Operation:

As per financing documents submitted by Petitioner, COD of the Project is 10.12.2020.

(b) Original estimated project cost and means of finance as on 15.11.2021:

Project Cost (Rs. in crore)		
Particulars	As per original Project Appraisal report	Amount incurred up to 15.11.2021
EPC cost for transmission line	675.26	694.88
Right of Way	143.74	159.75
Substation cost	250.00	285.87
Preliminary expenses & others miscellaneous cost	20.86	23.04
SPV acquisition cost	14.32	14.32
Interest During Construction paid/payable to bankers	133.95	112.52
Margin money for working capital	2.55	-
Contingencies	42.76	-
Land compensation	-	75.00
Crop compensation	-	2.60
Interest on delayed payment to EPC contractors	-	34.50
Others additional claims	-	127.11
Total Project cost (excluding interest on sub-ordinate debt.)	1,283.44	1,529.59
Interest to sponsors on sub-ordinate debt	-	10.31
Total Project cost	1,283.44	1,539.90
MEANS OF FINANCE (Rs. in crore)		
Particulars	As per original Project appraisal report	Amount up to 15.11.2021
Equity share capital		
Promoters equity (including security Premium)	256.69	256.59
Sub-ordinate debt by sponsors	32.09	48.76
Debt	994.67	994.44
Interest payable to sponsors on sub-ordinate debt	-	9.34
Other new current (assets)/liabilities	-	230.77
Total	1283.45	1539.90

(c) End use of term loan of Rs. 1050 crore:

Sl. No.	Name of lender	Sanctioned loan as per Loan Agreement(s) (Rs.)	Disbursed amount (Rs.)
1.	HDFC Bank Limited	400,00,00,000/-	399,99,92,715/- (as on 31.01.2022) a. Repayment of O/s loan Tata Cleantech- Rs. 122.03 crore. b. Repayment of O/s loan Aditya Birla- Rs. 102.54 crore. c. Repayment of O/s loan Indian Bank – Rs. 175.41 crore.
2.	Axis Bank Limited	350,00,00,000/-	350,00,00,000/- (as on 20.04.2022) a. Repayment of O/s loan Bank of Baroda Rs. 50.99 crore. b. Repayment of O/s Shareholders Loan- Rs. 62.19 crore. c. Pre- payment of Premium – Rs. 5.31 Cr. d. Repayment of O/s loan Deutsche Bank - Rs. 225.73 crore. e. AXIS Arranger Fee- Rs. 5.66 crore. f. Payment of partial interest Deutsche Bank – Rs. 175.41 crore.
3.	NIIF Infrastructure Finance Limited	300,00,00,000/-	300,00,00,000/- (as on 24.3.2022) a. Repayment of O/s loan Axis Bank - Rs. 175.77 crore. b. Repayment of O/s loan Aditya Birla- Rs. 43.94 crore. c. Pre- payment of Premium – Rs. 0.28 crore. d. Utilized to refinance the investment made by Aparva Energy Private Limited Rs. 80.00 crore. Trench-2
Total		1050,00,00,000/-	1049,99,92,715/- (Rs. 1050 crore Approximately)

(d) Present status of receipts by way of issue of 6.95% Non-convertible Debenture

(NCD):

Sr. No.	Name of the Security Trustee	Amount of commitment of rupee lenders for the rupee facility (Rs. in crore)	End use of borrowed funds
1.	Debenture Holders -Axis Trustee Services Limited	3,00,00,00,000	Repayment of O/s loan of Bank of Baroda-Rs. 300 crore (31.1.2022)

16. With regard to details regarding change in lenders after approval of the Commission vide order dated 12.3.2019 in Petition No. 381/MP/2018 and order dated 23.10.2021 in Petition No. 191/MP/2021, the Petitioner has submitted that after execution of the financing documents with regard to prior loan, namely Rs. 994.67 crore with the existing lenders, namely Bank of Baroda, Aditya Birla Finance Limited, Tata Cleantech Capital Limited and Axis Bank Limited, the existing lenders have assigned/novated the part of their respective prior loans aggregating to Rs 994.67 crore to New Lenders, namely HDFC Bank Limited, Axis Bank limited, NIIF Infrastructure Finance Limited and debenture holders (presently Axis Bank Limited).

17. The Petitioner has submitted that prior loan as on the date of Facility Agreement was Rs.994.67 crore which was entirely repaid on 31.1.2022 by way of the Rupee Loan Facility of Rs. 1050.00 crore. Accordingly, as on date, there is no prior outstanding loan against the Petitioner. The Petitioner has placed on record the 'No Due Certificates' issued by earlier Security Trustee, i.e. Axis Trustee services Limited, and the existing lenders, namely, Axis Bank Limited, Bank of Baroda, Aditya Birla Finance Limited, Tata Cleantech Capital Limited and Indian Bank.

18. We have considered the submissions made by the Petitioner. The transmission projects are capital intensive projects requiring huge 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 accordance with Article 15.2.2 of the TSA, the Transmission Service Provider has been allowed to create any encumbrance over all or part of the receivables, Letter of Credit or the other assets of the project in favour of the lenders or the representative of the lenders, as security for amounts payable under the Financing Agreements and other amounts agreed by the parties.

19. Section 17 (3) and (4) of the Electricity Act, 2003 provides 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 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 transfer its utility or any part thereof by way of sale, lease, exchange or otherwise and to enter into an agreement relating to any of these transactions. We are satisfied that Axis Trustee Services Limited as Security Trustee needs to be given comfort for creation of security for the benefit of banks/financial institutions/non-banking financial companies as security for the financial assistance provided by the lender(s). We, therefore, accord in-principle approval allowing the Petitioner to create security in favour of Axis Trustee Services

Limited for Rs. 1050 crore, (New Lenders are: HDFC Bank, Axis Bank Limited and NIIF Infrastructure Finance Limited) and Rs. 300 crore for Axis Bank Limited (Debenture Holder), acting as Security Trustee pursuant to Security Trustee Agreement for total amount of Rs. 1350 crore, by way of hypothecation on Project assets by execution of unattested Deed of Hypothecation for the Project. The Petitioner is directed to place on record the copy of financing documents, namely, Deed of Hypothecation after execution.

20. 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 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 License and other related matters) Regulations, 2009 which reads as under:

“12. Assignment of License In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the license to a nominee of the lenders.”

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.

21. With the above, Petition No. 152/MP/2022 stands disposed of.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member