

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 260/MP/2022

**Coram:
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 3rd November, 2022

In the matter of

Petition for approval for creation of security interest under Section 17(3) & Section 17(4) of Electricity Act, 2003 over Petitioner No. 1's Assets in favour of Petitioner No. 2 (including its assignees, transferees, novates) for the purpose of Petitioner No. 1's Transmission Project.

And

In the matter of

1. Nangalbibra-Bongaigaon Transmission Limited,
F-1, The Mira Corporate Suites, 1 & 2
Ishwar Nagar, Okhla Crossing,
Mathura Road,
New Delhi – 110065

2. Catalyst Trusteeship Limited
GDA House, Plot No. 85, Bhusari Colony (Right),
Kothrud Pune-411 038, Maharashtra.

... Petitioners

Vs

1. Assam Power Distribution Company Limited,
4th Floor, Bijulee Bhawan,
Paltan Bazar,
Guwahati – 781001, Assam

2. Meghalaya Energy Corporation Limited,
Lumjingshai, Short Round Road,
Shillong – 793001, Meghalaya

3. Tripura State Electricity Corporation Limited,
Bidyut Bhaban, Banamalipur,
Agartala – 799001, Tripura

4. Department of Power, Arunachal Pradesh,
Power Department Office, Kharsang,
Arunachal Pradesh – 792122

5. Manipur State Power Distribution Corporation Limited,
3rd Floor, New Directorate Building,
Near 2nd MR Gate, Imphal-Dimapur Road,
Imphal – 795001, Manipur

6. Department of Power, Nagaland,
Electricity House, A.G Colony,
Kohima – 797001, Nagaland

7. Department of Power & Electricity, Mizoram,
Power & Electricity Department,
Kawlpheta Building,
New Secretariat Complex, Khatla
Aizawl – 796001, Mizoram

8. HVDC BNC Powergrid,
Power Grid Corporation of India Limited,
Biswanath Ghat Road, Biswanath Chariali,
P.O: Burigang,
Sonitpur – 784176, Assam

9. PFC Consulting Limited,
First Floor, Urjanidhi, 1, Barakhamba Lane,
Connaught Place,
New Delhi- 110001

10. Central Electricity Authority,
Seva Bhawan, R.K. Puram,
New Delhi- 110066

... Respondents

Parties present:

Ms. Anusha Nagragranjan, Advocate for the Petitioner

ORDER

The Petitioner, Nangalbibra-Bongaigaon Transmission Limited (NBTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish "new 220/132 kV sub-station at Nangalbibra (in short, 'the Project') on 'Build, Own, Operate and Maintain' (BOOM) basis, the details of which are specified in the schedule attached to the transmission licence issued vide order dated 28.7.2022 in Petition No. 33/TL/2022.

2. The Petitioners have jointly filed the present Petition for creation of security interest over all assets including all movable and immovable assets of the First Petitioner in favour of the lenders and for its subsequent transferees, assign, novates thereof/Security Trustee acting for the benefit of the lenders and any refinancing lenders to the project, pursuant to the deed of hypothecation and power of attorney in relation thereto, mortgage documents and other security creating documents/financing agreements by way of mortgage/hypothecation/assignment of secured properties and project assets. The Petitioners have made the following prayers:

“(a) Approve the creation of Security Interest, over all assets including the movable and immovable assets, accounts, Project documents etc. of the Petitioner No 1 and to the extent as mentioned in paras 6 and 7 above, in favour of the Petitioner No. 2/ Lenders and for their subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project, pursuant to deed of hypothecation and power of attorney in relation thereto, mortgage documents and other security creating documents/ Financing Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Secured Properties and Project assets and for amendment of the security documents and any other Financing Agreements to include the assigns, transferees and novatees of the Lenders.

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

3. The First Petitioner has submitted that it approached Tata Cleantech Capital Limited and Tata Capital Financial Services Limited (hereinafter also referred to as ‘the lenders’) for the purpose of part financial assistance in the form of rupee term loan of Rs. 439.95 crore. Lenders vide their letters dated 24.2.2022 sanctioned rupee term loan to the extent of Rs. 439.95 crore (along with sub-limits of letter of comfort/letter of credit facility aggregating to 70% of the rupee term loan) for financing the Project. In pursuance of the sanction letters issued by the lenders, the First Petitioner entered into a Facility Agreement dated 25.2.2022 for availing loan of Rs. 439.50 crore.

4. The First Petitioner has appointed the Second Petitioner, namely, Catalyst Trusteeship Limited (hereinafter also referred to as “the Security Trustee”) who has agreed to act as Security Trustee for the benefit of lenders by entering into Security Trustee Agreement dated 25.2.2022. The First Petitioner has submitted that as on date, the lenders have disbursed amounts equivalent to Rs.110 crore.

5. In pursuance of the Facility Agreement read with the Security Trustee Agreement dated 25.2.2022, the First 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 lenders:

“(a) A first charge by way of hypothecation on all Petitioner No. 1’s movable assets including machinery, spares, tools and accessories, furniture, fixtures, vehicles, present & future in relation to the Project.

(b) A first charge by way of mortgage on all of Petitioner No. 1’s immovable properties including but not limited to civil structures, towers and cables, office buildings, present & future, including right of way / land, if any for the Project.

(c) A first charge on all intangible assets of the Petitioner No. 1 including but not limited to goodwill, uncalled capital, present & future in relation to the Project.

(d) A first charge by way of assignment or creation of Security Interest, present & future, of:

(i) all the rights, title, interest, benefits, claims and demands whatsoever of the Petitioner No. 1 in the project documents, (including but not limited to the transmission services agreement, transmission license, EPC contract/ multiple package contracts, O&M contract, any other related agreements (if any), land lease agreement, 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;

(ii) all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in the permits, approvals and clearances pertaining to the Project as may be permitted under Applicable Law;

(iii) all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee provided by any party to the

project documents; and

(iv) All insurance contracts / insurance proceeds.

(e) A first charge on the account (excluding distribution sub-account), debt service reserve account and debt service reserve amount and other reserves and any other bank accounts of the Borrower wherever maintained, present & future in relation to the Project.

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

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

7. The Petitioners have 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:

(a) 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

(b) 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 Petitioner to release such encumbrances upon payment by the Petitioner to the lenders, of all amounts due under the Financing Agreements.

8. The Petitioners have 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 Petitioners have 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 seeking approval 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 Petition was called out for hearing on 13.10.2022 after notice to the Respondents. Vide Record of Proceedings for the hearing dated 13.10.2022, the Respondents were directed to file their replies. However, no reply has been filed by the Respondents within due date.

Analysis and Decision

10. We have considered the submissions made by the Petitioners. The First Petitioner approached the lenders, namely, Tata Cleantech Capital Limited and Tata Capital Financial Services Limited for a rupee term loan for financing the Project. The lenders have agreed to grant rupee term loan of Rs. 439.95 crore (along with sub-limits of letter of comfort/letter of credit facility aggregating to 70% of the rupee term loan) to the First Petitioner subject to the terms and conditions set out in the Facility Agreement dated 25.2.2022.

11. As per the Facility Agreement, estimated cost of the Project is Rs. 586.60 crore. In terms of financing plan enclosed as Schedule 2 Part -A “Estimated Project Cost” of the Facility Agreement dated 25.2.2022, the Project shall be funded through the debt of Rs. 439.95 crore and equity of Rs. 38.13 crore. The Petitioner has submitted the following details, as per Auditor’s Certificate dated 10.8.2022 for capital expenditure of Rs. 154.60 crore incurred for its under construction Project till 31.7.2022.

(Rs. in crore)		
Particulars	Sanction	Obtained (as on date of application)
Equity Share Capital/Share Premium	38.13	35.01
Loan Debenture from promoters, group companies	108.52	9.59
Term loan	439.95	110.00
Total	586.60	154.60

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

Original estimated Project cost (as per agreement)	Rs. (in crore)	Means of Finance (as per agreement)	Rs. (in crore)
Hard Cost	525.30	Equity share capital / Share Premium	38.13
IEDC	61.30	Loan Debenture from promoters, group companies	108.52
		Term loan	439.95
Total	586.60	Total	586.60

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

Name of lender	Sanctioned loan (as per loan Agreement)	Actual loan disbursed (as on date of application)
Tata Cleantech Capital	379.95	110.00
Tata Capital Financial	60.00	-
Total	439.95	110.00

14. 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 lenders, namely, Tata Cleantech Capital Limited and Tata Capital Financial Services Limited has agreed to provide loan of Rs.439.95 crore (along with sub-limits of letter of comfort/letter of credit facility aggregating to 70% of the rupee term loan) 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.

15. 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.”

16. 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.

17. The First Petitioner and the lenders have appointed the Catalyst Trusteeship Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, Security Trustee Agreement and Facility Agreement dated 25.2.2022 have been executed for a loan of Rs. 439.95 crore (along

with sub-limits of letter of comfort/letter of credit facility aggregating to 70% of the rupee term loan). As per the Security Trustee Agreement dated 25.2.2022, at the request of the First Petitioner, the lenders have agreed to provide a loan of Rs.439.50 crore (along with sub-limits of letter of comfort/letter of credit facility aggregating to 70% of the rupee term loan) for the Project on the terms and conditions contained in the Facility Agreement and Security Trustee Agreement. In our view, Catalyst Trusteeship Limited needs to be given comfort for creation of security for the benefit of lenders as security for the financial assistance provided by the lenders. We, therefore, accord in-principle approval allowing the First 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.

18. 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 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.”

19. 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.

20. Petition No. 260/MP/2022 is allowed in terms of the above.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member