

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 544/MP/2020
along with
IA No. 54/IA/2020**

**Coram:
Shri P.K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 18.01.2022

In the matter of:

Petition under Regulations 4 and 10 of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 read with Regulations 111, 112 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for giving prior intimation of undertaking telecommunication business by the Petitioner and for determination of revenue sharing mechanism.

And
In the matter of:

Sterlite Power Grid Ventures Limited,
F-1, The Mira Corporate Suite,
Plot No. 1&2, Ishwar Nagar, Mathura Road,
New Delhi -110065

...Petitioner

VS

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur - 482 008
[Represented through its Managing Director]
2. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania, Raipur,
Chhattisgarh-492 013
[Represented through its Chairman]
3. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara - 390 007
[Represented through its Chairman]



4. Maharashtra State Electricity Distribution Company Limited,
Hongkong Bank Building, 3RD Floor,
M.G. Road, Fort,
Mumbai - 400 001
[Represented through MD]
5. Electricity Department,
Govt. of Goa, Vidyut Bhawan, Near Mandvi Hotel,
Panaji, Goa - 403 001
[Represented through Chief Engineer (Electrical)]
6. DNH Power Distribution Corporation Limited,
Vidyut Bhawan, 66KV Road, Near Secretariat Amla,
Silvassa - 396 230
[Represented through Secretary (Finance)]
7. Electricity Department,
Administration of Daman & Diu,
Daman - 396 210
[Represented through Secretary (Finance)]
8. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001 (Uttar Pradesh)
[Represented through its Chairman]
9. Chandigarh Administration,
Sector-9,
Chandigarh,
[Represented through its Chief Engineer]
10. BSES Yamuna Power Limited,
B-Block, Shakti Kiran, Building (Near Karkadooma Court),
Karkadooma 2nd Floor,
New Delhi-110092
[Represented through Chief Executive Officer]
11. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019
[Represented through Chief Executive Officer]
12. Tata Power Delhi Distribution Limited (TPDDL),
NDPL house, Hudson Lines Kingsway Camp,
Delhi – 110009
[Represented through Chief Engineer]
13. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110002



[Represented through Chairman]

14. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171004 (Himachal Pradesh)
[Represented through Chairman]
15. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula- 134109 (Haryana)
[Represented through S.E./C&R-1]
16. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat,
Jammu
[Represented through Commissioner]
17. Punjab State Power Corporation Limited,
The Mall,
Patiala-147001
18. Ajmer Vidyut Vitran Nigam Limited,
132 KV, GSS RVPNL Sub-Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)
19. Jodhpur Vidyut Vitran Nigam Limited,
132 KV, GSS RVPNL Sub-Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)
20. Jaipur Vidyut Vitran Nigam Limited,
132 KV, GSS RVPNL Sub-Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)
21. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun (Uttarakhand)
[Represented through Managing Director]
22. Department of Power,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh
[Represented through Secretary & Commissioner Power]
23. Assam Electricity Grid Corporation Limited,
(Formerly Assam State Electricity Board)
Bijulee Bhawan, Paltan Bazar,
Guwahati – 781001, Assam



[Represented through its Chairman]

24. Manipur State Power Distribution Corporation Limited,
(Formerly Electricity Department, Government of Manipur)
Keishampat,
Imphal, Manipur
[Represented through its Chairman]

25. Meghalaya Energy Corporation Limited,
(Formerly Meghalaya State Electricity Board)
Short Round Road, "Lumjingshai"
Shillong – 793001, Meghalaya
[Represented through its Chairman & M. D.]

26. Department of Power,
Government of Nagaland,
Kohima, Nagaland
[Represented through its Commissioner and Secretary Power]

27. Power and Electricity Department,
Government of Mizoram,
Aizawl, Mizoram
[Represented through its Secretary Power]

28. Tripura State Electricity Corporation Limited,
Vidyut Bhawan, North Banamalipur,
Agartala, Tripura (W) – 799001
[Represented through its Chairman]

...Respondents

Parties Present:

Shri Jafar Alam, Advocate, SPGVL
Shri Deep Rao Palepu, Advocate, SPGVL
Ms. Harneet Kaur, Advocate, SPGVL
Shri T.A.N. Reddy, SPGVL
Shri Anindya Khare, MPPMCL

ORDER

The Petitioner, Sterlite Power Grid Ventures Limited (SPGVL), has filed the present Petition purported to be in capacity of the parent company of the SPVs (Special Purpose Vehicles), in order to provide prior intimation to the Commission about the proposed business model that the Petitioner along with its SPVs are intending to undertake for utilizing the transmission assets optimally



and to also share the revenue with the LTTCs (long-term transmission customers) in terms of Regulation 5(1)(a) of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 (hereinafter called as “the 2020 Revenue Sharing Regulations”). The Petitioner claims to have obtained the required “No Objection Certificate” from its SPVs to file the present Petition for seeking approval and adoption of the proposed business model and the revenue sharing mechanism in terms of the 2020 Revenue Sharing Regulations.

2. The Petitioner has made the following prayers:

“a) Admit and allow the instant petition giving prior intimation on behalf of the Petitioner SPVs to the Hon’ble Commission, for carrying out proposed business model as described in the instant Petition;

b) Direct that the revenue sharing for the proposed business model of the Petitioner shall be 10% of gross revenue from such other business i.e. equivalent to the revenue share as mentioned in Regulation 5(1)(a) of the CERC (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020. This would be with a liberty to Petitioner SPVs to approach CERC in future, in case 10% revenue share is not viable;

c) Approve and adopt the proposed business model and revenue sharing mechanism for all the future projects that the Petitioner would implement through Tariff Based Competitive Bidding route; and

d) pass such further order or orders as this Hon’ble Commission may deem just and proper in the circumstances of the case.”

3. The Petitioner has also filed IA No.54/IA/2020 seeking interim directions for implementing the proposed business model for sharing of potential passive infrastructure assets with the interested eligible entities for utilization of transmission assets during the pendency of the present Petition.

Submissions of the Petitioner

4. The Petitioner has submitted that the present Petition is being filed to avoid multiplicity of proceedings before the Commission, whereby, each SPV



would be separately required to file a similar petition for placing the contents on record and seeking same relief. Therefore, the Petitioner in capacity of the parent company, and after obtaining NOCs from SPVs, has filed the instant petition for intimating the Commission about the proposal of the Petitioner and its SPVs to undertake licensing activities for optimum utilization of its transmission assets.

5. Petitioner has pointed out that the proposed business model is slightly different from the one envisaged for telecommunication business in the 2020 Revenue Sharing Regulations. The Petitioner is merely looking to put its transmission assets and utilising its Right of Way (ROW) to their optimum use and does not intend to undertake a separate category of business such as telecommunications. The Petitioner is, thus, also invoking the provisions of Regulation 10 of the 2020 Revenue Sharing Regulations which empowers the Commission to carve out such orders which are necessary and in furtherance to the objectives of the 2020 Revenue Sharing Regulations.

6. The Petitioner has also sought to draw attention towards the provisions of Section 41 of the Electricity Act, 2003 (in short, "the Act") read with the Statement of Objects and Reasons for the 2020 Revenue Sharing Regulations, which permit any transmission licensee to engage in other businesses, provided that such activities are used for reducing the transmission charges burden on LTTCs. Since the proposed model will result in final reduction of transmission charges for LTTCs and shall also ensure optimization of transmission assets, the Petitioner has stated that there is no inconsistency in the proposed business plan in terms of Section 41 of the Act or the scheme of the 2020 Revenue Sharing Regulations.



7. The Petitioner has submitted that the telecommunication sector in India is rapidly expanding and diversifying with the rise in the subscribed consumers of telecom services and has emerged as a promising investment option. It is estimated by the Department of Telecommunication (“DoT”), Government of India that telecommunication sector requires installation of over 1,00,000 towers to provide quality services and increase fibre footprint by nearly five-fold to 7.5 million kilometers by 2022, from the current 1.5 million kilometers and fiberize at least 60% of telecom towers by 2022, from present 1/4th in order to cater the growing consumer demands.

8. The Petitioner has submitted that the National Digital Communication Policy, 2018 (“NDCP Policy 2018”) has been formulated as a successor to the National Telecom Policy, 2012 to address the modern needs of digital communication sector of India. Further, the Fibre First Initiative of the NDPC Policy 2018 mentions utilization of the existing transmission assets to improve connectivity, affordability and sustainability of the telecom sector especially in the rural areas.

9. The Petitioner has mainly submitted as under:

a) The Petitioner is the holding company of various Special Purpose Vehicles, who have been issued transmission license by the Commission under Act, for implementing inter-State transmission project on a build, own, operate and maintain basis (BOOM basis). The details of SPVs that are relevant to the subject matter of the instant Petition are as follows:

i. Khargone Transmission Limited (KTL), holding Transmission License Number 46/Transmission/2016/CERC, dated 17.11.2016.



ii. Gurgaon Palwal Transmission Limited (GPTL), holding Transmission License Number 43/Transmission/2016/CERC, dated 29.09.2016.

iii. North Eastern Region Strengthening Scheme (NERSS), holding Transmission License Number 48/Transmission/2017/CERC, dated 20.06.2017.

iv. Goa Tamnar Transmission Project Ltd. (GTTPL) holding Transmission License Number: 52/Transmission/2018/CERC, dated 13.07.2018.

b) The Petitioner's SPVs intend to optimize utilization of its Potential Passive Infrastructure Assets (in short, "PPIA") by giving limited license over the vacant spaces of transmission towers, its sub-stations along with unused optical ground wire containing optical fibre ("OPGW") and Right of Way ("RoW") to various entities eligible under telecom regulatory framework namely Infrastructure Providers Category-I ("IP-I"), registration holding entities ("IP-I Entity"/ "Entities") and similar entities engaged in the business of providing and utilising telecommunication infrastructure.

c) Section 4 of the Indian Telegraph Act, 1885 ("ITA") provides that only the Central Government or entities authorised by it may either (a) establish, (b) maintain, or (c) operate a telegraph in India. The Central Government, through the Department of Telecommunications (DoT) regulates and grants a non-exclusive license to companies for establishment, operation and maintenance of the telegraph lines and for providing telecommunication services and is empowered to issue the conditions and restrictions subject to which any telegraph line, appliance or apparatus for telegraphic communication shall be established, maintained, worked, repaired, transferred, shifted, withdrawn or disconnected.

d) Department of Telecommunication issued guidelines on 04.07.2017 which was amended on 11.06.2019 for registration of infrastructure providers Category-I ("IP-I Guidelines"). DoT also grants IP-I registrations for entities to provide dark fibres, RoW, duct space, towers on sale, lease



or rent basis to the licensees of telecom services on mutually agreed terms and conditions.

e) The Petitioner's SPVs intend to continue to discharge the roles and responsibilities as a transmission licensee i.e. core business and are neither desirous of undertaking activities of a telecom licensee/IP-I registration holder by themselves nor are holding any approvals/permissions from DoT/ TRAI (Telecom Regulatory Authority of India) to carry out telecom business related activities, especially that of an IP-I registered entity, or apply for the same. The Petitioner along with SPVs shall continue doing transmission business while maximizing its asset utilization through limited licensing of vacant spaces on transmission towers, sub-stations and unutilised OPGW assets or provide limited rights to lay down additional OPGW assets by utilizing the corridors created by the Petitioner thereby providing solutions to some of the infrastructural hurdles and RoW constraints faced in augmenting or strengthening the telecom infrastructure.

f) The proposal could save the capital expenditures required for creating new telecom corridors, spaces and simultaneously optimize utilization of the available corridors in form of transmission networks. The transmission assets erected or under implementation by the Petitioner and transmission corridors established because of creation of transmission assets by the Petitioner will remain free from all encumbrances and are fit for utilization by businesses requiring similar network expansion exercises.

g) Regulation 4(1) of the 2020 Revenue Sharing Regulations provides that a transmission licensee can undertake telecom business by giving prior intimation to the Commission either through the same company undertaking or by incorporating a separate subsidiary under the existing transmission business. The Petitioner or its SPVs do not intend to enter into subsidiary model at this stage.

h) The proposed use of the transmission assets for telecom businesses would be undertaken by the entities who shall be a separate company undertaking telecom businesses and activities of telecom licensee/IP-I



registration 3in accordance with the guidelines issued by Department of Telecommunication from time to time. The Eligible Entities shall execute a license agreement with the Petitioner for identification of Potential Passive Infrastructure Assets and subsequent rightful enjoyment and optimum utilization by installing equipment to expand telecom networks throughout the country. The Petitioner shall reserve all rights under the license agreement to ensure that the Eligible Entities undertakes and discharge all responsibilities of operating and maintaining their facilities including maintenance of spaces and other PPIA identified by the Petitioner and duly licensed and handed over to the Eligible Entity for utilisation through signing of the Hand Over Take Over Sheet (“HOTO Sheet”). The Petitioner also intends to have powers to intervene, seek withdrawal or cease utilisation of assets if the utilization of assets for telecom purposes affects the transmission business, power flow or grid security in any manner or the deficiency in standards of O&M found by the Petitioner or by this Commission at any time during the term of the Agreement.

i) The proposed model of business is structurally similar to that of telecommunication business, except that the telecommunication business is a premium service with additional passive/ active infrastructure including internet bandwidth etc. Telecom sector being one of most regulated sectors, the Petitioner’s proposed model is risk free as it does not take any telecom license or IP-I registration and thus, does not have exposure of telecom regulatory and licensing obligations (including warding off AGR-related concerns), strict telecom SLAs and operation and maintenance of telecom equipment.

j) The major difference between the model proposed by the Petitioner and the telecommunication business as mentioned under the 2020 Revenue Sharing Regulations is as under:



For providing the right of use of Fibre in OPGW

Sr. No.	Use case (Through suitable contracts)	Proposed model of the Petitioner	Telecommunication business as per the 2020 Revenue Sharing Regulations
Products			
1	Pairs of Dark fibre along with Junction boxes	✓	✓
2	Leased circuits to Telecom customers	✗	✓
3	Internet Bandwidth (P2P, MPLS, IPLC, DLC, SD-WAN etc)	✗	✓
Customer segments			
4	IP-I registration holders	✓	✓
5	MSO (Broadcasting sector)	✓	✓
6	Telecom licensees	✗	✓
7	Large Enterprises (Telecom consumers)	✗	✓
8	Small and Medium enterprises (Telecom consumers)	✗	✓
9	Retail consumers (Telecom consumers)	✗	✓

✓: Can be provided ✗: Can't be provided

For providing space over transmission towers

Sr. No.	Use case	Non-telecommunication business by SPVs	Telecommunication business by SPVs as per 2020 Revenue sharing regulations
Product offerings by Transmission Licensee			
1	Space over towers	✓	✓
2	Generally, number of antennas which can be placed on tower	1 set (3 GSM + 2 MW)	1 set (3 GSM + 2 MW)
3	Power and storage systems	✗	✓
4	Power connection	✗	✓
5	Battery Bank	✗	✓
6	Shelter	✗	✓
7	Air Conditioning	✗	✓
8	Diesel Generator	✗	✓
9	Active telecom equipments	✗	✓ (in some cases)
10	SMPS	✗	✓
Customer segments			
1	IP-I registration holding entities	✓	✓
2	Telecom license holding entities	✗	✓

✓: Can be provided ✗: Can't be provided



k) The proposed business model is unique and unprecedented in the market domain of inter-State transmission licensee's business. Therefore, the Petitioner can only arrive at some estimates of the utilisation of PPIA and subsequent revenue generation from the proposed licensing activities. The Petitioner is not undertaking any telecommunication activities including any O&M of the telecom equipment installed by the Eligible Entities and, therefore, it is anticipating partial revenues in comparison to the revenues generated by Transmission Licensees who undertake complete telecom business or offers telecom services to various telecom service providers/ end customers in the market. Accordingly, the Petitioner is anticipating limited revenues and significant lower potential of the business model proposed by the Petitioner as compared with the models proposed under the 2020 Revenue Sharing Regulations.

l) The Petitioner proposes to accept the revenue sharing at 10% of its gross revenue from such other business at this stage, as has been determined by the Commission in Regulation 5(1)(a) of the 2020 Revenue Sharing Regulations. The Petitioner and its SPVs seek liberty to approach the Commission in future, in case 10% revenue share is not viable for its sustenance.

m) The salient aspects of the proposal as required to be intimated under Regulation 4(2) of the 2020 Sharing of Revenue Regulations are as under:

(i) *Nature of other business:* To provide space over transmission towers and in sub-stations for the end purposes of hoisting telecom antennas and allied equipment and for collocation, edge data centre or for warehousing. The Petitioner also intends to provide pairs of optical fibre in OPGW, along with its operation and maintenance along with right to deploy OPGW, with partial/ full capacity of optical fibre to be utilized by Eligible Entities.

(ii) *Transmission assets utilized or proposed to be utilized for other business:* To provide vacant spaces over transmission tower, unutilised spaces at the sub-station, idle/ unused optical fibre as

available in OPGW and permission to right to deploy OPGW and utilising partial/ full capacity.

(iii) *Cost of such transmission assets utilized or proposed to be utilized:* The Petitioner is not intending to provide any telecom services or undertake telecom business on its own but issue limited rights to Eligible Entities engaged in telecom business, for utilizing vacant spaces and idle assets. The Petitioner has submitted the tentative cost of transmission assets as derived from one of its SPV. Out of OPGW cables being made available to prospective Eligible Entities for utilisation, it is expected that only 2 to 4 pairs of OPGW cables, that too for certain distances (and not for entire OPGW route length), would be utilised in the initial two years, as per market information of intra-State transmission licensees. Thereafter, the Petitioner expects the demand to rise gradually, once route details of fibre cables along with number of fibre pairs, is made available to the Eligible Entities and their subsequent telecommunication licensees, who shall then be able to include this in their network planning activities and create demand. With regard to the use of transmission towers, as per its discussions with key IP-I Entities, there are no significant market uptake of the space available on rural transmission towers so far. Therefore, similar to OPGW, it is not possible to predict its market or revenues at this stage. Moreover, there is competitive disadvantage on the weight of number of telecom antennas a transmission tower can hold as compared to weight of telecom antennas a standalone telecom tower can hold. However, considering the demand of additional towers in present context and upcoming 5G telecommunication technology requiring additional space for antennas, it is anticipated that the demand for spaces on transmission towers would gradually get created post successful commercial launch of new telecom technologies such as 5G by multiple telecom companies in the country. In long term, it is expected to add additional revenues for the transmission licensees, thereby reducing the tariff for Long term transmission customers and benefiting the power sector as a whole. The cost of utilized or proposed to be utilised transmission assets



cannot be provided at this initial stage as it will depend upon the market uptake of transmission assets by Eligible Entities. Further, the incremental costs which will be incurred to undertake the proposed business model is expected to be discovered with some certainty and basis by the Petitioner only after undertaking the proposed business model through two business year cycles.

(iv) *Revenue derived or estimated to be derived from other business:* The revenue on gross basis can be estimated only after certain period of carrying out the business i.e. after two business year cycles.

(v) *Impact, if any, of use of transmission assets for other business on inter-State transmission of electricity:* No impact is envisaged from the proposed business on the inter-State transmission of electricity. Further, the permission to mount the telecom antennas on towers shall be given only after verification of the structural strength and other technical parameters. Also efforts shall be made to ensure that there is no impact on the inter-State transmission of electricity during the prospective usage of power tower for mounting of antennas. In order to protect the core activity, the Petitioner will continue to have supervision and control on the activity of the selected persons and the personnel of the Petitioner shall have full authority to supervise and give directions in regard to the installation, operation and maintenance of the antennas etc.

(vi) *Any other details required by the Commission:* The information along with all the relevant details as required under the provisions of the 2020 Revenue Sharing Regulations have been complied with. The Petitioner further undertakes to provide all such information as required by the Commission from time to time.

n) The proposed activities shall be carried out by executing a non-exclusive license agreement entered with the Eligible Entities for a pre-decided, specific and limited purpose of utilising the vacant spaces over the transmission assets and unutilised fibers/ RoW, by deploying, using and



maintaining the identified assets and for further providing it for use by telecommunication licensees.

o) The Petitioner in the Licensee Agreement has also provisioned for submission of a refundable security deposit by the Eligible Entity to the Petitioner so that all necessary works relating to maintenance of telecom assets and spaces licensed to the Eligible Entity, in cases where there is a delay or default on part of the IP-I Licensee in maintaining the assets in a timely manner, can be carried out by the Petitioner to avoid any damage, of whatsoever nature, to the transmission assets or grid security.

p) The Petitioner and the Eligible Entity shall undertake to maintain the workmanship of the Infrastructure Facility and ensure that equipment, construction/ fixtures remain mutually exclusive in regard to respective services being provided by the Petitioner and the Eligible Entity with the following undertaking:

(i) The Petitioner along with its SPVs and the Eligible Entity shall ensure that their respective performance or the equipment or asset of one party should not harm performance or the equipment(s) or asset(s) of the other party.

(ii) The Petitioner along with its SPVs and the Eligible Entity shall be required to bear the cost towards maintenance of its equipment(s), construction/ fixtures & assets and undertakes to take all reasonable care to avoid causing any harm to the equipment(s), construction/ fixtures and assets of the other party.

(iii) Further, all the parties shall ensure that reliability and availability of transmission services are not adversely affected due to utilisation of identified transmission assets for telecom services.

(iv) Responsibility for arranging the power supply to charge telecom equipment of the Eligible Entity shall solely vest with such Eligible Entity and they would be required to obtain a connection through power distribution companies of the concerned area. The Petitioner or



its SPV shall provide NoC to the Eligible Entity for obtaining such power connection, wherever it is required.

q) Under the provisions of the 2020 Revenue Sharing Regulations read with Section 41 of the Act, the Petitioner along with its SPVs undertakes to comply with the following requirements:

(i) SPVs shall maintain separate books of accounts for its transmission business and the vacant spaces licensing business.

(ii) SPVs shall not encumber, directly or indirectly, its transmission assets, in whatsoever nature, to support the telecom business being carried out by the Eligible Entity.

(iii) SPVs shall not add any cost or revenue related to the proposed business to the cost or revenue of the transmission business.

(iv) SPVs shall undertake full responsibility to ensure that the transmission assets utilised for other business shall not, in any manner, be compromised to adversely affect any activities of inter-State transmission of electricity.

r) The Petitioner on behalf of NERSS (an SPV), that is pursuing “other business” related to vacant spaces on transmission towers and in substation before coming into effect of the 2020 Revenue Sharing Regulations seeks approval of the Commission with regard to revenue share determination but, had not been able to file this petition seeking approval within 2 months of the effectiveness of the 2020 Revenue Sharing Regulations as per 2nd proviso to the Regulation 4(1), due to reason beyond control of Petitioner/ NERSS i.e. prevalence of lockdown owing to Covid-19 pandemic.

s) The model proposed by the Petitioner is not technically mentioned in the 2020 Revenue Sharing Regulations and the proposal is contingent upon responses shown by the existing market players having registered as telecom registration/ license holders, for utilizing transmission assets/ corridors for telecom system strengthening and augmentation purposes.



The Petitioner had undertaken market surveys and discussions with some of the interested parties to develop a business model which does not require the Petitioner to undertake telecom business/ licenses, but simultaneously ensuring optimum utilization of the assets owned and controlled by the Petitioner and its SPVs.

Hearing dated 20.08.2020

10. The Petition was admitted and the Petitioner was directed to furnish certain information which has been submitted by it vide affidavit dated 30.08.2020. The Petitioner has submitted certificate to the effect that the implementation of the proposed business model does not pose any threat to the reliability and security of the grid and/or the transmission assets. Further, undertaking to the effect that licensing of vacant space/ land to the eligible entities for telecom use as proposed in business model does not violate the applicable rules/ regulations and the conditions (if any) imposed by the concerned authorities while allotting/ leasing land to the Petitioner has also been submitted.

Reply of GUVNL (Respondent No.3)

11. GUVNL vide affidavit dated 28.8.2020 has submitted as under:

- a) There should not be any financial implication on the existing LTTCs on account of the proposed scheme.
- b) All safety measures need to be in place to ensure that there is no risk to the transmission services due to changes made in the infrastructure.
- c) The Petitioner should ensure that there would be no reduction in the availability of transmission lines to the beneficiaries on account of the proposed business both during the installation and during its operation period. If any such case arises, the Petitioner shall be held liable and should compensate the beneficiaries for any such instances which affects the supply of uninterrupted and reliable power supply to the Discoms.



d) The Petitioner is not directly involved in the telecommunication business and has not to make any additional capital expenditure towards other business as only the existing infrastructure is being put to use. In view of the same, the sharing of revenue towards sharing of transmission infrastructure needs to be with LTTCs in the ratio of 50:50 by way of appropriate reduction in transmission charges.

e) The Petitioner shall indemnify all LTTCs from any financial/ legal implications on account of other businesses while ensuring that the transmission assets and transmission corridors created under the transmission schemes for which the Petitioner's SPV were created shall remain free from all the encumbrances including tax liability for the entire terms of Transmission agreement with the LTTCs.

Reply of UPPCL (Respondent No.8)

12. UPPCL, vide affidavit dated 11.11.2020, has submitted as under:

a) The Petitioner is not maintainable on following grounds:

(i) Section 41 of the Act entitles only a transmission licensee to engage in any business for optimum utilization of its assets but does not allow others entities to use its transmission lines. The Petitioner is not a "transmission licensee" and is rather a holding company of the four subsidiary companies, which, in fact, are engaged in the business of transmission of electricity and are granted license for that purpose. Only transmission licensees can intimate or seek approval of the other business from the Commission, but in this Petition, KTL, GPTL, NERSS and GTTPL have authorized the Petitioner by way of NOC to file this Petition on their behalf.

(ii) According to Regulation 2(7), Regulation 4, Regulation 5 and Regulation 8 of the 2020 Revenue Sharing Regulations and in light of the provisions made under the aforesaid Regulations, the Petitioner, in capacity of holding company of the four transmission licensees cannot undertake or support any 'other businesses' to be undertaken by a person other than the transmission licensee.



(iii) The Petitioner has not specified “nature of other business” and ‘other relevant information’ required under Clause 2 of Regulation 4 of the 2020 Revenue Sharing Regulations.

(iv) Section 17(3) of the Act provides that no licensee shall at any time assign its license or transfer its utility or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the appropriate Commission. Grant of ‘limited license’ by the Petitioner means certain type of transfer of some part of ‘utilities’ of its subsidiary companies to some other person. Such limited “transfer” and “utilization” of transferred assets would not happen unless certain type of encumbrances are created in favour to such ‘other person’ which is contrary to Regulation 8 of the 2020 Revenue Sharing Regulations, which prohibits creation of encumbrances on the transmission assets. As such, the proposed model of “other Business” is not consistent with Section 17 of the Act and Regulation 8 of the 2020 Revenue Sharing Regulations.

b) The Petitioner’s claim that it shall provide solutions to some of the infrastructural hurdles and ROW constraints being faced in augmenting or strengthening the telecom infrastructure without having detailed them will include costs. No financial and accounting model has been submitted to clarify as to the manner “gross revenue” shall be arrived at for sharing with the beneficiaries.

c) The Petitioner has not provided the following information as regards ‘Operation and Maintenance’ mechanism:

(i) Sharing of O&M cost of shared assets;

(ii) Foreseen impacts of Other business on Inter-State transmission of electricity and communication links established with RLDC etc. [Para-19 (e)];

(iii) Potential risk to towers due to weight of telecom antennas [Para – 19 (iii)] as the towers must have not been designed to carry additional load of this nature;



(iv) Specific mode of transfer of use or access while 'Handing over take over sheet' shall be signed [Para – 20 (b)];

(v) Methodology of calculation of availability of the transmission system if the transmission system or any of its parts utilized for Other business by such Other person, is brought under shutdown for O&M requirements or break down;

(vi) The criteria or the manner in which the per month revenue envisaged under Annexure-1, Annexure-2 and Annexure-3 from different transmission assets has been arrived at, as the same seems meager in view of the risk of "other business" to the transmission system;

(vii) Remedies, the Petitioner would have, if the other business hampers the transmission business or stoppage of Other business put to litigation with eventual cost to beneficiary in terms of constraint in the transmission system or damage to any of the assets in the hand of such Other person.

Replies of Rajasthan Discoms (Respondent No.18, Respondent No.19 and Respondent No.20)

13. The Rajasthan Discoms vide affidavit dated 13.1.2021 have mainly submitted as under:

(a) The Commission is requested to only provide an in-principle go-ahead and not a blanket approval with direction to re-submit a detailed Petition with estimated costs, its impact, revenue projections and bring in some certainty before the Commission as the Petitioner is unable to give details of revenues to be accrued, costs etc.

(b) The Petitioner's claim of furnishing of details as required by the Regulations would require two business year cycles of undertaking the proposed business model to determine, namely, (i) cost of transmission assets utilized or proposed to be utilized (for the telecommunication business) and (ii) revenue derived or estimated to be derived. However,



according to clause (2) of Regulation 4 of the 2020 Revenue Sharing Regulations, these details must be furnished while the transmission licensee is giving intimation or seeking approval.

(c) Though the Petitioner has mentioned that no impact is foreseen on the transmission assets, the Petitioner has failed to describe the precautionary measures to be taken and implemented.

(d) Since there is no clarity on the revenue model to be used, the Petitioner has requested to consider the share of revenue on a case to case basis with a minimum sharing of 10%. The Petitioner should not be granted liberty to share revenue below 10%.

(e) The Petitioner is required to mention that if any additional expenditure is envisaged on an operational business, such instances should also be brought to notice of the Commission with detailed working of additional impact.

(f) For the purpose of maintaining transparency and integrity, a third party audit may be done every year, and the financials from this audit be made available to the long term consumers.

Reply of MPPMCL (Respondent No.1)

14. MPPMCL vide affidavit dated 01.03.2021 in its reply has submitted as under:

(a) The Petitioner is not directly involved in the telecommunication business and, thus, Regulation 5(b) shall be applicable rather than Regulation 5(a) of the 2020 Revenue Sharing Regulations. The case, therefore, has to be resolved on a case to case basis and the terms of revenue sharing must be finalized in accordance with law.

(b) The Petition is not maintainable in view of the following:

(i) The Petitioner's reliance on tentative cost of transmission is in respect of one of its SPVs engaged in telecom business. However, the Petitioner has not disclosed the details of such SPV.



(ii) The Petitioner is proposing to lease out the vacant spaces and idle assets of transmission assets to someone else and it may not have any control over such lessee. Such an activity of leasing out cannot be classified as “other business” as defined under Regulation 2(7) of the 2020 Revenue Sharing Regulations.

(iii) In case of leasing out the vacant spaces or idle transmission assets by the Petitioner for a fixed lease rent, in view of Regulation 5(b), it shall not be possible for the Commission to adjudicate upon and/or determine the sharing of revenue for said other business of leasing out the assets for the simple reason that lease rent that may be received by the Petitioner cannot be related with the revenues of the actual business for which the transmission assets are said to be leased out.

(iv) The Petitioner has stated that it does not intend to do the other business itself rather it is giving rights to other entities to utilize vacant space and idle transmission assets. In such a case, certainly the transmission assets would be subjected to encumbrances in violation of restrictions as provided under Regulation 8 of the 2020 Revenue Sharing Regulations.

(v) The Petitioner has not disclosed the particulars of the entities that would be availing of the benefits of other business. The Petitioner has failed to provide the exact details (including exact quantity/ space) of the transmission assets utilized or proposed to be utilized along with their respective costs, revenue derived and underlying assumptions.

(c) As the model referred by the Petitioner is different from that in the case where 10% sharing has been approved by the Commission, in order to protect the interest of the Respondents, revenue sharing should be in the ratio of 50:50 subject to review by the Commission at suitable interval.

(d) All safety measures should be taken to ensure that there is no risk to transmission system or personnel due to changes made in the infrastructure.



(e) The capital expenditure for other business must be incurred completely by the Petitioner. The petitioner is not entitled to any other charges except the tariff as adopted by the Commission. A guarantee and indemnification to the Respondents from the Petitioner should also be provided.

Rejoinder of the Petitioner to the replies of Respondents

15. The Petitioner in its rejoinder, vide affidavit dated 10.9.2020 to the reply filed by GUVNL, has submitted that the business model proposed by the Petitioner shall not have any adverse financial impact on the existing LTTCs. Regulation 7 and Regulation 8 of the 2020 Revenue Sharing Regulations already prescribes various compliance requirements in this regard, which all transmission licensees including the Petitioner's SPVs, are bound to comply while undertaking business other than the transmission business. All LTTCs including GUVNL stand to only gain as the revenue derived by the Petitioner's SPVs from the other business shall be shared with the beneficiaries in terms of the 2020 Revenue Sharing Regulations and the directions of the Commission.

16. In response to the concern on safety of the transmission system raised by various respondents, the Petitioner has submitted that an affidavit *inter alia* has been placed on record to certify to the effect that the implementation of the proposed business model shall not pose any threat to the reliability and security of the grid and the transmission assets. Also, all efforts as per standard industry practice shall be undertaken in carrying out the proposed business such that there is no adverse impact on inter-State transmission of electricity by the transmission licensee. It shall be ensured that mounting of telecom antennas on transmission towers is undertaken after verification of structural strength and consideration of other such technical aspects.



17. The Petitioner has further submitted that the draft license agreements that are to be executed, also incorporate provisions for putting in place relevant safety measures and to ensure that there is no risk to the transmission system on account of the use of transmission assets for the proposed other business. The draft license agreements *inter alia* provides underlying conditions which are:

- a) Petitioner's SPVs shall conduct preventive health check of the assets.
- b) For the purpose of actual utilisation of assets, the Petitioner and the Eligible Entity shall sign a hand-over take-over ("HOTO") sheet which shall clearly demarcate the assets licensed by the Petitioner to the Eligible Entity that are being utilized for other business.
- c) Eligible Entity shall be responsible for performing the maintenance activities upon the licensed transmission assets which have been handed over by the Petitioner's SPV and covered under the HOTO sheet signed between the Petitioner and the Eligible Entity.
- d) The Petitioner and the Eligible Entity shall undertake to maintain the workmanship of the Infrastructure Facility and ensure that equipment, construction/ fixtures remains mutually exclusive in regard to respective services being provided by the Petitioner and the Eligible Entity.
- e) The Petitioner along with its SPVs and the Eligible Entity shall ensure that their respective performance or the equipment or asset of one party should not harm performance or the equipment(s) or asset(s) of the other party.
- f) The Petitioner SPVs and the Eligible Entity shall be required to bear the cost towards maintenance of their respective equipment(s), construction/ fixtures & assets and undertakes to take all reasonable care to avoid causing any harm to the equipment(s), construction/ fixtures and assets of the other party.

g) Both parties shall ensure that reliability and availability of transmission services are not adversely affected due to utilisation of identified transmission assets for telecom services.

18. The Petitioner has submitted that it seeks to utilize only idle/ unused optical fiber as available in OPGW and in doing so, there shall be no reduction in the availability of transmission lines to LTTCs.

19. The Petitioner has submitted that sharing of revenue derived from the utilization of transmission assets for other business with LTTCs cannot be in the ratio of 50:50 in view of the following:

a) The proposed business model shall engage in providing the eligible entities limited license rights over transmission assets. The Petitioner shall not directly be involved in undertaking any telecommunication activities (including any O&M of the telecom equipment) installed by the Eligible Entities. Accordingly, the Petitioner is anticipating partial revenues in comparison to the revenues generated by Transmission Licensees who undertake complete telecom business or offer telecom services to various telecom service providers/ end customers in the market.

b) The Petitioner has incurred additional capital expenditure in relation to installation of OPGW to earn revenue from the proposed business. The Petitioner's projects are Tariff Based Competitively Bid (TBCB) projects where the revenue from all business models have been considered to arrive at the lowest tariff. The gross revenue estimation provided is based on internal estimates and workings, informal discussions with potential Eligible Entities and anticipated market potential which is dynamic and dependent upon various factors including but not limited to, number of telecom operators, the requirements of the Eligible Entities, launch of new technologies, local data residency rules affecting demand from enterprise customers, etc. Accordingly, it is not possible to predict clear market or minimum revenues at this stage. It can be done after carrying out the

proposed business for a certain period of time i.e. after two business year cycles.

c) The suggestion of the Respondents to share 50 percent revenue with LTTCs are based on the assumption that the Petitioner shall not be required to make any additional expenditure towards its other business. The Petitioner anticipates various incremental cost-heads including but not limited to one-time cost of legal fee towards petition filing, manpower cost towards sales/ invoicing/ finance, regulatory filings, book-keeping, legal opinions, auditor certifications, tower loading analysis, health safety checks of assets, any additional O&M activities of transmission networks. However, extent/ values of these incremental costs which will be incurred to undertake the proposed business model, are expected to be discovered with some certainty and basis only after undertaking the proposed business model through two business year cycles.

d) For cases where the transmission licensee engages in telecommunications business, the Commission vide Regulation 5(1)(a) of the 2020 Revenue Sharing Regulations has determined an amount equal to 10% of the gross revenue from such business to be shared with the LTTCs. The Petitioner has proposed to share 10% of its gross revenue from such other business with the LTTCs at this stage and liberty to approach in future, in case 10% revenue share is not viable. Allowing the prayer of the Petitioner to share 10% of the revenue generated from the other business with LTTCs at this stage will strike a balance between facilitating entry of other transmission licensees into the other business, recognized as a pertinent concern in the Statement of Reasons for the 2020 Revenue Sharing Regulations ("SOR") and Section 41 of the Act that provides for utilization of assets for rationalizing the transmission charges.

20. In terms of indemnifying all LTTCs from any financial and legal implication on account of other businesses, the Petitioner has submitted that such blanket indemnity for any legal/ financial implication on account of other business is neither appropriate nor feasible to be provided. The Petitioner has submitted that



the rights that may be conferred upon the Respondents must be within the framework of extant legal & regulatory position and must withstand the test of reasonableness and certainty.

21. The Petitioner has submitted that the 2020 Revenue Sharing Regulations call for provision to indemnify its LTTCs by the transmission licensee only in cases where the transmission licensee forms a subsidiary company for engaging in other business by utilizing the transmission assets, for any additional cost or losses or damages due to such subsidiary company. Indemnity, as and where is required is already provided to LTTCs as the Petitioner along with the Petitioner's SPVs undertakes to comply with the provisions of the 2020 Revenue Sharing Regulations along with Section 41 of the Act in implementing the proposed business model. In doing so, the Petitioner specifically undertakes that the Petitioner SPVs shall not encumber, directly or indirectly, its transmission assets, in whatsoever nature, to support the telecom business being carried out by the Eligible Entity.

22. The Petitioner in its rejoinder to reply filed by UPPCL has submitted that both SPGVL (Sterlite Power Grid Ventures Limited) and Sterlite Power Transmission Limited ("SPTL") have undergone a scheme of amalgamation and an affidavit placing on record the relevant submissions and documents in this regard has been filed with the Commission.

23. On the issue of maintainability of the Petition, the Petitioner has submitted that the instant Petition has been filed by the Petitioner to avoid multiplicity of identical proceedings. The Petitioner, therefore, as an interested party and after being duly authorised by the Board of Directors of the 4 (four) special purpose



vehicle (“SPV”) companies of which the Petitioner is the holding company, and relying on Regulation 24 of the CERC (Conduct of Business) Regulations, 1999 (in short, the CBR 1999) has filed the instant petition.

24. The Petitioner has further submitted that the Code of Civil Procedure, 1908 provides that any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may be made or done by the party’s recognized agent.

25. The Petitioner has submitted that in terms of provisions of Order III Rule 1 of the CPC and in its representative capacity on behalf of the transmission licensees i.e. SPVs, it has acted in terms of the authorisation granted to it and the petition has been filed in consonance with settled law and practice with a view to optimise the Commission’s time.

26. In response to contention of UPPCL and Rajasthan Discoms that the Petitioner has not furnished all the information necessary to adjudicate the matter, the Petitioner has submitted that the information required to be provided in terms of the Regulations as well as in terms of directions of the Commission, has been provided by the Petitioner.

27. The Petitioner has submitted that information in response to various contentions of respondents such as (a) Sharing of Revenue, (b) Sharing of O&M cost of shared assets, (c) foreseen impacts of other business on inter-State transmission of electricity and communication links established with RLDC, (d) Potential risk to towers due to weight of telecom antennas, (e) Signing of handing-over take-over sheet without specifying the mode of transfer of use or access, (f) manner of calculating availability of transmission system if the



transmission system or any of its parts utilized for other business is brought under shutdown for O&M requirements or break down, and (g) remedies that the Petitioner would have if the other business hampers the transmission business or if there is stoppage of other business on account of litigation with eventual cost coming to beneficiary in terms of constraints in the transmission system or damage to any of the assets in the hand of Eligible Entities, has been submitted along with the Petition.

28. In response to contention of the Respondents that limited transfer and utilization of transferred assets would not happen unless certain type of encumbrance is created in favour of such other persons and any such creation of encumbrance is contrary to Regulation 8 of the 2020 Revenue Sharing Regulations, the Petitioner has submitted that the structure and nature of 'other business' that the Petitioner's SPVs seek to engage has clearly been elaborated and that there will never be a transfer of utility as contemplated under Section 17(3) of the Act.

29. The Petitioner further submitted that the term 'transfer' is commonly used to denote the passing of title in property or an interest therein from one person to another and in that sense the term means that the owner of the property delivers it to another person with the intent of passing the rights which he had in it to the latter. This is in stark contrast to what transfer under Section 17(3) of the Act denotes. The business model proposed by the Petitioner simply contemplates grant of limited license over the PPIA of SPVs to Eligible Entities for the pre-decided, specific and limited purpose of utilising the PPIA, maintaining it and further providing it for use by telecommunication licensees. The Petitioner submitted that there shall be no transfer of utility whatsoever to Eligible Entity



and no creation of encumbrance on the transmission assets in favour of Eligible Entity in grant of such limited license, and the proposed 'other business' is in compliance with Regulation 8 and other provisions of the 2020 Revenue Sharing Regulations.

Hearing dated 15.04.2021

30. The learned counsel for the Petitioner submitted that it has also filed IA No.54/IA/2020 seeking interim directions for implementing the proposed business model pending decision in the present Petition. However, at present, the Petitioner is not pressing for the said IA No. 54/IA/2020.

31. The learned counsel for the Petitioner requested to allow him to file an additional affidavit to place on record that the Petitioner company, SPGVL now stands amalgamated with Sterlite Power Transmission Limited, which has been allowed by the Commission.

32. The Commission asked the Petitioner to inform whether the various activities proposed by the Petitioner in the vacant space/ land are permissible under the applicable rules/ regulations and the conditions, if any, have been imposed by the concerned authorities while allotting/ leasing the land.

33. The Petitioner in response to the query submitted that the relevant information sought by the Commission has already been filed vide its affidavit dated 30.08.2020 wherein it has been submitted that the land for the sub-stations for all four SPVs has been acquired through private negotiations and has not been allotted or leased out by the Government agencies. It was also submitted that none of the land so purchased, carry with them any separate restrictions or limitation and, thus, licensing of such vacant space/ land to eligible entities for



telecom use as per the proposed business model will not violate any laws, rules or regulations.

34. In response to the Commission's observation that as the Petitioner is only licensing of the space and is not concerned with the end usage or placing of telecom equipment, it is not clear as to who will be responsible for complying with the various safety and security standards, the Petitioner submitted that the usage of the vacant space by the licensees shall be restricted and that the Petitioner has also filed the draft license agreements in this regard. The Petitioner also submitted that the proposed businesses will pose no risk whatsoever to the transmission assets and that installation of telecom equipment shall be done only after conducting extensive tests and studies, inter alia, related to the safety and security of the transmission assets.

35. The Petitioner vide affidavit dated 28.04.2021 has made the following submissions:

(a) Vide the Order of the National Company Law Tribunal, Mumbai Bench-IV ("NCLT") in CP (CAA) No. 3997/MB.IV/2018 connected with CA (CAA) No. 707/MB.IV/2018, pronounced on 22.05.2020 ("NCLT Order"), the scheme of amalgamation of Sterlite Power Grid Ventures Limited with Sterlite Power Transmission Limited ("Scheme") had been sanctioned. In terms of the said NCLT Order and the Scheme, Sterlite Power Transmission Limited has stepped into the place of Sterlite Power Grid Ventures Limited as the resultant company in the eyes of the law as well as for all administrative and practical purposes, including conducting the captioned proceedings before this Commission.

(b) Manner in which vacant spaces at existing transmission towers are proposed to be utilised in the Other business is as follows:



(i) The Petitioner would like to use its transmission assets at different geographic locations through its affiliate special purpose vehicles (SPVs) that are transmission licensees:

- For end-use by multiple telecom operators and multiple radio frequency bands, for example, 2G, 3G, 4G and upcoming 5G.
- On towers of different heights and voltage levels like 220 kV, 400 kV and 765 kV.

(ii) Indicative Plan of execution:

Following arrangements will be made by the Petitioner and/or the Eligible Entity to complete the mobile tower solution:

- Required capacity of electricity connection will be taken through a distribution company (DISCOM) at site to power the telecom equipment. Backup shall be handled by battery banks of 600 AH in case of power outages.
- Telecom antennae will be installed on transmission towers as per the required height.
- Telecom equipment will be hoisted on a platform at the bottom of tower leg and feeder cables will be laid through cable trays to antenna mounted.
- The work in relation to installation of telecom antenna on tower will be carried out as per standard industry practices and all relevant regulations, including of the Central Electricity Authority and this Commission will be complied with.

(iii) Pre-requisites for execution:

- A joint survey will be undertaken by the Petitioner at all the planned sites with Eligible Entities to understand the need of infrastructure to mount telecom equipment.
- Tower loading tests and validation analysis (TLVA) will be undertaken before installing additional antenna (GSM & MW), cables and cable tray loading on 66kV / 400kV and



765kV Towers. These tests will first validate the safety and structural integrity of the structure to support the telecom equipment. Only after clear technical validation will the Eligible Entities be given a go ahead to install equipment.

- Permit to work for working on live line concept will be taken as per the safety guidelines and skilled manpower of Petitioner will only work on tower for telecom equipment installation.

(iv) Site Photographs:

Telecom equipment and antennas have been installed on transmission towers by various transmission licensees in India. Photographs of some such transmission towers have been attached for inter alia understanding the manner of utilisation of spaces available at transmission towers and the space commonly occupied by telecom antennae and passive telecom equipment. The Petitioner's proposed other business will involve installations along similar lines.

Analysis and Decision

36. We have considered the pleadings and submissions of the Petitioner and the Respondents for finding whether the prayer of the petitioner is fit to be allowed and whether it is a fit case for invoking the provisions of Regulation 10 of the 2020 Revenue Sharing Regulations.

37. The Petitioner has proposed a business model based on giving a limited license over the vacant spaces of its transmission towers, its sub-stations along with unused optical ground wire containing optical fibre ("OPGW") and Right of Way ("RoW") to various entities eligible under the telecom regulatory framework



and similar entities engaged in the business of providing and utilising telecommunication infrastructure.

38. It is a consistent case of the Petitioner that it is the holding company of the transmission licensee SPVs for the proposed business and has filed the present petition in the capacity of the parent company after obtaining NOCs from the said SPVs. The claim of the Petitioner hinges around the NOCs provided by the SPVs for the proposed business.

39. We have examined this aspect with reference to the Companies Act 2013, specially Section 2(46) and Section 2(87).

(i) Section 2(46) of the Companies Act 2013 defines holding company as a company if it holds/owns at least 50% of the other companies and has the authority to make management decisions, influence and control the company's board of directors. A holding company may exist for the sole purpose of controlling and managing subsidiary companies.

(ii) Section 2(87) of the Companies Act 2013 defines subsidiary company as a body corporate where the holding company controls the composition of the board of directors. As per the 2017 Amendment if the holding company has control over more than one-half of the voting power of another company, the company is to be known as subsidiary company.

40. The transactions between the holding company and subsidiary company qualify as related party transactions and need to comply with the relevant restrictions on related party transactions. It may range from disclosure of interest, abstention from voting or taking approval of a specific majority of shareholders



before entering into the transactions. To enter into a relationship of holding company and subsidiary company, the concerned entities have to abide by the rights and liabilities as enshrined under the Companies Act 2013. They have to frame Articles of Association and Memorandum of Association accordingly and duly get them registered with the Registrar of Companies.

41. We observe from the pleadings of the Petitioner and replies of the Respondents that the Petitioner has moved this petition merely on the basis of the NOCs given by the transmission licensee SPVs, which as transmission licensees are mandated to comply with various obligations as stipulated in the licenses. The Petitioner has not produced any documents regarding inter se rights and obligations/liabilities between the Petitioner and subsidiaries relating to the proposed business.

42. We further observe that the business model as proposed by Petitioner is covered under the Principal-Agent relationship within the meaning of the Indian Contract Act 1872. The Indian Contract Act 1872 lays down a series of rights and liabilities for such Principal-Agent relationship. However, we observe from the pleadings of the Petitioner that no such relationship has even been suggested or proposed.

43. We note that the Petitioner has submitted that the transmission licensee SPVs themselves will not be undertaking the telecom business, but as part of the business model, grant 'limited license' for use of vacant spaces on their transmission towers, sub-stations and unutilized OPGW assets of its subsidiary companies to some other person and provide 'limited rights' to lay down



additional OPGW assets by utilizing the corridors created by its subsidiary companies to some other person.

44. We have examined the business model proposed by the Petitioner. We are in agreement with the Respondents that granting such 'limited license' or providing such 'limited right' to other person to use assets would not happen unless certain type of encumbrances are created in favour of such 'other person' which is contrary to Regulation 8 of the 2020 Revenue Sharing Regulations, which prohibits creation of encumbrances on the transmission assets.

45. We further note that the Petitioner has submitted that for the purpose of actual use of assets, the Petitioner and the other person shall sign a hand-over take-over ("HOTO") sheet which shall demarcate the assets licensed by the Petitioner to the other person for being used for other business. However, we observe that the Petitioner has not provided the specific mode of transfer of assets for use when the hand-over take-over ("HOTO") sheet gets signed.

46. We note that the Petitioner itself has submitted that the proposed business model is different from the one envisaged for telecommunication business in the 2020 Revenue Sharing Regulations and is not technically mentioned in the same Regulations. And on this count, the Petitioner has requested the Commission to invoke the provisions of Regulation 10 of the 2020 Revenue Sharing Regulations.

47. In view of the discussions in the foregoing paragraphs, we do not find that it is a fit case for invoking the provisions of Regulation 10 of the 2020 Revenue



Sharing Regulations and we are of the considered opinion that the petition in the present form on behalf of the transmission licensee SPVs for approval and adoption of the proposed business model and revenue sharing mechanism and carrying out the proposed business model cannot not be allowed.

48. Accordingly, the IA No. 54/2020 stands disposed of and the Petition No. 544/MP/2020 stands rejected.

Sd/
(P.K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I.S. Jha)
Member

Sd/
(P.K. Pujari)
Chairperson

