

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 29/MP/2023

**Coram:
Shri I.S. Jha, Member
Shri P.K. Singh, Member**

Date of Order: 16th March, 2023

In the matter of

Petition seeking approval of this Commission under Section 17(3) and Section 17(4) of the Electricity Act, 2003 read with Article 15.2.1 read with Article 15.2.4 of the Transmission Service Agreement dated 13.1.2016 along with Article 17.2.1 read with Article 17.2.4 of the Supplementary TSA dated 3.7.2017 for creating security interest over the assets (immovable & movable), licenses/permits/approvals, current assets, bank accounts as well pledge of equity shares of the Petitioner in favour of SBICAP Trustee Company Limited, the Security Trustee on behalf of Kotak Mahindra Bank and ICICI Bank, the lenders.

And

In the matter of

NRSS XXXVI Transmission Limited,
B-10, Essel House, Lawrence Road,
New Delhi-110 035.

.....**Petitioner**

Vs.

1. U.P Power Corporation Limited,
14th Floor, Shakti Bhawan Extension,
14 - Ashok Marg,
Lucknow- 226 001.

2. Electricity wing of Engineering Department,
Union Territory of Chandigarh,
Electricity Operation Circle,
UT Secretariat Building, 5th floor,
Sector 9-D,
Chandigarh-160 009.

3. BSES Yamuna Power Limited,
2nd Floor, Shakti Kiran Bldg.,
Karkardooma,
New Delhi-110 092.

4. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110 019

5. Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lines, Kingsway Camp,
Delhi-110 009

6. New Delhi Municipal Council,
NDMC, 5th Floor, Palika Kendra,
New Delhi-110 001.

7. Electricity wing of Engineering Department,
Union Territory of Chandigarh,
Electricity Operation Circle,
UT Secretariat Building, 5th floor,
Sector 9-D,
Chandigarh-160 009.

8. BSES Yamuna Power Limited,
2nd Floor, Shakti Kiran Bldg.,
Karkardooma,
New Delhi-110 092.

9. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110 019

10. Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lines, Kingsway Camp,
Delhi-110 009

11. New Delhi Municipal Council,
NDMC, 5th Floor, Palika Kendra,
New Delhi-110 001.

12. Haryana Power Purchase Centre,
Shakti Bhavan Energy Exchange Room No. 446,
Top Floor, Sector - 6,
Panchkula – 134 109.

13. Punjab State Power Corporation Limited,
D-3, Shakti Vihar,
Patiala- 147 001.

14. Haryana Power Purchase Centre,
Shakti Bhavan Energy Exchange Room No. 446,
Top Floor, Sector - 6,
Panchkula – 134 109.

15. Power Development Department,
Government of Jammu and Kashmir,
Room No.1/27, Mini Block
Civil Secretariat,

Srinagar-190 009.

16. Rajasthan Discoms Power Procurement Centre,
Shed No. 5/4, Vidyut Bhawan,
Janpath, Jyoti Nagar
Jaipur-302 005.

17. Uttarakhand Power Corporation Limited,
Urja Bhawan Kanwali Road,
Dehradun- 248 001.

18. Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan,
Shimla-171 004.

19. Kotak Mahindra Bank,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-400 051
Maharashtra,

20. ICICI Bank Limited,
ICICI Bank Tower,
Near Chakli Circle, Old Padra Road,
Vadodara-390 007

21. SBICAP Trustee Company Limited,
202, Market tower E, Cufee Parde,
Mumbai-400 005, Maharashtra

.....Respondents

Parties present:

Shri Venkatesh, Advocate, NRSS
Shri Anant Singh, Advocate, NRSS
Shri Mohit, Advocate, NRSS
Shri Divyanshu Bhatt, Advocate, UPPCL

ORDER

The Petitioner, NRSS XXXVI Transmission Limited (in short 'NRTL') has filed the present Petition under Sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Article 15.2.1 and Article 15.2.4 of the Transmission Service Agreement (in short, 'the TSA') dated 13.1.2016 and Supplementary TSA dated 3.7.2017 for creation of security interest over the assets (immovable and movable), licenses/permits/approvals, current assets, bank accounts

as well pledge of equity shares of the Petitioner in favour of the Security Trustee on behalf of the lenders. The Petitioner has made the following prayers:

“(a) Admit and present Petition;

(b) Approve the creation of First charge-by way of mortgage of all immovable properties, hypothecation of all movable assets, assignment of all projects documents/licence, etc. on all existing and future receivables/current assets/movable assets/movable fixed assets, etc. of the Petitioner in favour of Respondent Nos. 15 acting on behalf of Respondent Nos. 13 & 16.

(c) Approve the execution and signing of security documents for creating encumbrance in favour of Respondent Nos. 15 acting on behalf of Respondents Nos. 15 acting on behalf of Respondent Nos. 13 & 16;

(d) Pass any further order or orders which the Commission may deem fit and proper.”

Background

2. NRTL is a fully owned subsidiary of Essel Infraprojects Limited (In short ‘Essel Infra’) which was selected as a successful bidder through the international tariff based competitive bidding process under Section 63 of the Act to establish the transmission system for “System Strengthening Scheme in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 KV D/C line at Babai (RRVPNL)” (hereinafter referred to as “the Transmission System” or “the Project”) on Build, Own, Operate and Maintain (BOOM) basis and to provide transmission service to the Long Term Transmission Customers (LTTCs) of the Project.

3. NRTL was incorporated as a special purpose vehicle by the Bid Process Coordinator, REC Transmission Projects Company Limited (RECTPCL) as part of Tariff Based Competitive Bidding process for implementing the Project on BOOM basis. On 13.1.2016, Transmission Service Agreement (TSA) was executed between NRTL and LTTCs of the Project. Essel Infra participated in the competitive bidding process conducted by RECTPCL and upon emerging as the successful bidder, the Letter of Intent (LOI) was issued to Essel Infra on 28.3.2016. In accordance with the

bidding documents, Essel Infra acquired 100% of the shareholding in NRTL by executing a Share Purchase Agreement with RECTPCL on 22.8.2016. The Commission by its order dated 7.12.2016 in Petition No. 161/TL/2016 granted transmission licence to NRTL for inter-State transmission of electricity. As per the TSA dated 13.1.2016, the Transmission System comprised of six elements. Scheduled Commercial Operation Date (SCOD) for Element 1 and Element 2 of the Transmission System was 40 months from the effective date, for Element 3 and Element 5 of the Transmission System it was December 2016, whereas Element 4 and Element 6 were to be commissioned within 34 months from the effective date.

4. For the purpose of financing the Project, NRTL had requested lender, PTC India Financial Services (PIFSL) to provide financial assistance to the extent of Rs.306 crore as Rupee Term Loan for construction, development and implementation of the Project on the terms and conditions set out in the Common Facility Agreement dated 7.11.2017 and other financing documents for which PIFSL had agreed to. Further, NRTL and PIFSL executed Security Trustee Agreement dated 7.11.2017 authorizing PIFSL to act as Security Trustee for the benefit of lender and its novates, assignees and transferees. NRTL had approached the Commission in Petition No. 266/MP/2017 for approval under Section 17(3) and Section 17(4) of the Act read with Article 15.2.2 of the TSA to create security interest over all movable and immovable assets of the Project in favour of PIFSL, acting for the benefit and on behalf of the lender. The Commission by its order dated 08.03.2018 in Petition No. 266/MP/2017 accorded in-principle approval allowing NRTL to create security interest in favour of PIFSL, acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage and/or hypothecation and/or assignment and/or substitution and/or charge, as the case may be, on assets of the Project by execution of indenture of mortgage for the

Project. In the said order, the Commission observed that in case of default by the licensee/NRTL in debt repayment, the licensee, lender, security trustee nominee may jointly approach the Commission for assignment of transmission licence to the nominee of lender and that specific prior approval of the Commission in this regard shall always be needed. Pursuant to aforesaid approval, NRTL entered into Indenture of Mortgage with PIFSL on 1.6.2018 creating a first charge in favour of PIFSL. It is submitted that total amount of debt disbursed to NRTL by PIFSL is Rs.206.92 crore out of the sanctioned loan of Rs.306 crore.

5. Subsequently, the Petitioner, PTC and Resurgent Power Ventures Pvt. Ltd. (RPVPL) jointly filed the Petition No. 267/MP/2021 seeking prior approval of the Commission for transfer of equity shareholding and management control of NRTL in favour of nominee of lender i.e. RPVPL. The Commission in its order dated 8.3.2018. had allowed the transfer of shareholding of NRTL from Essel Infra to RPVPL under Article 15.3.2 of the TSA read with Section 17(3) of the Act.

6. The Petitioner has submitted that it approached Kotak Mahindra Bank and ICICI Bank (hereinafter referred to as 'the lenders') for financial assistance in the form of credit facility i.e. Term Loan (TL), Overdraft (OD) and Letter of Credit (LC) for meeting the requirements such as repayment of existing debt from existing lenders, capital expenditure, procurement of raw materials, consumable stores, spares and tools, repayment of loads/ICD provided by sponsor/group companies, etc. Accordingly, both the Banks have sanctioned the following:

- (i) Kotak Mahindra Bank vide its letter dated 21.10.2022 sanctioned term loan of Rs. 170 crore and overdraft with a limit of Rs. 3 crore with total risk limit of Rs. 173 crore which includes total non-funded limit of Rs. 114 crore, divided

into Rs. 64 crore & Rs. 50 crore in form of Letter of Credit (LC) and LC (capex/bill discounting).

(ii) ICICI Bank vide its letter dated 11.11.2022 sanctioned overall limit of Rs. 170 crore comprising fund-based facilities i.e Term Loan (TL) & LC which includes a non-fund-based portion of Rs. 119 crore for capex LC purposes.

The lenders have sanctioned the aforesaid amount with the condition that for securing the credit facilities, the Petitioner will create first and *pari-passu* charge on all the immovable properties, existing and future receivables/current assets/movable assets/ movable fixed assets of the Petitioner. In this regard, SBICAP Trustee Company Limited vide its letter dated 9.12.2022 has agreed to act as a Security Trustee for the benefit of the lenders for the financial assistance aggregating to Rs. 343 crore (Kotak Bank Rs.173 crore and ICICI Bank Rs. 170 crore) sanctioned by the lenders.

7. As per sanction letter dated 21.10.2022, the following security is to be created in respect of term loans:

“Security:

The Facility together with interest, default interest, liquidated damages, costs, charges, expenses and all other monies whatsoever payable by the Borrower shall be secured by way of (mortgage/hypothecation/charge/ assignment) of below securities:

- 1. First charge by way of mortgage of all immovable properties (if applicable) of the Project,*
- 2. First charge by way of hypothecation of all the movable assets of the Project,*
- 3. First charge by way of assignment of all Project related documents, licenses, permits, approvals, rights, title, interests etc. pertaining to the Project,*
- 4. First charge on all the current assets of the company including but not limited to book debts, operating cash flows, receivables, commissions, revenue of whatsoever nature and wherever arising, present and future; and*
- 5. First charge on all the bank accounts of the Borrower including Escrow Account.*
- 6. Pledge of 30% of Equity shares/ CCDs/ CCPS of the Borrower (till the time KMBL is the sole lender and 51% when there are more than one lenders). The Borrower & the Promoter shall ensure that the voting rights of the pledged shares do not fall below 30%/51% (as the case may be) through the tenor of the Facility.*

The above-mentioned security shall be shared on pari-passu first charge basis with Secured lenders within permitted indebtedness amount and working capital lenders (such working capital amount shall be as approved by the Lenders).

Entire Security to be created and perfected within 180 days from the date of first disbursement under the facility or any of its sub-limits.

Security to be created in favour of Security Trustee on behalf of the lenders.

Security (Applicable for facilities 2.1 & 2.2.)

- First and pari-passu hypothecation charge on all existing and future receivables/current assets/ movable assets/movable fixed assets of the Borrower.

Timelines for completion of Security

Particulars	Time line for Completion/Perfection of the security
Creation	1 month from the date of disbursement
Perfection	3 months from the date of disbursement

The Facility together with interest, default interest, liquidated damages, costs, charges, expenses and all other monies whatsoever payable by the Borrower shall be secured by way of mortgage/hypothecation/charge/ assignment) of below securities:

1. First charge by way of mortgage of all immovable properties of the Project,
2. First charge by way of hypothecation of all the movable assets of the Project,
3. First charge by way of assignment of all Project related documents, licenses, permits, approvals, rights, title, interests etc. pertaining to the Project,
4. First charge on all the current assets of the company including but not limited to book debts, operating cash flows, receivables, commissions, revenue of whatsoever nature and wherever arising, present and future; and
5. First charge on all the bank accounts of the Borrower including Escrow Account.
6. Pledge of 51% of Equity shares/CCDs/CCPS of the Borrower. The Borrower & the Promoter shall ensure that the voting rights of the pledged shares do not fall below 51% through the tenor of the Facility.

The above-mentioned security shall be shared on pari-passu first charge basis with Secured Lenders within permitted indebtedness and working capital lenders (such working capital amount shall be as approved by the Lenders).

Security creation Timelines:

- Security creation and perfection to be completed within 180 days from the date of first disbursement

Other security related conditions:

- The Borrower shall obtain all such permissions and approvals as may be required under any law for the time being in force or pursuant to any provisions of any

agreement and/or documents for the purpose of creation of security as mentioned hereinabove.

- *RoC/CERSAI search for existing charges shall be conducted prior to security creation/disbursement. Search Report to be found satisfactory and acceptable to the Bank. Relevant charges shall be registered with CERSAI/ROC or any other authorities within regulatory time limit.*
- *Charges shall be registered with ROC vide Form CHG1 within statutory time limit. In case of failure to create/modify charge within 90 days, the Bank reserves the right to unilaterally register the charges within 90 days, the Bank reserves the right to unilaterally register the charges with ROC and any additional cost shall be borne by the borrower.*
- *Prior to disbursement, the borrower shall submit requisite confirmation / approval from Income-tax Authority in terms of Section 281 of the Income-tax Act for creation of security by the borrower and/or third party security provider, as the case may be, confirming that there are no pending proceedings or notices issued by the Income-tax department to the borrower / third party or granting permission to create the charge pending completion of proceedings”*

8. The Petitioner has submitted that as per Credit Arrangement Letter dated 11.11.2022 issued by lender, ICICI Bank, the Petitioner is required to execute the certain documents, namely, Facility Agreement, Undertaking, Security documents (Hypothecation Deeds and/or any other documents creating security as envisaged in the security clause), Security Trustee Agreement and all other financing and security documents as may be designated by the lenders. As per sanction letter dated 21.10.2022, the following security is to be created in respect of term loans:

“Security template

The Facility, together with interest, Default Interest, costs, charges, expenses and other monies payable in respect thereof shall be secured by first ranking mortgage/hypothecation/security interest/charge created in favour of the Lender/Security Trustee (for the benefit of the Lender) over inter-alia the following:

1. *First charge by way of mortgage of all immovable properties (if applicable) of the Project;*
2. *First charge by way of hypothecation of all the movable assets of the Project,*
3. *First charge by way of assignment of all Project related documents, licenses, permits, approvals, rights, title, interests etc. pertaining to the Project,*
4. *First charge on all the current assets of the company including but not limited to book debts, operating cash flows, receivables, commissions, revenue of whatsoever nature and wherever arising, present and future;*

5. *First charge on all the bank accounts of the Borrower including Escrow Account;*
6. *Pledge of 51% of Equity shares/ CCDs/ CCPS of the Borrower. The Borrower & the Promoter shall ensure that the voting rights of the pledged shares do not fall below 51% through the tenor of the Facility.*

The above-mentioned security shall be shared on pari-passu first charge basis with Lenders to Term Debt amount and working capital lenders (such working capital amount shall be as approved by the Lenders).

Entire Security to be created and perfected within 18 months from the date of first disbursement or 180 days from the date of CERC approval, whichever is earlier.

Security to be created in favour of Security Trustee on behalf of the lenders.”

9. 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:

“(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 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.”

10. 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. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for creation of

security interest, over all assets including the movable and immovable assets for the Project in favour of Security Trustee.

Hearing dated 22.2.2023

11. During the course of hearing on 22.2.2023, learned counsel for UPPCL requested for time to file reply to the Petition. UPPCL in its reply dated 6.3.2023 has submitted that UPPCL has no objection to the proposed creation of charge on its assets in favour of the Security Trustee. However, the Commission may take into consideration that the proposed creation of security interest must not impact any obligations of the Petitioner under the TSA towards the LTTCs, including commissioning of the elements under the TSA and claims of transmission charges thereunder.

12. Vide Record of Proceedings for the hearing dated 22.2.2023, the Petitioner was directed to furnish the element-wise status/progress of the Project and the details relating to Project Costs and funding pattern, etc.

13. The Petitioner vide its affidavit dated 2.3.2023 has submitted the element-wise status/progress of the project as under:

Progress in Element II:

(a) Summary of the works which stood completed, the balance works and the works completed, post the takeover by Resurgent Power Ventures Pte. Limited (RPVPL) on 4.4.2022 is as under:

Activity	Total Quantity	Completed at the time of takeover by RPVPL	Balance at the time of takeover by RPVPL	Progress after takeover by RPVPL	Balance to be completed
Tower Foundation	304	273	31	24	7
Tower Erection	304	248	56	47	9
Tower Earthing	304	248	56	47	9

Stringing of Power Conductors	110.9	36.8	74.1	57.1	17.0
**Balance bay works at Babai	02	@70%	@30%	@15%	@15%

*** Installation of Isolators, testing, control cabling, relay setting, protection, automation and communication, bus extension works and civil works such as road, trench covers, metal spreading remain to be completed.*

(b) Post-acquisition on 4.4.2022, NRSS XXXVI took up implementation of Element-2 on war footing. EPC contract and conductor supply contracts were placed immediately after acquisition. Approximately 125 workmen are presently deployed on Project site. All major material & equipment required for project completion have been ordered and received on site. All the requisite materials for 46 out of 56 pending towers, all 31 pending foundations and conductors for the entire balance 935 km have been received at site. Payment of Rs. 5.14 crore approximately was made to Forest Department for obtaining working permission.

(c) Approval of Power & Telecommunication Coordination Committee, approval Stage -II Forest approval and approval from Chief Electrical Inspector for Charging are still pending. The details of the balance work and the works completed post the takeover by RPVPL is as under:

Activity	Total quantity	Completed at the time of takeover by RPVPL	Balance at the time of takeover by RPVPL	Progress after takeover by RPVPL	Balance to be completed
Tower Foundation	106	26	80	0	80
Tower Erection	106	0	106	0	106
Tower Earthing	106	26	80	0	80
Stringing of Power Conductors	40	0	40	0	40
**Balance bay works at Rishikesh	02	0%	100%	5%	95%

*** Two bays are to be extended at Rishikesh Sub-station of Power Transmission Corporation of Uttarakhand ("PTCUL"). PTCUL has issued conditional approval. NOC from Animal Husbandry Department, Government of Uttarakhand has been received.*

(d) Forest approval was submitted in 2017, to the State of Uttarakhand to obtain necessary NoCs and consequent forest clearance. However, owing to the reasons beyond the control of NRSS XXXVI especially due to delay by various Government Instrumentalities, Forest clearance is yet to be received. NRSS XXXVI has restarted the process of obtaining Forest approval. Forest Diversion Proposal (“FDP”) has been uploaded successfully on the portal of Ministry of Environment Forest & Climate Chang, New Delhi on 21.12.2022.

Element III of the Project:

(e) Stage-I of Forest approval and working permission from Forest Department are pending. About 65% of the transmission line passes through Forest land and any further delay in Forest approval will impact the Project completion schedule adversely.

(f) Since acquisition, approximately Rs. 124 crore have been spent on NRSS XXXVI for construction (in addition to the One Time Settlement -OTS Amount of Rs. 127 crore paid to erstwhile lender, PTC Financial Services for stressed asset resolution) until February 2023.

Cost of project and financing scheme:

(g) Estimated capital expenditure for completion of Elements II and III is estimated at Rs. 323 crores, in addition to Rs. 127 crore, OTS amount paid to PTC Financial Services (Previous Lenders), aggregating Rs. 450 crore. Means of Finance for the Project is as under:

S.No.	Means of Finance (Funding Pattern)	Amount (Rs. in crore)
1.	Term loan from Kotak and ICICI Bank (75%)	338
2.	Resurgent funds (25%)	112
	Total Project Cost	450

Aggregate secured facilities tied up with Kotak and ICICI Banks for the Project is Rs. 343 crore (including Term Loan, Overdraft and Letter of Credit).

Analysis and Decision

14. We have considered the submissions made by the Petitioner and perused documents available on record. The Petitioner has filed the present Petition under Sub-section (3) and Sub-section (4) of Section 17 of the Act read with Article 15.3 of the TSA and Article 17.3 of the Supplementary Agreement seeking creation of security interest over the assets (immovable & movable), licenses/permits/approvals, current assets, bank accounts as well pledge of equity shares of the Petitioner in favour of SBICAP Trustee Company Ltd., the Security Trustee on behalf of lenders, Kotak Mahindra Bank and ICICI Bank. The lenders have agreed to grant financial assistance of Rs. 343 crore.

15. The Petitioner has submitted that the Project has not achieved the Commercial Operation Date. After grant of transmission licence, the Petitioner approached the Commission by way of Petition No. 266/MP/2017 for creation of security interest in favour of Security Trustee, namely, PTC India Financial Services Limited (prior Security Trustee) acting as Security Trustee for the benefits of lenders, for the loan availed from the lenders of Rs.306 crore. The Commission in its order dated 8.3.2018 accorded in-principle approval allowing the Petitioner to create security in favour of Security Trustee, namely, PTC India Financial Services Limited. Subsequently, the Petitioner approached for approval of transfer of equity shareholding and management control of the Petitioner company in favour of nominee of lender i.e RPVNL. The Commission in its order dated 8.3.2022 in Petition No.267/MP/2021 allowed transfer

of shareholding of Petitioner company from Essal Infra to RPVNL subject to certain conditions enumerated in the order dated 8.3.2022.

16. The Petitioner had subsequently approached the lenders, namely, Kotak Mahindra Bank and ICICI Bank (in short, New lenders) for refinancing the project assets and for outstanding loan. New Lenders have agreed for the same through their sanction letters dated 21.10.2022 and dated 11.11.2022.

17. 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 the Petitioner, COD/SCOD of the Project are as under:

S.No.	Element	Date of COD/SCOD
1.	Element 1	Achieved on 30.10.2017
2.	Element-2	SCoD - 31.3.2023
3.	Element-3	SCoD - 30.6.2024

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

Estimated Cost			Sources of Funds	
S.No	Particulars	Amount (Rs. in crore)	Particulars	Amount (Rs. in crore)
1	Preliminary Expenses (SPV Purchase), Civil Work & Building	5.61	Promoters Contribution	
2	EPC Contract including Land Cost	327.61	Equity share Capital	102
3	Preoperative Expenses	15.88	Debt Portion	
4	Contingency	16.40	Senior facility	286
	Total Hard Cost	365.50	Sub-ordinate facility	20
5	IDC	42.50		
	Total Soft Cost	42.50		
	Total	408	Total	408

(c) Present status of project cost including end use of Term Loans provided by Kotak Mahindra Bank Rs. 173 crore and ICICI Bank Rs. 170 crore:

Project cost	Rs. (in crore)
A. One Time Settlement (OTS) of old Loan	136.00
B. Balance Capital Expenditure	317.50
Total	453.50

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

(Rs. in crore)

Name of lenders	Sanctioned Loan (as per Loan Agreement)		Actual loan disbursed (as on date of filing of Petition)
	Type of Loan	Amount	
A. Kotak Mahindra Bank	Term Loan- Facility		Nil
	TL1	102	
	TL-2	68	
	Short term facility		
	OD Limit	3	
	Total	173	
	Letter of credit		
	LCBD	50	
B. ICICI Bank Limited	LC(Capex)	64	Nil
	Term Loan-		
	TL1	51	
	TL-2	51	
	TL-3	68	
	Total	170	
	Letter of credit		
	LC(Capex)	51	
LC(Capex)	68		

19. 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 lender, namely, Kotak Mahindra Bank and ICICI Bank have agreed to provide loan of Rs. 343 crore to the 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.

20. 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.”

21. 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.

22. UPPCL has submitted that it has no objection to the proposed creation of charge on its assets in favour of the Security Trustee. However, the Commission may take into consideration that the proposed creation of security interest must not impact any obligations of the Petitioner under the TSA towards the LTTCs, including commissioning of the elements under the TSA and claims of transmission charges. It is noticed that the instant Petition has been filed for grant of in-principle approval for creation of security interest in favour of new Security Trustee (SBICAP Trustee Company Limited) and the issues raised by the Respondent, UPPCL with regard to delay in implementation of the Project under TSA are not related with the present Petition.

23. The Security Trustee, SBICAP Trustee Company Limited, has agreed to act as Security Trustee for creation of security over all the movable and immovable

assets of the Project. However, no financing agreements has been executed by the Petitioner along with the lenders and Security Trustee. In our view, SBICAP Trustee Company Limited needs to be given comfort for creation of security for the benefit of lender as security for the financial assistance provided by the lender. In view of the said facts and circumstances, we, hereby, accord in-principle approval allowing the Petitioner to create security interest in favour of SBICAP Trustee Company Limited, subject to execution of Security Trustee Agreement, Facility Agreement and 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 Security Trustee Agreement, Facility Agreement, Indenture of Mortgage and other financing documents for the Project immediately after their execution.

24. This in-principle approval is being accorded with condition 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, without prior approval of the Commission 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 lender, 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 such approval. It will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such transfer. This stipulation has been imposed under 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.”

25. 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. It is further ordered that financial documents and statements shall be submitted by the Petitioner as and when required by the Commission for any specific purpose.

26. Petition No. 29/MP/2023 is allowed in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(I.S. Jha)
Member