

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 153/MP/2023**

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

**Date of Order: 7<sup>th</sup> August, 2023**

**In the matter of**

Petition under Sections 17(3) and 17(4) of the Electricity Act, 2003 seeking approval for creation of security interest over the Petitioner's Assets in favour of the Respondent No. 10 (as the Debenture Trustee acting for the benefit of the Debenture Holders).

**And**

**In the matter of**

**Alipurduar Transmission Limited,**  
Adani Corporate House,  
Shantigram,  
Near Vaishno Devi Circle,  
S.G. Highway, Khodiyar  
Ahmedabad, Gujarat – 382421

**....Petitioner**

**Versus**

**1. Assam Electricity Grid Corporation Limited,**  
1st Floor, Bijulee Bhawan  
Paltan Bazar  
Guwahati - 781001

**2. Department of Power, Government of Nagaland,**  
New Sectt. Complex, Kohima – 797001  
Nagaland

**3. Energy and Power Department,**  
Government of Sikkim,  
House No. 1, Power Secretariat,  
Sonam Gyatso Marg,  
Gangtok, Sikkim - 737101

**4. GRIDCO Limited,**  
Janpath, Bhubaneswar – 751011

**5. Jharkhand Bijli Vitran Nigam Limited,**  
Engineer's Building,  
Dhurwa, Ranchi – 834004

**6. Manipur State Distribution Company Limited,**  
Electricity Complex, Patta No. 1293 under 82 (2)  
Khawal Bazar, Keishampat  
District-Imphal West, Manipur-795001

**7. North Bihar Power Distribution Company Limited,**  
2nd Floor, Vidyut Bhawan, Bailey Road  
Patna-800001

**8. South Bihar Power Distribution Company Limited,**  
2nd Floor, Vidyut Bhawan Bailey Road  
Patna-800001

**5. West Bengal State Electricity Distribution Company Limited,**  
Bidyut Bhawan, (A-Block, 3rd Floor) Bidhannagar,  
Kolkata-700091.

**6. Catalyst Trusteeship Limited,**  
Having its registered office at:  
GDA House, Plot No. 85,  
Bhusari Colony (Right),  
Kothrud,  
Pune – 411 038  
Branch office at:  
810, 8th Floor,  
Kailash Building,  
26, Kasturba Gandhi Marg,  
New Delhi – 110 001

....Respondents

**Parties present:**

Shri Ramanuj Kumar, Advocate, ATL

**ORDER**

The Petitioner, Alipurduar Transmission Limited (ATL), has been granted a transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish a "Transmission System strengthening in Indian system for transfer of power from new HEPs in Bhutan" (hereinafter referred to as "the Transmission System" or "the Project") on a 'Build, Own, Operate, and Maintain'

(BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 21.03.2016 in Petition No. 6/TL/2016.

2. The Petitioner has filed the present Petition under Sub-sections (3) and (4) of Section 17 of the Act and Article 15 of the Transmission Service Agreement dated 22.09.2015, for the grant of approval for the creation of a security interest over all assets, including all the movable and immovable assets of the Petitioner in favour of the Respondent No. 10 (Debenture Trustee) acting for the benefit of the Debenture Holders and for their subsequent transferees, assigns, novatees thereof. and any refinancing lenders to the Project. The Petitioner has made the following prayers:

*“(a) Approve the creation of Security Interest by way of hypothecation/mortgage/charge/pledge/assignment etc., over all assets including the movable and immovable assets, Project accounts, Project documents (including the transmission licence) etc. of the Petitioner in favour of Respondent No. 10 / Debenture Trustee (or its replacement or successor) to secure the Petitioner’s obligations towards the Debenture Trustee under the Debenture Trust Deed (read with the Security Documents) and for their subsequent transferees, assigns, novatees and substitutes thereof in respect to the Project; and*

*(b) Pass any or such further orders as may be deemed fit and proper in the facts and circumstances of the case.”*

### **Hearing dated 12.7.2023**

3. The Petition was called out for hearing on 12.7.2023 after notice to the Respondents. Vide Record of Proceedings for the hearing dated 14.7.2023, the Respondents were granted an opportunity to file their respective replies within two weeks. However, no reply has been filed by the Respondents.

### **Analysis and Decision**

4. We have considered the submissions made by the Petitioner. The Petitioner had initially availed the financial assistance of Rs. 837,00,00,000 from a consortium of lenders to implement the Project. The Commission had approved the creation of a

security interest on the Petitioner's assets for such financial assistance vide orders dated 28.4.20217 in Petition No. 17/MP/2017 and 18.5.2017 in I.A. No. 24 of 2017 in Petition No. 17/MP/2017. The Petitioner further availed re-financing of Rs. 985,00,00,000 from a consortium of new lenders. The Commission approved the creation of security on the Petitioner's assets for the re-financed facility vide order dated 23.10.2021 in Petition No. 177/MP/2021.

5. The Petitioner has now once again refinanced the original loan with the issue of 91675 listed and non-convertible debentures of face value of Rs. 1,00,000 each, aggregating to Rs. 916,75,25,000 on the terms and conditions provided in the Debenture Trust Deed dated 16.1.2023 (hereinafter referred to as the "Debenture Trust Deed"). Catalyst Trusteeship Limited acts as a Debenture Trustee for the Debenture Holders pursuant to the trust created under the Debenture Trust Deed.

6. Pursuant to the terms of the Debenture Trust Deed dated 16.1.2023, the Petitioner has agreed to provide, *inter-alia*, the following security to secure the obligations (as defined in the Debenture Trust Deed) in favour of the Debenture Trustee for the benefit of the Debenture Holders on the following:

(a) a first charge, by way of mortgage, on all the immovable properties of Issuer, both present and future (if applicable), until the Final Settlement Date;

(b) a first charge on all the Issuer's tangible movable fixed assets, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets of the Issuer, both present and future, until the Final Settlement Date;

(c) a first charge over all accounts and all other bank accounts of the Issuer including the Escrow Account and the sub-accounts including the Debt Service Reserve Account (or any account in substitution thereof) that may be opened in accordance with this Agreement, the Escrow Agreement or any of

the other transaction documents and all funds from time to time deposited therein and all funds of the Issuer, the Project Proceeds and all Permitted Investments or other securities of the Issuer, both present and future, until the Final Settlement Date;

(d) a first charge over the current assets of the Issuer, both present and future, until the Final Settlement Date;

(e) a first charge on all revenues and receivables of the Issuer whether or not in the accounts, the book debts of the Issuer, the operating cash flows of the Issuer and all other commissions and revenues and cash of the Issuer, both present and future, until the Final Settlement Date;

(f) a first charge on all intangibles assets of the Issuer including but not limited to goodwill, rights, undertaking and uncalled capital of the Issuer, both present and future, until the Final Settlement Date;

(g) a first charge and/or assignment by way of security, until the Final Settlement Date in/over: (i) all the rights, title, interests, benefits, claims and demands whatsoever of the Issuer in the Project Documents, both present and future; (ii) the rights, title, interests and benefits of the Issuer in, to and under all the Clearances, to the extent permissible by Applicable Law, both present and future; (iii) all the rights (including right of way, if any, for transmission line up to the delivery point for electricity in relation to the Project), title, interests, benefits, claims and demands whatsoever of the Issuer in any letter of credit, guarantee and liquidated damages (including Contractual Damages) and performance bond provided by any party to the Project Documents, both present and future; and (iv) all the rights, title, interests, benefits, claims and demands whatsoever of the Issuer under all insurance contracts, both present and future;

(h) a first charge on letter of credit, if any or such other security provided by the Long-Term Transmission Customers directly in favour of the Issuer, both present and future.

7. The estimated cost of the Project and the means of financing as on the date of financial closure and the original financing plan agreed by the existing lenders as per the Common Loan Agreement are as under:

The original estimated cost of the Project (As per Agreement)	Rs. in Crore	Means of Finance (As per Agreement)	Rs. in Crore
Hard Cost	937.00	Equity share capital	194.00
IEDC	17.00	Equity share premium	00.00
IDC	98.00	Loan/Debenture from promoters, group companies	49.00
Contingency	26.00	Secured loan/debt from external sources	837.00
WC and DSRA	2.00	Others	0.00
<b>Total</b>	<b>1080.00</b>	<b>Total</b>	<b>1080.00</b>

8. The Petitioner has submitted the cost of the Project and the means of finance as on COD and on the date of application as under:

Particulars	As on COD	As on the 31.1.2023
Gross Block of Fixed Assets	1138	999
Loans and Advances to Promoter		241
Total	1138	1240
<b>Actual means of finance of the above cost duly certified by Auditor</b>		
Particulars	As on COD	As on the 31.01.2023
Equity Share Capital	194.00	194.00
Equity Share Premium	-	
Accumulated Profit	-	91.00
Loan/ Debenture from promoters, group companies	108.00	-
Secured loan/ debt from an External source	837.00	917.00
Other Liabilities	-0.48	38.00
<b>Total</b>	<b>1138</b>	<b>1240.00</b>

9. Details of new lenders after refinancing of the existing loan are as under:

Lender's Name	Sanction amount (as per agreement)	Amount Disbursed as on date
Catalyst Trusteeship Limited acting as Debenture Trustee on behalf of Debenture Holders	917.00	917.00

10. Vide RoP dated 12.7.2023, the Petitioner was directed to submit a copy of the 'No Objection Certificate' received from the previous lenders. The Petitioner has submitted the copies of 'No Objection Certificates' of the previous lenders on 17.7.2023 that have been taken on record.

11. We have considered the submissions made by the Petitioner. 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."*

As per the above provision, a licensee is required to obtain approval of the Commission before assigning his 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.

12. As per Article 15.2.2 of TSA, the Petitioner is required to obtain the prior approval of the Commission before creating any encumbrance over all or part of the receivables, letters of credit. or other assets of the transmission Project, in favour of its lenders or the representative of the lenders. Article 15.2.2 is extracted as under:

*"15.2.2. However, the TSP may create any encumbrance over all part of receivables, letter of credit or the other assets of the Project in favour of the Lenders or the Lender's representative on their behalf as security for amounts payable under the financing agreements and any other amounts agreed by the parties.*

*Provided that:*

*i. The lenders or the lenders' Representative on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and*

*ii. any encumbrance granted by the TSP in accordance with this Article 15.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on*

*their behalf agrees unconditionally with the TSP to release from such encumbrances upon payment by the TSP to the Lenders of all amounts due under the Financing Agreements.”*

13. The transmission projects are capital-intensive projects requiring large capital investments. These projects are financed through loans. It is normal practice followed by the 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, Debenture Holders have agreed to provide Rs. 916.75 crore and, for the said purpose, have entered into a Debenture Trust Deed on 16.1.2023 with the Petitioner. In the instant case, the Petitioner and the Debenture Holders have appointed Respondent No. 10, namely, Catalyst Trusteeship Limited, as a Debenture Trustee for the creation of a security over all the movable and immovable assets of the Project pursuant to the Debenture Trust Deed on 16.1.2023. In our view, Debenture Holders and Catalyst Trusteeship Limited need to be given comfort for creation of a security for the benefit of Debenture Holders as a security for the financial assistance provided by the Debenture Holders. We, therefore, accord approval for the substitution of existing lenders, namely, HDFC Bank Limited, Aseem Infrastructure Limited, NIIF Infrastructure Finance Limited, and ICICI Bank Limited with new lenders i.e. Debenture Holders who have agreed to refinance the projects/ transmission assets and accord in-principle approval for creation of a security interest in favour of the Debenture Trustee, namely, Catalyst Trusteeship Limited for the benefit of Debenture Holder(s).

14. This in-principle approval/approval is being approved with the condition that the transmission licence granted by the Commission to the Petitioner cannot be assigned in favour of the Debenture Trustee or a nominee of the Debenture Trustee without prior approval of the Commission at the time of creating rights in favour of such a nominee.



Before agreeing to transfer the licence and the assets of the Petitioner to the nominee of the Debenture Trustee, the Commission shall evaluate such a nominee`s experience in the development, design, construction, operation, and maintenance of transmission lines and whether he is able to execute the project and undertake the transmission of electricity. The licensee, Debenture Holders, Debenture Trustee and nominee, accordingly, shall be jointly required to approach the Commission to seek approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such a transfer. This decision of ours is in accordance with Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009, which reads as under:

*“12. Assignment of Licence*

*In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the licence to a nominee of the lenders.”*

15. Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, Debenture Holders, Debenture Trustee and the nominee, approve the assignment of the licence to a nominee of the lender subject to proper due diligence of the process. Therefore, specific prior approval of the Commission is always needed for assigning the licence to the nominee of the Debenture Trustee or transferring any assets to them. Lastly, financial documents and statements may be filed by the Petitioner as and when required by the Commission for any specific purpose.

16. The Petition No. 153/MP/2023 is disposed of in terms of the above findings.

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

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

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

sd/-  
**(Jishnu Barua)**  
Chairperson