

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 188/MP/2023

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

Date of Order: 10th 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 Petitioner No.1's assets in favour of the Petitioner No.2 (including its assignees, transferees, novates) in respect of the Petitioner No.1's Transmission Project.

And

In the matter of

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

Catalyst Trusteeship Limited,
810, 8th Floor, Kailash Building,
26, Kasturba Gandhi Marg,
New Delhi-110001

.....Petitioners

Versus

1. Chenab Valley Power Projects (P) Limited,
Chenab Jal Shakti Bhawan, Railhead Complex,
Opposite Saraswat Dham,
Jammu- 180012, J&K.

2. Jammu and Kashmir Power Development Department,
Civil Secretariat, Secretariat Road,
Pakki Dhaki, Old Heritage City,
Jammu, Jammu and Kashmir 180 001, J&K.

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

4. Central Transmission Utility of India Limited,
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk,
Gurgaon-122001, Haryana

.....Respondents

Parties present:

Shri Gaurav Dudeja, Advocate, KTL
Shri Dhruval Singh, Advocate, KTL
Shri Prateek Rai, KTL
Shri Rajiv Shankar Dvivedi, Advocate, CVPPL
Shri Amrik Singh, CVPPL
Shri Swapnil Verma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Ms. Ankita Singh, CTUIL

ORDER

The Petitioner, Kishtwar Transmission Limited (KTL), 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 for "Transmission Scheme for evacuation of power from Pakaldul HEP in Chenab Valley HEPS Connectivity System" (in short, '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 12.5.2023 in Petition No. 28/TL/2023.

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

secured properties and project assets. The Petitioners have made the following prayers:

“(a) Approve the creation of Security Interest, over all assets including the movable and immovable assets, accounts, project documents etc. of the Petitioner No. 1 and to the extent mentioned in paras 7 and 8 above, in favour of Petitioner No. 2, the Lender and for their subsequent transferees, assigns, novatees and substitutes, by way of mortgage/hypothecation/assignment of secured properties and project assets and for amendment of the security documents and any other Financing Agreements to include the assigns, transferees and novatees of the Lender; and

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

3. The First Petitioner has submitted that it approached Aseem Infrastructure Finance Limited (hereinafter also referred to as ‘the lenders’) for the purpose of part financial assistance in the form of a rupee term loan of Rs. 305 crore. The lender, vide its letter dated 12.9.2022, sanctioned a rupee term loan of Rs. 305 crore. In pursuance of the sanction letter issued by the lender, the First Petitioner entered into a Facility Agreement dated 23.12.2023 for availing a loan of Rs. 305 crore.

4. The First Petitioner has appointed the Second Petitioner, namely, Catalyst Trusteeship Limited (hereinafter also referred to as “the Security Trustee”) who has agreed to act as a Security Trustee for the benefit of the lender by entering into a Security Trustee Agreement dated 23.12.2023. The First Petitioner has submitted that, as of date, the lender has disbursed amounts equivalent to Rs.90 crore.

5. In pursuance of the Facility Agreement read with the Security Trustee Agreement dated 23.12.2023, the First Petitioner has agreed to provide, *inter-alia*, the following securities to secure the secured obligations in favour of a Security Trustee acting on behalf of the lender:

(a) A first ranking mortgage on Petitioner's immovable properties including but not limited to civil structures, towers and cables, office building, present & future, including right of way/land, if any for the Project (whether freehold or leasehold), together with all structures and appurtenances thereon.

(b) A first ranking Security Interest/ charge by way of hypothecation over Petitioner No. 1's moveable assets, including moveable plant and machinery, spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets of the Petitioner No. 1, both present and futures in relation to the Project;

(c) A first ranking Security Interest/ charge over Account and all other bank accounts of the Petitioner No. 1 including the DSRA (including DSR Amount maintained in any other form) and other reserves and sub-accounts (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 fund from time to time deposited therein and all Permitted Investments, both present and future, in relation to the Project;

(d) A first ranking Security Interest on all revenues and receivables of the Petitioner No. 1, book debts, operating cash flows and other commissions and cash of the Petitioner No. 1 of whatsoever nature and whenever arising, both present and future, in relation to the Project;

(e) A first ranking Security Interest/ charge on all intangible assets of the Petitioner No. 1 including but not limited to goodwill, rights, undertaking, intellectual property rights and uncalled capital of the Petitioner No. 1, both present and future, in relation to the Project;

(f) A first ranking Security Interest by way of Assignment/hypothecation or creation of charge, on:

(i) All the rights, title, benefits, claims and demands whatsoever of the Petitioner No. 1 in the Project Documents, both present and future, duly acknowledged and consented to by the counterparties to the Project Document (if such Project Document required prior consent of such

counterparties), all as amended, varied and supplemented from time to time;

(ii) The rights, title, claims interest and benefits of the Petitioner No. 1 in, to and under all the Approvals, both present and future, in relation to the Project;

(iii) All the rights, title, interests, benefits, claims and demands whatsoever of the Petitioner No. 1 in any letter of credit, guarantee, warranty (including contractor guarantees) and liquidated damages (including contractual damages) and performance bond provided by any counter-party to the Project Documents, both present and future;

(iv) All the rights, title, interest, benefits, claims and demand whatsoever of the Petitioner No. 1 under all Insurance Contracts obtained in favour of the Petitioner No. 1 in relation to the Project and Insurance Proceeds thereto, both present and future.

6. The First Petitioner has submitted that under the financial agreements and on enforcement of the security interest, it shall be lawful for the Security Trustee (the Respondent No.2) acting for the benefit of the Project lender, to enter into and take possession of the assets/ properties, mortgaged/ charged/ assigned for their benefits or its nominees for the Petitioner under any or all the Project document(s).

7. The Petitioner has submitted that Article 15.2.2 of the Transmission Service Agreement (TSA) entered into between the Petitioner and the LTTC provides that the Petitioner is free to create any encumbrance over all or part of the receivables, Letters of Credit or other assets of the Project in favour of the lenders or the representative of the lenders as a 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.”

8. 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, is seeking approval for the creation of security for the benefits of the Project lender. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for the creation of a security interest over all assets. including the movable and immovable assets for the Project in favour of the Security Trustee pursuant to the Security Trustee Agreement and Rupee Facility Agreement.

Hearing dated 12.7.2023

9. The Petition was called out for hearing on 12.7.2023 after notice to the Respondents. Vide Record of Proceedings for the hearing dated 12.7.2023, the Respondents were directed to file their replies. However, no reply has been filed by the Respondents within the due date.

Analysis and Decision

10. We have considered the submissions made by the Petitioner. The Petitioner approached a lender, namely, Aseem Infrastructure Finance Limited, for a rupee term loan to finance the Project. The lender has agreed to grant a rupee term loan of Rs. 305 crore to the Petitioner subject to the terms and conditions set out in the Rupee Facility Agreement dated 23.12.2022.

11. As per the Rupee Facility Agreement, the estimated cost of the Project is Rs. 406.67 crore. In terms of the financing plan enclosed as Schedule XII of the Rupee Facility Agreement, the Project shall be funded through debt of Rs. 305 crore and equity of Rs. 111.76 crore. The Petitioner has submitted the following details, as per the Auditor's Certificate dated 4.5.2023, for capital expenditure of Rs. 120.57 crore incurred for its under construction Project till 4.5.2023.

Particular	(Rs. in crore)	
	Sanction	Incurred
Equity Share Capital	25.42	25.42
Promoter Loan	76.25	5.15
Term loan	305.00	90.00
Total	406.67	120.57

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

Original estimated Project cost (as per agreement)	Rs. in crore	Means of finance (as per agreement)	Rs. in crore
Hard Cost	351.36	Equity share capital / Share Premium	25.42
IEDC	11.51	Promoter Loan	76.25
IDC	43.80	Long Term Loan-Secured	305.00
Contingency	-		-
Total	406.67	Total	406.67

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

Name of lender	Sanctioned loan (as per loan Agreement)	Actual loan disbursed (as of date of application)
Aseem Infrastructure Finance Limited	305.00	90.00
Total	305.00	90.00

14. The transmission projects are capital-intensive projects requiring huge capital investments 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, Aseem Infrastructure Finance Limited. has agreed to provide a loan of Rs. 305 crore to the Petitioner. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create an encumbrance over all or part of the receivables, Letters of Credit, or other assets of the Project in favour of the lenders or the lender's representatives as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

15. Sub-sections (3) and (4) of Section 17 of the Act provide as under:

“17. (3) No licensee shall any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement relating to any transaction specified in sub-section (1) or subsection (3), unless made with the prior approval of the Appropriate Commission, shall be void.”

16. As per the above provisions, a licensee is required to obtain approval of the Commission before assigning its licence or transferring its utility or any part thereof by way of sale, lease, exchange, or otherwise and entering into an agreement relating to any of these transactions.

17. The Petitioner and the lender, Aseem Infrastructure Finance Limited, have appointed Catalyst Trusteeship Limited as Security Trustee for the creation of security over all the movable and immovable assets of the Project. Accordingly, the Security Trustee Agreement and Rupee Facility Agreement dated 23.12.2023, have been executed for a loan of Rs. 305 crore. As per the Security Trustee Agreement dated 23.12.2023, at the request of the Petitioner, the lender has agreed to provide a loan of

Rs. 305 crore for the Project on the terms and conditions contained in the Facility Agreement and Security Trustee Agreement. In our view, Catalyst Trusteeship Limited needs to be given comfort for the creation of a security for the benefit of the lender as security for the financial assistance provided by the lender. We, therefore, accord in-principle approval allowing the Petitioner to create a security interest in favour of Catalyst Trusteeship Limited, by way of mortgage/ hypothecation on Project assets by execution of an Indenture of Mortgage and financing documents of the Project. The Petitioner is directed to submit a signed copy of the Indenture of Mortgage for the Project immediately after its execution.

18. This in-principle 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 Security Trustee or nominee of the lender without prior approval of the Commission at the time of creating rights in favour of such a nominee. Before agreeing to the assignment of the licence and the assets of the Petitioner to the nominee of the lender, the Commission will 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, lenders, security 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.”

19. Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lender, Security Trustee, and 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 lenders 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.

20. Petition No. 188/MP/2023 is allowed in terms of the above.

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

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

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

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