



Petition No 429/MP/2024

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order 24th March, 2025

In the matter of

Petition for approval under Section 17 (3) and Section 17 (4) of the Electricity Act, 2003 read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2024 for creation of security interest by way of hypothecation, charge or assignment over rights, title, interest, claims, demands, benefits under, clearance, project documents (except fixed assets), agreements and approvals of Kohima Mariani Transmission Limited in favour of the Debenture Trustee, i.e., Axis Trustee Services Limited and for approval of documents creating security and of other documents in relation to the financing of the Transmission Project build, owned, operated and maintained by Kohima Mariani Transmission Limited.

And

In the matter of

Kohima-Mariani Transmission Limited,
Plot No. D-1, 3rd Floor, Salcon Ras Vilas,
District Centre, Saket, New Delhi-110017.

Address for Correspondence:

7th Floor, FULCRUM,
Sahar Road, Andheri (East),
Mumbai, Maharashtra

.....Petitioner

Versus

- 1. Department of Power, Government of Arunachal Pradesh,**
Vidyut Bhawan, NH 52A, Cona,
Itanagar-79113, Arunachal Pradesh.
- 2. Assam Electricity Grid Corporation Limited,**



1st Floor, Bijulee Bhawan,
Paltan Bazar, Guwahati-781001, Assam.

3. **Manipur State Power Distribution Company Limited,**
Electricity Complex, Patta No. 1293, under 87(2), Khwai Bazar,
Keishamp District- Imphal West-795001, Manipur.
 4. **Meghalaya Energy Corporation Limited,**
Lumjingshai, Short Round Road,
Shillong-793001, Meghalaya.
 5. **Department of Power, Government of Mizoram,**
Kawlphetra Building,
New Secretariat Complex, Khatla,
Aizwal-796001, Mizoram.
 6. **Department of Power, Government of Nagaland,**
Electricity House, A.G. Colony,
Kohima-797001, Nagaland.
 7. **Tripura State Electricity Corporation Limited,**
Bidyut Bhaban, Banamalipur,
Agartala-799006, Tripura.
 8. **Axis Trustee Services Limited,**
Axis House, Bombay Dyeing Mills Compound,
Pandurang Budhkar Marg,
Worli, Mumbai-400025, Maharashtra.
 9. **HDFC Bank Limited,**
HDFC Bank House,
Senapati Bapat Marg,
Lower Parel, Mumbai-400013.
 10. **Axis Bank Limited,**
Trishul', 3rd Floor, Opposite Samartheshwar Temple,
Law Garden, Ellis Bridge, Ahmedabad-380006.
 11. **NIIF Infrastructure Finance Limited,**
3rd Floor, North Wing, UTI Tower,
GN-Block, Bandra Kurla Complex,
Bandra East, Mumbai-400051.
-**Respondents**

Parties present:

Shri Aniket Prasoon, Advocate, KMTL
Shri Vinit Kumar, Advocate, KMTL



ORDER

The Petitioner, Kohima Mariani Transmission Limited (hereinafter referred to as 'the Petitioner/KMTL'), has been granted a transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Electricity Act') to establish the "Transmission of electricity for North Eastern Region Strengthening Scheme-VI (NERSS-VI)" (hereinafter referred to as 'the Transmission System' or 'Project'), the details of which are specified in the schedule attached to the licence issued vide order dated 10.7.2017 in Petition No. 89/TL/2017.

2. The Petitioner has filed the present Petition for approval for the creation and perfection of a Security Interest in terms of the Debenture Trust Deed through the mortgage, hypothecation, charge, or assignment over rights, title, interest, claims, demands, benefits under, clearance, project documents, agreements, and approvals (with the exception of security over the fixed assets) of the Petitioner in favour of the Axis Trustee Services Limited (Respondent No. 8). Additionally, the Petitioner has requested for the approval of documents that create security as well as other documents pertaining to the debenture facility. The Petitioner has made the following prayers:

"(i) Creation and perfection of security interest in terms of the Debenture Trust Deed by way of mortgage, hypothecation, charge or assignment over rights, title, interest, claims, demands, benefits under, clearance, project documents, agreements and approvals (except security over the movable and immovable fixed assets) of the Petitioner in favour of the Respondent No. 8 (acting as the Debenture Trustee for the benefit of the Debenture Holder and for its successors, subsequent transferees, novatees, assigns) and for approval of documents creating security and of other documents relating to the debenture facility;

(ii) The security documents and other documents relating to the Debenture II and execution thereof for creation and perfection of the aforesaid security interest in favour of the Respondent No. 8 (acting as the Debenture Trustee);



(iii) Condone any inadvertent omissions/ errors/ shortcomings and permit to add, change, modify or alter this filing and make further submissions as may be required at a future date; and

(iv) Grant such order, further relief(s) in the facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Petitioner."

Background

3. The Petitioner has executed a Transmission Service Agreement (TSA) on 20.09.2016 with Long-Term Transmission Customers (Respondent Nos. 1 to 7) for the purpose of obtaining transmission services related to the subject Transmission System.

4. The Petitioner has submitted that the subject Transmission System was commissioned on 31.12.2020. In pursuit of funding for the project, the Petitioner had obtained financial support from various lending institutions. In response, a consortium of five lenders, led by Axis Bank Limited (hereinafter referred to as "Earlier Lenders," which includes their novatees, assignees, transferees, and successors), has extended a rupee term loan amounting to Rs.994.67 crores (hereinafter referred to as the "Earlier Loan Facility"). The facility in question encompasses non-fund-based sub-limits amounting to Rs.597 crores, which are constituted by letters of credit, letters of commitment, bank guarantees, and other documentary credits, all as sanctioned by the lenders involved. Axis Bank Limited served in the capacity of facility agent for the consortium.

5. The Commission, vide order dated 12.03.2019, in Petition No. 381/MP/2018, along with the corrigendum order dated 5.4.2019, had accorded in-principle approval in term of Sections 17(3) and 17(4) of the Electricity Act for the creation of a security interest. The aforementioned encompasses mortgage, hypothecation, charge, or

assignment pertaining to all movable and immovable assets of the Petitioner. This includes rights, title, interest, claims, and benefits associated with mortgaged properties, project assets, clearances, project documents, agreements, and approvals. The Petitioner appointed Axis Trustee Services Limited (Respondent No. 8) as a Security Trustee in favour of the Earlier Lenders.

6. The Petitioner, Kalpataru Power Transmission Limited, in conjunction with Apraava Energy Private Limited (previously known as CLP India Private Limited) and Techno Electric and Engineering Company Limited, entered into a Share Purchase and Shareholders Agreement on 03.07.2019, which was subsequently amended on 10.12.2021. In accordance with the provisions of this agreement, all shares, constituting 100% ownership of the Petitioner, held by Kalpataru Power Transmission Limited and Techno Electric and Engineering Company Limited, shall be transferred to Apraava Energy Private Limited, pursuant to the following terms outlined in the Transmission Service Agreement and within the designated timeline:

S. No.	Event	Percentage of equity shares of the Petitioner transferred/ being transferred	Balance shareholding with Kalpataru Power Transmission Limited
1.	-	49% has already been transferred on December 20, 2021, by Kalpataru Power Transmission Limited and Techno Electric and Engineering Company Limited to Apraava Energy Private Limited	51%
2.	On the expiry of 2 (two) years from COD and receipt of approval/ consent from long term transmission customer	25% will be transferred by Kalpataru Power Transmission Limited to Apraava Energy Private Limited	26%
3.	On the expiry of 5 (five) years from COD and receipt of approval/ consent from long term transmission customer	26% will be transferred by Kalpataru Power Transmission Limited to Apraava Energy Private Limited	NIL

7. Thereafter, on 19.02.2021, the Petitioner requested financial assistance for a working capital facility from Axis Bank Limited (hereinafter referred to as the “Working Capital Lender”). The Working Capital Lender vide its letter dated 12.2.2021 consented to make available financial assistance of Rs. 22 crores as a working capital facility, on the terms and conditions set out in the Working Capital Security Trustee Agreement dated 24.03.2021 (“WC Security Agreement”).

8. The Commission, vide its order dated 23.10.2021 in Petition No. 191/MP/2021, provided in-principle approval pursuant to Sections 17(3) and 17(4) of the Electricity Act for the establishment of security via a mortgage on project assets facilitating a working capital facility not exceeding Rs. 22 crores. Subsequently, the Petitioner surrendered this facility in December 2021.

9. According to the Petitioner, in pursuit of a more efficient capital structure for the Project, the Petitioner requested HDFC Bank Limited, Axis Bank Limited, and NIIF Infrastructure Finance Limited (hereinafter referred to as “Rupee Lenders”) to extend a rupee term loan in the aggregate principal amount of Rs. 1,050 crores (hereinafter referred to as “Rupee Facility”) for the purpose of, *inter alia*, refinancing the outstanding obligations of the Earlier Lenders in relation to the Earlier Loan Facility. In accordance with the aforementioned, the Rupee Lenders, through the subsequent sanction letters, have approved the rupee term loan for a total principal amount of Rs. 1050 crores. (“Rupee Facility Sanction Letters”): (i) Sanction letter dated 27.01.2022, issued by HDFC Bank Limited, reference number HDFC/IB/PSF/KMTL/01/06; (ii) Sanction letter dated 12.01.2022, issued by Axis Bank Limited, reference number AXISB/CO/MNC/2021-22/131; and (iii) Sanction letter dated 16.11.2021, issued by NIIF Infrastructure Finance Limited.

10. Furthermore, the Petitioner also requested Axis Bank Limited (“Debenture Holder,” encompassing its successors, transferees, novatees, and assigns) for the subscription of up to 3,000 unlisted, secured, senior, rated, freely transferable, redeemable, non-convertible debentures, each possessing a face value of ₹10 lakh, to be issued at par. The purpose of this issuance was to facilitate the refinancing of obligations owed to the Previous Lenders. The Debenture Holder has sanctioned a debenture facility amounting to Rs. 300 crores (hereinafter referred to as “Debentures-I”). The Rupee Facility and Debentures-I shall hereinafter be collectively referred to as the “Project Facilities.”

11. In light of the aforementioned circumstances, the Petitioner filed Petition No. 152/MP/2022 under Section 17(3) and Section 17(4) of the Electricity Act seeking in-principle approval for creation of a security interest by way of mortgage, hypothecation, charge or assignment over all the movable and immovable assets including over rights, title, interest, claims, demands, benefits under mortgaged properties, project assets, clearance, project documents, agreements and approvals of the Petitioner in favour of Axis Trustee Services Limited (Respondent No. 8). The Commission, vide order dated 30.08.2022, in Petition No. 152/MP/2022, granted in-principle approval for creation of security interest for the same.

12. Thereafter, the Petitioner filed Petition No. 164/MP/2021 under Section 79 of the Electricity Act seeking (i) an extension of the Scheduled Commercial Operation Date (“SCOD”) based on the factors beyond the control of the Petitioner and (ii) relief on account of Change in Law events. The request for an extension of the SCOD was made in light of delays attributable to (i) the COVID-19 pandemic, (ii) significant rainfall and Right of Way (RoW) complications, and (iii) the inability of Power Grid Corporation

of India ("PGCIL") to furnish the necessary interconnection facilities. The Commission, vide order dated 26.02.2023 in Petition No. 164/MP/2021, granted an extension of the SCOD until 31.12.2020, and had partially approved relief pertaining to events related to the Change in Law.

13. Pursuant to the Commission's order dated 26.02.2023 in Petition No. 164/MP/2021, the Petitioner requested investors, including Axis Corporate Debt Fund, Axis Credit Risk Fund, and ICICI Prudential Mutual Fund (hereinafter referred to as "New Debenture Holders") to subscribe to an issue of Rupee denominated, senior, unsecured, listed, rated, redeemable, and non-convertible 27,500 debentures, each having a face value of Rs. 1,00,000/- at par, for an aggregate subscription amount of Rs. 275 crores in dematerialized form ("hereinafter referred to as Debenture-II").

14. According to the Petitioner, for the purpose of Debenture-II, Axis Trustee Services Limited (Respondent No. 8), in its capacity as Debenture Trustee and as the Security Trustee, has issued a consent letter to act as Debenture Trustee on 19.06.2024 (in short as "Debentures Consent Letter"). Thereafter, the Debentures-II has been issued in accordance with the term sheet in the placement memorandum - key information document dated 05.07.2024 filed with the National Stock Exchange (hereinafter referred to as "Placement Memorandum - KID"). The following financing documents have been executed in connection with the issuance of Debentures-II:

- (i) Debenture Trust Deed dated 12.7.2024 executed between the Petitioner and Respondent No. 8 (hereinafter referred to as "Debenture Trust Deed"); and
- (ii) Debenture Trustee Agreement dated 28.6.2024 executed between the Petitioner and Respondent No. 8 (hereinafter referred to as "Debenture Trustee Agreement")

15. As per the Debenture Trust Deed, the Petitioner has agreed to provide the following security to secure the Debenture-II:

- (i) A first ranking security interest by way of hypothecation, over all Petitioner's present and future intangible assets including goodwill, undertaking and uncalled capital of the project, present and future;
- (ii) A first ranking security interest on all of the Petitioner's current and non-current assets (other than movable fixed assets) including operating cash flows, receivables, commissions, revenues of whatsoever nature and wherever arising, present and future;
- (iii) A first ranking security interest over all the accounts and sub-accounts under the Escrow Account (save and except the Distribution Escrow Sub-Account) including the Debt Service Reserve Escrow Sub-Account and all other reserves and bank accounts of the Company, wherever maintained and each account required to be opened by the Company under the Project Documents.
- (iv) A first ranking security interest by assignment by way of security or charge by hypothecation over (i) all the right, title, interest, benefits, claims and demands whatsoever of the Petitioner in the Project Documents (excluding Land Documents), as amended, varied or supplemented 'from time to time; (ii) all the rights, title, interest, benefits, claims and demands whatsoever of the Petitioner in the clearances in respect of the Project; (iii) all the right title, interest, benefits, claims and demands whatsoever of the Petitioner in any letter of credit, guarantee, performance bond provided by any party to the Project Documents (excluding Land Documents), and (iv) all insurance contracts/insurance proceeds, if applicable, in respect of the Project, and;
- (v) A first ranking security interest on Letter of Credit if any or such other security provided by the Long-Term Transmission Customers (LTTC) directly in favor of the Borrower, wherever maintained.

16. The Petitioner has submitted that the security interest to be created in the manner set out above is proposed to be held by the Security Trustee and shared on a *pari passu* basis with the Rupee Lenders and Debenture Holder. In view thereof, to extend the benefit of the security in favour of the New Debenture Holders and to appoint the Security Trustee as the Common Security Trustee, the Petitioner and Security Trustee executed the amended and restated Common Security Trustee Agreement dated 14.09.2024.

17. The Petitioner has submitted that under the financial agreements and on enforcement of the security interest, it shall be lawful for the Security Trustee, i.e. Respondent No. 8 acting for the benefit of the New Debenture Holders, to enter into and take possession of the security interest hypothecated/charged/assigned for their benefit and substitute themselves or any of them or its nominees for the Petitioner under any or all of the Projects Documents (excluding Land Documents).

18. The Petitioner has submitted that to create the aforementioned security for securing the outstanding in relation to the debenture facility, the following documents are proposed to be executed:

- (i) Unattested Deed of Hypothecation to be executed by the Petitioner in favour of Respondent No. 8 ("Unattested Deed of Hypothecation") and;
- (ii) Power of Attorney to be executed by the Petitioner in favour of Respondent No. 8 in relation to Unattested Deed of Hypothecation ("Power of Attorney - Hypothecation");

19. The Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement entered into between the Petitioner and the beneficiaries of the project provides 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 the amount payable under the Financing Agreements and any other amounts agreed by the parties. The Petitioner has submitted that in terms of Article 15 of the TSA, the Petitioner is required to take permission from this Commission prior to relinquishing or transferring its rights and obligations in the TSA.

20. The Petitioner has further submitted that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, the Petitioner, as a licensee, cannot create a Security in favour of and/or for the benefit of the Debenture Holder pursuant to an amended and restated Common Security Trustee Agreement dated 14.9.2024 without the approval of this Commission. Accordingly, the Petitioner has filed the present Petition seeking approval of the Commission for the creation and perfection of Security Interest in terms of the Debenture Trust Deed by way of the mortgage, hypothecation, charge or assignment over rights, title, interest, claims, demands, benefits under, clearance, project documents, agreements and approvals (except security over the fixed assets) in favour of the Axis Trustee Services Limited (Respondent No. 8). The Petitioner has also sought approval of the documents creating such security and of other documents relating to the debenture facility.

Hearing dated 28.1.2025

21. The matter was admitted on 21.1.2025, and notices were issued to the parties to file their respective replies. However, no reply has been filed by the Respondents.

22. Vide Record of Proceedings for the hearing on 28.1.2025, the Petitioner was directed to file the following information on an affidavit within two weeks with a copy to the Respondents:

- (i) Statement of Sources of funds and application of Funds as on date of submission of the Petition;
- (ii) Details of original Project cost and revised cost due to Change in Law or any other reason; and
- (iii) Details of end use of the Debenture-II.

23. The Petitioner, vide affidavit dated 14.02.2025, in compliance with the Record of Proceedings dated 28.01.2025, has submitted the requisite information, which has been placed on record.

Hearing dated 11.3.2025

24. During the course of the hearing, the learned counsel for the Petitioner submitted that the Petitioner had filed a compliance affidavit dated 14.02.2025 in adherence to the directions issued vide Record of Proceedings dated 28.01.2025. He further submitted that, as recorded in the proceedings of 28.01.2025, the Respondents were granted an opportunity to file their replies, if any. However, no reply has been filed by the Respondents, nor did any representative appear on their behalf during the hearing on 11.03.2025, despite due notice. Considering the submissions of the parties, the matter was reserved for orders. The learned counsel for the Petitioner also requested an expeditious approval for the creation of security interest as prayed for in the Petition.

Analysis and Decision

25. We have considered the submissions made by the Petitioner and perused the documents available on the record. The Petitioner approached the lender for the purpose of financing in the implementation of the Project. A consortium of five lenders led by Axis Bank Limited (collectively referred to as “**Earlier Lenders**”, which expression shall include their respective novatees, assignees, transferees, and

successors) had made available to the Petitioner financial assistance by way of rupee term loan to the extent of Rs. 994. 67 crores for the Project (“**Earlier Loan Facility**”). The existing Loan Facility also included non-fund-based facilities of Rs. 597 crores as sub-limits in the form of letters of credit, letters of commitment, bank guarantees, and all other such documentary credit as permitted by the Earlier Lenders.

26. The Petitioner has submitted that the present Petition has been filed for approval under Section 17(3) and Section 17(4) of the Electricity Act for the creation of the security interest in favour of the Debenture Trustee, i.e., Axis Trustee Services Limited (Respondent No. 8) and for approval of documents creating security in relation to the request made to investors including Axis Corporate Debt Fund, Axis Credit Risk Fund and ICICI Prudential Mutual Fund (“**New Debenture Holders**”) for Rupee denominated, senior, unsecured, listed, rated, redeemable, non-convertible 27,500 debentures, each having a face value of Rs. one lakh at par, for an aggregate subscription amount of Rs. 275 crores, in dematerialized form.

27. The Petitioner has submitted the details of the original Project cost and revised cost due to Change in Law or any other reason as tabulated below:

Particulars	Original Project Cost Rs. in crores)	Final Project Cost As on 05.10.2024 (Rs. in crores)
EPC cost for Transmission Line	675.26	694.88
Right of Way	143.74	159.75
Substation Cost	250.00	285.87
Preliminary Expenses & Other Misc. Cost	20.86	23.04
SPV Acquisition Cost	14.32	14.32
Interest During Construction paid/payable to Bankers	133.95	112.52
Margin Money for Working Capital	2.55	-
Contingencies	42.76	-
Land Compensation	-	75.00
Crop Compensation	-	2.60
Interest on Delayed Payment to EPC Contractors	-	34.50
Others Additional Claims	-	127.11

Total Project Cost	1283.44	1,529.59
Interest to sponsors on sub-ordinate debt	-	10.31
Total Project Cost	1283.44	1,539.90

28. The Petitioner has further submitted that it has secured funds of Rs. 1539.90 crores as on 05.10.2024 from the following sources:

Sources of Funds	Original Project Cost (Rs. in crores)	Final Project Cost As on 05.10.2024 Rs.in crores)
Particulars		
<u>Equity Share Capital</u>		
Promoter's Equity (including Security Premium)	256.69	256.59
Subordinate Debt by sponsors of the Company	32.09	48.76
<u>Debt</u>		
Long Term Debt	994.66	994.44
Interest payable to the sponsors on Subordinate debt	-	9.34
Other net current (Assets)/liabilities	-	230.77
Total Sources of Funds	1,283.44	1,539.90

29. The Petitioner, Kalpataru Power Transmission Limited (“**KPTL**”), Apraava Energy Private Limited (*formerly known as CLP India Private Limited*), and Techno Electric and Engineering Company Limited (“**TEEC**”) had executed a Share Purchase, and Shareholders Agreement dated 03.07.2019 (as amended on 10.12.2021) pursuant to which 100% shares of the Petitioner held by Kalpataru Power Transmission Limited and Techno Electric and Engineering Company Limited is to be transferred to Apraava Energy Private Limited.

30. The Petitioner has submitted that 49% of equity was transferred on 20.12.2021 by KPTL and TEEC to Apraava Energy Private Limited. Thereafter, 25% of equity was transferred by KPTL and TEEC to Apraava Energy Private Limited upon expiry of two years from the Commercial Operation Date (“**COD**”) and receipt of approval/ consent from the long-term transmission customer.

31. The Petitioner has submitted that the Project/Transmission System was commissioned on 10.12.2020. However, given the facts of the matter in Petition No. 164/MP/2021, the Commission, *vide* its order dated 26.02.2023, determined that the COD of the Project to be 31.12.2020. Therefore, for all commercial purposes, the COD of the Project has been decided as 31.12.2020.

32. The Petitioner has submitted that on account of the CIL events it incurred additional expenditure during the implementation of the Project, which was borne by KPTL. Pursuant to the Order dated 26.2.2023, in Petition No. 164/MP/2021, the Commission partly allowed relief on account of the CIL events, and accordingly, the tariff was revised for the Project for the duration of the TSA.

33. The Petitioner has submitted that, in accordance with the provisions of the Share Purchase and Shareholders Agreement, the Petitioner had to reimburse the amount to KPTL and TEEC incurred by them during the Project implementation on account of the CIL events. With the additional cash flows, by way of the additional monthly tariff, the Petitioner was entitled to raise additional debt funding from the lenders/investors to fund this reimbursement to KPTL and TEEC.

34. The Petitioner has submitted that the funds raised through the subscription of Debentures-II have not been utilized towards Project Cost but for the reimbursement to KPTL and TEEC towards costs incurred by them during the Project implementation on account of the CIL events. The details of the end-use of the Debentures-II are as under:

Particulars	(Rs in crores)	(Rs. in crores)
Inflow of funds through subscription of Debentures-II	275.00	

End use of the funds		
Payment to the Sponsor by way of unsecured loan		275.00

35. The Petitioner has submitted that in terms of the Financing documents, the Petitioner is required to create a Security Interest on a first charge basis for the lender. The Petitioner has submitted that under the Financing Agreements and on enforcement of a security interest, it shall be lawful for the lender and its assigns, transferees, and novates to enter into and take possession of the assets/properties mortgaged/hypothecated/charges assigned for their benefits and substitute themselves or any one of them or its nominees for the Petitioner under any or all of the project document(s). Article 15.2.2 of the TSA provides as under:

“15.2.2 However, the TSP may create any encumbrance over all or part of the receivables, or the Project Assets of the Project in favour of the Lenders or the Lenders' 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.”*

In accordance with the above provision, 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 lenders' representatives or their representatives, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

36. Article 15.3 of the TSA provides as under:

“15.3 Substitution Rights of the Lenders:

15.3.1 The TSP would need to operate and maintain the Project under the provisions of this Agreement and cannot assign the Transmission License or transfer the Project or part thereof to any person by sale, lease, exchange or otherwise, without the prior approval of the Nodal Agency.

15.3.2 However, in the case of default by the TSP in debt repayments or in the case of default by the TSP as per Article 13 of this Agreement during the debt repayments, the Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfilment of the qualification requirements and provisions of the Central Electricity Regulatory Commission (Procedure, terms and Conditions for grant of Transmission License and other related matters) Regulations, 2006 and as amended from time to time.”

37. 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 hereof, 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 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.

38. In the context of the present Petition dealing with the issuance of Debenture-II, the Petitioner and the Axis Bank Limited have appointed Axis Trustee Services Limited as a Security Trustee for the creation of a Security Interest over all the movable and immovable assets of the project. In our view, Axis Trustee Services Limited needs to be given comfort for the creation of security for the benefit of the lender, Axis Bank Limited as the security for the financial assistance provided by it. We, therefore, accord in-principle approval allowing the Petitioner to create a Security Interest in terms of the

Debenture Trust Deed in favour of the Axis Trustee Services Limited (acting as the Debenture Trustee for the benefit of the Debenture Holder and for its successors, subsequent transferees, novatees, assigns) by way of mortgage or any other security document 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.

39. 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 expertise in the development, design, construction, operation, and maintenance of the transmission lines and its ability to execute the Project and undertake the transmission of electricity. The licensee, lender, security trustee, and nominee, accordingly, shall be jointly required to approach the Commission to seek approval. This will allow the Commission to satisfy itself of the circumstances necessitating such a transfer. This decision of ours is in accordance with Regulation 8 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2024, which reads as under:

"8. Assignment of Licence

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

40. 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 subject to the proper due diligence of the process. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of Security Trustee or transferring any assets to them is a mandatory requirement. Lastly, the financial documents and statements are to be filed by the Petitioner as and when directed by the Commission.

41. Petition No. 429/MP/2024 is disposed of in terms of the above.

Sd/-	sd/-	sd/-	sd/-
(Ravinder Singh Dhillon)	(Harish Dudani)	(Ramesh Babu V.)	(Jishnu Barua)
Member	Member	Member	Chairperson

