

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 34 of 2021

Case of Adani Electricity Mumbai Ltd-Distribution (AEML-D) for taking on record changes in the group of lenders of AEML-D and the capacity of SBICAP Trustee Company Ltd. as the security trustee acting for the benefit of such lenders

And

Case No. 35 of 2021

Case of Adani Electricity Mumbai Ltd-Transmission (AEML-T) for taking on record changes in the group of lenders of AEML-T and the capacity of SBICAP Trustee Company Ltd. as the security trustee acting for the benefit of such lenders

Adani Electricity Mumbai Ltd- Distribution	.....Petitioner in Case No. 34 of 2021
Adani Electricity Mumbai Ltd- Transmission	.....Petitioner in Case No. 35 of 2021
	Respondents in Case No. 34 and 35 of 2021
SBICAP Trustee Company Ltd.	..... Respondent No.1
HDFC Bank Ltd.	..... Respondent No. 2
DBS Bank India Limited	..... Respondent No. 3
CitiBank N.A.	..... Respondent No. 4
Qatar National Bank (Q.P.S.C)	..... Respondent No. 5
Barclays Bank PLC	..... Respondent No. 6
Standard Chartered Bank	..... Respondent No. 7
Madison Pacific Trust Limited	..... Respondent No. 8
Citicorp International Limited	..... Respondent No. 9
Credit Suisse AG	..... Respondent No. 10
Deutsche Bank AG	..... Respondent No. 11

MUFG Bank Ltd. Respondent No. 12
JP Morgan Chase Bank N.A Respondent No. 13
Emirates NBD Bank PJSC Respondent No. 14

Appearance:

For Adani Electricity Mumbai Ltd. – Distribution and
Adani Electricity Mumbai Ltd.- TransmissionShri Kishor Patil (Rep.)

Coram

Shri Sanjay Kumar, Chairperson
Shri I. M. Bohari, Member
Shri Mukesh Khullar, Member

ORDER

Date: 1 June, 2021

1. Adani Electricity Mumbai Ltd. (**AEML**) has filed two Cases (Case No. 34 of 2021 for its Distribution Business and Case No. 35 of 2021 for its Transmission Business) on 25 March 2021 for taking on record changes in the group of lenders of AEML and the capacity of SBICAP Trustee Company Limited as the security trustee acting for the benefit of such lenders. The Petitioner has invoked Section 17(3) of the Electricity Act 2003 (**EA**) for seeking its relief and further stated that the Petitions have been filed in terms of the directions issued in Orders dated 2 January 2019 passed by the Commission in Case No. 311 of 2018 and in Case No. 341 of 2018. Since the prayers, issues and the Parties involved are same, both these Cases are being dealt with by the Commission in a combined manner.
2. **AEML's main prayers in Case No. 34 of 2021 and 35 of 2021 are as follows:**
 - i. *take on record the changes in lenders of AEML as shown in para 5 for whose benefit the Distribution License shall continue to be assigned (through the Security Trustee acting for the benefit of such Lenders) for the purpose of the permission that the Hon'ble Commission was pleased to grant vide its order dated 02.01.2019 in Case 341 of 2018.*
 - ii. *take on record the changes in lenders of AEML as shown in para 5 for whose benefit the Transmission License shall continue to be assigned (through the Security Trustee acting for the benefit of such Lenders) for the purpose of the permission that the Hon'ble Commission was pleased to grant vide its order dated 02.01.2019 in Case 311 of 2018.*

3. **AEML's Cases state as follows:**

3.1 AEML had filed its Petitions (Case No. 341 of 2018 for Distribution Business and Case No. 311 of 2018 for Transmission Business), seeking approval for the assignment of AEML's Distribution and Transmission Licences in favour of SBICAP Trustee Company Ltd., acting as the security trustee (**Security Trustee**) for the benefit of the previous lenders (**Previous Lenders**) of AEML. The respondents to those Petitions at that time were Security Trustee and respective Previous Lenders and the corresponding novates and assignees of such Previous Lenders who enjoyed the benefit of assignment of the Licences. The list of Previous Lenders is as under:

Sr. No.	Trustee / Member Lenders	Facility Type
1	SBICAP Trustee Company Limited	Trustee
2	State Bank of India	Rupee Term Loan, CAPEX Term Loan, Working Capital (WC)
3	Yes Bank Limited	Rupee Term Loan, CAPEX Term Loan, Working Capital
4	Bank of India	Rupee Term Loan
5	ICICI Bank Ltd	Rupee Term Loan
6	HDFC Bank Ltd	Rupee Term Loan, Working Capital

3.2 The Commission, vide its separate Orders dated 2 January 2019 in Case No. 311 of 2018 and 341 of 2018, granted its approval for the assignment of AEML's Transmission and Distribution Licence respectively, in favour of Security Trustee for the benefit of the aforesaid Previous Lenders.

3.3 Now, AEML has availed and/or is in the process of availing loans (**Loans**) from other lenders (**Lenders**) to fund financing requirements of AEML including capital expenditure, refinancing of existing term loans and working capital loan etc. The Commission is requested to take note of the refinancing and/or prepayment and/or repayment of the Previous Lenders and addition/deletion of the Lenders.

3.4 Further to the aforesaid, the consortium of the current Lenders who have and/or are in the process of providing facilities for inter alia refinancing of existing term loans, funding further capital expenditure, tying up working capital limits and/or providing hedging limits for foreign currency borrowings are as under:

Sr. No.	Trustee / Member Lenders	Facility Type	Changes / Remark
1	SBICAP Trustee Company Ltd.	Trustee	Trustee
2	HDFC Bank Ltd.	WC	Existing Lender with new WC facility
3	DBS Bank India Ltd.	WC and Hedging	Existing Lender continuing in the current

Sr. No.	Trustee / Member Lenders	Facility Type	Changes / Remark
			facility of WC and New lender for Hedging
4	CitiBank N.A.	WC and Hedging	New Lender
5	Qatar National Bank(Q.P.S.C)	WC	New Lender
6.	Barclays Bank PLC	WC and Hedging	New Lender
7.	Standard Chartered Bank	WC and Hedging	New Lender
8	Madison Pacific Trust Ltd. (Acting on behalf of various USD Bond Holders)	USD Bonds	USD 1 Billion Bonds Trustee (Acting on behalf of various Bond Holders)
9	Citicorp International Ltd. (Acting as agent on behalf of various ECB Lenders)	ECB CAPEX	Agent for ECB CAPEX (Acting on behalf of various ECB CAPEX Lenders)
10.	Credit Suisse AG	Hedging	New Lender
11.	Deutsche Bank AG	Hedging	New Lender
12.	MUFG Bank Ltd.	Hedging	New Lender
13.	JP Morgan Chase Bank N.A	Hedging	New Lender
14.	Emirates NBD Bank PJSC	Hedging	New Lender

WC- Working Capital, ECB- External Commercial Borrowing

3.5 The Commission in its Order dated 2 January 2019 in case 341 of 2018 has held as under:

“19. AEML has also prayed for an In-principle approval for assignment of its Distribution License in favour and/or benefit of any other lender (including in favour of any security trustee acting for the benefit of such lender) in the future in case the Loans are refinanced. The Commission is of the opinion that in case of refinancing of loans in future, the Petitioner needs to satisfy the Commission that same is not resulting into an undue burden on the consumers. Accordingly, the Commission is not inclined to accord an In-principle approval at this stage for future lenders for refinancing that may be undertaken by AEML in future.”

3.6 Similar stand was taken in Order dated 2 January 2019 in Case No. 311 of 2018 in the matter of Petition filed by AEML for its Transmission Business.

3.7 It is submitted that there is no undue burden on the consumers due to the repayment / refinancing done by AMEL through the new Lenders. The same has been elaborated as under:

a. Given the low benchmark of US treasury and favorable liquidity conditions in the international markets, there is an opportunity available to raise long term foreign

currency funds for a tenure of 10 years at attractive interest rates in case of Bonds and 3 years and beyond for External Commercial Borrowings (ECB's) for CAPEX purpose.

- b. With the improving macro-economic situation in India, there is a very high appetite amongst the International Investor fraternity for subscribing to debt issuances out of India. This is quite evident from the recent successful issuances by various large Indian Corporates.

3.8 In view of above, AEML has explored the International market to pursue accessing foreign currency bond by issuance of Senior Secured Fixed Rate Notes and ECB Capex.

3.9 Hence, the Commission is requested to take on record the changes in lenders of AEML for whose benefit the Distribution and Transmission Licences shall continue to be assigned (through the Security Trustee acting for the benefit of such Lenders) for the purpose of the approval that the Commission has granted vide its Orders dated 2 January 2019 in Case No. 311 of 2018 and Case 341 of 2018.

4. The Commission notes that there are fourteen respondents in each of these two Petitions. Out of these fourteen respondents, one respondent is the security trustee and rest thirteen respondents are the lenders which are providing financial facilities to AEML for its Transmission and Distribution Business. It is observed that out of fourteen respondents, twelve respondents have filed their responses to the Petitions stating that they were supporting the Petitions. They have requested the Commission to take on record their respective replies and also sought exemption from attending the e-hearing in the matter. No reply was received from Standard Chartered Bank (Respondent No. 7) and Citicorp International Ltd. (Respondent No. 9).

5. On 4 May 2021, Office of the Commission raised certain queries on AEML for getting further clarity on the AEML's Petitions. Vide its letter dated 6 May 2021, AEML submitted its response. The issue-wise responses submitted by AEML are summarized below:

5.1. Purpose of loan and its details:

- i. The fresh loans are taken for the purpose of refinancing the earlier loans of generation, distribution, and transmission businesses, as well as to fund the further working capital and capital expenditure requirements of the business.
- ii. Details of fresh loans are as under:

Nature of loan	Loan amount	Interest	Hedge premium	Withholding Tax	Total cost
Bond	\$ 1000 Million	3.95%	4.19%	0.23%	8.37%
Capex	\$ 175 Million	3.00%	4.96%	0.17%	8.13%
Working Capital	Rs. 950.02 Cr.	4.62%	-	-	4.62%

- iii. Any extra Rupee liability towards interest payment and loan repayment, shall be submitted at the time of the truing-up.
- iv. Details of earlier loans as per submissions in Case No. 311 of 2018 and 341 of 2018 are as under:

Sr. No.	Purpose	Lender	Loan amount (Rs. Cr.)	Tenure/Repayment Period	Interest Rate*
1	Term Loan	State Bank of India	3000	61 quarterly instalments	9.05%
2		YES Bank Ltd.	2550	61 quarterly instalments	9.05%
3		Bank of India	2000	61 quarterly instalments	9.05%
4		ICICI Bank Ltd.	750	61 quarterly instalments	9.05%
5		HDFC Bank Ltd.	200	61 quarterly instalments	9.05%
6	Working Capital	YES Bank /State Bank of India	869	61 quarterly instalments	8.95%
7	Capex Loan	Yes Bank Ltd.	290 (sub limit of Rs. 210 Cr. towards CAPEX Letter of credit)	Working Capital Loan	9.05%
8		State Bank of India	135 (sub limit of Rs. 95 Cr. towards CAPEX Letter of credit)	56 quarterly instalments	9.05%
* Interest rate will change as per Marginal Cost of Funds Base Lending Rate					

- v. Given the low benchmark of US treasury and London Interbank Offered Rate (**LIBOR**) and favorable liquidity conditions in the international markets, there is an opportunity available to raise long term foreign currency funds for a tenure of 10 years at attractive interest rates in case of Bonds and 3 years and beyond for ECBs for CAPEX purpose. Also, with the improving macro-economic situation in India, there is a very high appetite amongst the International Investor fraternity for subscribing to debt issuances out of India. This is quite evident from the recent successful issuances by various large Indian Corporates. It is for this very reason, AEML has explored the International market to pursue accessing foreign currency bond by issuance of Senior Secured Fixed Rate Notes and ECB Capex Funding.

- vi. The actual benefit to the consumers shall be determined as per the provisions of the applicable Multi Year Tariff Regulations and shall be presented at the time of final true up.
- vii. No Due Certificates from the earlier lenders has been submitted to the Commission vide letter dated 31 March 2021.

5.2. Details with respect to Loans, interest rates, tenure, outstanding amounts, repayment period etc.

- i. Details of long term loans are as under:

Sr. No.	Purpose	Lender	Loan amount (Rs. Cr.)	Loan amount O/s (Rs. Cr.)	Tenure	Repayment
1	Long Term Loan -USD 1 Billion Bonds	Madison Pacific Trust Ltd. (Acting on behalf of various Bond Holders)	7125	7125	10 Years	Bullet
2	ECB Capex Loan	CITI Corp International Ltd. (Acting on behalf of various ECB Lenders)	1271	1271	3 years	Bullet

- ii. The details of Working Capital loans are as under:

Sr. No.	Lender	Loan Amount (Rs. Cr.)	Loan Amount O/S - (Rs. Cr.)	Interest
1	HDFC Bank Ltd.	926	731	4.25%
2	DBS Bank India Ltd.	174	0	-
		226	92 (Suppliers Credit)	6.36%
3	Qatar National Bank	60	60	5.75%
4	Citi Bank N. A.	180	0	-
5	Barclays Bank PLC	100	67	8.5
6	Standard Chartered Bank	125	0	-

5.3. Need for hedging in Distribution and Transmission businesses and also need for nine different lenders for hedging activity:-

- i. The Bond and ECB availed are foreign currency loans. These are subject to foreign exchange rate variation both in terms of principal repayment and interest payment. In order to mitigate the probable forex loss, hedging is resorted to. The instrument of Hedging provides a means to mitigate the risk and the volatility in

the dynamic Foreign Exchange market. It is a strategy towards managing and reducing the risks of the Company. The Hedging of Foreign Currency Exposure is also mandated by the Reserve Bank of India (**RBI**).

- ii. Considering that AEML has outstanding USD Bonds of 1 billion, ECB facility of USD 400 million and shareholder affiliate debt of USD 282 million plus the interest amount that needs to be paid on such loans, it would not have been possible for an individual bank to take such amount of huge exposure considering RBI regulations on individual Group Exposures and also concerns with the pricing associated with various types of hedging instruments and individual banks dealing with such products. As such, the hedging instruments have been adopted from various banks managing the individual bank synergies in the hedging products and the pricing associated with the same.

5.4. Clarification as to whether Transmission/Distribution assets would be mortgaged and clarification as to whether the encumbrance is being created for the purpose of licensed business only or for other business also:-

- i. The assets of the company including Transmission and Distribution assets would be mortgaged with the lenders by creating an Indenture of Mortgage in favour of the Security Trustee, who is acting on behalf of the lenders. AEML is yet to execute the Indenture of Mortgage. The encumbrance is being created for the purpose of licensed businesses only.
- ii. The compliance of the Regulation 8.8.5 of the MERC (General Conditions of Distribution Licence) Regulations, 2006 is as under:
 - a. Indenture of mortgage is yet to be executed. As the same will be executed more than 15 working days from now, this response itself may be treated as intimation towards compliance of Regulation 8.8.5(a) of the MERC (General Conditions of Distribution Licence) Regulations, 2006.
 - b. Given the low benchmark of US treasury and LIBOR and favourable liquidity conditions in the international markets, there is an opportunity available to raise long term foreign currency funds for a tenure of 10 years at attractive interest rates in case of Bonds.
 - c. The Commission may also appreciate that the regulatory framework has evolved from 2004 to 2019 and the same is evident from different Multi Year Tariff (**MYT**) Regulations as notified by the Commission. Earlier, advance against depreciation (**AAD**) was provided for loan repayment considering the fact that loan tenure was of lower duration. Subsequently the Commission modified the depreciation rate to ~ 5.28% considering availability of loan tenure of more than 10 years. Accordingly, the Commission is requested to consider the loan of tenure of 10 years in the proposed finance arrangement.
 - d. AEML will retain operational control over the regulated distribution assets and will act in a prudent and reasonable manner in utilization of such assets.

- iii. Term loan availed by AEML is for the Company as a whole which, inter alia, includes Generation, Transmission and Distribution businesses. The loan considered in these Petitions is taking into account the asset value as is appearing in the Books of Accounts.

5.5. Details of closing Regulatory loan for FY 2020-21 as per Multi Year Tariff (MYT) Orders dated 30 March 2020:

The closing balance of loans as on 31 March 2021 as per the MYT Orders for Transmission and Distribution Business of AEML are Rs. 704.32 Crore and Rs. 1,994.95 Crore respectively.

5.6. Security Trustee Agreement

AEML stated that Security Trustee Agreement has been executed outside the State of Maharashtra and submitted the executable version of the Agreement. The summary of the Security Trustee Agreement states as follows:

- i. The Security Trustee Agreement (STA) dated 12 February 2020 was executed between Parties, to enable AEML to avail loans for funding its financing requirements.
- ii. AEML has settled the security trust for the benefit of the lenders and the security trustee is appointed as the trustee of such security trust and acts for the benefit of the lenders.
- iii. Subsequent to execution of the security trustee agreement and settlement of the trust, security documents are executed in favour of the security trustee and such security interest is contributed into the security trust by the security providers for the benefit of the lenders who are the beneficiaries of such security trust.
- iv. The STA stipulates the terms and conditions for due payment and discharge of all obligations of AEML including without limitation the repayment of loans, interest, fees, commissions, all costs, charges, expenses payable by AEML to the Secured Parties, which is inter alia secured by way of Security.

6. At the E-Hearing through video conferencing held on 7 May 2021:

- 6.1 Considering the identical nature of Petitions and prayers therein, the Commission stated that both the Petitions could be heard together for which the representative of AEML also consented.
- 6.2 Representative of AEML reiterated its submissions as made out in the Petitions and requested the Commission to take on record the change in the group of lenders of AEML.
- 6.3 Responding to a query raised by the Commission, representative of AEML stated that it would file separate submission indicating the likely interest rates on account of hedging costs included in the proposed refinancing and this would demonstrate that there would not be any adverse impact on Tariff payable by the consumers on account of the revised funding arrangement proposed in the Petitions.

7. **AEML, vide its additional submission dated 11 May 2021, stated as follows:**

7.1 The weighted average interest rate of long term loans existing as on 12 February 2020 is as under:

Nature of loan	Loan amount Rs. Cr.	Interest Rate
Rupee term loan	8,062	9.20%
Capex	806	9.14%
Total Loan	8,867	9.19%

7.2 Weighted average interest rate of current loans for which Petitions have been filed (as on 31 March 2020):

Nature of loan	Loan amount	Loan Amount Rs. Cr.	Interest	Hedge premium	Withholding Tax	Total cost
Bond	\$ 1000 Million	7,125	3.95%	4.14%	0.23%	8.31%
Capex	\$ 70 Million	503	3.95%	3.86%	0.23%	8.03%
Total loan		7,628	Weighted Avg. interest rate			8.30%

7.3 In addition to the above, sub-debt has also been availed to refinance the loans existing as on 12 February 2020. The above table depicts the loan details considering the present Petitions.

7.4 AEML has raised \$ 1,000 Million through issue of 10 year Senior Secured Notes (**Bond**) and ECB capex facility of \$ 400 Million (**ECB**) in the month of February 2020.

7.5 The ECB Capex Facility limits of \$ 400 million is exclusively for regulated capex with a minimum average maturity of 36 months. The drawdown will be as per capex requirement of the company. Currently \$ 70 Million of ECB has been drawn.

7.6 As per the AEML Risk Management requirements and covenanted hedge policy, it is required that the issuance be hedged for Forex risk at all times till the Debt is outstanding.

7.7 The Hedging instrument and tenure is as follows.

- a. \$ 400 Million of Bond is hedged through 5 year Cross Currency Swap (CCS) for Principal and interest– which will be rolled over at the end of 5 years.
- b. \$ 300 Million of Bond is hedged through 10 year Principal Only Swap (POS) – which will be maturing at the end of the tenure.
- c. Balance Bond of \$ 300 Million is hedged through At The Money Forward (ATMF) Options for a period of 5 year.
- d. Interest for \$ 600 Million (for Sr. b and Sr. c) is hedged through 5 year Coupon Only Swap (COS), which will be maturing at the end of the tenure.
- e. \$ 70 Million of ECB is hedged through 1 year Cross Currency Swap (CCS) for Principal and interest – which will be rolled over at the end of the year

Commission’s Analysis and Rulings:

8. Section 17(3) and 17(4) of EA reads as follows-

“17(3). No licensee shall at 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.

17(4). Any agreement relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.”

9. As per the above provisions, a Licensee is required to obtain prior approval of the Commission for assigning his Licence or transfer its utility or any part thereof by way of these transactions.
10. AEML had filed its separate Petitions (Case No. 311 of 2019 for Transmission Business and Case No. 341 of 2019 for Distribution Business) seeking assignment, by way of security, of its Transmission and Distribution Licences in favour of Security Trustee i.e. SBICAP Trustee Company Ltd. on behalf of the lenders. AEML had informed that it was in process of availing loans from various lenders for meeting its requirement for capex loans, working capital loans etc. As per the terms and conditions of loan agreements, the licences were required to be assigned in favour of SBICAP Trustee Company Ltd. who was acting as security trustee on behalf of lenders. The assignment of licences was by way of security only and was not as a matter of direct and absolute assignment. The purpose of the Licence assignment was to enable the Lenders to appoint a nominee of their choice to exercise their rights in place of AEML, or, to enforce the assignment by way of security. Vide its separate Orders dated 2 January 2019, the Commission allowed the Licence assignment subject to following conditions:
 - i. The assignment of Licence by way of security was allowed for the loan amount upto the regulatory loans as per the Mid Term Review Orders dated 12 September, 2018 for Generation, Transmission and Distribution Business of AEML and not for the entire loan amounts as per AEML’s Petitions.
 - ii. The finance arranged by way of the above funding arrangement to be exclusively used for the purposed of Licensed businesses only.
 - iii. AEML to retain the operational control over assets in Generation, Transmission and Distribution Businesses.
 - iv. The Licences and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee.
11. In those Petitions, AEML had also prayed for an In-principle approval for assignment of its Licences in favour and/or benefit of future lenders (including in favour of any security trustee acting for the benefit of such lender) in case the Loans are refinanced. However, the Commission held that in case of refinancing of loans in future, AEML needed to satisfy the Commission that same would not result into an undue burden on the consumers. Hence, this prayer had been rejected.
12. Now present Petitions have been filed by AEML for taking on record the change in lenders, on behalf of which SBICAP Trustee Co. Ltd. (existing Security Trustee) will

hold the security including the Licences. AEML has stated that the purpose of the new financing arrangement is for refinancing of existing term loan, funding capital expenditure requirements, working capital requirements and hedging.

13. The Commission notes that as per the MYT Orders dated 30 March 2020 passed by the Commission for Generation, Transmission and Distribution Business of AEML, the approved interest rate for FY 2019-20 is 9.05% for all the three businesses. Further, the approved interest rate for Working Capital for FY 2019-20 is 9.55% for Generation and Transmission Businesses and 9.50% for Distribution Business. As against this, a Term loan of Rs. 7,125 Cr. (1000 Million USD) has been availed by AEML at interest rate of 8.31% (as on 31 March 2020), a working capital loan of Rs. 950 Cr. at 4.62%., capex loans of Rs. 503 Cr. (70 Million USD) at 8.03% (as on 31 March 2020). The interest rate for new loans includes Hedge premium and With Holding Tax. Thus, inspite of the additional components, the interest rates for the fresh loans are lower than the interest rates approved in the MYT Orders. Also, it is seen that with hedging facility (which has been mandated by the Reserve Bank of India), the risk associated with the dynamic Foreign Exchange market would get minimized to certain extent as far as principal repayment and interest payment is concerned. Thus, prima-facie, it is observed that such financing shall reduce the interest component while determining Annual Revenue Requirement (**ARR**) and Tariff payable by the consumers and therefore, the same is in the interest of the consumers. However, there may be other factors such as refinancing and other related charges, various scenarios for exchange rate variations, interest rates for domestic loan and its variations etc. which would decide exact benefits of the refinancing undertaken by AEML.
14. The Commission notes that the Regulation 30.10 of the MERC (Multi Year Tariff) Regulations, 2019 provides that the refinancing of loan undertaken by the Licensee has to result in net savings on interest and the net saving in interest is computed after factoring all the terms and conditions. The relevant Regulation reads as under:

“ 30.10 *The Generating Company or the Licensee or the MSLDC, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event, the costs associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and them in the ratio of 2:1, subject to prudence check by the Commission:*

Provided that refinancing shall not be done if it results in net increase on interest:

...

Provided also that the re-financing shall not be subject to any adverse terms and conditions and additional cost:

...

*Provided also that **the net savings in interest shall be computed after factoring all the terms and conditions,** and based on the weighted average rate of interest of actual portfolio of loans taken from Banks and Financial Institutions recognised*

by the Reserve Bank of India for Indian institutions, before and after re-financing of loans:”

15. Accordingly, while submitting its forthcoming MTR Petitions, AEML is directed to submit the actual benefit that may accrue to the consumers on account of proposed financing, after factoring all the terms and conditions and considering all possible scenarios.
16. The Commission notes that AEML has availed /is availing Term loan of Rs. 7,125 Cr., a working capital loan of Rs. 950 Cr. and capex loans of Rs. 503 Cr. From the MYT Orders dated 30 March 2020 for Generation, Transmission and Distribution Business of AEML, it is seen that the combined closing balance of regulatory loans for Generation, Transmission and Distribution businesses is Rs. 2586.89 Cr. as on 31 March, 2020. Similarly, the regulatory loan for combined working capital requirements for Generation, Transmission and Distribution businesses as on 31 March 2020 is Rs. 772.81 Cr.
17. Since regulatory loan as per the MYT Orders dated 30 March 2020 is Rs. 2586.89 Cr. as on 31 March 2020 and AEML has availed term loan of Rs. 7,125 Cr. , it is observed that the term loan availed by AEML is around Rs. 4,539 Cr. more than the regulatory loan of Rs. 2,586.89 Cr. Thus, Rs. 4,539 Cr. is an excessive term loan when compared with the regulatory loan.
18. The Commission notes that responding to a query raised regarding purpose of the fresh loans, AEML has stated that the fresh loans are taken for the purpose of refinancing the earlier loans of generation, distribution, and transmission businesses, as well as to fund the further working capital and capital expenditure requirements of these businesses. AEML has also provided the details of earlier loans (which are being refinanced) as part of replies to the data gaps. In past, AEML had availed a term loan of Rs. 8,500 Cr. and vide its earlier Petitions in Case No. 311 of 2018 and Case No. 341 of 2018, AEML had sought approval for assignment of its Transmission and Distribution Licences (by way of security) in favour of Security Trustee on behalf of its earlier lenders. Since it was observed that the term loan of Rs. 8,500 Cr. was much more than the regulatory loan of Rs. 2295.96 Cr. as on 31 March 2018 (as per MTR Orders dated 12 September 2018), vide its Orders dated 2 January 2019 in Case No. 311 of 2018 and Case No. 341 of 2018, the Commission directed that the assignment of Licences by way of security was being allowed for the loan amount upto the regulatory loans as per the MTR Orders dated 12 September, 2018 and not for the entire loan amounts as per the Petitions filed by AEML.
19. In its subsequent MYT Petitions for the fourth control period, AEML had claimed recovery of the refinancing charges and also submitted the loan details claiming recovery of the interest as a part of its ARR for its Generation, Transmission and Distribution Businesses.
20. It was observed that excessive loan amount of Rs. 8,500 Crore availed by AEML was not solely for the purpose of repayment of the then existing loans taken for Generation, Transmission and Distribution business but AEML had used the loans for other

purposes like financing transaction cost, statutory dues, etc. The relevant extract of the MYT Order dated 30 March 2020 in Case No. 325 of 2019 is given below:

“ Refinancing Cost and Savings in Interest Expenses

AEML has refinanced the total loan portfolio of Rs 8500 Crore and has considered the refinance cost of Rs 157.18 crore.

The Commission has analysed the refinance agreement and other supporting documents of AEML with consortium of Banks provided as an Exhibit-L and Exhibit-S of the Petition.

.....

It is evident from the above submissions that the higher amount of loan refinanced by AEML was mainly for the purpose of financing the transaction costs towards acquisition of the business of RInfra by REGSL.

.....

It is also clearly evident from the above that loan amount of Rs. 8,500 Crore refinanced by AEML is not solely for the purpose repayment of existing loans taken for Generation, Transmission and Distribution business. AEML has used the loans for other purposes like financing transaction cost, statutory dues, etc.

....

Considering the above, it is clear that AEML is not eligible for any amount incurred for the transaction between RInfra and ATL. AEML is only eligible for proportionate recovery of refinancing cost pertaining to normative loans as on 29 August, 2018. Outstanding normative loans as on 29 August, 2018 for AEML-D Wires Business and Supply Business was Rs. 1437.01 Crore and Rs. 77.81 Crore respectively. Hence, refinancing cost on pro-rata basis works out to Rs. 24.07 Crore and Rs. 1.30 Crore for AEML-D Wires Business and Supply Business, respectively.”

21. Thus, in MYT Order, the refinancing cost to the extent of regulatory loan only, was allowed instead of the entire refinancing cost as claimed by AEML. Further, for allowing the interest, only regulatory loan was considered as per the MYT Regulations instead of actual loan.
22. In view of the above, although, as per present Petitions, the term loan of Rs. 7,125 Cr. availed by AEML is around Rs. 4,539 Cr. more than the regulatory loan of Rs. 2,586.89 Cr., it would not be appropriate to pass the assignment/burden of excessive loans on the consumers and hence, in line with the stand taken in Orders dated 2 January 2019 in Case No. 311 of 2018 and 341 of 2018, the Commission deems it appropriate to allow the continuation of assignment of Distribution and Transmission Licences upto the regulatory loans as per the MYT Orders dated 30 March 2020 for Generation, Transmission and Distribution Businesses of AEML and not for the entire loan amounts as per present Petitions.

23. It has also been observed that as per the Security Trustee Agreement, the charge would be created on assets of Distribution, Transmission as well as the Generation businesses.
24. As per the clause 5.3 of the Distribution Licence granted to Reliance Infrastructure Ltd. which has been assigned to AEML, the Distribution Licensee is required to seek the approval of the Commission before creating any encumbrance on the assets of its Licensed Business, except where such encumbrance is created for the purpose of the Licensed Business. Similar condition exists in the Transmission Licence of AEML. Thus, AEML is not required to obtain the approval of the Commission if the encumbrance is created for the purpose of Licensed Business. However, if the charge is to be created for other business/s, prior approval of the Commission is required. In response to the specific query raised by the Office of the Commission, AEML has clarified that encumbrance is being created for the purpose of licensed businesses only.
25. The Commission notes that AEML, being a Distribution Licensee, while financing its investment requirements, is required to comply with certain conditions specified under MERC (General Conditions of Distribution Licence) Regulations, 2006. These conditions are reproduced as below:
- “8.8.5 The Distribution Licensee shall be entitled to utilise the assets for facilitating financing its investment requirement subject to the conditions:*
- (a) that the Distribution Licensee will inform the Commission about such arrangements at least fifteen (15) working days prior to the effective date of the relevant agreements.*
 - (b) that the financing arrangement is for a period not exceeding seven (7) years or such other period as the Commission may specifically direct;*
 - (c) the Distribution Licensee acts in a prudent and reasonable manner in such utilisation of assets; and*
 - (d) the Distribution Licensee retains the Operational Control over assets in the Distribution System.”*
26. AEML, vide letter dated 6 May 2021 clarified that assets of the company including Distribution assets would be mortgaged with the lenders by creating an Indenture of Mortgage in favor of the Security Trustee, who is acting on behalf of the lenders. It further stated that Indenture of Mortgage is yet to be executed. AEML has stated that as the same will be executed more than 15 working days from now, the said letter may be treated as prior intimation to be given to the Commission in accordance with the Regulation 8.8.5 of the MERC (General Conditions of Distribution Licence) Regulations, 2006.
27. As a compliance of the Regulation 8.8.5 of the MERC (General Conditions of Distribution Licence) Regulations, 2006, the Commission notes that ideally, AEML should have informed much earlier about its intention to utilize its distribution assets for facilitating financing its investment requirement. However, the Commission is of the view that lenders need to be given comfort by creation of security in favour of the Respondent No. 1 for the funds made available by them. Further, AEML has stated that

relevant agreements including the Indenture of Mortgage for creation of security are yet to be executed. Also, the Commission notes that the Regulations require that the financing arrangement shall not exceed seven (7) years or such other period as the Commission may specifically direct. However, AEML clarified that the loan repayment period for term loan is 10 years which is more than 7 years. Since the refinancing of investment has been considered at lower interest rate, which is in interest of consumers, the Commission thinks it fit to consider the financing arrangement for the period of 10 years.

28. In view of the above, the Commission takes on record the changes in lenders of AEML and accords In-principle approval for continuation of assignment, by way of security, of the Distribution Licence No. 1 of 2011 and Transmission Licence No.1 of 2011 in favour of SBICAP Trustee Company Limited, on behalf of these new Lenders. However, in light of the observations made by the Commission at para. 16 to 21 above, the Commission deems it fit to stipulate certain conditions to ensure that the utilization of funding so arranged is done only for the Licensed Businesses in Mumbai. Accordingly, continuation of the assignment by way of security of the Distribution and Transmission Licences is being allowed subject to the following conditions:
- i. The assignment of Licences by way of security is being allowed for the loan amount upto the regulatory loans as per the MYT Orders dated 30 March 2020 for Generation, Transmission and Distribution Businesses of AEML and not for the entire loan amounts as per present Petitions.
 - ii. The finance arranged by way of the above funding arrangement shall be exclusively used for the purpose of Licensed businesses only.
 - iii. AEML shall retain the operational control over assets in Generation, Transmission and Distribution Businesses.
 - iv. The Distribution and Transmission Licences of AEML and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee.
 - v. AEML shall ensure adherence to all the obligations under the Security Trustee Agreement and the Financing Agreements in timely manner to avoid any default towards its lenders. AEML shall provide the details of fulfillment of the payment obligations to its lenders vis-à-vis the timelines and other requirement as provided in the financing agreements.
 - vi. Compliance of the above conditions shall be submitted by AEML while submitting its MTR Petitions.

29. Hence, the following Order.

ORDER

- 1. Case No. 34 of 2021 and 35 of 2021 are allowed subject to certain conditionalities.**
- 2. The Commission takes on record the changes in lenders of Adani Electricity Mumbai**


Ltd. and accords In-principle approval for continuation of assignment by way of security of the Distribution Licence No. 1 of 2011 and Transmission Licence No.1 of 2011, in favour of SBICAP Trustee Company Limited, on behalf of these new Lenders., subject to the following conditions:

- i. The assignment of Licence by way of security is being allowed for the loan amount upto the regulatory loans as per the Multi Year Tariff Orders dated 30 March 2020 for Generation, Transmission and Distribution Businesses of Adani Electricity Mumbai Ltd. and not for the entire loan amounts as per present Petitions.
 - ii. The finance arranged by way of the above funding arrangement shall be exclusively used for the purposed of Licensed businesses only.
 - iii. Adani Electricity Mumbai Ltd. shall retain the operational control over assets in Generation, Transmission and Distribution Businesses.
 - iv. The Distribution and Transmission Licences of Adani Electricity Mumbai Ltd. and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee.
 - v. Adani Electricity Mumbai Ltd. shall ensure adherence to all the obligations under the Security Trustee Agreement and the Financing Agreements in timely manner to avoid any default towards its lenders. Adani Electricity Mumbai Ltd. shall provide the details of fulfillment of the payment obligations to its lenders vis-à-vis the timelines and other requirement as provided in the financing agreements.
 - vi. Compliance of the above conditions shall be submitted by Adani Electricity Mumbai Ltd. while submitting its Mid Term Review Petitions.
3. Adani Electricity Mumbai Ltd. is directed to submit the actual benefit that may accrue to the consumers on account of proposed financing, while submitting its Mid Term Review Petitions.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

