

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 414/MP/2024

Coram:

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

Date of Order: 26th February, 2025

In the matter of

Petition under Section 17(3) of the Electricity Act, 2003 read with Regulation 6(8) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2024 and Article 15.2 of the Transmission Service Agreement dated 27.12.2023 seeking approval of this Commission for creating charge over the assets (Immovable & Movable), Licenses/Permits/Approvals, Current Assets and Bank Accounts of the Petitioner in favour of Axis Bank Limited, Kotak Mahindra Bank and ICICI Bank, the lenders.

And

In the matter of

TP Bikaner III Neerana II Transmission Limited,
Flat No. 94, 3rd Floor, Pocket-4,
LIG Flats, Sector-11,
Dwarka, New Delhi-110075.

...Petitioner

Vs.

- 1. Central Transmission Utility of India Limited,**
First Floor, Saudamini, Plot No. 2,
Sector-29, Near IFFCO Chowk Metro Station,
Gurgaon-122001, Haryana.
- 2. PFC Consulting Limited,**
1st Floor, "Urjanidhi", 1,
Barakhamba Lane, Connaught Place,
New Delhi-110001.
- 3. ICICI Bank Limited,**
ICICI Bank Tower, Near Chakli Circle,
Old Padra Road, Vadodara-390007, Gujarat.



- 4. Kotak Mahindra Bank Limited,**
27 BKC, C 27, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai-400051, Maharashtra.
- 5. Axis Bank Limited,**
'Trishul', 3rd Floor, Opposite Samartheshwar Temple,
Law Garden, Ellis Bridge,
Ahmedabad-380006, Gujarat.
- 6. Chandigarh Electricity Department Electricity,**
OP Division No.2 Industrial Area,
Ph-1 BBMB Complex, Chandigarh-160002, Punjab.
- 7. BSES Rajdhani Power Limited,**
2nd Floor, B-Block, BSES Bhavan,
Nehru Place, New Delhi-110019.
- 8. BSES Yamuna Power Limited,**
Shakti Kiran Building,
Karkardooma, Delhi-110032.
- 9. New Delhi Municipal Council,**
Palika Kendra Building, Parliament Street,
New Delhi-110001.
- 10. Tata Power Delhi Distribution Limited,**
NDPL House, Hudson Lines,
Kingsway Camp, Delhi-110009.
- 11. Himachal Pradesh State Electricity Board,**
Vidyut Bhawan, Shimla,
Himachal Pradesh -171004.
- 12. Haryana Power Purchase Centre,**
UHBVN, IP 3& 4, 4th Floor, Sector 14,
Panchkula-134113, Haryana.
- 13. Power Development Department,**
Jammu Exhibition Ground,
Opposite J&K High Court, Srinagar,
Srinagar-190009, Jammu and Kashmir,.
- 14. Punjab State Power Corporation Limited,**
Dy. CE/ISB, shed T-1A, Shakti Vihar,
PSPCL, Patiala-147001, Punjab.
- 15. HVDC Dadri, POWERGRID,**



B-9 Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016.

16. HVDC Rihand, POWERGRID,
B-9 Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016.

17. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road,
Ajmer-305004, Rajasthan.

18. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan.

19. Jaipur Vidyut Vitran Nigam Limited,
VQVX+M6J, Jan Path, Janpath, Jyothi Nagar,
Lalkothi, Jaipur- 302005, Rajasthan.

20. North Central Railway,
M627+5R3, Shankar Road Market,
Nabi Karim, Paharganj, New Delhi-110060.

21. Uttarakhand Power Corporation Limited,
V.C.V. Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun-248001, Uttarakhand.

22. Uttar Pradesh Power Corporation Limited,
10th Floor Shakti Bhawan Extn.,
14 Ashok Marg, Lucknow-226001, Uttar Pradesh.

23. AD Hydro Power Limited,
Bhilwara Towers, A-12, Sector-1,
Noida- 201301, Uttar Pradesh.

24. GMR Kamalanga Energy Limited,
New Shakti Bhawan,
New Udan Bhawan Complex,
Near Terminal 3 ,1GI Airport, New Delhi-110037.

25. MB Power (Madhya Pradesh] Limited,
239, Okhla Industrial Estate,
Phase-III, New Delhi-110020.

26. HVDC Agra, POWERGRID,
Chintel House, POP-303, Station Road,
Lucknow-226001, Uttar Pradesh.



27. HVDC Balia, POWERGRID,
Chintel House, POP-303,
Station Road, Lucknow-226001, Uttar Pradesh.

28. HVDC Bhiwadi, POWERGRID,
SCO Bay 5-10, near Haryana Pollution Control Board Office,
Sector 16A, Faridabad-121002, Haryana.

29. HVDC Kurukshetra, POWERGRID,
SCO Bay 5-10, near Haryana Pollution Control Board Office,
Sector 16A, Faridabad-121002, Haryana.

30. Northern Indian Railway,
Northern Railway, Headquarters Office,
Kasturba Gandhi Marg, New Delhi- 110001.

31. Noida Power Company Limited,
Corporate Office Building, Plot No. ESS,
Sector - Knowledge Park - IV,
Greater Noida- 201310, Uttar Pradesh.

32. Northern Railways,
Northern Railways Head Quarter,
Baroda House, New Delhi-110001.

Parties Present:

Shri Ashutosh K. Srivastava, Advocate, TB3N2TL
Shri Aashwyn Singh, Advocate, TB3N2TL
Shri Harsh Vardhan, Advocate, TB3N2TL

ORDER

The Petitioner, TP Bikaner III Neemrana II Transmission Limited (hereinafter referred to as “the Petitioner/TP Bikaner”), has filed the present Petition under Section 17(3) of the Electricity Act,2003 (hereinafter referred to as “the Act”) read with Regulation 6(8) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2024 (“CERC Transmission License Regulations”) and Article 15.2 of the TSA to seek approval for the purpose of creating charge over the assets of the Project to avail the financial facility in terms of the Facility Agreements executed



between the Petitioner and Axis Bank Limited ("Axis Bank"/"Lender No. 1"), Kotak Mahindra Bank Ltd. ("Kotak Bank"/"Lender No. 2") and ICICI Bank Limited ("ICICI"/"Lender No. 3") (collectively referred to as "the Lenders"). The Petitioner has made the following prayers in the Petition:

- a) Admit the present Petition;*
- b) Grant approval under Article 15.2 of the TSA read with Section 17(3) of the Act and Clause 6(8) of the CERC Transmission License Regulations in favour of the Petitioner for creation of security over (i) Project documents including Transmission License; (ii) the movable assets; (iii) the current assets (present and future); and (iv) Bank Accounts by way of Mortgage, Hypothecation and Pledge in favour of the Lenders in pursuance to the Facility Agreements executed between the Lenders and the Petitioner.*
- c) Pass any such further order(s) as this Commission may deem and appropriate in the facts and circumstances of the present case."*

Background

2. TP Bikaner was incorporated as a Special Purpose Vehicle ("SPV") for implementation of the 'Transmission system for evacuation of power from Rajasthan REZ Ph-IV (Part -1) (Bikaner Complex): Part-C ("Project") by PFC Consulting Limited ("PFCCL"/"Respondent No.2"). Subsequently, RfP was issued on 2.3.2023 by PFCCL and after being declared as the successful L1 bidder in the bidding process conducted by PFCCL in terms of the RfP, the Tata Power Company Limited ("TPCL") acquired the Petitioner on 27.12.2023 in terms of the Share Purchase Agreement dated 27.12.2023 ("SPA"), taking over one hundred percent (100%) of the equity shares of the Petitioner. The Petitioner has been granted a transmission licence by this Commission vide order dated 15.4.2024 in Petition No. 22/TL/2024 for establishment of the Project elements as envisaged under the Transmission Service Agreement dated 27.12.2023 ("the TSA").

Submissions of the Petitioners

3. The details of the Facility Agreements entered into by the Petitioner and the lenders are as under:

(a) Working Capital Loan Agreement dated 27.8.2024 executed between the Petitioner and Axis Bank for an amount of Rs. 601 crores ("Working Capital Loan Agreement") for procurement of the capex goods for setting up the Project;

(b) Master Capex Letter of Credit Facility Agreement dated 5.9.2024 executed between the Petitioner and Kotak Bank for an amount of Rs. 300 crores ("Capex LC Agreement") for the purchase of plant and machinery/capital goods; and

(c) Working Capital Facility Agreement dated 6.9.2024 executed between the Petitioner and ICICI for an amount of Rs. 265 crores ("Working Capital Facility Agreement") for procurement of the raw materials, consumable stores, spares and tools, and capital goods for the capital expenditure under the Project.

4. As part of the sanctioned terms of the aforesaid Facility Agreements from the lenders, the Facility, together with all interest, default interest, liquidated damages, costs, charges, expenses, and all other monies whatsoever payable by the Petitioner shall be secured by way of hypothecation/charge/assignment of below securities:

(a) First *pari passu* charge by way of hypothecation of all the movable assets of the Project,

(b) First *pari passu* charge by way of the assignment of all Project-related documents, licenses, permits, approvals, rights, title, and interest, etc., pertaining to the Project,

(c) First *pari passu* charge on all the current assets of the company, including but not limited to book debts, operating cash flows, receivables, commissions, revenue of whatsoever nature, and wherever arising, present and future; and

(d) First *pari passu* charge on all the bank accounts of the Borrower.

5. The Petitioner has submitted that in terms of the Financing Documents, it is required to create security, which is the transaction security (as defined under the Facility Agreement), in favour of the lenders.

6. The Petitioner has stated that as per Article 15.2 of the TSA, the Petitioner can create encumbrances on receivables or Project Assets as security for amounts owed to the lenders under Financing Agreements subject to the following two conditions:

(a) The lenders or their representative must have entered into the Financing Agreements and agreed in writing to the provisions of the main Agreement and

(b) Any encumbrance granted by the TSP must include provisions where the lenders or their representatives agree unconditionally to release the encumbrances once the TSP has paid all amounts due under the Financing Agreements. This clause essentially provides a mechanism for the TSP to secure financing while ensuring that the encumbrances can be lifted once the financial obligations are fulfilled.

7. The Petitioner has stated that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Act read with Article 15 of the TSA and Regulation 6(8) of the CERC Regulations, the Petitioner, as a licensee, and cannot create a security

interest over: (i) Project documents including transmission licence, (ii) the movable assets, (iii) the current assets (present and future), and (iv) Bank Accounts by way of Mortgage, Hypothecation, and Pledge in favour of the lenders in pursuance to the Facility Agreements executed between the lenders and the Petitioner. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for creating a charge over the assets (immovable & movable), licenses/permits/approvals, current assets, and bank accounts of the Petitioner in favour of the lenders, Axis Bank Limited, Kotak Mahindra Bank Limited, and ICICI Bank.

Hearing dated 27.12.2024

8. The Petition was called out for the hearing on 27.12.2024, wherein the Petitioner reiterated the submissions made in the Petition. After notice to the Respondents. Vide Record of Proceedings for the hearing on 27.12.2024, the Respondents were granted the opportunity to file their respective replies within a week. However, no reply has been filed by the Respondents.

9. Vide Record of Proceedings for the hearing dated 27.12.2024, the Petitioner was directed to file the following information/clarification:

(a) The comprehensive details about how the Petitioner is going to create a charge against the Assets in favour of all three lenders and how the situation would be managed in the event of a default; and

(b) Details of total credit facilities disbursed, total project cost, and the sources & application of the funds as on the date of filing of the Petition.

10. In compliance with, the Petitioner, vide its affidavit dated 6.1.2025, has submitted as under:

a) With reference to the (a) above, in accordance with Article 15.2 of the TSA, the Petitioner has the right to create encumbrances over all or part of the receivables, letter of credit, or other assets of the Project, in favour of the lenders, as security for amounts payable under the Sanction Letters and Facility Agreements executed between the Petitioner and the lenders. The Petitioner, therefore, has the right to create a charge over the Project's assets as security for amounts due under the Financing Agreements. In line with Article 15.2 of the TSA, the Petitioner and the lenders have entered into the Facility Agreements.

b) Further, the Act stipulates that the Petitioner, being a transmission licensee, must obtain prior approval from the Commission to assign its licence or transfer any part of its utility, including through sale, lease, or exchange. Regulation 6(8) of the CERC Transmission Licence Regulations also requires that a formal application is required to be made for any act requiring prior approval from this Commission.

c) In consortium lending, it is customary to appoint a Security Trustee to manage the security interests among the multiple lenders. However, in this case, the Petitioner has entered into separate Facility Agreements with each lender (i.e., three lenders) without appointing a Security Trustee. As per the terms of the Facility Agreements, the Facility, along with all interest, default interest, liquidated damages, costs, charges, expenses, and any other amount payable by the Petitioner, shall be secured through hypothecation, charge, or assignment of the securities as outlined in the submissions above.

d) As the Petitioner has entered into three separate Facility Agreements, it will execute individual Deeds of Hypothecation with each lender once the creation of the charge is authorized by the Commission. Upon signing these Deeds, the charges will be registered with the Registrar of Companies (hereinafter referred to as "ROC") via Form CHG 1 within 30 days of the execution. In the event of failure to register or modify the charges within the stipulated period, the lenders reserve the right to unilaterally register the charges with the ROC, with any additional costs borne by the Petitioner. The registration of the charge with the ROC, as per Section 77 of the Companies Act, 2013, will serve as public notice and ensure the enforceability of the charge. Following this, the lenders will exchange a pari-passu letter for the perfection of the security.

e) Further, once the charge is registered with the ROC, and, if the Petitioner defaults with any lender, the Petitioner may be subject to the formulation and implementation of a Resolution Plan (hereinafter referred to as "RP") by the lenders, either individually or collectively, as per the Reserve Bank of India's Prudential Framework for Resolution of Stressed Assets, or any other applicable RBI scheme, as amended from time to time. Moreover, the Facility Agreements and the TSA contain provisions allowing the invocation of a right of substitution in case of default, wherein a joint lender forum will be formed, and the lender with the highest exposure will act on behalf of the other lenders.

f) With reference to (b), the instant Project is being executed under Section 63 of the Act wherein the Petitioner's tariff is discovered and subsequently adopted by the Commission following the Tariff Based

Competitive Bidding process. Accordingly, the Petitioner has submitted a sealed envelope before the Commission.

Analysis and Decision

11. We have considered the submissions of the Petitioner and perused the documents available on the record. On the basis of the applications, Axis Bank Limited, Kotak Mahindra Bank Limited, and ICICI Bank Limited (Collectively lenders) issued sanction letters in favour of the Petitioner 25.7.2024, 31.7.2024, and 1.8.2024, respectively, and agreed for following facilities: -

(a) **Facility Coverage:** The facility, including interest, default interest, liquidated damages, costs, charges, expenses, and all other monies payable by the Borrower, will be secured by the following:

(b) **Security Details:**

i. Movable Assets: First *pari passu* charge by way of hypothecation on all movable assets of the Project.

ii. Current Assets: First *pari passu* charge on all current assets of the company, including but not limited to book debts, operating cash flows, receivables, commissions, and revenues of any nature, present and future.

iii. Bank Accounts: First *pari passu* charge on all bank accounts of the Borrower.

iv. Project Documents/Licence: First *pari passu* charge by way of assignment of all Project related documents, licenses, permits, approvals, rights, title, interest etc. pertaining to the Project.

(c) **Security Sharing:** The above mentioned securities will be shared on a *pari passu* first charge basis with secured lenders within the permitted



indebtedness amount and secured working capital lenders, if any (such working capital amount as approved by the lenders).

(d) **Security Creation Timeline:** The security must be created and perfected with the following timelines under the facility or any of its sub-limits.

i. Axis Bank Limited: Within 4 months from the date of the first disbursement.

ii. Kotak Mahindra Bank Limited: Within 180 days from the date of the first disbursement.

iii. ICICI Bank Limited: Within 15 months from the date of the first disbursement or 180 days from the date of CERC approval, whichever is earlier.

(e) **Project Details:** The project involves the construction of the 765 kV Double Circuit (D/C) line with the 330 MVAr switchable line reactor for each circuit at each end and two 765 kV line bays each at Bikaner-III Power Station (PS) & Neemrana-II sub-station (S/s).

12. From 27.8.2024 to 6.9.2024, Petitioner entered into various Loan Facility Agreements with Respondents, i.e. Axis Bank Limited, Kotak Mahindra Bank Limited and ICICI Bank Limited. The details of the Facility Agreements are as under: -

(a) **Working Capital Loan Agreement** dated 27.8.2024 executed between the Petitioner and Respondent - Axis Bank Limited for an amount of Rs. 601 crores.

(b) **Capex Letter of Credit Facility Agreement** dated 5.9.2024 executed between the Petitioner and Respondent- Kotak Mahindra Bank Limited for an amount of Rs. 300 crores.

(c) **Working Capital Facility Agreement** dated 6.9.2024 executed

between the Petitioner and Respondent-ICICI Bank Limited for an amount of Rs. 265 crores.

13. (a) Details of total credit facilities, total project cost, and the sources & application of the funds as on the date of filing of the Petition.

Particulars	Amount (Rupees in Crores)
Total Project Cost	1534
Funding Plan for the Project	
Promoter's Contribution: Share Capital, Perpetual Debt, Inter-Corporate Deposit	384
Loan Facility	1150
Laon Facility- Axis Bank Limited	600
- Kotak Mahindra Bank limited	300
- ICICI Bank limited	250
Total	1150

- (b) In addition to the above, the details of the credit facilities disbursed till date of filing of the Petition and the respective details of the utilisation of the same are as under:

Sources of Fund	As on the filing of Petition	
	Amount Disbursed	Amount Utilised (Rupees Crore)
Promoter's Contribution: Share Capital, Perpetual Debt, Inter Corporate Deposit	115.01	115.01
Borrowings: Capex LC	68.16	18.78
Total	183.17	133.78
Application of Funds		
Payment to Vendors		132.71
Cash & Bank Balance		1.07
Un-utilised limit*		49.38
Total		183.17

* Amount not utilised as on date of filing of petition

14. 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 lenders. 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 assignees, 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(L/Cs), 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.

15. 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.”

16. 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.

17. The transmission projects are capital-intensive projects requiring huge capital investments and are financed through loans. It is a 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 lender. In the instant case, the lenders have agreed to provide a loan, as mentioned in the above paragraphs, to the Petitioner.

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 lenders or nominee of the lenders 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 lenders, the Commission will evaluate such a nominee`s expertise in the development, design, construction, operation, and maintenance of transmission

lines and their ability to execute the Project and undertake the transmission of electricity. The licensee, lender, 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.”

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 the lenders or transferring any assets to them is a mandatory requirement. Lastly, the financial documents and statements are required to be filed by the Petitioner as and when directed by the Commission.

19. The Petition No. 414/MP/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson

