

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 357/MP/2018**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Dr. M.K. Iyer, Member**

**Shri I.S. Jha, Member**

**Date of Order: 6<sup>th</sup> of March, 2019**

**In the matter of**

Petition for approval for creation of security interest under Section 17 (3) and (4) of the Electricity Act, 2003 over Petitioner No. 1`s assets in favour of Petitioner No. 2 for the benefit of lenders and their agents for the purpose of financing Petitioner No.1`s transmission project.

**And**

**In the matter of**

Goa Tamnar Transmission Project Limited  
F-1, "The Mira Corporate Suites"  
1 & 2 Ishwar Nagar,  
Okhla Crossing, Mathura Road,  
New Delhi-110065

IDBI Trusteeship Services Limited  
Asian Building, Ground Floor,  
17, R. Kamani Marg,  
Ballard Estate, Mumbai-400 001

**...Petitioners**

**Versus**

1. Maharashtra State Electricity Distribution Company Limited  
Hongkong Bank Building, M.G. Road, Fort,  
Mumbai – 400001

2. Gujarat Urja Vikas Nigam Limited  
Race Course, Baroda- 390007

3. M.P. Power Management Company Limited  
Shakti Bhavan, Jabalpur, (MP) – 482008

4. Chhattisgarh State Power Distribution Company Limited  
Vidyut Sewa Bhavan, Daganiya,  
Raipur- 492 013

5. Goa Electricity Department  
Vidyut Bhavan, 3<sup>rd</sup> Floor,  
Panaji, Goa - 403001

6. DNH Power Distribution Corporation Limited  
Vidyut Bhavan, Near 66 KV Amli S/S,  
Besides Secretariat,  
Silvasa, Dadar Nagar Haveli – 396230

7. Electricity Department, Daman & Diu,  
Vidyut Bhavan, Kachigam, Ringanwada,  
Vapi, Daman – 396215

**..Respondents**

**The following were present:**

Shri Sitesh Mukherjee, Advocate, GTTPL  
Shri Deep Roa, Advocate, GTPPL  
Shri Divyanshu Bhatt, Advocate, GTPPL  
Shri Rohit Dwivedi, Advocate, GTPPL  
Shri TAN Reddy, GTPPL

**ORDER**

The First Petitioner, Goa Tamnar Transmission Project Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish transmission system for "Additional 400 kV feed to Goa and Additional System for power evacuation from generation projects pooled at Raigarh (Tamnar) Pool" on 'Build, Own, Operate and Maintain' (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 13.7.2018.

2. The Petitioners, Goa Tamnar Transmission Project Limited and IDBI Trusteeship Services Limited, have jointly filed the present Petition for creation of security interest over all the movable and immovable assets of the First Petitioner in relation to the project comprising of, amongst others, in favour of Second Petitioner, IDBI Trusteeship Services Limited as Security Trustee pursuant to the Security

Trustee Agreement and Facility Agreement, on project assets for the benefit of the lenders to the project. The Petitioners have made the following prayers:

“(a) Approve the creation of Security Interest, over Petitioner No. 1’s Assets to the extent described in the Petition, in favour of Petitioner No. 2 for the benefit of the Lenders and the Lender’s Agent and for subsequent transferees, assigns, novatees thereof and any refinancing lenders to the Project, acting on behalf of and for the benefit of the lenders pursuant to the Security Trustee Agreement, the draft Indenture of Mortgage, and other security creating documents/financing agreements (Financing Agreements) and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Mortgaged Properties (as more specifically defined in the draft Indenture of Mortgage attached herewith) and Project assets and for amendment of the security documents to include the assigns, transferees and novatees of Petitioner No. 2.; and

(b) Grant liberty to Petitioner No. 1 to re-approach this Commission by means of an Interlocutory Application in the instant Petition itself in the event of a requirement of refinancing or additional financing in the future.”

3. According to the First Petitioner, for the purpose of financing for the project, the First Petitioner requested Yes Bank Limited and IndusInd Bank (hereinafter referred to as ‘lenders’) for which lenders have agreed to make available financial assistance amounting to Rs. 1050 crore comprising of a term loan facility and two non-revolving Letter of Credit/Comfort Facilities of Rs. 367.50 crore on the terms and conditions set out in the Facility Agreement and Security Trustee Agreement (hereinafter referred to as the Financing Agreements). For this purpose, the First Petitioner and lenders have appointed the Second Petitioner, namely, IDBI Trusteeship Services Limited as Security Trustee (hereinafter referred to as ‘Security Trustee’) who has agreed to act as Security Trustee for the lenders including its assigns, transferees and novatees and has entered into Facility Agreement and Security Trustee Agreement on 28.9.2018 and 16.10.2018.

4. The First Petitioner has submitted that pursuant to the Facility Agreement, the secured obligations are secured by:

A. The facility together with all interest, liquidated damages, additional interest, further interest, fees, costs and charges, expenses, all other monies and other obligations payable to the secured parties, shall be secured by:

- (a) A first mortgage/charge on all the immovable assets/assets attached to the ground (such as transmission system and associated equipment) of the Project, both present and future (excluding land);
- (b) a first charge over all of the borrower's tangible movable assets, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present and future;
- (c) A first charge on all intangibles assets of the Borrower, including but not limited to, goodwill, rights, undertaking, intellectual property and uncalled capital, present and future;
- (d) A first charge on all current assets and receivables of the borrower, present and future;
- (e) Assignment of the following, both present and future:
  - (i) All the right, title, interest, benefits, claim and demands whatsoever of the Borrowers in the Project documents, duly acknowledged and consented to by the relevant counter-parties to such Project documents,
  - (ii) The rights, title and interest of the Borrowers in, to an under all the clearances (including the transmission licence for the Project), to the extent permissible by applicable law;
  - (iii) All the right, title, interest, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantee including contractor guarantees and liquidated damages (including contractual damages) and performance bond provided by any party to the Project Documents; and

(iv) All the right, title, interest, benefits, claims and demands whatsoever of the Borrower under all insurance contracts;

(f) A first charge over all accounts and reserves of the borrower pertaining to the Project, including the Trust and Retention Account, the Retention Accounts and the sub-accounts thereunder including but not limited to the DSRA, or any account in substitution thereof, that may be opened in accordance with this Agreement and the trust and Retention Account Agreement, or any of the other Project documents, and all funds from time to time deposited therein including the reserves maintained therein, the receivables and all permitted investments or other securities representing all amounts credited thereto:

Provided that in the event the DSR is maintained in a non-fund based form, all rights, title, interest, benefits, claims and demands whatsoever of the borrower in, to, under and in respect of the non-fund based DSR, wherever maintained, shall be charged by way of continuing security for the obligations:

Provided further that in the event the borrower opens any other bank account(s) in breach of the Trust and Retention Account Agreement and other Financing documents, such bank account(s) and all monies lying in all such accounts shall also be treated as the account of the borrower;

(g) A Pledge (in dematerialised form) by the Pledgor of 51% of the share capital of the borrower including voting rights including the equity share capital, preference shares and compulsorily convertible debentures on compulsorily convertible preference shares issued to the Promoter, to the satisfaction of the lenders.

(h) A negative lien undertaking with respect to all the leasehold/freehold land including substation land pertaining to the project, in the form and manner as acceptable to lenders.

The security mentioned in clause 10.1 (A) (a) to Clause 10.1 (A) (h) shall be

collectively referred to as the 'Security', which shall be created in favour of the Security Trustee for the benefit of the secured parties, in a form and manner satisfactory to the lenders:

Provided that

(i) The Security mentioned in Clause 10.1 (A) above shall rank on a pari passu basis inter se the lenders, without any preference or priority to one over the other or others;

(ii) The Security mentioned in Clause 10.1 (A) above created/to be created for the benefit of the secured parties shall be shared by the lenders on a pari passu basis with YBL; and

(iii) The lenders reserve the right modify the above Security Structure in its absolute discretion prior to execution of the financing documents.

B. The borrower further agrees and undertaking that creation of security, if any, and other benefits, from time to time, accruing in respect of the said Security of any part thereof shall be secured in favour of the Security Trustee for the benefit of the secured parties in form and manner satisfactory to the lenders

#### 10.2 Pledge Security

(i) The Lenders' interest in the pledge shall be in compliance with Sections 19 (2) and 19 (3) of the Banking Regulation Act, 1949.

(ii) The shares and debentures pledged to be pledged in favour/ for the benefit of the Lenders shall be free from any restrictive covenants/ lien or other encumbrance under any contract including shareholder agreement/ joint venture agreement/ financing arrangement with regard to pledge/ transfer of the shares/ debentures etc.

(iii) The Borrower shall (and shall ensure that the Promoter shall) ensure that the voting rights of the pledged shares do not fall below 51% during the Tenor

of the Facility.”

5. The First Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement entered into between the First Petitioner and the beneficiaries of the Project provide that the First 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 amount payable under the Financing Agreements and any other amounts agreed by the parties.

Provided that:

- (i) The lenders or the representatives of the lenders 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 First Petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on their behalf agrees unconditionally with the First Petitioner to release such encumbrances upon payment by the First Petitioner to the lenders, of all amounts due under the Financing Agreements.

6. The First Petitioner has submitted that in terms of Article 15.2.4 of the TSA, the Petitioner is required to take permission from this Commission prior to relinquishment or transfer of its rights and obligations in the TSA. The First Petitioner has stated that in view of the provisions of sub-sections (3) and (4) of Section 17 of the Electricity Act, 2003, the First Petitioner, as a licensee cannot create security interest over all the movable and immovable assets of the First Petitioner in favour of

Security Trustee/Lender and for any subsequent transferees, assigns, novatees thereof and any refinancing lenders to the project, acting on behalf of and for the benefit of the lender pursuant to Facility Agreement and Security Trustee Agreement and other security creating documents/Financial Agreements and for future refinancing transactions without approval of the Commission. Accordingly, the Petitioners have filed the present petition seeking prior approval of the Commission for creation of security interest, over all assets including the movable and immovable assets for the project in favour of Security Trustee pursuant to Security Trustee Agreement and Facility Agreement and other Financing Agreements.

7. The Petitioner, vide letter dated 8.2.2019, was directed to submit information in respect of the Project as per the format prescribed by the Commission. The Petitioner vide its affidavit dated 12.2.2019 has submitted the required information.

8. The Petition was heard on 14.2.2019 after notice to the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice.

9. We have considered the submissions made by the Petitioners. The First Petitioner approached the lenders, namely Yes Bank Limited and IndusInd Bank Limited for a rupee term loan of Rs. 1050 crore for the purpose of financing the Project on the terms and conditions contained in the Facility Agreement dated 28.9.2018 entered into between the First Petitioner and the lenders. The details of loan provided by the lenders are as under:

<b>S. No.</b>	<b>Name of the Lenders</b>	<b>Total Commitment (Rs in crore)</b>
1.	<b>Yes Bank Limited</b>	525.00 (including LC facility of Rs. 362.50 crore)



2.	<b>IndusInd Bank Limited</b>	525.00 (including LC facility of Rs. 362.50 crore)
<b>Total</b>		1,050.00 (including LC facility of Rs. 735 crore)

10. The lenders have agreed to grant rupee term loan of Rs. 1050 crore to the First Petitioner subject to the terms and conditions set out in the financing documents. The First Petitioner has agreed with Second Petitioner to execute an Indenture of Mortgage creating a charge on the all assets of the First Petitioner after obtaining the approval of the Commission. As per the Facility Agreement dated 28.9.2018 and information submitted vide affidavit dated 12.2.2019, estimated project cost is Rs. 1350 crore which will be sourced by the Promoter`s contribution amounting to Rs. 300 crore which includes equity share capital of Rs. 75 crore & loan/debenture of Rs. 225 crore from Promoter/group companies, and by external debt of Rs. 1050 crore.

11. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans. It is a normal practice followed by financial institutions/banking industry to ask for sufficient security from the borrower to back the loan in order to mitigate the credit risk of the lenders. In the instant case, the lenders, namely Yes Bank Limited and IndusInd Bank Limited have agreed to provide loan of Rs. 1050 crore to the First Petitioner for which draft Indenture of Mortgage has been finalized and to be executed upon the Commission`s approval for creation of security over all the movable and immovable assets of the project. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create encumbrance over all or part of the receivables, Letter of Credit or other assets of the project in favour of the lenders or the lender`s representatives, as security for amounts payable under the Financing Agreements and any other amounts

agreed by the parties.

12. Section 17 (3) and (4) of the Electricity Act, 2003 provides as under:

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

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

13. As per the above provision, a licensee is required to obtain approval of the Commission for assigning his licence or transfer its utility or any part thereof by way of sale, lease, exchange or otherwise and to enter into an agreement relating to any of these transactions.

14. The First Petitioner and the lenders have appointed the Second Petitioner, namely IDBI Trusteeship Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the project. Accordingly, Security Trustee Agreement and Financing Agreement dated 16.10.2018 have been executed for a loan of Rs. 1050 crore. As per the Security Trustee Agreement dated 16.10.2018, at the request of the First Petitioner, the performance BG provider has agreed to grant financial assistance of Rs. 43 crore by way of bank guarantee facility on the terms and conditions set out in the PBG Facility Agreement dated 16.10.2018. Since, the Petitioners have not prayed for creation of security interest for the above amount of Rs. 43 crore, the same is not being considered. In our view, IDBI Trusteeship Services Limited needs to be given comfort for creation of security for the benefit of lenders as security for the financial assistance provided by the lenders. We, therefore, accord in- principle approval allowing the First Petitioner to

create security interest in favour of IDBI Trusteeship Services Limited, by way of mortgage on project assets by execution of indenture of Mortgage and financing documents of the Project. The First Petitioner is directed to submit signed copy of Indenture of Mortgage for the Project immediately after its execution.

15. It is, however, made clear that the transmission licences granted by the Commission to the First Petitioner 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. Before agreeing to assignment of licence and the assets of the First petitioner to the nominee of lenders, the Commission shall evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and ability to execute the project and undertake transmission of electricity. The licensee, lenders, security trustee and the nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such transfer. This decision of ours is in accordance with Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 which reads as under:

***“12. Assignment of Licence***

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

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 the

nominee, approve the assignment of the licence to a nominee of the lender subject to proper due diligence of the process. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of Security Trustee or transfer of any assets to them shall always be needed. Lastly, finance documents and statements may be filed by the First Petitioner as and when required by the Commission for any specific purpose.

16. The Petitioners have also prayed to grant liberty to the First Petitioner to file the Interlocutory Application in the instant Petition for refinancing of the Project in future. Since, the present Petition is disposed of in terms of above observation, the Petitioner may file the Petition for refinancing of loan, etc. of the project in accordance with law.

17. With the above, Petition No. 357/MP/2018 stands disposed of.

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

sd/-  
**(Dr. M.K. Iyer)**  
Member

sd/-  
**(P.K. Pujari)**  
Chairperson