

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 175/MP/2019**

**Coram:  
Shri P.K.Pujari, Chairperson  
Dr. M.K.Iyer, Member  
Shri I.S.Jha, Member**

**Date of order: 10<sup>th</sup> January, 2020**

**In the matter of**

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest by the Borrower/Petitioner No.1 in favour of IDBI Trusteeship Services Ltd., the Security Trustee/Petitioner No. 2 acting on behalf of and for the benefit of (i) Axis Bank, Mumbai Branch, with respect to RTL Facility, (ii) Bank of India, Mumbai Branch with respect to RTL Facility; and (iii) Bank of Baroda, Mumbai Branch, with respect to RTL Facility in connection with the project of 765 kV SC Quad transmission line running from Raichur, Karnataka to Sholapur, Maharashtra.

**And  
In the matter of**

- 1) Raichur Sholapur Transmission Company Private Limited  
Patel Estate Road  
Jogeshwari West  
Mumbai-400102
  
- 2) IDBI Trusteeship Services Limited  
Asian Building  
Ground Floor, 17, R Kamani Road  
Ballard Estate, Fort  
Mumbai, Maharashtra 400001

**....Petitioners**

Vs

- 1) Power Grid Corporation of India Ltd. (CTU)  
B-9, Qutub Institutional Area  
Katwaria Sarai  
New Delhi-110061
  
- 2) Axis Bank Ltd.  
12 Mittal Towers, A Wing, First Floor

Nariman Point,  
Mumbai – 40021

- 3) Bank of India  
Bank of India Building, 4<sup>th</sup> Floor  
70-80, MG Road, Fort, Mumbai-400001
- 4) Bank of Baroda  
3<sup>rd</sup> & 4<sup>th</sup> Floor, 10/12, Mumbai Samachar Marg  
Horniman Circle, Fort, Mumbai-400001
- 5) Gujarat Urja Vikas Nigam Limited  
Sardar Patel, Vidyut Bhavan  
Race Course, Vadodara-390007  
Gujarat, India
- 6) Madhya Pradesh Power Trading Company Limited  
Shakti Bhawan, Vidyut Nagar  
Rampur, Jabalpur  
Madhya Pradesh-482008
- 7) Chhattisgarh State Power Distribution Company Limited  
Energy Info Tech Centre  
Daganiya, Raipur  
Chhattisgarh-492013
- 8) Goa State Electricity Department  
Electricity Department  
Government of Goa  
3<sup>rd</sup> Floor, Vidyut Bhavan, Tiswadi  
Goa-403001
- 9) Electricity Department  
Daman, Plot No. 35, OI DC Complex  
Near Fire Station, Somnath  
Nani Daman-396210
- 10) DNH Power Distribution Corporation Limited  
Vidhyut Bhavan  
Opposite Secretariat  
Silvassa-396230
- 11) Madhya Pradesh Audyogik Kendra  
Vikas Nigam Limited  
3/54, Press Complex  
Free Press House  
Agra-Mumbai Road, Indore  
Madhya Pradesh-452008

- 12) Jindal Power Limited  
Jindal Centre, 12  
Bhikaji Cama Place  
New Delhi-110066
- 13) Torrent Power Limited  
Torrent House  
Off Ashram Road  
Ahmedabad-38000+
- 14) PTC India Limited  
2<sup>nd</sup> Floor, NBCC Tower  
15 Bhikaji Cama Place  
New Delhi-110066
- 15) Adani Power Limited  
Adani House, Plot No. 83  
Institutional Area, Sector-32  
Gurgaon-122001
- 16) Heavy Water Project  
Department of Atomic Energy  
5<sup>th</sup> Floor, Vikram Sarabhai Bhavan  
Anushakti Nagar  
Mumbai-400094
- 17) Kerala State Electricity Board  
Vidyuthi Bhavanam  
Pattom  
Thiruvananthapuram-695004
- 18) Tamil Nadu Generation and Distribution Corporation Limited  
NPKKR Maaligai  
144, Annan Salai  
Chennai-600002
- 19) Electricity Department  
Government of Puducherry  
Puducherry-605001
- 20) Northern Power Distribution Company of A.P. Ltd.  
Vidyut Bhavan  
Nakkalgutta, Hanamkonda  
Warangal-506001
- 21) Eastern Power Distribution Company of A.P. Ltd.  
P&T Colony, Seethammadhara  
Vishakapatnam-530013

- 22) Southern Power Distribution Company of A.P. Ltd.  
House No. 19-13-65/A  
Behind Srinivasapuram Kalayana  
Mandapam  
Kesavyanagunta, Tiruchanoor Road  
Tirupati-517501
- 23) Central Power Distribution Company of A.P. Ltd.  
Corporate Office  
Mint Compund  
Hyderabad-500063
- 24) Power Company of Karnataka Limited  
5<sup>th</sup> Floor, KPTCL Building  
Kaveri Bhavan  
Gandhi Nagar  
Banglore-560009
- 25) Lanco Kondapali Power Ltd.  
Plot No. 4, Software Units Layout  
HITEC City, Madhapur  
Hyderabad-500081
- 26) Maharashtra State Electricity Distribution Co. Ltd.  
HongKong Bank Building  
M.G. Road, Fort  
Mumbai-400001
- 27) Central Electricity Regulatory Commission (CERC)  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath, New Delhi-110001

....Respondents

**The following were present:**

Shri Sayan Ray, Advocate, RSTCPL  
Shri Rahul Bisht, Advocate, RSTCPL

**ORDER**

The First Petitioner herein, Raichur Sholapur Transmission Company Private Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to transmit electricity as a transmission licensee and for that purpose to undertake the business of establishing Transmission

System associated with Krishnapattnam UMPP-Synchronous inter-connection between Southern Region and Western Region (Part B) (hereinafter referred to as “the Project”) 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 24.8.2011.

2. Raichur Sholapur Transmission Company Private Limited and IDBI Trusteeship Services Limited have filed a combined petition for creation of security interest in favour of IDBI Trusteeship Services Limited as Security Trustee pursuant to the Security Trustee Agreement and other relevant financing documents for benefit of the lenders to the Project. The Petitioners have made the following prayers:

“(a) The Commission may be pleased to approve creation and/or perfection of Security Interest as stated in the petition in favour of Petitioner No. 2/Security Trustee, acting on behalf of and for the benefit of Rupee Lenders; and

(b) Condone, any inadvertent omissions/errors/shortcoming and permit to add, change, modify, alter this filing and make further submissions as may be required at a future date.”

3. According to the First Petitioner, for financing the Project through secured loan facility, the First Petitioner approached Axis Bank Ltd. (Lead Secured Lender) for which Lead Secured Lender had agreed to make available financial assistance amounting to US\$ 48,000,000/- (48 million dollars) for the purpose of financing the development and implementation of the Project and on the terms and conditions set out in the ECB Facility Agreement dated 4.7.2012 entered into between the First Petitioner and Lead Secured Lender. For this purpose, the First Petitioner and Lead Secured Lender 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 lender and has entered into Security Trustee Agreement and Deed of Hypothecation on 4.7.2012.

4. The First Petitioner has submitted that subsequent to the ECB Facility Agreement, on the request of the First Petitioner, Axis Bank agreed to grant LER facility up to Rs. 15 crore for hedging the ECB Facility. Subsequently, the Petitioner entered into a Supplementary Deed of Hypothecation dated 19.2.2013. The First Petitioner has submitted that pursuant to the Supplementary Deed of Hypothecation dated 19.2.2013, securities were created to secure the LER Facility by way of second ranking charge.

5. The First Petitioner has submitted that subsequently, Axis Bank vide its letter dated 7.4.2013, reduced the foreign currency term loan from US\$ 48 million to US\$ 45 million and Lead Secured Lender downsold a part of loan to (i) Bank of Baroda, (ii) Bank of India. The ECB Facility loan was extended in the following share:

(a) Axis Bank - US\$ 22.50 million

(b) Bank of Baroda - US\$ 11.25 million

(c) Bank of India - US\$ 11.25 million

6. The First Petitioner has submitted that pursuant to above change in arrangement and for documenting the flexible structuring scheme of RBI as approved by Independent Evaluation Committee (IEC) and lenders, original ECB Facility Agreement was amended.

7. The First Petitioner has submitted that Secured Lead Lender vide its letter dated 23.6.2017 agreed to enhance the LER Facility up to Rs. 21,50,00,000/-. The First Petitioner has submitted that pursuant to the enhanced LER Facility, second

Supplementary Deed of Hypothecation dated 22.9.2017 was executed between the First Petitioner and Axis Bank to secure the enhanced LER Facility by security interest by way of second ranking charge.

8. The First Petitioner has submitted that pursuant to Supplementary Deed of Hypothecation dated 22.9.2017, Secured Lenders, namely Axis Bank, Bank of India and Bank of Baroda (hereinafter after referred to as "Rupee Lenders") proposed to refinance the outstanding amount of ECB Facility in Indian Rupees after 30.9.2018 on terms and conditions mutually agreed by the parties. Accordingly, Axis Bank, Mumbai Branch and Bank of India, Mumbai Branch vide their letters dated 16.11.2018, and 6.12.2018 sanctioned Rupee Term Loan for amount of Rs. 117,90,79,596.90/- and Rs. 58,94,56,56,268/- towards refinancing of the outstanding ECB Facility of US\$ 17.6445 million and US\$ 8.821 million respectively. The Petitioner has submitted that Bank of India vide its letter dated 31.5.2019 has sanctioned Rs. 58.95 crore as Rupee Term Loan towards refinancing of the outstanding ECB Facility of US\$ 8.82 million. The Petitioner has submitted that Bank of Baroda vide its letter dated 31.12.2018 has sanctioned Rs. 58.95 crore as Rupee Term Loan towards refinancing of the outstanding ECB Facility of US\$ 8.82 million. The First Petitioner has submitted that as per the terms and conditions of Rupee Term Loan, the following securities are being created:

"Primary

1. First charge by way of hypothecation in favour of lenders of the Borrower`s all movable assets including machinery, spares, tools and accessories, furniture, fixtures, vehicles, present & future;
2. First charge on all intangible assets of the Borrower including but not limited to goodwill, uncalled capital, present & future;

3. First charge by way of assignment or creation of security interest, present and future, of
  - a. all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in the project documents, (including but not limited to the Transmission Supply Agreement (TSA)/Transmission Licence, Engineering Procurement & Construction/Other contracts, O & M related agreements if any, Land Lease Agreement, Service Contracts, etc., duly acknowledged consented by the relevant counter parties to such project documents if so required, all as amended, varied or supplement from time to time;
  - b. all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in the permits, approvals and clearances pertaining to the project as may be permitted under the regulation in force;
  - c. all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee provided by any party to the project documents; and
  - d. all insurance contracts/insurance proceeds.
4. Exclusive charge on Letter of Credit given by Long Term Transmission Customers, if any;
5. First charge on the Letter of Credit. Escrow Account, Trust & Retention Account, Debt Service Reserve Account and other reserves and any other bank accounts of the Borrower wherever maintained, present & future; .
6. First charge in all book debts, operating cash flows, receivable, commissions, revenue of whatsoever nature and wherever arising of the Borrower, present & future.
7. Pledge over 51% of the total equity share capital of the Borrower by he sponsors subject to BR Act provisions.

The above security shall be shared and *pari-passu* basis among the lenders. Further, the above security shall have be created and perfected in favour the Security Trustee for the benefit of the Lenders. Security creation and perfection will have to be done upfront.”

9. The First Petitioner has submitted that pursuant to above term loan, the parties have agreed to execute fresh Deed of Hypothecation in terms of Section 17 (3) of the Act. The First Petitioner has submitted that there is no change in security of loan structure under the fresh hypothecation and only the currency of lending is different



from US\$ to Indian Rupees. Furthermore, the Indian branches of Secured Lenders are refinancing the ECB Facility in Indian currency. Accordingly, the present Petition has been filed for prior approval for creation of security interest in favour of Security Trustee acting on behalf of and for the benefit of Rupee Lenders.

10. The First Petitioner has submitted that it proposes to obtain approval for creation of Security Interest on its assets, rights and entitlements including movable properties of the Raichur-Sholapur Project by way of Deed of Hypothecation to be executed in favour of the Second Petitioner, namely Security Trustee.

11. The First Petitioner has submitted that under the financial agreements and proposed security documents, it shall be lawful for the Security Trustee, acting on behalf of and for the benefit of the Secured Lenders, to enter into and take possession of the assets/charged/assigned for their benefit and substitute themselves or any of the them or its nominees for the First Petitioner under any or all of the projects document(s) in case of default by the First Petitioner.

12. 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 and Regulation 12 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009, 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 acting on behalf of and for the benefit of the secured lenders. Accordingly, the Petitioners have filed the present Petition.

13. The Petition was heard after notice to the Petitioners and the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice. Vide letter dated 9.7.2019, the First Petitioner was directed to submit the information as prescribed in the format. The Petitioner vide its affidavit dated 13.7.2019 has submitted the information called for.

14. The First Petitioner, vide Record of Proceedings for hearing dated 26.11.2019 was directed to submit the following information/clarification:

(a) Auditor certificate with regard to 'Actual Project Cost' and the 'Actual means of application date (as on 31.3.2019);

(b) Reason for difference in 'Actual Project Cost' i.e., Rs. 387.4 crore and 'Actual means of Finance' i.e. Rs. 324.10 crore, as on application date submitted vide prescribed format;

(c) As per sanction letter No. MLCB:2019-19 dated 6.12.2018, the sanctioned rupee Term loan from Bank of India (Mumbai Branch) towards re-financing of the outstanding ECB facility from its Jersey Branch, subsequently transferred to London Branch, is Rs.58,94,56,56,268.00. While the sanctioned rupee term loan from Bank of Baroda (Mumbai Branch) vide letter No. CFSBAL:CMO:2018-19/24 dated 31.12.2018 towards re-financing of the outstanding ECB facility from its Ras Al Khaima Branch is Rs. 58,95,39,798.45, against the same amount of ECB loan amount i.e. USD 8.82 million. The same may be clarified; and

(d) Indicative cost of the project communicated by CEA as required in the prescribed format.

15. The First Petitioner, vide its affidavit dated 9.12.2019, has submitted the information called for.

### **Analysis and Decision**

16. We have considered the submissions made by the Petitioners. The Commission in its order dated 27.6.2018 in Petition No. 12/MP/2018 has granted approval under Section 17 (3) and (4) of the Act for creation of security interest in favour of Security Trustee for loan of US\$ 45 million. Accordingly, a part of the loan was downsold by the Secured Lead Lender, namely Axis Bank Limited to Bank of India and Bank of Baroda and ECB Facility loan was extended in Axis Bank (US\$ 22.50 million), Bank of Baroda (US\$ 11.25 million) and Bank of India (US\$ 11.25 million). Subsequently, Secured Lead Lender vide its letter dated 23.6.2017, agreed to enhance the LER Facility by an amount not exceeding Rs. 21.5 crore.

17. The First Petitioner vide its affidavit dated 13.7.2019 has submitted that the scheduled Commercial Operation Date (COD) of the Project was 7.1.2014 and the actual COD was 4.7.2014. The Petitioner has submitted original estimated Project cost and means of finance as under:

<b>Original Estimated Project cost</b>	<b>Rs. in crore</b>	<b>Means of finance</b>	<b>Rs. in crore</b>
Hard Cost	302.60	Equity Capital	80.00
IDC	9.50	Loan from Lenders	240.00
Other Costs	7.90		
<b>Total</b>	<b>320.00</b>		<b>320.00</b>

18. The Petitioner has submitted the actual Project cost – Gross Block of Fixed Assets and means of finance as on COD as under:

<b>Actual Project cost</b>	<b>Rs. in crore</b>	<b>Means of finance</b>	<b>Rs. in crore</b>
EPC Cost	257.09	Equity Capital	80.00

Interest on ECB loan during construction period (including interest swap charges)	25.27	Long Term ECB Loan	240.46
Finance Charges	25.04	Interest on FD	10.21
Other Expenses	23.27		
<b>Total</b>	<b>330.67</b>		<b>330.67</b>

19. The Petitioner has submitted actual Project cost-Gross Block of Fixed Assets and means of finance as on 31.3.2019 as under:

<b>Actual Project cost</b>	<b>Rs. in crore</b>	<b>Means of finance</b>	<b>Rs. in crore</b>
Gross Block of Fixed Assets	387.40	Equity Capital	80.00
		Long Term ECB Loan	244.10
<b>Total</b>	<b>387.40</b>		<b>324.10</b>

Note: With regard to difference in Gross Block of Fixed Assets (Rs. 387.40 crore) and Means of Finance (Rs. 324.10 crore) as on 31.3.2019, no supporting documents clarifying the same have been placed on record.

20. According to the First Petitioner, for refinancing the existing ECB Facility of US \$ 17.65 million, US\$ 8.82 million and US\$ 8.82 million, it had approached Axis Bank, Bank of India and Bank of Baroda, Mumbai Branch for Rs. 117.91 crore, Rs.58.95 crore and Rs. 58.95 crore respectively as Rupee Term Loan. Accordingly, Axis Bank, Bank of India and Bank of Baroda vide their letters dated 16.11.2018, 6.12.2018 (revised on 31.5.2019), and 31.12.2018 sanctioned the above Rupee Term Loan for refinancing of existing ECB Facility. The details of the sanctioned loan and actual loans in US dollars from foreign branches are as under:

<b>Name of the Lenders</b>	<b>Sanctioned Loan* (in USD Mn)</b>	<b>Actual Loan as on Date (i.e., 31.3.2019) (in USD Mn)*</b>
Axis Bank, DIFC Branch, Dubai	45.00	17.65
Bank of Baroda, Ras Al Khaima Branch	0.00	8.82
Bank of India, Jersey Branch	0.00	8.82
<b>Total</b>	<b>45.00</b>	<b>35.29</b>

\*Note: Original sanctioned amount was US\$ 48 million which was subsequently revised to US\$ 45 million Axis Bank subsequently down sold the loan to Bank of Baroda (25%) & Bank of India (25%).

21. The details of refinancing of ECB Facility in Indian currency from Indian Branches of the same lenders are as under:

<b>Name of the lenders</b>	<b>Sanctioned Loan (Rupee in crore)</b>
Axis Bank, Mumbai Branch	117.91
Bank of Baroda, Mumbai Branch	58.95
Bank of India, Mumbai Branch	58.95
<b>Total</b>	<b>235.81</b>

22. 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.”

23. Further, 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, Letter of Credit or the other 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.”

24. 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 the Transmission License granted by the Appropriate Commission and 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 Appropriate Commission.

15.3.2 However, in the case of default by the TSP on debt repayments, the Appropriate Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfillment 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 or as amended from time to time.”

25. As per Section 17 (3) and (4) of the Act, a licensee is required to obtain approval of the Commission for assigning its 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. As per the TSA, the TSP which is an inter-State transmission licensee can create any encumbrances over all or part of the receivables, Letter of Credit or the other assets of the Project. Moreover, the TSP cannot assign its licence or transfer the project or part thereof by sale, lease, exchange or otherwise without prior approval of the Commission. IDBI Trusteeship Services Limited as Security Trustee needs to be given comfort for creation of security for the benefit of banks/financial institutions/non-banking financial companies as security for the financial assistance provided by the lenders. Further, in the present case, there is no change in security of loan structure as already approved by the Commission in its order dated 27.6.2018 in Petition No. 12/MP/2018 but only a change in lending currency from US\$ to Indian Rupees under refinancing. We, therefore, accord in principle approval allowing the First Petitioner to create security in favour of IDBI Trusteeship Services Limited, presently acting as Security Trustee pursuant to Security Trustee Agreement and other Financing documents by way of hypothecation and equitable mortgage on Project assets.

26. We, however, make clear that the transmission licence of 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 transfer the licence and the assets of the First Petitioner to the nominee of Security Trustee, the Commission shall evaluate such a nominee`s experience in development, design, construction, operation and maintenance of transmission lines, and to be able 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, lenders, Security Trustee and the nominee, approve the assignment of the licence to a nominee of the lenders 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.

27. With the above, Petition No. 175/MP/2019 stands disposed of.

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

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

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