

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 50/MP/2021

Coram:

Shri P.K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Shri Prakash S.Mhaske, Member (Ex-officio)

Date of Order: 6th April, 2021

In the matter of

Petition seeking approval under Section 17(3) & 17(4) of Electricity Act 2003, for assignment of Licence by way for creation of security interest in favour of Security Trustee/ Lenders and other security creating documents/ financing agreements by way of mortgage/ hypothecation/assignment of rights, title, interest, claims, demands, benefits, mortgage properties, project assets, clearances, project documents, agreements, approvals and rights of Jam Khambaliya Transco Limited.

And

In the matter of

Jam Khambaliya Transco Limited

C-105, Anand Niketan,
New Delhi - 110021

...Petitioner

Vs

1. Powerica Limited

9th Floor, C Wing, Godrej Coliseum,
Sion (E), Mumbai – 400022

2. Axis Bank Limited

'Trishul', 3rd Floor, Opposite Samartheshwar Temple,
Law Garden, Ellis Bridge, Ahmedabad 380 006

3. Axis Trustee Services Limited

Axis House, Bombay Dyeing Mills Compound,
Pandurang Budhkar Marg,
Worli, Mumbai – 400025

...Respondents

The following were present:

Shri Bhavesh Kundalia, JKTL

ORDER

The Petitioner, Jam Khambaliya Transco Limited (JKTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish "Transmission System for Jam Khambaliya pooling station and inter-connection of Jam Khambaliya pooling station for providing connectivity to RE projects (1500 MW) in Dwarka (Gujarat) and installation of 400/220 kV ICT along with associated bays at M/s CGPL Switchyard" (hereinafter referred to as 'the Transmission System' or '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 24.3.2020 in Petition No. 46/TL/2020.

2. The Petitioner has filed the present Petition under Sub-sections (3) and (4) of Section 17 of the Act for assignment of licence by way for creation of security interest over all the movable and immovable assets of the Petitioner, in favour of Axis Trustee Services Limited (Respondent No. 3) as Security Trustee pursuant to the Security Trustee Agreement and Facility Agreement, for the benefit of the lender. The Petitioner has made the following prayers:

"a. Allow the assignment of the Transmission License and Utility (as defined in the Electricity Act, 2003) of Petitioner by way of security in favour of the Axis Trustee Services Limited as Security Trustee, acting for the benefit and on behalf of the Lenders.

b. *Approve the creation and/or perfection of security interest in favour of the Axis Trustee Services Limited as Security Trustee, acting on behalf of and for the benefit of the Lenders as provided under the Facility Agreement dated 22.10.2020.*

c. *Condone any inadvertent omissions / errors / shortcomings and permit to add, change, modify, alter this filing and make further submissions as may be required at a future date.*

d. *Allow any other relief, order or direction, which the Hon'ble Commission deems fit to be and proper under the facts and circumstances of the present case."*

3. The Petitioner requested Axis Bank Limited (hereinafter also referred to as 'the lender') for financing of the project. Pursuant to the request of the Petitioner, Axis Bank Limited has sanctioned rupee term loan to the extent of Rs. 256 crore with a sub-limit of LCs of up to Rs. 200 crore and a sub-limit of standby letter of credit of up to Rs. 200 crore for financing the Project on the terms and condition set out in the Facility Agreement dated 22.10.2020. In addition to rupee term loan of Rs. 256 crore, the lender has also agreed to provide performance bank guarantee of up to Rs. 36 crore, and Loan Equivalent Risk (LER) for hedging of up to Rs. 18 crore to the Petitioner on the terms and conditions specified in the Facility Agreement dated 22.10.2020.

4. The Petitioner has appointed the Respondent No. 3, namely, Axis Trustee Services Limited (hereinafter also referred to as "the Security Trustee") who has agreed to act as Security Trustee for the lender by entering into Security Trustee Agreement on 22.10.2020.

5. Pursuant to the terms of Facility Agreement dated 22.10.2020, the Petitioner has agreed to provide, *inter-alia*, the following security to secure the secured obligations in favour of the Security Trustee acting on behalf of the lender:

- a. *First pari passu Security Interest over the immovable fixed assets including but not limited to, land, civil structures, towers and cables, office buildings, both present and future, of the Applicant/Petitioner;*
 - b. *First pari passu Security Interest in favour of the Security Trustee by way of charge, on entire moveable fixed assets including but not limited to machinery, spares, tools and accessories, furniture, fixtures, vehicles, etc, both present and future, of the Applicant/Petitioner;*
 - c. *First pari passu Security Interest in favour of the Security Trustee by way of a hypothecation on the entire current assets including but not limited to all operating accounts, deposits, investments, book debts, operating cash flows, receivables, commissions, revenues of whatsoever nature and whenever arising, both present and future, of the Applicant/Petitioner;*
 - d. *Security Interest in favour of the Lenders/Security Trustee, if appointed, by way of first pari passu charge, on all the accounts of the Applicant/Petitioner (including the Accounts opened and maintained pursuant to the Escrow Account Agreement) and the monies credited or deposited therein, to the extent of Applicant/Petitioner's interests thereon, both present and future;*
 - e. *First pari passu Security Interest in favour of the Lenders/Security Trustee, if appointed, by way of charge on:*
 - (i) *all the rights, title, interest, benefits, claim and demands whatsoever of the Applicant/Petitioner in the project documents, clearances, loss protection covers, if any;*
 - (ii) *all the rights, title, interest, benefits, claim and demands whatsoever of the Applicant/Petitioner in any letter of credit, guarantee, performance bond provided by any counterparty to the project documents, in relation to the Project, if any;*
 - (iii) *all the rights, title, interest, benefits, claim and demands whatsoever of the Applicant/Petitioner in the insurance contracts, policies, insurance proceeds, procured by the Applicant/Petitioner or procured by any of its contractors favoring the Applicant/Petitioner in relation to the Project.*
 - f. *In relation to the LC Facility, all capital goods purchased and/or imported capex imported under the LC Facility.*
 - g. *First pari passu charge by way of a nondisposal undertaking on NDU Shares/ pledge from the Promoter over 30% of the Shares of the Applicant/Petitioner held by it in a form and manner acceptable to the Lenders and subject to compliance with the Banking Regulations Act 1949.*
6. It has been submitted by the Petitioner that Article 15.2.2 of the Transmission

Service Agreement (TSA) entered into between the Petitioner and the beneficiaries of

the Project provide that the Petitioner is free to create any encumbrance over all or part of the receivables, letter of credit or other assets of the Project in favour of the lender or the representative of the lender as security for amount payable under the Financing Agreements and any other amounts agreed by the parties. Provided that:

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

7. It has been stated by the Petitioner that in terms of Clause 8.3.1 of Facility Agreement, it is under the obligation to create and perfect security interest within 180 days from the initial disbursement date.

8. The 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 Petitioner has stated that in view of the provisions of Sub-sections (3) and (4) of Section 17 of the Act, the Petitioner, as a licensee, cannot create security interest over the movable and immovable assets of the Petitioner in favour of Security Trustee acting on behalf of and for the benefit of the lender pursuant to Facility Agreement and Security Trustee Agreement without approval of the Commission. Accordingly, the Petitioner has 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.

9. The Petitioner has submitted information in respect of its under construction Project as per the format prescribed by the Commission.

10. The Petition was called out for hearing on 19.3.2021 through video conferencing after notice to the Respondents. None was present on behalf of the Respondents despite notice. No reply has been filed by the Respondents.

Analysis and Decision

11. We have considered the submissions made by the Petitioner. The Petitioner approached the lender, namely, Axis Bank Limited for a rupee term loan for the purpose of financing the Project. The lender has agreed to grant (i) rupee term loan to the extent of Rs. 256 crore with a sub-limit of LCs of up to Rs. 200 crore and a sub-limit of standby letter of credit of up to Rs 200 crore; (ii) performance bank guarantee of up to Rs. 36 crore; and (iii) LER for hedging of up to Rs. 18 crore to the Petitioner subject to the terms and conditions set out in the Facility Agreement dated 22.10.2020.

12. As per the Facility Agreement dated 22.10.2020, estimated cost of the Project is Rs. 341 crore. In terms of Financing Plan enclosed as Schedule VIII of the Facility Agreement, the Project shall be funded through the debt of Rs. 256 crore and equity of Rs. 85 crore.

13. The Petitioner has submitted original estimated cost of the Project and means of finance as on the date of financial closure i.e. 22.10.2020 as under:

Original Estimated Project cost	Rs. in crore	Means of finance	Rs. in crore
Hard Cost	324	Equity Share Capital	21
IDC	15	Loan Debenture from promoters, group companies	64
Contingency	1	Secured loan/ debt from external source	256
WC and DSRA	1		
Total	341	Total	341

14. The Petitioner has submitted that in addition to rupee term loan of Rs. 256 crore, the lender has agreed to provide performance bank guarantee of up to Rs. 36 crore and LER for hedging of up to Rs. 18 crore subject to the terms and conditions set out in the financing documents. Since the Petitioner cannot avail loan facility more than the loan component of its Project cost, its request regarding creation of security interest pertaining to performance bank guarantee and LER for hedging is not being considered.

15. The transmission projects are capital intensive projects requiring huge capital investment and 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 lender, namely, Axis Bank Limited has agreed to provide loan of Rs. 256 crore with a sub-limit of letter of credits of up to Rs. 200 crore and a sub-limit of standby letter of credit of up to Rs. 200 crore to the Petitioner. 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 lender or the lender's representatives, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

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 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."

17. 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 to entering into an agreement relating to any of these transactions.

18. The Petitioner and the lender have appointed the Axis Trustee Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, Security Trustee Agreement and Facility Agreement dated 22.10.2020 have been executed for a loan of Rs. 256 crore. As per the Security Trustee Agreement dated 22.10.2020, at the request of the Petitioner, the lender has agreed to provide a loan of Rs. 256 crore with a sub-limit of LCs of up to Rs. 200 crore and a sub-limit of standby letter of credit of up to Rs. 200 crore for the Project on the terms and conditions contained in the Facility Agreement and Security Trustee Agreement. In our view, Axis Trustee Services Limited needs to

be given comfort for creation of security for the benefit of lender as security for the financial assistance provided by the lender. We, therefore, accord in principle approval allowing the Petitioner to create security interest in favour of Axis Trustee Services Limited, by way of mortgage on Project assets by execution of indenture of Mortgage and financing documents of the Project. The Petitioner is directed to submit signed copy of Indenture of Mortgage for the Project immediately after its execution.

19. It is, however, made clear that the transmission licence granted by the Commission to the 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 petitioner to the nominee of lenders, the Commission will 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, lender, 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.”

20. 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, financial documents and statements may be filed by the Petitioner as and when required by the Commission for any specific purpose.

21. With the above, Petition No. 50/MP/2021 stands disposed of.

Sd/- (P.S. Mhaske) Member	sd/- (P.K. Singh) Member	sd/- (Arun Goyal) Member	sd/- (I.S. Jha) Member	sd/- (P.K. Pujari) Chairperson
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