

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 10/MP/2023

**Coram:
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 10th March, 2023

In the matter of:

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for bringing on record the appointment of Vardhman Trusteeship Pvt. Ltd./ Respondent No. 2 as the Security Trustee and for creation of security interest over assets of Petitioner in favour of the Security Trustee, acting on behalf of and for the benefit of the lenders (and for any subsequent transferees, assign, novatees thereof and any refinancing lenders to the Project), by way of hypothecation and equitable mortgage on the Project assets, pursuant to unattested deed of Hypothecation, Declaration and Undertaking and other Financing Agreements, for the development of the Transmission Project.

And

In the matter of:

Rajgarh Transmission Limited,
2nd Floor, Novus Tower,
Plot No. 18, Sector-18
Gurugram, Haryana-122015

.....**Petitioner**

Versus

1. Rewa Ultra Mega Solar Limited,
Urja Bhawan, Shivaji Nagar,
Link Road No. 2,
Bhopal, Madhya Pradesh – 462016

2. Vardhman Trusteeship Private Limited
Konnectus Tower 1, 601/A1,
Bhavbhuti Marg,
New Delhi- 110002

.....**Respondents**

Parties present:

Shri Mridul Chagravarty, Advocate, RTL
Ms. Ankita Bafna, Advocate, RTL
Shri Harshit Singh, Advocate, RTL
Shri Lakshyajit Singh, Advocate, RTL
Ms. Lavanya Panwar, Advocate, RTL

ORDER

The Petitioner, Rajgarh Transmission Limited (RTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish transmission system for "Transmission Scheme for Evacuation of power from RE Projects in Rajgarh (2500 MW) SEZ in Madhya Pradesh (in short, '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 13.9.2022 in Petition No. 171/TL/2022.

2. The Petitioner has filed the present Petition for creation of security interest by way of hypothecation, declaration and undertaking over all movable and immovable assets of the Petitioner in favour of the Security Trustee, Respondent No.2 i.e. Vardhman Trusteeship Private Limited. The Petitioner has made the following prayers:

"(a) Approve the creation of security Interest, over all the movable and immovable assets of Petitioner and to the extent as mentioned in the Facility Agreement, Security Trustee Agreement and other financing documents and also for any future security creation, in favour of Security Trustee/ Respondent No. 2 acting on behalf of and for the benefit of the Lender and for subsequent transferees, assigns, novates thereof and any refinancing lenders of the Project, by way of hypothecation and equitable mortgage on Project assets, pursuant to Unattested Deed of Hypothecation, Declaration and undertaking and other Financing Agreements; and

(b) Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the case."

3. The Petitioner has submitted that it approached Standard Chartered Bank (hereinafter also referred to as 'the lender') for financial assistance in the form of term loan facility. Standard Chartered Bank vide its letter dated 20.09.2022 sanctioned rupee term loan to the extent of Rs. 315.40 crore and Letter of Credit facility of Rs. 275 crores for financing the Project. In pursuance of the sanction letter issued by Standard Chartered Bank, the Petitioner entered into a Facility Agreement dated 20.10.2022 for availing loan of Rs. 315.40 crore.

4. The Petitioner has appointed the Respondent No. 2, namely, Vardhman Trusteeship Private 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 20.10.2022.

5. In pursuance of the Facility Agreement read with the Security Trustee Agreement, the Petitioner has agreed to provide *inter-alia*, the following securities to secure the secured obligations in favour of the Security Trustee acting on behalf of the lender:

"20.10 Security Creation, Perfection and Preservation

a) *The Borrower and the other Obligors shall secure the Obligations by a Security Interest comprising the following:*

i. A first ranking pari passu mortgage to be granted by the Borrower in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) on the Immovable Properties;

ii. A first ranking pari passu charge by way of a hypothecation supported by a power of attorney to be granted by the Borrower in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) on all the movable assets of the Borrower (including plant, machinery, machinery spares, tools and accessories, furniture, fixture, vehicles, raw material, stock-in trade, inventory and all other movable properties of whatsoever nature), both present and future;

iii. A first ranking *pari passu* charge by way of a hypothecation supported by a power of attorney to be granted by the Borrower in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) on all its current assets, including but not limited to book debts, operating cash flows, receivables, commissions or revenues whatsoever arising, both present and future;

iv. A first ranking *pari passu* by way of a hypothecation supported by a power of attorney to be granted by the Borrower in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) on all the Borrower's intangible assets, including but not limited to Intellectual Property, goodwill, right, undertakings, uncalled capital, both present and future;

v. A first ranking *pari passu* charge by way of a hypothecation supported by a power of attorney to be granted by the Borrower in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) on all of the Borrower's accounts, including the Project Accounts and amounts lying to the credit of such accounts, both present and future;

vi. A first ranking *pari passu* assignment of all the rights, permits, title, interest, benefits, claims, insurances and demands whatsoever of the Borrower in the Project Documents and Project Document Guarantees and Bonds, and other Authorisations pertaining to the Project (to the extent assignable), both present and future;

vii. a first ranking *pari passu* charge over at least 51% (fifty one percent) of the entire Share capital and Compulsorily Convertible Securities of the Borrower, on a fully diluted basis, subject to the restrictions contained in the Banking Regulation Act, 1949, applicable to 'Banking Companies' as defined therein;

viii. first ranking *pari passu* charge/ assignment of 100% (one hundred percent) of the Sponsor Hypothecated Debt in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party).

The Security Interest created over assets referred to hereinabove shall collectively be referred to as "**Security**".

b) Ranking and Sharing of Security:

i. Security created or to be created pursuant to this Clause 20.10 (Security Creation, Perfection and Preservation) shall be on a first ranking *pari passu* basis and shall be created in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) in the form and manner satisfactory to the Secured Parties.

ii. The Security created or to be created in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) pursuant to paragraphs (i) – (viii) of Clause 20.10 (a) (Security Creation, Perfection and Preservation) shall be a first ranking *pari passu* charge *inter se* the Lenders and Working Capital Lenders. Provided however, that the Security created or to be created on the Debt Service Reserve Amount and the amounts lying in the DSRA in favour of the Security Trustee (acting on behalf of and for the benefit of the Secured Party) shall be for the exclusive benefit of the Lenders.

c) Timelines for Creation and Perfection of Security

i. The Obligors shall execute the Securities Pledge Agreement and the Sponsor Deed of Hypothecation, and shall ensure the creation and perfection of Security Interest to be created pursuant to Clause 20.10 (a)(vii)-(viii) (Security Creation, Perfection and Preservation) above prior to the First Utilisation. Provided that in relation to the Security Interest to be created pursuant to Clause 20.10 (a) (vii) (Security Creation, Perfection and Preservation) above, the pledge of at least: (A) 30% (thirty percent) of the entire Share capital and Compulsorily Convertible Securities of the Borrower shall be created prior to the First Utilisation; and (B) 51% (fifty one percent) of the entire Share capital and Compulsorily Convertible Securities of the Borrower, shall be created on and from: (I) the participation of at least 1 (one) New Lender together with SCB in the Facility; or (II) in case of any change in the Banking Regulation Act, 1949 or the Applicable Laws which removes or increases the limit of the instruments that can be held by a Banking Company by way of pledge, whichever is earlier, on a fully diluted basis.

ii. The Security Interest over the remaining Security as specified in Clauses 20.10 (a)(i)-(vi) (Security Creation, Perfection and Preservation) above shall be created and perfected on or prior to the Security Longstop Date or such other date acceptable to the Lenders.

iii. The Borrower shall make an application to CERC to obtain Authorisation from the CERC for creation and perfection of the Security proposed to be created vide the Subsequent Security Documents prior to the First Utilisation.

iv. The Borrower shall obtain Authorisation from the CERC for creation and perfection of the Security proposed to be created vide the Subsequent Security Documents on or prior to the Security Longstop Date.

v. Each of the Obligors shall make out a good and marketable title to its properties to be secured for the benefit of the Secured Parties to the satisfaction of Secured Parties and comply with such formalities as may be necessary or required for the said purpose.

vi. The Borrower shall ensure that Sponsor executes powers of attorney (in the form and manner stipulated under the Securities Pledge Agreement and Sponsor Deed of Hypothecation) authorising the Security Trustee to exercise certain powers in respect of the Shares and Compulsorily Convertible Securities pledged, and Sponsor Hypothecated Debt charged/ assigned.

vii. The Borrower shall, and shall ensure that the Obligors shall, file Form CHG-1 with the relevant Registrar of Companies and take all other actions for the perfection of Security and complete all other filings in relation to the perfection of the Security Interest over the relevant Security promptly and in any case, not later than 30 (thirty) days from the date of creation of such Security.

viii. Each of the Borrower and the other Obligors shall furnish an undertaking (in a format provided by the Agent) to, inter alia, indemnify each of the Secured Parties from any losses, damages, penalties, claims, costs, expenses, actions or liabilities suffered or incurred due to the failure of the Borrower and the other Obligors procure relevant permission from the income tax authorities under Section 281(1) of the Tax Act and if amounts are due from the Borrower and the other Obligors

under the Tax Act or any proceedings are pending against the Borrower and the other Obligors.

ix The Borrower will do everything necessary in the judgment of the Agent or any of the Secured Parties to: (a) create, perfect and maintain the Security in full force and effect at all times (including the priority thereof); (b) preserve and protect the Security and the priority thereof and protect and enforce its right and title, and the rights and title of the Secured Parties, to the Security.

x Each Obligor shall ensure that at all times its payment obligations under the Finance Document rank at least pari passu with all other unsubordinated creditors of the Obligors except for those creditors whose claims are mandatorily preferred by laws of general application to companies.

xi The Borrower shall ensure that the confirmation from the Security Trustee on the registration of charge with the central Registry of Securitisation Asset Reconstruction and Security Interest of India ("CERSAI") in relation to the Security Interest created under the relevant Security Document is furnished to the Agent within 30 (thirty) days from the execution of such relevant Security Document."

6. The Petitioner has submitted that under the financial agreements and on enforcements of the security interest, it shall be lawful for the Security Trustee (the Respondent No.2), acting for the benefit of Project lender, to enter into and to take possession of the assets/ properties, mortgaged/ charged/ assigned for their benefits or its nominees for the Petitioner under any or all the Project document(s).

7. The Petitioner has stated 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 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:

(a) 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

(b) Any encumbrance granted by the Petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on their behalf agrees

unconditionally with the Petitioner to release such encumbrances upon payment by the Petitioner to the lenders, of all amounts due under the Financing Agreements.

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 seeking approval for creation of security for the benefit of in favour of and/ or for the benefit of the Project lenders. 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 Rupee Facility Agreement.

9. The Petition was called out for hearing on 21.2.2023 after notice to the Respondents. Vide Record of Proceedings for the hearing dated 21.2.2023, the Respondents were directed to file their replies. However, no reply has been filed by the Respondents within due date.

Analysis and Decision

10. We have considered the submissions made by the Petitioner. The Petitioner approached the lender, namely, Standard Chartered Bank for a rupee term loan for financing the Project. The lender has agreed to grant rupee term loan of Rs. 315.40 crore and sub-limit for opening of Letter of Credit (LC) of Rs.275 crore to the Petitioner subject to the terms and conditions set out in the Facility Agreement dated 20.10.2022 entered into between the Petitioner and the lender.

11. As per the Facility Agreement, estimated cost of the Project is Rs. 430.60 crore. In terms of financing plan enclosed as Schedule 11 of the Facility Agreement, the Project shall be funded through the debt of Rs. 315.40 crore and equity of Rs. 115.20 crore (share capital Rs. 9.70 crore and Promoter loan Rs. 105.50 crore). The Petitioner has submitted original estimated cost of the Project and means of finance as on the date of financial closure as under:

Original estimated Project cost (as per agreement)	Rs. (in crore)	Means of finance (as per agreement)	Rs. (in crore)
Hard Cost	399.60	Subordinated debt from sponsor/promoter (Equity share capital / Share Premium)	115.20
IEDC and others	31.00	Secured loan/debt from external sources	315.40
Total	430.60	Total	430.60

13. The Petitioner has submitted lender-wise details as under:

(Rs. in crore)		
Name of lender	Sanctioned loan (as per loan Agreement)	Actual loan disbursed (as on date of filing of Petition)
Standard Chartered Bank	315.40 (TL facility) 275.00 (Sub-Limit for LC facility)	Nil

14. 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, Standard Chartered Bank has agreed to provide loan of Rs. 315.40 crore (TL facility) and Rs. 275 .00 crore (Sub- Limit for LC facility) 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 lenders or the lender`s representatives, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

15. 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 subsection (3), unless made with the prior approval of the Appropriate Commission, shall be void.”

16. 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 Petitioner and the lender have appointed the Vardhman Trusteeship Private 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 20.10.2022 have been executed for a loan of Rs. 315.40 crore (TL facility) and Rs. 275.00 crore (Sub- Limit for LC facility). As per the Security Trustee Agreement dated 20.10.2022, at the request of the Petitioner, the lender has agreed to provide a loan of Rs. 315.40 crore (TL facility) and Rs. 275 .00 crore (sub-Limit for LC facility) for the Project on the terms and conditions contained in the Facility Agreement and Security Trustee Agreement. In our view, Vardhman Trusteeship Private 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. In view of the said facts and circumstances, we, hereby, accord in-principle approval allowing the Petitioner to create security interest in favour of Vardhman Trusteeship Private Limited, by way of mortgage/ hypothecation 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 and other financing documents for the Project immediately after their execution.

18. This in-principle approval is being accorded with the condition 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, without prior approval of the Commission 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 lender, 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, 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 stipulation has been imposed under 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.”

19. 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. Lastly, financial documents and statements shall be submitted by the Petitioner as and when required by the Commission for any specific purpose.

20. Petition No. 10/MP/2023 is allowed in terms of the above.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member