

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 199/MP/2024

Coram:

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

Date of Order: 17th October, 2024

In the matter of

Petition under Sections 17(3) and 17(4) of the Electricity Act, 2003 read with Articles 15.2.2, 15.2.3 and 15.3.2 of the Transmission Service Agreement dated 2.8.2023 seeking approval for creation of security interest over the assets of the Petitioner in favour of IDBI Trusteeship Services Limited, the Security Trustee for the Lenders.

And

In the matter of

**Fatehgarh III Transmission Limited,
(A 100% wholly owned subsidiary of Apraava Energy Private Limited)**

T-15A, Third Floor, Salcon Rasvilas,
Saket-110017, New Delhi, India.

... Petitioner

Versus

1. Central Transmission Utility of India Limited,

Plot No. 2, Sector 29,
Gurgaon -122001.

2. IDBI Trusteeship Services Limited,

Ground Floor, Universal Insurance Building,
Sir Phirozshah Mehta Road,
Fort Bazargate, Mumbai- 400001,
Maharashtra, India.

3. IndusInd Bank Limited,

2401 Gen Thimmayya Road,
Cantonment- 411001,
Pune, Maharashtra, India.

....Respondents

Parties present:

Ms. Shriya P., FIITL
Ms. Bitika Kaur, FIITL

ORDER

The Petitioner, Fatehgarh III Transmission Limited (hereinafter referred to as 'FIITL'), has been granted a transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish the "Transmission system for evacuation of power from REZ in Rajasthan (20 GW) under phase III-Part A3" (hereinafter referred to as "the Transmission System" or "Project") on a Build, Own, Operate, and Transfer (BOOT) basis, the details of the Project are specified in the schedule attached to the licence issued vide order dated 28.1.2024 in Petition No. 246/TL/2023.

2. The Petitioner has filed the present Petition seeking approval for the creation of a security interest over the Petitioner's assets, including all movable and immovable assets, in favour of IDBI Trusteeship Services Limited, the security trustee, for the benefit of IndusInd Bank Limited, including its successors, subsequent transferees, novatees, assigns, and any refinancing lenders, to the Project. The Petitioner has made the following prayers:

- a) admit and list the instant Petition for an urgent hearing*
- b) approve the creation of the security interest by the Petitioner over the Hypothecated Properties to the extent described in this Petition in favour of Respondent No. 2 for the benefit of the Lender, to secure the Secured Obligations;*
- c) approve the creation of the security interest by the Petitioner over the Hypothecated Properties to the extent described in this Petition for the benefit of the Lender and for its successors, subsequent transferees, novatees, assigns and any refinancing lenders to the Project by way of hypothecation/ assignment/ mortgage (if any);*
- d) approve and allow the execution of the Unattested Deed of Hypothecation and Power of Attorney - Hypothecation for creation and perfection of the security interest to the extent described in this Petition in favour of the Respondent No. 2.*

- e) *Condone any inadvertent omissions/ errors/ shortcomings and permit to add, change, modify or alter this filing and make further submissions as may be required at a future date; and*
- f) *Grant such order, further relief(s) in the facts and circumstances of the case as this Commission may deem just and equitable in favour of the Petitioner.”*

3. According to the Petitioner, for the purpose of financing the project, the Petitioner requested the IndusInd Bank Limited (hereinafter referred to as ‘the lender’), for which the lender has agreed to provide the financial assistance to the tune of Rs. 487.00 crores by way of the Rupee Term Loan for the project along with a letter of credit facility, non-revolving and both usance or sight for an aggregate principal amount not exceeding Rs. 243 crores as a sub-limit of the Rupee Facility. For this purpose, the Petitioner and IndusInd Bank Limited have appointed Respondent No. 2, namely, IDBI Trusteeship Services Limited, as Security Trustee (hereinafter referred to as ‘the Security Trustee’) who has agreed to act as the Security Trustee for the lender and has entered into the Security Trustee Agreement and the Facility Agreement dated 27.2.2024.

4. The Petitioner has submitted that Clause 12.1 of the Facility Agreement provides as under:

“12. SECURITY

12.1 Security

In consideration of the Lenders making available the Facilities to the Borrower, the Borrower agrees that the Secured Obligations shall be secured by:

(a) a first ranking pari passu charge (including by way of hypothecation/ charge/ assignment by way of charge, in each case, as more particularly described under the Deed of Hypothecation) over the Hypothecated Properties of the Borrower, both present and future; and

(b) a first ranking exclusive pledge in respect of the Pledged Securities held by the Sponsor, at all times till the Final Settlement Date.”

5. The Petitioner has submitted that as per Clause 12.1 of the Facility Agreement, which is quoted above, it has undertaken to provide the following securities to secure the Secured Obligations under the Facilities:

(i) A first ranking *pari passu* charge over the following assets of the Petitioner, both present and future:

a) All moveable assets of the Petitioner, both present and future;

b) All Project Assets (*as defined in the Transmission Service Agreement and excerpted below*) and all Project Documents (*including rights under and in relation to the Transmission Service Agreement and Transmission License in relation to the Project*), contracts, Insurance Contracts, Clearances, Authorizations, *etc. (subject to the terms of the relevant Project Documents)*, both present and future;

c) All the bank accounts of the Petitioner in relation to the Project, including but not limited to the Accounts (but excluding Distribution Account), and all the moneys, securities, fixed deposits, instruments, investments, and other properties deposited in, credited to, created from, or required to be deposited in, credited to, or created from each Account and proceeds of all such securities, fixed deposits, instruments, investments and other properties including any interest on the same, in each case, both present and future; and

d) All the current assets of the Petitioner, including but not limited to the receivables, operating cash flows, commissions, revenues of whatsoever nature and wherever arising present and future, and all the intangible assets of the Borrower, including but not limited to goodwill, rights, undertakings, uncalled capital, both present and future,

e) In each case, excluding all immovable properties of the Petitioner;
(hereinafter collectively referred to as the “Hypothecated Properties”).

(ii) A first ranking exclusive pledge on the Equity Shares, compulsorily convertible preference shares, and compulsorily convertible debentures issued by the Petitioner and such other equity instruments which collectively constitute up to 51% (fifty one percent) of the total issued and paid-up share capital of the Petitioner (on Fully Diluted Basis), and held by Apraava Energy Private Limited (hereinafter collectively referred to as “Security”).

6. The Petitioner has submitted that, in terms of the Financing Documents, the Petitioner is required to create security, which is the transaction security (as defined under the Facility Agreement), in favour of a Security Trustee for the benefit of the lender.

7. 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 a Security Interest over all the movable and immovable assets of the Petitioner in favour of a Security Trustee acting on behalf of lenders, pursuant to a Facility Agreement dated 27.2.2024 and a Security Trustee Agreement dated 27.2.2024 without the approval of the Commission. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for the creation of a Security Interest over all the assets, including the movable and immovable assets for the Project in favour of the Security Trustee pursuant to a Security Trustee Agreement and a Facility Agreement.

Hearing dated 22.7.2024.

8. The Petition was called out for the hearing on 22.7.2024 after notice to the Respondents. Vide the Record of Proceedings for the hearing on 22.7.2024, The Petitioner was directed to implead the concerned lender(s) i.e., IndusInd Bank Limited, as a party to the Petition and file a revised memo of parties. Respondents were granted the opportunity to file their respective replies. The Petitioner was further directed to furnish details of the sources and application of funds as on the date of the filing of the Petition.

9. In compliance with the Record of Proceedings dated 22.7.2024, the Petitioner has impleaded the lender, IndusInd Bank Limited, as a party to the Petition and has served a copy of the Petition to it for filing a reply. However, no reply has been filed by the Respondents. The Petitioner, vide its affidavit dated 10.9.2024, has filed the information called for.

Analysis and Decision

10. We have considered the submissions made by the Petitioner and perused the documents available on the record. The Petitioner approached the lender, i.e. IndusInd Bank Limited, for the purpose of part-financing for the implementation of the Project. The lender has agreed to grant the financial assistance aggregating to Rs. 487.00 crores by way of Rupee Term Loan for the project along with a letter of credit facility, non-revolving and both usance or sight for an aggregate principal amount not exceeding Rs. 243 crores as a sub-limit of the Rupee Facility.

11. The Petitioner has submitted that it had appointed IDBI Trusteeship Services Limited as a Security Trustee who agreed to act as a Security Trustee and had entered into the Facility Agreement and the Security Trustee Agreement on 27.2.2024.

12. As per the Facility Agreement, the estimated cost of the Project is Rs. 650.4 crores. The Petitioner has submitted the original estimated cost of the Project and means of finance as on the date of the financial closure as under:

Estimated Project Cost and its means of finance (in Rs.)	
Particulars	Rs.in crore)
Financial indebtedness (Financial Assistance by Respondent No. 3)	487,00,00,000/-
Sponsor (Apraava Energy Private Limited) contribution in the form of equity infusion	More than or equal to 32,68,00,000/- (More than or equal to 20% of the Total Sponsor Contribution)
Sponsor contribution in the form of quasi equity instruments and/or unsecured loans to the Petitioner	Less than or equal to 130,72,00,000/- (Less than or equal to 80% of the Total Sponsor Contribution)
Total Sponsor Contribution	163,40,00,000/-
Total estimated Project Cost	650,40,00,000/-

13. The Petitioner has also submitted details of the sources and application of funds as of 31.7.2024, which have been certified by the Chartered Accountant through a certificate dated 12.8.2024, and the same is reproduced below:

Sources of Funds	
Particulars	(Rs. in crore)
Equity + Shareholder loan from Apraava Energy	41.59
Term Loan disbursement from IndusInd Bank	75.00
Direct payment from Apraava Energy	12.32
Total	128.91
Application of Funds	
Particulars	(Rs. in crore)
Advance paid towards procurement of Reactors from Vendor (CG Power and Industrial Solutions Ltd)	5.73
Payment made to vendor (Sterlite Power Transmission Limited) towards supply of Conductor with spares	12.32
Payment made to vendor (Jyoti Structures Limited) towards Tower Supply and Services	83.99
Right of Way related payments	1.75
SPV Acquisition Fees	14.59
Long-term loan Processing fees	2.87
Interest During Construction on Long Term loan (Mar'24-June'24)	4.66
Admin + Legal + Regulatory + Other Misc. expenses	3.00
Total	128.91

14. 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 lender, namely, IndusInd Bank Limited, has agreed to provide a loan of Rs. 487 crores and a letter of credit facility, non-revolving and both usance or sight for an aggregate principal amount not exceeding Rs. 243 crores as a sub-limit of the Rupee Facility crore to the Petitioner.

15. 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 lender. 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 assigns, 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).

16. Article 15.2.2 of the TSA provide as under:

“15.2.2 However, the TSP may create any encumbrance over all or part of the receivable, 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 as 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 Lenders’ 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 Agreement”.

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, 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.

17. 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 sub-section (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 the 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.

18. The Petitioner and the IndusInd Bank Limited have appointed IDBI Trusteeship Services Limited as a Security Trustee for the creation of Security Interest over all the movable and immovable assets of the project. In our view, IDBI Trusteeship Services Limited needs to be given comfort for the creation of security for the benefit of the lender, IndusInd Bank Limited, as the security for the financial assistance provided by it. We, therefore, accord in-principle approval allowing the Petitioner to create a Security Interest in favour of IDBI Trusteeship Services Limited by way of mortgage or any other security document on project assets by execution of an indenture of Mortgage and

financing documents of the Project. The Petitioner is directed to submit a signed copy of the Indenture of Mortgage for the Project immediately after its execution.

19. 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 Security Trustee or nominee of the lender 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 lender, the Commission will evaluate such a nominee's expertise in the development, design, construction, operation, and maintenance of the transmission lines and their ability to execute the Project and undertake the transmission of electricity. The licensee, lender, security trustee, 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 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 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 Security Trustee or transferring any assets to them is a mandatory requirement. Lastly, the financial documents and statements are to be filed by the Petitioner as and when directed by the Commission.

21. Petition No. 199/MP/2024 is disposed of in terms of the above.

Sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson