

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 230/MP/2024

Coram:

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

Date of Order: 7th September, 2024

In the matter of

Petition under Sections 17(3) and 17(4) of the Electricity Act, 2003 for creation of security interest over all the movable and immovable assets of the Petitioner in favour of the Security Trustee for the benefit of the lender.

And

In the matter of

Neemrana II Kotputli Transmission Limited,
YC Co Working Space, 3rd Floor, Plot No. 94,
Dwarka Sec. 13, Opp. Metro, Near Radisson Blu,
N.S.I.T. Dwarka, South-West Delhi,
Delhi – 110078

....**Petitioner**

Versus

- 1. Central Transmission Utility of India Limited,**
Plot No. 2, Sector 29,
Gurgaon -122001
- 2. Catalyst Trusteeship Limited,**
GDA House, Plot No. 85,
Bhusari Colony (Right),
Paud Road, Pune-411 038
- 3. Power Finance Corporation Limited,**
Urjanidhi, 1, Barakhamba Lane,
Connaught Place,
New Delhi-110 001.

....**Respondents**

Parties present:

Shri Deep Rao, Advocate for the Petitioner

ORDER

The Petitioner, Neemrana II Kotputli Transmission Limited (hereinafter referred to as 'NKTL'), 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 Rajasthan REZ PH-IV (Part 1) (Bikaner Complex): PART B" (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 22.4.2024 in Petition No. 34/TL/2024.

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 the Catalyst Trusteeship Limited, the Security Trustee, for the benefit of the lender, Power Finance Corporation Limited ('PFC 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 Project Assets to the extent described in this Petition, to secure the total commitment by the Lender aggregating to INR 1373.02 crores (Indian Rupees One Thousand Three Hundred Seventy-Three Crores and Two Lakhs Only), in favour of the Respondent No. 2 for the benefit of the Lender;*
- c) approve the creation of the security interest by the Petitioner over the Project Assets to the extent described in this Petition, to secure the total commitment of the Lender aggregating to INR 1373.02 crores (Indian Rupees One Thousand Three Hundred Seventy Three Crores and Two Lakhs Only), in favour of Respondent No. 2 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) *allow the Lender to down-sell or transfer its financial commitment either in part or full along with the underlying security, in favour of some other bank or financial institution who agree to take over/ novate the debt, and*
- e) *pass any such other relief as Hon'ble Commission deems fit and appropriate in the facts and circumstances of the case."*

3. According to the Petitioner, for the purpose of financing the project, the Petitioner requested the PFC Limited (hereinafter referred to as 'the lender'), for which the lender has agreed to provide financial assistance to the tune of Rs. 1373.02 crores by way of Rupee Term Loan for the project. For this purpose, the Petitioner and PFC Limited have appointed Respondent No. 2, namely, Catalyst Trusteeship 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 27.3.2024.

4. The Petitioner has submitted that pursuant to the terms of the Facility Agreement, the secured obligations are secured by following security package,

"SECURITY

5.1 Security for Rupee Term Loan

5.1.1 The Facility together with all Interest, Additional Interest, Liquidated damages, further interest, prepayment premium, all and any other fees, financing charges, fees / remuneration payable to the Lender (including its representatives, trustees / agents) costs, charges, expenses and other monies whatsoever as stipulated in or payable under the Financing Documents, shall be secured by charge on the Security Interest stipulated below, to be created in favour of the Security Trustee for the benefit of the Lender, as applicable:

- (i) a first charge by way of mortgage over all immovable properties (including over the freehold interest, leasehold interest or sub-leasehold*

interest of the Borrower in such properties immovable) together with all appurtenances thereon, both present and future, in form and manner acceptable to the Lender;

(ii) a first charge by way of hypothecation, in form and manner acceptable to the Lender, on all the Borrower's movable properties and assets, including plant and machinery, machinery spares, equipment, tools and accessories, furniture, fixtures, vehicles and all other movable assets wherever situated, both present and future;

(iii) a first charge on all the Borrower's Current Assets, including but not limited to, book debts, operating cash flows, uncalled capital, Receivables, commissions, revenue of whatsoever nature and wherever arising, both present and future;

(iv) a first charge over all accounts of the Borrower, including, the Trust and Retention Account and the Sub-Account(s), the DSRA, O&M Reserve or any account created for any reserve(s) to be created and maintained (or any account in substitution thereof) that may be opened in accordance with the Trust and Retention Account Agreement and the Financing Documents, or any of the other Project Documents and all funds from time to time deposited therein, the Receivables and all Permitted Investments or other securities representing all amounts credited to the Trust and Retention Account, any letter of credit and other reserves of the Borrower present and future wherever maintained;

(v) assignment in favour of the Security Trustee for the benefit of the Lender, on the following:

(a) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in the Project Documents (including but not limited to memorandum of understanding (MOU), package/ construction contracts, O&M related agreements, service contracts, etc. as applicable, and including amendments or modifications to such Project Documents, if any) except Transmission Service Agreement, duly acknowledged and consented to by the relevant counter parties to such Project Documents;

(b) the right, title, interest, benefits, claims and demands of the Borrower in, to and under all the Clearances (and shall include amendments or modifications to such Clearances, if any);

(c) all the rights, titles, interests, licenses, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee (and shall include amendments or modifications thereto, if any) provided by any Project Participant;

(d) all the rights, titles, interests, benefits, claims and demands whatsoever of the Borrower under all Insurance Contracts (and shall include amendments or modifications to such Insurance Contracts, if any) and Insurance Proceeds;

(e) *guarantees and indemnities (and shall include amendments or modifications thereto, if any) provided by any Project Participant;*
(f) *all intangible assets of the Borrower, including but not limited to, goodwill, intellectual property rights, undertaking, present and future, in a form and manner acceptable to the Lender. It includes amendments/ modifications regarding (a) to (f) above from time to time.*

(vi) *pledge of Equity Shares both present and future, held by the Pledgor, aggregating to the Specified Percentage, free from all restrictive covenants, lien or other encumbrance under any contract, arrangement or agreement including but not limited to any shareholders agreement (if any) of the Borrower;*

(vii) *a charge/ equitable assignment/pledge over Quasi Equity aggregating to the Specified Percentage, infused in the Borrower by the Promoter(s), until the Final Settlement Date;*

(viii) *save and except as otherwise provided herein, (a) an irrevocable and unconditional Corporate Guarantee from the Guarantor for the purpose of repayment/payment of Secured Obligations; and (b) a pledge of 26% (twenty six percent) of the Equity Share Capital and Quasi Equity of the Borrower, free from all restrictive covenants, lien or other encumbrance under any contract, arrangement or agreement including but not limited to any shareholders agreement (if any) of the Borrower, till the creation and perfection of Security Interest in Clause 5.1.1 (i) to (iv) above in terms of PFCs Policy.*

The security specified in this Clause 5.1 is referred to as the "Security", which shall include any further or additional Security Interest created in terms of Clauses 5.6, 5.7 and 5.8 of this Agreement.

The Lender agrees that the aforesaid Security Interest listed under Clause 5.1.1 (i) to Clause 5.1.1 (viii) shall be on a first ranking pari passu basis inter se the Lenders.

The Lender agrees that save and except the charge to be created on the DSRA under Clause 5.1.1 (iv) above and under Clause 5.1.1(i) and 5.1.1(v), the aforesaid charges listed may be extended by way of a first ranking charge for securing all amounts payable to the lenders issuing performance bank guarantee with respect to the TSA for an amount not exceeding 5% (five percent) of Project Cost subject to such banks/ institutions sharing securities stipulated by them on pari-passu basis with term lenders.

Additionally, we understand that the Security Trustee has been appointed in the transaction and accordingly all the security shall be created in favour of the Security Trustee for the benefit of the Lenders."

5. 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.

6. 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 27.3.2024 and a Security Trustee Agreement dated 27.3.2024 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.

7. 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., PFC Limited, as a party to the Petition and file a revised memo of parties; the Respondents were granted the opportunity to file their respective replies. The Petitioner has impleaded the lender, Power Finance Corporation Limited, as a party to the Petition and has served a copy of the Petition on it to file the reply. However, no reply has been filed by the Respondents.

Analysis and Decision

8. We have considered the submissions made by the Petitioner and perused the documents available on the record. The Petitioner approached the lender, Power Finance Corporation 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. 1373.02 crores.

9. The Petitioner has submitted that it had appointed Catalyst Trusteeship 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 27.3.2024.

10. As per the Facility Agreement, the estimated cost of the Project is Rs. 1830.70 crore. In terms of the financing plan submitted by the Petitioner, the Project shall be funded through debt of Rs. 1374.02 crores and equity of Rs. 457.68 crores. The Petitioner has submitted that as on 26.4.2024, the lender has disbursed Rs. 400 crores to the Petitioner for construction of its Project.

11. 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:

Original estimated Project Cost (as per agreement)	Rs. in crore	Means of finance (as per the Agreement)	Rs. in crore
Hard Cost	1710.00	Promoter's contribution	457.68
IDC	108.70	Rupee Term Loan	1374.02
Preoperative expenses and finance charges	12.00		
Total	1830.70	Total	1830.70

12. The Petitioner has submitted the details of the project cost and means of finance as under:

(Rs. in crores)

Actual Project Cost and Means of Finance (as on 25.4.2024)		
Particulars		As on 25.4.2024
Total Project Cost	1830.70	652.00
Actual means of Finance of the above cost duly certified by the Auditor Certificate		
Particulars	As on the COD	As on 31.3.2024
Promoter's contribution	457.78	252
Secured loan/debt from external source	1374.02	400
Total	1830.70	652.00

13. 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, Power Finance Corporation Limited has agreed to provide a loan of Rs.1373.02 crores to the Petitioner.

14. 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). Article 15.2.2 of the TSA provides as under:

“However, the TSP may create any encumbrance over all or part of the receivables, 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 agreed by the parties:

Provided that:

i. The Lenders or the Lender’s 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 TPS to the Lenders of all amounts due under the Financing Agreements.”

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.

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 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.

16. The Petitioner and the PFC Limited have appointed Catalyst Trusteeship Limited as a Security Trustee for the creation of security interest over all the movable and immovable assets of the project. In our view, Catalyst Trusteeship Limited needs to be given comfort for the creation of security for the benefit of the lender, PFC 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 the Catalyst Trusteeship 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.

17. 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.”

18. 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.

19. Petition No. 230/MP/2024 is disposed of in terms of the above.

Sd/-
(Ramesh Babu V)
Member

sd/-
(Jishnu Barua)
Chairperson