

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 293/MP/2024**

**Coram  
Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V., Member  
Shri Harish Dudani, Member**

**Date of Order: 11<sup>th</sup> December, 2024**

**In the matter of**

Petition seeking approval under Section 17 of the Electricity Act, 2003 for bringing on record the appointment of Axis Trustee Services Limited/ Respondent No. 2 as the Security Trustee and for the creation of security interest over assets of the Petitioner in favour of the Security Trustee, acting on behalf of and for the benefit of the Lender(s) (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 Pledge, Declaration, Undertaking and other Financing Agreements, for the development of the Transmission Project.

**And**

**In the matter of**

**Pachora Power Transmission Limited,**  
2<sup>nd</sup> Floor, Novus Tower Plot No. 18,  
Sector-18 Gurugram-122015 (Haryana).

.... **Petitioner**

**Vs**

**1. Central Transmission Utility of India Limited,**  
Ministry of Power Govt. of India,  
Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.

**2. Axis Trustee Services Limited,**  
Axis House,  
Bombay Dyeing Mill Compound,  
Pandurang Budhkar Marg, Worli, Mumbai- 400025.

**3 IndusInd Bank Limited,**  
2401, Gen. Thimmayya Road (Cantonment),  
Pune- 411001.

...**Respondents**

**Parties present:**

Shri Hemant Singh, Advocate, PPTL  
Ms. Ankita Bafna, Advocate, PPTL  
Ms. Lavanya Panwar, Advocate, PPTL

Shri Nishant Kumar, Advocate, PPTL  
Shri Jai Lal, Advocate, PPTL  
Shri Syed Fazl Askari, Advocate, PPTL  
Shri Pawan Singh, Advocate, PPTL  
Shri Akshaya Lal, Advocate, PPTL  
Shri Arun Lal, Advocate, PPTL  
Shri Gandharv Garga, Advocate, PPTL  
Shri Gyanendra Singh, Advocate, PPTL  
Shri Prakash Pathak, Advocate, PPTL  
Shri Gaurav, Advocate, PPTL

## **ORDER**

The Petitioner, Pachora Power Transmission Limited (hereinafter referred to as 'Petitioner/PPTL'), 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 RE Projects in Rajgarh (1000 MW) SEZ in Madhya Pradesh-Phase II" (hereinafter referred to as 'the Transmission System' or 'Project'), the details of which are specified in the schedule attached to the licence issued vide order dated 15.6.2024 in Petition No. 108/TL/2024.

2. The Petitioner has filed the present Petition seeking approval for the creation of the security interest over the assets of the PPTL to the extent as mentioned in the petition and also for any future security creation in favour of the Axis Trustee Services Limited (Security Trustee), acting on behalf of and for the benefit of the lender (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 an unattested deed of Pledge, Declaration and Undertaking and other Financing Agreements, for the purpose of the Transmission Project. 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, 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 the Financing Agreements executed in this regard;*

*b) Approve any future security creation, 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(s) 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 the requisite Financing Agreements executed in this regard, and*

*c) Pass any or such further orders as may be deemed fit and proper in the facts and circumstances of the case.”*

3. According to the Petitioner, for the purpose of financing the project, the Petitioner requested Respondent No. 3, i.e., 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. 300 crores by way of rupee term loan for the project. In this regard, IndusInd Bank Limited has agreed to act as a lender. For this purpose, the Petitioner has appointed Respondent No. 2, namely, Axis Trustee Services Limited, as Security Trustee (hereinafter referred to as ‘the Security Trustee’), who has agreed to act as Security Trustee for the lender and has entered into the Security Trustee Agreement and the other requisite financing documents with PPTL on 26.6.2024.

4. The Petitioner has submitted that the estimated cost of the Transmission Project is Rs. 408.16 crores.

5. The Petitioner has submitted that pursuant to the terms of the Facility Agreement (read with Schedule II of the Security Trustee Agreement), the secured obligations are secured by:

- (i) A first charge by way of hypothecation on all the tangible moveable assets of the Borrower, including but not limited to movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles, and all other movable assets, both present and future;
- (ii) A first charge by way of hypothecation on all current assets and intangibles of the Borrower, including but not limited to, Book-debts, Receivables, operating cash flows, commissions, revenues of whatsoever nature and wherever arising, goodwill, uncalled capital, rights and undertaking, both present and future;
- (iii) A first charge by way of hypothecation over all accounts of the Borrower, including but not limited to the Account and the Sub-Accounts (including the Petty Expenses Account, DSRA and Current Account) that may be opened in accordance with the Transaction Documents (save and except the Distribution Sub-Account) and in all funds/ cash inflows from time to time deposited therein;
- (iv) A first charge by way of hypothecation or equitable assignment or assignment by way of security of:
- (A) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, 10 and under all the Project Assets, Project Documents including the Transmission Service Agreement, substitution agreement (if any), Transmission License, duly acknowledged and/ or consented to by the counter parties (as applicable) to the Project Documents, all as amended, varied or supplemented from time to time;

(B) rights, title, interest, benefits, claims and demands of the Borrower in, to and under all the Clearances pertaining to the Project;

(C) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under any letter of credit, guarantee including contractor guarantees and liquidated damages, consent agreements, side letters and performance bond provided by any party to the Project Documents, both present and future; and

(D) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all Insurance Contracts (obtained by the Borrower or by any Contractor for the benefit of the Project or favoring the Borrower) and Insurance Proceeds pertaining to the Project, both present and future.

(v) Pledge over the Equity Share Capital, Preference Share Capital (if any), CCDs, compulsorily convertible preference shares or quasi-equity instruments (if any) held by the Promoter, free from any Security Interest, so as to maintain the Required Cover:

Provided that, to the extent of the Equity Shares and Preference Shares (if any) over which pledge cannot be created on account of Section 19 (2) and 19 (3) of the Banking Regulation Act, 1949, as amended from time to time and resultantly, the pledge over 21% (twenty one percent) of the Equity Share Capital and Preference Share Capital, if any cannot be maintained, the same shall be subject to non- disposal arrangement, in form and manner satisfactory to the lenders/ lenders' Agent.

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 Article 15.2.2 of the Transmission Service Agreement entered into between the Petitioner and the beneficiaries of the project provides that the Petitioner is free to create any encumbrance over all or part of the receivables, Letter of Credit(L/Cs) or other assets of the project in favour of the lenders or the representative of the lender as security for the amount payable under the Financing Agreements and any other amounts agreed by the parties. The Petitioner has submitted that in terms of Article 15 of the TSA, the Petitioner is required to get permission from this Commission prior to relinquishing or transferring its rights and obligations in the TSA.

8. 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 the Petitioner in favour of a Security Trustee acting on behalf of and for the benefit of the Hedge Banks pursuant to a Facility Agreement dated 26.6.2024 and a Security Trustee Appointment Agreement dated 26.6.2024 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 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 7.10.2024**

9. The Petition was called out for the hearing on 7.10.2024 after notice to the Respondents. Vide Record of Proceedings for the hearing on 7.10.2024, the Respondents were granted the opportunity to file their respective replies within three weeks. However, no reply has been filed by the Respondents.

### **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 for the purpose of financing the implementation of the Project. The lender has agreed to grant financial assistance aggregating to Rs. 300 crores.

11. The Petitioner has submitted that it had appointed Axis Trustee Services Limited as a Security Trustee who agreed to act as such a Security Trustee and had entered into a Facility Agreement and a Security Trustee Appointment Agreement on 26.6.2024.

12. According to the Petitioner, the estimated cost of the Transmission Project is Rs. 408.16 crores, and the means of financing such cost as on the date of financial closure are as under:

#### **Estimated Project Cost**

<b>Original Estimated Project cost (As per Agreement)</b>	<b>Rs. (in crore)</b>	<b>Means of Finance</b>	<b>Rs. (in crore)</b>
Hard Cost	370.00	Equity share capital/Share Premium	108.16

IEDC and Others	38.16	Debt from Bank (Lender/R-3)	300.00
		Subordinated Debt from Sponsor/Promoter	
<b>Total</b>	<b>408.16</b>	<b>Total</b>	<b>408.16</b>

13. The Petitioner has further submitted the details of the debt components as under:

**Financing Plan (Schedule II of Facility Agreement)**

(Rs. in crore)		
Name of Lender	Sanctioned loan (as per the Facility Agreement)	Actual loan disbursed as on date of filing of the Petition
IndusInd Bank Limited (Respondent No. 3)	300.00	NIL

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. 300 crores 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).

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, 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 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.”*

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(L/Cs), 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.

16. Article 15.3 of the TSA provides as under:

**“15.3 Substitution Rights of the Lenders:**

*15.3.1 The TSP would seed to operate and maintain the Project under 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 Nodal Agency.*

*15.3.2 However, in the case of default by the TSP in debt repayments or in the case of default by the TSP as per Article 13 of this Agreement during the debt repayments, the Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfilment of the qualification requirements and provisions of the Central Electricity Regulatory Commission (Procedure, terms and Conditions for great*

*of Transmission License and other related matters) Regulations, 2006 and as amended from time to time.”*

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 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 Axis Trustee 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, Axis Trustee 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 Axis Trustee 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 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 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 nominee, approve the assignment of the licence to a nominee subject to 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. The Petition No. 293/MP/2024 is disposed of in terms of the above.

Sd/-  
**(Harish Dudani)**  
Member

sd/-  
**(Ramesh Babu V.)**  
Member

sd/-  
**(Jishnu Barua)**  
Chairperson