

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 361/MP/2024**

**Coram:**

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

**Date of Order: 17<sup>th</sup> March, 2025**

**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 the creation of security interest over the assets of the Petitioner in favour of Axis Trustee Services Limited, the Security Trustee for the lender.

**And**

**In the matter of**

**Fatehgarh IV Transmission Limited,**  
(a 100% wholly owned subsidiary of Apraava Energy Private Limited),  
T-15A, Third Floor, Salcon Rasvilas,  
Saket, New Delhi-110017, India.

**Address for Correspondence:**

7<sup>th</sup> Floor, FULCRUM,  
Sahar Road, Andheri (East),  
**Mumbai, Maharashtra**

**.....Petitioner**

**Versus**

- 1. Central Transmission Utility of India Limited,**  
First Floor, Saudamini,  
Plot No.2, Sector-29, Gurugram-122001,  
Haryana, India.
- 2. Axis Trustee Services Limited,**  
The Ruby, 2<sup>nd</sup> Floor, SW,  
29 Senapati Bapat Marg, Dadar West,  
Mumbai-400028, Maharashtra, India.
- 3. Axis Bank Limited,**  
Mega Wholesale Banking Centre,

Mumbai Corporate Banking Branch,  
12, Mittal Tower, A Wing, 1<sup>st</sup> Floor,  
Nariman Point, Mumbai-400021.

.....**Respondents**

**Parties present:**

Ms. Sriya Polepally, FIVTL  
Ms. Priyansi Jadiya, CTUIL  
Ms. Indu Fulara, Axis Trustee

**ORDER**

The Petitioner, Fatehgarh IV Transmission Limited (hereinafter referred to as 'the Petitioner/FIVTL'), 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 A1" (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 30.1.2024 in Petition No. 244/TL/2023.

2. The Petitioner has filed the present Petition seeking approval for the creation of Security Interest by way of the hypothecation/mortgage/charge/pledge/assignment, etc., over all assets, including movable and immovable assets, project accounts and documents (including assignment of transmission licence), etc. of the Petitioner in favour of the Security Trustee (or its replacement or successor) to secure the Petitioner's obligations towards the Axis Trustee Services Limited under financing documents for the hedge and for their subsequent transferees, assigns, novatees including any refinancing lenders and substitutes thereof and any future or any other Secured Party to the Project by executing the deed of hypothecation and power of attorney in relation thereto, indenture of mortgage, mortgage by deposit of title deeds and such other security documents as per law. 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 and the Mortgaged Property 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 and the Mortgaged Property 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, Power of Attorney – Hypothecation and Mortgage Documents 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 Axis Bank Limited (hereinafter referred to as ‘the lender’), for which the lender has agreed to provide the financial assistance of Rs. 308 crores (a rupee term loan facility for an aggregate principal amount not exceeding Rs. 176 crores (“**Rupee Facility**”); and a letter of credit facility, non-revolving and both usance or sight for an aggregate principal amount not exceeding Rs.132 crores as a sub-limit of the Rupee Facility (“**LC Facility**”) (hereinafter collectively referred to as “**Facilities**”).

4. For this purpose, the Petitioner and Axis Bank Limited have appointed Respondent No. 2, namely, Axis Trustee Services Limited, as a 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 Facility Agreement on 27.3.2024.

5. The Petitioner has submitted that pursuant to the terms of the Facility Agreement, the secured obligations are secured by,

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

(b) All moveable assets of the Petitioner, including but not limited to the machinery, spares, furniture, fixtures, vehicles, tools, and accessories, in each case, both present and future;

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

(d) Any letter of credit, guarantee, or performance bond provided by any counterparty to the Petitioner under the Project Documents;

(e) 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

- (f) All the current assets of the Petitioner, including but not limited to the Receivables, operating accounts, reserve accounts, book debts, deposits, investments, operating cash flows, commissions, revenues of whatsoever nature, and wherever arising both present and future, of the Project; (hereinafter collectively referred to as “Hypothecated Properties”);
- (g) A first ranking *pari passu* mortgage (by way of deposit of title deeds) overall immovable properties of the Petitioner, both present and future (“Mortgaged Property”);
- (h) 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) [ 30% (thirty percent) pledged and 21% (twenty-one percent) in the form of Non-Disposal Undertaking] of the total issued and paid-up share capital of the Petitioner (on Fully Diluted Basis), and held by Apraava Energy Private Limited (“Sponsor”).

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, or other assets of the project in favour of the lenders or the representative of the lenders 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 take 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 of the Petitioner in favour of a Security Trustee acting on behalf of lender pursuant to a Facility Agreement dated 27.3.2024 and a Security Trustee Agreement dated 27.3.2024 without 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 8.11.2024**

9. The Petition was called out for the hearing on 8.11.2024 after notice to the Respondents. Vide Record of Proceedings for the hearing on 8.11.2024, the Respondents were granted the opportunity to file their respective replies within four weeks with a copy to the Petitioner, who may file its rejoinder within three weeks thereafter. However, no reply has been filed by the Respondents.

**Hearing dated 14.1.2025**

10. During the course of the hearing, the learned counsel for the Petitioner submitted that no reply had been received from the Respondents. The representative of Respondent No. 2, Axis Trustee Services Limited, submitted that it

does not wish to file a reply. Considering the submissions of the Parties, the matter was reserved for order.

### **Analysis and Decision**

11. 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 part financing in the implementation of the Project. The lender, namely, Axis Bank Limited, has agreed to provide financial assistance of Rs. 308 crores, including a rupee term loan facility for an aggregate principal of Rs.176 crores and a letter of credit facility for an aggregate principal of Rs. 132 crores only.

12. The Petitioner has submitted that it had appointed Axis Trustee Services Limited as a Security Trustee who agreed to act as a Security Trustee and had entered into a Facility Agreement and a Security Trustee Agreement on 27.3.2024. As per the Security Trustee Agreement, the estimated cost of the Project is Rs.346.70 crores. In terms of the financing plan submitted by the Petitioner, the Project shall be funded through debt of Rs.176 crores and equity of Rs.170.70 crores.

13. The Petitioner has further submitted that, as per the auditor certificate dated 23.8.2024, it has received Rs. 153.31crores as on 31.7.2024 from the following sources:

<b>Sources of Funds</b>	<b>(Rs. in crores)</b>
Equity+Shareholder loan from Apraava Energy	84.85
LC from Axis Bank	67.10
Direct payment from Apraava Energy	1.23
Cash in Bank	0.13
<b>Total</b>	<b>153.31</b>

14. The Petitioner has submitted the details of uses of the funds as on 31.7.2024 and the details of the application of funds received by it as under:

<b>Usage of Funds</b>	<b>(Rs. in crores)</b>
Transformer & Reactors + Substation - CG#	115.49
Conductor with spares - Sterlite	1.23
Transmission Line Supply Service	10.42
Substation land related payments	13.53
SPV Acquisition Fees	5.91
LT loan Processing fees	1.56
Interest During Construction on LT loan	2.19
Admin + Legal + Regulatory + Other Misc expenses	2.98
<b>Total</b>	<b>153.31</b>

15. 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, Axis Bank Limited, has agreed to provide a loan of Rs.308 crores, including a rupee term loan facility for an aggregate principal of Rs. 176 crores and a letter of credit facility for an aggregate principal of Rs 132 crores only to the Petitioner.

16. 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, 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. Article 15.3 of the TSA provides as under:

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

*15.3.1 The TSP would need 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 grant of Transmission License and other related matters) Regulations, 2006 and as amended from time to time.”*

18. 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 subsection (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.

19. The Petitioner and Axis Bank Limited have appointed Axis Trustee Services Limited as a Security Trustee for the creation of a 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, Axis 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.

20. 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 its 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 a licensee in debt repayment, the Commission may, on an application made by the lenders of the licensee, assign the licence to a nominee of the lenders.”*

21. 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 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.

22. Petition No. 361/MP/2024 is disposed of in terms of the above.

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

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

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