

Rajasthan Electricity Regulatory Commission

Petition No. RERC 1335/18

In the matter of petition filed under Section 17 (3) & (4) of the Electricity Act, 2003 for creation of security interest in favour of Lenders.

Coram:

Shri Vishvanath Hiremath, Chairman
Shri R.P. Barwar, Member
Shri S. C. Dinkar, Member

Petitioner : M/s Hadoti Power Transmission Service Limited

Respondents :

1. Rajasthan Urja Vikas Nigam Ltd. (RUVNL)
2. Jaipur Vidyut Vitran Nigam Ltd. (JVVNL)
3. Ajmer Vidyut Vitran Nigam Ltd. (AVVNL)
4. Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL)
5. Piramal Trusteeship Service Pvt Ltd.

Date of hearings : 23.04.2018 and 26.04.2018

Present :

1. Sh. Bhavesh Kundalia, Authorized rep. for Petitioner
2. Sh. A. K. Singhal, Ex. En for Discoms

Order Date:

04.05.2018

ORDER

1. M/s Hadoti Power Transmission Service Limited (hereinafter referred to as 'Petitioner' or 'HPTSL') has filed this petition on 05.04.2018 seeking approval of the Commission under Section 17(3) read with Section 17(4) of the Electricity Act for creation of security interest including assignment by way of security of License in favour of Security Trustee / Lenders and other security creating documents / Financial Agreements by way of mortgage / hypothecation / assignment of movable and immovable

properties and project assets of Petitioner in favour of Security Trustee/ Lenders.

2. Notices were issued to Respondents for filing the reply on the petition on 23.04.2018. Accordingly, Rajasthan Urja Vikas Nigam Ltd. (RUVNL) and Discoms submitted their common reply on 25.04.2018, reply on behalf of Piramal Trusteeship Service Pvt Ltd. was received on 25.04.2018.
3. The matter was finally heard on 26.04.2018. Sh. Bhavesh Kundalia, Authorized Rep. appeared for Petitioner and Sh. A. K. Singhal Ex. En. appeared for Discoms.
4. Petitioner in its petition made following submissions:
 - (i) The Commission vide its order dt. 01.11.2017 has granted transmission license under Section 14 of the Electricity Act, 2003 for following transmission system along with related infrastructure:

S. No.	Particulars	
1	(I)	220 kV GSS Ranpur, Kota.
	(II)	LILO of 220 kV SIC Kota-Badod line (03 km) " LILO of 220 kV SIC KTPS-Modak line (03 km) " LILO of 132 kV SIC Kota-Mandana Towan line (0.8 km) " LILO of 132 kV SIC Mahaveer Nagar Deoli Manjhi line (10 km) "
	(III)	Feeder bays for RVPN connection in addition to standard GSS lay-out shall be 4 Nos. on 220 kV, 4 Nos. on 132 kV side and 6 Nos. on 33 kV side .
2	(I)	132 kV GSS Peeplu, Distt. Tonk.
	(II)	132 kV SIC Malpura -Peeplu line (45 km) associated with 132 kV GSS Peeplu.
	(III)	Feeder bays for RVPN connection in addition to standard GSS lay-out shall be 01 No. on 132 kV side and 6 Nos. on 33 kV side.
3	(I)	132 kV GSS Chitr Distt. Dungarpur.
	(II)	LILO of 132 kV SIC Seemalwara -Sagwara line (3 km)
	(III)	Feeder bays for RVPN connection in addition to standard GSS lay-out shall be 2 Nos. on 132 kV side and 6 Nos. on 33 kV side.
4	(I)	132 kV GSS Bambora, Distt. Udaipur.
	(II)	132 kV GSS Salumbar# SIC line (25 km) associated with 132 kV GSS Bambora. (# Line length of Salumbar to Bambora is 33 KM out of which 8 KM long 220 KV LILO Salumbar is available on the way to Salumbar to Bambora which will be utilized therefore cost of 25 KM. 132 kV SIC Line has been considered)
	(III)	Feeder bays for RVPN connection in addition to standard GSS lay-out shall be 1 No. on 132 kV side and 6 Nos. on 33 kV side.
5	(I)	132 kV GSS Khatoti Distt. Bharatpur.
	(II)	LILO of 132 kV Nadbai-Weir line (15 km) associated with 132 kV GSS Khatoti Distt. Bharatpur.
	(III)	Feeder bays for RVPN connection in addition to standard GSS lay-out shall be 2 Nos. on 132 kV side and 6 Nos. 33 kV side.

- (ii) For the purpose of financing the Project, Petitioner has requested the Lenders, i.e., Piramal Finance Limited (PFL) & IndusInd Bank Limited to

sanction financial assistance for financing the Project, which the Lenders have agreed to do so, to the extent of Rs 157.50 Crores (Rs 78.75 Crore by each lender) as rupee term loan ("Term Loan").

- (iii) Accordingly, Lender 'IndusInd Bank' vide letter dated 05.12.2017 has sanctioned Performance Bank Guarantee facility of Rs 14.50 Cr.
- (iv) A Common Loan Agreement has been executed inter-alia between HPTSL, PFL and IndusInd Bank on 09.03.2018 with detail terms and conditions for the Term Loan and Performance Bank Guarantee.
- (v) Piramal Trusteeship Services Private Limited, has agreed to act as the security trustee for the benefit of the secured parties in respect of the Financing Agreements and has agreed to accept the trust created hereunder on behalf of and for the benefit of the Lenders. It is hereby agreed that the Security Trustee shall act as such only upon express written instructions and advice of the Lenders Agent (acting in accordance with the Common Loan Agreement). The Security Trustee Agreement was signed on 09.03.2018.
- (vi) As per Article 3.1 (a) (vi) of Common Loan Agreement, the payment and due discharge of the Secured Obligations of the Petitioner/ Borrower shall be secured, inter alia, by a first ranking pari passu pledge over 100% of the Pledged Securities of the Borrower (on a fully diluted basis) by the Pledger (Adani Transmission Limited).
- (vii) Adani Transmission Limited (as Pledger), Security trustee and the Petitioner/ Borrower entered in to Share Pledge Agreement on 09.03.2018.
- (viii) Pursuant to the terms of Common Loan Agreement dated 09.03.2018, the Petitioner has agreed to provide the following security to secure the obligations;

"Article 3.1 (a) The Secured Obligations shall be secured, by:

- i. a first charge on all the Borrower's tangible moveable assets, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets and current and non - current assets pertaining to the Project, both present and future;*

- ii. *a first charge over all accounts of the Borrower, including but not limited to the Account and the sub-accounts (including the DSRA) (or any account in substitution thereof) that may be opened in accordance with the Transaction Documents, and all funds from time to time deposited therein (including the reserves), all designated account opened with designated banks and the Permitted Investments or other securities representing all amounts credited to the Account or sub-accounts and a first charge on the Receivables;*
- iii. *a first charge on all intangible assets of the Borrower including but not limited to goodwill, rights and undertakings and intellectual property rights and uncalled capital, book debts, current assets, operating cash flows, Receivables, commissions, revenues of whatsoever nature pertaining to the Project, both present and future;*
- iv. *a first charge on all the immovable assets (if any) of the Borrower pertaining to the Project, present and future;*
- v. *a first charge and assignment, by way of security, of:*
 - a) *all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all the Project Documents and Additional Project Documents (if any) including the Transmission Service Agreement, duly acknowledged and consented to by the counter parties to the Project Documents (excluding documents relating to lease land) by executing the consent to assignment if such Project Documents require prior consent of such counter parties before creation of Security Interest as within-mentioned, all as amended, varied or supplemented from time to time;*
 - b) *the right, title and interest and benefits of the Borrower in, to and under all the Clearances (including the Transmission License) to the extent the same are assignable;*
 - 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 and*

Additional Project Documents (if any) (including any security/ letter of credit that may be available to the Borrower pursuant to the Transmission Service Agreement or in relation to the Project and/or guarantees issued by EPC Contractors in favour of the Borrower, which may be legally assigned); and

d) all the right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all Insurance Contracts and Insurance Proceeds pertaining to the Project.

vi. pledge of equity shares all other instruments including but not limited to compulsorily convertible debentures, non- convertible debentures or any other instruments (as and when entered into or issued by the Borrower) representing at least 100% of the Equity Share Capital representing at least 100% voting rights. Upon achievement of COD to the satisfaction of the Lender, the pledge of equity shares all other instruments including but not limited to compulsorily convertible debentures, non-convertible debentures or any other instruments (as and when entered into or issued by the Borrower) shall be reduced to representing at least 51 % of the Equity Share Capital representing at least 51 % voting rights."

- (ix) In this regard Petitioner has referred Article 15 of Transmission Service Agreement dated 24.05.2017 which deals with the conditions of assignment and charges.
- (x) Clause no 3.1 (B) (iv) of Common Loan Agreement requires the Petitioner to submit to the Lenders a copy of the acknowledgement of receipt of an Application made to the Commission for creation of the security.
- (xi) The Sanction Letter states that the Lender's obligation to commit financial assistance for the Project will become effective inter alia only upon the creation of the securities required by the Lenders. By virtue of section 17(3) and (4) of the Act, the said securities cannot be created without the approval of the Commission.
- (xii) As per Section 17(3) & (4) of Electricity Act 2003 prior approval of the Commission is essential for creation of security interest in favour of Security Trustee/ Lenders.

- (xiii) In terms of Clause 3.1(b)(ii) of the Common Loan Agreement, the Lenders require the Applicant to create and perfect the Security Interest stipulated in Article 3.1(a)(i) to Article 3.1(a)(vi) of the Common Loan Agreement, within 6 (six) months from the initial drawdown.
- (xiv) In view of above, The Petitioner submits that an assignment of the Transmission License and Utility (as defined in the Electricity Act, 2003) by way of security as is envisaged here is exercisable by the Lenders only on occurrence of an Event of Default, as determined by the Lender and will entitle the Lenders to substitute the Petitioner and appoint their nominee to exercise the rights under the Transmission License and Utility (as defined in the Electricity Act, 2003) or to enforce the assignment by way of security in such other manner as may be permitted by the Commission. Also, such assignment may be subject to prior approval of the Commission in terms of evaluating such nominee's experience in development, design, construction, operation and maintenance of the relevant project. Further, under Section 17(3) read with Section 17(4) of the Electricity Act 2003 and in accordance with Article 15.3.1 of the Transmission Service Agreement, seeking the Commission's approval for creation of security interest as provided in Article 3 of the Common Rupee Loan Agreement for the financial assistance to be provided by the Lenders for the development operation and maintenance of the Project.
- (xv) In view of above the Petitioner has prayed to:
- (a) Allow the Assignment of the Transmission License and Utility (as defined in the Electricity Act, 2003) of Petitioner by way of security in favour of the Security Trustee/ Lender and their assignees and transferees.
 - (b) Grant approval under section 17(3) read with section 17(4) of the Act for creation of charge over the assets of the Petitioner in favour of the Security Trustee for the benefit of the Lenders and all future lenders on an urgent basis to secure the financial assistance from the lender(s)
 - (c) Approve creation and/or perfection of Security Interest in favour of the Security trustee/ Lender and their assignees and transferees.
 - (d) Approve the Security Documents, and execution thereof, for creation and/or perfection of aforesaid Security Interest in relation to the Security in favour of Piramal Trusteeship Service Pvt Ltd

(Respondent), the Lender/ Security Trustee and their assignees and transferees;

2. Piramal Trusteeship Service Pvt. Ltd in its reply submitted that they have no objection to the instant petition and requested the Commission for grant of permission to the petition filed.
3. Sh. A. K. Singhal, Ex. En. on behalf of Discoms made following submissions:
 - (i) The conditions of assignment and charges have been provided under the Article 15.1 and 15.2 of TSA. It is submitted that before grant of permission as claimed, strict adherence to the provisions of Article 15.1 and 15.2 be directed to be made.
 - (ii) Discoms shall have no financial obligation or liability because of any approval as claimed is given by the Commission. Moreover, it is submitted that the TSP shall not be allowed to claim any change in law due to this refinancing agreement.
 - (iii) If the approval is granted under Section 17 of the Act by the Commission to the Petitioner company, no rights, liabilities or obligations may be permitted to be changed between the parties and all parties shall be ordered to be governed by the rights, obligations as provided in the TSA and shall not affect the lead customer in any manner and further submits that there shall not be any increase / liability of the lead customer in any manner if the transmission charges are affected.
 - (iv) The approval by this Commission in the instant petition shall not affect any TSA terms and conditions any manner.

Commission's view and decision

5. We have considered the submissions made on behalf of Petitioner and the Respondents. We have also looked into the documents produced along with the petition.
6. It is submitted by Petitioner that the Lenders, i.e., Piramal Finance Limited (PFL) & IndusInd Bank Limited have agreed to sanction financial assistance for financing the Project to the extent of Rs 157.50 Crores (Rs 78.75 Crore by each lender) as rupee term loan ("Term Loan").

7. It is further submitted on behalf of Petitioner that a Common Loan Agreement has been executed inter-alia between HPTSL, PFL and IndusInd Bank on 09.03.2018. Piramal Trusteeship Services Private Limited has agreed to act as the security trustee for the benefit of the Secured Parties in respect of the Financing Agreements. The Security Trustee Agreement was signed on 09.03.2018. Adani Transmission Limited (as Pledger), Security trustee and the Petitioner/ Borrower entered in to Share Pledge Agreement on 09.03.2018.
8. Petitioner as a licensee submitted that prior approval of the Commission is essential for creation of security interest in favour of Security Trustee/ Lenders in accordance with Section 17(3) & (4) of Electricity Act 2003. In this regard Petitioner has also referred to Article 15 of TSA which deals with the conditions of assignment and charges.
9. The Petitioner further submitted that in terms of Clause 3.1(b)(ii) of the Common Loan Agreement, it shall obtain the requisite Clearances from the commission for creation and perfection of the Security Interest stipulated in Article 3.1(a)(i) to Article 3.1(a)(vi) of the Common Loan Agreement within 6 (six) months from the Initial Drawdown.
10. Discoms have submitted that they have no objection to grant permission subject to the condition that they shall have no financial obligation or liability and the TSP shall not be allowed to claim any change in law benefit due to this refinancing arrangement.
11. In this petition, Petitioner has sought approval under Section 17(3) read with section 17(4) of the Electricity Act for creation of charge over the assets of the Petitioner, for allowing the Assignment of the Transmission License and Utility of Petitioner by way of security, approval of creation and/or perfection of Security Interest in favour of Piramal Trusteeship Service Pvt Ltd, the Lender/ Security Trustee and their assignees and transferees.
12. Section 17(3) & (4) of the Act reads as under:
 - “(3) No licensee shall at 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 sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.”*

13. Article 15.2 of the Transmission Service agreement ("Transmission Agreement") dated 24.05.2017 also provides that

"15.2 Permitted Charges:

15.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

15.2.2 However, the TSP may create any encumbrance over all or part of the receivables, Letter of Credit or the other 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.*

15.2.3 Article 15.2.1 does not apply to:

- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of the TSP carrying out the Project;*
- b. pledges of goods, the related documents of title and I or other related documents, arising or created in the ordinary course of the TSP carrying out the Project; or*
- c. security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the TSP carrying out the Project.*

15.2.4 Neither the TSP nor any of the Long Term Transmission Customers can relinquish or transfer its rights and obligations, without prior approval of the Rajasthan Electricity Regulatory Commission."

14. As per the provision of Electricity Act referred to above Licensee may assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise with the approval of the Commission.

15. Further as per the TSA signed between the Petitioner and Discoms thus Petitioner may create security interest required by Financial Institutions.

16. Considering the provisions of the Electricity Act, terms of TSA and facts submitted, Commission grants in-principle approval to the Petitioner to assign its rights, etc. as required by Piramal Trusteeship Service Pvt Ltd. subject to the condition that the approval given is limited to creating rights, etc. in favour of Piramal Trusteeship Service Pvt Ltd. only and to the extent provided in the TSA.

17. The petition stands disposed of as above.

(S.C. Dinkar)
Member

(R.P. Barwar)
Member

(Vishvanath Hiremath)
Chairman