

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 17/MP/2021**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I. S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P.K. Singh, Member**

**Shri Prakash S. Mhaske, Member (Ex-officio)**

**Date of Order: 6<sup>th</sup> April, 2021**

**In the matter of**

Petition seeking approval under Section 17(3) and 17(4) of the Electricity Act, 2003 for assignment of licence by way of creation of security interest in favour of Security Trustee/Lenders and other security creating documents/financing Agreements by way of mortgage/hypothecation/assignment of rights, title, interest, claims, demands, benefits, mortgage properties, project assets, clearance, project documents, agreements, approvals and rights of Bikaner - Khetri Transmission Limited.

**And**

**In the matter of**

**Bikaner-Khetri Transmission Limited**

Adani Corporate House,  
Adani SHANTI Gram,  
Near Vaishno Devi,  
Ahmedabad-382 421

**...Petitioner**

**Vs**

**1. Acme Solar Holdings Limited**

Plot No. 152, Sector-44,  
Gurgaon-122 002.

**2. Mahoba Solar (UP) Private Limited**

Adani House, 4<sup>th</sup> Floor, South Wing,  
Shanitgram, S.G. Highway, Ahmedabad-382421

**3. Hero Solar Energy Private Limited**

202, 2<sup>nd</sup> Floor, Okhla Industrial Estate,  
Phase-II, New Delhi-110 020

**4. Mahindra Susten Private Limited**

Mahindra Towers, G.M. Bhosale Marg,  
Worli, Mumbai-400 018

**5. Azure Power India Private Limited**  
3<sup>rd</sup> Floor, 301-304 & 307, Worldmark-3,  
Aerocity, New Delhi-110 037

**6. ReNew Solar Power Private Limited**  
Commercial Block-1, Zone-6,  
Golf Course Road, Gurugram-122 009

**7. Catalyst Trusteeship Limited**  
213, 2<sup>nd</sup> Floor, Naurang House,  
21, Kasturba Gandhi Marg, New Delhi-110 001

**...Respondents**

**The following were present:**

Shri Bhavesh Kundalia, BKTL

### **ORDER**

The Petitioner, Bikaner-Khetri Transmission Limited (BKTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish "Transmission System associated with LTA applications from Rajasthan SEZ (Part-D)" (hereinafter referred to as 'the Transmission System' or 'the Project') on 'Build, Own, Operate and Maintain' (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 27.12.2019 in Petition No. 344/TL/2019.

2. The Petitioner has filed the present Petition under Sub-sections (3) and (4) of Section 17 of the Act for assignment of licence by way of creation of security interest over all the movable and immovable assets of the Petitioner, in favour of Catalyst Trusteeship Limited (Respondent No. 7) as Security Trustee pursuant to the Security Trustee Agreement and Rupee Term Loan Agreement, for the benefit of the lender. The Petitioner has made the following prayers:

*“a. Approve 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 Catalyst Trusteeship Limited as Security Trustee, acting for the benefit and on behalf of the Lenders.*

*b. Approve the creation and/or perfection of security interest in favour of the Catalyst Trusteeship Limited as Security Trustee, acting on behalf of and for the benefit of the Lenders as provided under the Rupee Term Loan Agreement dated 11.08.2020.*

*c. Approve the Security Documents (as defined in the Rupee Term Loan Agreement), and execution thereof, for creation and/or perfection of aforesaid security interest in relation to the aforesaid security in favour of Catalyst Trusteeship Limited as Security Trustee acting on behalf of and for the benefit of the Lenders; and*

*d. Condone any inadvertent omissions / errors / shortcomings and permit to add, change, modify, alter this filing and make further submissions as may be required at a future date.”*

3. The Petitioner requested REC Limited (hereinafter also referred to as ‘the lender’) to avail financing for the project. Pursuant to the request of the Petitioner, REC Limited has sanctioned rupee term loan to the extent of Rs.641.42 crore (including LoC limit of Rs.480 crore i.e. 74.83% of loan) for financing the Project on the terms and condition set out in the Rupee Term Loan Agreement dated 11.8.2020.

4. The Petitioner has appointed the Respondent No. 7, namely, Catalyst Trusteeship Limited (hereinafter also referred to as “the Security Trustee”) who has agreed to act as Security Trustee for the lender by entering into Security Trustee Agreement on 11.8.2020.

5. Pursuant to the terms of Rupee Term Loan Agreement dated 11.8.2020, the Petitioner has agreed to provide, *inter-alia*, the following security to secure the secured obligations in favour of the Security Trustee acting on behalf of the lender:

*“(i) first charge by way of mortgage in a form and manner acceptable to the Lender, over all the Borrower’s immovable properties (in case of leased land, mortgage of leasehold right) including the land required for repeater station, both present and future pertaining to the Project, if any;*

*(ii) first ranking charge, by way of hypothecation (in terms of the Deed of Hypothecation) on all movable properties of the Borrower, including plant and machinery, transmission tower, transmission lines, machinery spares, equipment, tools and accessories, furniture, fixtures, vehicles, stocks and all other movable assets, present and future and also first charge by way of hypothecation/ assignment of all the present and future book debts, bills, receivables, revenue, operating cash flows, monies including bank accounts, claims of all kinds and stocks including consumables and other general stores;*

*(iii) first ranking charge, by way of assignment or creation of security interest (as contemplated by the Lender in accordance with the terms of the Rupee Term Loan Agreement), in terms of the Indenture (as defined in the Rupee Term Loan Agreement), of all rights, titles, interests, benefits, claims and demand whatsoever of the Borrower; in Project Documents (including without limitation the TSA, Transmission License, Clearances, Insurance Contracts, service contracts, proceeds under the Insurance Contracts, performance bonds, contractors’ guarantees, bank guarantees, advance payment guarantees and any letter of credit provided by any Person under the Project Documents, tie-ups, approvals, permissions, right of way (RoW) relating to the Project, guarantees and warranties issued by OEM, relating to the Project duly acknowledged and consented to by the Counterparties to the Project Documents (if such Project Document requires prior consent of such Counterparties), as amended, varied or supplemented from time to time, both present and future;*

*(iv) pledge of unencumbered Equity Shares and Quasi Equity Instruments issued by the Borrower, in terms of, and to the extent contemplated under, the Pledge Agreement, (i.e., 51% (fifty one percent) of the total Equity Shares forming part of Equity Contribution and 51% (fifty one percent) of the total Quasi Equity Instruments (each CCDs/OCDs) forming part of the Equity Contribution, in dematerialized form), representing a minimum of 51% (fifty one percent) of the total Equity Contribution of the Borrower. The Equity Shares and other Quasi Equity Instruments to be pledged shall be free from any restrictive covenants/ lien or other encumbrance under any contract/ arrangement including any shareholder agreement/ joint venture agreement/ financing arrangement with regard to pledge/ transfer of the aforesaid Equity Shares and other Quasi Equity Instruments including transfer upon enforcement of the pledge in terms of the Pledge Agreement;*

*(v) Corporate Guarantee provided by the Promoter (i.e Adani Transmission Limited) until the Guarantee Release Date (as defined under the Rupee Term Loan Agreement), which may be invoked by the Lender upon any Guarantee Invocation Trigger Events (as defined under the Rupee Term Loan Agreement).”*

6. It has been submitted by the Petitioner that Article 15.2.2 of the Transmission Service Agreement entered into between the Petitioner and the beneficiaries of the

Project provide 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 lender or the representative of the lender as security for amount payable under the Financing Agreements and any other amounts agreed by the parties. Provided that:

(i) The lender or the representative of the lender on its 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 Petitioner shall contain provisions pursuant to which the lender or the representative of the lender on its behalf agrees unconditionally with the Petitioner to release such encumbrances upon payment by the Petitioner to the lenders of all amounts due under the Financing Agreements.

7. It has been stated by the Petitioner that in terms of Clause 3.4(ii) of Rupee Term Loan Agreement, it is under the obligation to create and perfect the security interest within six months from the Initial Drawdown Date or one month after receipt of approval under Sub-sections (3) and (4) of Section 17 of the Act by the Commission, whichever is earlier, without levying any additional interest. It has been further submitted that the Petitioner need to submit a copy of the Commission's approval under Sub-sections (3) and (4) of Section 17 of the Act within six months from the date of Initial Drawdown as per Clause 5.5.7 of Rupee Term Loan Agreement.

8. The Petitioner has submitted that in terms of Article 15.2.4 of the TSA, the Petitioner is required to take permission from this Commission prior to relinquishment or transfer of its rights and obligations in the TSA. 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 security interest over all the movable and immovable assets of the Petitioner in favour of Security Trustee acting on behalf of and for the benefit of the lender pursuant to Rupee Term Loan Agreement and Security Trustee Agreement without approval of the Commission. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for creation of security interest, over all assets including the movable and immovable assets for the project in favour of Security Trustee pursuant to Security Trustee Agreement and Rupee Term Loan Agreement.

9. The Petitioner has submitted information in respect of its under construction Project as per the format prescribed by the Commission.

10. The Petition was called out for hearing on 19.3.2020 through video conferencing after notice to the Respondents. None was present on behalf of the Respondents despite notice. No reply has been filed by the Respondents.

### **Analysis and Decision**

11. We have considered the submissions made by the Petitioner. The Petitioner approached the lender, namely, REC Limited for a rupee term loan for the purpose of financing the Project. The lender has agreed to grant rupee term loan of Rs.641.42 crore (including LoC limit of Rs.480 crore i.e. 74.83% of loan) to the Petitioner subject to the terms and conditions set out in the Rupee Term Loan Agreement dated 11.8.2020.

12. As per the Rupee Term Loan Agreement, estimated cost of the Project is Rs. 855.23 crore. In terms of Financing Plan enclosed as Schedule 1 of the Loan Agreement, the Project shall be funded through the debt of Rs. 641.42 crore and equity of Rs. 213.81 crore. The Petitioner has submitted the Auditor's Certificate dated 26.8.2020 for capital expenditure of Rs. 266.51 crore incurred for its under construction project till June 2020.

13. The Petitioner has submitted original estimated Project cost and means of finance as on the date of financial closure i.e. 11.8.2020 as under:

<b>Original Estimated Project cost</b>	<b>Rs. in crore</b>	<b>Means of finance</b>	<b>Rs. in crore</b>
Hard Cost	783.63	Equity Share Capital	213.81
IEDC	26.09	Secured loan/ debt from external source	641.42
IDC	36.01		
Contingency	6.79		
WC and DSRA	2.71		
<b>Total</b>	<b>855.23</b>	<b>Total</b>	<b>855.23</b>

14. The transmission projects are capital intensive projects requiring huge capital investment and are financed through loans. It is a normal practice followed by 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 lenders. In the instant case, the lender, namely, REC Limited has agreed to provide loan of Rs.641.42 crore (including LoC limit of Rs.480 crore i.e. 74.83% of loan) to the Petitioner. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create encumbrance over all or part of the receivables, Letter of Credit or other assets of the Project in favour of the lenders or the lender's

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 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.”*

16. 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.

17. The Petitioner and the lender have appointed the Catalyst Trusteeship Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, Security Trustee Agreement and Rupee Term Loan Agreement dated 11.8.2020 have been executed for a loan of Rs.641.42 crore (including LoC limit of Rs.480 crore i.e. 74.83% of loan). As per the Security Trustee Agreement dated 11.8.2020, at the request of the Petitioner, the lender has agreed to provide a loan of Rs.641.42 Crore (including LoC limit of Rs.480 crore i.e. 74.83% of loan) for the Project on the terms and conditions contained in the Rupee Term Loan Agreement and Security Trustee Agreement. In our view, Catalyst Trusteeship Limited needs to be given comfort for creation of security for the benefit of lender as security for the financial assistance provided by the lender. We, therefore, accord in-principle approval allowing the Petitioner to create security interest in favour of

Catalyst Trusteeship Limited, by way of mortgage on Project assets by execution of Indenture of Mortgage and financing documents of the Project. The Petitioner is directed to submit signed copy of Indenture of Mortgage for the Project immediately after its execution.

18. It is, however, made clear that the transmission licence granted by the Commission to the Petitioner and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee unless prior approval of the Commission is obtained at the time of creating rights in favour of such nominee. Before agreeing to assignment of licence and the assets of the Petitioner to the nominee of lender, the Commission will evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and ability to execute the Project and undertake transmission of electricity. The licensee, lenders, security trustee and the nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such 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.”*

19. 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 the nominee, approve the assignment of the licence to a nominee of the lender subject to proper due diligence of the process. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of Security Trustee or transfer of any assets to them shall always be needed. Lastly, financial documents and statements may be filed by the Petitioner as and when required by the Commission for any specific purpose.

20. With the above, Petition No. 17/MP/2021 stands disposed of.

Sd/- <b>(P. S. Mhaske)</b> Member	sd/- <b>(P.K.Singh)</b> Member	sd/- <b>(Arun Goyal )</b> Member	sd/- <b>(I.S.Jha)</b> Member	sd/- <b>(P.K. Pujari)</b> Chairperson
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