

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 546/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Pravas Kumar Singh, Member

Date of order: 5th June, 2021

In the matter of:

Petition for approval under Section 17 (3) and (4) of the Electricity Act, 2003 for creation of security interest over all the movable and immovable assets of Petitioner No 1 in favour of Petitioner No. 2 / Security Trustee pursuant to the amended and restated Facility Agreement dated 12.10.2020 executed between Petitioner No. 1, REC Limited/ Lender's Agent and the Lenders, by way of mortgage/ hypothecation/ assignment on project assets for benefit of the Lenders, and for their subsequent transferees, assignees, novatees thereof and any refinancing lenders to the Project, for development, construction and operation of the independent transmission project for "WRSS-21 (Part-B) – Transmission System strengthening for reliving over loadings observed in Gujarat Intra-state system due to RE injections in Bhuj-PS.

And

In the matter of

1. Lakadia-Vadodara Transmission Project Limited
F-1, The Mira Corporate Suite
1&2, Ishwar Nagar
New Delhi-110 065

2. Catalyst Trusteeship Limited
GDA House, First Floor,
Plot No. 85, S. No. 94 & 95,
Bhusari Colony (Right), Kothrud
Pune – 411 038

....Petitioners

Versus

1. Adani Green Energy (MP) Limited
Adani House, Nr. Mithakhali Six Roads,
Navrangpura Ahmedabad-380 009

2. Adani Green Energy Limited
Adani House,
Nr. Mithakhali Six Roads, Navrangpura
Ahmedabad – 380 009

3. Netra Wind Private Limited
B 504, Delphi Building,
Orchard Avenue, Sector 3,
Hiranandani Business Park, Powai,
Mumbai – 400 076

...Respondents

Parties Present

Shri Aditya K Singh, Advocate, LVTPL
Ms. Anukriti Jain, Advocate, LVTPL
Shri Suchit, Advocate, LVTPL
Shri TAN Reddy, LVPTL

ORDER

The First Petitioner, Lakadia-Vadodara Transmission Project Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish "WRSS-21 (Part-B) Transmission System strengthening for relieving over loadings observed in Gujarat Intra-State system due to RE injections in Bhuj PS" (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 4.3.2020 in Petition No. 445/TL/2019.

2. Lakadia-Vadodara Transmission Project Limited (the First Petitioner) and Catalyst Trusteeship Limited (the Second Petitioner) have jointly filed the present Petition seeking approval under Sub-sections (3) and (4) of Section 17 of the Act for creation of security interest over the assets of the First Petitioner, including all movable and immovable assets, in favour of the Second Petitioner, for the benefit of REC Limited, IndusInd Bank Limited and L&T Infrastructure Finance Company Limited including their successors, transferees, novates and assigns, including their subsequent transferees, assignees, novatees thereof and any refinancing lenders

(hereinafter collectively referred to as “the lenders”) to the Project for Rs.1417 crore.

The Petitioners have made the following prayers:

“(a) Approve creation of the security interest by Petitioner No. 1 over Petitioner No. 1’s Assets to the extent described in this Petition, to secure the total commitment of the Lender aggregating to Rs. 1417,00,00,000/- Crores (Rupees One Thousand Four Hundred Seventeen Crores), in favour of the Petitioner No. 2 for the benefit of the Lenders and for their subsequent transferees, assignees, novatees thereof to the Project; and

(b) Pass an order allowing the Lenders 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.”

3. It has been submitted by the First Petitioner that it approached the lenders for financial assistance in the form of term loan facility, for an aggregate principal amount of Rs. 1417 crore with a letter of credit-sight/ usance as a sub-limit of the rupee term loan of Rs. 710 crore to enable it to meet part of the total cost of construction and development of the Project.

4. The IndusInd Bank Limited vide its letter dated 30.9.2019 sanctioned term loan facility of Rs. 917 crore with a letter of credit-sight/ usance as a sub-limit of the rupee term loan of Rs. 460 crore.

5. In pursuance of the sanction letter issued by the IndusInd Bank Limited, the First Petitioner entered into a Facility Agreement dated 16.1.2020 for availing a loan of Rs. 1417 crore. As per the terms of the Facility Agreement, IndusInd Bank Limited has agreed to lend and advance to the First Petitioner a loan facility of Rs. 917 crore and that the additional debt requirement of the First Petitioner for Rs. 500 crore may be granted by any other banks and/or financial institutions and/or any other persons who agree to provide/ participate in sharing of the additional debt requirement in accordance with the terms of the Facility Agreement dated 16.1.2020.

6. At the request of the First Petitioner and in accordance with the Security Trustee Agreement dated 16.1.2020 ("the Security Trustee Agreement"), the Second Petitioner has agreed to act as security trustee for the lenders including their assignees, transferees, novatees and to enter into all relevant financing documents pursuant thereto.

7. Subsequently, the First Petitioner approached other lenders for financial assistance in the form of term loan facility. L&T Infrastructure Finance Company Limited agreed to provide loan and vide its sanction letter dated 28.2.2020 approved a rupee-term of Rs. 500 crore to the First Petitioner in accordance with the terms of the Facility Agreement dated 16.1.2020. Subsequently, on 20.3.2020, L&T Infrastructure Finance Company Limited executed a Deed of Adherence to the Security Trustee Agreement.

8. The First Petitioner, vide letter dated 9.10.2020, was directed to furnish the information required for prior approval under section 17(3) and 17(4) related to the creation/ change of security interest as per prescribed format. The First Petitioner has submitted the information called for.

9. The matter was called out for hearing on 19.3.2021 through video conferencing after notice to the Respondents. During the course of the hearing, the learned counsel for the Petitioners submitted that subsequent to filing of the present Petition, an additional lender has agreed to finance the Project. Accordingly, learned counsel for the Petitioners sought permission to file an amended Petition so as to include the same in the amended Petition. The Petitioners were permitted to file amended Petition.

10. The First Petitioner, through the amended Petition, has submitted that post filing of Petition, on 12.10.2020, REC Limited on being approached, has agreed to finance the project to the extent of Rs. 1,000 crore for changing the lending composition and substitute itself as the lender's agent instead of IndusInd Bank Limited. Accordingly, in suppression of the earlier Facility Agreement dated 16.1.2020, Amended and Restated Facility Agreement dated 12.10.2020 was executed between the First Petitioner and REC Limited as lender's Agent and in suppression of the Security Trustee Agreement dated 16.1.2020, Amended and Restated Security Trustee Agreement dated 12.10.2020 was executed between the First Petitioner and the Second Petitioner.

11. The First Petitioner has submitted that in order to administer and coordinate the enforcement of the respective rights, power and duties (accruing from the transaction and financing documents), each of the lenders entered into an Inter-creditor Agreement dated 12.10.2020 with REC Limited. Thereafter, other consequential documents such as Borrower's confirmation dated 12.10.2020 to Inter-creditor's Agreement, Borrower's Undertaking dated 12.10.2020 to the Amended and Restated Facility Agreement, Power of Attorney dated 12.10.2020 in the name of Catalyst Trusteeship Limited, Amended and Restated Trust and Retention Account Agreement dated 12.10.2020 in pursuance of the Amended and Restated Facility Agreement, Unattested Amended and Restated Agreement for Pledge of Securities dated 12.10.2020, Amended and Restated Promoter Support Undertaking and Amended and Restated Sponsor Support Undertaking were executed.

12. Pursuant to the terms of the Amended and Restated Facility Agreement, the obligations of the First Petitioner shall be secured by the following security package:

“ ...

- (a) *A first ranking charge, on all the immovable properties of the Borrower including substation land (if any), both present and future;*
- (b) *a first ranking charge by way of hypothecation on all the Borrower 's moveable assets, including moveable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present and future;*
- (c) *a first ranking charge over all Accounts and all other bank accounts of the Borrower including the Trust and Retention Account, DSRA and other reserves and the sub-accounts (or any account in substitution thereof) that may be opened in accordance with this Agreement, the Trust and Retention Account Agreement or any of the other Transaction Documents and all funds from time to time deposited therein and all funds arising from the Project or otherwise, the Project Proceeds and all Permitted Investments or other securities, both present and future;*
- (d) *a first ranking charge over all the current assets of the Borrower, both present and future;*
- (e) *a first ranking charge on all revenues and receivables of the Borrower whether or not deposited in the Accounts, the book debts of the Borrower, the operating cash flows of the Borrower and all other commissions and revenues and cash of the Borrower of whatsoever nature, both present and future;*
- (f) *a first ranking charge on all intangibles assets of the Borrower including but not limited to goodwill, rights, undertaking, intellectual property rights and uncalled capital, both present and future;*
- (g) *assignment by way of security, of:*
 - (i) *all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in the Project Documents, both present and future, including the Transmission Service Agreement, duly acknowledged and consented to by the counterparties to the Project Documents if such Project Documents requires prior consent of such counterparties before creation of such Security Interest, all as amended, varied or supplemented from time to time;*
 - (ii) *the rights, title, interests and benefits of the Borrower in, to and under all the Clearances (including the Transmission License for the Project), both present and future, to the extent permissible by Applicable Law;*
 - (iii) *all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantee, warranty (including contractor guarantees) and liquidated damages (including Contractual Damages) and performance bond provided by any counter-party to the Project Documents, both present and future (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 the EPC Contractors in favour of the Borrower, which may be legally assigned);*
 - (iv) *all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower under all Insurance Contracts and Insurance Proceeds, both present and future,*

(v) a pledge of 51% (fifty one percent) (together with all accretions) of the share capital of the Borrower including the equity share capital, preference shares, compulsorily convertible debentures, compulsorily convertible preference shares issued/ to be issued by the Borrower, representing atleast 51% (fifty one percent) of the voting rights, to the satisfaction of the Lenders. The Lender's interest in the pledge shall be in compliance with Section 19 (2) and 19 (3) of the banking Regulation Act, 1949. The shares to be pledged of the share capital of the Borrower including the equity share capital, compulsorily convertible debentures issued/to be issued by the Borrower shall be in dematerialised form and shall be free from any restrictive covenants/ lien or other encumbrance under any contract/ arrangement including shareholder agreement/ joint venture agreement/ financing arrangement with regard to pledge/ transfer of the shares including transfer upon enforcement of the said pledge."

13. The First Petitioner has stated that Article 15.2.2 of the Transmission Service Agreement entered into between the First Petitioner and the beneficiaries of the Project provide that the First 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 amount payable under the Financing Agreements and any other amounts agreed by the parties. Provided that:

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

14. It has been submitted that in terms of Article 15.2.4 of the TSA, the First Petitioner is required to take permission from this Commission prior to relinquishment or transfer of its rights and obligations in the TSA. The First Petitioner has further stated that in view of the provisions of Sub-sections (3) and (4) of Section 17 of the Act, the First Petitioner, as a licensee, cannot create security interest over all the movable and immovable assets of the First Petitioner in favour of

Security Trustee (the Second Petitioner) acting on behalf of and for the benefit of the lenders pursuant to the Amended and Restated Facility Agreement dated 12.10.2020 and Amended and Restated Security Trustee Agreement dated 12.10.2020 without approval of the Commission. Accordingly, the Petitioners have filed the present Petition under Sub-sections (3) and (4) of Section 17 of the Act 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 the Amended and Restated Security Trustee Agreement dated 12.10.2020 and Amended and Restated Facility Agreement 12.10.2020.

15. The matter was called out for virtual hearing on 28.5.2021 after notice to the Petitioners and the Respondents. None was present on behalf of the Respondents despite notice. No reply has been filed by the Respondents. The learned counsel for the Petitioners submitted that the Scheduled Commercial Operation Date of the Project was in December, 2020. However, due to Covid-19 pandemic, the Project works have been considerably delayed. It was further submitted that the First Petitioner has achieved approximately 35% progress in respect of the Project works.

Analysis and decision

16. We have considered the submissions made by the Petitioners and perused the documents available on record. The First Petitioner approached the lenders, namely, REC Limited, IndusInd Bank Limited and L&T Infrastructure Finance Company Limited for a rupee term loan for the purpose of financing the Project. The lenders have agreed to grant rupee term loan for an aggregate principal amount of Rs. 1417 crore with a letter of credit-sight/ usance as a sub-limit of the rupee term

loan of Rs. 710 crore to enable it to meet part of the total cost of construction and development of the Project.

17. The First Petitioner has submitted original estimated Project cost and means of finance as on the date of financial closure i.e. 12.10.2020 as under:

Original Estimated Project Cost (as per agreement)	Rs. in crore	Means of Finance (as per agreement)	Rs. in crore
Hard Cost	1850.00	Sponsor/Promoter Contribution	607.00
IDC	133.00	Secured Loan	1417.00
DSRA	41.00		
Total	2024.00	Total	2024.00

18. Application of Funds and Means of Finance as on 18.2.2021 as certified by Chartered Accountant vide certificate dated 20.2.2021 is as under:

Application of Funds	Rs. in crore	Means of Finance	Rs. in crore
Application of Funds	573.20	Sponser/ Promoter Contribution	209.20
		Secured Loan	364.00
Total	573.20	Total	573.20

19. The lender-wise details submitted by the First Petitioner is as under:

Lender	Revised Commitment (as per loan agreement) (i.e. 12.10.2020) (Rs. in crore)	Actual Loan as on 18.02.2021 (Rs. in crore)
IndusInd Bank Limited	217.00	217.00
L&T Infrastructure Finance Company Limited	200.00	50.00
REC Limited	1000.00	97.00
Total	1417.00	364.00

20. The transmission projects are capital intensive projects requiring huge capital investment. These projects are financed through loans. It is normal practice followed by financial institution/ 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 First Petitioner and lenders have appointed the Second Petitioner, namely Catalyst Trusteeship Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, an Amended and Restated Security Trustee Agreement dated 12.10.2020 have been executed for loan of Rs. 1417 crore. In accordance with Article 15.2.2 of the TSA, the Transmission Service Provider has been allowed to 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 representative of the lenders, as security for amounts payable under the Financing Agreements and other amounts agreed by the parties.

21. 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.”

As per these provisions, a licensee is required to obtain approval of the Commission for assigning his 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. As per the TSA, the TSP, which is an inter-State transmission licensee can create any encumbrances over all or part of the receivables, Letter of Credit or the other assets of the project, but cannot assign its

licence or transfer the project or part thereof by sale, lease, exchange or otherwise without prior approval of the Commission.

22. The First Petitioner and the lenders have appointed the Second Petitioner for creation of security over all the movable and immovable assets of the Project. Accordingly, an Amended and Restated Security Trustee Agreement dated 12.10.2020 has been executed for a loan of Rs. 1417 crore (including LoC limit of Rs. 710 crore). In our view, Catalyst Trusteeship Limited (the Second Petitioner) 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 First Petitioner to create security in favour of Catalyst Trusteeship Limited, presently acting as Security Trustee pursuant to Amended and Restated Security Trustee Agreement by way of hypothecation on assets of the Project by execution of unattested deed of hypothecation for the Project.

23. It is, however, made clear that the transmission licence granted by the Commission to the First 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 transfer of the licence and the assets of the First Petitioner to the nominee of Security Trustee, the Commission may evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and to be able 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.”

24. Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lenders, Security Trustee and the nominee, approve the assignment of the licence to a nominee of the lender after 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, finance documents and statements may be filed by the First Petitioner as and when required by the Commission for any specific purpose.

25. With the above, Petition No. 546/MP/2020 is allowed.

Sd/-
(P.K.Singh)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson