

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 100/MP/2022

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of order: 18th June, 2022

In the matter of:

Petition under Section 17(3) and Section 17(4) of the Electricity Act, 2003 seeking approval for creation of security interest over the Petitioner's assets in favour of Respondent No. 6 (as the Security Trustee acting for the benefit of the lenders) in respect of the Petitioner's transmission Project.

And

In the matter of

WRSS XXI (A) Transco Limited,
Adani Corporate House,
Shantigram, Near Vaishno Devi Circle,
S.H.Highwat, Khodiyar,
Ahmedabad-382 421, Gujarat.

....Petitioner

Versus

1) Adani Green Energy Limited,
Adani House, Near Mithakhali six Roads,
Navrangpura, Ahmedabad-380 009

2) Adani Green Energy Limited,
Adani House, Near Mithakhali six Roads,
Navrangpura, Ahmedabad-380 009

3) Netra Wind Private Limited,
DLF Cyber Hub,
Building No. 53, Phase-2,
Gurgaon-122 002, Haryana.

4) Catalyst Trusteeship Limited,
GDA House, Plot No. 85,
Bhusari Colony (Right),
Kothrud, Pune-411 038.

Parties Present

Shri Ramanuj Kumar, Advocate, WRSS XXI (A) Transco Ltd.
Shri Manpreet Lamba, Advocate, WRSS XXI (A) Transco Ltd.
Ms. Priyal Modi, Advocate, WRSS XXI (A) Transco Ltd.
Shri M.R. Krishna Rao, Advocate, WRSS XXI (A) Transco Ltd.
Shri Bhavesh Kundalia, WRSS XXI (A) Transco Ltd.

ORDER

The Petitioner, WRSS XXI (A) Transco Limited ("WTL"), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish "Western Region Strengthening Scheme- 21 (WRSS-21) Part-A 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 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 24.1.2020 in Petition No. 409/TL/2019.

2. The Petitioner, WRSS XXI (A) Transco Limited, has filed the present Petition for creation of security interest over all assets including movable and immovable assets, Project accounts, Project documents (including assignment of transmission licence) of the Petitioner in favour of Security Trustee and for its subsequent transferees, assignees, novates and substitutes thereof and any refinancing lenders to the Project, pursuant to Facility Agreement and Security Trustee Agreement, by way of mortgage/ hypothecation/ charge/pledge/assignment of secured properties and Project assets. The Petitioner has made the following prayers:

"(a) Approve the creation of Security Interest, over all assets including the movable and immovable assets, accounts, Project documents, etc. of Petitioner No. 1 and to the extent as mentioned in paras 5 and 6 above, in favour of Lender and for their subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project, pursuant to deed of hypothecation and power of attorney in relation thereto, Indenture of Mortgage and other security creating

documents/Financing Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Secured Properties and Project assets and for amendment of the security documents and any other Financing Agreements to include the assign, transferees and novatees of the Lender; and

(b) Pass any other order/directions that the Commission may deem fit and appropriate under the circumstances”

3. The Petitioner has submitted that it approached the lenders, namely, Intesa Sanpaolo S.P.A. Singapore, Mizuho Bank Ltd., MUFG Bank Limited, Sumitomo Mitsui Banking Corporation Singapore Branch, DBS Bank Limited, Standard Chartered Bank (Hong Kong Limited), Siemens Bank GmbH Singapore Branch and SOCIETE GENERALE acting through its Singapore branch (hereinafter referred to as ‘the lenders’) for the purpose of part financing of the Project. Lenders had agreed to provide financial assistance of US\$103 million (One hundred Three Million USD). Subsequently, the Petitioner and the lenders entered into a Facility Agreement dated 28.10.2021 for availing loan of US\$103 million. The breakup of loan amount for individual lender is tabulated hereunder:

Sr. No.	Name of Lender	Loan Amount in USD(US\$)
1.	Intesa Sanpaolo S.P.A. Singapore Branch	14,714,000
2.	Mizuho Bank Ltd	14,714,000
3.	MUFG Bank Ltd.	14,714,000
4.	Sumitomo Mitsui Banking Corporation Singapore Branch	14,714,000
5.	DBS Bank Ltd.	11,036,000
6.	Standard Chartered Bank (Hong Kong) Limited	11,036,000
7.	Siemens Bank GmbH Singapore Branch	11,036,000
8.	Societe General Acting Through its Singapore branch	11,036,000
	Total	103,000,000

4. The Petitioner has appointed the Respondent, namely, Catalyst Trusteeship Limited as Security Trustee (hereinafter referred to as ‘Security Trustee’) who has agreed to act as Security Trustee and has entered into Facility Agreement and

Security Trustee Agreement (hereinafter referred to as the Financing Documents) on 28.10.2021.

5. The Petitioner has submitted that in terms of the Financing Documents, the Petitioner is required to create security being the transaction security (as defined under the Facility Agreement) in favour of the Security Trustee for the benefit of the lenders which, *inter alia*, includes the following:

(a) first *pari passu* charge by way of a hypothecation supported by a power of attorney to be granted by the Petitioner in favour of Security Trustee on all the movable assets of its Project, both present and future;

(b) first *pari passu* charge by way of a hypothecation supported by a power of attorney to be granted by the Petitioner in favour of Security Trustee on all book debts, operating cash flows, receivables, commissions or revenues whatsoever arising out of its Project, both present and future;

(c) first *pari passu* charge by way of a hypothecation supported by a power of attorney to be granted by the Petitioner in favour of Security Trustee on the Petitioner's Project Account and amounts lying to the credit of the Petitioner's Project Accounts, both present and future;

(d) first *pari passu* charge by way of a hypothecation supported by a power of attorney to be granted by the Petitioner in relation to:

(i) all the rights, permits, title, interest, benefits, claims, insurances and demands whatsoever of the Petitioner in the relevant Project Documents and Project Document Guarantee and Bonds for its Project both present and future from time to time; and

- (ii) all the rights, permits, title, interest, benefits, claims and demands whatsoever of the Petitioner in the clearances / approvals pertaining to the Project, both present and future;
- (e) first *pari passu* charge under a deed of hypothecation and a power of attorney to be granted by the Petitioner in favour of the Security Trustee on the Transmission Licenses relating to the Project;
- (f) first *pari passu* mortgage to be granted by the Petitioner in favour of Security Trustee on the Immovable Properties relating to the Project;
- (g) first *pari passu* assignment of all the rights, permits, title, interest, benefits, claims and demands whatsoever of the Petitioner in the Project Documents and Project Document Guarantees and Bonds for the Project, Transmission License, and other clearances and approvals pertaining to its Project (to the extent assignable), both present and future;
- (h) first *pari passu* mortgage to be granted by the Petitioner in respect to its leasehold interest on the Petitioner's land in favour of Security Trustee.

6. The Petitioner has submitted that under the Financing Agreements and on enforcements of the security interest, it shall be lawful for the lenders and its assigns, transferees and novatees, to enter into and take possession of the assets/properties mortgaged/hypothecated/charged/ assigned for their benefit and substitute themselves or any one of them or its nominees for the Petitioner under any or all of the Project document(s).

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 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 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 Petitioner in accordance with this Article 15.2.2 shall contain provisions pursuant to which the lenders or the representative of the lenders on their 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.

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 lenders pursuant to Facility Agreement dated 28.10.2021 and Security Trustee Agreement dated 28.10.2021 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 Facility Agreement.

9. The Petition was called out for hearing on 26.5.2022 through video conferencing after notice to the Respondents. No reply has been filed by the Respondents. None was present on behalf of the Respondents despite notice.

10. During the course of hearing, the Commission observed that the Petitioner in its prayer has submitted that it is seeking approval for creation of security interest in favour of Respondent No. 6. However, in the memo of parties submitted along with Petition, only four Respondents have been indicated. In response, learned counsel for the Petitioner sought permission to rectify the inadvertent error within a week. The Petitioner, vide affidavit dated 7.6.2022 has rectified the error and has amended the prayers. Accordingly, Respondent No. 6 has been considered as Respondent No. 4.

Analysis and Decision

11. We have considered the submissions made by the Petitioner and perused the documents available on record. The Petitioner approached the lenders for the purposes of part financing for implementation of the Project. The lenders have agreed to grant the financial assistance aggregating to US\$103 million (Rs. 738 crore).

12. The Petitioner has submitted that as on 30.11.2021, the lenders have disbursed amounts of US\$15 million.

13. The Petitioner has submitted lender-wise details of amount disbursed as under:

Sr. No.	Name of Lender	Sanction loan (As per Loan Agreement) (in US\$)	As on 30.11.2021 (in US\$)
1.	Intesa Sanpaolo S.P.A. Singapore Branch	14,714,000	2,142,816
2.	Mizuho Bank Limited	14,714,000	2,142,816
3.	MUFG Bank Limited	14,714,000	2,142,816
4.	Sumitomo Mitsui Banking Corporation Singapore Branch	14,714,000	2,142,816
5.	DBS Bank Limited	11,036,000	1,607,184
6.	Standard Chartered Bank (Hong Kong) Limited	11,036,000	1,607,184
7.	Siemens Bank GmbH Singapore Branch	11,036,000	1,607,184
8.	Societe General acting through its Singapore Branch	11,036,000	1,607,184
	Total (US\$)	103,000,000	15,000,000

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

Original estimated Project cost (as per agreement)	Rs. (in crore)	Means of finance (as per agreement)	Rs. (in crore)
Hard Cost	679	Equity share capital	0.05
IEDC	221	Equity share premium	-
IDC	39	Loan/Debentures from promoters, group companies	259
Contingency	13	Secured loan / debt from external source	738
WC and DSRA	43	Others	-
Total	997	Total	997

15. 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 lenders have agreed to provide loan of US\$ 103 million 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.

16. 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."

17. As per the above provisions, a licensee is required to obtain approval of the Commission for assigning its license 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 lenders 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 Facility Agreement dated 28.10.2021 have been executed for a loan of US\$ 103 million. As per the Security Trustee Agreement dated 28.10.2021, at the request of the Petitioner, the lenders have agreed to provide a rupee facility of US\$ 103 million. 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 lenders. We, therefore, accord 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 and other financing documents for the Project immediately after its execution.

19. 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 lenders, 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.”

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 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.

21. With the above discussion and findings, Petition No. 100/MP/2022 stands disposed of.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member