

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 99/MP/2022**

**Coram:**

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

**Date of order: 24<sup>th</sup> June, 2022**

**In the matter of:**

Petition under Sections 17(3) and 17(4) of the Electricity Act, 2003 seeking approval for creation of security interest over the Petitioner's Assets in favour of the Respondent No.2 (as the Security Trustee acting for the benefit of the Lenders) in respect of the Petitioner's Transmission Project.

**And**

**In the matter of**

Lakadia Banaskantha Transco Limited,  
Adani Corporate House,  
Shantigram, Near Vaishno Devi Circle,  
S.H.Highwat, Khodiyar,  
Ahmedabad-382 421, Gujarat.

**....Petitioner**

**Versus**

1. Powerica Limited,  
9<sup>th</sup> Floor, C Wing,  
Godrej Coliseum,  
Sion (E), Mumbai- 400 022

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

**..Respondents**

**Parties Present**

Shri Ramanuj Kumar, Advocate, LBTL  
Shri Manpreet Lamba, Advocate, LBTL  
Ms. Priyal Modi, Advocate, LBTL  
Shri Parveen Arora, Advocate, Powerica  
Shri Aishwarya Kaushiq, Advocate, Powerica  
Ms. Suruchi Kotoky, Powerica  
Shri M. R. Krishna Rao, LBTL



Shri Bhavesh Kundalia, LBTL  
Shri Jayendra Rane, Powericas

## ORDER

The Petitioner, Lakadia Banaskantha Transco Limited (LBTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish transmission system for "Transmission System associated with RE Generations at Bhuj-II, Dwarka and Lakadia" (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 3.3.2020 in Petition No. 442/TL/2019.

2. The Petitioner has filed the present petition seeking approval for creation of security interest by way of hypothecation/ mortgage/ charge/ assignment, etc. over all assets including movable and immovable assets, accounts and documents (including assignment of transmission licence) etc. of the Petitioner in terms of the loan Agreement and in favour of lender/ security trustee to secure the secured obligations and for their subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project by executing 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, for US\$85 Million(Eighty Five Million United States Dollar Only). The Petitioner has made the following prayers:

*"(a) Approve the creation of Security Interest by way of hypothecation/mortgage/charge/pledge/assignment etc., over all assets including the movable and immovable assets, Project accounts, Project documents (including assignment of transmission licence) etc. of the Petitioner in favour of Respondent No. 2 / Security Trustee (or its replacement or successor)to secure the Petitioner's Obligations towards the Lenders under the Financing Documents and for their*

*subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project; and*

*(b) Pass any or such further orders as may be deemed fit and proper in the facts and circumstances of the case”*

3. The Petitioner has entered into Facility Agreement dated 28.10.2021 with the lenders, namely, MUFG Bank Ltd., Mizuho Bank Ltd, Intesa Sanpaolo S.P.A. Singapore Branch, Siemens Bank GMBH Singapore Branch, Sumitomo Mitsui Banking Corporation Singapore Branch, DBS Bank Ltd., Societe General Acting Through its Singapore Branch, Standard Chartered Bank (Hong Kong) Limited (hereinafter referred to as ‘lenders’) for grant of US\$85 Million (Eighty-Five Million United States Dollar Only), equivalent to Rs. 612 crore as loan facility for the Project. The breakup of loan amount for individual lender is tabulated hereunder:

<b>Sr. No.</b>	<b>Name of Lender</b>	<b>Loan Amount in US\$</b>
1.	Intesa Sanpaolo S.P.A. Singapore Branch	12,143,000
2.	Mizuho Bank Ltd	12,143,000
3.	MUFG Bank Ltd.	12,143,000
4.	Sumitomo Mitsui Banking Corporation Singapore Branch	12,143,000
5.	DBS Bank Ltd.	9,107,000
6.	Standard Chartered Bank (Hong Kong) Limited	9,107,000
7.	Siemens Bank GmbH Singapore Branch	9,107,000
8.	Societe General Acting Through its Singapore branch	9,107,000
	<b>Total (US\$)</b>	<b>85,000,000</b>

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 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 Agreements.

9. The Petition was called out for hearing on 24.5.2022 through video conferencing after notice to the Respondents. No reply has been filed by the Respondents.

### **Analysis and Decision**

10. We have considered the submissions made by the Petitioner and perused documents on record. The Petitioner approached the lenders for the purposes of part

financing the implementation of the Project. The lenders have agreed to grant the financial assistance aggregating to US\$ 85 Million.

11. The Petitioner has submitted that as on 30.11.2021, the lenders have disbursed US\$ 8 million.

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

<b>Original estimated Project cost (as per agreement)</b>	<b>Rs. in crore</b>	<b>Means of finance (as per agreement)</b>	<b>Rs. in crore</b>
Hard Cost	577	Equity Share Capital	0.05
IEDC	188	Equity Share Premium	-
IDC	24	Loan / Debentures from promoters, group companies	242
Contingency	25	Secured Loan / Debt from External Source	612
WC and DSRA	40	Others	-
<b>Total</b>	<b>854</b>	<b>Total</b>	<b>854</b>

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

<b>S. No.</b>	<b>Name of Lender</b>	<b>Sanction Loan (As per Loan agreement) Amount in US\$</b>	<b>As on 30.11.2021 US\$</b>
1.	Intesa Sanpaolo S.P.A. Singapore Branch	12,143,000	1,142,871
2.	Mizuho Bank Ltd	12,143,000	1,142,871
3.	MUFG Bank Ltd.	12,143,000	1,142,871
4.	Sumitomo Mitsui Banking Corporation Singapore Branch	12,143,000	1,142,871
5.	DBS Bank Ltd.	9,107,000	857,129
6.	Standard Chartered Bank (Hong Kong) Limited	9,107,000	857,129
7.	Siemens Bank GmbH Singapore Branch	9,107,000	857,129
8.	Societe General Acting Through its Singapore branch	9,107,000	857,129
	<b>Total</b>	<b>85,000,000</b>	<b>8,000,000</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 lenders have agreed to provide loan of US\$ 85 million to the Petitioner.

15. Article 15.2.2 of the TSA provide as under:

*“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 Lender`s 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 TPS to the Lenders of all amounts due under the Financing Agreements.*

In accordance with above provision, 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. Article 15.2.4 of the TSA provide as under:

*“15.2.4. Neither the TSP nor any of the Long Terms Transmission Customers can relinquish or transfer its rights and obligations, without prior approval of the Appropriate Commission.”*



As per 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.

17. 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 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 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\$ 85 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\$ 85 million. In our view, Catalyst Trusteeship Limited needs to be given comfort for creation of security for the benefit of lenders as security for the financial assistance provided by the lenders. 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.

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. The Petition No. 99/MP/2022 is disposed of in terms of the above.

Sd/-  
**(P.K. Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I. S. Jha)**  
Member