

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 157/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member**

Date of Order: 24th June, 2024

In the matter of

Petition under Sections 17(3) and 17(4) of the Electricity Act, 2003 for creation of the security interest over all the movable and immovable assets of the Petitioner in favour of the Security Trustee, Respondent No. 4.

And

In the matter of

Lakadia-Vadodara Transmission Project Limited,
DLF, Cyber Park, Tower-B, 9th Floor,
Udyog Vihar Phase-III, Sector - 20
Gurugram, Haryana – 122008.

....Petitioner

Versus

1. Adani Wind Energy Kutchh One Limited,
(Formally known as Adani Green Energy MP Limited)
Adani House, 4th Floor, South Wing,
Shantigram, S.G. Highway,
Ahmedabad– 382421, Gujarat

2. Adani Green Energy Limited,
Adani House, 4th Floor, South Wing,
Shantigram, S.G. Highway,
Ahmedabad– 382421, Gujarat

3. Netra Wind Private Limited,
B-504, Delphi Building,
Orchard Avenue, Sector-5,
Hiranandani Gardens, Powai,
Mumbai– 400076, Maharashtra.

4. Catalyst Trusteeship Limited,

GDA House, First Floor,
Plot No. 85, S. No. 94 & 95,
Bhusari Colony (Right), Kothrud
Pune- 411 038, Maharashtra

....**Respondents**

Parties present:

Shri Arjun Agarwal, Advocate, LVTPL

ORDER

The First Petitioner, Lakadia Vadodara Transmission Project Limited, has been granted a transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish the "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"), 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. The Petitioner has filed the present Petition seeking the creation of security interest over the Petitioner's assets, including all movable and immovable assets, in favour of the Catalyst Trusteeship Limited, the Security Trustee, for the benefit of the lenders, namely, HDFC Bank Limited, India Infrastructure Finance Company Limited, and Bank of Baroda (hereinafter referred to as 'the new lenders') including their successors, transferees, novatees, and assigns thereof and any refinancing lenders to the Project for a sum of Rs. 1840 crore. The Petitioner has made the following prayers:

"a) admit and list the instant Petition for an urgent hearing;

b) approve the creation of the security interest by the Petitioner over the Petitioner's Assets to the extent described in this Petition, to secure the total commitment to the New Lenders aggregating to INR 1840,00,00,000/- (Rupees One Thousand Eight Hundred Forty Crores Only), in favour of the Respondent No. 4 for the benefit of the New Lenders;

c) approve the creation of the security interest by the Petitioner over the Petitioner's Assets to the extent described in this Petition, to secure the total commitment to the New Lenders aggregating to INR 1840,00,00,000/- (Rupees One Thousand Eight Hundred Forty Crores Only), in favour of the Respondent No. 4 for the benefit of the New Lenders and for their subsequent transferees, assignees, novatees thereof and any refinancing lenders to the Project by way of hypothecation/ assignment/ mortgage;

d) allow the New 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;

e) pass any such other relief as the Commission deems fit and appropriate in the facts and circumstances of the case”

3. According to the Petitioner, for the purposes of part financing the Project, the Petitioner had earlier availed a financial assistance in the form of a term loan facility for an aggregate principal amount of Rs. 1417 crore to enable it to meet part of the total cost of construction and development of the Project. The said loan facility was extended to the Petitioner by the lenders, namely, REC Limited, IndusInd Bank Limited, and L&T Infrastructure Finance Company Limited (hereinafter referred to as “the Previous Lenders”).

4. The Petitioner and the Previous Lenders had entered into a Facility Agreement dated 16.1.2020 for availing a loan of Rs. 1417 crore. Further, Catalyst Trusteeship Limited had agreed to act as a Security Trustee for the Previous Lenders. In this regard, the Petitioner had approached the Commission seeking approval for creating a security interest over the Petitioner's assets in favour of the Security Trustee, i.e., Catalyst Trusteeship Limited, for the benefit of the Previous Lenders. The Commission, in its order dated 5.6.2021 in Petition No. 546/MP/2020, accorded in-principle approval allowing the Petitioner to create a security interest in favour of the Security Trustee, namely, Catalyst Trusteeship Limited.

5. The Petitioner has submitted that the new lenders have sanctioned financial assistance of Rs. 1840 crore to the Petitioner to re-finance the Project as per the terms and conditions contained in the sanction letter dated 13.9.2023 and the Facility Agreement dated 22.12.2023.

Hearing dated 22.05.2024

6. The Petition was called out for the hearing on 22.5.2024 after notice to the Respondents. Vide Record of Proceedings for the hearing on 22.5.2024, the Respondents were granted the opportunity to file their respective replies within a week. However, no reply has been filed by the Respondents.

Analysis and Decision

7. We have considered the submissions made by the Petitioner and perused the documents available on the record. The Petitioner has filed the present Petition under Subsection (3) and Sub-section (4) of Section 17 of the Act seeking the creation of a security interest over the Petitioner's assets, including all movable and immovable assets in favour of the Catalyst Trusteeship Limited, Security Trustee for the benefit of the new lenders, namely, HDFC Bank Limited, India Infrastructure Finance Company Limited and Bank of Baroda who have agreed to refinance of Rs. 1,840 crores to the Petitioner.

8. The Petitioner had approached the Commission by way of Petition No. 546/MP/2020 for the creation of security interest in favour of the Security Trustee, namely, Catalyst Trusteeship Limited acting as Security Trustee for the benefits of the Previous Lenders, for the loan availed from the previous lenders of Rs.1417 crore to

enable it to meet the part of the total cost of construction and development of the Project. The Commission, in its order dated 5.6.2021, accorded in-principle approval allowing the Petitioner to create a security interest in favour of the Security Trustee, namely, Catalyst Trusteeship Limited.

9. The Petitioner subsequently approached the new lenders, namely, HDFC Bank Limited India Infrastructure Finance Company Limited, and Bank of Baroda, for refinancing the project assets and for outstanding loans. The new lenders have agreed to the same through their sanction letter dated 13.9.2023. According to the Petitioner, as on 21.3.2024, a total amount of Rs.1700 crore has been disbursed by the new lenders in Tranche I, and the same has been utilized by the Petitioner for the construction of the Project. Further, a total amount of Rs. 140 crores to be disbursed by the new lenders in Tranche II to the Petitioner as per the Facility Agreement dated 22.12.2023.

10. The new lenders have approved a rupee term loan amounting to Rs. 1840 crore to the Petitioner, contingent upon the terms and circumstances outlined in the financing instruments. The Petitioner and new lenders have mutually agreed to enter into financing arrangements that will establish a charge on the assets of the Petitioner in favour of the Catalyst Trusteeship Limited, the Security Trustee, for the benefit of the new lenders. However, the Agreements would be entered into after receiving the approval of the Commission. As per the Facility Agreement dated 22.12.2023, the projected cost of the project is Rs. 2355 crore.

11. The transmission projects are capital-intensive projects requiring huge capital investments and are financed through loans. It is a normal practice followed by the 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 lender. In the instant case, new lenders have agreed to provide a loan of Rs 1840 crore to the Petitioner the details of which is as under:

Name of the lender (1)	Amount of commitment of lenders for the facility (Rs. in crore)		Total (Rs. in crore)
	(2)		
	Tranche-I	Tranche-II	
HDFC	431.00	140.00	571.00
IIFCL	700	-	700.00
BANK OF BARODA	PART 1	435.00	435.00
	PART II	134.00	134.00
Total	1840.00		1840.00

12. The Petitioner has submitted that the previous loan has been entirely repaid, and no previous loan is outstanding as on the date. In this regard, the Petitioner has placed on record the copy of the "No Dues Certificates" issued by Previous Lenders (REC Limited, IndusInd Bank Limited and L&T Infrastructure Finance Company Limited) and No Objection Certificate from security trustee, i.e., Catalyst Trusteeship Limited for the Previous Lenders (REC Limited, IndusInd Bank Limited and L&T Infrastructure Finance Company Limited).

13. The Petitioner has submitted that in terms of the Financing documents, the Petitioner is required to create a Security Interest on a first-charge basis for the new lenders. The Petitioner has submitted that under the Financing Agreements and on

enforcement of a security interest, it shall be lawful for the lenders and its assigns, transferees, and novates to enter into and take possession of the assets/properties mortgaged/hypothecated/charges assigned for their benefits and substitute themselves or any one of them or its nominees for the Petitioner under any or all of the project document(s).

14. In accordance with Article 15.2.2 of the TSA, the Transmission Service Provider has been allowed to create an encumbrance over all or part of the receivables, Letters of Credit, or other assets of the Project in favour of the lenders or the lenders' representatives or their 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 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.”

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.

16. The Petitioner and new lenders have appointed Catalyst Trusteeship Limited as a Security Trustee for the creation of Security Interest over all the movable and

immovable assets of the project. In our view, Catalyst Trusteeship Limited needs to be given comfort for the creation of security for the benefit of the new lenders, namely HDFC Bank Limited, India Infrastructure Finance Company Limited, and Bank of Baroda as the security for the financial assistance provided by it. We, therefore, accord in-principle approval allowing the Petitioner to create a Security Interest in favour of Catalyst Trusteeship Limited by way of mortgage or any other security document on project assets by execution of an indenture of Mortgage and financing documents of the Project. The Petitioner is directed to submit a signed copy of the Indenture of Mortgage for the Project immediately after its execution.

17. This in-principle approval is being approved with the condition that the transmission licence granted by the Commission to the Petitioner cannot be assigned in favour of the Security Trustee or nominee of the lenders without prior approval of the Commission at the time of creating rights in favour of such a nominee. Before agreeing to the assignment of the licence and the assets of the Petitioner to the nominee of the lender, the Commission will evaluate such a nominee`s expertise in the development, design, construction, operation, and maintenance of the transmission lines and their ability to execute the Project and undertake the transmission of electricity. The licensee, lender, security trustee, and nominee, accordingly, shall be jointly required to approach the Commission to seek approval. This will allow the Commission to satisfy itself of the circumstances necessitating such a transfer. This decision of ours is in accordance with Regulation 8 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2024, which reads as under:

“8. Assignment of Licence: In case of default by the licensee in debt repayment, the Commission may, on an application made by the lenders of the licensee, assign the licence to a nominee of the lenders.”

18. 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 nominee, approve the assignment of the licence to a nominee subject to the proper due diligence of the process. Therefore, specific prior approval of the Commission for assigning the licence to the nominee of the Security Trustee or transferring any assets to them is a mandatory requirement. Lastly, the financial documents and statements are to be filed by the Petitioner as and when directed by the Commission.

19. Petition No. 157/MP/2024 is disposed of in terms of the above.

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

**sd/-
(Jishnu Barua)
Chairperson**