

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 166/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Ramesh Babu V., Member**

Date of Order: 25th June, 2024

In the matter of

Petition under Sections 17(3) and 17(4) of the Electricity Act, 2003 for creation of security interest over all the movable and immovable assets of the Petitioner in favour of the Security Trustee for the benefit of the lender.

And

In the matter of

Beawar Transmission Limited,

DLF, Cyber Park, Tower-B, 9th Floor,
Udyog Vihar Phase-III, Sector-20
Gurugram-22008, Haryana.

....**Petitioner**

Versus

1. Central Transmission Utility of India Limited,

Plot No. 2, Sector 29,
Gurgaon -122001

2. Catalyst Trusteeship Limited,

GDA House, Plot No. 85,
Bhusari Colony (Right),
Paud Road, Pune-411 038

3. REC Limited,

Urjanidhi, 1, Barakhamba Lane,
Connaught Place,
New Delhi-110 001.

....**Respondents**

Parties present:

Shri Arjun Agarwal, Advocate, BTL

ORDER

The Petitioner, Beawar Transmission Limited (BTL), has been granted a transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish the "Transmission system for evacuation of power from REZ in Rajasthan (20 GW) under Phase III-Part F" (hereinafter referred to as "the Transmission System" or "Project") on a Build, Own, Operate, and Transfer (BOOT) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 2.3.2024 in Petition No. 332/TL/2024.

2. The Petitioner has filed the present Petition seeking approval for the creation of security interest over the Petitioner's assets, including all movable and immovable assets, in favour of Catalyst Trusteeship Limited, the Security Trustee, for the benefit of the lender, namely, REC Limited including its successors, subsequent transferees, novatees, assigns and any refinancing lenders, to the Project. 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 Project Assets to the extent described in this Petition, to secure the total commitment by the Lender aggregating to INR 2367.36 crores (Indian Rupees Two Thousand Three Hundred Sixty Seven Crores and Three Six Lakhs Only), in favour of the Respondent No. 2 for the benefit of the Lender;

c) approve the creation of the security interest by the Petitioner over the Project Assets to the extent described in this Petition, to secure the total commitment of the Lender aggregating to INR 2367.36 crores (Indian Rupees Two Thousand Three Hundred Sixty Seven Crores and Three Six Lakhs Only), in favour of Respondent No. 2 for the benefit of the Lender and for its successors, subsequent transferees, novatees, assigns and any refinancing lenders to the Project by way of hypothecation/ assignment/ mortgage, if any;

d) *allow the Lender 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; and*

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

3. According to the Petitioner, for the purpose of financing the project, the Petitioner requested the REC Limited (hereinafter referred to as ‘the lender’ to provide financial assistance to the tune of Rs. 2367.36 crore by way of Rupee Term Loan for the project, the lender agreed for the same. For this purpose, the Petitioner and REC Limited have appointed Respondent No. 2, namely, Catalyst Trusteeship Limited, as Security Trustee (hereinafter referred to as “the Security Trustee”) who has agreed to act as the Security Trustee for the lender and has entered into the Security Trustee Agreement and the Loan Agreement dated 21.12.2023.

4. The Petitioner has submitted that pursuant to the terms of the Loan Agreement, the secured obligations are secured by following security package,

Security Package under the Loan Agreement: Pursuant to the terms of the Loan Agreement, the secured obligations of the Petitioner shall be secured by the following security package:

“3. SECURITY

3.1 Security for the Secured Obligations

3.1.1 The Secured Obligations, shall be secured by (the "Security"):

(i) A first charge by way of mortgage in favour of the Lender of all the immovable properties present and future, of the Borrower. The Project envisages one substation at Beawar district in Rajasthan. However, in case at a later stage, if any more immovable property (land) is involved, the same will also be mortgaged to the Lender;

(ii) first charge by way of hypothecation of all the movables properties, including movable Project Assets, movable plant and machinery, machinery spares, equipment, tools and accessories, furniture, fixtures, vehicles, stocks and all other movable assets, book debts, bills, monies

including bank account, operating cash flows, receivables, commissions, claims of all kinds, stocks including consumables and other general stores, revenues of whatsoever nature and wherever arising, present and future, intangibles, goodwill, uncalled capital, present, and future, of the Borrower;

(iii) a first charge over all accounts of the Borrower, including, the Trust and Retention Account and the Sub-Account(s), or any account created for any reserve(s) to be created and maintained (or any account in substitution thereof) that may be opened in accordance with the Trust and Retention Account Agreement and the Financing Documents, or any of the other Project Documents and all funds from time to time deposited therein, the receivables and all Permitted Investments or other securities representing all amounts credited to the Trust and Retention Account, any letter of credit and other reserves of the Borrower present and future wherever maintained;

(iv) first ranking charge by way of assignment in the form and manner acceptable to the Lenders;

(A) all the right, title, interest, benefit, claims and demand whatsoever of the Borrower in the Project Documents, as amended, varied or supplemented from time to time;

(B) all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in the Clearances relating to the Project;

(C) all the rights titles, interest, benefits, licenses, claims and demands, whatsoever of the Borrower in any letter of credit, guarantee, performance bond, corporate guarantee and bank guarantee provided by any party to the Project Documents in relation to the Project; and

(D) all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in all Insurance contracts and Insurance Proceeds;

(v) Pledge of Equity Shares representing at least 51% of the Equity Share Capital of the Borrower and carrying at least 51% (fifty one percent) voting rights in the Borrower on the terms and conditions contained in the relevant Deed of Pledge.

(vi) Pledge of 51% (fifty one percent) of the Convertible Instruments issued by the Borrower to the Promoters on the terms and conditions contained in the relevant Deed of Pledge.

The Equity Shares, Convertible Instruments, present and future, held by the Pledgor(s), to be pledged pursuant to this sub-clause (vi) and (vii) shall be in dematerialized form, together with all accretions thereon (in

dematerialized form), and shall be free from any security interest, including but not limited to, any restrictive covenants / liens or other encumbrance or charges under any contract/ agreement/ arrangement including shareholders agreements/ joint venture agreements/ financing arrangement. In case, the Project Equity Capital of the Borrower increases in future, the number of Equity Shares, Convertible Instruments, pledged with the Lender shall be increased proportionately to maintain the pledge as stipulated above.

(vii) An irrevocable and unconditional Corporate Guarantee which shall be valid until the Final Settlement Date or the Corporate Guarantee Release Date, whichever is earlier. The Corporate Guarantee will automatically fall off on the Guarantee Release Date. The Corporate Guarantee can be invoked upon non-fulfilment of any of the following conditions within the timelines stipulated in the Financing Documents:

- a) Infusion of Equity Contributions required to fund the Estimated Project Cost/Project Cost (including any Cost Overruns, if any) for achieving successful commissioning of the Project;
- b) Creation and perfection of Security Interest as mentioned in Clause 3.1.1 of the Facility Agreement;
- c) Any default by the Borrower in servicing of the Secured Obligations.

(viii) Promoter Deed of Hypothecation along with Promoter Agreement to Assign.

(ix)

3.1.2 The aforesaid Security Interest listed under Articles 3.1.1 (i) to 3.1.1 (viii) shall, in all respects, be on first charge basis for the benefit of the Lender.

3.1.3 The aforesaid Security interests listed under Articles 3.1.1 (i) to 3.1.1(iv) shall, in all respects, rank pari-passu inter se amongst, the Lender, the working capital Lenders up to a maximum of the extent of the Working Capital Facility (being an amount not exceeding INR 60 crore).

3.1.4 The Borrower shall submit consent of the Counterparties in the relevant Project Documents (if required in terms thereof) for creation of charge/assignment, prior to creation of security interest under Article 3.1.1(iv) hereinabove.”

5. The Petitioner has submitted that in terms of the Financing Documents, the Petitioner is required to create a security interest, which is the transaction security (as defined under the Loan Agreement), in favour of a Security Trustee for the benefit of the lender.

6. 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 a Security Interest over all the movable and immovable assets of the Petitioner in favour of a Security Trustee acting on behalf of lender pursuant to a Loan Agreement dated 21.12.2023 and a Security Trustee Agreement dated 21.12.2023 without approval of the Commission. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for the creation of a Security Interest over all the assets, including the movable and immovable assets for the Project in favour of the Security Trustee pursuant to a Security Trustee Agreement and a Loan Agreement.

Hearing dated 5.6.2024.

7. The Petition was called out for the hearing on 5.6.2024 after notice to the Respondents. Vide Record of Proceedings for the hearing on 5.6.2024, the Petitioner was directed to implead the concerned lender(s) as a party to the Petition and file a revised memo of parties, and the Respondents were granted the opportunity to file their respective replies within 10 days. The Petitioner has impleaded the lender, REC Limited, as a party to the Petition and has served a copy of the Petition on it to file the reply. However, no reply has been filed by the Respondents.

Analysis and Decision

8. We have considered the submissions made by the Petitioner and perused the documents available on the record. The Petitioner approached the lender, REC Limited, for the purpose of part financing for the implementation of the Project. The lender has agreed to grant the financial assistance aggregating to Rs. 2367.36 crore.

9. The Petitioner has submitted that it appointed Catalyst Trusteeship Limited as a Security Trustee, who agreed to act as a Security Trustee and had entered into the Loan Agreement and the Security Trustee Agreement on 21.12.2023.

10. As per the Facility Agreement, the estimated cost of the Project is Rs. 3156.48 crore. In terms of the financing plan submitted by the Petitioner, the Project shall be funded through debt of Rs. 2367.36 crore and equity of Rs. 789.12 crore. The Petitioner has submitted that the Petitioner has incurred the following capital expenditure of Rs. 966.36 crore (as per the Auditor's Certificate dated 20.3.2024) for the construction of Project till 20.3.2024:

(Rs.in crore)

Particular	Expenditure incurred
EPC Cost	913.52
SPV Acquisition Cost	19.21
Land	3.37
Forest & Statutory	1.96
ROW	1.04
Finance Cost	27.26
Total	966.36

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

Original estimated Project Cost (as per the Agreement)	Rs. in crore	Means of finance (as per the Agreement)	Rs. in crore
Hard Cost	2990	Equity share capital/Share Premium	197.28
IEDC	-	Compulsory Convertible Debentures	205.17
IDC and Finance Charges	166.48	Promoter Subordinated Debt	386.67
Contingency	-	Secured Loan/Debt from external sources	2367.36
WC & DSRA	-		
Total	3156.48	Total	3156.48

12. The Petitioner has submitted details of the project cost and means of finance as under:

(Rs. in crore)

Actual Project Cost and Means of Finance (as on 20.03.2024)		
Particulars	As on the COD	As on 20.3.2024
Total Project Cost	3156.48	1021.92
Actual means of Finance of the above cost duly certified by the Chartered Accountant		
Particulars	As on the COD	As on 20.3.2024
Promoter's contribution	789.12	311.73
Secured loan/debt from external source	2367.36	710.19
Total	3156.48	1021.92

13. 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 lender's credit risk-. In the instant case, the lender, namely, REC Limited. has agreed to provide a loan of Rs. 2367.36 crore to the Petitioner.

14. 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 lender. The Petitioner has submitted that under the Financing Agreements and on enforcement of a security interest, it shall be lawful for the lender 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). Article 15.2.2 of the TSA provides 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:

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

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 the above provision, 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 the REC Limited 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 lender, REC Limited 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 lender 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 a 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, lender, 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. 166MP/2024 is disposed of in terms of the above.

Sd/-
(Ramesh Babu V)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson