

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 24/MP/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 16th March 2024

In the matter of

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

And

In the matter of

Khavda-Bhuj Transmission Limited,

C-105, Anand Niketan, South Delhi,

New Delhi- 110021

....Petitioner

Versus

1. Adani Renewable Energy Holding Four Limited,

Adani Corporate House, Shantigram,
Near Vaishno Devi Circle, S G Highway,
Khodiyar, Ahmedabad- 382421

2. Catalyst Trusteeship Limited,

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

....Respondents

Parties present:

Shri Vishal Binod, Advocate, KBTL

Ms. Priyal Modi, Advocate, KBTL

ORDER

The Petitioner, Khavda-Bhuj Transmission Limited, has been granted a transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish the "Transmission Scheme for evacuation of 3

GW RE injection at Khavda P.S. under Phase-I" (hereinafter referred to as "the Transmission System" or "Project") on a Build, Own, Operate, and Maintain (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 16.06.2022 in Petition No. 107/TL/2022.

2. The Petitioner has filed the present Petition seeking approval for the creation of a security interest by way of hypothecation/ mortgage/ charge/ pledge/ assignment, etc., over all assets, including movable and immovable assets, Project accounts and documents (including assignment of transmission licence), etc. of the Petitioner in favour of the Security Trustee (or its replacement or successor) to secure the Petitioner's obligations towards the REC Limited under financing documents for the hedge and for their subsequent transferees, assigns, novatees including any refinancing lenders and substitutes thereof and any future REC Limited or any other Secured Party to the Project by executing the 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 Rs. 703.36 crore. The Petitioner has made the following prayers:

"(a) Approve the creation of Security Interest by way of hypothecation/mortgage/charge/pledge/assignment (as applicable), over all assets including the assets listed at Paragraph 9 above, and all the movable and immovable assets, accounts, Project documents (including assignment of transmission licence) etc., both present and future, of Petitioner in terms of the Financing Documents, or as may be agreed between the Petitioner and the Lender from time to time, in favour of Lender/Security Trustee to secure the financial assistance availed/to be availed from the Lender and its 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 or as may be required by the Lender from time to time through which a charge can be created; and

(b) Pass any or such further orders as may be deemed fit and proper 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’), for which the lender has agreed to provide financial assistance to the tune of Rs. 703.36 crore by way of rupee term loan for the project. In this regard, REC Limited has agreed to act as a lead bank for the consortium of lenders. 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 Security Trustee for the lender and has entered into the Security Trustee Agreement and the Rupee Loan Agreement on 11.9.2023.

4. The Petitioner has submitted that pursuant to the terms of the Facility Agreement, the secured obligations are secured by,

a) A first charge by way of mortgage of the sub-station land, i.e., the land parcel where the GIS sub-station at Khavda has been developed by the Petitioner;

b) A first charge by way of mortgage of all the immovable properties, present and future, of the Petitioner, including the Project site (excluding the sub-station land stated in Paragraph (i) above);

c) A first charge by way of hypothecation of all the movable 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

accounts, receivables, claims of all kinds, stocks including consumables and other general stores, present and future;

d) A first charge by way of hypothecation over all accounts of the Petitioner, 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 Petitioner present and future wherever maintained;

e) The first ranking charge, by way of assignment or creation of security interest (as contemplated by the lender in accordance with the terms of the Loan Agreement) including all rights, titles, interests, benefits, claims and demand whatsoever of the Petitioner; in project documents (including without limitation the TSA, transmission licence, EPC contracts, contracts under O&M arrangements (if any) and clearances, insurance contracts, service contracts, proceeds under the insurance contracts, performance bonds, contractors' guarantees, bank guarantees, advance payment guarantees, and any letter of credit provided by any person under the project documents, tie-ups, approvals, permissions, right of way (RoW) relating to the Project, leasehold rights, guarantees and warranties issued by the original equipment manufacturer, relating to the Project duly acknowledged and consented to by the

counterparties of the project documents (if such project document requires prior consent of such counterparties), as amended, varied or supplemented from time to time, both present and future;

f) The Pledge of the 100% (one hundred per cent) equity contribution of the Petitioner held by the Petitioner's promoter until all the securities are created and perfected. Thereafter, the pledge shall be a minimum of 51% of the total equity contribution.

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

6. 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 provides 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 the amount payable under the Financing Agreements and any other amounts agreed by the parties. 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 relinquishing or transfer of its rights and obligations in the TSA.

7. 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 and for the benefit of the Hedge Banks pursuant to a Facility Agreement dated 11.9.2023 and a Security Trustee Appointment Agreement dated 11.9.2023 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 assets, including the movable and immovable assets for the Project in favour of the Security Trustee pursuant to a Security Trustee Agreement and a Facility Agreement.

Hearing dated 21.02.2024

8. The Petition was called out for the hearing on 21.2.2024 after notice to the Respondents. Vide Record of Proceedings for the hearing on 21.2.2024, 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

9. We have considered the submissions made by the Petitioner and perused the documents available on the record. The Petitioner approached the lender for the purpose of part financing in the implementation of the Project. The lender has agreed to grant financial assistance aggregating to Rs. 703.36 crore. The Petitioner has submitted that as on 30.9.2023, the lender had disbursed amounts equivalent to Rs. 270 crore.

10. The Petitioner has submitted that it had appointed Catalyst Trusteeship Limited as a Security Trustee who agreed to act as such a Security Trustee and had entered into a Facility Agreement and a Security Trustee Appointment Agreement on 11.9.2023.

11. As per the Rupee Facility Agreement, the estimated cost of the Project is Rs. 1256 crore. In terms of the financing plan as submitted by the Petitioner, the Project shall be funded through debt of Rs. 703 crore and equity of Rs. 138.16 crore. The Petitioner has submitted the following details, as per the Auditor's Certificate dated 20.11.2023, for capital expenditure of Rs. 803 crore incurred for its construction Project till 30.9.2023:

<i>(Rs.in crore)</i>	
Particular	Incurred
Promotor's contribution	140
Loan/ Debenture from promoters group companies	421
Secured Loan/Debt from external sources	270
Total	831

12. 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 agreement)	Rs. in crore	Means of finance (as per the Agreement)	Rs. in crore
Hard Cost	1027.00	Equity share capital/Share Premium	138.16
IEDC	97.00	Loan/ Debenture from promoters group companies	414.00
IDC and Finance Charges	47.00	Secured Loan/Debt from external sources	703.00
Contingency	33.00		-
WC & DSRA	52.00		
Total	1256.00	Total	1256.00

13. The Petitioner has submitted lender-wise details as under:
(Rs. in crore)

Actual Project Cost and Means of Finance (as on 30-09-2023)		
Particulars		As on 30.9.2023
Total Project Cost	1256	831
Actual means of Finance of the Above cost duly certified by the Auditor Certificate		
Particulars	As on the COD	As on 30.9.2023
Equity Share Capital	138.16	140
Accumulated profit		

Equity Share Premium		
Loan/Debenture from promoters, group companies	414	421
Secured loan/debt from external source	703	270
Others		
Total	1256	831

14. 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, the lender, namely, REC Limited. has agreed to provide a loan of Rs. 703 crore to the Petitioner.

15. 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 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:

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.

16. Article 15.2.4 of the TSA provides 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 obtain permission from this Commission prior to relinquishing or transferring its rights and obligations under 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 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.

18. 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.

19. 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 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 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 nominee, approve the assignment of the licence to a nominee 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 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..

21. The Petition No. 24/MP/2024 is disposed of in terms of the above.

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

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

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