

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 311/MP/2025

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Shri Ravinder Singh Dhillon, Member

Date of Order: 30th May, 2025

In the matter of:

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

And In the matter of:

Khavda IV C Power Transmission Limited,

3rd Floor, Plot No.94, YC Space LLP,

Dwarka Sector 13, Opp. Metro Station,

Near Radisson Blu, South West Delhi,

New Delhi- 110078

...Petitioner

VERSUS

1. Power Finance Corporation Limited,

Utjanidhi, I Barakhamba Lane,

Connaught Place,

New Delhi-110001.

2. Catalyst Trusteeship Limited,

GDA House, Plot No. 85,

Bhusari Colony (Right), Kothrud,

Paud Road, Pune-411038.

3. Central Transmission Utility of India Limited,

CTU Planning,

Saudamini, Plot No.2,

Sector-29, Gurgaon-12200, Haryana.

...Respondents

Parties Present:

Shri Alok Shankar, Advocate, KIVCPTL

Shri Sadhvi Kumar, Advocate, KIVCPTL

ORDER

The Petitioner, Khavda IV C Power Transmission Limited (hereinafter referred to as "Petitioner/KIVCPTL"), 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 Renewable Energy Zone in Khavda area of Gujarat under Phase IV-C (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 07.12.2024 in Petition No. 340/TL/2024.

2. The Petitioner has filed the present Petition seeking approval for the creation of Security Interest by way of the 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 Power Finance Corporation Limited (hereinafter referred to as "PFC Limited") under financing documents as a safeguard and covering their subsequent transferees, assigns, novatees including any refinancing lenders, and substitutes thereof and any future 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. 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 the assets listed at Paragraph 12 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;

(b) Allow the Lender to further assign 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

(c) 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 Power Finance Corporation Limited (hereinafter referred to as “the lender”), for which the lender has agreed to provide the financial assistance to the tune of Rs. 9300 crores by way of Rupee Term Loan for the project. For this purpose, the Petitioner and PFC 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 Facility Agreement dated 16.12.2024.

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

- (i) A first charge by way of mortgage over all immovable properties, if any, together with all appurtenances thereon, both present and future;
- (ii) A first charge by way of hypothecation on all the movable properties and assets, including plant and machinery, machinery spares, equipment, tools and

accessories, furniture, fixtures, vehicles, encumbrance (first charge) over the assets of the Project as permitted under TSA and all other movable assets wherever situated, both present and future;

- (iii) A first charge on all the current assets of the Petitioner, including but not limited to book debts, uncalled capital, operating cash flows, receivables, commissions, revenue of whatsoever nature and wherever arising, both present and future;
- (iv) A first charge over all accounts of the Petitioner, including, the Trust and Retention Account and the Sub-Account(s), the Debt Service Reserve Account 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 and other bank accounts of the Petitioner wherever maintained, both present and future;
- (v) First charge, by way of assignment or creation of security interest (as contemplated by the Lender in accordance with the terms of the Facility Agreement) including: -
 - (a) all the rights, titles, interests, benefits, claims and demands whatsoever of the Petitioner in the Project Documents (and shall include amendments or modifications to such Project Documents, if any, except TSA and Transmission License);

- (b) all the rights, titles, benefits, claims, demands and interest of the Petitioner in, to and under all the clearances related to the Project (and shall include amendments or modifications to such clearances, if any);
 - (c) all the rights, titles, interests, benefits, claims and demands whatsoever of the Petitioner in any letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee (and shall include amendments or modifications thereto, if any);
 - (d) all the rights, titles, interests, benefits, claims and demands whatsoever of the Petitioner under all Insurance Contracts (and shall include amendments or modifications to such Insurance Contracts, if any) and Insurance Proceeds;
 - (e) assignment of guarantees from EPC Contractor relating to the Project along with other guarantees and indemnities (and shall include amendments or modifications thereto, if any);
 - (f) all intangible assets of the Petitioner, including but not limited to, goodwill, intellectual property rights, undertaking, present and future, in a form and manner acceptable to the Lender.
- (vi) Pledge of Equity Shares both present and future, held by the Pledgors, aggregating to the Specified Percentage, free from all restrictive covenants, lien or other encumbrance under any contract, arrangement or agreement including but not limited to any shareholders agreement (if any) of the Petitioner;
 - (vii) a charge/ equitable assignment/pledge over Quasi Equity aggregating to the Specified Percentage, infused in the Petitioner by the Promoter(s), until the Final Settlement Date;

(viii) save and except as otherwise provided herein, a pledge of 25% (twenty five percent) of the Equity Share Capital and Quasi Equity of the Borrower, free from all restrictive covenants, lien or other encumbrance under any contract, arrangement or agreement including but not limited to any shareholders agreement (if any) of the Petitioner, shall only remain till the creation and perfection of Security Interest.

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 lender.

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 of the TSA, the Petitioner is required to take permission from the Commission prior to relinquishing or transferring 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 lender pursuant to a Facility Agreement dated 16.12.2024 and a Security Trustee Agreement dated 16.12.2024 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 25.3.2025

8. The Petition was called out for the hearing on 25.3.2025 after notice to the Respondents. Vide Record of Proceedings (hereinafter referred to as “RoP”) for the hearing on 25.3.2025, the Respondents were granted the opportunity to file their respective replies.

9. Further, vide RoP dated 25.3.2025, the Petitioner was directed to file a statement showing sources of funds and application of funds as on the date of application and the statement of project cost.

10. The Petitioner, vide affidavit dated 10.4.2025, in compliance with RoP dated 25.3.2025, has placed on record the requisite information as directed.

Hearing dated 7.5.2025

11. During the course of the hearing, the learned counsel for the Petitioner submitted that the Petitioner has complied with the directions issued vide RoP dated 25.3.2025. He further submitted that, as the Respondents were granted an opportunity to file their replies, vide RoP dated 25.3.2025. However, no reply has been filed by the Respondents, nor did any representative appear on their behalf during the hearing on 7.5.2025, despite notice. Considering the submissions of the parties, the matter was reserved for orders.

Analysis and Decision

12. We have considered the submissions made by the Petitioner and perused the documents placed on record. The Petitioner approached the lender for the purpose of part financing for the implementation of the Project. The lender has agreed to grant the financial assistance aggregating to Rs. 9300 crores.

13. The Petitioner has submitted that it appointed Catalyst Trusteeship Limited as a Security Trustee, who agreed to act as a Security Trustee and has entered into a Security Trustee Agreement on 16.12.2024 and Facility Agreement dated 16.12.2024. As per the Facility Agreement, the estimated cost of the Project is Rs. 11625 crores. In terms of the financing plan submitted by the Petitioner, the Project shall be funded through debt of Rs. 9300 crores and equity of Rs. 2325 crores.

14. 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	10090	Promoter's contribution	2325
IDC	1213	Rupee Term Loan	9300
Preoperative expenses and finance charges	322		
Total	11625	Total	11625

15. In compliance with the RoP for the hearing dated 27.03.2025, the Petitioner has further re-submitted the Auditor's Certificate dated 14.02.2025 and has submitted that it has received Rs.2278.75 crores as on 31.1.2025 from the following sources:

<u>Particulars</u>	<u>Amount (INR Crore)</u>
Promoter contributions	
Equity Share Capital	319.688

CCDs	332.475
Debt/Loan	
Unsecured Loans	626.588
Term Loan	1000
Total (Promoter contribution + Debt/Loan)	2278.75

16. The Petitioner has submitted the details of uses of the funds as on 31.1.2025 and the details of the application of funds received by it as under:

Particulars	Amount (INR Crore)
Supply	1603.50
Service	-
Enablement	55.32
Total Hard Cost	1658.82
Preoperative Expenses & Financing Cost	69.82
IDC	6.77
Total Utilisation	1735.41
Bank Balance	543.34
Total	2278.75

17. The transmission projects are capital-intensive projects that need enormous capital inputs and are funded via loans rather than other forms of financing. In order to reduce the amount of credit risk that the lender is exposed to, it is a common practice for financial institutions and the banking sector to request enough collateral from the borrower in order to back the loan. Within the context of this particular case, the lender, PFC Limited, has consented to offer the Petitioner a loan of Rs.9300 crore.

18. 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:

“15.2.2 However, the TSP may create any encumbrance over all or part of the receivables, or the Project 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 Lenders' 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 TSP 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.

19. Article 15.3 of the TSA provides as under:

“15.3 Substitution Rights of the Lenders:

15.3.1 The TSP would need to operate and maintain the Project under the provisions of this Agreement and cannot assign the Transmission License or transfer the Project or part thereof to any person by sale, lease, exchange or otherwise, without the prior approval of the Nodal Agency.

15.3.2 However, in the case of default by the TSP in debt repayments or in the case of default by the TSP as per Article 13 of this Agreement during the debt repayments, the Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfilment of the qualification requirements and provisions of the Central Electricity Regulatory Commission (Procedure, terms and Conditions for grant of Transmission License and other related matters) Regulations, 2006 and as amended from time to time.”

20. Sub-sections (3) and (4) of Section 17 of the Act provides 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.

21. The Petitioner and the Power Finance Corporation 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, Power Finance Corporation 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 the 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.

22. 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 the licensee in debt repayment, the Commission may, on an application made by the lenders, assign the licence to a nominee of the lenders.”

23. In the event of a default by the licensee regarding debt repayment, the Commission may, upon a joint application submitted by the licensee, lender, Security Trustee, and nominee, grant approval for the assignment of the licence to a nominee, contingent upon the satisfactory completion of due diligence procedures. Consequently, it is imperative to obtain explicit prior approval from the Commission for the assignment of the licence to the nominee of the Security Trustee or for the transfer of any assets to them. Finally, the Petitioner is required to submit the financial documents and statements in accordance with the directives issued by the Commission.

24. Petition No. 311/MP/2025 is disposed of in terms of the above.

Sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Jishnu Barua)
Chairperson