

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 425/MP/2025

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Shri Ravinder Singh Dhillon, Member

Date of Order: 14th August, 2025

In the matter of:

Petition under Sections 17(3) & 17(4) of the Electricity Act seeking approval for creation of security interest over the Petitioner's assets in favour of Respondent No. 3 (who is acting as the security trustee for the purpose of holding the securities on behalf of and for benefit of the lenders in terms of the Security Trustee Agreement dated 23.12.2024) (including its Assignees, Transferees, Novates) in respect of the Petitioner's Transmission Project.

And In the matter of:

Halvad Transmission Limited,

C-105, Anand Niketan,

New Delhi-110021.

...Petitioner

VERSUS

1. Central Transmission Utility of India Limited,

Saudamini, 1st Floor, Plot No. 2,

Sector-29, Gurugram-122001, Haryana.

2. State Bank of India,

State Bank Bhavan, Madame Cama Road,

Nariman Point-400021, Mumbai

3. SBICAP Trustee Company Limited,

4th Floor, Ministry Bhavan,

122 Dinshaw Vachha Road, Churchgate,

Mumbai-400020, Maharashtra.

...Respondents

Parties Present:

Shri Nitish Gupta, Advocate, HTL

Shri Nipun Sharma, Advocate, HTL

ORDER

The Petitioner, Halvad Transmission Limited (hereinafter referred to as “the Petitioner/HTL”), 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 additional 7 GW of RE Power from Khavda RE Park under Phase III Part A” (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 24.5.2024 in Petition No. 61/TL/2024. Further, vide Order dated 28.5.2024 in Petition No. 62/AT/2024, the Commission adopted the competitively discovered levelized tariff of Rs. 2710.54 million per annum for the Project.

2. The Petitioner has filed the present Petition for approval for the creation and perfection of a Security Interest in terms of the Financing Document through the mortgage, hypothecation, charge, or assignment over rights, title, interest, claims, demands, benefits under, clearance, project documents, agreements, and approvals (with the exception of security over the fixed assets) of the Petitioner in favour of the SBICAP Trustee Company Limited (Respondent No. 3). Additionally, the Petitioner has requested for the approval of documents that create security as well as other documents pertaining to the debenture facility. 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 14 above, and all the movable and immovable assets, Transmission Project 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, novates 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; or

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

Background

3. The Petitioner, HTL, is a company incorporated under the Companies Act, 2013. Respondent No. 3 i.e., SBICAP Trustee Company Limited (hereinafter referred to as the “Security Trustee / SBICAP”), who is acting as the Security Trustee for the purpose of holding the securities on behalf of and for benefit of the lender i.e., Respondent No. 2, State Bank of India, and any other banks and financial institutions participating in the facility (hereinafter referred to as the “Lender(s) / SBI / Lender’s Agent”), in terms of the Security Trustee Agreement dated 23.12.2024.

4. According to the Petitioner, for the purpose of financing the project, the Petitioner requested the State Bank of India (hereinafter referred to as “the lender”), for which the lender has agreed to provide the financial assistance to the tune of Rs. 1,950 crore by way of Rupee Term Loan for the project. For this purpose, the Petitioner and State Bank of India have appointed Respondent No. 3, namely, SBICAP, as 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 23.12.2024.

5. The Petitioner has further submitted that the Loan Agreement was executed in relation to the Project Facility, which has been agreed to be extended by the

Lender(s) to the Borrower on and subject to the terms and conditions set out in the Loan Agreement and the other financing documents. In terms of the Loan Agreement, the following documents are the financing documents (hereinafter referred to as the “Financing Documents”):

- (i) Loan Agreement;
- (ii) Non-Disposal Undertaking (as defined under the Loan Agreement);
- (iii) Promoter Undertaking (as defined under the Loan Agreement);
- (iv) Security Documents (as defined under the Loan Agreement);
- (v) Trust and Retention Account Agreement (as defined under the Loan Agreement);
- (vi) Such other documents in relation to the Project Facility designated as the Financing Documents by the Lender’s Agent in mutual agreement with the Borrower.

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

- (i) A first ranking mortgage and charge on all the immovable properties of the Borrower in relation to the Project, including but not limited to the Project Site, the towers, conductors, insulators and land/right of way acquired in relation to the Project, both present and future;
- (ii) A first ranking Security Interest on all the Borrower's tangible movable assets in relation to the Project, including moveable plant and machinery, cranes, machinery spares, tools and accessories, furniture, fixtures, vehicles, stock-in-trade, inventory and all other movable assets and current assets in relation to the Project including receivables, book debts, operating cash flows, other receivables, fees, commissions, revenues of whatsoever nature and wherever arising, of the Borrower, both present and future;
- (iii) A first ranking Security Interest over all the bank accounts of the Borrower in relation to the Project, including the Accounts and its Sub-Account’s, the

Debt Service Reserve Sub-Sub-Account and other reserves, (or any accounts in substitution thereof) that may be established in accordance with this Agreement and the Trust and Retention Account Agreement along with the monies lying therein, and all funds from time to time deposited therein, the receivables, commissions, revenues and all Authorised Investments or other securities of the Borrower, both present and future;

(iv) A first ranking Security Interest on all intangible's assets of the Borrower in relation to the Project including but not limited to goodwill, rights, Intellectual Property Rights, undertaking and uncalled capital, present and future;

(v) A first ranking Security Interest on:

- a) All the right, title, interest, benefits, claims and demands whatsoever of the Borrower in the Project Documents duly acknowledged and consented to by the relevant counter-parties to such Project Documents, all as amended, varied or supplemented from time to time;
- b) The right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under all the Clearances pertaining to the Project;
- c) The right, title, interest, benefits, claims and demands whatsoever of the Borrower in, to and under the Transmission License;
- d) All the right, title, interest, benefits, claims and demands whatsoever of the Borrower in relation to the Project in letter of credit, warranty, construction contracts and liquidated damages and performance bond provided by any party to the Project Documents; and

e) All the right, title, interest, benefits, claims, and demands whatsoever of the Borrower under all Insurance Contracts.

7. 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 Financing Agreements), in favour of a Security Trustee for the benefit of the lender.

8. 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.

9. 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 23.12.2024 and a Security Trustee Agreement dated 23.12.2024 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 21.5.2025

10. The Petition was called out for the hearing on 21.5.2025 after notice to the Respondents. Vide Record of Proceedings (hereinafter referred to as “RoP”) for the hearing on 21.5.2025, the Respondents were granted the opportunity to file their respective replies.

Hearing dated 7.7.2025

11. During the course of the hearing, the learned counsel for the Petitioner submitted that as the Respondents were granted an opportunity to file their replies, vide RoP dated 21.5.2025. However, no reply has been filed by the Respondents. None was present on behalf of the Respondent during the hearing on 7.7.2025, 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. 1,950 crore.

13. The Petitioner has submitted that it had appointed SBICAP Trustee Company Limited as a Security Trustee, who agreed to act as a Security Trustee and had entered into a Loan Agreement and a Security Trustee Agreement dated 23.12.2024. As per the Loan Agreement, the estimated cost of the Project is Rs. 2785 crore. In terms of the financing plan submitted by the Petitioner, the Project shall be funded through debt of Rs. 1,950 crore and equity of Rs. 209 crore.

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	2,399	Promoter's contribution	835
IDC	274	Rupee Term Loan	1950
Preoperative expenses and finance charges	18		
Total	2785	Total	2785

15. The Petitioner has further submitted the sources of funds as on 31.1.2025, as per the Chartered Accountant's Certificate dated 26.2.2025 as under"

Particulars	Amount (Rs. in crore)
Promoter contributions	
Equity Share Capital	208.76
Inter Corporate Loan	177.67
Capitalisation of Interest on Inter Corporate Loan	0.11
Debt/Loan	
Term Loan	700.00
Unsecured Loans	188.59
Total (Promoter contribution + Debt/Loan)	1275.13

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

Particulars	Amount (Rs. In crore)
Land, SPV cost, Substation, Tower Supply Conductor	699.21
IDC and soft cost	13.93
Other works	561.99
Total	1275.13

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 secure the loan. Within the context of this particular case, the lender, State Bank of India, has consented to offer the Petitioner a loan of Rs. 1950 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 provides 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 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 the 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 State Bank of India have appointed SBICAP as a Security Trustee for the creation of Security Interest over all the movable and immovable assets of the project. In our view, SBICAP needs to be given comfort for

the creation of security for the benefit of the lender, State Bank of India, 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 SBICAP 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 granted 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. 425/MP/2025 is disposed of in terms of the above.

Sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson