

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 432/MP/2024**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V., Member  
Shri Harish Dudani, Member**

**Date of Order: 14<sup>th</sup> January, 2025**

**In the matter of**

Petition under Sections 17(3) & 17(4) of 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 (as defined in the Petition) in respect of the Petitioner's transmission project.

**And**

**In the matter of**

**KPS1 Transmission Limited,  
C-105, Anand Niketan, South Delhi,  
New Delhi- 110021.**

**.....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),  
Paud Road, Pune –411038.**

**3. Central Transmission Utility of India Limited,  
Saudamini, Plot No.2, Sector -29,  
Gurgaon 122001, Haryana.**

**.....Respondents**

**Parties present:**

Shri Vishal Vinod, Advocate, KPS1TL

**ORDER**

The Petitioner, KPS1 Transmission Limited (hereinafter referred to as 'the Petitioner/KTL'), 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 Injection Beyond 3 GW RE Power At Khavda PS1 (KPS1)" (hereinafter referred to as 'the Transmission System' or 'Project'), the details of which are specified in the schedule attached to the licence issued vide order dated 30.9.2023 in Petition No. 189/TL/2023.

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 for the hedge and for 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 11 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 PFC Limited (hereinafter referred to as 'the lender'), for which the lender has agreed to provide financial assistance to the tune of Rs. 597.36 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 a Security Trustee (hereinafter referred to as 'the Security Trustee') who has agreed to act as a Security Trustee for the lender and has entered into the Security Trustee Agreement and the Facility Agreement on 29.8.2024.

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:

(i) 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 licence).

(ii) 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)

(iii) 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;

(iv) all the guarantees (and shall include amendments or modifications thereto, if any) provided by EPC Contractor of the Petitioner/ module supplier, if any, relating to the Project;

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 29.8.2024 and a Security Trustee Agreement dated 29.8.2024 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 10.12.2024

8. The Petition was called out for the hearing on 10.12.2024 after notice to the Respondents. Vide Record of Proceedings for the hearing on 10.12.2024, 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. 597.36 crores.

10. The Petitioner has submitted that it had appointed Catalyst Trusteeship Limited as a Security Trustee, who agreed to act as a Security Trustee and had entered into a Facility Agreement and a Security Trustee Agreement on 29.8.2024.

11. As per the Independent Auditors certificate, the estimated cost of the Project is Rs. 887.20 crores. In terms of the financing plan submitted by the Petitioner, the Project shall be funded through debt of Rs. 597.36 crores and equity of Rs. 289.84 crores. The Petitioner has submitted the following details, as per the Independent Auditor's Certificate dated 13.9.2024, for capital expenditure of Rs. 289.17 crores incurred for its construction Project till 30.6.2024:

<b>(Rs.in crores)</b>	
<b>Particular</b>	<b>Amount incurred</b>
Promoters Contribution	216.20
From Adani Energy Solutions Limited	9.00
Other Capex Payable	63.97
<b>Total</b>	<b>289.17</b>

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:

(Rs.in crores)

Original Estimated Project Cost (As per Agreement)	Amount	Means of finance (As per the Agreement)	Amount
Hard Cost	786	Equity Share Capital	0.05
IEDC	14	CCD	72.41
IDC and Finance Charges	39	OCD	217.38
Contingency	48	Secured Loan/ debt from External Source	597.36
WC & DSRA		Others	
<b>Total</b>	<b>887</b>	<b>Total</b>	<b>887</b>

13. 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.597.36 crores.

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 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.

15. 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."*

16. 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 subsection (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.

17. The Petitioner and the PFC Limited have appointed Catalyst Trusteeship Limited as a Security Trustee for the creation of a 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, PFC 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.

18. This in-principle approval is being accorded 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 its 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.”*

19. 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.

20. Petition No. 432/MP/2024 is disposed of in terms of the above.

**Sd/-  
(Harish Dudani)  
Member**

**sd/-  
(Ramesh Babu V.)  
Member**

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

