

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 157/MP/2023**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri I. S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P. K. Singh, Member**

**Date of Order: 3<sup>rd</sup> August, 2023**

**In the matter of**

Petition under Sections 17(3) and 17(4) of the Electricity Act, 2003 seeking approval for creation of security interest over the Petitioner's Assets in favour of the Respondent No.4 (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**

WRSS XXI (A) Transco Limited,  
Adani Corporate House,  
Shantigram, Near Vaishno Devi Circle,  
S.G.Highway, Khodiyar,  
Ahmedabad-382 421, Gujarat.

**....Petitioner**

**Versus**

1. Adani Green Energy (MP) Limited,  
Adani House,  
Nr. Mithakhali Six Road,  
Navrangpura,  
Ahmedabad - 380 009

2. Adani Green Limited,  
Adani House,  
Nr. Mithakhali Six Roads,  
Navrangpura,  
Ahmedabad-380 009

3. Netra Wind Private Limited,  
DLF Cyber Hub, Building No. 53  
Phase-2, Gurgram-122 002

4. Catalyst Trusteeship Limited,  
GDA House, Plot No. 85,  
Bhusari Colony (Right),

**Parties present:**

Shri Ramanuj Kumar, Advocate, W(A)TL

Ms. Priyal Modi, Advocate, W(A)TL

Ms. Bhabna Das, Advocate

**ORDER**

The Petitioner, WRSS XXI (A) Transco Limited (WTL), has been granted a transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish a transmission system for "Western Region Strengthening for Relieving Over Loadings observed in Gujarat Intra-State System due to RE injections in Bhuj PS" (hereinafter referred to as "the 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 24.1.2020 in Petition No. 409/TL/2019.

2. The Petitioner has filed the present Petition seeking approval for 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 Hedge Banks under financing documents for the hedge and for their subsequent transferees, assigns, novatees including any refinancing lenders and substitutes thereof and any future Hedge Banks 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 US\$103 million. The Petitioner has made the following prayers:

*“(a) Approve the creation of Security Interest by way of hypothecation/mortgage/charge/pledge/assignment etc., over all assets including the movable and immovable assets, Project accounts, Project documents (including assignment of transmission licence) etc. of the Petitioner in favour of Respondent No. 4 / Security Trustee (or its replacement or successor) to secure the Petitioner’s Obligations towards the hedge Banks under the Financing Documents and for the hedge and their subsequent transferees, assigns, novatees including any refinancing lenders and substitutes thereof and any future Hedge Bank or any other Secured Party in respect to the Project; and*

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

3. The Petitioner has entered into a Facility Agreement dated 28.10.2021 with the lenders for a grant of US\$103 million, equivalent to Rs. 714.60 crore, as a loan facility for the Project.

4. The facility availed of by the Petitioner is a foreign currency loan, and hence it is subject to foreign exchange rate variations both in terms of principal repayment and interest payment. Accordingly, the Petitioner has adopted a strategy of managing and reducing the risks associated with such a foreign currency loan by entering into instruments of hedging and availing of hedging products as a means to mitigate the risk and the volatility of a dynamic foreign exchange market.

5. As per the Reserve Bank of India Master Direction - External Commercial Borrowings, Trade Credits, and Structured Obligations dated March 26, 2019 (“ECB Master Directions”) governing external commercial borrowings such as the Facility of the Petitioner, the Petitioner is required to mandatorily hedge 70% of its ECB exposure in case the average maturity of the ECB is less than 5 years. In the present case, the maturity date of the Facility of the Petitioner is less than 5 years from the date of the Facility Agreement and hence, the requirement of mandatory hedging as per the ECB Master Directions is applicable to the Petitioner. The ECB Master Directions further require that “the ECB borrower will be required to cover the principal as well as the

coupon through financial hedges. Additionally, it is also the requirement of the lenders under the Facility Agreement that the Petitioner enters into suitable hedging arrangements to manage its currency and interest rate risk with respect to the Facility.

6. The Petitioner has appointed the Respondent, namely, Catalyst Trusteeship Limited, as a Security Trustee (hereinafter referred to as 'Security Trustee'). who has agreed to act as a Security Trustee and has entered into a Facility Agreement and a Security Trustee Appointment Agreement (hereinafter referred to as 'the Financing Documents') on 28.10.2021.

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 Facility Agreement), in favour of a Security Trustee for the benefit of the lenders and Hedge Banks.

8. 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 28.10.2021 and a Security Trustee Appointment Agreement dated 28.10.2021 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 14.7.2023**

9. The Petition was called out for hearing on 14.7.2023 after notice to the Respondents. During the course of the hearing, learned counsel for the Respondent No.3, Netra Wind Private Limited, sought liberty to file a vakalatnama and a reply in the matter. However, no reply has been filed by the Respondent. Vide Record of Proceedings for the hearing on 14.7.2023, the Respondents were again granted the opportunity to file their respective replies within two weeks. However, no reply has been filed by the Respondents.

### **Analysis and Decision**

10. We have considered the submissions made by the Petitioner and perused the documents available on record. The Petitioner approached the lenders for the purposes of part financing the implementation of the Project. The lenders have agreed to grant financial assistance aggregating to US\$ 103 million. As per the Reserve Bank of India Master Direction - External Commercial Borrowings, Trade Credits, and Structured Obligations dated 26.3.2019, governing external commercial borrowings such as the Facility of the Petitioner, the Petitioner is required to mandatorily hedge 70% of its ECB exposure in case the average maturity of the ECB is less than 5 years. In the present case, the maturity date of the Facility of the Petitioner is 57 months from the date of the Facility Agreement and hence, the requirement of mandatory hedging as per the ECB Master Directions is applicable to the Petitioner. The ECB Master Directions further require that *“the ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower).”* It is also the requirement of the lenders under the Facility

Agreement that the Petitioner enters into suitable hedging arrangements to manage its currency and interest rate risk with respect to the Facility.

10. The Petitioner has submitted that it had appointed Catalyst Trusteeship Limited as a Security Trustee who had agreed to act as a Security Trustee, and had entered into a Facility Agreement and a Security Trustee Appointment Agreement on 28.10.2021.

11. The Petitioner has submitted that as on 31.12.2022, the lenders had disbursed amounts equivalent to USD 94 million. The Petitioner has submitted that since hedging will cause a reduction in the Petitioner`s borrowing costs and protect it against uncertainty in the foreign exchange market, the benefits of hedging accruing will outweigh the hedge costs associated with it. The Petitioner has submitted that due to the dynamic nature of the foreign exchange market, including the possibility of better commercial terms/products offered by different hedging counterparties, the Petitioner may enter into hedging instruments with one or more banks in the future that are not identified as Hedge Banks, namely, DBS Bank Limited, Sumitomo Mitsui Banking Corporation, MUFG Bank Limited, Standard Chartered Bank, and Société Générale.

12. The Petitioner has submitted that each of the Hedge Banks, namely, DBS Bank Limited, Sumitomo Mitsui Banking Corporation, MUFG Bank Limited, Standard Chartered Bank, and Société Générale, has appointed Catalyst Trusteeship Limited as a Security Trustee for the purpose of creating and holding the securities for the benefit of the Hedge Banks pursuant to the Security Trustee Appointment Agreement dated 28.10.2021. The Petitioner has submitted that in terms of the Financing documents for the hedge, the Petitioner is required to create a security interest, on a first charge basis and in all respects ranking pari-passu between the lenders and the Hedge Banks

without any preference or priority to one over the other(s). The Petitioner has submitted that under the Financing Agreements and on enforcement of a security interest, it shall be lawful for the Hedge Banks 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).

13. 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:*

*i. 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*

*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 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 lender’s representatives or Hedge Banks or their representatives, as a security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

14. 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 relinquishment or transfer of its rights and obligations under the TSA.

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 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.

16. The Petitioner and the Hedge Banks have appointed Catalyst Trusteeship Limited as a Security Trustee for the creation of security 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 Hedge Banks as the security for the financial assistance and hedge facility provided by the lenders and Hedge Banks respectively. 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 lenders 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 Lenders or Hedge Banks, 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, lenders, Hedge Banks, security trustee and nominee, accordingly, shall be jointly required to approach the Commission to seek approval. This will give an opportunity to 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.”*

18. Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lenders, Hedge Banks, 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 shall always be needed. Lastly, financial documents and statements may be filed by the Petitioner as and when required by the Commission for any specific purpose.

19. The Petition No. 157/MP/2023 is disposed of in terms of the above.

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

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

sd/-  
**(I.S. Jha.)**  
**Member**

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