

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 174/MP/2023**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member**

**Date of Order: 26<sup>th</sup> July, 2023**

**In the matter of**

Approval under Section 17(3) & 17(4) of Electricity Act 2003, for assignment of licence granted to Gadag II-A Transmission Limited pursuant to order dated 26.2.2023 bearing license No. 86/Transmission/2023/CERC (the "Transmission License") by way of hypothecation/assignment by way of security in favour of Catalyst Trusteeship Limited acting as the Security Trustee for the benefit of YES Bank Limited (including its successors, transferees, novatees, and/or assigns, the "Lender"/ "Lenders" or "YES Bank") and other secured parties (viz. Lenders' Agent and the Security Trustee) and creation of other security by way of mortgage / hypothecation / assignment of rights, title, interest, claims, demands, benefits of Gadag II-A Transmission Limited in the project under "Transmission Scheme for Solar Energy Zone in Gadag (1500 MW), Karnataka: Part A-Phase-II" on Build, Own, Operate and Transfer basis, as detailed in the schedule to the transmission licence (the "Project"), Project assets, clearances, Project documents, agreements, approvals and rights, accounts, receivables of Gadag II-A Transmission Limited.

**And**

**In the matter of**

**Gadag II-A Transmission Limited,**  
138, Ansal Chambers-II,  
Bhikaji Cama Place,  
New Delhi -110066

.....**Petitioner**

**Versus**

**1. Central Transmission Utility of India Limited,**  
Saudamini, Plot No.2,  
Sector-29, Gurugram-122001

**2. Catalyst Trusteeship Limited,**  
GDA, House Plot No. 85, Bhusari Colony (Right),  
Kothrud, Pune - 411038

**3. YES Bank Limited,**  
YES BANK House, Off Western Express Highway,  
Santacruz (East), Mumbai - 400055,

**4. REC Power Development and Consultancy Limited,**  
REC Corporate Head Quarter, D Block,  
Plot No. I – 4, Sector- 29  
Gurugram-122001, Haryana

.....Respondents

**Parties present:**

1. Shri Mohit Jain, GTL
2. Shri Ankush Khurana, GTL

**ORDER**

The Petitioner, Gadag II-A Transmission Limited (GTL), 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 "Transmission Scheme for Solar Energy Zone in Gadag (1500 MW), Karnataka: Part A-Phase-II ), Karnataka-Part A" (in short, 'the Project') on 'Build, Own, Operate and Transfer' (BOOT) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 26.2.2023 in Petition No. 351/TL/2022.

2. The Petitioner has filed the present Petition for assignment of the transmission licence by way of security in favour of the Security Trustee and creation of a security interest by way of mortgage, hypothecation, charge or assignment over all movable and immovable assets including over rights, title, interest, claims, demands, benefits under mortgage properties, project assets, clearance, project documents, agreements, and approval of the Petitioner in favour of the Security Trustee, i.e. Catalyst Trusteeship Limited. The Petitioner has made the following prayers:

*"(a) Approve the assignment of the Transmission License (as defined in the Electricity Act, 2003) of Petitioner as security in favour of the Catalyst*

*Trusteeship Limited as Security Trustee (Respondent No.2), acting for the benefit and on behalf of the Lenders and other Secured Parties.*

*(b) Approve the creation and/or perfection of security interest in favour of the Catalyst Trusteeship Limited as Security Trustee, acting on behalf of and for the benefit of the Lenders and other Secured Parties as provided under the Rupee Facility Agreement dated 28.04.2023.*

*(c) Approve the Security Documents (as defined in the Rupee Facility Agreement), and execution thereof, for creation and/or perfection of aforesaid security interest in relation to the aforesaid security in favour of Catalyst Trusteeship Limited as Security Trustee acting on behalf of and for the benefit of the Lenders and other Secured Parties.*

*(d) Condone any inadvertent omissions / errors / shortcomings and permit to add, change, modify, alter this filing and make further submissions as may be required at a future date.*

*(e) Allow any other relief, order or direction, which the Hon'ble Commission deems fit to be and proper under the facts and circumstances of the present case."*

3. The Petitioner has submitted that it approached YES Bank Limited (hereinafter also referred to as 'the lender') for financial assistance in the form of a rupee term loan. YES Bank Limited vide its letter dated 23.3.2023 sanctioned a rupee term loan to the extent of Rs. 195.75 crore (including LoC limit of Rs. 130.0 crore) for financing the Project. In pursuance of the sanction letter issued by YES Bank Limited, the Petitioner entered into a Rupee Facility Agreement dated 28.4.2023, for availing a loan of Rs. 195.75 crore.

4. The Petitioner has appointed the Respondent No. 2, namely, Catalyst Trusteeship Limited (hereinafter also referred to as "the Security Trustee"), who has agreed to act as Security Trustee for the benefit of the lender by entering into a Security Trustee Agreement on 28.4.2023.

5. In pursuance of the Rupee Facility Agreement read with the Security Trustee Agreement, the Petitioner has agreed to provide, *inter-alia*, the following securities to secure the secured obligations in favour of the Security Trustee acting on behalf of the lender:

(a) a first charge in a form and manner satisfactory to the Lenders, on all the immovable properties of the Borrower (if any), including but not limited to all lands of the Borrower including civil structures, towers and cables, both present and future, until the Final Settlement Date;

(b) a first charge by way of hypothecation on all the tangible movable assets (including towers and cables) of the Borrower, including but not limited to machinery, spares, tools and accessories, furniture, fixtures, etc., both present and future, until the Final Settlement Date;

(c) a first charge by way of hypothecation over all accounts and all other bank accounts of the Borrower, including the Trust and Retention Account and the sub-accounts thereof including the Debt Service Reserve Account (or any account in substitution thereof) that may be opened in accordance with this Agreement, the Trust and Retention Account Agreement or any of the other transaction documents, and all funds from time to time deposited therein and all funds of the Borrower in relation to the Project, the Project Proceeds and all Permitted Investments, other investments or other securities of the Borrower, both present and future, until the Final Settlement Date;

(d) a first charge by way of hypothecation on all revenues, cashflows and receivables of the Borrower, whether or not deposited in the accounts, the book debts of the Borrower, the operating cash flows of the Borrower and all other

commissions and revenues and cash of the Borrower, both present and future, until the Final Settlement Date;

(e) a first charge by way of hypothecation on all current assets of the Borrower, both present and future, until the Final Settlement Date;

(f) a first charge by way of hypothecation on all intangible assets of the Borrower, if any, including but not limited to goodwill, rights, undertaking and uncalled capital of the Borrower, both present and future, until the Final Settlement Date;

(g) a first charge and assignment, by way of security, through a deed of hypothecation, in (i) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in the Project Documents (including the Transmission Service Agreement), both present and future; (ii) the rights, title, interests and benefits of the Borrower in, to and under all the Clearances (including the Transmission License), to the extent permissible by applicable law, both present and future; (iii) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower in any letter of credit (including letters of credit or such other payment security mechanism provided by the Nodal Agency), guarantee (including contractor guarantees issued by the EPC contractor) and liquidated damages (including contractual damages) and performance bond provided by any Project participant, both present and future; and (iv) all the rights, title, interests, benefits, claims and demands whatsoever of the Borrower under all insurance contracts, both present and future, until the Final Settlement Date;

- (h) the Corporate Guarantee till the Corporate Guarantee End Date;
- (i) a pledge of the Pledged Securities in compliance with Section 19(2) of the Banking Regulation Act, 1949, until the Final Settlement Date.

6. The Petitioner has submitted that under the financial agreements and on enforcements of the security interest, it shall be lawful for the Security Trustee (the Respondent No.2), acting for the benefit of Project lenders, to enter into and take possession of the assets/ properties, mortgaged/ charged/ assigned for their benefits. or its nominees for the Petitioner under any or all the Project document(s).

7. The Petitioner has submitted that Article 15.2.2 of the Transmission Service Agreement (TSA) entered into between the Petitioner and the CTUIL provides that the Petitioner is free to create any encumbrance over all or part of the receivables, Letters of Credit or other assets of the Project in favour of the lenders or the representative of the lenders 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.”*

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, is seeking approval for the creation of security for the benefits of the Project lenders. 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 the Security Trustee Agreement and Rupee Facility Agreement.

### **Hearing dated 12.7.2023**

9. The representative of the Petitioner submitted that the present Petition has been filed, inter alia, seeking approval for creation and/or perfection of security interest and also assignment of the transmission licence of the Petitioner by way of security in favour of the Security Trustee, namely, Catalyst Trusteeship Limited acting for the benefit and on behalf of the lenders and other secured parties under the Rupee Facility Agreement dated 28.4.2023.

10. Vide Record of Proceedings for the hearing dated 12.7.2023, the Respondents were directed to file their replies. However, no reply has been filed by the Respondents within the due date.

### **Analysis and Decision**

11. We have considered the submissions made by the Petitioner. The Petitioner approached the lender, namely, YES Bank Limited, for a rupee term loan to finance the Project. The lender has agreed to grant a rupee term loan of Rs. 195.75 crore (including a LoC limit of Rs. 130.0 crore) to the Petitioner subject to the terms and conditions set out in the Rupee Facility Agreement dated 28.4.2023.

12. As per the Rupee Facility Agreement, the estimated cost of the Project is Rs. 195.75 crore. In terms of the financing plan enclosed as Schedule XII of the Rupee Facility Agreement, the Project shall be funded through debt of Rs. 195.75 crore and equity of Rs. 65.25 crore. The Petitioner has submitted the following details, as per the

Auditor's Certificate dated 10.5.2023. for capital expenditure of Rs. 40.41 crore incurred for its under construction Project till 10.5.2023.

<b>Particular</b>	<b>Sanction</b>	<i>(Rs. in crore)</i>
		<b>Incurred</b>
Promotor's contribution	65.25	0.05
Capital creditors	-	7.28
Term loan	195.75	-
Unsecured term loan from RTVPL	-	33.08
<b>Total</b>	<b>261.00</b>	<b>40.41</b>

13. The Petitioner has submitted original estimated cost of the Project and means of finance as on the date of financial closure as under:

<b>Original estimated Project cost (as per agreement)</b>	<b>Rs. in crore</b>	<b>Means of finance (as per agreement)</b>	<b>Rs. in crore</b>
Hard Cost	237.93	Equity share capital / Share Premium	65.25
IEDC	9.89	Secured loan/debt from external sources	195.75
IDC	7.50		-
Contingency	5.68		-
<b>Total</b>	<b>261.0</b>	<b>Total</b>	<b>261.00</b>

14. The Petitioner has submitted lender-wise details as under:

<b>Name of lender</b>	<b>Sanctioned loan (as per loan Agreement)</b>	<b>Actual loan disbursed (as on date of application)</b>
YES Bank Limited	195.75	-
<b>Total</b>	<b>195.75</b>	<b>-</b>

15. The transmission projects are capital intensive projects requiring huge capital investments and are financed through loans. It is a normal practice followed by 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 lenders. In the instant case, the lender, namely, YES Bank Limited. has agreed to provide a loan of Rs. 195.75 crore (including a LoC limit of Rs. 130.0 crore) to the Petitioner. In accordance with Article 15.2 of the TSA, 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, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

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 thereof, 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.”*

17. 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 lender, YES Bank Limited, have appointed Catalyst Trusteeship Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, the Security Trustee Agreement and Rupee Facility Agreement dated 28.4.2023, have been executed for a loan of Rs. 195.75 crore (including LoC limit of Rs. 130.0 crore). As per the Security Trustee Agreement dated 28.4.2023, at the request of the Petitioner, the lender has agreed to provide a loan of Rs. 195.75 crore (including a LoC limit of Rs. 130.0 crore) for the Project on the terms and conditions contained in the Rupee Facility Agreement and Security Trustee Agreement. In our view, Catalyst Trusteeship Limited needs to be given comfort for the creation of security for the benefit of the lender as security for the financial assistance provided by the lender. We, therefore, accord in-principle approval

allowing the Petitioner to create a security interest in favour of Catalyst Trusteeship Limited, by way of mortgage/ hypothecation 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 lenders without prior approval of the Commission at the time of creating rights in favour of such nominee. Before agreeing to the assignment of licence and the assets of the Petitioner to the nominee of lender, the Commission will evaluate such a nominee's experience 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, 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.”*

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 of the

lender subject to proper due diligence of the process. Lastly, financial documents and statements may be filed by the Petitioner as and when required by the Commission for any specific purpose.

21. Petition No. 174/MP/2023 is allowed in terms of the above.

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

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

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

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