

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 344/MP/2022

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 27th January, 2023

In the matter of:

Approval under Section 17(3) and 17(4) of Electricity Act 2003, for assignment of licence granted to Gadag Transmission Limited pursuant to order dated 18.7.2022 bearing license no. 76/Transmission/2022/CERC (the "Transmission License") by way of hypothecation for creation of security interest in favour of Axis Trustee Services Limited acting as the security trustee ("Security Trustee"), for the benefit of Axis Bank Limited ("Axis Bank") (including their respective successors, transferees, novatees, and assigns) (collectively the "Lender"/ "Lenders") 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 Transmission Limited in the project under "Transmission Scheme for Solar Energy Zone in Gadag (2500 MW), Karnataka - Part A" on build, own, operate and maintain basis, as detailed in the schedule to the Transmission License (the "Project"), Project assets, clearances, project documents, agreements, approvals and rights, accounts, receivables of Gadag Transmission Limited.

And

In the matter of:

Gadag Transmission Limited,
138, Ansal Chambers-II, Bhikaji Cama Place,
Delhi – 110066

.....**Petitioner**

Versus

1. ReNew Solar Power Private Limited,
Renew Hub, Commercial Block-1, Zone-6,
Golf Course Road, DLF City Phase V,
Gurugram, Haryana- 122009.
2. Vena Energy Vidyuth Private Limited,
2/1, 1st Floor, Embassy Icon Annexe,
Infantry Road, Bangalore-560001
3. Axis Bank Limited
Trishul 3rd Floor, Opp Samartheshwar Temple

Law Garden. Ellisbridge, Ahmedabad – 380006;

4. Axis Trustee Services Limited,
Axis House, Bombay Dyeing Mills Compound,
Pandurang Budhkar Marg, Worli,
Mumbai – 400025
5. Chief Executive Officer, REC Power Development and Consultancy Limited
REC Corporate Head Quarter, D Block, Plot No. I – 4,
Sec – 29 Gurugram – 122001
6. Chief Operating Officer, Central Transmission Utility of India Limited,
Saudamini, Plot No.2, Sector-29, Gurugram-122001

.....Respondents

Parties present:

1. Shri Amit Kumar, GTL
2. Shri Mohit Jain, GTL
3. Shri Ankush Khurana, GTL
4. Shri Swapnil Verma, CTUIL
5. Shri Ranjit Rajput, CTUIL
6. Ms. Muskan Agarwal, CTUIL

ORDER

The Petitioner, Gadag Transmission Limited (GTL), has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish transmission system for "Transmission Scheme for Solar Energy Zone in Gadag (2500 MW), Karnataka - Part A" (in short, 'the Project') on 'Build, Own, Operate and Maintain' (BOOM) basis, the details of which are specified in the schedule attached to the licence issued vide order dated 18.07.2022 in Petition No. 105/TL/2022.

2. The Petitioner has filed the present Petition for assignment of the transmission licence by way of security in favour of Security Trustee and creation of 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, Respondent No.4 i.e. Axis Trustee Services Limited. The Petitioner has made the following prayers:

“a. Approve the assignment of the Transmission License and Utility (as defined in the Electricity Act, 2003) of Petitioner by way of security in favour of the Axis Trustee Services Limited as Security Trustee (Respondent No.3), 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 Axis Trustee Services 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 29.07.2022.

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 Axis Trustee Services 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 Axis Bank Limited (hereinafter also referred to as ‘the lender’) for financial assistance in the form of rupee term loan. Axis Bank Limited vide its letter dated 19.7.2022 sanctioned rupee term loan to the extent of Rs. 259.29 crore (including Letter of Credit- LoC ,limit of Rs. 207.50 crore) for financing the Project. In pursuance of the sanction letter issued by Axis Bank Limited, the Petitioner entered into a Rupee Facility Agreement dated 27.9.2022 for availing loan of Rs. 259.29 crore.

4. The Petitioner has appointed the Respondent No. 4, namely, Axis Trustee Services Limited (hereinafter also referred to as “the Security Trustee”) who has agreed to act as Security Trustee for the lender by entering into Security Trustee Agreement on 27.9.2022. The Petitioner has submitted that as on date (31.10.2022), the lender has disbursed amounts equivalent to Rs. 2.25 crore.

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, by way of mortgage, in a form and manner satisfactory to the lenders, on all the immovable properties of the borrower, including but not limited to all lands of the borrower including substation land, civil structures, towers and cables, office buildings, both present and future;
- b) a first charge by way of hypothecation on all the tangible movable assets of the borrower, including but not limited to machinery, spares, tools and accessories, furniture, fixtures, etc., both present and future;
- 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;

- 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;
- e) a first charge by way of hypothecation on all current assets of the borrower, both present and future;
- 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;
- 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 licence), 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 LTTCs), 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;

- 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; and
- j) a non-disposal of the NDU securities by the Promoter until the syndication 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.4), acting for the benefit of Project lenders, to enter into and to 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 stated that Article 15.2.2 of the Transmission Service Agreement (TSA) entered into between the Petitioner and the beneficiaries of the Project provide 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 amount payable under the Financing Agreements and any other amounts agreed by the parties provided that:

“(a) The lenders or the representatives of the lenders on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and

(b) Any encumbrance granted by the Petitioner shall contain provisions pursuant to which the lenders or the representative of the lenders on their behalf agrees unconditionally with the Petitioner to release such encumbrances upon payment by the Petitioner to the lenders, of all amounts due under the Financing Agreements.”

8. The Petitioner has submitted that in terms of Article 15.2.4 of the TSA, the Petitioner is required to take permission from this Commission prior to relinquishment or transfer of its rights and obligations in the TSA. 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 seeking approval for creation of security for the benefit of in favour of and/ or for the benefit of the Project lenders. Accordingly, the Petitioner has filed the present Petition seeking prior approval of the Commission for creation of security interest, over all assets including the movable and immovable assets for the Project in favour of Security Trustee pursuant to Security Trustee Agreement and Rupee Facility Agreement.

9. The Petition was called out for hearing on 17.01.2023 after notice to the Respondents. Vide Record of Proceedings for the hearing dated 17.01.2023, the Respondents were directed to file their replies. However, no reply has been filed by the Respondents within due date.

Analysis and Decision

10. We have considered the submissions made by the Petitioner. The Petitioner approached the lender, namely, Axis Bank Limited for a rupee term loan for financing the Project. The lender has agreed to grant rupee term loan of Rs. 259.29 crore (including Letter of Credit, limit of Rs.207.50 crore) to the Petitioner subject to the terms and conditions set out in the Rupee Facility Agreement dated 27.09.2022.

11. As per the Rupee Facility Agreement, estimated cost of the Project is Rs. 345.72 crore. In terms of financing plan enclosed as Schedule XII of the Rupee Facility Agreement, the Project shall be funded through the debt of Rs. 259.29 crore and equity of Rs. 86.43 crore. The Petitioner has submitted the following details, as per Auditor's Certificate dated 14.11.2022 for capital expenditure of Rs. 54.12 crore incurred for its under construction Project till 31.10.2022.

(Rs. in Crore)

Particular	Sanction	Incurred
Promotor's contribution	86.43	45.32
Capital creditors		6.56
Term loan	259.29	2.25
Total	345.72	54.13

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

Original estimated Project cost (as per agreement)	Rs. in crore	Means of finance (as per agreement)	Rs. in crore
Hard Cost	317.59	Equity share capital / Share Premium	86.43
IEDC	11.63	Secured loan/debt from external sources	259.29
IDC	9.20		
Contingency	7.30		
Total	345.72	Total	345.72

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

(Rs. In Crores)

Name of lender	Sanctioned loan (as per loan Agreement)	Actual loan disbursed (as on date 31.10.2022)
Axis Bank Limited	259.29	2.25
Total	259.29	2.25

14. The transmission projects are capital intensive projects requiring huge capital investment 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, Axis Bank Limited has agreed to provide loan of Rs. 259.29 crore (including LoC limit of Rs. 207.50 crore) to the Petitioner. In accordance with Article 15.2 of the TSA, the Transmission Service Provider has been allowed to create encumbrance over all or part of the receivables, Letter 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.

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 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.”

16. 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 lender have appointed the Axis Trustee Services Limited as Security Trustee for creation of security over all the movable and immovable assets of the Project. Accordingly, Security Trustee Agreement and Rupee Facility Agreement dated 27.09.2022 have been executed for a loan of Rs. 259.29 crore (including LoC limit of Rs. 207.50 crore). As per the Security Trustee Agreement dated 27.09.2022, at the request of the Petitioner, the lender has agreed to provide a loan of Rs. 259.29 crore (including LoC limit of Rs. 207.50 crore) for the

Project on the terms and conditions contained in the Rupee Facility Agreement and Security Trustee Agreement. In our view, Axis Trustee Services Limited needs to be given comfort for creation of security for the benefit of lender as security for the financial assistance provided by the lender. In view of the said facts and circumstances, We, hereby, accord in-principle approval allowing the Petitioner to create security interest in favour of Axis Trustee Services Limited, by way of mortgage/ hypothecation on Project assets by execution of Indenture of Mortgage and financing documents of the Project. The Petitioner is directed to submit signed copy of Indenture of Mortgage for the Project immediately after its execution.

18. This in-principle approval is being approved with condition that the transmission licence granted by the Commission to the Petitioner and the underlying assets cannot be assigned in favour of the nominee of the Security Trustee without prior approval of the Commission at the time of creating rights in favour of such nominee. Before agreeing to assignment of licence and the assets of the Petitioner to the nominee of lender, the Commission will evaluate such a nominee's experience in development, design, construction, operation and maintenance of transmission lines, and ability to execute the Project and undertake transmission of electricity. The licensee, lenders, security trustee and the nominee, accordingly, shall be jointly required to approach the Commission for seeking approval. This will give an opportunity to the Commission to satisfy itself of the circumstances necessitating such transfer. This stipulation has been imposed under 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. 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 the 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 shall be submitted by the Petitioner as and when required by the Commission for any specific purpose.

20. Petition No. 344/MP/2022 is allowed in terms of the above.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member