

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 634/MP/2020**

**Coram:**

**Shri P.K. Pujari, Chairperson**

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

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Shri Prakash. S. Mhaske, Member (Ex-officio)**

**Date of order: 8<sup>th</sup> April, 2021**

**In the matter of:**

Petition for approval for creation of security interest under Sections 17(3) and 17(4) of Electricity Act, 2003 over Petitioner No. 1's assets in favour of the Petitioner No. 2 for the benefit of lenders and their assignees, transferees and novatees for the purpose of Petitioner No. 1's Transmission Project.

**And**

**In the matter of**

1. Gurgaon-Palwal Transmission Limited  
F-1, The Mira Corporate Suite  
1&2, Ishwar Nagar  
New Delhi-110 065
2. Catalyst Trusteeship Limited  
810, 8<sup>th</sup> Floor, Kailash Building,  
26 Kasturba Gandhi Marg,  
New Delhi – 110 001

**....Petitioners**

**Versus**

1. U.P. Power Corporation Limited,  
14th Floor, Shakti Bhawan Building,  
14, Ashok Marg,  
Lucknow – 226001
2. UTC Chandigarh  
UT Secretariat,  
Sector 9,  
Chandigarh- 160009
3. BSES Yamuna Power Limited  
2nd Floor, B Block, Shakti Kiran Building,  
Near Karkadooma Court, New Delhi- 110032

4. BSES Rajdhani Power Limited  
BSES Bhawan, 2nd Floor, B- Block  
Behind Nehru Place Bus Terminal  
Nehru Place, New Delhi- 110019
5. TATA Power Delhi Distribution Limited  
33 kV S/Stn. Building,  
Hudson Lane, Kingsway Camp,  
New Delhi- 110019
6. New Delhi Municipal Council  
Palika Kendra, Sansad Marg,  
New Delhi- 110001
7. Himanchal Pradesh State Electricity Board Limited  
Vidyut Bhawan,  
Shimla- 171004
8. Haryana Power Purchase Centre  
2nd Floor, Shakti Bhawan, Sector 06,  
Panchkula- 134109
9. Power Development Department,  
Govt. of Jammu & Kashmir  
Civil Secretariat, Jammu- 180001
10. Punjab State Power Corporation Limited  
The Mall Patiala- 147001
11. Ajmer Vidyut Vitran Nigam Limited  
Old Power House, Hathi Bhatta,  
Jaipur Road, Ajmer.
12. Jodhpur Vidyut Vitran Nigam Limited  
New Power House Industrial Area,  
Jodhpur- 342003
13. Jaipur Vidyut Vitran Nigam Limited  
Vidyut Bhawan, Janpath,  
Jyoti Nagar, Jyoti Marg, Jaipur- 302005
14. Uttarakhand Power Corporation Limited  
Urja Bhawan, Kanwali Road,  
Dehradun- 248001.

....Respondents

**Parties Present:**

Ms. Mandakini Ghosh, Advocate, GPTL  
Ms. Ritika Singhal, Advocate, GPTL

## ORDER

The First Petitioner, Gurgaon Palwal Transmission Limited, has been granted transmission licence under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to transmit electricity as a transmission licensee and for that purpose to undertake the business of establishing transmission system for "creation of new 400 kV GIS Sub-station in Gurgaon and Palwal area as a part of ISTS" (hereinafter referred to as "the Transmission System" or "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 29.9.2016.

2. The First Petitioner had approached the Commission in Petition No. 12/MP/2017 for approval under Sub-sections (3) and (4) of Section 17 of the Act to create security interest for Rs.800 crore in favour of Security Trustee, namely, IDBI Trusteeship Limited. It has been submitted by the First Petitioner that the total cost of the Project is estimated to be Rs. 1027 crore and the equity amount in the form of promoter's contribution is Rs. 227 crore and the debt by way of Facility Agreement is Rs. 800 crore. The Commission by its order dated 22.3.2017 in Petition No.12/MP/2017 accorded in-principle approval allowing the First Petitioner to create security in favour of Security Trustee, namely, IDBI Trusteeship Service Limited.

3. On 30.5.2017, Yes Bank has transferred the loan to IFCI Limited (Rs. 200 crore) and PTC India Financial Services Limited (Rs. 200 crore). On 1.6.2017, Yes Bank further transferred the loan to Bank of India (Rs. 200 crore).

4. The Petitioners, namely, Gurgaon-Palwal Transmission Limited (First Petitioner) and Catalyst Trusteeship Limited (Second Petitioner) have jointly filed the

present Petition under Sub-sections (3) and (4) of Section 17 of the Act for creation of security interest in favour of Catalyst Trusteeship Limited as new Security Trustee.

The Petitioners have made the following prayers:

*“(a) Approve the creation of Security Interest, over all assets including the movable and immovable assets, accounts, Project documents etc. of Petitioner No. 1 and to the extent as mentioned in paras 5 and 6 above, in favour of Security Trustee/ Lenders/ Lenders’ Agent and for their subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project, pursuant to deed of hypothecation and power of attorney in relation thereto, declaration and memorandum of entry and other security creating documents/Financial Agreements and for future refinancing transactions also, by way of mortgage/hypothecation/assignment of Secured Properties and Project assets and for amendment of the security documents and any other Financial Agreements to include the assigns, transferees and novatees of the Lenders.”*

5. The First Petitioner has submitted that for the purposes of refinancing of facility availed from original lenders for part financing the Project, payment of transaction related expenses, payment of outstanding capital creditors of the First Petitioner and for part reimbursement of capital expenditure/ Project cost funded by unsecured loans of the sponsor and/or promoter, the First Petitioner has availed financial assistance to the extent of Rs. 935 crore as rupee term loan from a consortium of lenders led by HDFC Bank Limited and their assignees, transferees, novates (hereinafter referred to as “the lenders”) on the terms and conditions contained in the Common Loan Agreement dated 30.6.2020, as amended from time to time and sanction letter dated 23.6.2020 issued by HDFC Bank Limited. Further, in this regard, HDFC Bank Limited has also agreed to act as lenders’ agent for the consortium of lenders. In terms of the Common Loan Agreement, lenders have right to transfer or assign or novate or securitize or down-sell, all or any part of their commitment under the facility along with the underlying security interest and/ or any of their rights, benefits or obligations thereunder and under the other financing documents and the project documents to any bank/ financial institution/ non-banking financial company/ other person at any time.

6. The First Petitioner has submitted that the lenders have, till date, disbursed an amount of Rs. 821.78 crore out of the total facility amount. The disbursed amount has been utilised by the borrower towards refinancing of facility availed from existing lender, capex creditor payment to Sterlite Power Grid Ventures Limited and transaction related expenses. In this regard, a certificate No. RG/25/2020 dated 6.8.2020 issued by Chartered Accountant has been placed on record.

7. Further, the First Petitioner has submitted that subsequently, the borrower, by way of its letter dated 27.8.2020 (hereafter referred to as “the Cancellation Letter”) has requested the lenders to cancel the remaining/ undisbursed portion of the Facility which has been accepted by the lenders. Further, the borrower has repaid the Facility to the extent of Rs. 75 crore to HDFC Bank Limited.

8. The First Petitioner has submitted that HDFC Bank Limited has also transferred a portion of the Facility upto Rs. 140 crore to NIIF Infrastructure Finance Limited, in terms of Assignment cum Amendment Deed (in Short “the NIIF Assignment Deed”) dated 17.9.2020 executed *inter alia* between HDFC Bank Limited and NIIF Infrastructure Finance Limited. The assignment under the NIIF Assignment Deed shall become effective from the date of receipt of consideration by HDFC Bank Limited from NIIF Infrastructure Finance Limited in relation to the assigned portion of the facility.

9. The First Petitioner has submitted that HDFC Bank Limited has further transferred a portion of Facility upto Rs. 210 crore to Bank of Maharashtra, in terms of Assignment Deed dated 30.9.2020 executed between HDFC Bank Limited and Bank of Maharashtra. The assignment under the Bank of Maharashtra Assignment

Deed shall become effective from the date of receipt of consideration by HDFC Bank Limited from Bank of Maharashtra in relation to the assigned portion of the Facility.

10. The First Petitioner has submitted that the Second Petitioner, Catalyst Trusteeship Limited, through the Security Trustee Agreement dated 30.6.2020, as amended from time to time, has agreed to act as Security Trustee for the lenders including their assigns, transferees, novates and to enter into all relevant financing documents pursuant thereto. It has been submitted that the original Facility has since been repaid in full out of the proceeds of the Facility. The original lenders have provided their no dues certificates/ emails as (i) letter from Yes Bank Limited dated 8.7.2020 bearing reference no. YBL/MUM/46/2020-2021; (ii) letter from Bank of India dated 7.7.2020 bearing reference No. PuneLCB/NV/2020-21/146; (iii) email from PTC India Financial Services Limited Email dated 17.7.2020; and (iv) letter from IFCI Limited dated 29.7.2020 bearing reference No. IFCI/HO/Credit-HO/GPTL/2020-21. IDBI Trusteeship Services Limited (*erstwhile security trustee for the Original Facility*) has also provided its no objection certificate vide letter No. 17182/ITSL/OPR/2020-21 dated 29.6.2020.

11. The First Petitioner has submitted that in accordance with Sub-sections (3) and (4) of Section 17 Act, as a licensee, prior approval of the Commission is essential for creation of security interest over all assets including the movable and immovable assets of the Project in favour of Security Trustee/ lenders/ lenders' Agent and for their subsequent transferees, assigns, novatees thereof and any refinancing lenders to the Project, pursuant to deed of hypothecation and power of attorney in relation thereto, declaration and memorandum of entry and other security creating documents/ Financial Agreements and for future refinancing transactions

also, by way of mortgage/ hypothecation/ assignment of secured properties and Project assets.

12. The Respondent, UP Power Corporation Limited vide its reply dated 23.11.2020 has submitted as under:

(a) *Powergrid Corporation of India Limited, who is a Central Transmission Utility should be impleaded as necessary party because the transmission being developed by the First Petitioner is a part of ISTS and PGCIL as CTU has responsibility under Section 38 of the Act to discharge all functions of planning and coordination relating to ISTS ensuring development of efficient, coordinated and economical inter-State Transmission System for smooth flow of electricity from generating stations to load centres.*

(b) *Security Trustee, Catalyst Trusteeship Limited cannot be appointed by the First Petitioner, unless it is agreed by the second lender consortium led by HDFC Bank Limited. As such, the First Petitioner must submit the consent of HDFC Bank Limited obtained by it for appointment of Second Petitioner as Security Trustee on their behalf.*

(c) *The First Petitioner cannot assign the TSA, which is not in nature of 'Utility' within the meaning of Section 17 read with Section 2(75) of the Act as it has proposed under para 7(g)(i) of the Petition.*

(d) *The First Petitioner cannot create first ranking charge on TSA as proposed since the stage of default in repayment has not yet arrived required the lender to seek transfer of the Project in the name of their nominee. Therefore, the proposal for creation of first raking charge on TSA is premature and might not be allowed.*

(e) *The First Petitioner is also allowing first raking charges on various documents, clearances and contract/insurances in Para 7(g) (i), (ii) and (iv) in favour of the lenders. However, since documents, clearances and contracts/insurance are not in nature of Utility, as defined in the Act or covered under Article 15 of the TSA, creation of charge thereon may not be allowed.*

13. The Petitioner vide its rejoinder to the reply filed by UPPCL has mainly submitted as under:

(a) *PGCIL is neither a Long-Term Transmission Customer nor a party to the TSA whose position would otherwise be directly affected by the present Petition. Accordingly, PGCIL has not been arrayed as party in the present Petition.*

(b) *The Second Petitioner, Catalyst Trusteeship Limited has been appointed as the Security Trustee for the benefit of the lenders in term of the Security Trustee Agreement dated 30.6.2020 executed between the lenders, the Second Petitioner and the First Petitioner. HDFC Bank Limited vide (i) Assignment Cum Amendment Deed dated 17.9.2020 has assigned a portion of facility to NIIF Infrastructure Finance Co. Ltd.; (ii) Assignment cum Amendment Deed dated 30.9.2020 has assigned portion of the facility to Bank of Maharashtra. NIIF Infrastructure Finance Co. Ltd. and Bank of Maharashtra vide Deed of Adherence to Security Trustee Agreement dated 17.9.2020 and 30.9.2020 respectively have acceded to the terms of Security Trustee Agreement. Thus, evidently by entering into the Security Trustee Agreement, the lenders have agreed to the appointment of Second Petitioner, as the Security Trustee for the benefit of the lenders.*

(c) *Under Sub-sections (3) and (4) of Section 17 of the Act, the prior approval of the Commission is required for transfer/assignment of licence or 'Utility' or any part thereof by the licensee. However, the said provision doesn't pose any restriction on transfer/assignment of assets/ rights of the licensee other than licence or 'Utility'. As per the UPPCL's own submission TSA and other assets would not be covered under the definition of 'Utility' and consequently, the transfer/assignment of rights of the First Petitioner under the TSA and other assets would not be restricted under Sub-sections (3) and (4) of Section 17 of the Act.*

(d) *In terms of Article 15.2.2 of the TSA, the First Petitioner is permitted to create encumbrance over all or on part of the receivables, letter of credit or other assets of the Project in favour of lenders as security for amount payable under the financing agreement. Article 15.2.4 of the TSA further permits the First Petitioner to transfer its rights and obligation under the TSA, with prior approval of the Commission. Accordingly, in terms of the above Articles, the First Petitioner has approached and sought approval of the Commission for assignment of its rights, title, interests, benefits, claims and demands in the TSA in favour of Security Trustee.*

(e) *By way of present Petition, only approval for assignment of right of the First Petitioner for the benefit of the lenders is being sought and not for transfer of Project /transmission licence or part thereof to a third party or nominee of the lenders. The assignment/charge of rights of First Petitioner under TSA would become enforceable only upon happening of an event of default under the financing/security documents.*

(f) *In project financing transaction, it is a standard condition imposed by the lenders, wherein rights of the borrowers/licensees under the Project documents, clearances, insurance policies, etc. are required to be assigned/charges to the lenders of the Project. The same has been*



*acknowledged by the Commission in several matters including in Petition No. 456/MP/2019 in the matter of Odisha Generation Phase-II Transmission Limited v. North Bihar Power Distribution Company Limited & Ors.*

14. The matter was called out on 19.3.2021 through video conferencing after notice to the Respondents. None was present on behalf of the Respondents despite notice. During the course of hearing, the learned counsel for the First Petitioner submitted that the elements of the Project have already achieved the commercial operation between 25.2.2019 to 13.4.2020. Vide Record of Proceedings for the hearing dated 19.3.2021, the Petitioner was directed to submit the Auditor Certificate as required in the prescribed format. However, the Petitioner has not submitted Auditor Certificate in the prescribed format and has only submitted Auditor Certificate certifying the utilization of the proceeds of loan from HDFC Bank Limited, which the Petitioner had already submitted with the Petition.

### **Analysis and decision**

15. We have considered the submissions of the Petitioner and Respondents. We have also perused the documents available on record. After grant of transmission licence, the First Petitioner approached the Commission by way of Petition No. 12/MP/2017 for creation of security interest in favour of Security Trustee, namely, IDBI Trusteeship Services Limited (prior security Trustee) acting as Security Trustee for the benefits of lenders for the loan availed from Yes Bank Limited of Rs. 800 crore. On 30.05.2017, Yes Bank has transferred the loan to IFCI Limited (Rs. 200 crore) and PTC India Financial Services Limited (Rs. 200 crore). On 1.6.2017, Yes Bank further transferred the loan to Bank of India (Rs. 200 crore).

16. The First Petitioner for the purposes of refinancing of Facility availed from original lenders for part financing the Project, payment of transaction related

expenses, payment of outstanding capital creditors of the First Petitioner and for part reimbursement of capital expenditure/ Project cost funded by unsecured loans of the sponsor and/or promoter, has availed financial assistance to the extent of Rs. 935 crore from HDFC Bank Limited vide Common Loan Agreement dated 30.6.2020 of which Rs. 821.78 crore has been disbursed till date. Subsequently, borrower requested the lenders to cancel the remaining undisbursed portion. Further, the borrower repaid Rs. 75 crore to HDFC Bank Limited. HDFC Bank Limited also transferred a portion of the Facility upto Rs. 140 crore to NIIF Infrastructure Finance Limited and upto Rs. 210 crore to Bank of Maharashtra. Catalyst Trusteeship Ltd agreed to act as security trustee for the Lenders. The Petitioners have submitted the No Dues Certificate of the outgoing lenders and IDBI Trusteeship Services Limited.

17. The present Petition has been jointly filed by the First Petitioner and Second Petitioner under Sub-sections (3) and (4) of Section 17 of the Act for creation of security interest in favour of new Security Trustee, i.e. Catalyst Trusteeship Limited as Security Trustee.

18. As per Article 15.2.4 of the TSA, the First Petitioner is required to take prior approval of this Commission before creating any encumbrance over all or part of the receivables, letter of credit or other assets of the Transmission Project, in favour of its lenders or the lender's representative. The relevant extract of the Article 15 is as under:

*"15.2.2 However, the TSP may create any encumbrance over all part of receivables, letter of credit or the other assets of the Project in favour of the Lenders or the Lender's 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.*

*15.2.4 Neither the TSP nor any of the Long Term Transmission Customer can relinquish or transfer its rights and obligations, without prior approval of the Appropriate Commission”*

19. Sub-sections (3) and (4) of Section 17 of the Act provides 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 sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.”

As per the above provision, 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.

20. We have observed that the Petitioners have sought approval of the Commission only with regards to creation of security in favour of the new Security Trustee for the benefit of the lenders. However, the Petitioners have not prayed for approval of the Commission for substitution of the original lenders with the new lenders and the agreements relating to the transaction entered into between the Petitioners and the lenders as mandated by Sub-sections (3) and (4) of Section 17 of the Act.

21. In our view, creation of security in favour of new Security Trustee, namely, Catalyst Trusteeship Limited for the benefit of lenders can be allowed only after or along with approval of the Commission for substitution of original lenders with the new lenders.

22. In light of the above, the Petitioner is granted liberty to approach the Commission by filing appropriate application with regards to substitution of lenders and creation of security with all relevant documents/ information in accordance with law.

23. With the above, Petition No. 634/MP/2020 stands disposed of.

Sd/-  
**(P.S. Mhaske)**  
Member

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

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

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

sd/-  
**(P.K. Pujari)**  
Chairperson