



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 385/MP/2018

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson

डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member

श्री आई. एस. झा, सदस्य/Shri I. S. Jha, Member

आदेश दिनांक /Date of Order: 28th of June, 2019

IN THE MATTER OF:

Petition under Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with the Regulation 14 of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and in order dated 30.03.2017 in Petition No. 2/SM/2017.

AND IN THE MATTER:

- 1. Reliance Industries Limited**
Maker Chambers IV,
3rd floor, 222, Nariman Point,
Mumbai – 400 021
- 2. Reliance Jio Infocomm Limited**
9th Floor, Maker Chambers IV
222, Nariman Point,
Mumbai – 400021

...Petitioners

VERSUS

1. **National Load Dispatch Centre**
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi - 110016
2. **Indian Energy Exchange Limited**
Unit no. 3,4,5 & 6, Fourth floor,
Plot No. 7, TDI Center, District Center,
Jasola, New Delhi - 110 025

...Respondents

Parties Present: Shri Ramji Srinivasan, Senior Advocate, RIL
Shri Gaurav Mitra, Advocate, RIL
Shri Vishnu Sharma, Advocate, RIL
Shri Rohan Ganpathy, Advocate, RIL
Shri Nikhil, Advocate, RIL
Shri Ashok Rajan, Advocate, POSCO, NLDC
Shri Indrani Chatterjee, IEX

आदेश/ ORDER

The Petitioner No.1, M/s Reliance Industries Limited and Petitioner No.2, M/s Reliance Jio Infocomm Limited are “Obligated Entities” who fulfill the Renewable Purchase Obligation (hereinafter referred to as “RPO”) by purchasing Renewable Energy Certificates (hereinafter referred to as “RECs”) issued under the provisions of Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulations 2010 (hereinafter referred to as “REC Regulations, 2010”) framed by the Commission. The Petitioner No.1 has installed Captive Power Plants (hereinafter referred to as “CPPs”) at its units in Maharashtra and Gujarat fulfilling the energy requirements through captively produced power whereas the Petitioner No.2 is an “Open Access Consumer” availing power using open access pursuant to the Regulations of the State Commission governing terms and conditions of Transmission Open Access or Distribution Open Access. The Petitioners have filed the Petition under Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with the Regulation 14 of the REC Regulations, 2010 and Order dated 30.03.2017 in Petition No. 2/SM/2017.

2. Respondent No.1, National Load Dispatch Centre (hereinafter referred to as “NLDC”) is a

‘Central Agency’ within the meaning of Regulation 2 (1) (b) of the REC Regulations, 2010 and is so designated by this Commission under clause (1) of Regulation 3 of the REC Regulations, 2010.

3. Respondent No.2, Indian Energy Exchange Limited (hereinafter referred to as “IEX Ltd.”) is a ‘Power Exchange’ within the meaning of Regulation 2 (1) (j) of the REC Regulations, 2010.
4. The Petitioners have made the following prayers:-
 - a. *Direct refund of the amount of Rs.9,28,67,000/- (Rupees Nine Crores Twenty Eight Lakhs Sixty Seven Thousand Only) deposited with this Commission in respect of Non-Solar RECs issued after 1st April, 2017 purchased by the Applicants.*
 - b. *Grant any other relief which this Commission may deem fit in the facts and circumstances of the case.*

Submissions of the Petitioners

5. The Petitioners have submitted that they are companies incorporated under the provisions of Companies Act, 1956. They are “Obligated Entities” which are required to fulfil RPO under the Regulations framed by various State Electricity Regulatory Commissions. They fulfil RPO by purchasing RECs issued under the provisions of the said REC Regulations, 2010. M/s PTC India Ltd. is a trader and an agent of the Petitioners to procure RECs on behalf of Petitioners through Respondent No. 2 (IEX Ltd.).
6. The Petitioners have submitted that by an Order (hereinafter referred to as “REC Price Determination Order”) dated 30.03.2017 in Petition No. 02/SM/2017, the Commission determined the forbearance price and floor price for solar and non-solar renewable energy certificate as under:

“51. Summary of Decisions

1)

2) *Floor and forbearance price for non-solar RECs starting 01.04.2017 shall be as follows:*

<i>Non Solar REC</i>	<i>(Rs/ MWh)</i>
<i>Forbearance Price</i>	<i>3,000</i>
<i>Floor Price</i>	<i>1,000</i>

3) *Floor and forbearance price for solar RECs starting 01.04.2017 shall be as follows:*

<i>Solar REC</i>	<i>(Rs/ MWh)</i>
<i>Forbearance Price</i>	<i>2,400</i>
<i>Floor Price</i>	<i>1,000</i>

4) *The forbearance and floor price of RECs as above shall remain valid until further orders of the Commission.*

5) *This order shall be effective from 1.4.2017.”*

7. The Petitioners have submitted that being aggrieved by the said REC Price Determination Order , Indian Wind Energy Association (hereinafter referred to as “IWEA”) filed an Appeal No. 105 of 2017 before the Appellate Tribunal for Electricity (hereinafter referred to as “the Tribunal”) seeking stay on the Suo Motu Order of the Commission. However, vide Order dated 25.04.2017, the Tribunal refused to stay the said Order. Being aggrieved by the aforesaid Order, IWEA filed a Civil Appeal No. 6083 of 2017 before the Hon’ble Supreme Court of India which stayed the said REC Price Determination Order in terms of the following Order dated 08.05.2017:

“Heard the learned Senior counsel appearing for the appellants in both the Civil Appeals and the learned counsel appearing for the Commission.

Let notice be issued in the matters, returnable after eight weeks.

In the meantime, there shall be stay of the order of the Central Electricity Regulatory Commission.”

8. The Petitioners have submitted that IWEA preferred another I.A. No. 42496/2017 in the aforesaid Civil Appeal. The Hon’ble Supreme Court disposed off the Civil Appeal No. 6083 of 2017 on 14.07.2017 in terms of the following Order:-

“1) Application for intervention is allowed.

2) An I.A. being No. 42496/2017 has been filed by M/s Global Energy Private Limited for clarification of the order passed by this Court on 08.05.2017. It has been pointed out by Mr. Dhruv Mehta, learned Senior Counsel, appearing on behalf of the

applicant, that in this Court, the appellant before us i.e. Indian Wind Power Association in C.A. No. 6083/2017 has itself sought for an alternate prayer in the following terms:

“(c) In the alternative, direct the Respondents to ensure that any obligated entity purchasing RECs at the floor price determined vide order dated 30.03.2017 shall deposit the difference between the earlier floor price and the present Floor price with the respondent No. 1, Central Commission during the pendency of the Appeal No. 105 of 2017 before the Appellate Tribunal;”

He, therefore, states that if we were to modify our earlier order and allow prayer (c), the interest of justice would be better served.

3) On the other hand, Mr. K.V. Vishwanathan, learned Senior Counsel appearing on behalf of the appellant in Civil Appeal No. 6083/2017 argues before us that this was only an alternative prayer, and, in any case, the matter itself is going to be heard by the Appellate Tribunal on 17.07.2017 and that, therefore, we ought to stay our hands until the Appellate Tribunal renders a final decision in the matter.

4) Having heard the learned counsel for the parties, we feel that there should be no problem if RECs were to be traded at the figures given previously.

5) That being the case, we now substitute our order dated 08.05.2017 by granting prayer (c) instead of staying the Appellate Tribunal’s order.

6) With this modification/clarification, I.A. as well as appeal stands disposed of.”

9. The Petitioners have submitted that by the aforesaid Order dated 14.07.2017, Hon’ble Supreme Court substituted its previous Order dated 08.05.2017 by directing that any Obligated Entities purchasing RECs at the floor price determined vide the said REC Price Determination Order shall deposit the difference between the earlier floor price and the present floor price with the Commission during the pendency of the Appeal No. 105 of 2017 before the Appellate Tribunal. In view of the Order dated 14.07.2017 passed by the Hon’ble Supreme Court, the Commission issued directions dated 20.07.2017 to Respondent No. 2, *inter alia*, directing that:

i) trading in non-solar RECs shall resume and difference shall be deposited with CERC during the pendency of Appeal before APTEL;

ii) deposit of differential amount shall be subject to the outcome of Appeal filed by Non-Solar association in APTEL;

10. The Petitioners have submitted that by an Order dated 12.04.2018, the Tribunal dismissed the Appeal No. 105 of 2017 filed by IWEA *inter alia* observing that the said Price Determination

Order (dated 30.03.2017) issued by the Commission does not suffer any legal infirmity and ambiguity. As a consequence of dismissal of the Appeal, the Commission issued directions vide letter dated 23.04.2018 to Respondent No. 2 *inter alia* directing that:

i) Trading in RECs (Solar and Non-Solar) shall be carried out as per CERC order dated 30.03.2017 (REC Price Determination Order);

ii) Deposit of differential amount of Rs.500/- per REC with CERC shall be discontinued.

11. The Petitioners have submitted that being aggrieved by Judgment dated 12th April, 2018 of the Tribunal, IWEA filed Civil Appeal No. 4801 of 2018 before the Hon'ble Supreme Court. By Order dated 14.05.2018, the Hon'ble Supreme Court admitted the Civil Appeal No. 4801 of 2018 and directed that Interim Orders dated 08.05.2017 and 14.07.2017 would continue. It was further clarified by the Hon'ble Supreme Court that the Interim Orders will not apply to RECs issued on or after 01.04.2017. Pursuant to the order dated 14.05.2018 of the Hon'ble Supreme Court, the Commission issued following directions in respect of RECs generated through non-solar renewable energy sources (hereinafter referred to as Non-Solar RECs).

- *Trading in Non-Solar REC issued prior to 1.4.2017 shall be carried out at the floor price of Rs.1500/MWh. The obligated entities/ Power Exchanges shall deposit Rs.500/-i.e. the difference between the floor price prevailing earlier, i.e. Rs.1500/MWh and the floor price as determined vide order dated 30.3.2017 in Petition No. 2/SM/2017 (i.e. Rs.1000/MWh) with the Commission in the Account number notified vide letter dated 23rd August, 2017. The issue related to GST on Rs.500/- deposited with CERC shall continue to be governed in line with letter No. L-1/230/2017/CERC dated 26.2.2018 of CERC.*
- *Arrangement as mentioned in (b) above shall be subject to the outcome of the Civil Appeal No. 4801/2018 in the Supreme Court.*
- *Non-Solar RECs issued on or after 1.4.2017 shall continue to be traded in accordance with the floor price (i.e. Rs.1000/MWh) determined in the order dated 30.3.2017 in 2/SM/2017.*

12. The Petitioners have submitted that they have purchased following Non-Solar REC certificates:

A. Details of REC procured by Petitioner No. 1

Sr. No.	Excha Nge	Sr. No.	RE Certificate Number	Date of issue	No. of RECs	Difference deposited With CERC
1	IEX	IEX_0000006	C_IEX-NS001134	27-09-17	6	3,000
2	IEX	IEX_0002373	C_IEX-NS001933	28-02-18	1,712	8,56,000
3	IEX	IEX_0000011	C_IEX_NS001798	28-02-18	5	2,500
4	IEX	IEX_0069968	C_IEX_NS002418	28-03-18	69,968	3,49,84,000
5	IEX	IEX_0112001	C_IEX_NS002419	28-03-18	112,001	5,60,00,500
6	IEX	IEX_0001554	C_IEX_NS002443	28-03-18	1,554	7,77,000
7	IEX	IEX_0000277	C_IEX_NS002108	28-03-18	266	1,33,000
	Total				185,512	9,27,56,000

B. Details of REC procured by Petitioner No. 2

Sr. No.	Excha Nge	Sr. No.	RE Certificate Number	Date of issue	No. of RECs	Difference deposited With CERC
1	IEX	IEX_0000222	C_IEX_NS002320	28-03-18	222	1,11,000

13. The Petitioners have submitted that they have purchased the aforesaid Non-Solar RECs after 01.04.2017 and an amount of Rs.9,28,67,000/- is lying with the Commission towards the difference of Rs. 500/- per MWh (being difference between floor price prevailing earlier i.e. Rs.1,500/- per MWh and floor price as determined later vide Order dated 30.03.2017 i.e. Rs.1000/- per MWh regarding the Non-Solar RECs purchased after 01.04.2017).

14. The Petitioners have submitted that in view of the aforesaid facts, they are entitled for refund of the difference.

Submissions of the Respondent No. 2

15. The Respondent No. 2 has submitted the facts including the dates of Orders issued by Hon'ble Supreme Court, the Tribunal and subsequent directions issued to the Power Exchanges by the Commission as explained above and is not reproduced for the sake of brevity.

16. The Respondent No. 2 has submitted that in the event of refund of deposits to the buyers of

RECs issued after 01.04.2017, there is a requirement of segregation of RECs in accordance to their date of issuance and this segregation shall be equitable to all the buyers since they were at equal footing at the time of trading and the same equity shall have to be maintained. Further, differentiation between buyers in allocating old and new RECs is not possible and therefore it proposed that, if it is decided to allocate new and old RECs amongst various buyers, it should be done on pro-rata basis.

17. The Respondent No. 2 has submitted that in case the Hon'ble Supreme Court decides to allow higher floor prices to the sellers who have commissioned their plants prior to 01.04.2017, irrespective of date of issuance of RECs, the amount will have to be recovered from the buyers. Such collection would be difficult and tedious process with a possibility of default or delay on recovery of amount. It has requested the Commission to consider the aforesaid aspect while taking a decision.

Submissions in the Rejoinder filed by the Petitioners

18. The Petitioners have reiterated their stand taken in the Petition and hence the same is not reproduced herewith for the sake of brevity. Additionally, they have denied the submissions of the Respondent No.2 that all the buyers were at equal footing. They have denied the submission that differentiation between the buyers in allocating of old and new RECs is not possible or such allocation should be made on pro rata basis.
19. The Petitioners have submitted a list of Sellers from whom the RECs have been purchased based on the GST invoices issued by the Sellers. Further, the Petitioners have also submitted that Respondent No.2's submission about the difficulty in recovery of amount in the event of Hon'ble Supreme Court allowing higher floor prices is speculative in nature. The Order dated 14.05.2018 has clarified that this interim order will not apply to RECs issued on or after 01.04.2017 and the said Order does not create any distinction between the sellers based on the date of commissioning of their plants.

Analysis and Decision

20. The Petition was admitted on 27.02.2019 and was heard on 16.05.2019. We have heard the learned Senior Counsel for the Petitioners and the learned Counsel for the Respondents and have carefully perused the records. The brief facts of the case are as under:

21. The Petitioners have purchased Non Solar RECs during FY 2017-18 as under:

S. No.	Petitioner Details	RECs Purchased	Amount deposited with Commission (in Rs.)
1	Petitioner No.1	185,512	9,27,56,000
2	Petitioner No.2	222	1,11,000
	TOTAL	185,734	9,28,67,000

22. The Petitioner has submitted that it is eligible for refund of the amount deposited with the Commission as above based on the Hon'ble Supreme Court Order dated 14.05.2018 in which it has directed that the Orders dated 08.05.2017 and 14.07.2017 shall not apply to RECs issued on or after 01.04.2017.

23. Per Contra, the Respondent No.2 has submitted that in the event of refund of deposits to the buyers of RECs issued after 01.04.2017, the Commission shall require segregation of RECs in accordance to their date of issuance and this segregation shall be equitable to all the buyers since at the time of trading they were at equal footing at the time of trading and the same equity shall have to be maintained. They also submitted that, differentiation between buyers in allocating of old and new RECs is not possible and therefore it proposed that, if it is decided to allocate new and old RECs amongst various buyers, it should be done on pro-rata basis.

24. The Commission observes that vide Order dated 14.05.2018 in Civil Appeal No. 4801 of 2018 the Hon'ble Supreme Court of India held that:-

“Appeal admitted.

Interim orders dated 08.05.2017 and 14.07.2017 to continue.

However, we clarify that this interim order will not apply to RECs issued on or after 01.04.2017.”

25. The Commission observes that as per submission of the Petitioners they have purchased 1,85,734 No. of RECs and have deposited the differential amount of Rs. 500/- per REC with the Commission in compliance to the Order dated 14.07.2017 in Civil Appeal No. 6083 of 2017 and the Commission's directions vide letter dated 20.07.2017. Accordingly, a total sum of Rs. 9,28,67,000/- has been deposited with the Commission as a differential amount and now it is eligible for refund of the same based on the Hon'ble Supreme Court Order dated

14.05.2018 in which it has directed that the Orders dated 08.05.2017 and 14.07.2017 shall not apply to RECs issued on or after 01.04.2017. The Commission observes that M/s Tata Power Delhi Distribution Limited (TPDDL) have filed an I.A. in the Civil Appeal 4801/2018 in the Hon'ble Supreme Court seeking similar dispensation for the amount deposited with the Commission for the RECs purchased during the period September, 2017 to December, 2017. It is scheduled for hearing on 16.07.2019. The I.A. is sub-judice in the Hon'ble Supreme Court and no decision has been taken as yet. Further, the final decision is also awaited in Civil Appeal 4801/2018 in the matter of determination of Floor and Forbearance Price for Solar and Non-Solar RECs effective from 1st April 2017 onwards (determined vide Order dated 30.03.2017 in Petition No. 02/SM/2017).

26. The Commission observes that in the interest of justice, the proceeding on same subject matter should not be continued when the Civil Appeal with a wider scope is already pending before the Hon'ble Supreme Court. The reliance is also placed on the judgment by the Hon'ble National Commission in the case of M/s. Dees Pistons (P) Ltd. Vs. State Bank of India reported in (1991) 2 CPR 148 where it has been held clearly that "*when a matter is subjudice before a competent Civil Court, even the National Commission will not entertain a petition in respect of the identical subject matter.*" Therefore, we are of the opinion that the refund of amount, if any shall be in accordance to the final decision of the Hon'ble Supreme Court in Civil Appeal 4801/2018.
27. The Petitioners are given the liberty to approach the Commission as and when the decision by the Hon'ble Supreme Court is pronounced in the matter.
28. Accordingly, the Petition No. 385/MP/2018 is disposed of in terms of the above

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