



नईदिल्ली
NEW DELHI

याचिकासंख्या. /Petition No.:75/MP/2018

कोरम/Coram:

श्रीपी.के.पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
डॉ.एम.के.अय्यर, सदस्य/ Dr. M.K. Iyer, Member

आदेशदिनांक /Date of Order: 18th of February, 2019

IN THE MATTER OF:

Petition seeking directions against the Respondent, National Load Dispatch Centre in the matter of issuances of the Renewable Energy Certificates to the Petitioner for the specified period.

AND

IN THE MATTER OF:

Regulation 15 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 THE MATTER OF:

Olam Agro India Pvt. Ltd.
DLF Building No. 8, Tower A,
Ground Floor, Phase II, Cyber City,
Gurgaon HR 122002

...Petitioner

VERSUS

National Load Despatch Centre

Power System Operation Corporation Ltd.

B- 9, Qutab Institutional Area, Katwaria Sarai,

New Delhi – 110016

...Respondent

Parties Present: Ms. Dipali Sheth, Advocate, Olam

Shri Ashok Rajan, NLDC

आदेश/ ORDER

The Petitioner M/s Olam Agro India Pvt. Ltd is operating bio-fuel generating station of 20.40 MW in the State of Maharashtra and is seeking relaxation in filing for allocation of the Renewable Energy Certificates (hereinafter referred to as “RECs”) for the month of December 2016.

2. The Respondent, National Load Despatch Centre (hereinafter referred to as “NLDC”) has been nominated as the Central Agency. Under clause (2) Regulation 3 of the of the 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 the “REC Regulations, 2010”) the Respondent is entrusted to issue RECs.
3. The Petitioner has made the following prayer:
 - a) Direct Respondent to accept the application of the Petitioner for the month of December 2016;
 - b) Direct Respondent to issue RECs to the Petitioner for the month of December 2016 at the earliest;
 - c) Pass such other order(s) as the Commission may deem just in the facts of the present case.

Submissions of the Petitioner:

4. The Petitioner has submitted that its bio- fuel co-generation power plant was commissioned in 2010 and the same was registered under REC mechanism. It was issued 'Certificate of Accreditation' on 13.12.2011 by the 'State Agency' with validity upto 12.12.2016. It was registered with Central Agency and was issued 'Certificate of Registration' on 11.01.2012 with the validity upto 10.01.2017.
5. The Petitioner has submitted that Regulation 7 of the REC Regulations, 2010 notified by the Commission provides that the eligible entities shall apply to NLDC viz. Respondent for certificates within six (6) months after corresponding generation from eligible renewable energy projects.
6. The Petitioner has submitted that it has entered into an Energy Purchase Agreement (hereinafter referred to as "EPA") with the Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as "MSEDCL") on October 16, 2010 for sale of part of energy to the extent of 14.80 MW during season and 18.50 MW during off season. It has complied with all the eligibility criteria and registrations required to apply for the issuance of the RECs as provided for under Regulation 5 of the REC Regulations, 2010.
7. The Petitioner has submitted that the energy injection report for the month of December, 2016 was issued by MSEDCL on 12.01.2017 which was received by it only on 27.03.2017. On receipt of such energy injection reports, it attempted to file the application for issuance of RECs on 20.05.2017. However an error occurred on the online portal and the print out could not generated for the same. It has also made the required payment of fees and charges towards the issuance of the RECs and fees of Rs. 7,408/- (Rupees Seven Thousand Four Hundred and Eight Only) that was paid on 18.05.2017.
8. The Petitioner has submitted that thereafter energy injection reports were duly certified by the NLDC on 20.05.2017. This clearly evidences that the Petitioner took necessary steps for obtaining RECs within specified time under the REC Regulations, 2010. Due to the error on

online portal the application print out was not generated. Thereafter the official of the organization left the services and due to this inadvertent error on part of such ex-official the application for the issuance of the RECs could not be physically filed within the stipulated timeframe of six (6) months from the date of generation.

9. The Petitioner has submitted that when it came to the notice of the Petitioner that the application was not physically filed as the print out could not be generated due to temporary online error, the Petitioner complied with the formality of making the application for the RECs to the Respondent on August 23, 2017.
10. The Petitioner has submitted that the NLDC should grant relaxation in the time for filing for the RECs especially when the fees was paid by the Petitioner well in time and Energy injection report was generated on May 20, 2017 on online portal of NLDC i.e. within the time period of six (6) months.
11. The Petitioner has submitted that it is a diligent entity and has not failed on any of its responsibilities previously. The Respondent has failed to appreciate that the application for the RECs could not be completed due to error on the online portal. The Petitioner cannot be deprived of its rights to receive RECs as the requisite fee was paid within stipulated time by it.
12. The Petitioner has submitted that the REC mechanism was designed to encourage and incentivize the renewable energy generators and hence, any non-issuance on such technical grounds will dampen the investor sentiments for investing in RE projects under the REC mechanism. Regulation 15 of the REC Regulations, 2010 clearly stipulates that the Commission is empowered to relax the provisions of the Regulations or provide dispensation by general or specific order:

“Power to Relax:

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an

application made before it by an interested person.”

13. The Petitioner has placed its reliance on the Order dated October 8, 2013 in Petition 258/MP/2012 in the matter of *Jasons Foundry Private Limited Vs NLDC*, vide which the Commission had considered difficulties in peculiar circumstances and granted dispensation for certain period for submission of energy injection reports. As the Petitioner had genuine difficulty in making an application online in stipulated time, this is fit case for the Commission to relax the provision for making application within six (6) months of generation.
14. The Petitioner has also placed reliance on the Order dated December 20, 2016 in Petition No. 105/MP/2016 in the matter of *Oudh Sugar Mills Limited versus NLDC*, vide which the Commission directed the NLDC to grant RECs to the Petitioner as the procedural error which caused the delay was inadvertent and without any malafide intention and did not result in any grave difficulty to Respondent.

Submissions of the Respondent:

15. The Respondent did not prefer to file any reply to the Petition. In the hearing held on 08.01.2019 the learned counsel of the Respondent appeared before the Commission and submitted that the Petitioner itself has admitted that due to error on the part of its ex-official, the application for the issuance of the RECs could not be physically filed within the stipulated timeframe of six months from the date of generation. Therefore, the Petitioner is not entitled for RECs for non-compliance of the REC Regulations.

Analysis and Decision:

16. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records.
17. The brief facts of the case are that the Petitioner has entered into an Energy Purchase Agreement with the Maharashtra State Electricity Distribution Company Limited on October

16, 2010 for sale of part of energy to the extent of 14.80 MW during season and 18.50 MW during off season and the project is registered under REC mechanism. The energy injection report for the month of December, 2016 was issued by MSEDCL on 12.01.2017 which was received by the Petitioner only on 27.03.2017. On receipt of such energy injection reports, it attempted to file the application for issuance of RECs on 20.05.2017. However, an error occurred on the online portal and the print out could not generated for the same. The Petitioner has also made the required payment of fees and charges towards the issuance of the RECs and fees of Rs. 7,408/- (Rupees Seven Thousand Four Hundred and Eight Only) on 18.05.2017. Energy injection reports were duly certified by the NLDC on 20.05.2017. Thereafter, the official of the organization left the services and due to an inadvertent error on part of such ex-official, the application for the issuance of the RECs could not be physically filed within the stipulated timeframe of six (6) months from the date of generation. The Petitioner complied with the formality of making the application for the RECs to the Respondent on August 23, 2017 when it came to the notice that the application was not physically filed as the print out could not be generated due to temporary online error. The Petitioner has submitted that the NLDC should grant relaxation in the time for filing for the RECs especially when the fees was paid by the Petitioner well in time and online application was filed on May 20, 2017 on online portal of NLDC i.e. within the time period of six (6) months. Per contra, during hearing held on 08.01.2019, the learned counsel of the Respondent appeared before the Commission and submitted that the Petitioner itself has admitted that due to error on the part of its ex-official, the Petitioner is not entitled for RECs for non-compliance of the REC Regulations.

18. The Commission observes that Regulation 7 of the REC Regulation (as amended by notification dated 10.07.2013), stipulates that an eligible entity must apply to the answering Respondent for issuance of REC within six months from the month of which the RECs are sought. Regulation 7 of the REC Regulation as amended by second amendment to the REC Regulations dated 10.07.2013 is extracted below:

“7. Denomination and issuance of Certificates

(1) The eligible entities shall apply to the Central Agency for certificates within six months from corresponding generation from eligible renewable energy projects:

Provided that the application for issuance of certificates may be made on 10th, 20th and last day of the month.

- (2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificate, as may be stipulated in the detailed procedure, are complied with by the eligible entity:*
- (3) The Certificates shall be issued by the Central Agency within fifteen days from the date of application by the eligible entities.*
- (4) The Certificates shall be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the Grid or deemed to be injected in case of self consumption by eligible captive generating plant, and duly accounted in the Energy Accounting System as per the Indian Electricity Grid Code or the State Grid Code as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, or based on written communication of distribution licensee to the concerned State Load Dispatch Centre with regard to the energy input by renewable energy generators which are not covered under the existing scheduling and dispatch procedures.*
- (5) The process of certifying the energy injection shall be as stipulated in the detailed procedures to be issued by the Central agency.*
- (6) Each Certificate issued shall represent one Megawatt hour of electricity generated from renewable energy source and injected or deemed to be injected (in case of self consumption by eligible captive generating plant) into the grid”*

As per the above, an eligible entity is obligated to make an application within the stipulated period of six months to the Respondent and the answering Respondent is entrusted with the responsibility of scrutinising the said application for the purpose of ascertaining whether all conditions mentioned in the detailed procedures are being duly complied with by the eligible entity.

19. The Commission observes that REC Issuance Procedure has prescribed a step by step procedure that must be followed while issuing RECs to an eligible entity. Relevant provisions of Procedure for Issuance of Renewable Energy Certificates to the Eligible Entity by Central Agency, as approved by the Commission's order dated 05.11.2015, are extracted below:-

“3. STEP-WISE DESCRIPTION OF THE PROCEDURE

...

3.1 Step-1: An application for issuance of Renewable Energy Certificate shall be made by the Eligible Entity to the Central Agency. The eligible entity shall apply for Issuance of REC on the Web Based Application and shall also submit the same information in physical form with the Central Agency. The online application shall be acceptable by the Central Agency only if complete in all respect. The physical application for issuance of certificate shall include (i) Energy Injection Report duly certified by the concerned State Load Despatch Centre and shall be made in the specified format (FORMAT-3.1: “Application for Issuance of Renewable Energy Certificates to the Eligible Entities”). (ii) Print out of online application duly signed and stamped by Authorised Signatory (iii) Commissioning Certificate, only for issuance for the first month after registration. ...

...

3.5 Step-5: The Central Agency shall issue Renewable Energy Certificates to the Eligible Entity only after confirming, the claims made by the Eligible Entity, with the duly certified Energy Injection Report submitted by the SLDC. In case of any discrepancy, in the Energy Injection Report enclosed by the Eligible Entity along with Application and regular Energy Injection Report received by Central Agency from concerned State Load Despatch Centre, the information contained in regular Energy Injection Report furnished by concerned State Load Despatch Centre shall be considered as final and binding for the purpose of issuance of Renewable Energy Certificates. However, in case energy units reported under Energy Injection Report by concerned State Load Despatch Centre exceed that claimed by Eligible Entity for same period then, Central Agency shall seek necessary clarification from concerned State Load

Despatch Centre before issuance of the Renewable Energy Certificates. The denomination of each REC issued would be as per the CERC REC Regulations and 1 REC would be taken as equivalent to 1 MWh of electricity generated from renewable energy source and injected or deemed to be injected (in case of self consumption by eligible captive power producer) into the grid. It is clarified that any fractional component of energy as per the Energy Injection Report can be accumulated and would be considered for issuance of RECs as per the CERC REC Regulations.

3.7 Step-7:*In case the Eligible Entity is not fulfilling any of the conditions mentioned under Step-5 and fails to provide necessary information/clarification in the matter within stipulated timeframe, the Central Agency may reject the application and shall intimate to the Eligible Entity, in writing, the reasons for rejecting the application for issuance of RE certificates.”*

As per the above provisions, the eligible entity is required to apply for issuance of REC on the Web Based Application and is also required to submit the same information in physical form with the Central Agency within six months from the month of which RECs certificates are sought. The online application shall be acceptable by the Central Agency only if it is complete in all respects. The physical application for issuance of certificate shall include (i) Energy Injection Report duly certified by the concerned State Load Despatch Centre, and (ii) Print out of online application duly signed and stamped by Authorized signatory, etc.

20. In the instant petition, the Petitioner has submitted that energy injection report for the month of December, 2016 was issued by MSEDCL on 12.01.2017 which was received by the Petitioner only on 27.03.2017. On receipt of such energy injection reports, it attempted to file the application for issuance of RECs on 20.05.2017. However an error occurred on the online portal and the print out could not be generated for the same. The required payment of fees and charges towards the issuance of the RECs of Rs. 7,408/- (Rupees Seven Thousand Four Hundred and Eight Only) was paid on 18.05.2017. Energy injection reports were duly certified by the NLDC on 20.05.2017. Due to the error on online portal, the application print out was not generated. Thereafter the official of the organization left and due to an inadvertent error on part of such ex-official the application for the issuance of the RECs could not be physically filed within the stipulated timeframe of six (6) months from the date

of generation. The Respondent has submitted that the Petitioner has itself admitted its own fault.

21. The Commission observes that the Petitioner had failed to submit applications for issuance of RECs along with relevant documents, within the stipulated time limit of six months, and thus defaulted in complying with a mandatory requirement under the REC Regulations and procedures as amended/ revised/ modified by the Commission from time to time. Neither the REC Regulations nor the aforesaid procedure vests any discretionary power on the answering Respondent to relax, extend or condone the delay insofar as the compliance with any of the provisions contained therein are concerned. The Petitioner has categorically admitted that there was a delay in filing of hard copy of application seeking RECs. The Petition and the documents annexed therewith, in the present form, are not enough to ascertain the reason behind the purported delay. Moreover, for the sake of argument, even if it is admitted that there was an inadvertent fault on the part of ex-official of the Petitioner, it does not give liberty to the Petitioner to not comply with statutory requirements. As per Regulation 7, the Petitioner could have submitted the hard copy of its application for issuance of RECs anytime within a period of 6 months from the corresponding generation.
22. During the course of hearing, learned counsel for the Petitioner tendered un-conditional apology for late submission of the physical copy of the application along with Energy Injection Report. The Petitioner has accepted its mistake regarding non-submitting the physical copy of the application within time. Learned counsel further submitted that this error was procedural in nature. The Respondent has denied the issuance of RECs on account of procedural and technical issues for which Respondent has no power/authority to condone the same.
23. In our view, the Petitioner has already submitted the application on-line within time i.e. on 23.08.2017 (within three months) and has already paid the processing fee to the Respondent within time. The delay in submission of the physical copy of the application though not in conformity with the Detailed Procedure, does not act in abrogation of the right of any other parties including the Respondent (NLDC). As an exception case, we direct the Respondent (NLDC) to process the case of the Petitioner for grant of RECs for the month of December,

2016 within one month from the date of issue of this order. The Petitioner is required to be careful in future and comply with the provisions of the REC Regulations, 2010 diligently in letter and spirit. This should not become a precedent to be quoted in future in case of non-compliance of the provisions of the REC Regulations, 2010.

24. Accordingly, the petition no. 75/MP/2018 is disposed of.

Sd/-
डॉएमकेअय्यर
सदस्य

Sd/-
श्रीपीकेपुजारी
अध्यक्ष