



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 61/MP/2019

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: 27th of January, 2020

IN THE MATTER OF:

Petition seeking directions against the Respondent National Load Dispatch Center in the matter of issuance of the Renewable Energy Certificates to the Petitioners for the specified period.

AND IN THE MATTER:

1. Weizmann Limited
Empire House, 214,
Dr. D.N. Road, Ent. A .K. Nayak Marg Fort,
Mumbai-400001
2. Karma Energy Limited
Empire House, 214,
Dr. D.N. Road, Ent. A .K. Nayak Marg Fort,
Mumbai-400001

....Petitioners

Versus

Power System Operation Corporation Limited
C/o National Load Despatch Centre (NLDC)
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110016

...Respondent

Parties Present: Shri M.G. Ramachandaran, Senior Advocate, KEL
Ms. Dipali Sheth, Advocate, KEL
Shri Shubham Arya, Advocate, KEL
Shri Shourya Bari, Advocate, KEL
Shri Arjun Krishnan, Advocate, NLDC
Shri Ankur Singh, Advocate, NLDC
Shri Shailendra Verma, NLDC
Shri Ashok Rajan, NLDC

आदेश/ ORDER

The Petitioners, M/s Weizmann Limited and Karma Energy Limited own and operate two wind energy projects in the State of Maharashtra. They have filed the Petition under Section 79 of the Electricity Act, 2003, Regulation 24 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Regulations 14 & 15 of Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, seeking directions to the Respondent for issuance of RECs.

2. The Petitioner has made the following prayers:

- a) *Direct the Respondent to issue the RECs for the Relevant Period in the name of the Petitioner No. 1 at the earliest;*
- b) *Direct the Respondent to issue the RECs for the period of July 01, 2018 to July 14, 2018 in the name of Petitioner No. 2 at the earliest;*
- c) *Pass such other order(s) as the Commission may deem just in the facts of the present case.*

Background

3. The Petitioners, M/s Weizmann Limited and Karma Energy Limited belonged to the same Group Viz. Weizmann Group. Karma Energy Limited (Petitioner No. 2) was the subsidiary company of Weizmann Ltd. (Petitioner No. 1) (Weizmann Ltd). The Petitioner No.1 and Petitioner No.2 were having wind energy projects of 9 MW each at Vankusavade site, Patan Taluka, Satara District, which were commissioned in December 2000 / March 2001 and September / December 2001. The 9 MW wind power plant owned by Petitioner No. 1 was taken on operating lease by Karma Energy Ltd. Consequently, all income and expenses were recorded in the books of Karma Energy Ltd even though the ownership remained with Petitioner No. 1.
4. The Weizmann group underwent a restructuring through a Scheme of Arrangements sanctioned by the Hon'ble High Court of Bombay vide Order dated October 29, 2010. Under the Scheme two (2) subsidiaries of the Group viz. Karma Energy Limited and Weizmann Forex Limited merged with the holding company, Weizmann Limited i.e. the Petitioner No. 1, w.e.f. April 01, 2009.
5. Under the same Scheme, the power business undertaking and forex business undertaking of the merged Weizmann Limited then demerged into two (2) resultant companies i.e. Karma Wind Power Limited and Chanakya Holdings Limited. The demerger came into effect from April 01, 2010. Subsequent to the demerger, all assets and liabilities of the specific business undertakings of Weizmann Limited were transferred to the Resultant Companies.
6. Subsequent to the demerger, the names of the Resultant Companies changed to Karma Energy Limited and Weizmann Forex Limited, with the approval of the Registrar of Companies. Post demerger, all the assets and liabilities of the power business undertaking from the Petitioner No. 1 were transferred and recorded in the books of accounts of Petitioner No. 2.
7. On 14.01.2010, the Commission notified 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').
8. On 24.09.2011, the Petitioner No. 1 got registration of the two plants located at

Vankusawade, Taluka Patan, District Satara, Maharashtra (hereinafter referred to as 'RE projects') under the REC Regulations, 2010 in its own name.

9. The Petitioner got the revalidation of accreditation and registration of the RE projects in the year 2016,
10. On 01.07.2017 the Goods and Services Tax (hereinafter referred to as 'GST') Act was enacted pan India. As per GST Act it was mandated that an entity having permanent business has to get itself registered in each State in which it is conducting business.
11. On 25.07.2017, the Petitioner No. 1 initiated the name change formalities in favour of Petitioner No. 2 in the records of various State Electricity Boards including the Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as 'MSEDCL') under Regulation 10.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.
12. On 12.04.2018, MSEDCL approved change of name in favour of Petitioner No.2.
13. In June, 2018, the O&M Circle Office processed and completed the transfer in favour of Petitioner No. 2.
14. On 16.03.2018, the Commission approved REC Registration Procedures, 2018 which is to be followed by the eligible entity in case of change in name/change of legal status of the eligible entity.
15. On 11.05.2018, subsequent to receiving the approval from MSEDCL, the Petitioner No. 1 made its application to Maharashtra Energy Development Agency (hereinafter referred to as 'MEDA'/'State Agency') informing about the change in name of the Petitioner No. 1.
16. On 17.05.2018, the Petitioner No. 1 requested NLDC to record the change in name of the Petitioner No. 1 entity in accordance with approval of MSEDCL and the State Agency.
17. On 14.06.2018, the Respondent informed the Petitioner No. 1 to submit re-registration/fresh accreditation application since it was a change in the legal status of the Petitioner No. 1 and not merely a change in name.
18. On 30.06.2018 & 01.07.2018, the Petitioner No. 1 filed fresh application of re-

registration/fresh accreditation certificate.

19. On 14.07.2018, the Petitioner No. 1 submitted further documentation as were required by the State Agency.
20. On 09.07.2018, 27.07.2018 & 07.08.2018, based on the EIRs received from the State Agency, the Petitioner No.1 made applications for the issuance of RECs for the Relevant Period to the Respondent in the name of the Petitioner No. 1 since the REC project status was still active in the name of the Petitioner No. 1.
21. The Respondent directed that the RECs would be issued to Petitioner No. 2 from 14.07.2018 onwards being the date of application of registration.
22. The Petitioner No. 2 sent numerous emails to the Respondent requesting for change in the effective issuance date to 01.07.2018 since it made the application for registration on 01.07.2018.
23. The Petitioners filed the petitioner to direct the Respondent to issue the RECs for the Relevant Period in the name of the Petitioner No. 1 and RECs for the period of 01.07.2018 to 14.07.2018 in the name of Petitioner No. 2.

Submissions of the Petitioner

24. The Petitioners have submitted that the Weizmann group underwent a restructuring through a Scheme of Arrangements sanctioned by the Hon'ble High Court of Bombay vide Order dated October 29, 2010. Under the Scheme two (2) subsidiaries of the Group viz. Karma Energy Limited and Weizmann Forex Limited merged with the holding company i.e. the Petitioner No. 1, w.e.f. April 01, 2009. Under the same Scheme, the power business undertaking and forex business undertaking of the merged Weizmann Limited then demerged into two (2) resultant companies i.e. Karma Wind Power Limited and Chanakya Holdings Limited. The demerger came to effect from April 01, 2010. Subsequent to the demerger, the names of the Resultant Companies changed to Karma Energy Limited and Weizmann Forex Limited, with the approval of the Registrar of Companies.

25. The Petitioners have submitted that post the demerger, all the assets and liabilities of the power business undertaking from the Petitioner No. 1 were transferred and recorded in the books of accounts of Petitioner No. 2. Further, all the revenues and expenses in respect of the power business undertaking from April 01, 2010 onwards had been recorded under Petitioner No. 2 even if the income was received by the Petitioner No. 1. From the date of demerger i.e. April 01, 2010, the Petitioner No. 1 had been acting in the capacity of a trustee to Petitioner No. 2 with respect to the power business undertaking
26. The Petitioners have submitted that the records of the various State Electricity Boards where the company has wind farms remained unchanged, as both the Petitioner No. 1 and Petitioner No. 2 were considered part of the same group. Further, there was no impediment in recording of revenues and expenses, and additionally, revenues in the form of value of power generation and value of sale of RECs, where applicable, were not subject to any indirect taxes.
27. The Petitioners have submitted that with the introduction of Goods and Service Tax in 2017, the registration of companies and its branches with the respective jurisdictional state became mandatory. Thereafter, it initiated the name change formalities in the records of various State Electricity Boards including the Maharashtra State Electricity Distribution Company Limited by making an application to the Director Finance, MSEDCL. Approval for changing the name in the records was granted by MSEDCL and the O&M Circle Office was also directed to make a note of the change in name. The O&M Circle Office processed and completed the transfer only by the end of June 2018.
28. The Petitioners have submitted that 'Procedure for Issuance of Renewable Energy Certificate' to the Eligible Entity by Central Agency which was in existence at the time of the execution of the Scheme, had no provision regarding the procedure to be followed by the eligible entity in case of change in its name/status. Therefore, it can be concluded that as there existed no such requirement prior to 2015 and with the advent of the GST in 2017 the Petitioner No. 1 entity had notified the State Agency and the Respondent as soon as it was feasible for them to do so.
29. The Petitioners have submitted that subsequent to receiving approval from MSEDCL, the Petitioner No. 1 made its application to Maharashtra Energy Development Agency informing

about the change in name of the Petitioner No. 1 entity. Thereafter, Petitioner No. 1 submitted a letter dated 17.05.2018 to the Respondent requesting the Respondent to record the change in name of the Petitioner No. 1 entity in accordance with the HC Order as well as the approval of MSEDCL and the State Agency. The Respondent in its reply vide email dated 14.06.2018 asserted the requirement to make re-registration/fresh accreditation application since it was a change in the legal status of the Petitioner No. 1 and not merely a change in name.

30. The Petitioners have submitted that Petitioner No. 1 initiated the procedure for application of re-registration/fresh accreditation certificate on the suggestion of the Respondent. It made an application to the State Agency for fresh accreditation of the two (2) wind projects of the Petitioner No. 1 to be converted to Petitioner No. 2. The online application for the re-registration/fresh certificate of accreditation from the State Agency was recorded as below:

Registration No.	Fresh Accreditation Application made on
MH0NSKAREN003R171018	June 30, 2018
MH0NSKAREN004R171018	July 01, 2018

31. The Petitioners have submitted that State Agency while processing the above-mentioned applications informed the Petitioner No. 1, that certain documents were required to be submitted as part of the procedure. After obtaining the required clarifications from the State Agency, the required documents were also submitted on 14.01.2018 to the State Agency.
32. The Petitioners have submitted that in view of the letter dated 12.04.2018 the process of verification and recording the transfer by the O&M Circle Office was completed only towards the end of June 2018. In view of the same, the Energy Injection Reports (EIR), credit notes, joint meter readings and Open Access permissions for the Relevant Period were issued by the State Agency in the name of the Petitioner No. 1 since the change in name to Petitioner No. 2 had not formally taken place in the records of MSEDCL. Based on the EIRs received from the State Agency, the Petitioner No. 1 made applications dated 19.07.2018, 27.07.2018 and 07.08.2018 for the issuance of RECs for the Relevant Period to the Respondent in the name of the Petitioner No. 1 since the REC project status was still active in the name of the Petitioner No. 1.

33. The Petitioners have placed their reliance on Order dated September 20, 2016 in Petition No. 76/MP/2016 in the matter of *NLDC Versus Roshni Powertech Private Limited and Ors* and have submitted that RECs are issued based on the EIRs generated by the State Agency. Since the EIRs and other related documents are in the name of the Petitioner No. 1, the RECs for the relevant period must also be in the name of the Petitioner No. 1 and Petitioner No. 1 can retrospectively claim RECs.
34. The Petitioners have submitted that the Respondent has recorded the date of application of accreditation as 14.7. 2018 and had directed that the RECs would be issued to Petitioner No. 2 from 14.07.2018 onwards, however, the application to the Respondent for issuance of RECs was made in the name of Petitioner No. 2 w.e.f. 01.07.2018 and therefore the RECs should be issued to Petitioner No.2 accordingly.

Submissions of the Respondent (NLDC)

35. The Respondent has submitted that the present petition is devoid of any merit as the non-issuance of RECs for the aforesaid period is solely due to the Petitioner's own default and wilful suppression. The Petitioners have intentionally suppressed material and relevant information which they were duty bound to disclose.
36. The Respondent has submitted that the change in legal status of the Petitioners had admittedly occurred as far back as in the year 2010, however no steps whatsoever were taken by the Petitioners to notify/disclose the same to the Respondent. As a result, the registration was granted in the name of Petitioner No. 1 i.e. M/s Weizmann Limited, relying on Accreditation certificate issued by State Agency. Further, since the details were not updated in the records of the State Agencies, the Energy Injection Reports were also issued by the Maharashtra SLDC in the name of Petitioner No. 1. Thus, the Respondent have been issuing RECs to Petitioner No. 1 which is in fact not the "generating company", solely due to the suppression of material facts on the part of Petitioners herein.
37. The Respondent has submitted its reply on the limited question as to *Whether an entity who has obtained registration on wilful suppression of material information, be allowed to receive RECs?*

38. The Respondent has submitted that the plants in question were commissioned in the year 2000-2001. At the relevant time, the ownership of the said plants vested with Petitioner No. 1 and all the permissions including open access were granted in its name. Subsequently in the year 2010, the Petitioner No. 1 underwent restructuring whereby its power business undertaking was demerged to form a new entity i.e. Karma Wind Power Ltd. Subsequently, on 29.12.2010, Karma Wind Power Ltd. was renamed as Petitioner No. 2 herein. All rights including ownership of the subject plants stood transferred in favour of the Petitioner No. 2 herein. Having complete knowledge that it no more possessed any rights or interests in the subject plants, Petitioner No. 1 went ahead and got registration of the RE projects under the REC Regulations, 2010 in its own name, under Registration Nos. MH0NSWEIZM001R240911 and MH0NSWEIZM002R240911.
39. The Respondent has submitted that no reason has been provided by the Petitioners as to why the restructuring of their business and vesting of power undertaking in favour of Petitioner No. 2 was not notified to it at the time of making the application for registration. Furthermore, it has remained completely unexplained as to why Petitioner No. 2 in the first place was not the applicant and sought registration of projects owned by it, through Petitioner No. 1 and in its name. As a result of the above material suppression, the Respondent was induced to issue registration in favour of Petitioner No. 1, when admittedly it was not the “generating company” for the purposes of the REC Regulation, 2010. Thus, the registration granted in favour of Petitioner No. 1 ought to be held void ab initio.
40. The Respondent has submitted that the Petitioner No. 1’s misconduct is further evident from the fact that even at the time of seeking revalidation of accreditation and registration in the year 2016, they chose not to disclose the aforesaid restructuring to the Respondent. The Petitioners for the first time approached with a request of change of name of the eligible entity to the State Agency being MEDA on 11.05.2018 i.e. almost 7 years from the date of registration. The Respondent, vide its email communication dated 14.06.2018 intimated the Petitioner No.1 that change being sought is not simple change in name and hence, the Petitioner No.1 was advised to follow the procedure for obtaining fresh accreditation and registration. The Petitioner No.2 preferred for fresh accreditation of both the projects online on 14.07.2018 and the same was accredited by the State Agency/MEDA on 25.09.2018. On accreditation by the State Agency, the Central Agency registered the projects on 17.10.2018 under REC Procedure.

41. The Respondent has submitted that the Petitioner No.1 knowing that the process of granting fresh registration is already underway, applied for Energy Injection Report (EIR) for the month of April, May and June 2018 on 25.06.2018, 11.07.2018 and 24.07.2018 respectively. However, RECs remained unapproved in lieu of the letter dated 12.04.2018 sent by MSEDCL intimating such change.
42. The Respondent has submitted that the Petitioners were duty bound to disclose the factum of demerger of the entity at the time of registration, which has not been done wilfully by the Petitioners collectively. It is relevant to mention that the Regulation 5 of REC Regulations, 2010 categorically provide that only a “generating company” producing renewable energy would be eligible for registration under the said regulation.
43. The Respondent has submitted that the Petitioners have wilfully suppressed relevant information and material and hence, have misrepresented themselves before all the authorities at different levels since as far back as 2010. Further, the Petitioner No.1 also kept on obtaining the RECs from the Respondent in favour of non-eligible entity which, in fact, was not even generating any renewable energy. Admittedly, Petitioner No. 2 was the generating company while RECs were issued in Petitioner No. 1’s name.
44. The Respondent has submitted that the RECs issued in the name of Petitioner No. 1 ought to be recalled/ revoked or in the alternative it should be directed to remit amount commensurate to the monetary value of RECs so transacted/availed. In this regard it is relevant to set out Clause 9.2 of the ‘REC Registration Procedure’ which contemplate action to be taken in cases where accreditation or registration has been acquired through false or suppression of material information:

“9.2. In case Eligible entity has obtained accreditation and registration on the basis of false information or by suppressing material information and the accreditation of such entity is revoked at a later date, the Certificates already issued to such entity but not redeemed shall stand revoked from the date of issue of such Certificates and in respect of Certificates already redeemed, such entity shall deposit the amount realized from sale of such Certificates along with the interest with the Central Agency at the rate of two (2) percent in excess of the applicable State Bank of India Base rate per annum.”

45. The Respondent has submitted that every application for fresh registration/revalidation or extension of validity of existing registration is accompanied with a “Declaration” which

contains the affirmation on part of the applicant that all the information furnished in the application is/are true to the best of his knowledge and belief. This declaration is to be signed by the M.D./CEO/Authorized Signatory of the applicant. As such, it is clear that the Petitioners have knowingly and wilfully made false declarations while applying under 'REC Registration Procedures'.

46. The Respondent has submitted that although the object of the REC scheme is to incentivise and reward the generation of energy from renewable sources of energy, yet this should not be construed to mean that even if an entity acts in complete disregard of the regulations or the procedure brought in place for regulating such grant of incentive / benefit shall be entitled to receive them, solely because it produces energy from a renewable source. Hence, in the facts of the present case the Petitioner does not deserve any equitable relief from the Commission.
47. The Respondent has submitted that the Petitioners have admitted that even after the legal entities changed hands, the records of the various State Electricity Boards as well as the Central Agency remained unchanged. Such misconduct on part of the Petitioners in suppressing the material information amounts to fraud and should not be allowed by the Commission. A strict action should be taken against such applicants who wilfully misrepresent the authorities.
48. The Respondent has submitted that it has acted in strict compliance of the REC Regulations, 2010 and 'REC Registration Procedures' while issuing RECs to the Petitioner No. 2 for the period commencing from 17.10.2018 i.e. after it was granted registration. All RECs issued prior to the above said date are liable to be revoked and Petitioners be directed to be proceeded against in terms of procedure contemplated under clause 9.2 of the REC Registration Procedure. Hence, the petition may be dismissed with heavy costs.

Submissions of the Petitioners through Rejoinder

49. The Petitioners have reiterated its submissions made in the Petition as such the same are not reproduced for the sake of brevity. In addition, the Petitioners have submitted that it has inadvertently failed to register as generating company after demerger/restructuring exercise. The Petitioners have placed their reliance on the Order dated 09.11.2017 in Petition No. 141/MP/2017 in the matter of *Rai Bahadur Seth Shreeram Narasingdas Private Limited Versus NLDC and Anr.* vide which it was held that:

“94. In the instant case, for the interim period i.e. from 21.3.2016 to 8.11.2016, when the Petitioner entered into the Energy Purchase Agreement with TANGEDCO and until it got registered with NLDC, NLDC did not issue any REC either to RBSSN or RBSSNPL. Therefore, green attributes of the power generated were lost. Undoubtedly, the Petitioner should have intimated NLDC well in advance regarding the process of change in legal status from partnership concern to private limited company vide Business Takeover Agreement executed on 8.4.2015. However, the main objective of REC Regulations is to promote the generation of renewable energy and as there was generation of renewable energy for the period from 21.3.2016 to 8.11.2016, therefore, RECs need to be issued.”

50. The Petitioners have submitted that based on the aforesaid Order error which was not with any malafide intent be pardoned and delay in registration may be condoned.
51. The Petitioners have submitted that the non-updation by the Petitioners was unintentional and on the ground that the Petitioner No. 1 was acting as trustee for the Petitioner No. 2. Further as stated above, due to an inadvertent error, the Petitioner should not be deprived of the benefits attached to promoting non-conventional energy sources. The bonafide of the Petitioners is also substantiated by the fact that the Petitioners themselves approached for intimation of such change and not that it was compelled by the Respondent and therefore, there was no malafide intent or intentional withholding of information by the Petitioners.

Hearing held on 19.11.2019

- 52.1. During the hearing held on 19.11.2019 the Petitioners submitted that the present Petition has been filed seeking direction to the Respondent, National Load Despatch Centre to issue the Renewable Energy Certificates (REC) for the periods from April, 2018 to June, 2018 and from 01.07.2018 to 14.07.2018 to the Petitioner No. 1 and 2 respectively. The Petitioners argued at length and mainly submitted as under:

(a) Pursuant to the Scheme of Demerger from the appointed dated i.e.1.4.2010, the Petitioner 1, Weizmann Limited was required to act as trustee of Petitioner 2, Karma Energy Limited. The Petitioner No. 1 and 2 belong to same Group, namely Weizmann Group and the Promoters of both the Petitioners are also same. Even the Shareholders of both the Petitioner's Companies are substantially the same as the Petitioner 2 was formed pursuant to the Scheme of Demerger.

(b) Procedure for Issuance of RECs to the Eligible Entity by Central Agency dated 17.3.2010, which was in existence at the time of the execution of the Scheme, has no

provision regarding the procedure to be followed by the eligible entity in case of change in its name. Therefore, with the advent of the GST in 2017, the Petitioners have complied with the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and accordingly, the details were updated.

(c) The Petitioners have complied with all the eligibility criteria and necessary registration requirements for issuance of the RECs under Regulation 5 of the REC Regulations.

(d) The Petitioners had informed the Respondent about the restructuring of their business while applying for revalidation of accreditation and re-registration of the company in the year 2017. On 25.7.2010, the Petitioner 1 initiated the formalities for change of name of the company in the records of the various State Electricity Boards including MSEDCL by making an application in respect thereof.

(e) Wind power is infirm power which is generated only when wind is available and any forceful stoppage is loss forever to generator. Therefore, the cut-off for issuance of invoices, certificates can only be as per the cut off date on the document issued by relevant agencies like MSEDCL and MEDA in the present case. Therefore, non-issuance of RECs pursuant to name change in the records of MSEDCL is unjustified and arbitrary.

(f) The Petitioners had inadvertently failed to register as generating company after demerger/restructuring exercise. However, the Commission may condone the delay in change in registration in terms of the Order dated 9.11.2017 in Petition No.141/MP/2017.

52.2 The Respondent, NLDC submitted as under:

(a) As per Regulation 5 of REC Regulations, only a generating company producing renewable energy is eligible for registration for issuance of REC Certificates.

(b) As per the REC Regulations, the Petitioner 1 while not being the generating company, applied for accreditation and registration in its own name by willfully suppressing the fact of change in ownership of the RE Generating Plants from the Petitioner 1 to Petitioner 2 after the scheme of restructuring.

(c) The Petitioner1 has not disclosed the fact of change in ownership even at the time of re-accreditation in the year 2016 and re-registration in the year 2017.

Analysis and Decision

53. The Petitioners have filed the petition on 14.03.2019. The petition was admitted on 11.04.2019 came up on hearing on 22.08.2019 and was reserved for Orders on 19.11.2019. We have heard the learned counsels for the Petitioner and the Respondent and have carefully perused the records.
54. The brief facts of the case are that 2 (two) wind energy projects in the State of Maharashtra were accredited and registered under the name of M/s Weizmann Limited. The details of the projects are as under:

Project	Capacity	Location	COD	Accreditation	Registration
Phase 1	4.5 MW	Vankusawade, Patan taluka,	07-12-2000/ 09.05.2001	MHONSWEIZ M001A030911	MHONSWEIZ M001R240911
Phase 2	4.5 MW	Satara district, Maharashtra	29.03.2001	MHONSWEIZ M002A030911	MHONSWEIZ M002R240911

55. Pursuant to restructuring of the business vide Order dated 29.10.2010 of the Hon'ble High Court of Bombay, Karma Energy Limited and Weizmann Forex Limited were merged with the holding company Weizmann Limited. Under the same scheme, the power business undertaking of Weizmann Limited (Petitioner No. 1) was demerged to Karma Wind Power Limited and the forex business undertaking was demerged to Chanakya Holdings Limited. Post the demerger, the names of the resultant companies were changed subsequently from "*Karma Wind Power Limited to Karma Energy Limited*" and "*Chanakya Holdings Limited to Weizmann Forex Limited*" respectively.
56. The Petitioners have submitted that Procedure for Issuance of Renewable Energy Certificate (REC) to the Eligible Entity by Central Agency dated 17.03.2010, which was in existence at the time of the execution of the Scheme, had no provision regarding the procedure to be followed by the eligible entity in case of change in its name/status. The accreditation and registration for the projects was made in the name of M/s Weizmann Limited and RECs were issued in the name of M/s Weizmann Limited for the energy generated.
57. Subsequent to the notification of GST Act and the circular issued by IEX regarding the applicability of GST on REC, the Petitioners approached the relevant authorities for changing the name. However, as informed by the Respondent the Petitioner again

approached Respondent with the request of Change in legal Status. The RE projects thereafter have been registered by the NLDC in the name of Karma Energy Limited (Petitioner No.2) on 17.10.2018. The Petitioners have submitted that since the EIRs and other related documents are in the name of the Petitioner No. 1, the RECs for the relevant period must also be in the name of the Petitioner No. 1 and Petitioner No. 1 can retrospectively claim RECs. Further, the Respondent has wrongly recorded the date of application of accreditation as 14.07.2018 and had directed that the RECs would be issued to Petitioner No. 2 from 14.07.2018 onwards, however, the application to the Respondent for issuance of RECs was made in the name of Petitioner No. 2 w.e.f. 01.07.2018 and therefore the RECs should be issued to Petitioner No.2 accordingly. **Per Contra**, the Respondent has submitted that the change in legal status of the Petitioners had admittedly occurred as far back as in the year 2010, however the Petitioners did not notify/disclose the same to the Respondent until the requirement effected by the notification of Goods and Services Tax framework. They approached the State Agency in June 2018 with a request to change the name. The Respondent informed the Petitioner that it was a change in legal status instead of a change in name and suggested them to approach for fresh accreditation in the name of the new entity. Thereby, Petitioners approached the Respondent for fresh accreditation and subsequently registration in name of Karma Energy Limited (Petitioner No.2) was granted on 17.10.2018.

58. From the submissions of the parties, the following issues arise before this Commission: -

Issue 1: Whether the Respondent may be directed to issue the RECs for the Relevant Period in the name of the Petitioner No. 1?

Issue 2: Whether the Respondent may be directed to issue the RECs for the period of 01.07.2018 to 14.07.2018 in the name of Petitioner No. 2?

59. Since the issue No. 1 and issue No. 2 are interrelated, the same are taken for discussion together. The Petitioners have submitted that since the EIRs and other related documents are in the name of the Petitioner No. 1, the RECs for the relevant period must be issued in the name of Petitioner No. 1, whereas the Petitioner No. 2 is entitled for RECs from 01.07.2018 to 14.07.2018, since it applied for the registration under REC Mechanism on 01.07.2018. **Per Contra**, the Respondent has submitted that the Petitioner 1, while not being the generating

company, applied for accreditation and registration in its own name by wilfully suppressing the fact of change in ownership of the RE Generating Plants from the Petitioner 1 to Petitioner 2 after the scheme of restructuring. All RECs issued prior to the above said date are liable to be revoked and Petitioners be directed to be proceeded against in terms of procedure contemplated under clause 9.2 of the REC Registration Procedure. Hence, the petition may be dismissed with heavy costs.

60. The Commission observes that Regulation 5 of the REC Regulations, 2010 as amended from time from time, elucidates the eligibility criterion for participation in the REC mechanism by eligible entities. The relevant extracts are quoted as under:

“5. Eligibility and Registration for Certificates:

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfils the following conditions:

- a. it has obtained accreditation from the State Agency;*
- b. it does not have any power purchase agreement for the capacity related to such generation to sell electricity, with the obligated entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under Section 63 of the Act by the Appropriate Commission:*

Provided that in case of renewable energy sources based co-generation plants, the connected load capacity as assessed or sanctioned by the concerned distribution licensee, shall be considered as the capacity for captive consumption for the purpose of issue of certificates, irrespective of the capacity of such plants covered under the power purchase agreement.

- c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, [at the pooled cost of power purchase of such distribution licensee as determined by the appropriate commission]³ (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.*
-”

61. The Commission observes that aforesaid clause establishes that only a generating company engaged in the generation of electricity from renewable energy sources is eligible to apply for registration and issuance of RECs. Any subsidiary, group company or custodian cannot act on behalf of the generating company to get the registration made in their name. In the instant case, the Petitioner No. 1 has undergone an amalgamation followed by a demerger based on the Composite Scheme of Arrangement as approved by the Hon’ble High Court of Bombay vide Order dated 29.10.2010 as under:

- a) amalgamation of Karma Energy Limited and Weizmann Forex Limited with Petitioner No. 1.
- b) demerger of power undertaking of Petitioner No. 1 into Karma Wind Power Limited on a going concern basis.
- c) demerger of forex undertaking of Weizmann Limited into Chanakya Holdings Limited on a going concern basis.
- d) renaming of resultant companies from “*Karma Wind Power Limited*” to “*Karma Energy Limited*” and from “*Chanakya Holdings Limited*” to “*Weizmann Forex Limited*” respectively.

62. As Claimed by the Petitioner, post the demerger, all the assets and liabilities of the power business undertaking from the Petitioner No. 1 were transferred and recorded in the books of accounts of Petitioner No. 2 and all the revenues and expenses in respect of the power business undertaking from April 01, 2010 onwards had been recorded under Petitioner No. 2. However, the Petitioner No.1 approached the competent authority only subsequent to notification of GST Act in 2017. The Petitioner, in the letter submitted to Central Agency regarding the incorporation of change in name, referred the letter received from Maharashtra Energy Development Agency (MEDA) in 2013 regarding the change in name from Petitioner No.1 to Petitioner No.2. However, the Petitioner, while applying for revalidation of accreditation in FY 2016-17, continued to receive RECs in the name of Petitioner No.1.

63. Accordingly, the Commission is of the view that in accordance with the aforesaid scheme of arrangement, M/s Karma Energy Limited (Petitioner No. 2) is the actual generating company at the time of applying for accreditation and registration under the REC mechanism. The Commission agrees with the Respondent, that the project should have been registered in the name of Petitioner No. 2 which is the eligible entity in accordance with the REC Regulations. Hence, the Commission rejects the payer of the Petitioner to issue RECs for relevant period in the name of Petitioner No.1 for not being the RE generator.

64. With regard to issue No.2, the Commission observes that vide its Order dated 09.11.2010 (No. L-1/12/2010-CERC) in the matter of REC Regulations, 2010 and in the matter of Detailed procedure under REC mechanism submitted by the NLDC, it had approved the detailed REC Procedures. In the REC Procedures approved in November 2015, “*change in legal status*” has been duly captured in Model Accreditation Procedures, Registration

Procedures and Issuance Procedures. The process to be followed by the RE Generators in case of change in legal status has been provided as under:

“Whenever there is a change in the legal status of the eligible entity (e.g. change from partnership to company), the eligible entity shall immediately intimate the concerned State Agency and the Central Agency about the said change and apply afresh for Accreditation by the concerned State Agency and Registration by the Central Agency. In all other cases involving a change in the name of the eligible entity, only the name of the entity shall be updated with the records of the State Agency and the Central Agency based on the intimation given by the eligible entity”

65. The Commission observes that the Petitioners have to inform the State Agency and the Central Agency in case of change in legal status and apply afresh for accreditation and registration with the State Agency and Central Agency respectively in order to continue seeking benefits under the REC mechanism. The submission of the Petitioners that fresh accreditation and registration requirements in case of change in legal status were not provided in the REC Procedures during the time of accreditation of the project in 2016-17 is not correct.

66. The Commission note that the RE projects have been accredited and registered afresh in the name of Petitioner No. 2 vide certificate number MH0NSKAREN003R171018 and MH0NSKAREN004R171018 as on 17.10.2018. The relevant clause in the Procedure for Issuance of Renewable Energy Certificate to the Eligible Entity by Central Agency states as under:

“4.1 f. Whenever there is a change in legal status of registered entity (e.g. change from partnership to company, Pvt. Limited to Public Limited, new entity subsequent to demerger, change in ownership of the company, asset sale/transfer to other company, etc.), it shall inform the concerned State Agency and the Central Agency within one month from the date of said change, along with the following:

*i) request for revocation of the project from the REC Mechanism
ii) request for re-accreditation/fresh accreditation and re-registration/fresh accreditation of the project under REC, if desired
iii) request for transfer of RECs to the new entity
Supporting documents including revised PPAs (if any) and Certificate from Registrar of Companies must be submitted.*

Upon verification, the State Agency shall accredit the new legal entity, and update the Central Agency. Subsequently the Central Agency shall register the new legal entity, and transfer ownership of existing valid RECs.

New RECs to be issued to the new entity from the date of application for re-accreditation/fresh accreditation.”

67. From the above, the Commission observes that the eligible entity in the event of change in legal status is eligible to seek issuance of RECs from the date of application for reaccreditation/fresh accreditation and the RECs shall be issued to the new entity. Therefore, the RECs need to be issued to the Petitioner No. 2 from the date of application for fresh accreditation. In the instant case it is observed that the copy of the application enclosed at Annexure 'H' filed alongwith the petition clearly indicates that application was made on 14.07.2018. Accordingly, we direct the Respondents to process the applications for issuance of RECs for the energy generated during the relevant period from 14.07.2018 to Petitioner No. 2, in line with the Energy Injection Report.
68. As discussed at para 47 the Respondent NLDC has submitted that there is a wilful misconduct and suppression of material information by the Petitioner and the same is required to be dealt firmly. In the above circumstances, the Respondent is hereby directed to investigate into the matter and prepare report within six months of the date of this Order. The Respondent shall file a petition before the Commission with all facts of the case for Commission to take appropriate action.
69. Accordingly, the Petition No. 61/MP/2019 is disposed of in terms of the above.

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