



नई दिल्ली
NEW DELHI

याचिका संख्या. / Petition No.: 112/MP/2019 along with
I.A. No. 55 of 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: 30th of December, 2019

IN THE MATTER OF:

Petition under Section 66 & 79 of the Electricity Act, 2003 read with Regulations 14 & 15 of CERC (Terms and Conditions for recognition & issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 for issuance of directions to the Respondent to effect accreditation and registration of the Petitioner under the Renewable Energy Certificates mechanism and issue RECs along with consequent reliefs.

AND IN THE MATTER OF:

Tadas Wind Energy Private Ltd.
Plot No. C-22, G-Block,
The IL7FS Financial Centre,
Bandra, Kurla Complex,
Mumbai 400051

....PETITIONER

VERSUS

National Load Despatch Centre (NLDC)
1st Floor, B-9, Qutab Institutional Area,
Katwaria Sarai
New Delhi-110016

...RESPONDENT

Parties Present: Shri Anand Ganesan, Advocate, TWEPL
Shri Punit Dave, TWEPL
Shri Arjun Krishna, Advocate, NLDC
Shri Gajendra Singh, NLDC
Shri Ashok Rajan, NLDC

आदेश/ ORDER

The Petitioner, M/s Tadas Wind Energy Private Ltd., owns and operates two wind power generating projects viz. 100 MW wind power project located at State of Karnataka and 50.4 MW wind power project located at Andhra Pradesh. The Petitioner has filed the petition under Section 66 & 79 of the Electricity Act, 2003 read with Regulations 14 & 15 CERC (Terms and Conditions for recognition & issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as 'REC Regulations, 2010') for issuance of directions to the Respondent to effect accreditation and registration of the Petitioner under the Renewable Energy Certificates mechanism (hereinafter referred to as 'REC Mechanism') and issue RECs along with consequent reliefs.

The Petitioner has made the following prayers in the Petition alongwith I.A. 55 of 2019:

- a) *Admit the petition;*
- b) *Set aside the Email dated 29.03.2019 issued by the NLDC;*
- c) *Direct NLDC to take necessary action for issuing RECs to the Petitioner for the period from 01.12.2016 to 22.10.2018 for the Karnataka Project;*
- d) *Permit the Petitioner to amend its petition qua the A.P. Project by a suitable application if the needs arises;*
- e) *Pass such other further order(s) as the Commission may deem just and proper;*

Prayer in I.A. 55 of 2019

- a) *Permit the Petitioner to amend the present Petition to include its claims of RECs even for the A.P. Project;*
- b) *Direct NLDC to issue RECs to the Petitioner's A.P. Project from 01.04.2017 to 23.10.2018;*
- c) *Pass such further order(s) as deemed fit and proper.*

Brief facts of the case

2. On 17.07.2012, 50.4 MW wind power project located in Andhra Pradesh (hereinafter referred to as 'A.P. Project') was commissioned in the name of Tadas Wind Energy Limited.
3. On 29.09.2012, 100 MW wind power project located in Karnataka (hereinafter referred to as 'Karnataka Project') was commissioned in the name of Tadas Wind Energy Limited.
4. On 18.09.2012, Accreditation was granted for A.P. Project in favour of Tadas Wind Energy Limited
5. On 11.10.2012, Registration granted for A.P. Project in favour of Tadas Wind Energy Limited.
6. On 13.12.2012, Accreditation was granted for Karnataka Project in favour of Tadas Wind Energy Limited.
7. On 20.07.2013, Registration granted for Karnataka Project in favour of Tadas Wind Energy Limited.
8. On 27.09.2013, legal status of Tadas Wind Energy Limited was changed to Tadas Wind Energy Private Limited (the Petitioner).
9. During May 2014 – Dec 2015, the Petitioner approached the State Agency, for the respective States, seeking 'change in name' simpliciter.
10. In Dec 2016, Issuance of RECs was stopped in view of change in legal status of eligible entity for Karnataka Project.
11. In April 2017, Issuance of RECs was stopped in view of change in legal status of the eligible entity for A.P. Project.
12. On 05.12.2017, the Petitioner was informed that in terms of the '*Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency*' (hereinafter referred to as 'REC Registration Procedure') for registration under the REC mechanism, an application for fresh accreditation and registration is required for 'change in legal status'.
13. On 14.12.2017, the Petitioner filed a petition before the Commission being 16/MP/2018 for

directions to the Respondent to register and update the 'change of name' of the Petitioner in its records forthwith and to continue issuing the RECs due to it under REC mechanism.

14. On 09.10.2018, the Commission passed the Order in Petition No. 16/MP/2018 whereby the petition was dismissed.
15. On 24.10.2018, the Petitioner has submitted that it had also applied for fresh accreditation of A.P. Project. The application is pending with APTRANSCO.
16. On 30.01.2019, subsequently, a fresh accreditation was granted to the Petitioner for its Karnataka project by the State Agency.
17. On 22.02.2019, fresh Registration was granted by the Central Agency/ Respondent to the Petitioner for its Karnataka Project.
18. On 04.04.2019, Petitioner has filed the present petition seeking identical prayer as in its earlier petition i.e. 16/MP/2019.
19. On 30.04.2019, the Petitioner received the accreditation for A.P. project.
20. On 22.05.2019, the A.P. Project got reregistered with NLDC.

Submissions of the Petitioner in the Petition

21. The Petitioner has submitted that the 100 MW Karnataka Project was commissioned on 29.09.2012, accredited on 13.12.2012 and registered on 20.03.2013. Similarly, the 50.4 MW A.P. Project was commissioned on 17.07.2012, accredited on 18.09.2012 and registered on 11.10.2012 under the REC mechanism. The Petitioner had entered into PPAs with the distribution companies of Karnataka and Andhra Pradesh for sale of power from its 100 MW Karnataka Project and 50.4 MW A.P. Project respectively, at APPC tariff.
22. The Petitioner has submitted that at the time of grant of accreditation and registration under the REC mechanism for the first time, the Petitioner was existing under its former name viz. M/s Tadas Wind Energy Ltd. and accordingly, the Accreditation and Registration under the REC mechanism was also in the former name of the Petitioner. However, after the grant of accreditation and registration, the Petitioner company was converted to a Private Limited

Company and the name of the company was changed from M/s. Tadas Wind Energy Limited to M/s. Tadas Wind Energy Private Limited, on 27.09.2013. The Petitioner subsequently applied for 'change of name' to the concerned authorities in the State of Karnataka and Andhra Pradesh. Meanwhile the Respondents stopped the issuance of RECs for the Karnataka Project from December 2016 and for the A.P. Project from April 2017.

23. The Petitioner has submitted that while it was following up with the respective authorities both in Karnataka and Andhra Pradesh regarding the processing of its 'change of name' application, it received an email from NLDC on 05.12.2017 wherein the Petitioner was asked by NLDC to apply for fresh accreditation and registration since NLDC considered the 'change of name' from M/s. Tadas Wind Energy Limited to M/s. Tadas Wind Energy Private Limited as 'Change in legal status' of the company.
24. The Petitioner has submitted that upon receiving the email from NLDC, the Petitioner filed a petition no. 16/MP/2018 before the Commission for directions to the Respondent to register and update the 'change of name' of the Petitioner in its records forthwith and to continue issuing the RECs due to it for both projects under REC mechanism. On 09.10.2018, the Petition No. 16/MP/2018 was dismissed by the Commission.
25. The Petitioner has submitted that since the Order dated 09.10.2018 in Petition No. 16/MP/2018 was silent on the aspect of grant of RECs to the Petitioner for the interim period, the Petitioner addressed a letter dated 22.10.2018 to the Secretary of the Commission requesting for the issuance of corrigendum. However, the Bench Officer of the Commission vide letter dated 19.12.2018 advised the Petitioner to first re-register under the REC mechanism and thereafter file an appropriate petition. The Petitioner, in compliance to the Commission's Order dated 09.10.2018, applied for a fresh registration of its Projects.
26. The Petitioner has submitted that with respect to the Karnataka Project, the Petitioner applied for fresh accreditation on 23.10.2018 and the same was approved on 30.01.2019. The Petitioner then applied for fresh registration of the Karnataka Project with NLDC on 07.02.2019 and the said registration was granted to the Petitioner on 22.02.2019. In order to claim REC for the interim period from 1.12.2016 to 22.10.2018 (since date of application for re-accreditation/ fresh accreditation is 23.10.2018), the Petitioner wrote to NLDC on 14.03.2019 seeking for issuance of RECs for the 100 MW Project from 01.12.2016 to

22.10.2018 since the period of delay in re-registration was only due to procedural reasons and that the Petitioner has complied with all the substantive requirements. The Petitioner also informed NLDC of the decisions of the Commission in various orders where it has been held that procedural delay ought to be condoned if the substantive requirements have been fulfilled. However, NLDC vide email dated 29.03.2019 denied the RECs to the Petitioner from the period from 01.12.2016 to 22.10.2018 for the Karnataka Project.

27. The Petitioner has submitted that it had also applied for fresh accreditation of A.P. Project with APTRANSCO on 24.10.2018. APTRANSCO has caused significant amount of delay in granting re-accreditation/ fresh accreditation.
28. The Petitioner has submitted that subsequent to filing of the Petition, APTRANSCO has issued the accreditation on 30.4.2019. Accordingly, the Petitioner has filed the Interlocutory Application (I.A.) for seeking amendment to the Petition. In I.A. No. 55 of 2019, the Petitioner has submitted regarding A.P. Project that it had applied to APTRANSCO for issuance of fresh accreditation on 24.10.2018 and thereafter pursued with APTRANSCO for issuance on a continuous basis. After much delay, APTRANSCO issued the accreditation only on 30.04.2019. Immediately after receiving the accreditation, the Petitioner applied to the NLDC on 02.05.2019 for granting fresh registration to the A.P. Project. NLDC issued the fresh registration to the A.P. Project of the Petitioner on 22.05.2019. The Petitioner vide letter 14.03.2019 requested NLDC to grant the RECs from 01.04.2017 till the date of fresh accreditation. However, NLDC vide email dated 29.03.2019 refused to grant the RECs (similar to the position taken by NLDC in several cases).
29. The Petitioner has submitted in Petition No. 16/MP/2018 that the Commission has held the requirement of procedural formalities and processes to be interpreted in a manner to facilitate the achievement of the primary objective of promoting renewable energy generation and not to defeat the same. The Petitioner being a generator of renewable energy and selling power at the pooled cost of power purchase (APPC rate) from 100 MW project to Hubli Electricity Supply Company Limited (HESCOM) and from 50.4 MW project to Southern Power Distribution Co. of Andhra Pradesh Ltd, is an eligible entity to avail RECs.
30. The Petitioner has placed its reliance on the judgment dated 28.11.2014 of Appellate Tribunal of Electricity in *Simran Wind Power Private Limited & Ors v Central Electricity Regulatory*

Commission & Anr, Appeal No. 156 of 2013 and 248 of 2013; Orders of Commission dated 02.03.2017 the Petition No. 308/MP/2015 in case titled Nu Power Renewables Private Limited & Anr v. National Load Despatch Centre & Anr.; Order dated 09.11.2017 in Petition No. 141/MP/2017 in case titled Rai Bahadur Seth Shreeram Narasingdas Private Limited v. National Load Despatch Centre (NLDC) & Ors.; Order dated 11.02.2019 in Petition No. 22/MP/2019 in case titled M/s Mirra and Mirra Industries v. National Load Despatch Centre & Anr. and Order dated 11.02.2019 in Petition No. 129/MP/2018 case titled M/s Shalimar Visuals Private Limited v. National Load Despatch Centre & Anr.

Submission of the Respondent

a) Present Petition is barred by the principles of ‘Res judicata’

31. The Respondent has submitted that the present petition is nothing but an abuse of the process of law by the Petitioner and is barred by the principles of *res judicata*. The prayers sought by the Petitioner in the present Petition have been previously sought by it under Petition No. 16/MP/2018, which was duly dismissed by the Commission vide its detailed Order dated 09.10.2018. Hence, the principle of *res judicata* is squarely applicable in the present case which bars the Petitioner from raising identical pleas, which have already been dismissed in an earlier petition between the same parties. The Commission while deciding the earlier petition being 16/MP/2018, had framed the following issues:

Issue No.1: Whether conversion from a public limited to private limited company amounts to ‘change in legal status’ or a mere ‘change in name’ for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee?

Issue No.2: Whether the Respondent should be directed to continue issuing the RECs to the Petitioner as due to it under the REC mechanism?

Issue No.3: Whether the Respondent should be directed to renew the registration of the Petitioner’s 50.4 MW project at Andhra Pradesh under the REC mechanism?

Issue No.4: Whether the Respondent should be directed to register and update the change of name of the Petitioner in its records forthwith?

32. The Respondent has submitted that the Commission has held in Issue 1 “*that it is definitely the case of ‘change of legal status’*”. Thereafter, the Commission held in issues No. 2, 3 and 4 that, “*it is mandatory for the Petitioner to comply with the Regulations and Procedures laid out by the Commission in order to take benefit of the Renewable Energy Certificates under REC mechanism. Accordingly, the Issue No.2, 3 & 4 are answered in favour of Respondent and against the Petitioner as the Petitioner is to get itself a fresh registration and without*

registration, the Petitioner is not entitled to the REC/renewal of registration/updation in the change of name.”

33. The Respondent has submitted that principle of *res judicata* codified in Section 11 of the Civil Procedure Code, 1908 is one of the most fundamental and core principles of law through which finality to a particular adjudication is achieved. *Res judicata* bars a party from seeking same prayers arising out of same cause of action, which has been already decided inter se the parties, one way or another. Even a slight departure from this well embedded legal principle, would give rise to abuse of process at the hands of unsuccessful parties and uncertainty as to the enforcement of any judicial decision, which is wholly unsuited to the rule of law. The Respondent has placed its reliance on the judgment of Hon'ble Supreme Court in *Satyadhyan Ghosal v Smt. Deorajin Debi*, AIR 1960 SC 941. The said judgment has also been followed and relied upon by APTEL in the matter of *M/s. Indian Oil Corporation Ltd. v. Gujarat Electricity Regulatory Commission & Ors.*, in Appeal No. 124 of 2012, decision dated 04.01.2013I wherein it was held that the principles of *res judicata* squarely applies in the cases where the issue raised in the earlier proceedings between the same parties was decided.
34. The Respondent has submitted that in the absence of any challenge/ appeal to the order dated 09.10.2018 passed by the Commission, the said order has attained finality and similar pleas, as raised in this Petition is now barred by law.
35. The Respondent has further submitted that the cause of action in the present petition is same as was urged in the previous petition being 16/MP/2018 by the Petitioner. It is well settled that for the same cause of action, no separate petition can be initiated. The Respondent has placed its reliance on the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908.

b) Reliefs/Prayers sought cannot be granted on the merits of this case

36. The Respondent has submitted that the reliefs/ prayers claimed in the present petition do not merit any consideration in the facts of the case. On conversion from a public to private limited company i.e. change in legal status, the Petitioner's registration under the REC mechanism is terminated subject to other provisions of the REC Regulations, 2010 and REC Registration Procedures. Clause 4.1 of the REC Registration procedures mandated for prompt intimation, followed by an application for fresh accreditation and registration from the

Petitioner i.e. the entity formed on change in legal status. However, it is an undisputed fact that the Petitioner entirely failed in complying with aforesaid stipulation.

37. The Respondent has submitted that the Petitioner has failed to apply for a fresh accreditation and registration in time and there is a gross delay of more than 3 years, in complying with the REC Regulations, 2010 and REC Registration Procedures. Thus, even the RECs which were issued to the predecessor of the Petitioner from 27.09.2013 till 30.11.2016 i.e. the default period are liable to be revoked.

c) Imposition of cost is warranted, if the Commission is allowing the present petition

38. The Respondent has submitted that a large number of entities registered under the REC mechanism, are regularly defaulting in complying with the regulatory provisions and the procedures. Even after numerous decisions by the Commission, clarifying the ambit and application of REC Regulations, 2010 and REC Registration Procedures framed under it, the entities have been sluggish in compliance with various aspects of the regulatory framework. It has been seen that intimation as to change in name or even legal status, etc. is provided by the registered entity only at the time of seeking revalidation, which in many cases is years after such change has occurred. Although, the Respondent has always taken a lenient view and not initiated any revocation proceedings till date against such a defaulting entity, this has only resulted in encouraging more entities to not comply with provisions in a timely manner. Hence, the Commission may impose cost on these eligible entities including the Petitioner herein, so as to deter other eligible entities in defaulting with the REC Regulations, 2010 and the REC Detailed Procedures.

Written Submission of the Petitioner

39. The Petitioner has submitted that in compliance of this Commission's Order dated 09.10.2018, it applied for a fresh registration of its Projects. With respect to the Karnataka Project, the Petitioner applied for fresh accreditation on 23.10.2018 and the same was issued on 30.01.2019. For the A.P. project, the Petitioner applied on 24.10.2018 and received the same only on 30.04.2019. The reregistration was done with NLDC on 22.02.2019 & 22.05.2019 respectively. In the above circumstances, the reasons for which the RECs were rejected by the Commission in the Order dated 09.10.2018 have been remedied by the Petitioner and there can be no question of not issuing the RECs to the Petitioner at this stage

citing res judicata.

32. The Petitioner has submitted that Section 11 of the Code of Civil Procedure, 1908 and the Doctrine of Res Judicata as summarised by the Hon'ble Supreme Court in *Amarendra Komalam & Anr vs Usha Sinha & Anr (2005) 11 SCC 251* for the applicability of the doctrine of res judicata, it is important that the 'matter in issue' in the previous proceedings and subsequent proceeding have to be 'identical'. The Petitioner has placed its reliance on the judgement of Hon'ble Supreme Court passed in *Syed Mohd. SalieLabbai v. Mohd. Hanifa, (1976) 4 SCC 780* and *Workmen of Cochin Port Trust v. Board of Trustees of The Cochin 1978 3 SCC 119*.
33. The Petitioner has submitted that in the light of above, the present petition cannot be said to be barred by the principles of *res judicata*. Further, the decisions of the Hon'ble Supreme Court in *Satyadhyan Ghosal* or of the Appellate Tribunal in *IOCL v GERC* are not applicable in the present case.
34. The Petitioner has submitted that the issue in Petition No. 16/MP/2018 was whether the Petitioner is entitled to the RECs without following the REC Registration Procedures of reaccreditation and reregistration for change in legal status. This question was answered against the Petitioner. This does not mean that after complying with the Orders of the Commission, the Petitioner will still not be entitled to the RECs. The reliance on Order II Rule 2 of the CPC is also misplaced. This is not a suit or a lis between the parties. The Petitioner having complied with the provisions of the Regulations cannot be now denied the RECs especially when it had been advised to comply with the Regulations and then make an appropriate application.

Analysis and Decision

35. The Petitioner has filed the petition on 11.04.2019. The Petitioner has also filed I.A. No. 55 of 2019 on 10.06.2019. The petition was admitted on 12.06.2019 and the Respondent was advised to file the reply on the Petition and I.A. The petition alongwith I.A. was reserved for Orders on 24.09.2019. We have heard the learned counsels for the Petitioner and the Respondent and have carefully perused the records. The brief facts of the case are as under:

36. The Petitioner owns and operates two wind power generating projects viz. 100 MW wind power project located in Karnataka and 50.4 MW wind power project located in Andhra Pradesh. The Petitioner got the accreditation and registration for both of its projects under the REC mechanism in its former name viz. M/s Tadas Wind Energy Ltd. Subsequently, the Petitioner converted from public limited company to private limited company and the name of the company was changed from M/s. Tadas Wind Energy Limited to M/s. Tadas Wind Energy Private Limited on 27.09.2013. The Petitioner applied for issuance of RECs under 'changed name' to the concerned authorities in the State of Karnataka and Andhra Pradesh but the same was declined and the RECs were not issued by the Respondents for want of documentation as there was 'change of legal status'. The Petitioner then filed Petition No. 16/MP/2018 with the Commission for redressal of its grievance. The Commission vide its Order dated 09.10.2018 held that it was a case of 'change of legal status'. Subsequent to the directions of the Commission, the Petitioner applied for fresh accreditation and registration of its projects under its new name i.e. M/s. Tadas Wind Energy Private Limited. The Respondents approved the same as under:

Project Location/Capacity	Date of Application for Accreditation	Date of Accreditation	Date of Registration
Andhra Pradesh (50.4 MW)	24.10.2018	30.04.2019	22.05.2019
Karnataka (100 MW)	23.10.2018	30.01.2019	22.02.2019

37. The Petitioner has submitted that the Order dated 09.10.2018 of the Commission was silent on the issue of RECs for the interim period. The Petitioner has requested that RECs for the period from 01.12.2016 to 22.10.2018 for the Karnataka Project and from the period from 01.04.2017 to 23.10.2018 for A.P. Project may be issued. **Per Contra**, the Respondent has submitted that the issuance of RECs for the interim period cannot be granted since the Commission has already declined the prayers of the Petitioner in its Order dated 09.10.2018 in Petition No. 16/MP/2018. Hence, the principle of *res judicata* is squarely applicable in the present case which bars the Petitioner from raising identical pleas, which already have been dismissed in an earlier petition between the same parties.

38. From the submissions of the parties, the following issue arise before this Commission: -

Issue 1: Whether the claim of the Petitioner for issuance of RECs for the period from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project is barred by the principle of res judicata?

Issue 2: Whether the Petitioner can be granted the RECs for the interim period i.e. from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project?

39. No other issues were pressed or claimed.

40. We discuss the issues as under:

Issue 1: Whether the claim of the Petitioner for issuance of RECs for the period from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project is barred by the principle of res judicata?

41. The Petitioner has submitted that RECs for the period from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project may be issued. Per contra, the Respondent has submitted that the issuance of RECs for the interim period cannot be granted since the identical issue stands disposed of vide Order dated 09.10.2018 in Petition No. 16/MP/2018. Hence, the principle of *res judicata* is squarely applicable.

42. The Commission observes that Section 11 of the Code of Civil Procedure, 1908 stipulates as under:

"11. Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

43. The Commission observes that Order II Rule 2 of the Code of Civil Procedure, 1908 stipulates as under:

“ORDER II- FRAME OF SUIT

...

2. Suit to include the whole claim—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

44. From the above, the Commission observes that Section 11 of the Code of Civil Procedure, 1908 mandates that any suit or issue in which matter directly and substantially in issue has been heard and finally decided on merits by the competent Court cannot be tried again by any Court provided the matter directly and substantially in issue is same between the same parties to the suit whereas Order II Rule 2 of the Code of Civil Procedure, 1908 mandates that the suit filed should include the whole claim. The Commission observes that the object underlying Section 11 of the Code of Civil Procedure, 1908 is that if the proceeding originally instituted is proper, the decision given therein is binding on all the persons on whom the right or interest may devolve. The doctrine of res-judicata is conceived in the larger public interest that all the litigation must, sooner than later come to an end. Similarly, the object of Order 2 Rule 2 of the Code of Civil Procedure is to ensure that no defendant

issued or vexed twice with regard to the same cause of action and second to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of CPC is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. The Commission observes that Section 11 the Code of Civil Procedure read with Order II Rule 2 of the Code of Civil Procedure bars the subsequent suit on the same cause of action but does not however bar a subsequent suit based on a different and distinct cause of action.

45. The Commission observes that the prayer of the Petitioner in Petition No. 16/MP/2018 was as under:

“

- a) *Direct the Respondent to continue issuing the RECs to the Petitioner as due to it under the REC mechanism;*
- b) *Direct the Respondent to renew the registration of the Petitioner’s 50.4 MW project at Andhra Pradesh under the REC mechanism;*
- c) *Direct the Respondent to register and update the change of name of the Petitioner in its records forthwith*
- d) *Direct the Respondent to pay the costs of the instant petition;*
- e) *pass any other or further order/s as the Commission may deem fit and proper in facts and circumstances of the present case.”*

46. The Commission observes that the main issue involved in Petition No. 16/MP/2018 was:

“Issue No. 1: Whether conversion from a public limited to private limited company amounts to ‘change in legal status’ or a mere ‘change in name’ for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee?”

Issue No. 2: Whether the Respondent should be directed to continue issuing the RECs to the Petitioner as due to it under the REC mechanism?

Issue No. 3: Whether the Respondent should be directed to renew the registration of the Petitioner’s 50.4 MW project at Andhra Pradesh under the REC mechanism? And

Issue No. 4: Whether the Respondent should be directed to register and update the change of name of the Petitioner in its records forthwith?”

47. The Commission has held vide Order dated 09.10.2018 in Petition No. 16/MP/2018 as under:

“Issue No. 1: The Petitioner has changed its character from private limited company to public limited company and subsequently from public limited company to private limited company and by virtue of this change the basic characteristics of the company have changed on both the occasions. The fiction available under section 2 (71) of the Companies Act, 2013, cannot be invoked to ignore the basic legal status of the petitioner. The Commission therefore holds that it is definitely the case of “change of legal status”.”

“Issue No. 2, 3 & 4: The Commission is of the view that sub-clause (2) of Regulation 7 of the REC Regulations as well as paragraph 4.1 (h) of the REC Registration Procedure uses the word “shall” which denotes that a provision is imperative in nature and must be strictly complied with. It is apparent from clause 4.h that in cases where there is a change in legal status, the entity is required to apply afresh for accreditation and registration. It has been already held by the Commission in Issue No. 1 that it is a case of „change of legal status“ from public limited company to private limited company. Therefore, it is mandatory for the Petitioner to comply with the Regulations and Procedures laid out by the Commission in order to take benefit of the Renewable Energy Certificates under REC mechanism. Accordingly, the Issues no. 2, 3 & 4 are answered in favour of Respondent and against the Petitioner as the Petitioner is to get itself a fresh registration and without registration, the Petitioner is not entitled to the REC/ renewal of registration/ updation in the change of name.”

48. From the above, the Commission observes that the issue between the contracting parties in Petition No. 16/MP/2018 was that conversion of public limited company to private limited company by the Petitioner tantamounts to change in name and not change of legal status and hence the Respondent should continue to issue RECs to the Petitioner in the name viz. M/s Tadas Wind Energy Private limited. However, now the Petitioner has filed the petition alongwith I.A. 55 of 2019 for issuance of RECs for the period from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project after complying with REC Regulations, 2010 and REC Registration Procedures and after getting fresh accreditation and registration of both projects under REC Mechanism. As discussed above, Section 11 the Code of Civil Procedure read with Order II Rule 2 of the Code of Civil Procedure, 1908 bars the subsequent suit on the same cause of action but does not however bar a subsequent suit based on a different and distinct cause of action. The Commission observes that since the Petitioner has now approached the Commission after complying with REC Regulations, 2010 and REC Registration Procedures and after getting fresh accreditation and registration of both projects under REC Mechanism, the petition now filed has different and distinct cause of action. In the light of above, the present petition cannot be said to be barred by the principles of res judicata. The Issue is decided accordingly.

Issue 2: Whether the Petitioner can be granted the RECs for the interim period i.e. from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project?

49. The Petitioner has submitted that RECs for the period from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project may be issued. **Per contra**, the Respondent has submitted that with change in legal status, the Petitioner’s registration under the REC mechanism is terminated subject to other provisions

of the REC Regulations, 2010 and REC Registration Procedures. Clause 4.1 of the REC Registration procedure mandated for prompt intimation, followed by an application for fresh accreditation and registration from the Petitioner i.e. the entity formed on change in legal status. The Petitioner has failed to apply for a fresh accreditation and registration in time and there is a gross delay of more than 3 years, in complying with the REC Regulations, 2010 and REC Registration Procedures. Thus, even the RECs which were issued to the predecessor of the Petitioner from 27.09.2013 till 30.11.2016 i.e. the default period are liable to be revoked.

50. The Commission observes that Petitioner company had undergone a change in legal status as has been held in the Order dated 09.10.2018 by the Commission in Petition No. 16/MP/2018. The Petitioner has got re-accredited for the Karnataka Project and the A.P. Project in the name of M/s Tadas Wind Energy Private Limited under REC mechanism on 23.10.2018 and 24.10.2018. The Petitioner has got both of its projects registered in the name of M/s Tadas Wind Energy Private Limited under REC mechanism with NLDC on 22.02.2019 and 22.05.2019. The Petitioner has been receiving the RECs for the electricity generated since the date of re-accreditation of the project in the REC mechanism.

51. The Commission observes that in its Order dated 02.03.2017 in Petition No. 308/MP/2015 case titled *“Nu Power Renewables Pvt. Ltd. V/s National Load Dispatch Centre and Another”*, it was held that:

“20. Now the question remains is whether the petitioners fulfil the conditions of REC Regulations for grant of RECs. As per the principle laid down for grant of RECs, if the petitioner is availing any benefits admissible to Captive Generating Plants (CGPs), then it would be required to forego the same for the purpose of availing RECs. The benefits admissible to a CGP are enumerated in fourth proviso to Regulation 5(1)(c) of the REC Regulations which is extracted as under:

“Provided further that a Captive Generating Plant (CGP) based on renewable energy sources shall be eligible for the entire energy generated from such plant for self-consumption for participating in the REC scheme subject to the condition that such CGP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and for banking facility benefit.”

21. It is noted that EUPL has generated and sold power under the group captive model for the period from 24.4.2015 to 7.10.2015 and also did not avail any concessional or promotional benefits. Since, EUPL has been granted RECs from 8.10.2015, all criteria as specified in the provisions of REC Regulations have been complied with by it. 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 24.4.2015 to 7.10.2015, RECs need to be issued. However, both the petitioners should have intimated NLDC well in advance regarding the Slump Sale Agreement and the need to transfer RECs from NPRPL to EUPL.

22. As regards the question as to whether the RECs would be issued to NPRPL or to EUPL, it is evident from the facts that through the Slump Sale Agreement dated 1.4.2015, all assets, liabilities, etc. of NPRPL stand transferred to EUPL. However, since the Energy Wheeling Agreement was signed between EUPL and TANGEDCO on 24.4.2015 for sale of power under group captive model, the benefits of renewable energy generation, i.e., issuance of RECs should also stand transferred to EUPL from this date i.e. from 24.4.2015. Therefore, we direct NLDC to issue RECs to EUPL for the period from 24.4.2015 to 7.10.2015 within one month from the date of issue of the order.”

52. The Commission observes that in its Order dated 09.11.2017 in Petition No. 141/MP/2017 case titled *Rai Bahadur Seth Shreeram Narasingdas Private Limited*, it was held that:

“95. The RECs would be issued to RBSSNPL (the Petitioner), since the Business Takeover Agreement stands closed on 25.2.2016 and RBSSNPL has taken over the entire business of RBSSN (partnership concern) with all assets, liabilities, etc. However, since the Energy Purchase Agreement was signed between RBSSNPL and TANGEDCO on 21.3.2016, the benefits of renewable energy generation, i.e., RECs shall be issued to RBSSNPL w.e.f.21.3.2016. Therefore, we direct NLDC to issue RECs to RBSSNPL for the period from 21.3.2016 to 8.11.2016 within one month from the date of issue of the order...”

53. The Commission also observes that Regulation 5 of the REC Regulations, 2010 stipulates that:

“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 fulfills 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 (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

Explanation-for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.”

54. From the above, the Commission observes that as per the principle laid down for grant of RECs, if the Petitioner is engaged in generation of electricity from renewable energy sources, then it shall be eligible RECs if it sells the electricity generated 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, or to any other distribution licensee or to an open access consumer at a mutually agreed tariff, or through power exchange at the market determined price.

55. The Commission observes that relevant paragraph of the REC Registration Procedures stipulates is as under: -

“4. Functions, Roles And Responsibilities Of Entities Involved

4.1. Generating Company or Distribution Licensee, as the case may be

....

h. 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. In such cases, eligible entity shall provide the relevant documents like Board Resolution regarding name change, certificate of name change from Registrar of Companies, approval of concerned authorities, State Agency, etc. in hard copy.”

56. In the instant case, for the interim period from 01.12.2016 to 22.10.2018 for the Karnataka Project and for the period from 01.04.2017 to 23.10.2018 for A.P. Project, NLDC stopped issuance of RECs for want of fresh registration under REC Mechanism on account of ‘change in legal status’ of eligible entities i.e. Karnataka Project and A.P. Project. Therefore, green attributes of the power generated were lost. Undoubtedly, as also held in Petition No. 16/MP/2018, in cases where there is a change in legal status, the entity is required to apply afresh for accreditation and registration as per aforesaid clause 4.1 (h) of REC Registration Procedures. Therefore, it is mandatory for the Petitioner to comply with the REC Regulations, 2010 and REC Registration Procedures laid out by the Commission. The Petitioner has now complied with the REC Regulations, 2010 and REC Registration Procedures and has obtained fresh accreditation for the eligible entities and also got the Karnataka Project and A.P. Project registered under REC Mechanism and had subsequently applied to NLDC for RECs for the interim period. The Commission is of the view that the main objective of REC Regulations, 2010 is to promote the generation of renewable energy and as there was generation of renewable energy for the period from 01.12.2016 to 22.10.2018 by the Karnataka Project and from the period from 01.04.2017 to 23.10.2018 by A.P. Project, therefore, RECs need to be issued. It is pertinent to mention here that it is also in consonance with the decision of the Commission given in Petition No. 308/MP/2015 in case of *M/s Nu Power Renewables Private Limited* and order dated 09.11.2017 in Petition

No. 141/MP/2017 case titled *Rai Bahadur Seth Shreeram Narasingdas Private Limited*. Therefore, we direct NLDC to issue RECs to the Petitioner within one month from the date of issue of the Order subject to the review of the application in line with the energy injection report.

57. Accordingly, the Petition No. 112/MP/2019 alongwith I.A. 55 of 2019 is disposed of.

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