



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 242/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: 28th of January, 2020

IN THE MATTER OF:

Petition filed under Section 79 of the Electricity Act, 2003 read with Regulations 3(4) and 14 of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

AND IN THE MATTER OF:

Techno Electric & Engineering Company Limited
Corporate Office: 1B, Park Plaza, South Block
71, Park Street
Kolkata-700016

...PETITIONER

VERSUS

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

...RESPONDENT

Parties Present: Shri Amit Kapur, Advocate, TEECL
Shri Saunak Rajguru, Advocate, TEECL
Shri Dinesh Parakh, TEECL
Shri Ashok Krishnan, Advocate, NLDC
Shri Ankur Singh, Advocate, NLDC
Shri Shailendra Verma, Advocate, POSOCO
Shri Ashok Rajan, NLDC, POSOCO
Shri Shourya Bari, Advocate, POSOCO

आदेश/ ORDER

The Petitioner, M/s Techno Electric & Engineering Company Limited (hereinafter referred to as “Techno Electric”), formerly M/s Simran Wind Project Ltd. (hereinafter referred to as “Simran”), is a generating company and a fully owned subsidiary company of the erstwhile M/s Techno Electric & Engineering Co. Ltd (hereinafter referred to as “Techno”). The Petitioner executed multiple Power Purchase Agreements (hereinafter referred to as “PPAs”) with Tamil Nadu Generation and Distribution Company Limited (hereinafter referred to as “TANGEDCO”) between 31.03.2011 to 24.02.2012 for sale of power generated from its wind mills having installed capacity of 111.9 MW. The Petitioner has filed the petition under Section 79 of the Electricity Act, 2003 read with Regulations 3(4) and 14 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 “REC Regulations, 2010”) and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

2. The Petitioner has made the following prayers:

- (a) *Admit the Petition;*
- (b) *Direct the National Load Despatch Centre to withdraw its letter dated 08.07.2019 and allow the Petitioner’s application to change the name of the registered entity from “M/s. Simran Wind Project Limited” to “M/s. Techno Electric & Engineering Company Limited” and update the same accordingly in their record books;*
- (c) *Direct the National Load Despatch Centre to transfer the existing RECs in favour of Techno Electric and continue issuing the Renewable Energy Certificates to the Petitioner as due to it under the REC Mechanism;*

(d) Pass such further or other Orders as this Commission may deem just and proper in the facts and circumstances of the case.

Background

3. In 2011 and 2012, Simran Wind Project Private Limited applied to the Tamil Nadu State Load Despatch Centre (hereinafter referred to as “TNSLDC”) for its REC accreditation. Pursuant thereto, TNSLDC gave REC accreditation to Simran Wind Project Private Limited for its 111.9 MW wind generation. Accordingly, the NLDC granted ‘Certificate for Registration’ to Simran Wind Project Private Limited as ‘Eligible Entity’ confirming its entitlement to receive Renewable Energy Certificates (hereinafter referred to as ‘RECs’). On 14.06.2013, Simran Wind Project Private Limited got converted from a Private Limited Company to a Public Limited Company and the Registrar of Companies, West Bengal issued a fresh ‘Certificate of Incorporation’. Accordingly, as per the said Certificate, the CIN was changed and numbered as U40108WB2005PLC166026.
4. On 30.08.2014, Simran Wind Project Limited informed TNSLDC and the NLDC about its conversion from a Private Limited Company to a Public Limited Company and accordingly NLDC approved the ‘Change in Name’ request of Simran Wind Project Limited pursuant to its conversion from a Private Limited Company to a Public Limited Company.
5. On 23.06.2017, the Registrar of Companies, Kanpur of Regional Director Order issued the ‘Certificate of Registration’ for Change of State since Simran Wind Project Limited changed its registered office from West Bengal to Uttar Pradesh. As per the said Certificate, the CIN of Simran Wind Project Limited was U40108UP2005PLC094368.
6. On 20.07.2018, the NCLT, Allahabad Branch issued an Order in Company Petition No. 168/ALD of 2018 in Company Application (CAA) No. 18/ALD/2018 and approved the Scheme of Amalgamation of M/s Techno Electric & Engineering Company Ltd. (transferor company) and M/s Simran Wind Project Limited (transferee company). Accordingly, Techno Electric & Engineering Company Ltd. got merged with M/s Simran Wind Project Limited. In the said merger, inter alia, the name “M/s. Simran Wind Project Limited” was changed to “M/s. Techno Electric & Engineering Company Limited.”

7. On 05.09.2018, the Registrar of Companies, Kanpur certified the change in name of “M/s. Simran Wind Project Limited” to “M/s. Techno Electric & Engineering Company Limited”.
8. On 23.04.2019, M/s. Techno Electric & Engineering Company Limited sent an application to the TNSLDC to change the name of “M/s Simran Wind Project Limited” to “M/s Techno Electric & Engineering Company Limited” in TNSLDC’s records.
9. On 13.05.2019, a similar application was sent to the NLDC. In the said applications, it was informed by M/s Techno Electric & Engineering Company Limited that supplementary PPAs was yet to be signed and executed with TANGEDCO.
10. On 08.07.2019, NLDC informed Techno Electric that its request for name change from “M/s. Simran Wind Project Limited” to “Techno Electric & Engineering Company Limited” could not be processed as there was a change in the legal status of the company. NLDC requested Techno Electric to follow the procedure regarding legal status change laid down in para 4.1 (j) of this Commission’s approved Procedure for Issuance of Renewable Energy Certificate to the Eligible Entity by Central Agency dated 16.03.2018.

Submissions of the Petitioner

11. The Petitioner has submitted that the Scheme of Amalgamation of M/s Techno Electric & Engineering Company Ltd. (transferor company) and M/s Simran Wind Project Limited (transferee company) was approved. Accordingly, M/s Techno Electric & Engineering Company Ltd. merged with M/s Simran Wind Project Limited. In the said merger, the name of “M/s. Simran Wind Project Limited” was also changed to “M/s. Techno Electric & Engineering Company Limited.”
12. The Petitioner has submitted that subsequent to the Scheme of Amalgamation, the ‘Eligible Entity’ status of M/s Simran Wind Project Limited (now M/s. Techno Electric & Engineering Company Limited i.e. the Petitioner) with respect to its entitlement to receive RECs does not cease to operate. Accordingly, the ‘change in name’ of M/s Simran Wind Project Limited to M/s. Techno Electric & Engineering Company Limited ought to be construed as deemed ‘Eligible Entity’ status conferred on Techno Electric to use the existing RECs. The Registrar

of Companies, Kanpur certified the change in name of “M/s. Simran Wind Project Limited” to “M/s. Techno Electric & Engineering Company Limited.”

13. The Petitioner has submitted that it sent an application to the TNSLDC and NLDC to change the name of “M/s Simran Wind Project Limited” to “M/s Techno Electric & Engineering Company Limited” in their records, However, NLDC informed that its request for name change could not be processed as there was a change in the legal status of the company.
14. The Petitioner claimed that when a transferor company merges into a transferee company, it is only the transferor company which achieves corporate death whereas the transferee company retains its legal status. In this regard, the Petitioner has placed its reliance on the judgment of the Hon’ble Supreme Court in *Saraswati Industrial Syndicate Ltd. vs. Commissioner of Income Tax AIR 1991 SC 70* wherein it was held as under:

“5. ...Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity.

6. ...The High Court's view that on amalgamation there is no complete destruction of corporate personality of the transferor company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.”

15. The Petitioner has submitted that according to above, it claimed that the only effect of the merger on the transferee company (i.e. Simran (now Techno Electric)) is entrustment of additional rights and obligations from the transferor company over and above its pre-existing rights and obligations under the applicable laws.
16. The Petitioner has submitted that even its Corporate Identification Number (CIN), Tax Deduction Account Number (TAN), and Permanent Account Number (PAN) have not changed. Therefore, the contention that it is a case of change of legal status has no relevance. This Commission in its decision in *Tadas Wind Energy Private Limited v. National Load*

Despatch Centre C/o Power System Operation Corporation Limited [Petition No. 16/MP/2018], held that TAN & PAN would remain unaltered irrespective of the nature of the change in legal status (major or minor), and a minor change in CIN is immaterial. Therefore, non-alteration of CIN, TAN, & PAN of any entity is not a material or determinative factor for assessing whether at all its legal status has been changed or altered.

17. The Petitioner has submitted the Respondent was obligated to give effect to its request for change in name of Petitioner on the ground that the NCLT Allahabad has noted in the Scheme that '*all concerned regulatory authorities to act on a copy of this Order annexed with the Scheme...*'.

Submissions of the Respondent

18. The Respondent has submitted that Regulation 7(2) of the REC Regulation stipulates that RECs shall be issued only after the Central Agency i.e. the Respondent herein duly satisfies itself that all conditions for issuance of certificate are complied with by the eligible entity. It is pertinent to mention here that the *Procedure for Registration of a Renewable Energy Generation or Distribution Licensee* (hereinafter referred to as 'REC Registration Procedure') prescribes for a mandatory intimation on the part of the eligible entity to the State Agency as well as the Central Agency immediately along with a request for re-accreditation/fresh accreditation and re-registration/fresh accreditation, in case the legal status thereof has changed.
19. The Respondent has submitted that the Petitioner company's change of name is not an ordinary one and is only one aspect of a much larger change in its legal status and corporate structure through an amalgamation. The change of name occurred in furtherance of a Scheme of Amalgamation (hereinafter referred to as 'Scheme') sanctioned by the NCLT Allahabad under Section 232 of the Companies Act, 2013. The very fact that resort had to be made to the procedure under Section 232 of the Companies Act indicates that the change was a significant change in the identity of the company. In accordance with the Scheme, the entire shareholding of Petitioner company stood cancelled. Effectively, the entire shareholding of the Petitioner stood altered. Therefore, it amounted to 'change in ownership of the company', and it is an illustration of a change in legal status, according to the Regulation 4 (1) (h) of the

‘REC Registration Procedure’.

20. The Respondent has submitted that it is a matter of record that the transferee company (Simran Wind Project Ltd.) was a wholly owned subsidiary company of the transferor company (Techno Electric & Engineering Company Ltd.) prior to the Scheme. In the Petitioner’s own admission, the transferor company had been dissolved. In the eyes of law, the transferor company is non-existent. Naturally, the Petitioner has to have a totally different owner now. Therefore, undoubtedly there has been a change in ownership of Petitioner, and in accordance with Regulation 4 (1) (h) of the ‘REC Registration Procedure’, and it amounts to a change in legal status.
21. The Respondent has submitted that as an illustration of change in legal status in the Regulation, includes change from Private Limited company to Public Limited company, new entity subsequent to demerger, change in ownership of the company, asset sale/transfer to other company, etc. A material change in a company’s corporate structure would amount to a change in its legal status. Additionally, the illustrations are suffixed by an ‘etc.’ which implies that the list of illustrations is only inclusive in nature, and not exhaustive. Therefore, it is not necessary for a ‘Scheme of Amalgamation’ to be specifically provided in the list of illustrations. Therefore, it is submitted that the new amalgamated company, whose name was changed to Techno Electric & Engineering Company Limited underwent a change in its legal status.
22. The Respondent has submitted that the Petitioner’s reliance on the decision of the Hon’ble Supreme Court of India in *Saraswati Industrial Syndicate Ltd. v. Commissioner of Income tax [1990 (Supp) SCC 675]*, to conclude that it is only the transferor company that suffers corporate death, and there is no change in legal status of the transferee company, is misplaced. The Petitioner has only selectively relied on the Saraswati decision.
23. The Respondent has submitted that non-alteration of CIN, TAN, & PAN of any entity is not a material or determinative factor for assessing whether at all its legal status has been changed or altered.
24. The Respondent has submitted that the referred part of the NCLT Allahabad’s order cited by the Petitioner, in no way casts an obligation on the Respondent to change the Petitioner’s

name when there has been a change in legal status of the company as this would be in contravention of the REC Regulations, 2010. Further, the NCLT itself, in paragraph XIII of the operative part of its order dated 20.07.2018, have clarified that approval of the Scheme of Amalgamation ought not be construed as express or implied exemption from complying with requirements under any other law.

25. The Respondent has submitted that the present circumstance is not that of a mere change in name, and that of a change in legal status of Petitioner. By requiring the Petitioner to comply with procedure prescribed for change in legal status of a company, that Respondent has not only contributed to regulatory inconsistency but has only sought to uphold its obligation of ensuring regulatory compliance. There can be no legitimate expectation contrary to a statutory provision or rule. It is trite that regulatory statutes and subordinate legislations are to be interpreted in a purposive manner, not only in the context of broad purpose they seek to achieve but also in the context and magnitude of evolving sectoral issues which require regulation and limited resources possessed by the Regulator.
26. The Respondent has submitted that it does not have any discretionary power to relax regulatory stipulations. It found a change in legal status of the company and accordingly asked the Petitioner to follow the process prescribed for circumstances when there is a change in legal status. Therefore, the contention of the Petitioner with respect to policy intent is of no relevance. In view of above, the petition may be dismissed.

Submissions of the Petitioner through Rejoinder

27. The Petitioner in its Rejoinder reiterated its submissions made in petition and as such the same is not being reproduced for the sake of brevity. Additionally, the Petitioner has submitted that:
- a. As per the Scheme of Amalgamation, the authorized share capital of erstwhile Techno merged into and combined with the authorized share capital of Simran and all properties, rights, powers and liabilities of erstwhile Techno were transferred to Simran.
 - b. Erstwhile Techno was holding 100% equity share capital of Simran (now Techno Electric) before merger. Pertinently, post-merger, all the shareholders and directors of erstwhile Techno became the shareholders and board members of Simran (now

Techno Electric). Accordingly, the shareholders of erstwhile Techno remain the owners of Simran (now Techno Electric).

- c. The shareholders were allotted shares in Simran (now Techno Electric) in the same ratio in which they were holding shares in erstwhile Techno without any consideration. Further, promoter's shareholding and management control is the same pre and post-merger. There has been no change in ownership as shareholders holding shares indirectly prior to the merger became direct shareholders in Simran (now Techno Electric) post-merger.
- d. TANGEDCO by its letters dated 04.09.2019 and 07.11.2019 has acknowledged the name change as per the Scheme of Amalgamation and accepted the amended PPAs.

Hearing on 19.11.2019

28. During the hearing held on 19.11.2019 the Petitioner, Techno Electric and Engineering Company Limited ('Techno Electric') submitted that the present petition has been filed inter alia seeking direction to the Respondent, NLDC to consider Techno Electric as the 'Eligible Entity' for issuance of Renewable Energy Certificates in terms of the REC Regulations, 2010. The Petitioner argued at length and mainly submitted that: (a) Erstwhile Techno Electric was merged into Simran Wind Project Limited ('Simran') pursuant to the Scheme of Amalgamation approved by the National Company Law Tribunal vide its Order dated 20.7.2018 in Petition No. 168/ALD of 2018.(b) In terms of Clauses 4 to 8 and 13 of the Scheme of Amalgamation, all rights, obligations and legal status of Erstwhile Techno Electric was continued in the hands of Simran with its name changed to Techno Electric from the effective date i.e. 6.9.2018. (c) Subsequent to the Scheme of Amalgamation, the 'Eligible Entity' status of Simran with respect to its entitlement to receive RECs does not cease to operate. Therefore, the change in name of Simran to Techno Electric ought to be construed as deemed 'Eligible Entity' status being conferred on Techno Electric to use the pre-existing RECs. (d) The shareholders were allotted shares in Simran (now Techno Electric) in the same ratio in which they were holding shares in erstwhile Techno Electric without any consideration. Further, promoter's shareholdings and the management control is the same pre and post-merger. There has been no change in ownership as shareholders holding shares indirectly prior to the merger became direct shareholders in Simran. (e) Tamil Nadu

Generation and Distribution Company Ltd. vide its letters dated 4.9.2019 and 7.11.2019 has acknowledged the name change as per the Scheme of Amalgamation and accepted the amended Power Purchase Agreements.

29. The Respondent, NLDC submitted that: (a) Neither the REC Regulations nor the 'Procedure for registration of Renewable Energy Generator or Distribution Licensee' vests any discretionary power on the Respondent to relax or to exempt compliance with any of the provisions contained therein. (b) Clause 4.1(h) of the REC Registration Procedure prescribes for mandatory intimation on the part of the eligible entity to the State Agency as well as to the Central Agency immediately along with request for re-accreditation/fresh accreditation and re-registration/fresh accreditation, in case the legal status thereof has changed. (c) Since there has been change in legal status and equity pattern of the Petitioner, contention of the Petitioner that it is merely a case of change in name from 'Simran Wind Project Limited' to 'Techno Electric and Engineering Company Limited' is misconceived. (d) The Petitioner changed its structure from the Private Limited Company to Public Limited Company on 14.6.2013. However, the Petitioner informed the Respondent of this change, which amounts to change in legal status, on 30.8.2014, i.e. 14 months later. (e) Based on the request of the counsel for the Petitioner, the Commission directed the Petitioner and the Respondent to file their respective written submissions, with copy to each other, on or before, 29.11.2019.

Written Submission of Petitioner

30. The Petitioner in its written submission has again contented that the stand of the Respondent is erroneous and contrary to the settled position of law that the legal status of the company pursuant to a merger remains intact. The Petitioner has also emphasised that that the entire paid-up share capital of the company has remained the same pre and post-merger.
31. The Petitioner has submitted that NCLT Order permitted the reverse merger of a parent company with its wholly owned subsidiary without change in eventual shareholding and management.
32. The Petitioner has submitted that NLDC has placed fallacious reliance on the judgment of *General Radio and Appliances Co. Ltd. vs. M.A. Khader* (1986) 2 SCC 655. There, Hon'ble

Supreme Court was adjudicating in a case where the companies involved in the merger were not related to each other prior to the merger. Here, the merger is of a parent company with its wholly owned subsidiary. Saraswati Industrial case is applicable which was recently followed by the Hon'ble Supreme Court in *India Bulls Housing Finance Limited vs. Deccan Chronicle Holdings Limited & Ors.* (2018) 14 SCC 783.

33. The Petitioner has submitted that the Commission has the power to issue directions to NLDC by invoking its inherent powers conferred to it under Regulation 111 of the Conduct of Business Regulations.
34. The Petitioner has submitted that the courts of law have consistently recognized that the Commission can exercise its inherent powers to grant an appropriate relief under extraordinary circumstances. The Petitioner has placed its reliance on the following decisions: *UP Power Corporation Ltd. vs. NTPC Ltd.* (2009) 6 SCC 235; *Madhya Pradesh Power Generation Company Ltd vs. Madhya Pradesh Electricity Regulatory Commission*, Appeal No. 170 of 2010.
35. The Petitioner has submitted that as per prevalent practice, most of the RECs are ideally traded off in the third and fourth quarter of the financial year to meet the Renewable Purchase Obligation ("RPO") of the obligated entity. Techno Electric has not been issued RECs related to the generation since January 2019 and the same has had undeserved adverse financial consequences on Techno Electric. In this backdrop, the Commission may pass an early Order entitling Techno Electric (previously Simran) to the REC benefits.

Written submission of Respondent:

36. The Respondent has submitted that in the present factual matrix, Simran Wind Project Ltd. ('*Simran*') was a wholly owned subsidiary of erstwhile Techno Electric & Engineering Company Ltd. ('*Techno*') In accordance with a Scheme of Amalgamation approved by the National Company Law Tribunal, Allahabad dated 20.07.2018, erstwhile Techno Electric & Engineering Company Ltd. merged with Simran. The Petitioner has admitted in its own petition that Techno as an entity stands dissolved. Therefore, the Petitioner has admitted that Simran's owner prior to the Scheme is non-est in law. At this very juncture, the requirement for change in legal status under REC Registration Procedure is satisfied. The reason being,

Simran was fully owned by an entity, and that entity no longer exists in law. By law, Simran's ownership had to change, and it did.

37. The Respondent has submitted that the Petitioner's contention, that there has been no change in legal status of Simran, and that it is only a case of mere change in name (in which case, re-registration is not required), falls foul of the well-established legal principle that, a company is a separate legal entity which is entirely distinct from its shareholders [*Paragraph 6, Bacha F. Guzdar, Bombay v. Commissioner of Income Tax, Bombay, AIR 1955 SC 74*]. Therefore, in the eyes of law, there exists a strong and well-established legal separation between the erstwhile shareholders of Techno, Techno itself, and erstwhile Simran which was fully owned by Techno. Through a legal process, the erstwhile shareholders of Techno became shareholders of Simran into which Techno was merged. In the eyes of law, this amounts to a complete change in ownership of Simran and a change in its legal status [*Saraswati Industrial Syndicate Ltd. v. Commissioner of Income Tax, 1990 Supp (SCC) 675*]. The fact that those shareholders who had control on erstwhile Simran through a holding company (i.e Techno), has direct control of Simran now by virtue of being direct shareholders, cannot justify a proposition that there has been no change in Simran's ownership. That would amount to ignoring the fact that there existed a separate legal entity, i.e. Techno, which fully owned Simran. An overlooking of this crucial aspect of distinct legal existence, violates well established legal tenets.
38. The Respondent has submitted that the shareholding pattern provided by the Petitioner in its rejoinder demonstrates that the shareholding of Simran before and after the Scheme is entirely different. The Petitioner's reliance on this shareholding pattern to argue, that those who owned Techno, now own Simran, and hence there has been no change in ownership of Simran is misconceived. It ignores the principle of separate legal existence of corporations, and in this case specifically ignores the fact that, prior to the Scheme, Simran was owned by Techno, and that Techno had a separate existence from that of its shareholders. Techno shareholders substituting themselves as owner of Simran post a Scheme, is a change of ownership in the eyes of law, and that amounts to a change in legal status as explicitly laid down in Clause 4.1 (h) of the REC Procedures.

Analysis and Decision

39. The Petition was filed on 22.08.2019, was admitted on 31.10.2019 and Order was reserved on 19.11.2019. We have heard the learned counsels for the Petitioner and the Respondent and have carefully perused the records.
40. M/s Simran Wind Project Limited was a wholly owned subsidiary of erstwhile M/s Techno Electric & Engineering Company Ltd. It owned and operated the wind projects of 111.9 MW in Tamil Nadu. Subsequent to the NCLT Allahabad Order dated 20.07.2018, M/s Techno Electric & Engineering Company Ltd merged with M/s Simran Wind Project Limited, resulting in the entity as M/s Simran Wind Project Limited. Post-merger, the resultant entity i.e. Simran Wind Project Limited has been renamed as Techno Electric & Engineering Company Ltd. (hereinafter referred to as 'TEECL'). The Registrar of Companies, Kanpur certified the change in name from "Simran Wind Project Limited" to "Techno Electric & Engineering Company Ltd." on 05.09.2018. On 23.04.2019, TEECL sent an application for change in name from "Simran Wind Project Limited" to "Techno Electric & Engineering Company Ltd." to Tamil Nadu SLDC. A similar application was sent to NLDC on 13.05.2019. In response, NLDC informed TEECL that its request for name change from "M/s. Simran Wind Project Limited" to "Techno Electric & Engineering Company Limited" could not be processed as there was a change in the legal status of the company. NLDC requested Techno Electric to follow the procedure regarding legal status change laid down in para 4.1 (j) of this Commission's approved Procedure for Issuance of Renewable Energy Certificate to the Eligible Entity by Central Agency dated 16.03.2018 ("Issuance of REC Guidelines"). On 16.07.2019, Techno Electric wrote to the NLDC stating that the legal status of Simran had not changed due to the merger. In this regard, Techno Electric provided necessary supporting documents viz. CIN, Permanent Account Number ("PAN"), Tax Deduction and Collection Account Number ("TAN") and GST Identification Number ("GSTIN") to show that all identity numbers of Simran in the said documents remained unchanged after the merger. *Per Contra*, NLDC has submitted that in the present factual matrix, there has been a change in legal status of Petitioner. The Petitioner company's change of name is not an ordinary one and is only one aspect of a much larger change in its legal status and corporate structure through an amalgamation. The change of name occurred in

furtherance of a Scheme of Amalgamation sanctioned by the NCLT Allahabad under Section 232 of the Companies Act, 2013. The very fact that resort had to be made to the procedure under Section 232 of the Companies Act indicates that the change was a significant change in the identity of the company. In accordance with the Scheme, the entire shareholding of Petitioner company stood cancelled. Effectively, the entire shareholding of the Petitioner stood altered. Therefore, it amounted to 'change in ownership of the company', and it is an illustration of a change in legal status, according to Regulation 4 (1) (h) of the REC Registration Procedure. The Petitioner was a wholly owned subsidiary company of the transferor company prior to the Scheme. In the Petitioner's own admission, it is stated that transferor company has been dissolved. In the eyes of law, the transferor company is non-existent. Therefore, the Petitioner has to have a totally different owner now. Hence, there has been a change in ownership of Petitioner and in accordance with Regulation 4 (1) (h) of the REC Registration Procedures, it amounts to a change in legal status. Non-alteration of CIN, TAN, & PAN of any entity is not a material or determinative factor for assessing whether at all its legal status has been changed or altered.

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

Issue No.1: *Whether amalgamation of two companies amounts to 'change in legal status' of the transferee company for the purposes of Rule 4 (1) (h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee? AND*

Issue No.2: *Whether the Respondent be directed to transfer the existing RECs in favour of the Petitioner and continue issuing the Renewable Energy Certificates to the Petitioner as due to it under the REC Mechanism?*

42. No other issues were pressed or claimed.

43. We discuss the issues as under:

Issue No.1: *Whether amalgamation of two companies amounts to 'change in legal status' of the transferee company for the purposes of Rule 4 (1) (h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee?*

44. The Petitioner has submitted that there is a mere change in name of the company from

‘Simran Wind Project Limited’ to ‘Techno Electric & Engineering Company Limited’ in the records of the Registrar of Companies and it cannot be construed as change of the constitution / legal status of the Petitioner. **Per contra**, the Respondent has submitted that it is a change in ownership as the holding company merged into its subsidiary. This has resulted in dissolution of the holding company which was previously the owner of the subsidiary.

45. The Commission notes that in 2011 and 2012, Simran Wind Project Private Limited applied to the TNSLDC for its REC accreditation. Pursuant thereto, TNSLDC gave REC accreditation to Simran Wind Project Private Limited for its 111.9 MW wind generation. Further, NLDC also granted ‘Certificate for Registration’ to Simran Wind Project Private Limited as ‘Eligible Entity’. However, on 14.06.2013, Simran Wind Project Private Limited converted from a Private Limited Company to a Public Limited Company and the Registrar of Companies, West Bengal issued a fresh ‘Certificate of Incorporation’. As per the said certificate, the CIN changed and was numbered as U40108WB2005PLC166026. On 30.08.2014, Simran Wind Project Limited informed TNSLDC and the NLDC about its conversion from a Private Limited Company to a Public Limited Company. However, NLDC approved the ‘change in name’ request of Simran Wind Project Limited pursuant to its conversion from a Private Limited Company to a Public Limited Company. NLDC has argued that the change from Private Limited Company to a Public Limited Company is a case of change of legal status and not mere ‘change of name’. Therefore, Simran Wind Project Limited should have requested for change of legal status and not for ‘change of name’.
46. The Commission further notes that Simran Wind Project Limited changed its registered office from West Bengal to Uttar Pradesh. Therefore, the Registrar of Companies, Kanpur issued the fresh CIN U40108UP2005PLC094368. On 20.07.2018, the NCLT, Allahabad issued an Order in Company Petition No. 168/ALD of 2018 in CAA No. 18/ALD/2018 and approved the Scheme of Amalgamation of M/s Techno Electric & Engineering Company Ltd. (transferor company) and M/s Simran Wind Project Limited (transferee company). Accordingly, Techno Electric & Engineering Company Ltd. merged with M/s Simran Wind Project Limited. In the said merger, inter alia, the name “M/s. Simran Wind Project Limited” was changed to “M/s. Techno Electric & Engineering Company Limited.”
47. The Commission observes that it is a change in ownership as the holding company merged

with its subsidiary which has resulted in dissolution of the holding company Techno Electric & Engineering Company Ltd. which was previously the owner of the subsidiary M/s Simran Wind Project Limited. This amounts to “change in legal status” and not 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.

48. The Commission observes that the Clause 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee, stipulates as under:

“h. 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.

In cases involving a change in name of the registered entity, it shall inform the concerned State Agency and the Central Agency within one month from the date of said change, along with relevant documents including but not limited to Board Resolution regarding the name change, certificate of name change from Registrar of Companies, approval of concerned authorities, State Agency etc.”

49. From the above, the Commission observes that change in ownership of the company is one example of change in legal status and is explicitly categorised as change in legal status.

Issue No.2: Whether the Respondent be directed to transfer the existing RECs in favour of the Petitioner and continue issuing the Renewable Energy Certificates to the Petitioner as due to it under the REC Mechanism?

50. The Petitioner has submitted in its prayer that subsequent to the change in name, the existing RECs be transferred from “M/s Simran Wind Project Limited” to the Petitioner. It has also prayed to seek directions to the Respondent to continue issuing RECs to the Petitioner. *Per Contra*, the Respondent has submitted that the present petition involves adjudication upon a short issue i.e. whether change in ownership of the company due to amalgamation is a “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. The Respondent has submitted that neither the REC Regulations nor the aforesaid procedure vests any discretionary power on the Respondent to relax and/or to exempt compliance from any of the provisions contained therein. The provisions contained in the REC Regulations, 2010 and REC Registration Procedures are mandatory in nature and entail strict compliance on the part of an eligible entity as well as the “Central Agency”. Regulation 7(2) of the REC Regulation, 2010 stipulates that RECs shall be issued only after the Respondent herein duly satisfies itself that all conditions for issuance of certificate are complied with by the eligible entity. REC Registration Procedure prescribes for a mandatory intimation on the part of the eligible entity to the State Agency as well as the Central Agency immediately, in case the legal status thereof has changed. The Respondent has submitted that sub-clause (2) of Regulation 7 of the REC Regulations, 2010 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. As per clause 4.1 (j) of REC Accreditation Procedure and Clause 4.1(h) of REC Registration Procedure where there is a change in legal status, the entity is required to apply afresh for accreditation and registration, while, in the case of a mere change in name, it is sufficient if the entity gives intimation about the same to the State Agency and the Central Agency. Since the legal status of Petitioner’s company is changed upon change in ownership due to demerger of holding company with the subsidiary, hence the Petitioner has to comply with the Rule 4.1(h) of the Procedure for Registration.

51. The Commission observes that the Respondent is obligated under Regulation 3(3) of the REC Regulations, 2010 to issue detailed procedures with regard to registration, accreditation and issuance of REC certificates to eligible entities, which in turn, is approved by the Commission before coming into force. The relevant procedure i.e. Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be, by Central

Agency for the purpose of present case, was approved by the Commission on 16.03.2018. Further, the REC Registration Procedure provides for a mandatory intimation on the part of the eligible entity to the State Agency as well as the Central Agency immediately, in case the legal status thereof has changed. Relevant paragraph of the aforesaid procedure 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.

52. 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 4.1 (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”. 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 Issue No. 2, is 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 RECs.

53. Accordingly, the Petition No. 242/MP/2019 is disposed of in terms of the above.

Sd/-
आई.एस. झा
सदस्य

Sd/-
डॉ एम. के. अय्यर
सदस्य

Sd/-
पी. के. पुजारी
अध्यक्ष