



नई दिल्ली  
NEW DELHI

याचिका संख्या. /Petition No.: 97/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: 09<sup>th</sup> of January, 2020

**IN THE MATTER OF:**

Petition under Section 79(1) of the Electricity Act, 2003 and Section 14 & 15 of Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, challenging the illegal and arbitrary rejection of application of the Petitioner by Respondents, seeking change of name and/or re-accreditation

**AND IN THE MATTER:**

Magadh Sugar & Energy Limited  
Unit Hasanpur Sugar Mills  
Having its registered office at  
P.O. Hargaon, Sitapur,  
Uttar Pradesh-261121

...Petitioner

**Versus**

1. Power System Operation Corporation Limited

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

2. Bihar Renewable Energy Development Agency  
3rd Floor, Sone Bhawan, Birchand Patel Marg,  
Patna, Bihar 800001

... Respondents

**Parties Present:** Shri Pankaj Bhagat, Advocate, MSEL  
Shri Shishir Agarwal, Advocate, MSEL  
Shri R. K. Agarwal, Advocate, MSEL  
Shri Arjun Krishnan, Advocate, NLDC  
Shri Ankur Singh, Advocate, NLDC  
Shri Ashok Rajan, NLDC

### आदेश/ ORDER

The Petitioner, M/s Magadh Sugar & Energy Limited, is a sugarcane processing company and owns and operates a renewable energy co-generation plant by use of bagasse at its Hasanpur Sugar Mills Unit.

2. The Respondent No. 1, National Load Despatch Centre (hereinafter referred to as 'NLDC') is notified as the Central Agency for the purpose of the REC Regulation, 2010.
3. The Respondent No. 2, Bihar Renewable Energy Development Agency (hereinafter referred to as 'BREDA') is the department of the Bihar Government with the functions of promotion of Renewable Energy in the State of Bihar and is State Load Despatch Centre.
4. The Petitioner has filed the petition under Section 79(1) of the Electricity Act, 2003 and Section 14 & 15 of Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, (hereinafter referred to as 'REC Regulations, 2010) challenging the rejection of application of the Petitioner by Respondents, seeking change of name and/or re-

accreditation.

5. The Petitioner has made the following prayers:

- a) *Direct the Respondent to consider the application of the Petitioner and direct the Respondent to change the name of the Petitioner in its records and in the accreditation certificate and registration certificate from the date when the Scheme of Amalgamation became effective (i.e. 23.03.2017), and*
- b) *In alternative direct the Respondent to grant re-accreditation certificate and re-registration certificate in favour of the Petitioner from the date when the Scheme of Amalgamation became effective (i.e. 23.03.2017) and onwards, and*
- c) *Direct Respondent to issue 10,379 nos. of RECs to Petitioner for the period December, 2017 to March, 2018 as verified and approved by the Respondent, SLDC pertaining to co-generation from Petitioner Unit; and*
- d) *Direct Respondent to issue RECs to Petitioner for the period subsequent to March, 2018 pertaining to co-generation from Petitioner Unit; and*
- e) *Pass any other order(s) as deemed fit, necessary and appropriate*

### **Submissions of the Petitioner**

6. The Petitioner has submitted that it is a leading integrated Sugarcane processing Company and is engaged in the manufacture of sugar and other related products including denatured spirit /Alcohol (Ethanol). It owns and operates renewable energy co-generation plant viz. Hasanpur Sugar Mills Unit (hereinafter referred to as 'Project') located in State of Bihar, by use of bagasse. The Project was earlier a unit of M/s Upper Ganges Sugar and Industries Limited. The approval to establish Bagasse Based Co-Generation Power Plant to the said Hasanpur Sugar Mills Unit of the Petitioner, was granted by the Department of Industries (Technical Division), State of Bihar vide its letter dated 13.08.2013
7. The Petitioner has submitted that permission to execute Power Purchase Agreements (hereinafter referred to as 'PPA') was granted in favour of the 'Project' by the BREDA vide its letter dated 17.12.2013. Accordingly, the PPA was executed on 26.02.2014 between the

‘Project’ and North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited. The Hasanpur Sugar Mills/Project of the Petitioner is registered under REC mechanism with the Respondents and has also been granted Certificate of Registration. Hasanpur Sugar Mill/Project after compliance of all the applicable laws and procedures has been regularly obtaining RECs from Respondent since December, 2015.

8. The Petitioner has submitted that on the application under Section 391 to 394 of the erstwhile Companies Act 1956 for Sanction/Approval of ‘Composite Scheme of Arrangement and Amalgamation’ (hereinafter referred to as ‘Composite Scheme of Arrangement’), the National Company Law Tribunal (hereinafter referred to as ‘NCLT’), Allahabad Bench in Company Petition No. 33 / 2016 connected with Company Application no. 17 of 2016, vide Order dated 02.03.2017 allowed the ‘Composite Scheme of Arrangement’ and accordingly:
  - a. Bihar Sugar business undertaking of Upper Ganges Sugar & Industries Ltd was merged with Magadh Sugar & Energy Ltd and
  - b. Hasanpur Sugar Mill (Project) became Unit of Magadh Sugar & Energy Ltd.
  
8. The Petitioner has submitted that in terms of the ‘Composite Scheme of Arrangement’ w.e.f. the 01.04.2015 (appointed date), the whole of Bihar Sugar Business undertaking of Upper Ganges was transferred to and vested in Magadh Sugar & Energy Limited (the Petitioner) as a going concern, so as to become the properties and liabilities including all approvals, consents, exemptions, registration no-objection certificates, permits, quotas, rights, entitlements, licenses (including the licenses granted by any Governmental, Statutory or regulatory bodies) for the purpose of carrying on its business in connection therewith and certificates of every kind and description of whatsoever nature related to Hasanpur Sugar Mills of Magadh Sugar.
  
9. The Petitioner has submitted that the certified copy of the order dated 02.03.2017 passed by NCLT was filed with the Registrar of Companies, Kanpur on 23.03.2017 and thereafter the ‘Composite Scheme of Arrangement’ became effective w.e.f. 01.04.2015. Pursuant to the approval of ‘Composite Scheme of Arrangement’, the Petitioner applied to various departments and authorities seeking change in name, in compliance with the Order dated

02.03.2017 passed by NCLT.

10. The Petitioner has submitted that as per the legal advice received, a detailed letter dated 01.04.2017 was written by the Petitioner to BREDA informing it about restructuring from “Hasanpur Sugar Mills a unit of Upper Ganges Sugar & Industries Limited” to “Magadh Sugar & Energy Limited unit Hasanpur Sugar Mills”. The Petitioner vide email dated 12.04.2017, 19.04.2017, 15.05.2017 & 27.05.2017 and its letter dated 01.09.2017 again informed BREDA about restructuring and requested for change of name. BREDA vide its letter No. BREDA/LEKHA/REC/01/2011-2012-1400 dated 26.09.2017 informed NLDC about the intimation letter dated 01.09.2017 received from the Petitioner along with copy of Order dated 02.03.2017 passed by the NCLT, Allahabad. NLDC vide its Email dated 01.11.2017 without even considering the legal proposition, held that the change in the name of the project could not be entertained in view of Para 4.1(h) approved ‘*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 Procedures’).
11. The Petitioner has submitted that in compliance with the modified REC Registration Procedures, it applied for issuance of RECs for the period December, 2017 and March, 2018 on the Web based application by punching its Online Energy Injection Report with all requisite details and in approved format, on website portal of NLDC in the stipulated time and within limitation. Several correspondences were made with the NLDC by the Petitioner,. However, NLDC declined the request of the Petitioner solely on the ground that as per Para 4.1(h) of CERC approved REC Registration Procedures dated 05.11.2015, the concerned person shall immediately intimate the concerned state agency about the said change and apply fresh for accreditation by the concerned state agency and registration by the Central Agency.

**Submissions of the Respondent No.1 (NLDC)**

12. The Respondent No.1 has submitted that revised ‘REC Registration Procedures, under Para. 4.1.(h) stipulates the procedure required to be followed in case of a change in legal status of a registered entity:

#### **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 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 registration 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.*

13. The Respondent No.1 has submitted that neither the REC Regulations, 2010 nor the aforesaid REC Registration Procedures vests any discretionary power on the Respondent No.1 to relax and/or to exempt compliance with any of the provisions contained therein. Further, the language of the REC Regulations, 2010 and the REC Registration Procedures makes it abundantly clear that the provisions contained therein are mandatory in nature and entail strict compliance on the part of an eligible entity as well as the 'Central Agency' i.e. NLDC.
14. The Respondent No. 1 has submitted that Regulation 7(2) of the REC Regulations, 2010 stipulates that RECs shall be issued only after the Central Agency i.e. NLDC herein duly satisfies itself that all conditions for issuance of certificate are complied with by the eligible entity. The aforesaid regulation is extracted below:

### ***7. Denomination and issuance of Certificates***

...

*(2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificate, as may be stipulated in the detailed procedure, are complied with by the eligible entity:*

...

15. The Respondent No.1 has submitted that sub-clause (2) of Regulation 7 of the REC Regulations as well as para. 4.1 (h) of the REC Registration Procedures uses the word “shall” which generally denotes that a provision is imperative in nature and must be strictly complied with.
16. The Respondent No.1 has submitted that in the present case, registration was granted in the name of one Upper Ganges Sugar & Industries Limited, Unit Hasanpur Sugar Mills. It is further not in dispute that generation unit in question is a Captive Generating Plant (“CGP”). It is an admitted fact that, with effect from 23.03.2017, the subject generation unit was demerged from Upper Ganges to a new entity i.e. the Petitioner herein. In view of procedure contained in para. 4.1(h) of the REC Registration Procedures, earlier registration in favour of Upper Ganges was to be revoked, while the Petitioner was required to apply afresh for accreditation and registration. NLDC vide email dated 01.11.2017 had duly informed the Petitioner that this is not a case of mere name change but the legal status of the eligible entity has been changed/alterd, in pursuance of approval granted to the scheme of arrangement by NCLT. Thus, the Petitioner was advised to adhere to and follow the straight forward procedure laid down under the REC Registration Procedures.

### **Rejoinder by Petitioner**

17. The Petitioner has denied the averments made by the Respondent and has reiterated the submissions made in the petition as such the same has not been reproduced herewith for the sake of brevity.

### **Analysis and Decision**

18. The Petitioner filed the petition along with I.A. No. 32 of 2019 on 05.04.2019. The petition

was admitted on 16.04.2019. Vide I.A. No. 32 of 2019 , the Petitioner requested the Commission to issue directions to the Respondents to verify and undertake requisite activities to enable the Petitioner to punch its online application and file physical application and deposit requisite fees for issuance of RECs till final disposal of the Petition. Considering the submission of the Petitioner, the Commission directed the Respondents to consider the request of the Petitioner subject to the outcome of the decision in the Petition. Accordingly, the Commission disposed off the IA No. 32/2019 on 16.04.2019. The petition came up for hearing and was reserved for Orders on 15.10.2019. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records. The brief facts of the case are as under:

19. The Petitioner has set up a bagasse based co-generation plant and was granted accreditation certificate by BREDA and Registration Certificate by NLDC which are valid upto 09.01.2020 and 01.06.2020 respectively. Registration Certificate is in the name of unit of Hasanpur Sugar Mills (Project), which was earlier a unit of Upper Ganges Sugar and Industries Limited as under:

| <b>Project</b>  | <b>Location</b>   | <b>Accreditation</b>  | <b>Registration</b>   |
|---|---|---|---|
| Hasanpur Sugar Mills<br>Unit of<br>Upper Ganges<br>Sugar &<br>Industries Ltd. | Hasanpur<br>Sugar Mills.<br>Distt.-<br>Samastipur,<br>Bihar | BHONSHASAN001A10011<br>5<br>dated 10.01.2015<br>valid upto 09.01.2020 | BHONSHASAN001R02061<br>5<br>dated 02.06.2015<br>valid upto 01.06.2020 |

20. However, pursuant to Order dated 02.03.2017 of the NCLT, Allahabad Bench, Bihar Sugar Business Undertaking of Upper Ganges Sugar and Industries Ltd. has been merged with Magadh Sugar and Energy Limited and unit of Hasanpur Sugar Mill has now become 'Unit of Magadh Sugar and Energy Ltd.' Pursuant to Order of NCLT, all approvals, consents, exemptions, registration, permits and licences, etc. in relation to Bihar Sugar Business Undertaking of Upper Ganges are transferred to and vested in and/or deemed to have been transferred to and vested in Magadh Sugar and Energy Limited. The 'Composite Scheme of



Arrangement' became effective w.e.f. 01.04.2015. Thereafter, the Petitioner informed BREDA about restructuring from "Hasanpur Sugar Mills a unit of Upper Ganges Sugar & Industries Limited" to "Magadh Sugar & Energy Limited unit Hasanpur Sugar Mills". BREDA vide its letter dated 26.09.2017 informed NLDC about the above restructuring. The Respondent vide email dated 01.11.2017 rejected the request of the Petitioner regarding change in name of the project.

21. The Petitioner has submitted that it applied for issuance of RECs for the period December, 2017 and March, 2018 on the Web based application since there was merely a change of name of the Project from "Hasanpur Sugar Mills a unit of Upper Ganges Sugar & Industries Limited" to "Magadh Sugar & Energy Limited unit Hasanpur Sugar Mills". *Per contra*, NLDC has submitted that there is change in a legal status and the Petitioner is required to apply afresh for accreditation and registration as per Para 4.1(h) of 'REC Registration Procedures'.

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

*Issue No.1: Whether the restructuring of Hasanpur Sugar Mills a unit of Upper Ganges Sugar & Industries Limited to Magadh Sugar & Energy Limited unit Hasanpur Sugar Mills pursuant to approved 'Scheme of Amalgamation' amounts to 'change in legal status' or is a mere 'change in name' for the purposes of Rule 4.1(h) of the REC Registration Procedures?*

*Issue No.2: Whether the Respondent should be directed to issue 10,379 Nos. of RECs for the period December, 2017 to March, 2018 and continue issuing the RECs to the Petitioner as due to it under the REC mechanism? AND*

*Issue No.3: Whether the Respondent should be directed to renew the accreditation and registration of the Petitioner's project under the REC mechanism?*

23. No other issues were pressed or claimed.

24. We discuss the issues as under:

***Issue No.1: Whether the restructuring of Hasanpur Sugar Mills a unit of Upper Ganges Sugar & Industries Limited to Magadh Sugar & Energy Limited unit Hasanpur Sugar Mills pursuant to approved 'Scheme of Amalgamation' amounts to 'change in legal status' or is a mere 'change in name' for the purposes of Rule 4.1(h) of the REC Registration Procedures?***

25. The Petitioner has submitted that NCLT vide its Order dated 02.03.2017 has approved the Scheme of Amalgamation which includes demerger of Bihar sugar business undertaking of M/s Upper Ganges Sugar & Industries Ltd. to M/s Magadh Sugar & Energy Limited. The Petitioner has submitted that it is a case of change of name and NLDC should continue to issue RECs in the name of the Petitioner . Per Contra, NLDC has submitted that since there is change in a legal status, the Petitioner is required to apply afresh for accreditation and registration.
26. The Commission observes that salient features of the 'Composite Scheme of Arrangement' are as under:

*“1.3 “Appointed Date” means April 01, 2015 or such date as may be fixed or approved by the Hon’ble High Court of Allahabad or National Company Law Tribunal or any other appropriate authority.*

...  
*6. “Bihar Sugar Business Undertaking of Upper Ganges” means the business of manufacture and sale of sugar and it’s by-products being carried out by unit of Upper Ganges in Bihar on a going concern basis, comprising, inter alia, the assets and liabilities relating thereto and which shall mean and include (without limitation).*

*1.6.1 All assets (wherever situated), whether movable or immovable, tangible or intangible, leasehold or freehold, including all plant and machinery, investments, capital work in progress, furniture, fixtures, office equipments, current assets, loans and advances, deposits, receivables, funds, cash, bank balances, deferred tax asset (if any), accounts and all other rights, benefits if all agreements, subsidies, grants, incentives, bills of exchange, letters of intent and loans and advances appearing in the books of accounts of Upper Ganges pertaining to or relating to its Bihar sugar business undertaking.*

*1.6.2 All rights, entitlements, approvals, licenses, registrations, certifications, consents, permissions, brands, logos, engagements, arrangements, municipal permissions, cash balances, financial assets, fund of Upper Ganges relatable to its Bihar sugar business undertaking; bank balances, balances with government, excise department, tax authorities both state and central government bank accounts, security deposits, privileges, recoverable, receivables, advantages, all other rights and benefits of Upper Ganges, in connection with or relating to the Bihar sugar business*

undertaking.

1.6.3 All secured and unsecured debts, liabilities present or future (including contingent liabilities), deferred tax liability (if any), duties, undertakings and obligations of every kind, nature and description whatsoever and howsoever arising in connection with or relating to the Bihar Sugar Business Undertaking of Upper Ganges.

1.6.4 All existing and future contracts, Request for Proposals ('RFP'), bids, responses to Expression of Interest ('EOI'), memorandum of understanding, entitlements, industrial and other licenses, municipal permissions, approvals, consents, tenancies in relation to any joint venture or other arrangement which may be entered into by Upper Ganges in respect of business relating or incidental to its Bihar sugar business undertaking.

1.6.5 All the past track record of Upper Ganges, including without limitation, the profitability, production volumes, experience, credentials (including awards and accolades), certifications, accreditations and markets hare pertaining to or relating to its Bihar Sugar Business Undertaking.

1.6.6 All employees of Upper Ganges who are substantially engaged in its Bihar Sugar Business Undertaking, as identified by the Board of Directors of Upper Ganges.

...

1.8 "**Effective Date**" means the date on which certified copy(s) of the Hon'ble High Court of Judicature at Allahabad or National Company Law Tribunal or any other appropriate authority under section 391 to 394 of the Act sanctioning this scheme are filed with the registrar of Companies, Kanpur.

...

1.23 "**Upper Ganges**" means Upper Ganges Sugar & Industres Limited, a company incorporated under the Act, having its registered office at P.O. Seohara, District Bijnor, Uttar Pradesh- 246746"

## PART - VII

### DEMERGER OF BIHAR SUGAR BUSINESS UNDERTAKING OF UPPER GANGES TO MAGADH SUGAR

#### **52. TRANSFER AND VESTING OF BIHAR SUGAR BUSINESS UNDERTAKING OF UPPER GANGES**

With effect from the appointed date or such other date as may be fixed or approved by the court and upon the scheme becoming effective, the Bihar sugar business undertaking of Upper Ganges shall be transferred and vested in Magadh sugar in the following manner:

52.1 The whole of the Bihar sugar business undertaking of Upper Ganges as defined in clause 1.6, shall, under the provisions of sections 391 and 394 and the court or any other appropriate authority sanctioning the scheme and without any further act or deed, be transferred to and vested in and/ or deemed to be transferred to and vested in Magadh sugar, as a going concern, so as to become the properties and liabilities of Magadh sugar within the meaning of section 2(19aa) of the income tax act, 1961 with effect from the appointed date.

...

52.2.5 it is clarified that if any assets (estate, claims, rights title, interest and authorities relating to such assets ) or any contract, deeds, bonds, agreement schemes arrangements or other instruments of whatsoever nature in relation to Bihar sugar business undertaking and to which cannot be transferred to Magadh sugar for any reason whatsoever, Upper Ganges shall hold such assets or contract, deeds bonds agreements, ashamed, arrangements or other instruments of whatsoever, nature in trust for the benefit of Magadh sugar insofar as it is permissible so to do, till such time the transfer is effected.

...  
52.2.7 All approvals, consents exemptions, registrations, no-objection certificates, permits, quotas, rights, entitlements, licenses (including the licenses granted by any governmental, statutory or regulatory bodies for the purpose of carrying on its business or in connection therewith) and certificates on its business or in connection therewith), and certificates of every kind and description of whatsoever nature in relation to Bihar sugar business undertaking of Upper Ganges, or to the benefit of which Bihar sugar business undertaking may be eligible/entitled and which are subsisting or having effect on the effective date shall by endorsement, delivery or recordable or by operation of law pursuant to the vesting order of the courts sanctioning the scheme, be deemed to be approvals, consents, exemptions, registrations, no-objection certificates, permits, quotas rights, entitlements licenses (including the licenses granted by any governmental statutory or regulatory bodies for the purpose of carrying on its business or in connection therewith), and certificates, of every kind and description of whatsoever nature of Magadh sugar and shall be in full force and effect in favour of Magadh sugar subject to Magadh sugar maintaining all prior undertaking and commitments pursuant to any administrative or judicial proceedings, concerning Bihar sugar business undertaking and may be enforced as fully and effectually as if, instead of Upper Ganges, Magadh sugar had been a party or beneficiary or obligor thereto any third party or authority required to give effect to the provisions of this clause shall take on record the order of the court sanctioning the scheme on its file and make and duly record the necessary substitution or endorsement in the name of Magadh as successor in interest, pursuant to the sanction of this scheme by the courts, and upon this pat becoming effective in accordance with the terms provided hereof for this purpose, Magadh sugar shall file certified copies of such sanction orders and if required file appropriate applications or forms with relevant authorities concerned for statistical and information purposes only and there shall be no break in the validity and enforceability of approvals, consents exemptions, registrations, no-objection certificates permits, quotas, rights, entitlements licenses (including the licenses granted by any governmental statutory or regulatory bodies for the purpose of carrying on its business or in connection therewith) and certificates of every kind and description of whatsoever nature.

...  
55.1.5 Any of the rights, powers, authorities, privileges, attached, related or pertaining to or exercised by Upper Ganges, in relation to its Bihar Sugar Business Undertaking, shall be deemed to have been exercised by Upper Ganges for and on behalf of and in trust for and as an agent of Magadh Sugar. Similarly, any of the obligations, duties and commitments attached, related or pertaining to the Bihar Sugar Business Undertaking of Upper Ganges that have been undertaken or

*discharged by Upper Ganges shall be deemed to have been undertaken for and on behalf of and as an agent for Magadh Sugar”*

...

**57. CONTRACTS, DEEDS, APPROVALS, EXEMPTIONS, ETC.**

57.1 *With effect from the Appointed Date and upon the Scheme becoming effective, all contracts, deeds, bonds, agreements and other instruments, if any, of whatsoever nature and relating to the Bihar Sugar Business Undertaking of Upper Ganges, shall continue in full force and effect against or in favour of Magadh Sugar, and may be enforced effectively by or against Magadh Sugar as fully and effectually as if instead of Upper Ganges, Magadh Sugar had been a party thereto.*

57.2 *Magadh Sugar may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, enter into, or issue or execute deeds, writings, confirmations, novation, declarations, or other documents with, or in favour of any party to any contract or arrangement to which Upper Ganges is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. Magadh Sugar shall be deemed to be authorized to execute any such writings on behalf of Upper Ganges and to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of Upper Ganges.*

57.3 *It is hereby clarified that if any contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in relation to the Bihar Sugar Business Undertaking to which Upper Ganges is a party to, cannot be transferred to Magadh Sugar for any reason whatsoever, Upper Ganges shall hold such contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in trust for the benefit of Magadh Sugar insofar as it is permissible so to do, till such time as the transfer is effected.*

57.4 *With effect from the Appointed Date and upon the Scheme becoming effective, the past track record of Upper Ganges relating to the Bihar Sugar Business Undertaking, including without limitation, the profitability, production volumes, experience, credentials and market share, shall be deemed to be the track record of Magadh Sugar for all commercial and regulatory purposes including for the purpose of eligibility, standing, evaluation and participation of Magadh Sugar in all existing and future bids, tenders and contracts of all authorities, agencies and clients.*

57.5 *Magadh Sugar shall be entitled to the benefit of all insurance policies which have been issued in respect of the Bihar Sugar Business Undertaking of Upper Ganges and the name of Magadh Sugar shall be substituted as "Insured" in the policies as if Magadh Sugar was initially a party.*

...

**60 SAVING OF CONCLUDED TRANSACTIONS**

*The transfer and vesting of properties and liabilities and the continuance of proceedings by or against Magadh Sugar shall not affect any transaction or proceedings already concluded by Upper Ganges on or after the Appointed Date till the Effective Date in relation to the Bihar Sugar Business Undertaking, to the end and intent that Magadh Sugar accepts and adopts all acts, deeds and things done and executed by Upper Ganges in respect thereto as done and executed on behalf of Magadh Sugar.”*

27. The Commission observes that the revised 'REC Registration Procedure' under Para 4.1.(h) stipulates the procedure required to be followed in case of a change in legal status of a registered entity:

*"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 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 registration 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."*

28. The Commission observes that the NCLT has allowed Composite Scheme of Arrangement vide Order dated 02.03.2017 by virtue of which Bihar Sugar Business Undertaking got demerged from Upper Ganges Sugar & Industries Ltd and was amalgamated with Magadh Sugar & Energy Ltd. In view of the approved 'Composite Scheme of Arrangement', the assets and liabilities pertaining to the Bihar Sugar Business Undertaking of M/s Upper Ganges Sugar & Industries Ltd stand amalgamated in M/s Magadh Sugar & Energy Limited. Accordingly, the Hasanpur Sugar Mill (Project) which was an undertaking of M/s Upper Ganges Sugar & Industries Ltd. got amalgamated in Magadh Sugar & Energy Ltd. Furthermore, the Commission observes that 'REC Registration Procedure' under Para 4.1.(h) considers 'new entity subsequent to demerger' as a category classified under change in legal status. In view of above the Commission holds that the transfer of assets, liabilities and

control of Hasanpur Sugar Mill (Project) to M/s Magadh Sugar & Energy Limited constitutes change in legal status of the 'Project'. This issue is decided accordingly.

***Issue No.2: Whether the Respondent should be directed to issue 10,379 Nos. of RECs for the period December, 2017 to March, 2018 and continue issuing the RECs to the Petitioner as due to it under the REC mechanism?***

**AND**

***Issue No.3: Whether the Respondent should be directed to renew the accreditation and registration of the Petitioner's project under the REC mechanism?***

29. Issue no. 2 and Issue no. 3 being interrelated are being taken together for discussions. The Petitioner has submitted that since there was a change of name of the Project from "Hasanpur Sugar Mills a unit of Upper Ganges Sugar & Industries Limited" to "Magadh Sugar & Energy Limited unit Hasanpur Sugar Mills" , it is entitled for 10,379 Nos. of RECs for the period December, 2017 and March, 2018 and thereafter. *Per contra*, NLDC has submitted that as there is change in a legal status, the Petitioner is required to apply afresh for accreditation and registration as per Para 4.1(h) of 'REC Registration Procedures'.
30. The Commission observes that the Respondent is obligated under Regulation 3(3) of the REC Regulations, 2010 to issue detailed procedures with regards to registration, accreditation and issuance of REC certificates, to eligible entities, which in turn, are 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 revised by Order dated 05.11.2015 of the Commission. Further, the 'REC Registration Procedures' provide 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 extract 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 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 registration 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.”*

31. 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 the 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 Issues no. 2 & 3 are answered in favour of Respondent and against the Petitioner . The Petitioner is to get itself a fresh registration subject to fulfilment of eligibility conditions as stipulated in REC Regulations, 2010 as amended from time to time, and without registration, the Petitioner is not entitled to the RECs.



32. Accordingly, the Petition No. 97/MP/2019 is disposed of.

Sd/-  
आई. एस. झा  
सदस्य

Sd/-  
डॉ एम. के. अय्यर  
सदस्य

Sd/-  
पी. के. पुजारी  
अध्यक्ष