



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 595/MP/2020

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 11th of January, 2022

IN THE MATTER OF:

Petition for directions to the Respondents, National Load Despatch Centre, the Central Agency and Odisha Renewable Energy Development Agency, the State Nodal Agency for the accreditation and registration of the Petitioner under the Renewable Energy Certificates (REC) mechanism and consequent reliefs.

AND IN THE MATTER:

Dalmia Cement (Bharat) Limited,
[Unit: Kapilas Cement Manufacturing Works,
A unit of Dalmia Cement (Bharat) Limited,
(formerly known as OCL Cement Limited)],
11th and 12th Floor, Hansalaya Building
Barakhamba Road,
New Delhi 110 001

... Petitioner

VERSUS

1. National Load Despatch Centre,
Power System Operation Corporation Limited,
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110 016
2. Odisha Renewable Energy Development Agency,
Chief Executive (State Nodal Officer),
(State Nodal Agency for REC mechanism)
Mancheswar,
Bhubaneswar – 600 002

...Respondents

Parties Present: Shri Manu Seshadri, Advocate, DCBL
Shri Aveak Ganguly, Advocate, DCBL
Shri Abhijit Lal, Advocate, DCBL
Ms. Pallavi Anand, Advocate, DCBL
Shri Manoranjan Sahoo, DCBL
Shri Ahmer Ali Khan, DCBL
Shri Gajendra Sinh Vasava, WRLDC

आदेश/ ORDER

The Petitioner, M/s Dalmia Cement (Bharat) Limited, owns and operates a 2.5 MW Captive Solar PV Power Plant at its M/s Kapilas Cement Manufacturing Works Unit (KCMW) located at Village Biswali, District Cuttack, in the State of Odisha. The Captive Solar Power Plant forms part of the KCMW unit. The KCMW unit was a part of M/s OCL India Limited and was commissioned on 29.03.2014. M/s OCL India was issued accreditation certificate on 02.01.2018 and was registered under REC mechanism on 02.05.2018. On 20.04.2018, the National Company Law Tribunal (NCLT) at Chennai passed an order of amalgamation of M/s OCL India Limited with the Petitioner. As a result, the Captive Solar Power Plant at KCMW came to be vested and transferred in favour of the Petitioner, consequent to the amalgamation of OCL India Limited with its parent company – the Petitioner. The Petitioner has filed the Petition under sections 66, 79 and other applicable provisions of the Electricity Act, 2003 read with 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”). The Petitioner is seeking appropriate directions on account of the refusal by the Respondents to grant accreditation and registration of the Petitioner’s 2.5 MW Captive Solar PV plant under the Renewable Energy Certificate (REC) mechanism on account of the change of name of the Petitioner from ‘OCL India Ltd’ to ‘Dalmia Cement (Bharat) Ltd’ brought about by amalgamation of OCL Cement Limited with its parent company Dalmia Cement (Bharat) Limited and for consequential reliefs.

2. The Respondent, National Load Despatch Centre (NLDC) is nominated as the Central Agency under Regulation 3 of the REC Regulations vide the Commission’s Order dated 20.01.2010, is entrusted with the functions inter alia of granting registration and issuance of RECs as per the said REC Regulations.
3. Odisha Renewable Energy Development Agency (OREDA) is the State nodal agency under REC mechanism and is responsible inter alia for accreditation of projects for the purpose of REC.
4. The Petitioner has made the following prayers:

(a) Hold that the Petitioner is entitled to fresh accreditation and registration of the Petitioner’s CGP with effect from 25.11.2019 under the REC Regulations, 2010 and the procedures laid down thereunder and direct Respondents to accredit and register the Petitioner’s CGP with effect from 25.11.2019 and under the REC Regulations and the procedures laid down thereunder;

(b) Direct the Respondents to approve the 5990 RECs of the Petitioner corresponding to the generation of electricity by the Petitioner for the period from November, 2018 onwards and permit the utilization of these RECs towards meeting the Petitioner’s Renewable Purchase Obligations for the FY 2019-2020;

(c) Pass such other further order(s) as the Hon’ble Commission may deem just in the facts and circumstances of the present case.

Submissions of the Petitioner

5. The Petitioner has submitted as under:

- a) On 20.04.2018, the NCLT passed an order of amalgamation of M/s OCL India Limited with the Petitioner. Prior to the amalgamation, the Captive Solar Plant at the KCMW unit was accredited and registered as an Eligible Entity as part of 'M/s OCL India Limited' under the provisions of the REC Regulations for issuance of RECs.
- b) OREDA granted accreditation and was last renewed vide certificate dated 02.01.2018 and is valid up to 01.01.2023.
- c) NLDC granted registration which was last renewed vide certificate dated 02.05.2018 and is valid up to 01.05.2023.
- d) However, after the order of amalgamation, the entire undertaking of OCL has been vested in its current holding company, DCBL. As such, all assets, leases, tenancy rights, plant and machinery and properties including other secured/unsecured debts, duties and obligations of OCL now have been transferred and vest in DCBL so as to become the assets and liabilities of DCBL.
- e) It has been using the electricity for captive use as well as for the purposes of meeting its RPO obligations. After amalgamation, the Petitioner obtained a Consent to Operate in the Petitioner's name from the Odisha State Pollution Control Board for commencing operations at the KCMW unit.
- f) Meanwhile, on 25.11.2019, it sent a request letter to OREDA, for 'change of name' with respect to its accreditation from "M/s OCL India Limited" to "Dalmia Cement Bharat Limited". However, no reply was received from OREDA. Instead, the Petitioner was advised to take up the issue with NLDC.
- g) As advised, it approached the NLDC for grant of change of name under cover of its letter dated 20.01.2020. However, NLDC on 10.2.2020, informed the Petitioner through email that, "Central Agency examined the matter and observed that this is not a case of simple name change. It is a case of change in legal status of the company. Therefore, it is hereby requested to do the needful as per Para 4.1(j) of CERC REC Procedure for Accreditation of Renewable Energy Generation Project by State Agency and CERC REC Regulations under REC mechanism."
- h) As per the instructions of NLDC, it applied for fresh accreditation and registration. As such, it created a new login ID in the name of Dalmia Cement (Bharat) Limited for filing a fresh application for Accreditation and Registration. However, the online system portal did not

permit it to submit a fresh application. The option for filing a fresh application for Captive Generating Plants (CGP) was not available to it. In the option for station detail, the system did not have an option for CGP. In the option for type of route, the system shows APPC, OA, APPC & OA, which are not applicable in its case as the it's unit is a CGP under REC mechanism.

- i) Moreover, it had applied for self-retention of 3041 RECs from OREDA. However, it was denied on the grounds of alleged requirement for fresh accreditation and registration by the Respondent No.2's email dated 12.03.2020. NLDC also clarified to the Petitioner that once fresh registration in the name of new legal entity is done, the existing RECs will be permitted to be transferred to the new entity.
- j) It immediately intimated these issues to Respondents by its letter and by email dated 19.03.2020, attaching screenshots of the issues faced in applying for fresh accreditation and registration using the online system portal.
- k) On 01.05.2020 & 02.05.2020, it received emails from the Respondents, stating that *"Please follow CERC REC Regulations and amendments thereof, for eligibility conditions of registration under REC Mechanism. After 4th amendment to CERC REC Regulations, APPC and Third Party Sale through open access are the off-take routes allowed for registration under REC Mechanism."*
- l) Further, on 24.06.2020, the OREDA sent an email to the Petitioner denying accreditation and registration of the Petitioner's CGP unit under the REC mechanism.
- m) It objected to this stand of OREDA, as it is in contravention of the REC Regulations, and immediately communicated the same to the Respondents by way of email dated 25.06.2020. It clarified to the Respondents that – (i) the Petitioner's CGP unit had already acquired valid accreditation and registration before 30.06.2016, and (ii) the unit qualifies as an Eligible Entity for accreditation and registration for participation in the REC mechanism as per the REC Regulations and this need for a fresh accreditation and registration has only been brought about due to the internal re-structuring, i.e. amalgamation of the company leading to a 'change of name'.
- n) It was also pointed out by the Petitioner that the KCMW CGP unit remains eligible under the REC Regulations, and therefore should be allowed accreditation and registration. Further, in view of the impending last date for compliance of Renewable Purchase

Obligations of DBCL, the Petitioner requested the Respondent No.1 to kindly allow the Petitioner to utilise the RECs lying with the Petitioner for self-retention to meet the RPO obligation of the Petitioner before the last date of compliance, i.e. 30.06.2020.

- o) On 26.6.2020, it received an email from OREDA, expressly admitting that, “*the project M/s OCL India Limited having Registration No. OR0SLKCMWO001R200513 was registered under REC Mechanism on 20.05.2013 with off-take route of electricity as Self-consumption (CGP). As per the Central Agency record, the date of commissioning of aforementioned project is 29.3.2014. Hence, as per the Fourth Amendment in CERC REC Regulations, 2010, the project M/s OCL India Limited was eligible under REC Mechanism.*”
- p) However, in the email, OREDA sought to create a non-existent, artificial and fictional distinction between the Petitioner’s CGP unit being two separate projects, despite it being the same CGP unit without any material change and therefore, stated that on the basis of the Model Guidelines for Accreditation, the Petitioner’s CGP unit is not eligible for fresh accreditation.
- q) As a result of the Respondent’s denial of accreditation and registration, it has 5990 RECs in total that have remained unutilised since November, 2018. Out of this, 3041 RECs from the period November, 2018 to September 2019 are already approved and valid; 932 RECs from the period October, 2019 to December, 2019 have been applied for but are pending approval; and 1657 RECs from January, 2020 to May, 2020 have been generated but not been applied for due the Respondent’s advice to apply for fresh accreditation and registration.
- r) As per Regulation 5 of the REC Regulations, 2010, it is clear that the eligibility criteria for a CGP having self-consumption, to participate in the REC scheme is three-fold –
 - (i) it should have been commissioned between 29.09.2010 and 31.03.2016;
 - (ii) it should have been registered under REC scheme on or before 30.06.2016; and
 - (iii) it does not avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit.
- s) It is not in dispute that the Petitioner’s KCMW unit qualifies under all the above three grounds which are necessary for a CGP to participate in the REC scheme under the

regulations. Therefore, the Petitioner's CGP at the KCMW unit is and has always been eligible and compliant under the REC Regulations, 2010 for participating in the REC scheme. The only material alteration is in the name under which the CGP unit is accredited and registered due to the amalgamation of M/s OCL India Ltd. with M/s Dalmia Cement (Bharat) Ltd.

- t) Till 26.06.2020, the only issue that had arisen was that the system portal which is used for registration and accreditation, does not provide for any fresh registration or accreditation application for CGPs, even for eligible entities, after passing of the Fourth Amendment to the REC Regulations, 2010. Therefore, it had the confidence that the Respondents have agreed to in-principle regarding the eligibility of the Petitioner's CGP Unit and only issue was with respect to the procedural error in the online system portal.
- u) However, it was shocked that OREDA by its email of 26.6.2020, has now sought to outrightly refuse the accreditation and registration of the Petitioner's KCMW CGP Unit solely on the alleged ground of purported ineligibility as per para 2.2 of the Model Guidelines for Accreditation.
- v) The Model Guidelines of Accreditation do not carry the force of law and are just 'model guidelines' meant to enhance and streamline procedural compliances. On the other hand, the REC Regulations, 2010 do carry the force of law and grant a substantial right to the Petitioner for acquiring registration and accreditation under the REC mechanism, which cannot be denied on the basis of procedural guidelines.
- w) Fresh application for accreditation and registration process is only a procedural requirement that has been necessitated on account of the amalgamation and the resultant change in legal status. In the circumstances, non-availability of an online mechanism in the portal to file fresh applications for registration and accreditation of eligible CGPs or procedural guidelines ought not to prejudice the right of the Petitioner with respect to exercise of its substantive rights under the REC mechanism especially since the CGP of the Petitioner is already accredited and registered under the Regulations. It is a well settled principle of law that procedural law and procedural aspects are meant to be subservient to the substantive law and cannot take away the rights of the parties under the substantive law. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in the case of Saiyad

Mohammad baker El-Edross v Abdulhabib Hasan Arab (1998) 4 SCC 343, wherein it has been held as under:

“8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.”

- x) Further, the power to process fresh registration and accreditation is granted to the Respondents. The power being granted without any express prohibition can be exercised at any time as occasion arises. This would also be, by application of the principles contained in Section 14 of the General Clauses Act, 1897. Even if such a prohibition as contended by the Respondents is to be assumed or read into the procedures so as to place a restriction on the accreditation and registration of the Petitioner’s CGP unit, the Commission under the REC Regulations has sufficient powers to relax such conditions in the interest of the renewable energy generator.

Submissions of Respondent No. 1 (NLDC)

6. NLDC on 23.09.2021 has submitted that:
- a) The issue involved in the present case is covered by the recent judgment of the APTEL dated 20.05.2021 in Appeal No. 174 of 2020 viz. Magadh Sugar and Energy Ltd. v. POSOCO and Ors., wherein the tribunal has permitted the grant of re-accreditation and registration of Appellate/ captive generator therein from the Appointed Date mentioned in the NCLT Order approving the Scheme and has held that the Appointed date will be treated as the date from which the Scheme of Arrangement had become effective.
 - b) The Appointed Date for the Scheme of Amalgamation and Arrangement is 01.01.2015 as per the NCLT Order dt. 10.04.2018.

Submission of the Petitioner through Rejoinder

7. The Petitioner through rejoinder dated 29.11.2021 has submitted that:

- a) The above mentioned issue is squarely covered by the APTEL judgement dated 20.05.2021 in Appeal No.174 of 2020 viz. Magadh Sugar Energy Ltd v POSOCO and Ors., wherein the APTEL allowed the re-accreditation and re-registration of Captive Generators from the “Appointed Date” mentioned in the NCLT Order approving the scheme of amalgamation.
- b) The “Appointed Date” for the Scheme of Amalgamation and Arrangement is 01.01.2015, and the same has been recorded in para 10 of the NCLT order dated 20.04.2018.
- c) The Commission may hold that the Petitioner is entitled to fresh accreditation and registration of the CGP and grant other consequent reliefs as prayed for in the captioned petition.

Analysis and decision

8. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.
9. The Petition was filed on 05.08.2020 and was called for admission through virtual hearing on 25.08.2020. The Petitioner has also filed IA No. 51/2020 for interim relief for extension of time for Renewable Purchase Obligation (RPO) compliance and for protection from any coercive steps that may be taken by any authority against the Petitioner arising out of non-compliance or failure to meet RPO targets during the pendency of the present Petition. After hearing, the Commission clarified that the specification of RPO targets and compliance thereof are not within the purview of the Commission and the Commission declined to issue any interim relief in this regard. Accordingly, the Commission disposed of IA No. 51/2020 and the admitted the petition for adjudication.
10. The case was again called for virtual hearings on 17.09.2021 & 14.12.2021.

During the course of hearing, the Petitioner submitted that the Respondent, NLDC vide its reply has placed on the record judgment of the APTEL dated 20.05.2021 in Appeal No. 174 of 2020 viz. *Magadh Sugar and Energy Ltd. v. POSOCO and Ors.*, wherein the tribunal has permitted the grant of re-accreditation and registration of captive generator therein from the Appointed Date

mentioned in the NCLT Order approving the Scheme and has held that the Appointed Date will be treated as the date from which the Scheme of Arrangement had become effective. NLDC has consented to the applicability of the said decision in the present case.

11. Further, during the virtual hearings NLDC did not object to the submissions made by the Petitioner.

12. APTEL in its judgement dated 20.05.2021 in Appeal No. 174 of 2020 viz. *Magadh Sugar and Energy Ltd. v. POSOCO and Ors.*, has held as under:

“21. It does appear that doubts as to eligibility of the appellant for such benefits to be given post such amendment of the REC Regulations notified on 27.03.2016 might arise in the proceedings that would follow the disposal of the appeal at hand. Suffice it to observe that in taking an appropriate view the concerned authorities will bear in mind the time spent by the appellant under wrong or deficient legal advice in pursuing a wrong course of action. Further, the fact that the transfer of ownership of Hasanpur Sugar Mill has taken effect from 01.04.2015, by virtue of the approval granted by NCLT on 02.03.2017, should leave no scope for doubts to be entertained that all consequences flow from the Scheme of Arrangement, under the company law, including transfer of assets and liabilities (concerning the said unit) of the transferor company (Upper Ganges) in favour of the transferee company (Magadh Sugar) – and that undoubtedly includes the RECs already accrued - with reference to the said crucial day i.e. 01.04.2015. The amendment of the REC Regulations notified on 27.03.2016 cannot possibly have retrospective effect.

22. We, thus, set aside the order whereby the application made for fresh registration on 07.05.2018 was declined only on the ground of it being belated. We direct the concerned authorities i.e. NLDC to pass a fresh order, bearing in mind the observations recorded above and accord registration/accreditation vis-à-vis Hasanpur Sugar Mills in favour of the appellant, also expressly providing for benefit of the REC Scheme, including the benefits already accrued in favour of Upper Ganges prior to the change, to be passed on to the transferee i.e. the appellant, within one month of this judgment. In case the appellant has any further grievances with regard to compliance/noncompliance with these directions, it shall have the liberty to approach this tribunal by moving an appropriate application with reference to the captioned appeal.

23. The appeal and pending application stand disposed of in above terms.”

13. From above, we observe that by virtue of the approval granted by NCLT, all consequences flowing from the Scheme of Arrangement, under the Company Law, including transfer of assets

and liabilities of the transferor company in favour of the transferee company includes the RECs already accrued - with reference to the said crucial day i.e. 01.01.2015.

14. We observe that the Appointed Date for the Scheme of Amalgamation and Arrangement is 01.01.2015 as per the NCLT Order dated 10.04.2018. We hold that the Petitioner is entitled to fresh accreditation and registration of the Petitioner's CGP with effect from 01.01.2015 (appointed date) under the REC Regulations and the procedures laid down thereunder. The Petitioner is entitled to fresh accreditation and registration of the Petitioner's CGP with effect from 25.11.2019 under the REC Regulations and the procedures laid down thereunder. Accordingly, we direct the Respondents to grant accreditation and registration to the Petitioner's CGP under the REC Regulations and the procedures laid down thereunder with effect from 25.11.2019. We also direct the Respondent NLDC to issue RECs to the Petitioner after due verification of the requirement of other conditions for issuance of RECs as per the REC Regulations.

15. Accordingly, the Petition No. 595/MP/2020 is disposed of in terms of the above.

Sd/-
(पी. के. सिंह)
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(अरुण गोयल)
सदस्य

Sd/-
(आई. एस. झा)
सदस्य

Sd/-
(पी. के. पुजारी)
अध्यक्ष