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NEW DELHI

याचिका संख्या./ Petition No. 59/MP/2023

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, 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: 30th November, 2023

IN THE MATTER OF:

Petition under Section 79 (1) of the Electricity Act, 2003 read with Regulation 6, 8, 17 & 18 of the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 seeking directions for re-accreditation and registration of the Petitioner under Renewable Energy Certificates mechanism and consequent reliefs

AND IN THE MATTER OF:

Dhanashree Agro Products Private Limited
(Formerly known as Lakshmi Sugar Mills Co. Ltd.)
Village Iqbalpur, Tehsil Bhagwanpur,
District Hardiwar, Uttarakhand

...Petitioner

Versus

1. Grid Controller of India Ltd.

(Formerly known as Power System Operation Corporation Limited)

B-9, First Floor, Qutab Institutional
Area, Katwaria Sarai,
New Delhi – 110016

2. Uttarakhand Renewable Energy Development Agency (UREDA)

Kargi – Patel Nagar Bypass, Energy
Park Campus, Niranjanpur,
Dehradun, Uttarakhand -248121

...Respondents

Parties Present: Shri Akshat Jain, Advocate, DAPPL

Shri Sanjeev Kumar, Advocate, DAPPL

Shri Avdesh Mandloi, Advocate, DAPPL

Shri S. Kumar, Advocate, DAPPL

Shri Bhishm Pratap, Advocate, DAPPL

Shri Kailash Chand Saini, POSOCO

Shri Gajendra Sinh Vasava, POSOCO

आदेश/ ORDER

The Petitioner, Dhanashree Agro Products Private Limited owns and operates sugar mills in Haridwar, Uttarakhand and has a Bio-fuel (bagasse) based Cogeneration power plant with an installed capacity of 26 MW, out of which 6.6 MW (power for captive consumption) is registered under REC mechanism. The Petitioner has filed the petition under Regulations 6, 8, 17 & 18 of the *Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022* (REC Regulations, 2022) seeking directions for re-accreditation and registration of the Petitioner under Renewable Energy Certificates (REC) mechanism and consequent reliefs

2. Respondent No. 1, Grid Controller of India Ltd. (formerly known as Power System Operation Corporation Ltd.) is a Government of India enterprise, operating as the National Load Despatch Centre (NLDC). NLDC is the Central Agency for issuance of RECs as provided in Regulation 3 of REC Regulations 2022

3. Respondent No. 2, Uttarakhand Renewable Energy Development Agency (UREDA) is the State Agency for the State of Uttarakhand for accreditation and recommending the renewable energy projects for registration and to undertake functions as specified in the REC Regulations 2022.
4. The Petitioner has made the following prayers:
- (a) Hold that the Petitioner is entitled for revalidation of accreditation of 6.6 MW capacity of Project with effect from 13.06.2021 and revalidation of registration with effect from 24.06.2021 onward under the REC Regulations 2022;*
 - (b) Condone the procedural delay in applying for revalidation of accreditation;*
 - (c) Direct the Respondents to take necessary action for revalidation of accreditation of 6.6 MW capacity of Project with effect from 13.06.2021 and revalidation of registration with effect from 24.06.2021;*
 - (d) Direct the Respondents to issue RECs corresponding to the generation of electricity by the Petitioner and accordingly Respondents to be directed to issue equivalent RECs for the energy injected; and*
 - (e) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

Factual matrix:

5. The Petitioner has submitted as under:
- (a) On 01.03.2013, the Petitioner commissioned its bagasse-based power plant.
 - (b) On 13.06.2016, the Petitioner was issued a Certificate of Accreditation by UREDA, having Accreditation number UL0NSLSMCL002A130616, for 6.6 MW capacity, which was valid for a period of five years i.e. up to 12.06.2021.
 - (c) On 13.06.2016, UREDA issued a letter to POSOCO wherein UREDA recommended a 6.6 MW capacity of Petitioner's Project for registration under the REC mechanism.
 - (d) On 24.06.2016, POSOCO issued a 'Certificate for Registration' to the Petitioner as an eligible entity confirming its entitlement to receive RECs for its Project, which was valid for a period of five years i.e. up to 23.06.2021.
 - (e) On 16.03.2018, the Commission in terms of the fourth Amendment to the *Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for*

Renewable Energy Generation) Regulations, 2010 (REC Regulations, 2010) approved the modifications to the 'Model Procedure' for REC.

Submissions of the Petitioner:

6. The Petitioner has submitted as under:
 - (a) On 14.06.2021, the Petitioner in the normal course of business issued a letter to UREDA requesting for an extension of accreditation and paid requisite fees for revalidation as the accreditation under the REC mechanism had expired. Thereafter, on 17.06.2021, UREDA requested the Petitioner to apply online for re-accreditation on the portal and pay the fees for re-accreditation through the portal only.
 - (b) However, when the Petitioner applied for re-accreditation on the portal, the online gateway did not accept the payment. In these circumstances, the Petitioner was left without accreditation, and consequently, the registration also expired without revalidation. All this occurred due to the only reason of not revalidating the accreditation prior to its expiry date and, as such, the delay of two (2) days has occurred from the expiry of accreditation which is completely inadvertent in nature.
 - (c) The Petitioner was granted a Certificate of accreditation and registration under the REC Regulations, 2010 and the Model Procedure for REC. However, on 24.05.2022, the Commission notified REC Regulations, 2022, thereby repealing the REC Regulations 2010 and the Model Procedure for REC.
 - (d) NLDC is yet to notify/issue the aforesaid procedures under Regulation 16 of REC Regulations 2022, and therefore, presently there is no specified procedure for revalidation of accreditation and registration under the REC Regulations 2022.
 - (e) The reaccreditation was denied on account of procedural and technical issues under the REC Regulations, 2010 and the Model Procedure for REC which stands repealed after the promulgation of REC Regulations 2022.
 - (f) The Petitioner had requested the Commission to issue appropriate directions to Respondents to provide the Petitioner with an online link or portal for application of reaccreditation.

Analysis and Decision:

7. We have heard the Petitioner and the Respondent and have carefully perused the records.

8. The brief facts of the case are that the petitioner, Dhanashree Agro Products Private Limited (DAPPL) owns and operates sugar mills in Haridwar, Uttarakhand and has a Bio-fuel (bagasse) based Cogeneration power plant with an installed capacity of 26 MW out of which 6.6 MW (power for captive consumption) is registered under the REC mechanism. UREDA granted a certificate of Accreditation for the Petitioner's project from 13.6.2016 till 12.6.2021, and the Petitioner was registered on 24.6.2016, which was valid till 23.06.2021. On 14.06.2021, the Petitioner wrote to UREDA requesting an extension of the accreditation for the Petitioner's Project under the REC mechanism and accordingly submitted the required fees for Accreditation. On 17.06.2021, UREDA informed the Petitioner to apply for the reaccreditation/ extension of validity online on the portal. Accordingly, the Petitioner applied for reaccreditation on the portal. However, the online gateway did not accept the payment. Therefore, the Petitioner's project could not get re-accredited, and consequently, the registration also expired without revalidation.
9. The Petition came up for hearing on 24.04.2023. As per the Record of Proceedings, it was held as under:
2. *The representative of the Respondent No.1, NLDC/POSOCO submitted that there was a delay of 2 days in applying for revalidation of its accreditation by the Petitioner and the Respondent has no objection towards the prayers made by the Petitioner.*
 3. *Learned counsel for the Petitioner submitted that keeping in view that the Respondent does not have any objection, the matter may be reserved for order.*
 4. *Considering the submissions made by the learned counsel for the Petitioner and the representative of the Respondent, the Commission admitted the Petition. The Commission directed the Respondent to file its reply, if any, within two weeks with advance copy to the Petitioner who may file its rejoinder within a week thereafter.*
 5. *Subject to the above, the Commission reserved the matter for order.*
10. From the discussion above we are of the view that the only issue for adjudication is as under:
- Whether the Petitioner is entitled to revalidation of accreditation of 6.6 MW capacity of Project with effect from 13.06.2021 and revalidation of registration with effect from 24.06.2021 onward under the REC Regulations 2022 and whether the Respondents can be directed to issue equivalent RECs for the energy injected or not?*

11. We observe that Para 4.1(i) and 4.2(b) of the *Model Procedure / Guidelines for Accreditation of Renewable Energy Generation Project or Distribution Licensee, as the case may be, under REC Mechanism by State Agency* (REC Accreditation Procedures), stipulates as under:

*“4.1(i) The Generating Company or Distribution Licensee, as the case may be, shall apply through REC web application for revalidation or extension of validity of existing accreditation **at least three months** in advance prior to expiry of existing Accreditation.”*

...

“4.2.State Agency

b. State Agency shall submit one time information in the prescribed format to Central Agency to obtain login credentials in the REC Web application. Any change in the information shall immediately be intimated to the Central Agency.”

12. Para 4.1(f) of the *Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency* (REC Registration Procedures) reads as follows:

*“The generating company or Distribution Licensee, as the case may be, shall apply for revalidation or extension of validity of existing Registration **at least three months** in advance prior to expiry of existing Registration.*

In case, RE generator has submitted online application for revalidation of Accreditation to State Agency before expiry of the Accreditation Certificate, and during the process of approval by State Agency, Registration Certificate is expired, in such cases, Central Agency will accept the application for revalidation of Registration.

Subsequent to re-validation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of revalidation of Accreditation/Registration.

Further, Central Agency will reject the application of those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate.”

13. From the above, we observe that as per the REC Regulations, 2010 and the Model Procedure for REC, the application process for revalidation of accreditation and registration is through a web-based link provided by the Central Agency. The Central Agency provides the login to the RE generators. An eligible entity is required to apply through this REC web application at least three months in advance prior to the expiry of existing accreditation. In case the RE generator has submitted an online application before the expiry of the accreditation certificate and during the process of approval by the State Agency, the registration certificate expires, in such cases, the Central Agency accepts the application for revalidation of registration. Subsequent to

revalidation of registration, the concerned RE generator continues to receive RECs without any gap in the process of re-validation of accreditation/ registration. Further, for those RE generators who have not initiated the process of accreditation/ registration before the expiry of the accreditation certificate, the Central Agency rejects the application.

14. In the instant petition, we observe that the Petitioner was required to apply for revalidation of accreditation three months prior to the date of expiry of accreditation i.e. at least three months preceding 12.06.2021, but the Petitioner has failed to apply for revalidation of accreditation. The Petitioner issued a letter to UREDA requesting an extension of accreditation on 14.06.2021, whereas the accreditation validity was only till 12.06.2021. Hence, the Petitioner failed to comply with the REC Regulations, 2010 and the Model Procedure for REC. It is pertinent to mention here that the application process for re-validation of accreditation and registration is through a web-based link provided by NLDC and the link automatically expires as soon as the prescribed last date for such an application lapse. Hence, the Petitioner failed to apply for revalidation of accreditation and registration within the timeline specified in the above-mentioned Procedures.
15. In our view, the delay in submission of the application for revalidation of accreditation and registration for the issuance of REC is procedural in nature due to the reasons stated by the Petitioner and condoning the delay causes no harm to any of the stakeholders, including the Respondent. The main objective of the REC Regulations, 2010 is to promote the generation of renewable energy and that any procedural law cannot be an impediment in achieving the objective of a law.
16. The REC Regulations, 2022, were notified on 09.05.2022 and became effective from 05.12.2022. The REC Regulations, 2010 and all subsequent amendments thereto and Procedures were repealed from the date of coming into force of REC Regulations, 2022.
17. The relevant provisions of REC Regulations, 2010 stipulate as under:

15. Power to Relax:

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.

18. The relevant provisions of REC Regulations, 2022 stipulate as under:

18. Power to Relax

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected, may relax any of the provisions of these regulations on its own motion or on an application made before it by interested person(s).

19. Repeal and Savings

(1) Save as otherwise provided in these regulations, the REC Regulations, 2010 and all subsequent amendments thereto and Procedures thereof shall stand repealed from the date of coming into force of these regulations.

(2) Notwithstanding such repeal:

(a) anything done or any action taken or purported to have been done or taken or any accreditation or registration or permission granted or any document or instrument executed or any direction given under the repealed regulations shall, in so far as it is not inconsistent with the provisions of these regulations, be deemed to have been done or taken under the corresponding provisions of these regulations;

19. From the above, it is noted that the REC Regulations 2010 have been repealed by the REC, Regulations 2022. By virtue of the saving clause, in terms of Regulations 19 (2) of the REC Regulations 2022, anything done or any action taken under the repealed REC Regulations 2010 shall be deemed to have been done or taken under the REC Regulations, 2022, It is pertinent to note that both the REC Regulations, 2010 and the REC Regulations, 2022 have provisions for the power to relax and Power to give directions.

20. As per the principle laid down for the grant of RECs, if the Petitioner is engaged in the generation of electricity from renewable energy sources, it shall be eligible for issuance of RECs subject to the eligibility criteria. The main objective of the REC Regulations, 2010 is to promote the generation of renewable energy. Therefore, we are inclined to exercise the “Power to relax” under Regulation 15 of the REC Regulations, 2010 and under Regulation 18 of REC Regulations, 2022, in order to achieve the object of the regulations. Accordingly, we hereby relax Regulation 7(2) of the REC Regulations, 2010, read with paragraph 4.1 (h) of the REC

Procedures to enable the issuance of RECs to the Petitioner. As already decided above, the delay in the application for revalidation of accreditation and registration for the issuance of REC is procedural in nature due to the reasons stated by the Petitioner and condoning the delay causes no harm to any of the stakeholders, including the Respondent. It is pertinent to mention here that during the hearing held on 24.04.2023, *“the representative of the Respondent No.1, NLDC/POSOCO submitted that there was delay of 2 days in applying for revalidation of its accreditation by the Petitioner and the Respondent has no objection towards the prayers made by the Petitioner.”*

21. Accordingly, we hereby condone the delay in submitting the application for revalidation of accreditation and registration for issuance of REC and direct the Petitioner to approach the State Agency for reaccreditation. Further, NLDC is directed to issue the RECs after due verification and satisfying itself that the projects meet all conditions and the Petitioners have submitted all required documents for issuance of RECs.

22. The Petition No. 59/MP/2023 is disposed in terms of the above.

Sd/-
(पी. के. सिंह)
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(अरुण गोयल)
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(आई. एस. झा)
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