

केंद्रीय विद्युत नियामक आयोग
CENTRAL ELECTRICITY REGULATORY COMMISSION

नई दिल्ली
NEW DELHI

याचिका संख्या. / Petition No.: 16/MP/2018

कोरम/Coram:

श्री पी के पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
श्री ए के सिंघल, सदस्य/ Shri A.K. Singhal, Member
डॉ. एम के अय्यर, सदस्य/ Dr. M.K. Iyer, Member

आदेश दिनांक /Date of Order: 9th of October, 2018

IN THE MATTER OF:

Petition under Regulation 5 read with Regulations 14 & 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 seeking directions for issuance of RECs, updation of name and Re- registration of the Petitioner under the Renewable Energy Certificate Mechanism

AND IN THE MATTER OF:

M/s Tadas Wind Energy Private Limited,
Plot C-22. G Block, The IL&FS Financial,
Centre, Bandra Kurla Complex,
Bandra East, Mumbai 400051

...PETITIONER

Versus

National Load Dispatch Centre

C/o Power System Operation Corporation Limited
(POSOCO). B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi 110016

... RESPONDENT

Parties Present: Shri Vishal Gupta, Advocate, TWE(P)L
Shri Abhishek Ray, Advocate, TWE(P)L
Shri Dipun B, TWE(P)L
Shri Arjun Krishnan, Advocate, NLDC
Shri Ankur Singh, Advocate, NLDC

आदेश/ ORDER

1. The Petitioner, M/s Tadas Wind Energy Private Limited, is a Generating Company as defined under Section 2 (28) of the Electricity Act. 2003. The Petitioner is primarily engaged in the business of setting up of solar power plants and generation of electricity. The Petitioner was incorporated as private limited company on 27.07.2011. Subsequently, the Petitioner was converted into a public company on 20.01.2012 and the name of the Petitioner was changed as 'M/s Tadas Wind Energy Limited'. The Petitioner commissioned its 100 MW Plant in phases at Tadas, Haveri district, Karnataka (hereinafter referred to as 'Karnataka Project') and got it registered under REC mechanism. Further, the Petitioner also commissioned its 50.4 MW Plant in Nalakonda, Andhra Pradesh (hereinafter referred to as 'Andhra Pradesh Project') and got it registered under REC mechanism. Thereafter, the Petitioner again converted into a private limited company and its name was changed to 'M/s Tadas Wind Energy Private Limited' on 27.09.2013.
2. The Respondent, National Load Dispatch Centre, as defined under Section 26 of the Electricity Act, 2003 is the nodal agency for issuance of Renewable Energy Certificates (hereinafter referred to as 'RECs') as provided in regulation 3 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 as 'REC Regulations, 2010').

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

Brief facts of the case:

4. On 10.03.2015, MNRE issued guidelines for implementation of Scheme for selection of 3000 MW Grid Connected Solar PV Power Projects under Phase-II, Batch-II, Tranch-I for "State Specific Bundling Scheme". Under the said State Specific Bundling Scheme, NTPC was made responsible for implementation. NTPC implemented the said scheme through its subsidiary NTPC Vidyut Vyapar Nigam Ltd, a trading licensee for inter-State trading in electricity in whole of India.
5. On 27.02.2011, M/s Tadas Wind Energy Private Limited was incorporated as a private limited Company.
6. On 20.01.2012, M/s Tadas Wind Energy Private Limited was converted into Public Limited Company and the name was changed as M/s Tadas Wind Energy Limited.
7. From May, 2012 to Sept. 2012, the Petitioner commissioned its 100 MW Plant in phases at Tadas, Haveri district, Karnataka.

8. In July, 2012, the Petitioner registered its Karnataka Project under REC mechanism. Further, in the same month, the Petitioner also commissioned its 50.4 MW Plant in Nalakonda, Andhra Pradesh.
9. In Oct. 2012, the Petitioner registered its Andhra Pradesh Project under REC mechanism.
10. On 27.09.2013, the Petitioner again converted M/s Tadas Wind Energy Limited into Private Limited Company and the name was changed as M/s Tadas Wind Energy Private Limited.
11. On 20.05.2014, the Petitioner sent the name change application to Karnataka Renewable Energy Development Limited (hereinafter referred to as 'KREDL') by paying requisite regulatory fees. However, on 03.06.2014, KREDL informed the Petitioner that name change application is on hold due to pending service tax dues of the Contractor of the Petitioner.
12. On 11.08.2015, KREDL asked the Petitioner to submit TDS Certificate which was submitted by the Petitioner on 17.03.2016.
13. On 17.08.2017, the Petitioner requested KREDL for name change from M/s Tadas Wind Energy Limited to M/s Tadas Wind Energy Private Limited.
14. On 01.12.2015, the Petitioner sent an application to Southern Power Distribution Co. of Andhra Pradesh Ltd. (hereinafter referred to as 'APSPDCL') requesting name change for its 50.4 MW Andhra Pradesh project.
15. On 03.12.2015, CGM – Tirupati Division of APSPDCL sent a letter to CGM – TSPDCL to submit original Power Purchase Agreements. However, on 12.07.2017, the Petitioner informed the Respondent that the Petitioner and M/s Tadas Wind Energy Limited are one and same companies.
16. On 24.08.2017, the Petitioner received Re-accreditation of Andhra Pradesh Project from Transmission Corporation of Andhra Pradesh Limited
17. On 20.09.2017, the Petitioner sent a letter to Respondent requesting to continue issuance of RECs and renew the registration of its 50.4 MW Andhra Pradesh Project.
18. On 22.09.2017, the Petitioner gave an undertaking in lieu of the TDS deducted on REC

issuance charges paid to Respondent under same TAN number as that of M/s Tadas Wind Energy Limited.

19. On 06.10.2017, the Petitioner submitted the shareholding pattern of M/s Tadas Wind Energy Private Ltd. and M/s Tadas Wind Energy Ltd. and requested Respondent to continue issuing RECs and renew the Registration of its 50.4 MW Andhra Pradesh Project.
20. On, 13.11.2017, the Petitioner sent emails to Respondent requesting to continue issuing RECs and renew Registration of its 50.4 MW Andhra Pradesh Project.
21. On, 27.11.2017, the Petitioner sent reminders to APSPDCL and KREDL respectively to process the application.
22. On 05.12.2017, Respondent sent an email to Petitioner reiterating that the legal status of the company has changed and request for name change could not be entertained.

Submissions of the Petitioner:

23. The Petitioner has submitted that it is a Generating Company as defined under Section 2 (28) of the Electricity Act, 2003 having been incorporated on 27.07.2011 as M/s Tadas Wind Energy Private Limited. It was converted into a public company on 20.01.2012 and subsequently, the name of the Petitioner was changed as Tadas Wind Energy Limited. It has commissioned a Power Plant having installed capacity of 100 MW capacity located at Tadas, Haveri District, Karnataka in phases from May 2012 to September, 2012. It has also commissioned another plant having installed capacity of 50.4 MW at Nalakonda, Andhra Pradesh in July 2012. Further, both the projects were granted registration under the REC Mechanism viz. Karnataka project in July 2012 and Andhra Pradesh Project in October, 2012.
24. The Petitioner has submitted that M/s Tadas Wind Energy limited was converted into a private limited company and its name was changed to Tadas Wind Energy Private Limited on 27.09.2013. The Petitioner has further submitted that change in name of the company is due to mere change in the status from a public limited company to a private limited company in the records of the Registrar of Companies and it does not change the constitution / legal status

of the Petitioner Company. This merely changes the type of Company as per the provisions of the Companies Act, 2013 without change in 'legal status' i.e. a company duly incorporated with distinct identity and legal status different from its members.

25. The Petitioner has placed its reliance on Section 2(71) of the Companies Act, 2013 which provides as under:

*“(71) —public company: means a company which—
(a) is not a private company;
(b) has a minimum paid-up share capital as may be prescribed:
Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;”*

26. The Petitioner has submitted that a bare perusal of Section 2(71) of the Companies Act, 2013 establishes that despite the conversion of the Petitioner company from a public limited company to a private limited company, it continues to be a deemed to be public limited company for the purposes of the Companies Act, 2013 as it is a subsidiary of a public company and it continues to comply with provisions applicable to public Companies under the Companies Act, 2013. Even otherwise, the Company Identification Number (CIN) (except type of company i.e. private limited company), Permanent Account Number (PAN) and Tax Deduction Account Number, (TAN) of the Petitioner Company remained the same under the revised name.

27. The Petitioner has submitted that after the change in the name of its company, it sent an application to KREDL on 20.05.2014 by paying the requisite regulatory fees. In response to the same, KREDL vide its letter dated 30.06.2014 informed the petitioner that due to pending service tax dues of VISH Wind Infrastructure LP (Contractor of the Company but an unrelated party), the name change application of the petitioner was kept on hold. Subsequently, KREDL sent another letter dated 11.08.2015 to the Petitioner interalia asking it to submit the TDS certificate. The Petitioner submitted the TDS certificate as required to KREDL vide its letter dated 17.03.2016.

28. The Petitioner has submitted that in spite of repeated reminders, KREDL did not allow the name change of the Petitioner. The Petitioner vide its letter dated 17.08.2017 once again

requested KREDL to complete its name change request after having paid all the processing fees plus the applicable service tax. The Petitioner also sent an application dated 01.12.2015 to Southern Power Distribution Co. of Andhra Pradesh Ltd (hereinafter referred to as 'APSPDCL') requesting name change for its 50.4 MW Andhra Pradesh Project. In response to the same, Chief General Manager- APSPDCL, Tirupati, vide its letter dated 03.12.2015 informed CGM, TSPDCL to submit the original Power Purchase Agreements. Since the original Power Purchase agreements were not received from Telangana State Southern Power Distribution Company Limited (hereinafter referred to as 'TSSPDCL'), the request for name change was not processed by APSPDCL CGM – Tirupati.

29. The Petitioner has submitted that in the meantime, it also deducted the TDS on REC issuance charges paid to the Respondent under the same TAN number as that of M/s Tadas Wind Energy Limited and also gave an undertaking dated 22.09.2017 wherein it agreed to indemnify the Respondent against any losses that it may incur pertaining to the deduction of TDS on account of the name change of the Petitioner Company from M/s Tadas Wind Energy Limited to M/s Tadas Wind Energy Private Limited.
30. The Petitioner has submitted that the Respondent stopped issuing RECs to the Petitioner for units generated since December, 2016. Further, the accreditation of the project of the Petitioner at Nalakonda, Andhra Pradesh expired on 10.10.2017 and the same has not been registered by NLDC till date despite application for renewal was submitted by the Petitioner three months before its expiry. The re-accreditation for the said project at Nalakonda, Andhra Pradesh, has already been obtained from the Transmission Corporation of Andhra Pradesh Limited on August 24, 2017, as per Regulation 5 (1)(a) of the REC Regulations, 2010. The Petitioner vide its letters dated 12.07.2017 and 14.08.2017 informed the Respondent that both the Petitioner and Tadas Wind Energy Ltd are one and the same companies.
31. The Petitioner has submitted that vide letter dated 06.10.2017 it has informed the Respondent of the shareholding pattern of both Petitioner and M/s Tadas Wind Energy Ltd and requested the Respondent to continue issuing RECs and renew the Registration of its 50.4 MW Andhra Pradesh Project of the Petitioner. However, the Respondent has not taken any action whatsoever and therefore, the Petitioner sent an email dated 13.11.2017 to the respondent

requesting it to continue issuing RECs and renew the Registration of its 50.4 MW Andhra Pradesh Project of the Petitioner.

32. The Petitioner has submitted that though it has applied for renewal of its registration within time, the Respondent has neither re-registered its project nor is it issuing RECs to the Petitioner on the premise that the Petitioner and M/s Tadas Wind Energy Ltd are two different companies and that there has been a constitution change/ change of legal status and that the Petitioner should apply afresh for accreditation by the State Agency and registration by the Central Agency i.e. the Respondent as per Regulation 4.1. (j) of the REC Procedures as approved by the Commission on November 05, 2015. The regulation stipulates that:

“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 relevant documents in hard copy.”

The instances given in the above regulation clearly indicate that the intention of the Commission is to deal with cases of change in “legal status” of the eligible entity.

33. The Petitioner has submitted that its projects have been registered under the REC mechanism for last 5 years and in case it is not allowed to obtain renewal of registration (without re-accreditation) of its project under the REC mechanism, grave loss, hardship and injury will be caused to it.
34. The Petitioner has submitted that vide email dated 05.12.2017, the Respondent reiterated that it is not a simple name change but the legal status of the company has been changed, and the new name of the company ‘M/s Tadas Wind Energy Private Limited’ is a separate entity w.e.f. 27.09.2013 under Companies Act. Therefore, the request for change in the name of the registered projects could not be entertained by the Central Agency, the Respondent herein. The Respondent further informed the Petitioner that the pending application for issuance of RECs and the application for revalidation of registration of RE projects of Andhra

Pradesh in the name of M/s Tadas Wind Energy Limited will not be processed by the Central Agency due to name change of the company.

35. The Petitioner has submitted that it had duly complied with all the requirements prescribed under the REC Regulations, 2010 as well as the Procedure for renewal of accreditation under the RECs Mechanism and the Respondent ought to have re-registered the project of the Petitioner herein. Further , as the Petitioner and Tadas Wind Energy Ltd are one and the same company, there was no reason whatsoever, for the Respondent to stop issuing RECs to the Petitioner herein.
36. The Petitioner has submitted that it has been repeatedly requesting the Respondent to issue RECs and grant re-registration of its 50.4 MW Andhra Pradesh project and updation of name in its records under the REC mechanism. However, due to apathy / inaction of the Respondent, it has been deprived of the benefits under the REC mechanism which has caused grave loss and injury to it.

Submissions of Respondent

37. The Respondent has submitted that the present petition involves adjudication upon a short issue i.e. whether conversion from a public limited to private limited company amounts to 'change in legal status' or a mere 'change in name' for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee.
38. The Respondent has submitted that in exercise of powers conferred under sub-section (1) of Section 178 and Section 66 read with clause (y) of sub-section 2 of Section 178 of the Act, this Commission, brought into force the REC Regulations. Subsequently, the Commission issued a notification dated 29.01.2010, and designated the answering Respondent as the 'Central Agency' under Regulation 3(1) of the REC Regulations.
39. The Respondent has submitted that it 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, is approved by the Commission before coming into force. Consequently, the Respondent submitted detailed

procedures which were initially approved on 01.06.2010. The relevant procedure i.e. *‘Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency’*, (hereinafter referred to as ‘REC Registration Procedure’), for the purpose of present case, was revised by order dated 05.11.2015 of the Commission.

40. The Respondent has submitted that neither the REC Regulations nor the aforesaid procedure vests any discretionary power on the answering Respondent to relax and/or to exempt compliance with any of the provisions contained therein. Further, the language of the REC Regulations and the REC Registration Procedure 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. the answering Respondent.
41. The Respondent has further 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. The extracts of the aforesaid regulation is as given 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:

...”

42. The Respondent has submitted that it is relevant to mention that the 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. 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.”

43. The Respondent has submitted 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 generally denotes that a provision is imperative in nature and must be strictly complied with. Further, a bare perusal of the aforesaid clause indicates that in cases 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.
44. The Respondent has submitted that in order to examine whether in the facts of the present case, there is a change in legal status upon conversion of Petitioner’s company from public to private, it would be pertinent to examine the relevant provisions of the Companies Act 2013 (hereinafter referred to as the ‘Companies Act’). A review of the provisions of the Companies Act reveals that there are important differences between a public limited and a private limited company, and that the law treats both these entities differently. Some of the important differences are as under:-
- (i) Under section 3 of the Act, a minimum of 2 persons are required to subscribe their names to the memorandum for the formation of a private company; whereas a minimum of 7 persons are needed in case of a public company. Under section 149, a minimum of 3 directors are required for a public limited company whereas for a private limited company the requirement is 2 directors only.
 - (ii) Under sub-section (68) of section 2 of the Act, a private company is prohibited from invitation to the public to subscribe for any securities of the company and also restricts the right to transfer its shares. There cannot be an absolute prohibition on the right to transfer shares. The right to transfer may be subjected to restrictions contained in the articles and though such restrictions may be either very stringent or very slight, it would be acceptable so long as it does not amount to a total ban on transferability. The restriction clause, however, should apply equally to all shareholders or shareholder of

the same class, and not exempt the shares held by some of them. Further, the maximum number of members in a private company is limited to 200.

- (iii) Sub-section (1) of Section 23 lists out the modes by which a public company may issue securities, while sub-section (2) of Section 23 lists out the modes by which a private company may issue securities. In a nutshell, both, a public company and a private company may issue securities by way of a private placement and a rights issue *i.e.* without accessing members of the public. However, it is only a public company that may make an offer of securities to members of the public. Such an issue of securities to members of the public would require the publication of a prospectus.
- (iv) Under Sub-section (1) of Section 40, every company that makes a public offer is required to apply to the stock exchange for listing the securities being offered. The word used is 'shall' which makes it a mandatory requirement. This obligation is not applicable in case of private companies as they are not permitted to make public offers of their securities
- (v) Under section 2(85), a "*small company*" can only be a private company and not a public company. Whether a company is a small company or not will be determined either by the paid up capital or its turnover.
- (vi) Sub-section (2) of Section 67 imposes restrictions on public companies (which includes private companies which are subsidiaries of a public company) to give financial assistance to persons purchasing their shares. Other private companies do not come under the prohibition in sub-section (2).
- (vii) Section 73 of the Act prohibits both public and private companies from acceptance of deposits from the public except in accordance with the conditions prescribed therein. Section 76(1), however, makes an exception to Section 73 by permitting public companies meeting certain criteria to accept deposits from the public that is other than its members.
- (viii) Under section 108, the Quorum requirements are different for meetings of public and private limited companies. For a private limited company just two members, personally present, are sufficient to constitute quorum for a meeting.
- (ix) Under section 197, there are restrictions on the remuneration payable to directors of a public limited company, whereas there are no such restrictions on a private limited company.

45. The Respondent has submitted that the process of conversion itself is indicative of a change in legal status of the company. Section 21 of the Companies Act 1956 dealt with change of name of a company. Section 21 is reproduced below:

“21. Change of Name by Company: A company may, by special resolution and with the approval of the Central Government signified in writing change its name: Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.”

Section 21 provides for the procedure for change in name by a company. The section itself draws a distinction between changes in name simpliciter and change of name upon conversion, indicating that the Companies Act treats both the situations differently. Further, the conversion of a public limited to a private limited company requires a special resolution under section 31 of the 1956 Act (corresponding to section 14 of the 2013 Act), which reads as under :

“31. Alteration of articles by special resolution: (1) Subject to the provisions of this Act and to the conditions contained in its memorandum a company may, by special resolution, alter its articles:

Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.

(2) Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution.

(2A) Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.]

(3) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them, extend to altering any provisions in Table B annexed to Act 19 of 1857, and

shall also, in the case of an unlimited company formed and registered under the said Acts, or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.”

46. The Respondent has submitted that in the instant case, the Petitioner had resorted to the aforesaid provision and resultantly, sought and obtained Central Government’s approval in terms of the same.
47. The Respondent has submitted that Section 18 of the Companies Act is also relevant for the purposes of the present case. The said section is reproduced below for ready reference: -

“Section 18 – Conversion of Companies already registered

(1) A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.

(2) Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the same manner as its first registration.

(3) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.”

A perusal of sub section (2) of the aforesaid provision shows that upon conversion, virtually, a new entity is born in law and the former registration is closed while a new one created. Even a fresh incorporation certificate is issued (as has been done in the present case). But for the savings clause in sub-section (3), the converted company would not be bound by the liabilities and obligations of the entity. In other words, there is a definite change in the legal status upon conversion from a public limited company to private limited company and vice versa.

48. The Respondent has submitted that in view of the above provisions the legal status of Petitioner’s company is changed upon conversion from public limited to private limited company, hence the Commission may dismiss the present Petition.

Submissions of the Petitioner through its Rejoinder:

49. The Petitioner has filed the rejoinder on 07.04.2018 in which it has denied all the averments submitted by the Respondent and reiterated the stand taken in the petition. The same is not being reproduced again for the sake of brevity. Additionally, the Petitioner has submitted that 51% of its shareholding is held by 'IL&FS Wind Energy Limited' which is a public limited company. Hence, M/s TADAS Wind Energy Private Limited is deemed to be a public company in terms of the proviso to Section 2 (71) of the Companies Act, 2013. It has complied with all the provisions as applicable to public companies under the Companies Act, 2013 and even after the conversion of the Petitioner from a public limited company to a private limited company the petitioner continues to be a public company under the provisions of the Companies Act, 2013. Thus, there is no change of legal status of the Petitioner.

Analysis and decision:

50. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records.

51. The brief facts of the case are that the Petitioner was incorporated as a private limited company on 20.01.2012 as M/s Tadas Wind Energy Private Limited. Subsequently it changed its constitution to a public limited company with its name as M/s Tadas Wind Energy Limited. It had commissioned a power plant having installed capacity of 100 MW located at Karnataka in phases from May 2012 to September, 2012 and commissioned another plant having installed capacity of 50.4 MW at Nalakonda, Andhra Pradesh in July 2012. Further, both the projects were granted registration under the REC Mechanism viz. Karnataka project in July 2012 and Andhra Pradesh project in October, 2012 respectively. Meanwhile, on 27.09.2013, the Petitioner again converted itself into a private limited company and its name was again changed to M/s Tadas Wind Energy Private Limited. The Petitioner submitted that change in name of the company is due to mere change in the status from a public limited company to a private limited company in the records of the Registrar of Companies and it does not change the constitution / legal status of the Petitioner Company. This merely changes the type of Company as per the provisions of the Companies Act, 2013 without

change in 'legal status' i.e. a company duly incorporated with distinct identity and legal status different from its members.

52. The Petitioner has submitted that 51% of its shareholding is held by 'IL&FS Wind Energy Limited' which is a public limited company. Hence, M/s TADAS Wind Energy Private Limited is deemed to be a public company in terms of the proviso to Section 2 (71) of the Companies Act, 2013. It has complied with all the provisions as applicable to public companies under the Companies Act, 2013 and even after the conversion of the Petitioner from a public limited company to a private limited company, the petitioner continues to be a public company under the provisions of the Companies Act, 2013. Thus, there is no change of legal status of the Petitioner. The Petitioner has placed its reliance on Section 2(71) of the Companies Act, 2013. The Petitioner has submitted that despite the conversion of the Petitioner company from a public limited company to a private limited company, it continues to be a deemed public limited company for the purposes of the Companies Act, 2013 as it is a subsidiary of a public company and it continues to comply with provisions applicable to public Companies under the Companies Act, 2013. Even otherwise, the Company Identification Number (CIN) (except type of company i.e. private limited company), Permanent Account Number (PAN) and Tax Deduction Account Number, (TAN) of the Petitioner Company remained the same under the revised name.
53. The Petitioner has submitted that after the change in the name of its company, it sent an application to KREDL but the same was not allowed. It also sent an application dated 01.12.2015 to APSPDCL requesting name change for its 50.4 MW Andhra Pradesh Project. However, the same was not processed for want of original Power Purchase agreements from TSSPDCL. The Respondent stopped issuing RECs to the Petitioner for units generated since December, 2016.
54. The accreditation of the project of the Petitioner at Nalakonda, Andhra Pradesh expired on 10.10.2017. The reaccreditation for the said project was obtained from the Transmission Corporation of Andhra Pradesh Limited on August 24, 2017. However, the same has not been registered by NLDC till date despite the fact that application for renewal was submitted by the Petitioner three months before its expiry.

55. The Petitioner has submitted that though it has applied for renewal of its registration within time, the Respondent has neither re-registered its project nor is it issuing RECs to the Petitioner on the premise that the Petitioner and M/s Tadas Wind Energy Ltd are two different companies and that there has been a constitution change/ change of legal status and that the Petitioner should apply afresh for accreditation by the State Agency and registration by the Central Agency i.e. the Respondent as per Regulation 4.1. (j) of the REC Procedures as approved by the Commission on November 05, 2015.
56. **Per Contra**, the Respondent has submitted that there is a conversion from a public limited to private limited company which amounts to ‘change in legal status’ or a mere ‘change in name’ for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee. The process of conversion itself is indicative of a change in legal status of the company. Section 21 of the Companies Act, 2013, provides for the procedure for change in name by a company. The section itself draws a distinction between changes in name simpliciter and change of name upon conversion, indicating that the Companies Act treats both the situations differently. Further, the conversion of a public limited to a private limited company requires a special resolution under section 31 of the 1956 Act (corresponding to section 14 of the 2013 Act). A perusal of sub section (2) of the Section 18 of the Companies Act, 2013 shows that upon conversion, virtually, a new entity is born in law and the former registration is closed while a new one created. Even a fresh incorporation certificate is issued (as has been done in the present case). But for the savings clause in sub-section (3), the converted company would not be bound by the liabilities and obligations of the entity. In other words, there is a definite change in the legal status upon conversion from a public limited company to private limited company and vice versa. The Respondent has submitted that in view of the above provisions the legal status of Petitioner’s company is changed upon conversion from public limited to private limited company, hence the Commission may dismiss the present Petition.
57. From the submissions of the parties, the following issue arise before this Commission:
58. **Issue No. 1:** *Whether conversion from a public limited to private limited company amounts to ‘change in legal status’ or a mere ‘change in name’ for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee?*

59. *Issue No. 2: Whether the Respondent should be directed to continue issuing the RECs to the Petitioner as due to it under the REC mechanism?*
60. *Issue No. 3: Whether the Respondent should be directed to renew the registration of the Petitioner's 50.4 MW project at Andhra Pradesh under the REC mechanism? And*
61. *Issue No. 4: Whether the Respondent should be directed to register and update the change of name of the Petitioner in its records forthwith?*
62. No other issue was pressed or claimed.
63. We may now discuss the issues one by one:
64. *Issue No. 1: Whether conversion from a public limited to private limited company amounts to 'change in legal status' or a mere 'change in name' for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee?*
65. The Petitioner has submitted that change in name of the company is due to mere change in the status from a public limited company to a private limited company in the records of the Registrar of Companies and it cannot be construed as change of the constitution / legal status of the Petitioner. This merely changes the type of Company as per the provisions of the Companies Act, 2013 without change in 'legal status' i.e. a company duly incorporated with distinct identity and legal status different from its members. 'IL&FS Wind Energy Limited' which is a public limited company is holding 51% of the shares of the Petitioner. Hence, M/s TADAS Wind Energy Private Limited is deemed to be public company in terms of the proviso to Section 2 (71) of the Companies Act, 2013. The Company Identification Number (CIN) (except type of company i.e. private limited company), Permanent Account Number (PAN) and Tax Deduction Account Number, (TAN) of the Petitioner Company remained the same under the revised name. **Per Contra**, the Respondent has submitted that there is conversion from a public limited to private limited company which amounts to 'change in legal status' 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. Section 21 of the Companies Act, 2013, provides for the procedure for change in name by a company. The

section itself draws a distinction between changes in name simpliciter and change of name upon conversion, indicating that the Companies Act treats both the situations differently. There is a definite change in the legal status upon conversion from a public limited company to private limited company and vice versa. Hence the Petition may be dismissed.

66. The Commission observes that as per preamble of the Companies Act, 2013 “*the purpose of this Act*” is to “*consolidate and amend the law relating to companies*”. Incorporation of a company is a crucial decision which is based on the decision regarding which kind/type of company is to be incorporated. It is observed that Section 13 of the Act provides for alteration of memorandum whereas Section 14 provides for alteration of articles. Section 18 allows an existing Company to convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provision of chapter II of the Act.

67. Section 2(71) of the Companies Act, 2013 stipulates as under:

“2

(71) public company: means a company which

(a) is not a private company;

(b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;”

68. The Commission observes that in case titled Hillcrest Realty Sdn. Bhd v. Hotel Queen Road (P.) Ltd., the Company Law Board, Delhi Bench on 31.01.2006 held at para no. 36 that:

“all the provisions in the Articles to maintain the basic characteristics of a private company in terms of section 3(1)(iii) will continue to govern the affairs of the company even though it is a subsidiary of a public company”. It was held by the Delhi CLB Bench that the basic characteristics of a private company in terms of section 3(1)(iii) do not get altered just because it is a subsidiary of a public company in view of fiction in terms of section 3(1)(iv)(c) that it is a public company. It was further held by the Bench that it may be a public company in terms of other provisions of the Act but not with reference to its basic characteristics.”

69. From the above, the Commission is of the view that such a deemed public company, therefore, would retain the fabric of its constitution and would not have to give up its statutory status with which it was incorporated. Clearly the private company that is deemed as a public company by virtue of section 2(71) of Companies Act, 2013, retains the characteristics of its origin, its birthmark of a private company. Hence, in the present Petition therefore, conversion from public limited to private limited is not the case of mere 'Change in name' of the Petitioner but it is definitely the case of 'change of legal status'.
70. The Petitioner has further submitted that there is no change in legal status of the company as it has retained the 'Company Identification Number' (CIN), 'Tax Deduction and Collection Account Number' (TAN) and 'Permanent Account Number' (PAN) has been retained by the Petitioner under the 'change of name'.
71. The Commission observes that CIN is issued by Ministry of Corporate Affairs whereas TAN and PAN are issued by 'National Securities Depository Limited' under Income Tax Department.
72. The Commission observes that as per Notification dated 26th March 2014 of Ministry of Corporate Affairs, it has been made mandatory from 01.04.2014 to mention CIN number by the company in its business letters, bill-heads & letter-heads and in all its notices and other official publications. CIN has 21 set of alphanumeric that can be divided into 6 parts. It is observed that in the case of 'change of legal status' of a company Part 5 of the CIN number containing three alphabets gets altered and accordingly CIN is assigned by the Registrar of Companies in compliance with the direction of Ministry of Corporate Affairs. The 'Certificate of Incorporation' bears CIN number issued by Registrar of Companies. In the instant case, it is the admitted fact that the Part 5 of the CIN has been altered by the Registrar of Companies.
73. As regards TAN, it is pertinent to note here that in the case of 'change of legal status' of company or 'change of name' of the company, the TAN number does not get altered. It changes only in case of change of jurisdiction and the name of the deductor. In the instant petition, since the issue is not related to change of location or jurisdiction of the assessing

authority, therefore, the company had applied for the ‘change/corrections’ to retain the TAN Number.

74. Further, as regards PAN, it is pertinent to note here that PAN once allotted to an individual or entity is unaffected by a change of name, address within or across States in India or other factors. Therefore, the argument put forth by the Petitioner that minor change in CIN and no change in TAN/PAN implies retention of its basic characteristics of public limited company, is not relevant in the context.

75. The Petitioner has changed its character from private limited company to public limited company and subsequently from public limited company to private limited company and by virtue of this change the basic characteristics of the company have changed on both the occasions. The fiction available under section 2 (71) of the Companies Act, 2013, cannot be invoked to ignore the basic legal status of the petitioner. The Commission therefore holds that it is definitely the case of ‘change of legal status’.

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

AND

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

AND

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

77. Issue no. 2, Issue no. 3 and Issue no. 4 being interrelated are being taken together for discussions. The Petitioner has submitted that it is a generating company having been incorporated on 27.07.2011 as M/s Tadas Wind Energy Private Limited. It was converted into a public company on 20.01.2012 and the name of the Petitioner was changed as M/s Tadas Wind Energy Limited. It had commissioned a power plant having installed capacity of 100 MW capacity located at Tadas, Haveri District, Karnataka in phases from May 2012 to September, 2012. It has also commissioned another plant having installed capacity of 50.4 MW at Nalakonda, Andhra Pradesh in July 2012. Both the projects were granted registration under the REC Mechanism viz. Karnataka project in July 2012 and Andhra Project in

October, 2012. Further, M/s Tadas Wind Energy limited was converted into a private limited company and its name was again changed to M/s Tadas Wind Energy Private Limited on 27.09.2013. After the 'change in the name' of its company, it sent an application to KREDL on 20.05.2014 by paying the requisite regulatory fees. However, KREDL did not allow the change of name. It also sent an application dated 01.12.2015 to APSPDCL requesting name change for its 50.4 MW Andhra Pradesh Project which was not processed. The Respondent stopped issuing RECs to the Petitioner for units generated in since December, 2016 and onwards. Further, the accreditation of the project of the Petitioner at Nalakonda, Andhra Pradesh expired on 10.10.2017 and the same has not been registered by NLDC till date despite application for renewal was submitted by the Petitioner three months before its expiry. The re-accreditation for the said project at Nalakonda, Andhra Pradesh, has already been obtained from the Transmission Corporation of Andhra Pradesh on 24.08, 2017. The Respondent has neither re-registered its project nor is it issuing RECs to the Petitioner on the incorrect premise that the Petitioner and M/s Tadas Wind Energy Ltd are two different companies and that there has been a constitution change/ change of legal status and that it should apply afresh for accreditation by the State Agency and registration by the Central Agency.

78. **Per Contra**, the Respondent has submitted that the present petition involves adjudication upon a short issue i.e. whether conversion from a public limited to private limited company amounts to 'change in legal status' or a mere 'change in name' for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee. The Respondent has submitted that neither the REC Regulations nor the aforesaid procedure vests any discretionary power on the answering Respondent to relax and/or to exempt compliance with any of the provisions contained therein. The provisions contained in the REC Regulations and 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 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 as well as paragraph 4.1 (h) of the REC Registration

Procedure uses the word “shall” which generally denotes that a provision is imperative in nature and must be strictly complied with. As per Clause 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 conversion from public limited to private limited company, hence the Petitioner has to comply with the Rule 4.1(h) of the Procedure for Registration. The Commission may dismiss the Petition.

79. 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, 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 revised by order dated 05.11.2015 of the Commission. Further, the 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. 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.”*

80. The Commission is of the view that sub-clause (2) of Regulation 7 of the REC Regulations as well as paragraph 4.1 (h) of the REC Registration Procedure uses the word “shall” which

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

81. Accordingly, the Petition is disposed of.

Sd/-

डॉ एम के अय्यर
सदस्य

Sd/-

श्री ए के सिंघल
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श्री पी के पुजारी
अध्यक्ष