

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

**IA NO. 324 OF 2020 IN
APPEAL NO. 57 OF 2020**

Dated : 5th March, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

IN THE MATTER OF:

Techno Electric and Engineering Company Limited ...Appellant

VERSUS

Central Electricity Regulatory Commission & Anr. ...Respondents

Counsel for the Appellant (s) : Mr. Sajan Poovayya, Sr. Adv.
Mr. Amit Kapur
Ms. Poonam Verma
Mr. Saunak Kumar
Mr. Rajguru
Mr. Sidhant Kaushik
Ms. Aparajita Upadhyay
Ms. Adhishree Chakraborty
Ms. Sakshi Kapoor

Counsel for the Respondent(s) : Ms. Abiha Zaidi for R-2

Order

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

IA No. 324 of 2020

1. The present IA No. 324 of 2020 in Appeal No. 57 of 2020 has been filed by Respondent No. 2 (National Load Despatch Centre/**Applicant**) for vacation of the directions passed by this Tribunal in its Order dated 17.02.2020 (in IA No. 233 of 2020) which reads as under :

“--- We grant ad interim ex parte stay of the impugned order dated 28.01.2020 till the next date of hearing before the Bench.

List the matter on 17.03.2020. In the meantime, we direct NLDC to issue 1,54,050 RECs (1,20,243 + 33,807 RECs) to the ‘Eligible/Registered Entity i.e., Simran Wind Project Limited which have been approved by TNSLDC and is pending only with NLDC for issuance.’”

2. The Applicant herein is mainly aggrieved that the aforesaid direction has been passed without giving opportunity of hearing the Applicant and has submitted that under the settled provisions of law an *ad interim injunction* is an extra ordinary relief which cannot be allowed unless the circumstances are extra ordinary and unless the suit may become infructuous if such relief is refused.
3. Applicant further submitted that in the instant case no such circumstances have arisen that necessitated the passing of an ex parte ad interim stay and it is therefore prayed that this Tribunal may uphold the principles of natural justice and exercise its power under Section 120 (h) of the Electricity Act, 2003 to set aside the Impugned Stay Order.
4. Learned Counsel for the Applicant contended that in the Instant Appeal (Appeal No. 57 of 2020) the pertinent issue for consideration before this Tribunal is as under :

“Whether the Ld. CERC was correct in holding that the amalgamation of two companies’ amounts to change in legal status of the transferee company for the purpose of Clause 4(1)(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee and therefore

correct in directing the Appellant herein to get a fresh registration?”

5. It is the contention of the Applicant that the Order of the Central Commission is well reasoned and does not suffer from any irregularity. However, the Applicant did not get an opportunity to place any submissions before the Hon'ble Tribunal to substantiate its case. In this regard, learned Counsel for the Applicant placed reliance on the Judgement of Hon'ble Supreme Court in the case of *“Union of India Vs. Oswal Woollen Mills Ltd., (1984) 2 SCC 646.”*
6. Learned counsel for the Applicant further contended that the regulation 7(2) of the CERC (Terms and Conditions for the Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 stipulates that RECs are required to be issued to the eligible entities only after the Central Agency i.e. the Applicant duly satisfies itself that all conditions for issuance of certificate are complied with by the concerned entity. Further, the procedure followed by the Applicant in granting registration is a part of the necessary checks and balances of Renewable Energy Certificate (REC) framework that seeks to promote renewable energy and accordingly, the Applicant is merely discharging its statutory functions under the Act and therefore balance of convenience lies in its favour.
7. Learned counsel further submitted that there arises no urgency for seeking an ad interim ex parte stay in the instant case considering the fact that trading of RECs is conducted every month and the Appellant can avail the opportunity of trading RECs at any given time.
8. In the explained circumstances allowing the issuance of RECs as per the Impugned Stay Order would effectively grant the relief prayed for

under the Appeal and therefore it is important that aforesaid principles are satisfied before any such order is passed.

9. Stating the above the Applicant has prayed for the following :

(a) Vacate the ad interim ex parte stay order dated 17.02.2020 and grant an opportunity of hearing to the Applicant in IA No. 233 of 2020 in Appeal No. 57 of 2020.

(b) Pass any such other appropriate order/ directions as this Tribunal may deem fit and proper in the facts and circumstances of the case.

10. Per contra learned senior counsel Mr. Sajan Poovayya appearing for the Appellant invited our reference to the order passed by the National Company Law Tribunal (NCLT) Bench at Allahabad dated 20.07.2018 in the Petition filed under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with rules framed there under as in force from time to time for the sanction of proposed scheme of amalgamation of Techno Electric & Engineering Company Limited (Transferor company) with Simran Wind Project Limited (Transferee Company).

11. NCLT among others has ruled that :

- Consequent to the amalgamation and upon Scheme becoming effective, the name of Transferee Company shall be changed to (Techno Electric & Engineering Company Limited". Clause I of the Memorandum of Association shall stand altered according;
- All concerned regulatory authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Assistant Registrar, National Company Law Tribunal, Allahabad Bench;

- Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal to the Scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned person, directors and officials of the petitioners; and
 - While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any as applicable), taxes (including income tax, GST or any other charges, if any are applicable) and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.
12. Learned counsel for the Appellant alleged that despite categorical order dated 17.02.2020 issued by this Tribunal, the RECs entitled to the eligible entity i.e. Simran Wind Project Limited has not yet been released by the Applicant/Respondent No. 2 which in turn, has caused considerable financial loss to the Appellant. In fact, the price of RECs goes on reducing at the fag end of the financial year and will cause further financial loss. The Applicant/Respondent No. 2 is not prejudiced by the interim order of this Tribunal dated 17.02.2020 and for the reasons best known to them the issue of RECs is being delayed without any firm commitment for issuance of the same. He further submitted that in the current month which the last month of the current financial year only one day (last Wednesday) is left for trading for RECs and if certificates not issued immediately, this month may also lapse without any transaction of trading the RECs.
13. Learned counsel for the Appellant accordingly prayed that the Applicant/Respondent No. 2 be directed by this Tribunal to release

the RECs without further delay so that parties could be tied up for selling the RECs in the open market and further loss to the Appellant could be prevented.

OUR CONSIDERATION AND FINDINGS

14. We have carefully considered the rival submissions and arguments of the parties and also taken note of various provisions of the REC regulations specified by the Central Commission, especially regulation 4(1)(h) which reads thus :

“4. FUNCTIONS, ROLES, AND RESPONSIBILITIES OF ENTITIES INVOLVED

4.1 Generating Company or Distribution Licensee, as the case may be

*(h) Whenever there is a change in legal status of registered entity (e.g. change from partnership to company, Pvt. Limited to Public Limited, new entity subsequent to demerger, **change in ownership of the company**, asset/sale transfer to other company, et.), it shall inform the concerned Stae Agency and Central Agency within one month from the date of the said change, alongwith the following:*

(i) Request for revocation of the project from the REC mechanism

(ii) Request for re-accreditation/fresh accreditation and re-registration/fresh accreditation of the project under REC, if desired

(iii) Request for transfer of RECs to the new entity”

15. It is relevant to note that the Applicant /Respondent No. 2 has heavily relied upon the above regulations which is related to the change in legal status of a registered entity. After careful consideration and critical analysis of the above regulation what thus emerges is that none of the conditions/issues mentioned therein applies to the case of the Appellant herein.
16. The learned counsel for the Applicant has repeatedly contended that the balance of convenience lies in favour of the Applicant and not the Appellant. However, we do not find force in such contentions of the Applicant due to the fact that merely being a statutory body for issuing the RECs, it is not prejudiced due to the issue of RECs to the eligible entity which has generated renewable power and by virtue of its right, it is entitled to get the requisite number of RECs. It is also pertinent to note that Tamil Nadu SLDC has already verified and recommended to the Applicant, the requisite number of RECs to be issued for quite some time back but the same has not been issued to the Appellant as yet.
17. Having regard to the order passed by the NCLT dated 20.07.2018 and submissions/arguments of both the parties, we are of the opinion that once amalgamation order has been issued by the Competent Court after going through the due procedures, it is not open for any Government instrumentality/statutory authorities to question the same with erroneous interpretation of change in legal status. NCLT in its aforesaid order under Para IX has stipulated that *any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary*. It is noticed that the order of NCLT has been passed after duly getting public notice issued in addition to other requisite procedural formalities.
18. Further, is relevant to notice that despite issue of court notice, the Applicant failed to participate in the proceedings before this Tribunal.

Hence, the question of the Applicant that the order dated 17.02.2020 of this Tribunal is “*an interim ex-parte*” is baseless and irrational.

19. In view of the above facts, we are of the considered opinion that in the event of vacation of the order dated 17.02.2020 passed by this Tribunal the Appellant shall be prejudiced and shall continue to suffer financial loss on account of non-trading of RECs in the open market. Hence, the balance of convenience lies in favour of the Appellant and accordingly IA No. 324 of 2020 in the Appeal No. 57 of 2020 does not deserve to be allowed and hence is not allowed.
20. The Applicant/Respondent No. 2 is hereby directed to comply with the Orders of this Tribunal dated 17.02.2020 and issue the RECs to the eligible entity i.e. Simran Wind Project Limited as early as possible but not later than 9th March, 2020.

We make it clear that we have not gone into merits of the case (Appeal No. 57 of 2020).

Accordingly IA No. 324 of 2020 is disposed off in the above terms.

Pronounced in the Open Court on this **5th Day of March, 2020.**

List the matter on **17.03.2020.**

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson