

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

**Thiru M.Chandrasekar**

**.... Chairman**

**and**

**Thiru. K.Venkatasamy**

**.... Member (Legal)**

**D.R.P.No.21 of 2020**

M/s. Techno Electric & Engineering Company Limited  
1B, Park Plaza, South Block  
71, Park Street  
Kolkata – 700 016.

... Petitioner  
(Thiru Rahul Balaji  
Advocate for the Petitioner)

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)  
Rep by its Chairman and Managing Director  
NPKRR Maaligai  
144, Anna Salai  
Chennai – 600 002.
2. The Chief Financial Controller  
TANGEDCO  
No. 144, Anna Salai  
Chennai – 600 002.
3. The Chief Engineer  
Non-Conventional Sources of Energy  
TANGEDCO  
144, Anna Salai  
Chennai – 600 002.
4. The Executive Engineer  
O/o.NCES  
TANGEDCO  
144, Anna Salai  
Chennai – 600 002.

5. The Superintending Engineer  
Palladam EDC  
TANGEDCO, Palladam
6. The Superintending Engineer  
Tirunelveli EDC  
TANGEDCO, Tirunelveli

....Respondents  
Thiru M.Gopinathan  
(Standing Counsel for the Respondent)

**Dates of hearing** : 01-12-2020; 29-12-2020; 19-01-2021;  
16-02-2021; 23-03-2021; and 30-03-2021

**Date of Order** : 13-07-2021

The D.R.P.No.21 of 2020 came up for final hearing on 30-03-2021. The Commission upon perusing the affidavit filed by the petitioner, counter affidavit filed by the respondent, Rejoinder affidavit filed by the respondent and all other connected records and after hearing both the parties passes the following:-

### **ORDER**

**1. Prayer of the Petitioner in D.R.P.No.21 of 2020:-**

The prayer of the Petitioner in the above D.R.P.No.21 of 2020 is to

- (i) set aside the impugned communication in Lr. No. CE/ NCES/ SE/ Solar/ EE/ WPP/AEE3/F.Fees intimation/D.434/19, dated 12-04-2019 issued by the 4<sup>th</sup> Respondent in respect of the WEGs connected to the Palladam EDC and the letter bearing No.CE/NCES/ACE/Solar/EE/ WPP/AEE2/F.Fees intimation/ D.No.888/19 dated 09-08-2019 in respect of the WEGs connected to the Tirunelveli EDC issued by the 4<sup>th</sup> Respondent and direct the Respondents to effect the name change for the petitioner's windmills bearing HTSC numbers as enumerated above pursuant to the applications dated 02.01.2019 by

making changes to the existing Agreements in compliance of and furtherance of the binding ruling of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 57 of 2020 dated 1<sup>st</sup> September 2020 in the matter of the petitioner's own case in Techno Electric & Engineering Company Vs Central Electricity Authority and others;

- (ii) direct the Respondents to refund a sum of Rs.89,15,172 (Rupees Eighty Nine Lakhs Fifteen Thousand One Hundred and Seventy Two Only) being the sum due as of the date of the present petition being the excess sums collected together with interest thereon and further award *pendente lite* interest from the date of filing of the petition and until payment by the Respondents at such rate and on such amount as the Commission may deem fit in the facts and circumstances of the case.;
- (iii) direct the Respondents to pay all costs including the court fees remitted by the petitioner and
- (iv) pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case.

## **2. Facts of the Case:-**

This petition has been filed to set aside the impugned communications in Lr.No.CE/NCES/SE/Solar/EE/WPP/AEE3/F.Fees intimation/D.434/19, dated 12-04-2019 issued by the 4<sup>th</sup> Respondent in respect of the WEGs connected to the Palladam EDC and the letter bearing Lr.No.CE/NCES/ACE/Solar/EE/WPP/AEE2/F.Fees intimation/D.No.888/19 dated 09-08-2019 in respect of the WEGs connected to the Tirunelveli EDC issued by the 4<sup>th</sup> Respondent and direct the Respondents to effect the name change for the petitioner's windmills pursuant to the

applications dated 02-01-2019 and also direct refund of the excess amounts collected and for other reliefs.

### **3. Contentions of the Petitioner:-**

3.1. The petitioner company is a generating company in terms of section 2 (28) of the Electricity Act, 2003 and provider of engineering, procurement and construction services to India's core sector industries; both in the public and private domain. Erstwhile Techno Electric & Engineering Co. Ltd. ("Techno" / Erstwhile Techno) had a fully owned subsidiary company, Simran which was entered into Energy Purchase Agreement ("EPA") for sale of power generated by its 67 Wind Energy Generators (WEGs) totalling 111.9 MW with Tamil Nadu Generation and Distribution Company Limited ("TANGEDCO") vide various agreements between 31<sup>st</sup> March 2011 to 24<sup>th</sup> February 2012. The Tamil Nadu Load Despatch Centre (State Agency) has duly accredited above said 111.9 MW wind power generation plant under 9 different portfolios as Eligible Entity under REC Mechanism which have been also registered by the National Load Despatch Centre (Central Agency).

3.2. Out of these 67 WEGs, the petitioner has commissioned 34 WEGs connected to the 5<sup>th</sup> respondent's EDC. The petitioner has also commissioned 33 WEGs connected to the 6<sup>th</sup> respondent's EDC.

3.3. The entire energy generated from these WEGs is sold to TANGEDCO by the Petitioner at APPC rate under CERC REC Regulations, 2010. The petitioner was originally incorporated on 26.10.2005 under the Companies Act, 1956 (No. 1 of 1956) as a private limited company under the name and style 'Simran Wind Project

Private Limited' by the Registrar of Companies, Pune, Maharashtra. As per the Certificate of Incorporation, the Corporate Identity Number ("CIN") of Simran was U40108PN2005PTC021476.

3.4. On 08.08.2011, the Registrar of Companies, West Bengal issued the "Certificate of Registration of Company Law Board order for Change of State" since Simran changed its registered office from Maharashtra to West Bengal. As per the said Certificate, the CIN of Simran was U401 08WB2005PTC166026.

3.5. Thereafter, it made an application for conversion into a Public Company under Section 31(1) of the Companies Act, 1956; and accordingly on 14-06-2013, the Registrar of Companies, West Bengal issued a 'Fresh Certificate of Incorporation'. Consequent upon this conversion, the CIN of Simran got changed and was numbered as U40108WB2005PLC166026 and the name of the said company was changed to 'Simran Wind Project Limited'.

3.6. On 23-06-2017, the Registrar of Companies, Kanpur issued the 'Certificate of Registration of Regional Director order for Change of State" since Simran changed its registered office from West Bengal to Uttar Pradesh. As per the said Certificate, the CIN of Simran was U40108UP2005PLC094368.

3.7. On 20-07-2018, the Ld. NCLT, Allahabad Branch issued an order under section 232 of the Companies Act, 2013 in Company Petition No. 168/ALD of 2018 in Company Application (CAA) No. 18/ALD/2018 and approved the Scheme of Amalgamation of Techno Electric (Transferor Company) and Simran (Transferee

company). In the said merger, *inter alia*, as part of scheme, subsequent to the transfer to the transferee company, the name "M/s.Simran Wind Project Limited" was changed to "M/s. Techno Electric & Engineering Company Limited." Thus, so far as the corporate entity Simran Wind Project Limited is concerned, there was no transfer by it since it was the transferee and there was only a name change effected.

3.8. On 05.09.2018, the Registrar of Companies, Kanpur certified the change in name of "M/s. Simran Wind Project Limited" to "M/s. Techno Electric & Engineering Company Limited."

3.9. The CIN of Simran pre-and post-merger / change of name has remained the same i.e. U40108UP2005PLC094368, as given below:

Particulars	Before Merger	After Merger	Issuing authority	Effective Date
CIN	U40108UP2005PLC094368	U40108UP2005PLC094368	ROC-Kanpur	05-09-2018

In addition, other relevant identification numbers as given below have also not undergone any change pursuant to the merger / change of name:

Particulars	Before Merger	After Merger	Issuing authority	Effective Date
PAN	AAJCS4400J	AAJCS4400J	Income Tax Department	10-01-2019
TAN	CALS27280B	CALS27280B	National Securities Depository Ltd.	31-01-2019
GST	33AAJCS4400J1ZJ	33AAJCS4400J1ZJ	Asst. Comm. GST Tamil Nadu	01-02-2019

3.10. From the above sequence of events, it is evident that the legal status of Simran has not changed due to the merger since all identity numbers of Simran in the said documents remained unchanged after the merger. The amalgamation approved by the NCLT can be summed up, *inter alia* as under:-

- (a) Techno Electric stands dissolved without being wound-up;
- (b) The authorised share capital of Techno Electric stands merged into and combined with the authorised share capital of Simran;
- (c) All properties, rights, powers and liabilities of Techno Electric stand transferred to Simran without any further act or deed to Simran;
- (d) The name "Simran Wind Project Limited" was changed to " Techno Electric & Engineering Company Limited".

3.11. In the light of the above, the Petitioner wrote to the 3rd, 5th and 6th Respondents respectively, seeking to approve the said change in name and to thereafter amend the energy purchase agreements and other records maintained by TANGEDCO to effect the new name of the Petitioner, as mentioned below:-

- (a) Letter dated 26.12.2018 addressed to the Superintending Engineer, Palladam EDC (Respondent No.5) requesting for issuing no dues / NOC for name change from Simran Wind Project Ltd. to Techno Electric & Engineering Co. and amendment of Power Purchase Agreement in respect of 34 WEGs in the Distribution Circle.

- (b) Letter dated 02.01.2019 addressed to the Chief Engineer / NCES (Respondent No. 3) with reference to letter dated 26.12.2018 to the Superintending Engineer, Palladam EDC.
- (c) Letter dated 28.12.2018 addressed to the Superintending Engineer, Tirunelveli EDC (Respondent No.6) requesting for issuing no dues / NOC for name change from Simran Wind Project Ltd. to Techno Electric & Engineering Co. and amendment of Power Purchase Agreement in respect of 33 WEGs in the Distribution Circle.
- (d) Letter dated 02.01.2019 addressed to the Chief Engineer / NCES (Respondent No. 3) with reference to letter dated 28-12-2018 to the Superintending Engineer, Tirunelveli EDC.

3.12. Thereafter, the petitioner was surprised to receive a letter from the 4<sup>th</sup> respondent bearing Lr. No. CE/NCES/SE/Solar/EE/WPP/AEE3/F.Fees intimation/D.434/19 dated 12-04-2019 stating that the petitioner must pay a sum of Rs.34,00,000/- for the 34 WEGs connected to the Palladam EDC, along with applicable GST thereon to effect the said change in name in the records maintained by TANGEDCO. In a similar fashion, the Petitioner received a letter dated 09.08.2019 bearing Lr.No. CE/NCES/ACE/Solar/EE/WPP/AEE2/F.Fees intimation/ D. No.888/19 in respect of its 33 WEGs belonging to the Tirunelveli EDC. The said letter insisted that the Petitioner pay a sum of Rs.33,00,000/- along with GST thereon for effecting the said name change in the record maintained by TANGEDCO. The said demands were clearly incorrect since they were treating a name change as a name transfer. However, on oral enquiries being made, the petitioner's representatives were informed that the Respondents would only be treating it as a

name transfer and not a name change and that if the petitioner so wished, it would have to seek for and obtain necessary orders through a judicial pronouncement. The Petitioner was faced with a situation wherein any delay in effecting the change in name would have substantial repercussions in its accounting of Renewable Energy Certificates as also the recognition of income from sale and left with no option duly complied with the stipulations contained in the above mentioned two letters and remitted the said sums to TANGEDCO for effecting the change in name.

3.13. TANGEDCO can only charge what is permissible under law and any sums collected without authority of law is liable to be refunded. The petitioner proposed to effect such name change and then approach the Commission immediately for seeking refund of the said sums. However, as would be evident from the subsequent facts, the issue came to be unnecessarily complicated by the action of the National Load Despatch Centre and subsequently the CERC which took the peculiar stand similar to that of the respondents that there was a change in the legal status of the petitioner which was a transfer and this issue had to be resolved.

3.14. On 23-04-2019, the petitioner had sent an application to TNSLDC to change the name of "Simran Wind Project Limited" to "Techno Electric & Engineering Company Limited" in TNSLDC's records after having effected the name change after paying the charges as were actually applicable to name transfer. Following the laid down procedure under REC mechanism, SE/TNSLDC forwarded the request of Simran to NLDC (Central Agency) for effecting the change of name in the REC records. Also, on 13.05.2019, a similar application was sent to NLDC. Between 10.05.2019 and 10.09.2019, the petitioner applied for issuance of RECs with

TNSLDC for the renewable energy generated between January 2019 and July 2019. TNSLDC by virtue of the Energy Injection Reports ranging between the dates 21.05.2019 to 03.10.2019 corresponding to each generation month approved issuance of RECs to the petitioner. On the basis of such approvals, the Petitioner through its applications between 23 05.2019 and 15.10.2019 applied for issuance of RECs to NLDC. However, 1,20,243 RECs were withheld by NLDC and on 08.07.2019, NLDC informed the Petitioner that its request for name change from "M/s. Simran Wind Project Limited" to "Techno Electric & Engineering Company Limited" could not be processed as there was a change in the legal status of the company. NLDC requested the petitioner to follow the procedure regarding legal status change laid down in para 4.1 (j) of CERC approved Procedure for Issuance of Renewable Energy Certificate to the Eligible Entity by Central Agency dated 16.03.2018 ("Issuance of REC Guidelines").

3.15. On 16.07.2019, the petitioner wrote to NLDC stating that the legal status of the transferee company had not changed due to the merger. In this regard, the petitioner provided necessary supporting documents viz. CIN, Permanent Account Number ("PAN"), Tax Deduction and Collection Account Number ("TAN") and GST Identification Number ("GSTIN") to show that all identity numbers of the transferee company in the said documents remained unchanged after the merger. However, NLDC did not respond to the petitioner's letter dated 16-07-2019. Aggrieved thereby, on 07-08-2019, the petitioner filed Petition No. 242/MP/2019 before CERC seeking appropriate directions to NLDC to give effect to the entitlement of the petitioner to the REC benefits. Unfortunately, the Hon'ble CERC rejected the claims of the Petitioner leading to filing of Appeal No.57 of 2020 which came to be

finally ordered in favour of the petitioner. The legal position having been settled in favour of the petitioner by a judgment of the Hon'ble APTEL which would also bind all parties including the Commission, the petitioner is now filing the present petition.

3.16. The Hon'ble APTEL in its judgment in Appeal No.57 of 2020 dated 1<sup>st</sup> September 2020 in the matter of Techno Electric & Engineering Company vs Central Electricity Authority and Others has held that merger of Techno Electric & Engineering Company into Simran Wind Energy Ltd. and subsequent change of name of Simran Wind Energy Ltd. to Techno Electric & Engineering Company is merely a change in name and does not entail any change in its legal status. The part of the APTEL Judgment is extracted as under:

*“.....9.23 We have critically evaluated the rival submissions of the Appellant and the Respondents and also perused the ratio laid down by the Hon'ble Courts in the judgments relied upon by the parties. We have also taken note of the findings in the impugned orders as well as the scheme of Amalgamation approved by NCLT, Allahabad dated 20.07.2018. Before firming up our views in the matter, we would like to first refer to the main operative parts of the NCLT Orders which reads thus*

- 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.*

*9.24 It is relevant to note that the Central Commission in the impugned order has mainly observed 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, the Appellant is required to get a fresh registration. It is, thus, evident that the Commission has simply concluded that after merger of the holding company into the subsidiary company and the transferee company (Simran) adopting the name of its holding company (Techno) is nothing but a change in legal status and, therefore, the Clause 4 (1) (h) of the Procedure is attracted requiring the Appellant herein to apply for fresh registration to obtain legitimate RECS.*

*9.25 While considering the rival submissions of both the parties in preceding paras, what thus transpires is that the dispute mainly revolves around the fact that subsequent to the Scheme of Amalgamation approved by the NCLT, Allahabad has caused a change in legal status or not. The Scheme of Amalgamation and change in name have been duly approved by the Company Court under applicable laws and the change of name has been duly registered by Registrar of Company, Kanpur on 05-09-2018. It is relevant to note from the detailed order of NCLT approving the scheme of Amalgamation that has nowhere indicated cause of any change in the legal status of the transferee company which has adopted the name of its holding company (Techno). Further, the judgments relied upon by the parties also rule that such a process of amalgamation and adoption of name does not amount to change in legal status.*

*9.26 We also noticed from the records placed before us that pertinently, all the identification nos. of transferee company (Simran) pre-and post-merger have remained the same which also affirms the contentions of the Appellant that in the whole process, the legal status of the Appellant has not undergone any change. It is a settled position of law that if a company undergoes a change in legal status, then its Vth part of CIN changes. In this regard, we also refer to the CERC order dated 09.10.2018 in Todus Wind Energy Pvt. Ltd. Vs. "NLDC 2018 SCC Online CERC 2002. The relevant extract of the said order is reproduced as under:-*

*'75. 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.....”*

*9 27 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.*

*9.28 In the light of above facts, we are of the considered opinion that the Central Commission in its impugned order has erroneously concluded that the Appellant has undergone a change in legal status and thus requires a fresh registration for obtaining RECs. Even the Central Commission has not followed its own findings in its order dated 09.10.2018 (stated supra). Accordingly, in view of the above discussions and analysis, the impugned order is liable to be set aside.*

#### **ORDER**

*For the foregoing reasons, we are of the considered view that the issues raised in the present Appeal No. 57 of 2020 have merits and hence, appeal is allowed. ....”*

3.17. The above judgment being rendered in the case of the petitioner, it would bind all parties, being the judgment of a superior Appellate body. It is thus clear that so far as the petitioner, in its original name of Simran Wind Energy Limited is concerned, it continued to hold the assets and by virtue of the scheme of Scheme of Amalgamation of the erstwhile Techno Electric (transferor company) and Simran (transferee company). In the said merger, *inter alia*, the name “M/s. Simran Wind Project Limited” was changed to “M/s. Techno Electric & Engineering Company Limited.” On 05-09-2018, the Registrar of Companies, Kanpur certified the change in name of “M/s. Simran Wind Project Limited” to “M/s. Techno Electric & Engineering Company Limited.” Thus, the transferee company received the assets etc. of the transferor company and then as far as the transferee company is

concerned, it only underwent a name change to Techno Electric & Engineering Company Limited as evidenced from the name change certificate. There was, in fact no transfer involved since the erstwhile Simran Wind Project Ltd. continued to exist but only underwent a name change whereas it was the erstwhile Simran Wind Project Ltd. continued to exist but only underwent a name change whereas it was the erstwhile Techno Electric & Engineering Co. Ltd. which came to be wound up. This fact was evident from the fact that the CIN Number, TIN Number, GST Number and PAN Number continued to remain the same showing that its identity and personality as a company did not change but there was only a name change effected.

3.18. In the light of the above, the Commission may set aside the impugned letters dated 12-04-2019 and 09-08-2019 issued by the 4th Respondent and direct refund of the sums collected pursuant thereto and only collect at the approved rate of Rs.10,000 per connection for the reason that this issue has already been settled by the Commission in the case of Hinduja Foundries Ltd. (DRP No.5 of 2009 dated 26.8.2009). The Commission while ruling on a specific issue whether the charges for change in name of a company could be treated as a 'name transfer' has held as follows:-

*6. 5. .... The TNEB proposed to retain the same charges. The Commission, on the other hand decided to prescribe a uniform charge of Rs. One lakh per service connection irrespective of the capacity of the wind mills as charges for effecting name transfer in regard to legal succession and sale of property.*

*6.6. We would like to observe that change of name of a company in accordance with section 21 of the Companies Act, 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below:*

*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."*

*6.7. It is evident that what has been proposed by the TNEB and approved by the TNERC is the charge relating to legal succession or sale of property and that the change of name under section 21 of the Companies Act, 1956 is not covered under the above category and therefore the charge of Rs.one lakh per service connection levied by the TNEB should be set aside. The charges levied by the TNEB in their impugned letters D 438/09 dated 30-01-2009 and D 1568/09 dated 20-02-2009 issued by CE/NCES as if they relate to legal succession or sale of property are set aside. Any charges paid by the petitioner will have to be refunded by the TNEB.*

*It is further directed that there will be no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under section 21 of the Companies Act, 1956. Mere corrections have to be carried out in the existing agreements as stipulated in section 23 of the Companies Act, 1956. If the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission."*

3.19. It is clear from the above order that the charges with respect to name transfer are only to be levied in case of legal succession or sale. The present case is one which is identical in so far as the principle in DRP 5 of 2009 is concerned. The name change in the present case is also on where the Petitioner has undergone a simple name change and the assets of the company have neither been sold nor has there been any legal succession of the same. The assets standing in the name of "Simran Wind Energy Limited' now stand in the changed name of 'Techno Electric and Engineering Company Limited' which is the same entity as the original entity as evident from the CIN, TIN, GST and PAN number being the same pursuant to a scheme of amalgamation. Once the name change has been effected and certificate of name change issued by the RoC Kanpur, reflecting such change, the petitioner is only required to notify the authorities on the basis of such statutory evidence to effect the change in name and carry out the same in its records. This contention of the

Petitioner has also been upheld by the Hon'ble APTEL in Appeal No.57 of 2020 dated 1<sup>st</sup> September 2020 and now the Hon'ble APTEL's judgment binding and the Tamil Nadu State Load Dispatch Centre was also a party to the said proceedings.

3.20. Since the petitioner has only undergone a “name change” which is not the same as legal succession or transfer, as held by the Commission. The charges for a name transfer will not apply and there will be no necessity for the petitioner to enter into fresh agreements with TANGEDCO on account of the change in name pursuant to a Scheme of Amalgamation which was duly recognized by the National Company Law Tribunal, Allahabad vide its order dated 20-07-2018.

3.21. The Respondent TANGEDCO is misinterpreting the principle laid down in the case of Hinduja Foundries with the sole intention of profiteering and has insisted that the Petitioner pay a sum of Rs.1,00,000/- per service connection. The impugned letters suffer from complete non-application of mind in as much as, the petitioner has undergone a name change only through a Scheme of Amalgamation. The said WEGs continue to be held by the very same company and there has been no sale or legal succession in respect of the WEGs. In order to ensure that all the records maintained by TANGEDCO duly reflect the petitioner's changed name, the petitioner paid the said sums to TANGEDCO. The petitioner is therefore, entitled to a refund of the sums paid to TANGEDCO since the same has been collected contrary to the Regulations and in light of the principle laid down in the case of Hinduja Foundries and the petitioner's own case by the Hon'ble APTEL, which is squarely applicable to the case of the petitioner.

3.22. The petitioner is also entitled to the payment of interest at 1.5% per month on the said sums being the same rate that TANGEDCO charges as BPSC for any payments due to it, from the date the payments were made until date of refund. This for the reason that any sums wrongly collected and withheld are liable to be repaid with interest. Reference can be made to Indian Council of Enviro-Legal Action Vs. Union of India and Others wherein it has been held by the Hon'ble Supreme Court as follows:-

*“178 To do complete justice, prevent wrongs, remove incentive for wrong doing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above- or to simply levelise – a convenient approach is calculating interest. But here interest has to be calculated on compound basis – and not simple – for the latter leaves much uncalled for benefits in the hands of the wrong doer.*

*179. Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors i.e. use of the money and the inflationary trends, as the market forces and predictions work out”.*

3.23. The respondent TANGEDCO is now insisting that the petitioner ought to enter into fresh Energy Purchase Agreements. The respondent TANGEDCO is also insisting that the same ought to be complied with within a period of 60 days. In the same case of Hinduja Foundries, the Commission has categorically held that there is no necessity for parties to enter into a fresh agreement on account of a mere name change. There is only an amendment to the name to be carried out and no further changes are required. Therefore, any such insistence by the TANGEDCO will amount to a contravention of the express order of the Commission.

3.24. The respondents are therefore liable to return a sum of Rs.71,15,400/- i.e. (Rupees Seventy One Lakhs Fifteen Thousand and Four Hundred only) (Amount

paid = Rs.79,06,000.00, Amount payable = Rs.7,90,600.00, Excess amount paid = Rs.79,06,000.00 – Rs.7,90,000.00 = Rs.71,15,400.00) being the excess sums paid by the petitioner to the respondents for effecting the said name change in as much as the same is contrary to the Regulations which allow for collection of only Rs.10,000 per Service Connection and further also pay interest at 1.5% per month thereon being the same rate that TANGEDCO charges as BPSC, payable from the date of effecting payment until 07-11-2020 which is Rs.17,99,772.00. The petitioner is paying court fee on the said sum of Rs.89,15,172.00.

#### **4. Contentions of the Respondents:-**

4.1. That petitioner has made applications for name transfer and amendment to Power Purchase Agreement of WEGs that were stood in the name of M/s. Simran Wind Project Limited by enclosing, among other things, copies of incorporation certificates issued by the Registrar of Companies; Board of Directors; Board Resolution for Authorisation; Commissioning Certificates; NOC issued by CE/NCES; Power Purchase Agreement; and MoA & AoA.

4.2. As requested by the petitioner, the name transfer with amendment to Power Purchase Agreement were processed and, on payment of the prescribed charges, the said requests were considered and the name transfer of the WEGs were accorded and the Power Purchase Agreements were duly amended accordingly. It was never the case of the petitioner that it has objected for the charges asked for and / or paid it under protest.

4.3. The TANGEDCO has acted as per the request of the petitioner and as per the orders in force. Hence, the petitioner is estopped to turn around and seek any relief as prayed for in this present petition.

4.4. The change of name, from M/s.Simran Wind Project Limited to M/s. Techno Electric & Engineering Company Limited, issued by the Registrar of Companies, Kanpur was only a consequential order pursuant to the amalgamation through competent Court. Therefore, change of name by the Registrar of Companies cannot be the sole basis for seeking the relief as prayed for in the petition.

4.5. By virtue of amalgamation, the erstwhile Techno Electric & Engineering Company Limited got merged with M/s. Simran Wind Project Limited. By virtue of the said legal action, obviously, M/s. Simran Wind Project Limited cannot be said to be the same entity as was it prevailed earlier. In other words, in the course of execution of amalgamation, the new entity, though called as M/s.Simran Wind Project Limited, has within its fold M/s.Techno Electric & Engineering Company Limited as well. Thereafter, the name change took place from M/s. Simran Wind Power Limited to M/s. Techno Electric & Engineering Company Limited, which was merely a consequential act. Therefore, reliance placed on name change order issued by the Registrar of Companies has no effect as far as the present issue on hand is concerned.

4.6. The petitioner has approached the Hon'ble CERC and Hon'ble APTEL on a different context, i.e., eligibility of continued accreditation under REC scheme, which was granted by the Hon'ble APTEL. Unlike, NLDC or Hon'ble CERC, the

TANGEDCO has not disputed the continuation of the benefits availed by the erstwhile company, namely, M/s. Simran Power Project Limited consequent on amalgamation and name change to M/s. Techno Electric & Engineering Company Limited. While so, the name transfer charges asked for was based on amalgamation and name change, to which the petitioner rightly accepted the charges asked for as prescribed by the Commission and paid the charges accordingly without any demur. Therefore, the petitioner cannot now turn around and dispute the entire process including the amendment to power purchase agreement and charges asked for and paid. In short, the present petition and the prayers sought for are afterthoughts pursuant to the decision of the Hon'ble APTEL which was not only at much later point of time but also decided on a different context, more particularly not touching the Charges.

4.7. In the said facts and circumstances, the decision of the Commission in Hinduja Foundaries Limited (DRP No.5 of 2009 dated 26.08.2009) is not applicable to the case of the petitioner.

4.8. The petitioner is neither entitled to seek the prayer to set aside the orders impugned nor the consequential relief of refund. In any case, the petitioner is not entitled to any interest and/or cost inasmuch as the petitioner has never prior to the order of the Hon'ble APTEL, has stated that it was entitled to name transfer fee as a mere change and not liable to pay otherwise. Hence, the petition is liable to be dismissed in its entirety and in limini.

## **5. Rejoinder filed on behalf of the Petitioner:-**

5.1. On 20.07.2018, the Ld. NCLT, Allahabad Branch issued an Order approving the Scheme of Amalgamation of Techno Electric (transferor company) and Simran (transferee company). In the said merger, *inter alia*, as part of scheme, subsequent to the transfer to the transferee company, the name "M/s.Simran Wind Project Limited" was changed to "M/s. Techno Electric & Engineering Company Limited." Thus, so far as the corporate entity Simran Wind Project Limited is concerned, there was no transfer by it since it was the transferee and there was only a name change effected. On 05.09.2018, the Registrar of Companies, Kanpur certified the change in name of M/s. Simran Wind Project Company Limited" to M/s. Techno Electric & Engineering Company Limited.

5.2. After sending multiple letters to the Respondents to effect name change of the Petitioner, the petitioner was shocked to receive two letters asking the petitioner to pay sums of Rs.34,00,000/- (for 34 WEGs connected to Palladam EDC) and Rs.33,00,000/- (for 33 WEGs connected to Tirunelveli EDC) along with GST thereon for effecting the name change. The Petitioner was faced with a situation wherein any delay in effecting the change in name would have substantial repercussions in its accounting of the Renewable Energy Certificates as also the recognition of income from sale and left with no option duly complied with the stipulations contained in the above mentioned two letters and remitted the said sums to TANGEDCO for effecting the change in name.

5.3. While so, on 23.04.2019, the Petitioner had sent an application to TNSLDC to

change the name in REC records and on 13.05.2019, a similar application was sent to NLDC. However, the applications were withheld by NLDC and on 08.07.2019, NLDC informed the Petitioner that the name change could not be processed as there was a change in the legal status of the company. Even though the Petitioner clarified the same through its letter, no response was received. As such, the Petitioner was constrained to file a petition before CERC which was rejected. However, on appeal, the Hon'ble APTEL in Appeal No.57 of 2020 ordered in favour of the Petitioner and as such the legal position has been settled. Relevant portions of the judgment in Appeal No.57 of 2020 have already been set out in the petition, however, the Petitioner seeks to reproduce the same herein:

*" ... 9.25 ...*

*It is relevant to note from the detailed order of NCLT approving the Scheme of Amalgamation that has nowhere indicated cause of any changes in the legal status of the transferee company which has adopted the name of its holding company (Techno). Further, the judgments relied upon by the parties also rule that such a process of amalgamation and adoption of name does not amount to change in legal status.*

*9.26. We also noticed from the records placed before us that pertinently, all the identification nos. of transferee company (Simran) pre-and-post-merger have remained the same which also affirms the contentions of the Appellant that in the whole process, the legal status of the Appellant has not undergone any change. It is a settled position of law that if a company undergoes a change in legal status, then its Vth part of CIN changes. In this regard, we also refer to the CERC order dated 09.10.2018 in Tadas Wind Energy Pvt. Ltd. Vs. NLDC 2018 SCC OnLine CERC 2002. The relevant extract of the said order is reproduced as under:-*

*"75. 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....."*

*9.27 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.”*

5.4. The above judgment binds all parties and as such, the TANGEDCO is estopped from making submissions directly contrary to the findings of the Hon'ble APTEL.

5.5. The petitioner seeks to set out some of the admissions made or various points where no contest has been raised by the Respondent TANGEDCO:-

- (a) That the documents and records produced by the petitioner evidencing the amalgamation and name change are correct;
- (b) That CIN of Simran pre-and post-merger / change of name has remained the same i.e. U40108UP2005PLC094368. That other identification numbers viz. PAN (AAJCS4400J), TAN (CAL27280B) and GST (33AAJCS4400J1ZJ) have also not undergone any change pursuant to the merger / change of name.
- (c) That the TANGEDCO has not disputed the continuation of the benefits availed by the erstwhile company, namely, M/s. Simran Power Project Limited consequent on amalgamation and name change to M/s. Techno Electric & Engineering Company Limited.

5.6. The demands made by the TANGEDCO were incorrect since they were treating a name change as a name transfer. This was further confirmed when the Petitioner's representatives made oral enquiries and were informed by the officials of

the Respondent that this would be treated as a name transfer and not name change and that if the petitioner so wished, it would have to seek for and obtain necessary orders through a judicial pronouncement. However, since the Petitioner was faced with a situation wherein any delay in effecting the change in name would have substantial repercussions in its accounting of the Renewable Energy Certificates as also the recognition of income from sale and left with no option duly complied with the stipulations contained in the above mentioned two letters and remitted the said such under protest to TANGEDCO for effecting the change in name. Nevertheless, it is submitted that the TANGEDCO can only charge what is permissible under law and any sums collected without authority of law is liable to be refunded.

5.7. The petitioner is relying on more than just the change of name by Registrar of Companies, Kanpur. The Petitioner further relies on the unchanged CIN, PAN, TAN and GST number and essentially on the judgment of the Hon'ble APTEL in Appeal No.57 of 2020 wherein it was categorically held that the legal status of the Petitioner has not been changed due to the amalgamation and name change. Therefore, the Respondent is estopped from claiming that the Petitioner is not the same entity as it prevailed earlier or that due to amalgamation a new entity was formed as this is directly in contradiction to the binding order of the Hon'ble APTEL.

5.8. The judgment in Appeal No.57 of 2020 cannot be construed to restrict it to the issue of eligibility of accreditation under REC scheme. The Hon'ble APTEL was very clear and unambiguous in ordering that there is no change in the legal status of the Petitioner herein. In fact, the Order goes on to hold 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". Therefore, the Respondent's plea that this Order was in a different context is untenable. The decision of the Commission in the case of Hinduja Foundries Ltd (DRP 5 of 2009 dated 26.8.2009) squarely applies to the instant case since the said ruling was on the specific issue whether the charges for change in name of a company could be treated as a 'name transfer', which is the issue in the instant case as well. The Respondent has made a bare submission that this ruling does not apply to the instant case without making any specific reasons to demonstrate why this would not be the case, it is submitted that as per the norms, the respondent is permitted to collect the approved rate of Rs.10,000/- per connection for the name change and are therefore liable to refund additional sums collected. TANGEDCO has no authority to collect beyond the prescribed norms.

5.9. As decided in the case of Hinduja Foundries Ltd. (D.R.P. No. 5 of 2009 dated 26-08-2009), there is no need for entering into a fresh Energy Purchase Agreement (EPA) on account of mere change of name. TANGEDCO is required to carry out only 'corrections' existing EPAs. The relevant extract of the said order is reproduced as under:

*"6.7 ... It is further directed that there will no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under Section 21 of the Companies Act, 1956. Mere corrections have to be carried out in the existing agreements as stipulated in Section 23 of the Companies Act 1956...."*

## **6. Written Submissions of the Petitioner:-**

6.1. The petitioner has filed Written Submission which contains averments very much similar and identical to the ones made in the petition and rejoinder. Hence, the relevant portions of the Written Submission are only reproduced for the sake of brevity.

6.2. As the corporate entity Simran Wind Project Limited is concerned, there was no transfer by it since it was the transferre and there was only a name change effected.

6.3. In the said merger, *inter alia*, the name M/s. "Simran Wind Project Limited" was changed to "M/s. Techno Electric & Engineering Company Limited." On 05-09-2018, the Registrar of Companies, Kanpur certified the change in name of "M/s. Simran Wind Project Limited" to M/s. Techno Electric & Engineering Company Limited". Thus, the transferee company received the assets etc. of the transferor company and then as far as the transferee company is concerned, it only underwent a name change to Techno Electric & Engineering Company Limited as evidenced from the name change certificate.

6.4. There was, in fact no transfer involved since the erstwhile Simran Wind Project Ltd. continued to exist but only underwent a name change whereas it was the erstwhile Techno Electric & Engineering Co. Ltd. which came to be wound up. This fact was evident from the fact that the CIN Number, TIN Number, GST Number and PAN Number continued to remain the same showing that its identity and personality as a company did not change but there was only a name change effected.

6.5. This issue has already been settled by the Commission in the case of Hinduja Foundries Ltd (DRP 5 of 2009 dated 26.8.2009). The Commission while ruling on a specific issue whether the charges for change in name of a company could be treated as a 'name transfer' has held as follows:

*"6.5 The TNEB proposed to retain the same charges. The Commission, on the other hand decided to prescribe a uniform charge of Rs. one lakh per service connection irrespective of the capacity of the wind mills as charges for effecting name transfer in regard to legal succession and sale of property.*

*6.6 We would like to observe that change of name of a company in accordance with Section 21 of the Companies Act 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below:*

*"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."*

*6.7 It is evident that what has been proposed by the TNEB and approved by the TNERC is the charge relating to legal succession or sale of property and that the change of name under Section 21 of the Companies Act 1956 is not covered under the above category and therefore the charge of Rs. one lakh per service connection levied by the TNEB should be set aside. The charges levied by the TNEB in their impugned letters D 438/09 dated 30-1-09 and D1568/09 dated 20-2-09 issued by C.E.INCES as if they relate to legal succession or sale of property are set aside. Any charges paid by the Petitioner will have to be refunded by the TNEB.*

*It is further directed that there will no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under Section 21 of the Companies Act,1956. Mere corrections have to be carried out in the existing agreements as stipulated in Section 23 of the Companies Act 1956. If the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission."*

6.6. It is clear from the above judgment that the charges with respect to name transfer are only to be levied in case of legal succession or sale. The present case is one which is identical in so far as the principle in DRP 5 of 2009 is concerned. The name change in the present case is also on where the Petitioner has undergone a simple name change and the assets of the company have neither been sold nor has there been any legal succession of the same. The assets standing in the name of 'Simran Wind Energy Limited' now stand in the changed name of 'Techno Electric and Engineering Company Limited' which is the same entity as the original entity as evident from the CIN, TIN, GST and PAN number being the same pursuant to a scheme of amalgamation. Once the name change has been effected and certificate of name change issued by the RoC Kanpur, reflecting such change, the petitioner is only required to notify the authorities on the basis of such statutory evidence to effect the change in name and carry out the same in its records. This contention of the Petitioner has also been upheld by the Hon'ble APTEL in Appeal No. 57 of 2020 dated 1<sup>st</sup> September 2020 and the Hon'ble APTEL's judgment is binding and the Tamil Nadu State Load dispatch Centre was also a party to the said proceedings.

6.7. The respondent TANGEDCO's claim calling upon Petitioner to enter into fresh Energy Purchase Agreements is also contrary to the express ruling of the Commission. As decided in the case of Hinduja Foundries Ltd (DRP 5 of 2009 dated 26.8.2009), there is no need for entering into a fresh Energy Purchase Agreement (EPA) on account of mere change of name. TANGEDCO is required to carry out only 'corrections' in existing EPAs. The relevant extract of the said order is reproduced as under:

*"6.7 ... It is further directed that there will no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under Section 21 of the Companies Act 1956. Mere corrections have to be carried out in the existing agreements as stipulated in Section 23 of the Companies Act 1956 ...."*

6.8. Since the petitioner has only undergone a 'name change' which is 'not the same as legal succession or transfer, as held by the Commission the charges for a name transfer will not apply and there will be no necessity for the petitioner to enter into fresh agreements with TANGEDCO on account of the change in name pursuant to a Scheme of Amalgamation which was duly recognized by the National Company Law Tribunal, Allahabad vide its order dated 20.07.2018. The Commission may therefore set aside the impugned letters dated 12.04.2019 and 09.08.2019 issued by the 4th Respondent and direct refund of the sums collected pursuant thereto and only collect at the approved rate of Rs.10,000 per connection.

6.9. The Petitioner is also entitled to the payment of interest at 1.5% p.m on the said sums being the same rate that TANGEDCO charges as BPSC for any payments due to it, from the date the payments were made until date of refund. This for the reason that any sums wrongly collected and withheld are liable to be repaid with interest. Reference can be made to Indian Council of Enviro-Legal Action vs. Union of India &Ors. wherein it has been held by the Hon'ble Supreme Court as follows:

*"178. To do complete justice, prevent wrongs, remove incentive for wrong doing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above or to simply levelise a convenient approach is calculating interest. But here interest has to be calculated on compound basis and not simple for the latter leaves much uncalled for benefits in the hands of the wrongdoer.*

*179. Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors i.e. use of the money and the inflationary trends, as the market forces and predictions work out.”*

6.10. The Hon’ble Supreme Court has also held that where a collection is without authority of law the same is to be refunded and has also awarded interest on such sum in *Welspun Projects Ltd. v. State Transport, Punjab*, (2016) 10 SCC 203 it held as follows:-

*“24. In view of the foregoing discussion, we are of the considered opinion that the appellant Company is not liable to pay any house tax under the Act and the demand and payment of house tax from the appellant Company was without the authority of law and the appellant Company is entitled to the refund of the amount of house tax paid by it along with rate of interest @ 10% p.a. from the date of deposit.*

6.11. The Respondents are therefore liable to refund a sum of Rs.71,15,400.00 .i.e., Rupees Seventy One Lakhs Fifteen Thousand and Four Hundred Only (Amount paid = Rs.79,06,000.00, Amount payable = Rs.7,90,600.00, Excess amount paid = Rs.79,06,000.00–Rs.7,90,600.00 = Rs.71,15,400.00) being the excess sums paid by the Petitioner to the Respondents for effecting the said name change in as much as the same is contrary to the Regulations which allow for collection of only Rs.10,000 per Service Connection and further also pay interest at 1.5% per month thereon being the same rate that TANGEDCO charges as BPSC, payable from the date of effecting payment until 7.11.2020 which is Rs.17,99,772.00. The petitioner has paid court fee on the said sum of Rs.89,15,172.00.

## **7. Findings of the Commission:-**

7.1. The short point for consideration is whether the petitioner is liable to pay the fees applicable for transfer of name or the fees applicable to name change. The petitioner is a generating company in terms of section 2 (28) of the Electricity Act, 2003 which has entered into Energy Purchase Agreement for sale of power by its 67 wind energy generators vide various agreements. Out of the 67 WEGs, 34 WEGs are connected to the 5<sup>th</sup> respondent and 33 WEGs are connected to the 6<sup>th</sup> respondent. The energy generated from all these WEGs is sold to the respondent by the petitioner at the APPC rate.

7.2. The petitioner was originally incorporated on 26.10.2005 under the Companies Act, 1956 (No. 1 of 1956) as a private limited company under the name and style 'Simran Wind Project Private Limited' by the Registrar of Companies, Pune, Maharashtra. As per the Certificate of Incorporation, the Corporate Identity Number ("CIN") of Simran was U40108PN2005PTC021476.

7.3. On 08.08.2011, the Registrar of Companies, West Bengal issued the "Certificate of Registration of Company Law Board order for Change of State" since Simran changed its registered office from Maharashtra to West Bengal. As per the said Certificate, the CIN of Simran was U401 08WB2005PTC 166026.

7.4. Thereafter, it made an application for conversion into a Public Company under Section 31(1) of the Companies Act, 1956; and accordingly on 14-06-2013, the Registrar of Companies, West Bengal issued a 'Fresh Certificate of Incorporation'. Consequent upon this conversion, the CIN of Simran got changed and was

numbered as U40108WB2005PLC166026 and the name of the said company was changed to 'Simran Wind Project Limited'.

7.5. On 23-06-2017, the Registrar of Companies, Kanpur issued the 'Certificate of Registration of Regional Director order for Change of State" since Simran changed its registered office from West Bengal to Uttar Pradesh. As per the said Certificate, the CIN of Simran was U40108UP2005PLC094368.

7.6. On 20-07-2018, the Ld. NCLT, Allahabad Branch issued an order under section 232 of the Companies Act, 2013 in Company Petition No. 168/ALD of 2018 in Company Application (CAA) No. 18/ALD/2018 and approved the Scheme of Amalgamation of Techno Electric (Transferor Company) and Simran (Transferee company). In the said merger, *inter alia*, as part of scheme, subsequent to the transfer to the transferee company, the name "M/s.Simran Wind Project Limited" was changed to "M/s. Techno Electric & Engineering Company Limited." Thus, so far as the corporate entity Simran Wind Project Limited is concerned, there was no transfer by it since it was the transferee and there was only a name change effected.

7.7. On 05.09.2018, the Registrar of Companies, Kanpur certified the change in name of "M/s. Simran Wind Project Limited" to "M/s. Techno Electric & Engineering Company Limited."

7.8. The CIN of Simran pre-and post-merger / change of name has remained the same i.e. U40108UP2005PLC094368, as given below:-

Particulars	Before Merger	After Merger	Issuing authority	Effective Date
CIN	U40108UP200 5PLC094368	U40108UP200 5PLC094368	ROC-Kanpur	05-09-2018

In addition, other relevant identification numbers as given below have also not undergone any change pursuant to the merger / change of name:

Particulars	Before Merger	After Merger	Issuing authority	Effective Date
PAN	AAJCS4400J	AAJCS4400J	Income Tax Department	10-01-2019
TAN	CALS27280B	CALS27280B	National Securities Depository Ltd.	31-01-2019
GST	33AAJCS4400 J1ZJ	33AAJCS4400 J1ZJ	Asst. Comm. GST Tamil Nadu	01-02-2019

7.9. Consequently, the petitioner wrote to the respondents seeking to approve change in the name of the company from Simran Wind Project Private Limited to Techo Electric & Engineering Company Limited and amend the Energy Purchase Agreement appropriately. However, the petitioner received intimation from the respondents that a sum of Rs.33,00,000/- along with GST thereon will have to be paid for change of name. It is the contention of the petitioner that it was a case of mere change in name of the existing company and not a case of name transfer and hence the charges as applicable to name transfer would not be applicable. It is further the case of the petitioner that its representatives were informed by the respondents that the respondents would be treating the request as a name transfer and not a name change and the that petitioner will have to seek necessary orders through judicial pronouncement for treating the case as name change. It is further contended by the petitioner that being faced with the situation that delay in effecting

the change in name would have substantial repercussions in the accounting of Renewable Energy Certificate and also the recognition of income from sale it was left with no option but to comply with the direction given in the impugned letters and pay the sums to the respondents as demanded for effecting change in name.

7.10. It is further the contention of the petitioner that charging of amount as applicable to name transfer in the present case is not correct and liable to be refunded and that it proposed to effect such name change and then approach the Commission for refund. It is also the case of the petitioner that the question as to whether a merger of a company with another entails change in legal status has been well settled by the Hon'ble APTEL in its decision dated 1<sup>st</sup> September, 2020 in Techno Electric and Engineering Company Vs. CEA in Appeal No. 57 of 2020 and the said judgment would apply to the facts of the case. The said judgment which set aside the order of the Hon'ble Central Commission proceeded to hold that it would not be open to any government instrumentality or statutory authority to question a judgment rendered by a competent court. Thus, it is the grievance of the petitioner is that, inspite of having brought to the knowledge of the respondent that the judgment of the Hon'ble APTEL referred to above would be binding on it and further the question as to whether an amalgamation exercise would entail any change in legal status being already settled, the respondent misinterpreted the order of this Commission in D.R.P. No. 5 of 2009 in Hinduja Foundries Ltd. dated 26-08-2009 and refused to treat the case as change in name and instead treated it as a name transfer and collected the amount of Rs.1,00,000/- per service connection.

7.11. The petitioner has also prayed for payment of interest at 1.5% per month for the sums wrongly collected by TANGEDCO relying upon the decision in Indian Council of Enviro Legal Action Vs. Union of India and others (1996 AIR 1446 and 1996 SCC 3 (212)) which provides for payment of interest in deserving cases to do justice, prevent wrongs and unjust enrichment. The petitioner has also drawn reference to the order of the Commission in the matter of Hinduja Foundries Ltd. in D.R.P. No. 5 of 2009 to contend that there is no need to enter into any fresh agreement.

7.12. Per contra, the respondents have contended that they acted as per the request of the petitioner and the name transfer was done on payment of required charges and it was never the case of the petitioner that it objected to such charges nor it was such paid under protest. The respondents have further contended the change of name from Simran Wind Project Ltd. to Techno Electric and Engineering Company Limited was only a consequential order pursuant to the amalgamation through a competent court and it will not have any effect or bearing on the present case. The respondents have further sought to argue that the petitioner cannot turn around and dispute the entire process and seek refund of the charges already paid when the petitioner itself agreed to the charges as demanded and paid without demur.

7.13. Having considered the crux of the submissions made by the both sides, we are of view that the short point which arises for consideration is whether the respondents were correct in taking a stand that having paid the required charges as applicable to name transfer, the petitioner cannot turn around and seek refund of the

amount paid. In this connection, we have considered the case laws relied upon by the petitioner. The law laid down by Hon'ble APTEL in Appeal No. 57 of 2020 lays down the legal position on this subject and hence the issue is no longer *res integra*. In this connection, the following observation of Hon'ble APTEL in the said case would be relevant:-

*“.....9.23 We have critically evaluated the rival submissions of the Appellant and the Respondents and also perused the ratio laid down by the Hon'ble Courts in the judgments relied upon by the parties. We have also taken note of the findings in the impugned orders as well as the scheme of Amalgamation approved by NCLT, Allahabad dated 20.07.2018. Before firming up our views in the matter, we would like to first refer to the main operative parts of the NCLT Orders which reads thus*

- 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.*

*9.24 It is relevant to note that the Central Commission in the impugned order has mainly observed 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, the Appellant is required to get a fresh registration. It is, thus, evident that the Commission has simply concluded that after merger of the holding company into the subsidiary company and the transferee company (Simran) adopting the name of its holding company*

*(Techno) is nothing but a change in legal status and, therefore, the Clause 4 (1) (h) of the Procedure is attracted requiring the Appellant herein to apply for fresh registration to obtain legitimate RECS.*

*9.25 While considering the rival submissions of both the parties in preceding paras, what thus transpires is that the dispute mainly revolves around the fact that subsequent to the Scheme of Amalgamation approved by the NCLT, Allahabad has caused a change in legal status or not. The Scheme of Amalgamation and change in name have been duly approved by the Company Court under applicable laws and the change of name has been duly registered by Registrar of Company, Kanpur on 05-09-2018. It is relevant to note from the detailed order of NCLT approving the scheme of Amalgamation that has nowhere indicated cause of any change in the legal status of the transferee company which has adopted the name of its holding company (Techno). Further, the judgments relied upon by the parties also rule that such a process of amalgamation and adoption of name does not amount to change in legal status.*

*9.26 We also noticed from the records placed before us that pertinently, all the identification nos. of transferee company (Simran) pre-and post-merger have remained the same which also affirms the contentions of the Appellant that in the whole process, the legal status of the Appellant has not undergone any change. It is a settled position of law that if a company undergoes a change in legal status, then its Vth part of CIN changes. In this regard, we also refer to the CERC order dated 09.10.2018 in Todus Wind Energy Pvt. Ltd. Vs. NLDC 2018 SCC Online CERC 2002. The relevant extract of the said order is reproduced as under:-*

*'75. 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....."*

*9 27 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.*

*9.28 In the light of above facts, we are of the considered opinion that the Central Commission in its impugned order has erroneously concluded that the Appellant has undergone a change in legal status and thus requires a fresh registration for obtaining RECs. Even the Central Commission has not followed its own findings in its order dated 09.10.2018 (stated supra). Accordingly, in view of the above discussions and analysis, the impugned order is liable to be set aside.*

#### **ORDER**

*For the foregoing reasons, we are of the considered view that the issues raised in the present Appeal No. 57 of 2020 have merits and hence, appeal is allowed. ....”*

Further, this Commission in D.R.P. No. 5 of 2009 dated 26-08-2009 also held as follows:-

*“6. 5. .... The TNEB proposed to retain the same charges. The Commission, on the other hand decided to prescribe a uniform charge of Rs. One lakh per service connection irrespective of the capacity of the wind mills as charges for effecting name transfer in regard to legal succession and sale of property.*

*6.6. We would like to observe that change of name of a company in accordance with section 21 of the Companies Act, 1956 does not amount to legal succession or sale. It prescribes the procedure for registration for name change as below:*

*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.”*

*6.7. It is evident that what has been proposed by the TNEB and approved by the TNERC is the charge relating to legal succession or sale of property and that the change of name under section 21 of the Companies Act, 1956 is not covered under the above category and therefore the charge of Rs.one lakh per service connection levied by the TNEB should be set aside.....*

*The charges levied by the TNEB in their impugned letters D 438/09 dated 30-01-2009 and D 1568/09 dated 20-02-2009 issued by CE./NCES as if they*

*relate to legal succession or sale of property are set aside. Any charges paid by the petitioner will have to be refunded by the TNEB.*

*It is further directed that there will be no necessity for the petitioners to enter into a fresh agreement with TNEB on account of the change in name under section 21 of the Companies Act, 1956. Mere corrections have to be carried out in the existing agreements as stipulated in section 23 of the Companies Act, 1956. If the distribution licensee desires to levy a charge for mere name change, they may file a petition before the Commission.”*

7.14. It is clear that the exercise of amalgamation does not amount to change in legal status. In our view, the respondent ought not to have collected fees as applicable to the name transfer when the law on the subject is well settled. Assuming that the charges were paid in excess at the time of demand when there was no judgment of Hon'ble APTEL on this issue, still, in all fairness, the respondents ought to have taken into account the ratio laid down in the said judgment in the light of the order passed by this Commission in Hinduja Foundries Ltd. Case in D.R.P. No. 5 of 2009 and effected refund.

7.15. A conjoint reading of the order of the Commission in D.R.P. No. 5 of 2009 and judgment of Hon'ble APTEL in Appeal No. 57 of 2020 leaves no manner of doubt that in cases where there is no transfer of service connection and it involves a case of mere change in name or change in name arising out of amalgamation, the fees as applicable to name transfer cannot be collected. It also follows that there is no need to enter into a fresh agreement for a mere name change. However, the petitioner should have paid the amount under protest when there is disagreement between a generator and a licensee regarding the fees to be paid for effecting name change in the records.

7.16. Whatever may have been the exigency, the appropriate course of action would be to indicate the frame of mind on the issue at the earliest and not to keep quiet at the opportune moment and revise its stand afterwards. This gives rise to the question as to whether the petitioner acquiesced to the payment of the charges as applicable to name transfer and is estopped from controverting the same as contended by the respondent. However, the issue cannot be solely seen in the said context of acquiescence alone when the Act provides the refund of amount collected in excess by the licensee as stated in section 62 (6) of the Electricity Act, 2003 and the pronouncement of Hon'ble APTEL in Appeal No. 57 of 2020 and the order of the Commission in D.R.P. No. 5 of 2009 are clear in this issue.

7.17. It is to be noted that the judgment of the Hon'ble APTEL as referred herein is a judgment in rem and not judgement in personam which means the judgment having common application to all similar cases, the respondents need not have advised the petitioner to move the Commission for deciding the issue. When the judgment is very clear on the point that the exercise of the amalgamation of the company does not entail any change in legal status it goes without saying that it is as similar to a case of simple name change.

7.18. It also follows that the need to execute a fresh PPA for a mere name change does not arise as held in D.R.P. No. 5 of 2009 in the matter of Hinduja Foundries Ltd. The stand taken by the respondent that the judgment in Appeal No. 57 of 2020 of Hon'ble APTEL is restricted only to the issue of eligibility of accreditation under REC scheme and the same is not applicable to the case on hand does not find favour with us for the reason, the judgment of the Hon'ble APTEL is unequivocal in

observing *“that once amalgamation order has been issued by the competent court after going through due procedures it is not open for any Government institute authority or statutory authority to question the same with erroneous interpretation of change in legal status”*.

7.19. In such circumstances, the respondents being the instrumentality of the state ought not to have collected the fees in excess or withheld the refund on extraneous ground such that the subject matter is one of eligibility of accreditation under REC Scheme. We hold that the petitioner is entitled to refund for the reason that the judgment rendered by the Hon’ble APTEL is a judgment in rem and the collection of fees for name change or amalgamation as applicable to name transfer, in the light of combined reading of Hon’ble APTEL’s judgment and Commission’s order in D.R.P. No. 5 of 2019, was illegal. We also hasten to add that the order of the Commission in D.R.P. No. 5 of 2009 too is an order in rem.

7.20. When the order of the Commission in D.R.P. No. 5 of 2019 also has enunciated the rule that change of name cannot be treated as name transfer and the only question as to whether an amalgamation exercise can have change in legal status too having been settled by Hon’ble APTEL, we see no reason as to why the excess amount was collected. We also find no justification in the plea of TANGEDCO that the ratio of Hon’ble APTEL is not applicable to the instant case and orders of the Commission is necessary when TANGEDCO is itself an instrumentality of State and going by the said judgment TANGEDCO ought to have decided the issue on its own being an instrumentality of State. Accordingly, the respondents are directed to refund the excess fees collected over and above the

fees applicable for simple name change within 60 days from the date of this order. On the question of grant of interest @ 1.5 % per month, we hold that payment of interest at 1% per month from the date of collection till refund would meet the ends of justice.

7.21. In the result, the petition is allowed to the extent indicated in para 7.20. There will be no order as to the costs.

(Sd.....)  
**(K.Venkatasamy)**  
**Member (Legal)**

(Sd.....)  
**(M.Chandrasekar)**  
**Chairman**

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission