



नई दिल्ली  
NEW DELHI

याचिका संख्या. /Petition No.: 22/MP/2018

कोरम/Coram:

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

आदेश दिनांक /Date of Order: 11<sup>th</sup> of February, 2019

**IN THE MATTER OF:**

Petition for directions to the Respondents, National Load Despatch Centre and Tamil Nadu Transmission Corporation Limited - State Nodal Agency for the revalidation of accreditation and registration of the Petitioner under the Renewable Energy Certificates (REC) mechanism and consequent reliefs.

**AND IN THE MATTER:**

M/s Mirra and Mirra Industries,  
Plot No. 119 & 120, SIDCO Industrial Estate,  
Vichur, Manali New Town,  
Chennai – 600013

**...Petitioner**

VERSUS

1. National Load Despatch Centre  
Power System Operation Corporation Limited  
B-9, Qutab Institutional Area, Katwaria Sarai,  
New Delhi – 110016
2. Tamil Nadu Transmission Corporation Limited  
Superintending Engineer (State Noda Officer)  
Load Despatch & Grid Operation  
TANTRANSOCO, 144, Anna Salai,  
Chennai – 600002

...Respondents

**Parties Present:** Shri Anand K.Ganesan, Advocate, MMI  
Shri Ashwin Ramanathan, Advocate, MMI  
Shri Vallinayagam, Advocate, SLDC, Tamil Nadu

### आदेश/ ORDER

The Petitioner, M/s Mirra and Mirra Industries, amongst other businesses, owns and operates 1.5 MW of wind generation capacity (6 x 250 kW WEGs ) in the State of Tamil Nadu. It has filed the petition under the Central Electricity Regulatory Commission (Terms And Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter called the “REC Regulations”) for directions to the Respondents for revalidation of the accreditation and registration of the Petitioner and seeking condoning of delay of 8 days in applying for such revalidation of accreditation by the Petitioner under the REC Regulations of the Commission and consequential reliefs. The Petitioner has made the following prayers:

- (a) Hold that the Petitioner is entitled to revalidation of accreditation of the Petitioner’s projects with effect from 05.07.2017 and revalidation of registration with effect from 03.09.2017 under the REC Regulations and the procedures laid down thereunder;
- (b) Condone the procedural delay of 8 days in applying for revalidation of accreditation, starting from 04.07.2017 till 12.07.2017;

- (c) Direct the Respondent to take necessary action for revalidation of accreditation of the Petitioner's projects with effect from 05.07.2017 and revalidation of registration with effect from 03.09.2017 under the REC Regulations and the procedures laid down thereunder;
- (d) Direct the Respondents to issue RECs corresponding to the generation of electricity by the Petitioner for the period from 05.07.2017 onwards;
- (e) Pass such other further order(s) as the Commission may deem just in the facts and circumstances of the present case.

**Submissions of the Petitioner:**

2. The Petitioner has submitted that amongst other businesses, it owns and operates 1.5 MW of wind generation capacity (6 x 250 kW WEGs ) in the State of Tamil Nadu, as below:

<b>S. No</b>	<b>Location</b>	<b>Village</b>	<b>Date of commissioning</b>
1	657/18(P), 19(P)	KambhaneriPuddukkudi	16.09.2011
2	510/3A, 3B & 511/2(P)	Nainaragaram	20.09.2011
3	512/1B(P) & 506/1(P), 2(P)	Nainaragaram	30.09.2011
4	253/1, 2(P) & 216/2A, 2B	Urmelazhagian	31.03.2012
5	253/1, 2(P) & 216/2A, 2B	Urmelazhagian	20.04.2012
6	300/5	Sambavarvadakarai	31.03.2012

3. The Petitioner has submitted that all the above WEGs were accredited and registered as an Eligible Entity under REC mechanism. The accreditation was granted by the Tamil Nadu Transmission Corporation Limited (hereinafter referred to as 'Respondent No.2 /TNTCL') vide certificate dated 05.07.2012 valid till 04.07.2017. The Registration was granted by National Load Dispatch Centre (hereinafter referred to as 'Respondent No.1 /NLDC') vide certificate dated 03.09.2012 valid till 02.09.2017.
4. The Petitioner has submitted that it is using the electricity for captive use and has also executed a "Renewable Energy Wheeling Agreement" under the REC scheme dated

11.06.2013 with the Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as “TNGDCL”). It has been receiving the RECs for the electricity generated from the WEGs.

5. The Petitioner has submitted that on 13.06.2017, the Petitioner received an email from the Respondent No. 2 for re-validation of the accreditation, with instructions for revalidation. However, its officers were not expecting the email on the re-validation process. In such circumstances coupled with the fact that certain staffs were on leave, the email was missed by the office. This was also the first time the revalidation was being done after the registration and such omission was an honest mistake on its part. It is in these circumstances, which are due to bona fide reasons, the email on the re-validation of accreditation dated 04.07.2017 was missed and immediate action was not taken by the office of the Petitioner. Hence it could not complete the process of re-validation of the accreditation before 04.07.2017. Such re-validation was also not on short-periodic basis, as the earlier registration process was in the year 2012 and was valid at one stretch for 5 years. Many of its officers had changed and the routine compliances with regard to RECs on the certified generation being submitted on a monthly basis.
6. The Petitioner has submitted that on 12.07.2017 when in normal routine it approached the Respondent No. 2 for issuance of the RECs for the previous month of June 2017, it came to the knowledge of the Petitioner that the RECs cannot be issued due to non-revalidation of the accreditation, it immediately sought to pay the fees online for the revalidation of the accreditation. However the online gateway did not accept the payment. In the circumstances, the Petitioner addressed an email to the Respondent No. 1 requesting for unlocking of the payment gateway for payment of the fees for revalidation of the accreditation by the Petitioner. Thereafter vide email dated 14.07.2017 addressed to the Respondent No. 1, the Petitioner forwarded the screen shots of the error message received in the process of payment for re-validation of the accreditation.
7. The Petitioner has submitted that by email dated 14.07.2017, the Respondent No. 1 replied by stating that the revalidation of the accreditation could be done within 90 days before the expiry and since re-accreditation process was not initiated within 90 days before expiry, the system could not proceed further.

8. The Petitioner has submitted that on 03.08.2017, the Petitioner received an email from the Respondent No.1 intimating that the registration is about to expire in 30 days' time and for initiating the process of revalidating the registration. The Petitioner vide communication dated 10.08.2017 addressed to the Respondent No. 1 provided the factual background for missing the revalidation of the accreditation prior to its expiry and also the fact that the revalidation of the registration cannot be proceeded with until the revalidation of the accreditation is completed. It once again requested the Respondent No. 1 to restore the link for revalidation of the accreditation by providing grace period. In response to the above communication, the Respondent No. 1 vide email dated 04.09.2017 intimated to the Petitioner that the request for restoring the link for revalidation of the accreditation cannot be accepted as the revalidation had to be done before expiry and not after the expiry.
9. The Petitioner has submitted that in above circumstances it has been left without accreditation and consequently the registration also expired without revalidation. The entire process has occurred due to the only reason of not revalidating the accreditation prior to its expiry and the delay of 8 days that has occurred. The non-revalidation of the accreditation prior to its expiry was because of a genuine mistake for the reasons as mentioned above.
10. The Petitioner has submitted that the revalidation of the accreditation and registration process is only a procedural requirement and procedural compliances are to be undertaken for such revalidation. There are no other substantial conditions to be fulfilled. In the circumstances, the non-revalidation prior to expiry of the accreditation ought not to prejudice the petitioner with regard to the substantive rights and that too for the life of the projects. The process to be undertaken online is the payment of fees, whereas certain procedural documents are to be submitted to the Respondent No. 2 for the revalidation of the accreditation. The entire issue has arisen only because the fees of Rs. 17,250/- was not being accepted online after 04.07.2017.
11. The Petitioner has submitted that although it had due to a genuine mistake and for bona fide reasons missed due communication dated 13.06.2017, the said communication did not specify that the process had to necessarily be completed prior to 04.07.2017 without which the revalidation of the accreditation could not be undertaken thereafter. The process is purely

procedural, no substantive rights or obligations are placed and consequently no substantive rights and obligations of the petitioner ought to be affected by the minor delay in the revalidation of the accreditation process.

12. The Petitioner has submitted that the procedures laid down under the REC Regulations enable the revalidation of the accreditation in advance. In this regard, Clause 4.1(i) of the ‘Model Procedure / Guidelines for Accreditation of Renewable Energy Generation Project or Distribution Licensee, as the case may be, under REC Mechanism by State Agency’ provides as under:

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

13. The Petitioner has submitted that the above procedure are in the form of guidelines for implementation of the REC Regulations. The guidelines cannot and do not prescribe any substantive condition to be fulfilled or provide for any substantive rights to the parties. This is evident from Clause 1.2 which reads as under:

*“1.2. This procedure is prepared in order to implement the CERC REC Regulations exercising its 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 Electricity Act, 2003 and all other powers enabling it in this behalf, to facilitate development of market in power from renewable energy sources by issuance of ‘Renewable Energy Certificates (REC)’.”*

14. The Petitioner has submitted that as recognised in the above guidelines itself, the purpose is to facilitate development of the market from renewable energy sources. This objective is also recognised by the Commission in the Statement of Objects and Reasons issued at the time of framing of the REC Regulations, wherein the Commission has held as under:

***“1. Introduction***

*1.1 The Electricity Act, 2003 entrusts on the appropriate commission the responsibility of promotion of co-generation and generation based on renewable energy sources. The policy framework of the Government of India also stresses on the encouragement of renewable energy sources keeping in view the need for energy security of the country.*

...

*3.1.2 The Commission has carefully considered these comments and would like to reiterate that the framework of renewable energy certificate (REC) is meant to facilitate and promote the development of market in electricity based on renewable energy sources and as such the Commission is well within its jurisdiction to specify regulations in this regard under Sections 66 of the Act. This also goes with the vision enshrined in the Preamble to the Act – the vision of “promoting efficient and environmentally benign policies”. Development of market with suitable mechanism for promotion of renewable energy sources is essential to facilitate the new investment in this vital segment of the electricity sector. The constraints in development of market in electricity based on renewable energy sources have been explained in detail in para 1.6. The Commission would like to underscore that the framework of REC would help overcome these constraints and facilitate harnessing of renewable sources in the locations where there is potential for such sources of energy. This will at the same time also enable the obligated entities in other places to meet their renewable purchase obligation. The Commission would also like to emphasize that the Act and the policies envisage coordinated efforts of CERC and SERCs in promotion of renewables in the country. The SERCs have specific responsibility under section 86(1)(e) of the Act and the Forum of Regulators (FOR) has already evolved a model regulation to be framed by the SERCs under the said provision to facilitate inter alia implementation of the REC framework. The need for regulations by CERC was also felt by the FOR to facilitate the dealing of REC at national level as part of the market based instrument for promotion of renewable energy in the country. The scheme envisages inter alia central level registry, dealing of certificates in the platforms of power exchange which can be facilitated only through a regulation by the Central Commission.”*

15. The Petitioner has submitted that the Commission as well as the Appellate Tribunal in various decisions have reiterated the primary objective of the Electricity Act for promoting and facilitating renewable energy generation in the country. This is the substantive goal to be achieved. It has also been held that procedural formalities and processes have to be interpreted and applied in a manner so as to facilitate the achievement of the primary objective of promoting renewable energy generation and not to defeat the same. In this regard, the reliance is placed on the Order dated 03.03.2017 passed by the Commission in Petition No. 308/MP/2015 case titled *Nu Power Renewables Private Limited & Anr v. National Load Despatch Centre & Anr.*, dealing with a similar case of delay in intimation of slump sale of undertaking and consequent change in registration, has held as under:

*“21. It is noted that EUPL has generated and sold power under the group captive model for the period from 24.4.2015 to 7.10.2015 and also did not avail any concessional or promotional benefits. Since, EUPL has been granted RECs from 08.10.2015, all criteria has specified in the provisions of REC Regulations have been complied with it. The main objective of REC Regulations is to promote the generation*

*of renewable energy and as there was generation of renewable energy for the period 24.2.2015 to 7.10.2015, RECs need to be issued. However, both the petitioners should have intimated NLDC well in advance regarding the Slump Sale Agreement and the need to transfer RECs from NPRPL to EUPL.”*

16. The Petitioner has submitted that in the case of *Simran Wind Power Private Limited & Ors v Central Electricity Regulatory Commission & Anr.*, Appeal No. 156 of 2013 and 248 of 2013 dated 28.11.2014, the Hon'ble Tribunal while dealing with procedural issues under the REC Regulations, has held as under:

*“30. The regulations have to be interpreted and applied in light of the object to promote the renewable generators and not in a restrictive manner to deprive the generators of any benefit that may be available to them. In other words, any beneficial legislation need to be interpreted and applied keeping in mind the object to be achieved and not to nullify the basic intent of legislation.*

*31. The registration process is merely procedural with a view to verify and confirm whether the substantive conditions mentioned above have been fulfilled or not. That apart, the Respondent No. 2 – NLDC has no discretion whatsoever to refuse registration to any generator who fulfils the substantive conditions. In other words, the generator who fulfils the substantive conditions of sale of electricity at APPC rate, not taking promotional or concessional measures etc., is entitled to claim Renewable Energy Certificates from the date of commissioning. But fulfilment is not from the date of registration, but from when the generation of electricity commence. In the circumstances, there is no justification for denying the entitlement of Renewable Energy Certificates to the generators from the date when the generation commences or for postponing the entitlement to the Renewable Energy Certificates after the date of registration.”*

17. The Petitioner has submitted that in the above background it is incorrect on the part of the Respondent No. 1 to read an absolute prohibition into the procedures laid down under the REC Regulations that there can be no revalidation of the accreditation after the expiry. Reading such an absolute prohibition would not only be contrary to the provisions of the Procedure laid down, but also contrary to the very objective sought to be achieved. Even the communication dated 13.06.2017 of the Respondent No. 2 did not specify that the revalidation of the accreditation can be done only till 04.07.2017 and cannot be done thereafter.



18. The Petitioner has submitted that non-grant of revalidation of the accreditation in the present case would cause irreparable loss and injury to the petitioner for the life of the power project. The power project was established and investments made on the basis of the legal position then existing that RECs would be available for captive use of electricity. The Commission has also been extremely careful in amending the legal position for non-grant of RECs for captive power plants only for future power plants to be established and not for the power plants who were already registered under the REC mechanism. The Petitioner has also placed its reliance on the decision of the Hon'ble Supreme Court in the case of *Saiyad Mohammad baker El-Edross v Abdulhabib Hasan Arab (1998) 4 SCC 343* in which it was held that procedural law and procedural aspects are meant to be subservient to the substantive law and cannot take away the rights of the parties under the substantive law. The relevant extract of the judgment is as under:

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

19. The Petitioner has submitted that the power to revalidate the accreditation is granted to the Respondent No. 2. The power being granted without any express prohibition that it cannot be exercised after the expiry of the accreditation, the said power can be exercised at any time as occasion arises. This would be also by application of the principles contained in Section 14 of the General Clauses Act, 1897. Even if such a prohibition as contended by the Respondents is to be assumed or read into the procedures so as to place a restriction on revalidation post expiry of the accreditation, the Commission under the REC Regulations has sufficient powers to relax such a conditions in the interest of the renewable energy generator. In this regard, Regulation 14 and 15 are relevant and read as under:

***“14. Power to give directions:***

*The Commission may from time to time issue such directions and orders as considered appropriate for the implementation of these regulations and for the development of market in power for Renewable Energy Sources.*

**15. Power to Relax:**

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

20. The Petitioner has submitted that it has supplied renewable energy in compliance with the conditions applicable for issuance of RECs. The only difficulty arose on account of the delay of 8 days in the revalidation of the accreditation. In view of the above, the Petition may be allowed as prayed.

**Submissions of the Respondent No. 2:**

21. The Respondent No.2 has submitted that it is designated as State Agency by Tamil Nadu Electricity Regulatory Commission. It is to act as the agency for accreditation and recommending the renewable energy projects for registration and to discharge the functions under REC Regulations.
22. The Respondent No.2 has submitted that the Petitioner has been issued Certificate of Accreditation bearing No. TNONSMMICH001A050712 which was valid upto 04.07.2017. It is the responsibility of the Generating Company to apply for revalidation or extension of validity of existing accreditation at least three months in advance, prior to expiry of existing Accreditation. State Agency (SLDC) had intimated the expiry of validity period of accreditation and process of Revalidation of accreditation on 13.06.2017. The petitioner failed to act on the intimation.
23. The Respondent No.2 has submitted that as per the mandate of the REC procedures, it is the duty of the Generating Company to apply for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation. The State Agency has no role to play until the generator applied for an accreditation. The petitioner was not diligent enough to apply for revalidation. The petitioner is bound by the procedures prescribed by the Regulations. The Regulations do not provide for extension of period to apply for revalidation. The parties to the contract are to act under the Regulations on commercial principles. As per the judgment in *PTC vs CERC*, the Hon'ble Supreme Court

has clearly held that under Electricity Act, 2003 the regulated entities are required to act strictly as per the Regulations governing the field.

24. The Respondent No.2 has submitted that the petitioner is wrong in alleging that ‘the State Agency did not specify that the process had to necessarily be completed prior to 04.07.2017 and that the revalidation of accreditation could not be undertaken there after’. The petitioner is required to be aware of the provisions of the Regulations. The answering respondent states that it has become a practice of the RE generators to always seek and get all sorts of indulgences and this had become a way of getting revalidation of accreditation at their own will and convenience. They do not feel it appropriate to follow the provisions of the Regulations. The Petitioner, to cover-up his own omission has stated that it is the State Agency which did not specify to it that unless the process is completed prior to 04.07.2017, the revalidation of accreditation could not be undertaken. This statement is wrong and is made with an intention to mislead the Commission. Utilities act as per the mandate of Regulations. So does the mandate apply on RE generators. Until and unless this Commission takes a strict view on the issue of belated revalidation of accreditation, which is not there in the Regulations, the provision prescribing time limit for applying for accreditation will become otiose. The petitioner is operating under the provisions of Regulations; which is the law governing the transaction and cannot plead ignorance of law. Hence the petition may be dismissed.

#### **Submissions in the Rejoinder filed by the Petitioner**

25. The Petitioner has simply denied the averments filed by the Respondent No.2 in its reply and also reiterated its stand taken in the Petition and as such the same has not been reproduced for the sake of brevity.
26. Additionally, the Petitioner has submitted that the main purpose of the REC Regulations is to ensure that only such persons who comply with the substantive Regulations of not taking any concessional benefits should obtain the RECs. The procedural aspects cannot override this substantive provision of the REC Regulations. The Petitioner has placed its reliance on the Order dated 02.03.2017 in Petition No. 308/MP/2015 in the case of *Nu Power Renewables Private Limited & Anr. v National Load Despatch Centre & Anr.*, and in the Order dated

09.11.2017 in Petition No. 141/MP/2017 in the case of *Rai Bahadur Seth Shreeram Narsingdas Private Limited v National Load Despatch Centre (NLDC) & Ors.* The settled principle of law here is that the regulations need to be interpreted and applied in light of the main objective sought to be achieved, which in the present case is to promote renewable energy generators. The actions of the Respondent No. 2 in not granting the REC by taking such a stringent and restrictive approach only shows that it has failed to implement the objectives of promotion of renewable energy in the country.

27. The Petitioner has submitted that the REC Regulations do not provide for any such mandatory procedure where the generator has to apply three months prior to the date of expiry of accreditation. Further, the Hon'ble Supreme Court in the case of *Ramchandra Keshav Adke v Govind Joti Chavare (1975) 1 SCC 559* has held as under –

*“14. Thus, the first point to be considered is, whether the requirements of these provisions are mandatory or directory. “No universal rule”, said Lord Campbell [Liverpool Borough Bank v. Turner, (1861) 30 LJ Ch 379, 383; Craies on Statute Law, 7th Edn., p. 262] , “can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope”. Such intention of the legislature is therefore to be ascertained upon a review of the language, subject-matter and importance of the provision in relation to the general object intended to be secured, the mischief, if any, to be prevented and the remedy to be promoted by the Act.”*

28. The Petitioner has submitted that the above principle supports the case of the Petitioner which is that the substantive provisions of the REC Regulations cannot be defeated by procedural delays and must be interpreted with the general object to be secured.

### **Analysis and Decision:**

29. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.

The brief facts of the case are that

30. The Petitioner owns and operates 1.5 MW of wind generation capacity (6 x 250 kW WEGs ) in the State of Tamil Nadu, as below:

<b>S. No</b>	<b>Location</b>	<b>Village</b>	<b>Date of commissioning</b>
1	657/18(P), 19(P)	KambhaneriPuddukkudi	16.09.2011
2	510/3A, 3B & 511/2(P)	Nainaragaram	20.09.2011
3	512/1B(P) & 506/1(P), 2(P)	Nainaragaram	30.09.2011
4	253/1, 2(P) & 216/2A, 2B	Urmelazhagian	31.03.2012
5	253/1, 2(P) & 216/2A, 2B	Urmelazhagian	20.04.2012
6	300/5	Sambavarvadakarai	31.03.2012

31. All the above WEGs were accredited and registered as an Eligible Entity under REC mechanism. The accreditation was granted by the TNTCL vide certificate dated 05.07.2012 valid till 04.07.2017. The Registration was granted by NLDC vide certificate dated 03.09.2012 valid till 02.09.2017. The Petitioner is using the electricity for captive use and has also executed a “Renewable Energy Wheeling Agreement” under the REC scheme dated 11.06.2013 with the TNGDCL. It has been receiving the RECs for the electricity generated from the WEGs. On 13.06.2017, the Petitioner received an email from the Respondent No. 2 for re-validation of the accreditation, with instructions for revalidation. However, the Petitioner claims that officers of the Petitioners were not expecting the email on the re-validation process and certain staffs were on leave. Therefore the email was missed by the Petitioner’s office. The revalidation was to be done for the first time after the registration and such omission is being claimed to be an honest mistake on its part. The Petitioner has submitted that in the above circumstances, which are due to bona fide reasons, the email on

the re-validation of accreditation dated 04.07.2017 was missed and immediate action was not taken by the office of the Petitioner. As such the re-validation of the accreditation process could not be completed before 04.07.2017. On 12.07.2017, in normal routine the Petitioner approached the Respondent No. 2 for issuance of the RECs for the previous month of June 2017 where it came to the knowledge of the Petitioner that the RECs cannot be issued due to non-revalidation of the accreditation. It immediately sought to pay the fees online for the revalidation of the accreditation. However the online gateway did not accept the payment. In the circumstances, the Petitioner addressed an email to the Respondent No. 1 requesting for unlocking of the payment gateway for payment of the fees for revalidation of the accreditation by the Petitioner. On 14.07.2017, the Respondent No.1 replied that the revalidation of the accreditation could be done within 90 days before the expiry and since re-accreditation process was not initiated within 90 days before expiry, the system could not proceed further.

32. The Petitioner has submitted that on 03.08.2017, the Respondent no. 1 informed that the registration is about to expire in 30 days' time and for initiating the process of revalidating the registration. The Petitioner vide communication dated 10.08.2017 addressed to the Respondent No. 1 provided the factual background for missing the revalidation of the accreditation prior to its expiry and also the fact that the revalidation of the registration cannot be proceeded with until the revalidation of the accreditation is completed. The Petitioner once again requested the Respondent No. 1 to restore the link for revalidation of the accreditation by providing grace period. In response to the above communication, the Respondent No. 1 vide email dated 04.09.2017 intimated the Petitioner that the request for restoring the link for revalidation of the accreditation cannot be accepted as the revalidation had to be done before expiry and not after the expiry.
33. The Petitioner has submitted that in the above circumstances it has been left without accreditation and consequently the registration also expired without revalidation. The entire process has occurred due to the only reason of not revalidating the accreditation prior to its expiry and a delay of 8 days had occurred. The non-revalidation of the accreditation prior to its expiry was because of a genuine mistake for the reasons as mentioned above. The revalidation of the accreditation and registration process is only a procedural requirement and procedural compliances are to be undertaken for such revalidation. There are no other

substantial conditions to be fulfilled. In the circumstances, the non-revalidation prior to expiry of the accreditation ought not to prejudice the petitioner with regard to the substantive rights and that too for the life of the projects. The process to be undertaken online is the payment of fees, whereas certain procedural documents are to be submitted to the Respondent No. 2 for the revalidation of the accreditation. The entire issue has arisen only because the fees of Rs. 17,250/- was not being accepted online after 04.07.2017. The Petitioner has submitted that the power to revalidate the accreditation is granted to the Respondent No. 2. The power being granted without any express prohibition that it cannot be exercised after the expiry of the accreditation, the said power can be exercised at any time as occasion arises. This would also be by the way of application of the principles contained in Section 14 of the General Clauses Act, 1897. Even if such a prohibition as contended by the Respondents is to be assumed or read into the procedures so as to place a restriction on revalidation post expiry of the accreditation, the Commission under Regulation 14 and 15 of the REC Regulations has sufficient powers to relax such a conditions in the interest of the renewable energy generator.

34. Per Contra, the Respondent No. 2 has submitted that the Petitioner has been issued Certificate of Accreditation bearing No. TNONSMICH001A050712 which was valid upto 04.07.2017. It is the responsibility of the Generating Company to apply for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation. State Agency (SLDC) had intimated the expiry of validity period of accreditation and process of Revalidation of accreditation on 13.06.2017. The petitioner failed to act on the intimation. The Petitioner is operating under the provisions of Regulations; which is the law governing the transaction and cannot plead ignorance of law. Hence the petition may be dismissed.
35. From the submissions of the parties, the following issues arise before this Commission:
36. *Issue No 1: Whether the Petitioner is entitled to revalidation of accreditation of the Petitioner's projects with effect from 05.07.2017 and revalidation of registration with effect from 03.09.2017 under the REC Regulations and the procedures laid down thereunder and Whether the procedural delay of 8 days in applying for revalidation of accreditation, starting from 04.07.2017 till 12.07.2017 can be condoned?; and*

37. **Issue No. 2:** *Whether the Petitioner is entitled to avail the benefit of REC for the electricity generated/ injected in the grid from 05.07.2017 till the final decision in this matter?*
38. No other issues were pressed or claimed.
39. We discuss the issues one by one:
40. **Issue No 1:** *Whether the Petitioner is entitled to revalidation of accreditation of the Petitioner's projects with effect from 05.07.2017 and revalidation of registration with effect from 03.09.2017 under the REC Regulations and the procedures laid down thereunder and Whether the procedural delay of 8 days in applying for revalidation of accreditation, starting from 04.07.2017 till 12.07.2017 can be condoned?; and*
41. The Petitioner has submitted that it owns and operates 1.5 MW of wind generation capacity (6 x 250 kW WEGs) in the State of Tamil Nadu. WEGs were accredited and registered as an Eligible Entity under REC mechanism. The accreditation was granted by the TNTCL vide certificate dated 05.07.2012 valid till 04.07.2017. The Registration was granted by NLDC vide certificate dated 03.09.2012 valid till 02.09.2017. On 13.06.2017, the Petitioner received an email from the Respondent No. 2 for re-validation of the accreditation, with instructions for revalidation. However, the officers of the Petitioners were not expecting the email on the re-validation process and certain staffs were on leave. Therefore the email was missed by the Petitioner's office. In the above circumstances, due to bona fide reasons i.e. the email on the re-validation of accreditation dated 04.07.2017 was missed, immediate action was not taken by the office of the Petitioner. As such the re-validation of the accreditation process could not be completed before 04.07.2017. The Respondent No.1 has informed that the revalidation of the accreditation could be done within 90 days before the expiry and since re-accreditation process was not initiated within 90 days before expiry, the system could not proceed further. The Petitioner has submitted that in above circumstances it has been left without accreditation and consequently the registration also expired without revalidation due to delay of 8 days that had occurred. The revalidation of the accreditation and registration process is only a procedural requirement and procedural compliances are to be undertaken for such revalidation. The Petitioner has submitted that under Regulation 14 and 15 of the REC Regulations, the Commission has powers to relax such a condition in the interest of the



renewable energy generator. Per Contra, the Respondent No. 2 has submitted that it is the responsibility of the Generating Company to apply for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation. State Agency (SLDC) had intimated the expiry of validity period of accreditation and process of Revalidation of accreditation on 13.06.2017. The petitioner failed to act on the intimation. The Petitioner is operating under the provisions of Regulations; which is the law governing the transaction and cannot plead ignorance of law. Hence the petition may be dismissed.

42. The Commission observes that Para 4.1(i) of the *Model Guidelines For Accreditation of a Renewable Energy Generation Project or Distribution Licensee*, as the case may be Under REC Mechanism, stipulates that :

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

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

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

*In case, RE generator has submitted online application for revalidation of Accreditation to State Agency before expiry of the Accreditation Certificate, and during the process of approval by State Agency, Registration Certificate is expired, in such cases, Central Agency will accept the application for revalidation of Registration. Subsequent to re-validation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of re-validation of Accreditation/Registration*

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

44. Relevant Provisions of *Procedure for Issuance of Renewable Energy Certificates to the Eligible Entity by Central Agency* are extracted below: -

### **3. STEP-WISE DESCRIPTION OF THE PROCEDURE**

*3.1. Step-1: An application for issuance of Renewable Energy Certificate shall be made by the Eligible Entity to the Central Agency. The eligible entity shall apply for Issuance of REC on the Web Based Application as per the details given in the Energy Injection Report (EIR issued by the SLDC / Recommendation of SERC for issuance of RECs) and shall also submit the same information in physical form with the Central Agency. The online application shall be acceptable by the Central Agency only if complete in all respect. The physical application for issuance of certificate shall include (i) Energy Injection Report (EIR) for RE projects /Recommendation of SERC for issuance of RECs for distribution licensee, and shall be made in the specified format (FORMAT-3.1: “Application for Issuance of Renewable Energy Certificates to the Eligible Entities”/FORMAT-3.1.1 for distribution licensee) (ii) Print out of online application duly signed and stamped by Authorized Signatory (iii) Commissioning Certificate for RE Generator, only for issuance for the first month after registration. The application shall be accompanied with the details of payment of the applicable fee & charges towards issuance of certificates as determined by CERC from time to time. While making application for issuance of RECs, the Applicant (Eligible Entity) shall quote the unique Registration Number assigned to it by Central Agency at the time of registration.*

...

*3.2. Step - 2: After receipt of physical application for issuance of renewable energy certificates from the Eligible Entity, the Central Agency shall undertake a preliminary scrutiny within 6 working days to ensure that the Application Form is complete in all respect along with necessary documents and applicable fees and charges. As part of preliminary scrutiny, the Central Agency shall satisfy that the following conditions are fulfilled by the RE generators or distribution licensee, as the case may be: a) The application is made in the format specified by the Central Agency from time to time. b) The status of Accreditation of the Eligible Entity with the State Agency has not expired. The status of Registration of the Eligible Entity with the Central Agency has not expired. c) The duly certified EIR/ Recommendation of SERC for issuance of RECs is attached for the same period for which application is made towards issuance of Renewable Energy Certificate by the Eligible Entity. d) The application is accompanied with fees & charges.*

... ”

45. Regulation 7(2) of the *Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010* provides as follows:

**“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 Certificates, as may be stipulated in the detailed procedure, are complied with by the eligible entity.”*

46. Clause 2.1 of the ‘Detailed Procedure’ provides as under:

*This procedure shall be applicable to RE projects, who have received “Certificate of Registration” from the Central Agency, and shall be eligible to avail Renewable Energy Certificates from the date of commercial operation or from the 00:00 hrs of next day of Registration date of such plant by the Central Agency whichever is later.*

From the above, the Commission observes that an eligible entity is required to apply through REC web application for revalidation or extension of validity of existing accreditation at least three months in advance prior to expiry of existing Accreditation. In case, RE generator has submitted online application before expiry of the Accreditation Certificate and during the process of approval by State Agency, Registration Certificate gets expired, in such cases, Central Agency will accept the application for revalidation of Registration. Subsequent to revalidation of Registration, the concerned RE Generator will continue to receive RECs without considering any gap in the process of re-validation of Accreditation/Registration. Further, Central Agency will reject the application of those RE generators who have not initiated the process of Accreditation/Registration before expiry of the Accreditation Certificate. The Central Agency shall duly satisfy itself that all the conditions for issuance of Certificates as stipulated in the detailed procedure are complied with by the eligible entity and then certificate shall be issued to the eligible entity. The entity shall be eligible to avail Renewable Energy Certificates from the date of commercial operation or from the 00:00 hrs of next day of Registration date of such plant by the Central Agency whichever is later.

47. The Commission observes that in the instant case, the ‘Certificates of Accreditation’ for both of the projects of the Petitioners were valid upto 04.07.2017. The Petitioner was required to apply for re-validation of accreditation by 04.04.2017 i.e. at least three months in advance prior to expiry of accreditation. However, the Petitioner applied for the revalidation of the re-accreditation on 12.07.2017 i.e. eight days after the expiry of the accreditation. The Respondent No. 2 had instructed the Petitioner for re-validation of the accreditation on 13.06.2017. However, the Petitioner did not apply for re-validation of accreditation within time and applied for the same on 12.07.2017 i.e. ninety eight days after the expiry of

mandated advance period prior to expiry of re-accreditation and eight days after the expiry of accreditation. It is also an admitted fact that the Petitioner has not initiated the process of revalidation of reaccreditation of the project under REC mechanism prior to three months as stipulated under Para 4.1(i) of the *Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee*.

48. We are in agreement with the contention of Respondents. The Petitioner was required to submit the application for issuance of RECs in terms of Regulation 7 of the REC Regulations and Detailed Procedure made thereunder. However, the Petitioner did not comply with the provisions of the REC Regulations and Detailed Procedure. During the course of hearing, learned counsel for the Petitioner has accepted its mistake regarding non-initiation of the application within time for the process of revalidation of reaccreditation of the project under REC mechanism prior to three months as stipulated under Para 4.1(i) of the *Model Guidelines for Accreditation of a Renewable Energy Generation Project or Distribution Licensee*. Learned counsel further submitted that this error was procedural in nature and the delay may be condoned. The representative of Respondent No.2 agreed that the RECs were denied on account of procedural and technical issues for which Respondent has no power/authority to condone the same and that it could be done only by the Commission. In the circumstances explained above, the Commission feels necessary to condone the procedural delay by the Petitioner in applying for revalidation for accreditation.
49. The Commission observes that as per the principle laid down for grant of RECs, if the Petitioner is engaged in generation of electricity from renewable energy sources then it shall be eligible for dealing in RECs if it sells the electricity generated to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase of such distribution licensee as determined by the Appropriate Commission. Further, the main objective of REC Regulations is to promote the generation of renewable energy and as there was generation of renewable energy for the period mentioned above. Therefore, RECs need to be issued from 05.07.2017. Accordingly, we direct Respondents to process the case of the petitioner for grant of RECs w.e.f. 05.07.2017 onwards till the period the Petitioner got the accreditation/registration revalidated under REC mechanism as per REC Regulations. We also take serious note of the lack of diligent adherence to procedures by the petitioner and

administer a strong warning to the petitioner to be careful in future and comply with the provisions of the REC Regulations in letter and spirit. This should not become a precedent to be quoted in future in case of non-compliance of the provisions of the REC Regulations.

50. *Issue No. 2: Whether the Petitioner is entitled to avail the benefit of REC for the electricity generated/ injected in the grid from 05.07.2017 till the final decision in this matter?*
51. In the light of discussion held in Issue No. 1 above, the Commission holds that M/s Mirra & Mirra Industries (the Petitioner) is entitled for RECs from 05 July, 2017 onwards as per terms and conditions of The Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and the Respondents are directed accordingly.
52. Accordingly, the Petition No. 22/MP/2018 is disposed of.

Sd/-  
डॉ एम के अय्यर  
सदस्य

Sd/-  
श्री पी के पुजारी  
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