APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 57 OF 2020

Dated : 01st September, 2020

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

IN THE MATTER OF :

Techno Electric & Engineering Company Limited
Represented through its General Manager,
Corporate Office: 1B, Park Plaza, South Block,
71, Park Street, Kolkata- 700016.

....Appellant

Versus

(i) **Central Electricity Regulatory Commission**
Represented through Hon'ble Secretary.
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001

(ii) **National Load Despatch Centre**
Represented through its Executive Director
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi- 110016

(iii) **Tamil Nadu Transmission Corp. Ltd.**
Represented through its Chairman
144, Anna Salai, Chennai,Tamil Nadu

....Respondent(s)

Counsel for the Appellant (s) : Mr. Amit Kapur
Ms. Poonam Verma
Mr. Saunak Kumar Rajguru
Mr. Sidhant Kaushik
Ms. Aparajita Upadhyay
Ms. Adishree Chakraborty
Ms. Sakshi Kapoor

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1

Mr. S.B. Upadhay, Sr. Adv.
Ms. Suparna Srivastava
Ms. Sanjana Dua
Mr. Tushar Mathur for R-2

J U D G M E N T

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

1. The Appellant, Techno Electric & Engineering Company Limited formerly Simran Wind Project Ltd. ("***Simran***") has filed the present Appeal challenging the findings of the Order passed by Central Electricity Regulatory Commission ("***CERC***") dated 28.01.2020 in Petition No. 242/MP/2019 ("***Impugned Order***") whereby the CERC has failed to appreciate the impact of merger and amalgamation of a holding company into its subsidiary company. By doing so, CERC has wrongly deprived the Appellant of its legitimate entitlement as a renewable energy generator.

1.1 Pursuant to the merger, the Appellant continues to be entitled to Renewable Energy Certificates ("***RECs***")as it was prior to the merger as the merger resulted into change in name only and not change in legal status. CERC wrongly treated it as change in legal status.

1.2 The statutory framework in India mandates promotion of renewable energy generation. The Electricity Act, 2003 ("***Act***"), the policies framed under the Act, as also the National Action Plan on Climate Change provide for a roadmap for increasing the share of renewable energy in the total generation capacity in the country. In States where there are avenues for harnessing the renewable energy potential beyond the Renewable Purchase Obligation ("***RPO***") level fixed by the State Commissions, the high cost of generation from renewable energy sources discourages the local distribution licensees from purchasing renewable power beyond the RPO level.

1.3 The concept of RECs assumes significance which seeks to address the mismatch between availability of renewable energy sources and the requirement of the obligated entities to meet their RPO. RECs encourage the renewable energy capacity addition in the States where there is potential for renewable energy generation as the REC framework seeks to create a national level market for such generators to recover their cost. In terms of CERC's approved procedure for redemption of RECs, non-solar (wind) certificates are sold to obligated entities (*viz. distribution licensees etc.*)to enable them to meet their RPO or to entities other than obligated entities on voluntary basis. Such RECs are traded through CERC's approved power exchanges within the forbearance price and floor price as determined by CERC from time to time.

1.4 The Appellant, as a renewable energy generating company, is entitled to obtain the RECs in terms of Central Electricity

Regulatory Commission (Terms and Conditions for Recognition and Issuance of REC for Renewable Energy Generation) Regulations, 2010. As per the CERC REC Regulations, the eligible entity applies to the State Load Despatch Centre ("*SLDC*") [i.e. Tamil Nadu State Load Despatch Centre ("*TNSLDC*")] for issuance of RECs which accredits them and then such accredited RECs are sent to National Load Despatch Centre ("*NLDC*") for registration and issuance. This was being following since 2011. RECs have been issued to the Appellant since 2011 and it has been able to sell/ trade them as per law.

1.5 With effect from 05.09.2018, the holding company (i.e. erstwhile Techno) merged into its subsidiary company (i.e. Simran). The Scheme of Amalgamation was approved by the Ld. National Company Law Tribunal ("*NCLT*") Bench at Allahabad in its Order dated 20.07.2018 ("*NCLT Order*"). In terms of the Clause 13 of the Scheme of Amalgamation, the name of Simran (i.e. transferee company) changed to Techno Electric from the effective date of the Scheme of Amalgamation. Accordingly, as per the Scheme of Amalgamation, it was merely the name of the transferee company which got altered (from Simran to Techno Electric), with the legal status remaining intact.

1.6 Pursuant to the merger/amalgamation, TNSLDC has allowed the issuance of 1,20,243 RECs to the Appellant. The RECs so approved by TNSLDC were submitted to NLDC for approval/issuance. NLDC did not allow such issuance on a pretext that the merger has impacted it and has amounted to change in legal status of the Appellant. NLDC did not allow the change in

name of Simran to Techno Electric and refused to update the records for the purposes of REC accreditation, registration and issuance. Since the merger amounted to only the 'change in name' and **not** in 'legal status', the Appellant challenged such interpretation/withholding before CERC in Petition No. 242/MP/2019.CERC agreed with NLDC in the Impugned Order and held that:-

(a) There exists a change in ownership of Simran pursuant to the merger of the holding company into its subsidiary.

(b) Change in ownership amounts to "change in legal status" and not a mere "change in name" for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee ("***REC Mechanism Guidelines***")

(c) The Appellant needs to apply for a fresh registration with NLDC until which the Appellant is not entitled to the RECs.

1.7 TNSLDC has approved issuance of 33,807 RECs on 01.02.2020, i.e. after the Impugned Order. The same are now pending before NLDC. Even this Tribunal has already acknowledged such name change in judgment dated 31.05.2019 in *Techno Electric* vs. *TANGEDCO* in Appeal No. 232 of 2017.

2. **Facts of the case:-**

2.1 The Appellant, Techno Electric & Engineering Company Limited after the amalgamation, is a generating company in terms of Section 2(28) of the Electricity Act, 2003 and is engaged in the business of setting up of wind power projects and generation of electricity. The Appellant has set up wind power projects having installed capacity of 111.9 MW in Tamil Nadu and 18 MW in

Karnataka.

2.2 Respondent No. 1,Central Electricity Regulatory Commission is a statutory authority constituted under the Electricity Regulatory Commissions Act, 1998 with powers vested in it by virtue of Sections 79 and 178 of the Electricity Act, 2003.

2.3 The Respondent No. 2, National Load Despatch Centre as defined under Section 26 of the Electricity Act, 2003 is the nodal agency for issuance of RECs as provided in Regulation 3 of the CERC REC Regulations.

2.4 On 26.10.2005, the Registrar of Companies, Pune, Maharashtra issued the 'Certificate of Incorporation' to Simran Wind Project Private Limited. Accordingly, Simran initially was incorporated as a private company. As per the said Certificate of Incorporation, the Corporate Identity Number ("***CIN***") of Simran was U40108PN2005PTC021476.

2.5 On 14.01.2010, CERC promulgated the CERC REC Regulations. In 2011 and 2012, Simran applied to the TNSLDC for its REC accreditation. Pursuant thereto, SLDC gave REC accreditation to Simran for its 111.9 MW wind generation. Accordingly, NLDC granted 'Certificate for Registration' to Simran as 'Eligible Entity' confirming its entitlement to receive RECs

2.6 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 U40108WB2005PTC166026.

2.7 On 14.06.2013, the Registrar of Companies, West Bengal issued a 'Fresh Certificate of Incorporation Consequent upon Change of Name on Conversion to Public Limited Company'. Accordingly, on 14.06.2013, Simran got converted from a Private Limited Company to a Public Limited Company. As per the said Certificate, the CIN of Simran got changed and was numbered as U40108WB2005PLC166026.

2.8 On 30.08.2014, Simran informed NLDC about its conversion from a Private Limited Company to a Public Limited Company and accordingly requested NLDC to change the name of the company in NLDC's records. Simran had also sent the copy of the said letter to TNSLDC.

2.9 On 30.09.2014, TNSLDC forwarded Simran's letter dated 30.08.2014 to NLDC for necessary actions and NLDC approved the 'change in name' request of Simran pursuant to its conversion from a Private Limited Company to a Public Limited Company. The same is evident from the perusal of REC registration certificates issued to Simran between 08.06.2011 and 02.01.2012 and the renewed REC registration certificates issued between 17.05.2016 and 02.12.2016.

2.10 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.

2.11 On 20.07.2018, Ld. NCLT Order approved the 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.”

2.12 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.”

2.13 On 23.04.2019, the Appellantsent an application to TNSLDC to change the name of “M/s Simran Wind Project Limited” to “M/s Techno Electric & Engineering Company Limited” in TNSLDC’s records. On 13.05.2019, a similar application was sent to NLDC.

2.14 Between 10.05.2019 and 10.09.2019, Appellant 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 Reportsranging between the dates 21.05.2019 to 03.10.2019 corresponding to each generation month approved issuance of RECs to the Appellant. Basis such approvals, the Appellant through its applications between 23.05.2019 and 15.10.2019 applied for issuance of RECs to NLDC. However, 1,20,243 RECs have been withheld by NLDC.

2.15 On 08.07.2019, NLDC informed the Appellant 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 Appellant 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***”).

2.16 On 16.07.2019, the Appellant wrote to NLDC stating that the legal status of the transferee companyhad not changed due to the merger. In this regard, the Appellant 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 companyin the said documents remained unchanged after the merger.

2.17 However, NLDC did not respond to Appellant's letter dated 16.07.2019.Aggrieved thereby, on 07.08.2019, the Appellant filed Petition No. 242/MP/2019 before CERCseeking appropriate directions to NLDC to give effect to the entitlement of the Appellant to the REC benefits.

2.18 Between 10.09.2019 and 20.12.2019, the Appellant applied for issuance of RECs with TNSLDC for the renewable energy generated between August 2019 and October 2019.Out of 52,540 RECs applied for August 2019 and September 2019, TNSLDC approved issuance of 33,807 RECs as on date. Although the Appellant applied with NLDC for issuance of the said 33,807 RECs, the same are pending with NLDC as on date.

2.19 After completion of the Pleadings in the Petition, the Impugned Order was issued wherein CERC rejected the claims of the Appellant.

3. **Facts in Issue**:-

Whether there exists a change in ownership and/or legal status of

Simran (Transferee company) pursuant to merger of the holding company into its subsidiary company?

4. **Questions ofLaw:-**

The Appellant has raised following questions of law:-

4.1 Whether CERC passed the Impugned Order contrary to the settled position of law that the legal status of the transferee company pursuant to a merger will remain intact?

4.2 Whether CERC failed to appreciate that the shareholding pattern of the transferee company pre and post-merger was identical resulting in no change in ownership?

4.3 WhetherCERC erred in directing the Appellant to apply for fresh registration with NLDC to avail legitimate REC benefits?

5. **Shri Sajan Poovayya, learned senior counsel appearing for the Appellant has filed the following written submissions for our consideration:-**

5.1 Techno Electric & Engineering Company Limited ("*Techno*"/ "*Appellant"*), formerly Simran Wind Project Ltd. ("*Simran*") filed this Appeal challenging the findings of Order passed by Ld. Central Electricity Regulatory Commission dated 28.01.2020 in Petition No. 242/MP/2019. In the Impugned Order, CERC failed to appreciate the impact of merger of a holding company (Techno) into its wholly owned subsidiary company (Simran). By doing so, CERC has wrongly deprived the Appellant of its legitimate entitlement as a renewable energy generator.

5.2 Pursuant to the merger, the Appellant continues to be entitled to Renewable Energy Certificates ("*RECs*") as it was prior to the

merger as the merger resulted into change in name onlyand not change in legal status. CERC wrongly treated it as change in legal status.

5.3 The Appellantwas constrained to challenge the Impugned Order on the following aspects/findings: -

(a) There exists a change in ownership of Simran pursuant to the merger of the holding company into its subsidiary.

(b) Change in ownership amounts to “change in legal status” and not a mere “change in name” for the purposes of Rule 4.1(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee.

(c) The Appellant needs to apply for a fresh registration with NLDC until which the Appellant is not entitled to Renewable Energy Certificates.

5.4 The Impugned Order is erroneous since: -

(a) It is contrary to the settled position of law that the legal status of the transferee company (Simran, now Techno) remains intact pursuant to a merger of a holding company (Old Techno) into its subsidiary company (Simran, now Techno).

(b) CERC failed to appreciate that the shareholding pattern of the transferee company pre- and post-merger wasidentical. There is no change in ownership.

(c) CERC erred in directing the Appellant to apply for fresh registration with NLDC to avail REC benefits. This is in contravention of the intent of Regulation 4(1)(j) of CERC REC Regulations, 2010

(lastpara of the said Regulation relates to the procedure wherein an entity changes its name).

5.5 CERC REC Regulations, 2010 were notified on 14.01.2010 and *inter alia* entitles a generating company to trade in RECs corresponding to the renewable energy generated. The role of SLDC and NLDC under the CERC REC Regulations, 2010 is to facilitate accreditation, registration and issuance of RECs. Simran, the wholly owned subsidiary of erstwhile Techno, executed multiple Power Purchase Agreements ("*PPAs*") with TANGEDCO between 31.03.2011 and 24.02.2012 for sale of power generated from its wind power projects having installed capacity of 111.9 MW. Since 16.05.2011, NLDC has been granting 'Certificates for Registration' in terms of the CERC REC Regulations, 2010 to Simran recognizing it as an 'Eligible Entity' confirming its entitlement to receive RECs.

5.6 There is no dispute regarding the eligibility of Techno to RECs, or regarding Techno's renewable energy generation etc. The only short issue that is germane to the dispute is whether Techno (parent company) merging with Simran (subsidiary) has any resultant impact on the legal status and ownership of Simran.It is Techno's submission that there isNO change in legal status, and it is **only** a change in name pursuant to the merger.

(A) Transferee company (Simran, now Techno) has notundergone any change in ownership pursuant to merger of the holding company into its subsidiary

5.7 On 20.07.2018, NCLT Order was issued under Section 232 of the Companies Act, 2013 in Company Petition No. 168/ALD of 2018 approving the Scheme of Amalgamation of erstwhile Techno

(transferor company) with its wholly owned subsidiary Simran (transferee company). By operation of law, it resulted in: -

(a) The authorized share capital of holding company being merged into and combined with the authorized share capital of the subsidiary without any further act (or) deed, and without payment of any registration or filing fee on such combined share capital

(b) All properties, rights, powers, liabilities and proceedings of holding company being transferred to and vested in the subsidiarysuch that all files of the two Companies shall stand consolidated. Pre-existing rights of Simran (including RECs issued to Simran) were not taken away.

(c) The name "M/s. Simran Wind Project Limited" being changed to "M/s. Techno Electric & Engineering Company Limited" (*Para X of Ld. NCLT Order@pg. 61read with Clause 3(iv)@pg. 66 and Clause 13 of the Schemeof Amalgamation@pg. 72*).

(d) All concerned regulatory and other authorities (including NLDC, CERC and this Tribunal) were to act on a copy of Ld. NCLT Order annexed with the Scheme .

(e) The Undertaking of holding company being transferred to the subsidiary.

5.8 Pursuant to merger, erstwhile Techno ceased to exist (disappeared without liquidation). The entity which vanished was erstwhileTechno, not Simran. Simran continued to exist, but with Techno's name.On 05.09.2018, Registrar of Companies ("*RoC*"), Kanpur recorded the change of name from Simran Wind Project Limited to Techno Electric & Engineering Company Limited.This

was in terms of Section 13(3) of the Companies Act, 2013 which provides that: -

> "***13 Alteration of Memorandum****:*
>
> (3) *Registrar shall enter new name in the register of companies in place of the Old name and issue a fresh certificate of incorporation with the new name and* ***change in name shall be complete*** *and effective only on the issue of such certificate*"

Once RoC had acknowledged that it was amere change in nameunder Section 13(3) of the Companies Act, 2013, it was no longer open for NLDC to contend that there was anything beyond such change in name on account of the merger, let alone change in legal status.

5.9 The Respondents' contention that the transferee company [Simran (now Techno Electric)] has undergone a change in its legal status is erroneous since it assumes that there was a change in ownership of the transferee company (Simran). In this regard, the following submissions are noteworthy: -

(a) Prior to the merger, the entire paid-up equity share capital of the subsidiary company (Simran) was held by holding company (erstwhile Techno) along with its nominees.

(b) Post-merger, all the shareholders and directors of holding company (erstwhile Techno) became the shareholders and board members of subsidiary company (Simran) respectively.

(c) Clause 11.5 of the Scheme of Amalgamation specified that the shareholding pattern should **not** undergo any change post and pre-merger. The Appellant gave effect to the mandate of Clause 11.5 of the Scheme of Amalgamation by allotting the shares to the shareholders in the transferee company (Simran) in the same ratio in which they were holding shares in the transferor company

(erstwhile Techno) without any consideration. In support, the Appellant has already placed on record the shareholding pattern of the transferor company and the transferee company along with the Memorandum of Association and Article of Association for pre-merger and post-merger in the Appeal.

(d) Promoters' shareholding and management control is the same pre- and post-merger.

(e) Additionally, pre- and post-merger, the registered office of the transferee company is the same i.e. C-218, ground floor, Sector-63, Noida 201 307, Gautam Buddha Nagar, Uttar Pradesh, 201307. This is evident from the Order of Ld. NCLT recording the addresses of the respective companies involved in the merger.

5.10 Further, NLDC's contention that ownership of a company is not to be determined based on the shareholding of a company, is erroneous and contrary to the law. In this regard, Appellant relies on the judgment of the Hon'ble Supreme Court in *Hindustan Lever* vs. *State of Maharashtra*, (2004) 9 SCC 438 wherein it was held as under: -

> **"*18.*** *It is difficult to subscribe to the view propounded by the learned counsel for the appellants. As stated earlier, the order of amalgamation is based on a compromise or an arrangement arrived at between the two companies.* ***No individual living being owns the company. Each shareholder is the owner of the company to the extent of his shareholding****. By enacting Sections 391 to 394 a method has been devised to give effect to the will of the prescribed majority of shareholders/creditors. Even in the absence of individual agreement by all the shareholders and creditors the decision of the majority prescribed in Section 391(2) binds all the creditors and the shareholders. The scheme after being sanctioned by the court binds all its creditors, members and shareholders including even those who were opposed to the scheme being sanctioned. It binds the company as well. While exercising its power in sanctioning the scheme of amalgamation, the court is to satisfy itself that the provisions of statute have been complied with….*

5.11 In that light, the Impugned Order is perverse since it erroneously held that post-merger, transferee company (Simran)'sownership was changed when there is no change in ownership.

(B) Transferee company (Simran, now Techno) has <u>not</u> undergone any change in legal status pursuant to merger of the holding company into its subsidiary

5.12 Respondents have failed to comprehend the Scheme of Amalgamation and without any legal basis arecontending that the transferee company underwent a change in legal status pursuant to the merger. Appellant's submissions in response to Respondents' erroneous and misplaced arguments are set-out herein-under.

5.13 In fact, there existstwo possibilities in any merger *viz*:-

(i) There may be amalgamation by the transfer of one or more companies to an '*existing company'[merger by absorption – present case];*or

(ii) There may be amalgamation either by the transfer of two or more companies to a '*new company' [merger by formation of a new company]*.

5.14 In this regard, Techno Electric relies on the judgment of the Hon'ble Supreme Court dated 04.09.1990 in *Saraswati Industrial Syndicate Ltd*. vs. *Commissioner of Income Tax* 1990 (Supp) SCC 675, wherein the different types of mergers were explained in the following terms: -

"**5.** *…In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to*

carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). ***Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation.*** *When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity.*"

Respondents are erroneously reading the judgment of in *Saraswati Industrial Syndicate Ltd*. vs. *Commissioner of Income Tax* 1990 (Supp) SCC 675 selectively out of its context, which is impermissible.

5.15 By contending that the transferee company acquires a new status pursuant to merger of two companies, Respondents are oblivious to the fact that there is no involvement of any new company in present Scheme of Amalgamation. This is so because erstwhile Techno (i.e. the holding company) blended into or absorbed by Simran (i.e. the subsidiary company). In effect, erstwhile Techno merged into anexisting company *i.e.* Simran. Hence this is a case of merger by absorption and not merger by formation of a new company.

5.16 It is a settled position of law that the legal status of the transferee company remainsintact pursuant to a merger of a holding company into its subsidiary. In this regard, it is relevant to note the law as laid down in the following judgments: -

(a) In *Speedline Agencies v. T. Stones & Co. Ltd.*, (2010) 6 SCC 257, *it was held as under*: -

> "***32.*** *As stated earlier, death of a landlord after passing the order of eviction does not ipso facto destroy the accrued right under the decree.*

The cases which have taken into account the subsequent event in favour of the tenant are cases where during the pendency of the appeal or revision, the requirement of the landlord had been fully satisfied and met or ceased to exist. In the case on hand, the landlord required it for its own business and for residential purposes of its employees. ***That requirement continues to exist also for the transferee Company since the entire business of the transferor company stood transferred to the transferee Company****. The requirement of the Company has neither been satisfied nor extinguished.* ***The right to evict has already crystallised into a decree to which the Company after amalgamation has succeeded by involuntary assignment****. As the decree for eviction was under stay, the decree could not be executed. Once the stay is vacated or dissolved, the respondent would be entitled to execute the decree. In the present case,* ***the amalgamation order has also preserved the said right****.*

33. As per Clause 1.7 of the scheme, all assets vest in the transferee Company*. As per Clause 6, any suit, petition, appeal or other proceedings in respect of any matter shall not abate or be discontinued and shall not be prejudicially affected by reason of the transfer of the said assets/liabilities of the transferor company or of anything contained in the scheme but the proceedings may be continued, prosecuted and enforced by or against the transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the transferor company as if the scheme has not been made.* ***In view of the same, by virtue of the provisions in the scheme of amalgamation and operation of Order 21 Rule 16 CPC, the decree-holder is deemed to execute the decree****.*

36. The assets of the erstwhile company had vested in the amalgamated Company*. A decree constitutes an asset.* ***The said asset of the erstwhile company has devolved on the amalgamated Company****. The eviction was on the ground of its own requirement of the erstwhile company.* ***The said business will be continued to be carried by the amalgamated Company****.* ***If the amalgamated Company is deprived of the said benefit, it will frustrate the very purpose of amalgamation and defeat the order of amalgamation passed by the High Court exercising jurisdiction under the Companies Act.***

(b) In *Simbhaoli Sugar Mills Limited*vs. *Hindustan Brown Boveri Limited* 1994 (23) ALR 259, the Hon'ble Allahabad High Court held as under: -

"**7**. *Having heard the learned counsel for the applicant and having perused the above noted decision, I am unable to agree with the submissions made by the learned counsel. In the case of Saraswati*

Industrial Syndicate Ltd. (Supra) it has been held by the apex court, as already observed above, that the true effect and character of amalgamation largely depends on the terms of the scheme of merger and, their respective rights and liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company cease to exist with effect from the date of the amalgamation is made effective. In the instant case at hand, the plaintiff has filed a copy of the order passed by the Bombay High Court on 10-8-1989 in the matter of amalgamation of Asea Brown Boveri Ltd. which was the transferor company with ***Hindustan Brown BoverieLtd. which was the transferee company****. The scheme of amalgamation has also been annexed to the counter affidavit.* ***The scheme of amalgamation and the order passed therein by the Bombay High Court, shows that with effect from 1st January, 1989 which is the "Appointed Date", the entire undertaking of Asea Ltd. the transferor company including its business, properties, assets etc., have been transferred and vested in the transferee company M/s. Hindustan Brown Boverie Ltd. It further shows that there has not been any change in the corporate status of the transferee company. Whereas, the transferor company has been effaced and has become extinct. However, only the name of the transferee company stood changed in the place of Hindustan Brown Boverie Ltd., the name of the transferee company is changed to Asea Brown Boveri Ltd. On the change of the name the transferee company does not stand dissolved nor any new company comes into existence. In fact, the constitution and the entity of the transferee company is not effected in any other manner and thus, the legal proceeding instituted by it in its former name can be continued by its new name.*** *The position could be different if instead of the transferee company being plaintiff the transferor company would have filed a suit. In such a situation the submissions advanced by the learned counsel would be tenable and the observations of the Supreme Court in the case of Saraswati Industrial Syndicate Ltd. would have applied, as it was held in said case that the transferor company ceased to exist from the date the amalgamation is made effective.* ***As seen above we are concerned with the transferee company only with which the transferor company has merged****.*

In this context the provision of ***Section 23(3) of the Companies Act, 1956*** *may be noticed which runs as follows;* ***The change of name shall not affect any rights or obligations of the company****, or render defective any legal proceedings by or against it; and any legal proceedings which might have continued or commenced by or against the company by its former name may be continued by or against the company by its new name.*

It is clear from sub-section (3) of Section 23 that by the change of name, the constitution of the old company is not changed. ***The section does not provide or imply that on the issue of the new certificate of registration in the new name, the company as it existed will stand dissolved and the new company will come into***

> ***existence.****On the other hand, sub-section (3) of Section 23 provides that the change of name will not affect any right or obligation of the company and that legal proceeding pending in the old name will not be rendered ineffective but will be continued by or against the company in its new name. It has been held by the* ***Calcutta High Court in (1985) (3) CLJ page 309*** *that the expression used in the section 23(3) of the act is "the Company" and not "old Company" or "new Company" or "dissolved Company*".”

(c) In *Bihari Mills Ltd., In re, 1983 SCC OnLine Guj 177,* the Hon’ble High Court of Gujarat*inter alia* held as under: -

> “***31.*** *The* ***proposed arrangement of takeover by reverse bid in the present case would not affect the right of control with the existing controllers of the transferor company.*** *In para. 641, at p. 93, in the aforesaid book of Take-overs and Mergers, the following observation is instructive:*
>
> > *“641. Where H. Co. acquires the undertaking of S. Co. for shares and the shares in H. Co. issued as consideration are retained by S. Co., the concentration of a block of shares in the hands of S. Co. may give it effective control of H. Co.* ***To avoid this consequence*** *(or possibly for other reasons discussed earlier), it may be decided that S. Co. should acquire the undertaking of H. Co. in exchange for an issue to H. Co. of shares in S. Co.* ***In this way, control of H. Co. remains firmly with its existing controllers, H. Co. acquires a controlling block of shares in S. Co. and the original shareholders of S. Co. remain as minority shareholders in S. Co****……”*

5.17 In light of the afore-said settled position of law, the following is noteworthy: -

(a) As held in *Speedline Agencies v. T. Stones & Co. Ltd.*, (2010) 6 SCC 257, it is clear that Simran (transferee)retained its assetsand became bulkier with erstwhile Techno’s (transferor) assets now been transferred to Simran. Accordingly, Simran was always entitled to RECs and such eligibility has not been affected due to the merger.

(b) Considering an identical circumstanceof a parent company into its subsidiary, the Hon'ble Allahabad High Court in *Simbhaoli Sugar Mills Limited*vs. *Hindustan Brown Boveri Limited* 1994 (23) ALR 259, categorically held that on: -

(i) The change of the name, the transferee company does not stand dissolvednor any new company comes into existence.

(ii) The change of name shall not affect any rights or obligations of the company

Accordingly, Impugned Order erroneously eroded the vested rights of Simran (now Techno) for eligibility towards RECs issuance.

(c) Further, while considering the implications of a reverse merger, the Hon'ble Gujarat High Court's illustration quoted above in *Bihari Mills Ltd., In re, 1983 SCC OnLine Guj 177*, clearly supports Techno's case to the extent it is held that arrangement of takeover by reverse bid(present case also involves a reverse merger) in the present case will not affect the right of control with the existing controllers of the transferor company. This settles the issue concerning ownership of Simran remaining unchanged pursuant to the merger.

5.18 There is no finding about change in legal status of the company in the Scheme of Amalgamation. It is submitted that subsequent to the Scheme of Amalgamation, the 'Eligible Entity' status of the transferee company with respect to its entitlement to receive RECs does not cease to operate. The change in name of Simran to Techno Electric pursuant to the merger in terms of Section 13 of the Companies Act, 2013 ought to be construed as deemed

'Eligible Entity' status conferred on the Appellant to use the existing RECs. The following evidence on record establishes that the legal status of the transferee company has not changed pursuant to the merger: -

(a) Corporate Identification Number ("*CIN*"): -

(i) It is a settled position of law that if a company undergoes a change in its legal status, then its fifth part of the CIN changes. The Appellant places reliance on CERC's Order dated 09.10.2018 in *Tadus Wind Energy Private Limited* vs. *NLDC* 2018 SCC OnLine CERC 202: -

> "**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…*"

(ii) Pertinently, CIN of Simran pre- and post-merger remained the same *i.e*. U40108UP2005PLC094368(*PLC is part 5*) details of which are tabulated herein-under: -

Particulars	Before Merger	After Merger	Issuing authority	Effective Date
CIN	U40108UP2005 **PLC**094368	U40108UP2005 **PLC**094368	ROC – Kanpur	05.09.2018

(b) Other relevant identification numbers: -

It is noteworthy that other relevant identification numbers as enumerated herein-below have also not undergone any change pursuant to the merger: -

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	33AAJCS4400J 1ZJ	33AAJCS4400 J1ZJ	Asst. Comm. GST Tamil Nadu	01.02.2019

5.19 NCLT Order permitted the merger/amalgamation of a parent company with its wholly owned subsidiary with no change in eventual shareholding and management. Section 175 of Actstipulates that the provisions of the Act are in addition and are not in derogation of other laws. Section 232(4) of the Companies Act, 2013 stipulates that when an Order is passed under Section 232 (3) of the Companies Act, 2013 approving the Scheme of Amalgamation, and where such Order provides for the transfer of any property, then by virtue of the said Order, that property shall be transferred to the transferee company.

5.20 As evident from the provisions of Section 232 (3) of the Companies Act, 2013, no existing property or right of the 'existing company' i.e. Simran cease to exist. Accordingly, pursuant to the merger, transferee company's rights under law are now a combination of its pre-existing rights and rights vested in it which previously belonged to the transferor company.

5.21 Respondents by contending that Appellant is required to apply afresh for registration of RECs is contrary to the mandate of Section 232 (3) and (4) of the Companies Act, 2013 and thus is violative of Section 175 of Act. In this respect, this Tribunal may refer to the intent and provisions of paragraphs II to VI, VIII, X and XI of the Ld. NCLT Order read with Clauses 1(iv), 3(ii), (iii), (iv), (v), (vi); 4.1, 4.6, 5, 6, 7, 11.1, 11.5, 13, 19.4 and 19.6 of the Scheme of Amalgamation.

(C) Regulation 4.1(j) of the REC Mechanism Guidelines, 2018 has no applicability in the instant case

5.22 Respondents are erroneously invoking Regulation 4.1(j) of the REC Mechanism Guidelines, 2018 to contend that there was a change in legal status of the transferee company pursuant to the merger. It is submitted that thepre-conditions for applicability of the said provision are not met in the facts and circumstances of this case. In Regulation 4.1 (j) of the REC Mechanism Guidelines, 2018 certain events are envisaged that would result in change in legal status of the companies. In the instant case, none of the grounds for change in legal status are met since: -

(a) The registered entity was a Public Limited Company prior to the merger and retains the same status even after the merger.

(b) This is neither a case of change of partnership to a company nor a case of demerger. Instead, as already explained, it is a case of merger of parent company into its subsidiary i.e. reverse merger. Accordingly, the transferee company retained its status pursuant to the merger.

(c) There is no change in 'ownership' of the registered Eligible Entity with the NLDC and TNSLDC. In this regard, it is pertinent to note that TANGEDCO by its letters dated 04.09.2019 and 07.11.2019 has acknowledged the name change as per the Scheme of Amalgamation and accepted the amended PPAs .

(d) Pertinently, even this Tribunal has already acknowledged such name change in judgment dated 31.05.2019 in *Techno Electric* vs. *TANGEDCO* in Appeal No. 232 of 2017.

(e) The assets of the transferee company have not been sold/transferred to any other company.

5.23 In view thereof, Respondents' submissions are erroneous and ought to be rejected. In fact, the present case involves only a change in name and not change in legal status. Accordingly, the relevant procedure which is applicable to the present case is the last paraof Regulation 4(1)(j) of CERC REC Regulations, 2010 (last para of the said Regulation relates to the procedure wherein an entity changes its name, after procedure in situations of change in legal status is set-out). The said part is applicable to the present case and the reliance is placed on the said para extracted herein below for the ease of this Tribunal:-

> *"…In **cases involving a change in name of the registered entity**, it **shall inform** the concerned State Agency and the Central Agency within one month from the date of said change, along with relevant documents including but not limited to Board Resolution regarding the name change, certificate of name change from Registrar of Companies, approval of concerned authorities, State Agency etc*."

(D) CERC ought to have directed NLDC to consider the Appellant as the 'Eligible Entity' for issuance of RECs

5.24 As already demonstrated, there has been neither any change in

legal status nor any change in ownership of the transferee company pursuant to the merger. Consequentially, CERC's direction to the Appellant to apply for fresh registration to avail REC benefits is erroneous and ought to be reversed. Such a finding: -

(a) defies the statutory mandate and the policy intent which requires deemed transfer of rights and obligations pursuant to change in name of a corporate entity.

(b) is causing unnecessary delay and denial to the Appellant, the benefits of renewable energy generation including RECs.

5.25 Pertinently, in the REC Mechanism Regulations approved by CERC on 05.11.2015, para 4.1 (j) provided that if there is a change in legal status, then the entity must apply afresh for accreditation. In this regard, the Order dated 09.11.2017 passed by CERC in *Rai Bahadur Seth Shreeram Narasingadas Private Limited* vs. *NLDC & Anr*. 2017 SCC OnLine CERC 368 is noteworthy. It was observed that the then existing REC Mechanism Regulations required amendments foreasy transfer of benefits of renewable energy generation including RECs from the previous entity to the newly formed entity. The relevant observation is extracted herein-under: -

"**95.** *The **RECs would be issued to RBSSNPL (the Petitioner), since the Business Takeover Agreement stands closed on 25.2.2016 and RBSSNPL has taken over the entire business of RBSSN (partnership concern) with all assets, liabilities, etc**. However, since the Energy Purchase Agreement was signed between RBSSNPL and TANGEDCO on 21.3.2016, the benefits of renewable energy generation, i.e., RECs shall be issued to RBSSNPL w.e.f. 21.3.2016. Therefore, we direct NLDC to issue RECs to RBSSNPL for the period from 21.3.2016 to 8.11.2016 within one month from the date of issue of the order. **We also direct the Staff to amend the provisions of the 'Detailed Procedure' accordingly, for proper redressal of such an eventuality in future**."*

5.26 Accordingly, in the amended REC Mechanism Regulations as approved by CERC dated 16.03.2018, three options are now given to the generating companies if they undergo a change in legal status *viz.*: -

(a) request for revocation of the project from the REC Mechanism

(b) request for re-accreditation/fresh accreditation and reregistration/ fresh registration of the project under REC, if desired

(c) request for transfer of RECs to the new entity.

5.27 The underlying intent of the amendment was to secure smooth transfer of benefits of renewable energy generation including RECs. This shows that CERC's past practice and the statutory mandate favour transfer of all benefits of renewable energy generation from the previous entity to the newly formed entity. Following the same analogy, there must be even more easy transfer of the existing RECs by way of a mere change in name of the 'Registered Entity' in the book of records of the NLDC.

5.28 By not allowing the change in name after the merger, the Impugned Order fails to give effect to regulatory consistency and certainty. It also violates the principle of legitimate expectation. The Hon'ble Supreme Court has held that same criteria ought to be followed to give effect to legitimate expectation. Reference may be made to:-

(a) *Monnet Ispat & Energy Ltd.* vs*. Union of India*, (2012) 11 SCC 1 wherein it was held that:-

> "**186.** *….. the* ***doctrine of legitimate expectation had been judicially recognised.*** *…it was stated that both doctrines—promissory*

> *estoppel and* ***legitimate expectation—require satisfaction of the same criteria*** *and* ***arise out of the principle of reasonableness****.*"

(b) This Tribunal in *Gujarat Urja Vikas Nigam Limited* vs. *Gujarat Electricity Regulatory Commission*, 2014 SCC OnLine APTEL 168 held as under: -

> "**165.** *The* ***Doctrine of Promissory Estoppel and Legitimate Expectations are applicable in the present case*** *since it is settled position of law that the doctrine of Promissory Estoppel and Legitimate Expectations are applicable when:*
>
> > *(c)* ***Private parties in dealing with the Government have legitimate expectationto be dealt with regularity, predictability and certainty****.*
> >
> > *(d) Legitimate Expectation is capable of including* ***expectations which go beyond enforceable legal rights****, provided they have some reasonable basis."*

5.29 In view of the afore-said submissions, it is evident that there is only name change pursuant to the merger and there is NO change in the legal status. The Appellant respectfully prays before this Tribunal to:-

(a) Set-aside the Impugned Order,

(b) Direct TNSLDC to issue pending RECs in the name of Techno.

(c) Direct NLDC to update its records updating change in name of Simran to Techno.

(d) Direct NLDC tore-name the existing RECswhich were issued by NLDC on 09.03.2020 in the name of "Simran" (but are unsold, if any as on date of the Judgment) and be issued expeditiously in the name of "Techno". This is to ensure that in case Techno succeeds in the present Appeal, then Techno will have RECs issued to it under one single name for its eligibility to redeem all available RECs in the Power Exchange.NLDC may be requested to

complete this process such as to ensure that no hindrance is caused to Techno to participate in the forthcoming REC trading sessions, which are conducted on the last Wednesday of every month.

6. **Ms. Abiha Zaidi, learned counsel appearing for the Respondent No.2 has filed the following reply for our consideration:-**

6.1 Respondent No. 2 denies each and every averment and contention raised in the Appeal under Reply except those which are matters of record and/or are admitted and none of the averments may be treated as admitted by Respondent No. 2 merely on account of their not being individually denied or on account of non-traverse of the same. The submissions made in this Reply are strictly in the alternative and without prejudice to one another.

6.2 The pertinent issue for consideration before this Tribunal in the Appeal is "*Whether the CERC was correct in holding that the amalgamation of two companies' amounts to change in legal status of the transferee company for the purposes of Clause 4(1)(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee and therefore correct in directing the Appellant herein to get a fresh registration?*"

6.3 At the outset, Respondent No. 2 submits that the Order of CERC has been passed after detailed hearing and due consideration of the arguments placed by both parties. The Impugned Order is well reasoned and does not suffer from any irregularity and ought to be upheld by this Tribunal.

A. Appellant cannot evade Regulatory Compliance

A.1 Role of NLDC/Respondent No. 2

6.4 In order to proceed with the case, it is necessary to establish the relevance of the REC Framework, role of Respondent No. 2 and the accompanying Regulations and Procedures. A bare perusal of the statement of objects and reasons accompanying the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Generation), Regulations 2010 ("***REC Regulations*"**) establishes that the Regulations are principally aimed at providing an implementation framework for a certificate based mechanism to address the mismatch between availability of energy through renewable sources and the requirement of the obligated entities to meet their renewable purchase obligation ("***RPO***"), which differs from state to state.

6.5 By virtue of the REC mechanism, renewable energy generators have an option either to sell the renewable energy at preferential tariff or to sell electricity generation and environmental attributes associated with RE generations separately. The environmental attributes are periodically quantified by way of RECs which can be traded/exchanged for the purposes of RPO compliance.

6.6 Under the said mechanism, Respondent No. 2 has been designated as the Central Agency in terms of Regulation 3(1) of the REC Regulations to perform the following functions:-

> *"(2) The functions of the Central Agency will be to undertake:*
> *(i) registration of eligible entities,*
> *(ii) issuance of certificates,*
> *(iii) maintaining and settling accounts in respect of certificates,*

(iv) repository of transactions in certificates, and
(v) such other functions incidental to the implementation of renewable energy certificate mechanism as may be assigned by the Commission from time to time."

6.7 Respondent No. 2 is bound to comply and act in accordance with the following procedures: - (i) Procedure for Registration of Renewable Energy Generator or Distribution Licensee ('***REC Registration Procedure'***)for grant of registration and (ii) Procedure for issuance of Renewable Energy Certificates to the Eligible Entity by Central Agency ('***REC Issuance Procedure'***) for issuance of certificates. The REC Registration Procedure (Clause 3 to 5) delineates each and every step to be followed in order to verify the entities seeking registration while authorising the Central Agency to seek the necessary information desired in fulfilling this function. It is pertinent to note that the REC Registration Procedure also provides for events of default and authorises the Central Agency to revoke registration of entities and/or take necessary penal actions (Please refer to Clause 9 of the respective Procedures.

6.8 In order to establish the necessity of this verification procedure and the necessity of checks and balances done by Respondent No. 2, the following extract from the Statement of Objects and Reasons of the REC Regulations is noteworthy:-

Stakeholder Comment – *"Accreditation by State Agency and registration by the Central Agency should be clubbed together .i.e. once entity is accredited by the state agency then it should automatically get registered at the central level without any separate registration process."*

…

Observation by CERC – *"As regards the suggestion of automatic registration after accreditation, the Commission appreciates the*

> *underlying concern around procedural delays.* ***However, the Commission does not endorse the idea of complete removal of the processes from accreditation to registration. Checks and balances are required to ensure proper implementation of any scheme, more so when it is a new concept. To allay the apprehension in this regard, the Commission has made suitable provision in the final regulations requiring the Central Agency to accord registration within fifteen days from the date of application for registration, if the applicant fulfils all eligible criteria for registration. The Central Agency can also reject the application by recording reasons in writing.*** *Suitable modification has also been made in the draft regulations to bring about clarity in regard to sale of electricity through power exchange at market determined price.* ***A separate provision has also been made providing for the circumstances under which registration of an eligible entity can be revoked. An opportunity of appeal before the Commission against the order of rejection of application for registration and revocation of registration has also been provided in the final regulation****."*(Emphasis Supplied)

6.9 Having established the necessity of the verification procedure, it is relevant to point out that neither the REC Regulations nor the aforesaid procedure *vests any discretionary power* on Respondent No. 2 to relax and/or to exempt compliance with any of the provisions contained therein.

6.10 On the other hand, the language of the REC Regulations and the REC Registration Procedure makes it abundantly clear that the provisions contained therein are mandatory in nature and entail strict compliance on the part of an eligible entity as well as the 'Central Agency' i.e. Respondent No. 2. The REC Registration Procedure followed by Respondent No. 2 in granting registration is a part of the necessary checks and balances of the REC framework that seek to promote of renewable energy.

6.11 The Regulation 7(2) of the REC Regulation stipulates that RECs shall be issued only after the Central Agency i.e. the Respondent No. 2 duly satisfies itself that all conditions for issuance of

certificate are complied with by the eligible entity. Regulation 7(2) is extracted below:-

> ***"7. Denomination and issuance of Certificates***
>
> *(2) The Certificates shall be issued to the eligible entity after the Central Agency **duly satisfies itself** that all the conditions for issuance of Certificate as may be stipulated in the detailed procedure are complied with by the eligible entity:" (Emphasis supplied)*

Sub-clause (2) of Regulation 7 of the REC Regulations as well as para. 4.1 (h) of the REC Registration Procedure uses the word "shall" which denotes that a provision is imperative in nature and must be strictly complied with.

A.2 Need for fresh Registration

6.12 It is relevant to note Regulation 5 of the REC Regulations prescribes the eligibility criteria of a generating plant for registration, issuance and dealing in RECs.Correspondingly, Clause 4(1)(h) of the REC Registration Procedure stipulates the procedure required to be followed in case of a change in legal status of a registered entity. The clause provides that there is a change of legal status of a registered entity, when it's ownership changes. In the given scenario the said entity ought to apply for *re-accreditation/fresh accreditation* or re-registration/fresh accreditation, if it desires to continue availing the benefit of the Renewable Energy Certificates. Regulation 4. (1) (h) is as under: -

> ***"4. FUNCTIONS, ROLES, AND RESPONSIBILITIES OF ENTITIES INVOLVED***
> *4.1 Generating Company or Distribution Licensee, as the case may be*
> *…*
> *(h) Whenever there is a change in legal status of registered entity (e.g. change from partnership to company, Pvt. Limited to Public Limited, new entity subsequent to demerger, **change in ownership of the***

> ***company****, asset/sale transfer to other company, etc.), it* ***shall*** *inform the concerned State Agency and the Central Agency within one month from the date of the said change, along with the following:*
>
> *(i) Request for revocation of the project from the REC Mechanism*
> *(ii) Request for re-accreditation/fresh accreditation and re-registration/fresh accreditation of the project under REC, if desired*
> (iii) *Request for transfer of RECs to the new entity"*
>
> (Emphasis added)

6.13 In accordance with Regulation 4(1) (h) of the REC Registration Procedure, there is a change of legal status of a registered entity, when its ownership changes and the said entity ought to apply for *re-accreditation/fresh accreditation* or *re-registration/fresh accreditation* if it desires to continue availing the benefit of the Renewable Energy Certificates.

6.14 This is a mandatory regulatory compliance which cannot be forgone.It is also in accordance with the Scheme which requires the Appellant to comply with the existing legal framework as a result of the Scheme. The NCLT Order in paragraph XIII of the operative part clarifies that approval of the Scheme of Amalgamation ought not be construed as express or implied exemption from complying with requirements under any other law. Paragraph XIII of the aforesaid order is as under: -

> *XIII. 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 is 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.*
>
> *(emphasis added)*

6.15 In view of the aforesaid, the Appellant has to comply with the requirement of registration on account of the change in legal

status. The NCLT Order categorically provides that the said legal compliance cannot be forgone.

B. The Appellant has undergone Change in Ownership

6.16 Having established the necessity of compliance, it is relevant to address the disputed question pertaining to the change that the Appellant underwent on account of an amalgamation of two companies (a holding and a subsidiary company) to form one amalgamated company.For ease of reference the companies shall be referred to as under:-

a) Erstwhile Techno Electric & Engineering Co. Ltd. i.e. the Transferor Company – *"**Old Techno"***.

b) Erstwhile Simran Wind Project Ltd. i.e. the Transferee Company (also the wholly owned subsidiary of Old Techno) – *"**Simran".***

c) Techno Electric & Engineering Co. Ltd. i.e. amalgamated company – "***New Techno***".

6.17 In the present case, the Scheme of Amalgamation ("***Scheme***") is sanctioned by the National Company Law Tribunal, Allahabad ("*NCLT Allahabad*") under Section 232 of the Companies Act, 2013. The very fact that the Appellant resorted to the procedure under Section 232 of the Companies Act indicates that the Appellant acquired a new status. Respondent No. 2 places reliance on Judgment of the of Hon'ble Supreme Court in*Speedline Agencies* vs*. T. Stanes& Co. Ltd*. [2010]160CompCas33(SC) which followed the decision *General Radio and Appliances Co. Ltd.* vs*. M.A. Khader*[1986 (2) SCC

656] to hold as under:-

> *"This decision lays down that after the amalgamation of the two companies the transferor company ceased to have any entity and the* ***amalgamated company acquired a new status*** *and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets."*(Emphasis Supplied)

6.18 In accordance with the Scheme, the entire shareholding of Simran stood cancelled. Effectively, the entire shareholding of Simranstood altered. This amounts to 'change in ownership of the company'.Simran was a wholly owned subsidiary company of the transferor company i.e. Old Techno prior to the Scheme and nowthe transferor company i.e. Old Techno has been dissolved. In the eyes of law, Old Techno is non-existent. Naturally, Simran a different owner now. Therefore, undoubtedly there has been a change in ownership of Simran.

6.19 The contention of the Appellant that pursuant to the scheme, all the shareholders and directors of Old Techno became the shareholders and board members of New Techno and therefore there is no change in ownership falls foul of the well-established legal principle that, a company is a separate legal entity which is entirely distinct from its shareholders [*Bacha F. Guzdar, Bombay*vs. *Commissioner of Income Tax, Bombay*, AIR 1955 SC 74]. In the eyes of law, there exists a strong and well-established legal separation between, the shareholders and the companies. Through a legal process, the erstwhile shareholders of Old Techno became shareholders ofSimran into which Techno was merged. Old Techno's shareholders substituting Old Techno as owner of Simran post a Scheme, is a change of ownership in the eyes of law, and that amounts to a change in legal status as explicitly laid

down in Regulation 4 (1) (h). In order to demonstrate the aforesaid, Respondent No 2 places reliance on the following documents:-

a) Shareholding Pattern of Old Techno, Simran and New Techno.

b) List of shareholders of Simranas on 31.03.2017 i.e. before the Scheme (*As per the Annual Return 2016-17 of Simran, downloaded from the Ministry of Corporate Affairs, Government of India*).

c) Form No. MGT-8 dated 28.09.2019 issued by the Company Secretary to New Techno i.e. post the Scheme (*As per the Annual Return 2018-19 of New Techno, downloaded from the Ministry of Corporate Affairs, Government of India*).

6.20 The Appellant's reliance on the case of *Saraswati Industrial Syndicate Ltd.* vs. *Commissioner of Income tax* [1990 (Supp) SCC 675] to conclude that there is no change in legal status of the transferee company [i.e. Appellant in this case], is incorrect and misleading. It seeks to add a sequitur to the ratio when one does not exist.The case law relied on by the Appellant does not anywhere provided that the legal status of the transferee remain un-changed. Even the Scheme of Amalgamation does not provide for this.

6.21 In its support, Respondent No. 2 places reliance on Clauses 3(iii), 3(iv),11.5, 12 of the Scheme of Amalgamation. Further, to contend that the present case is that of a "mere name change" from 'Simran Wind Project Limited' to 'Techno Electric & Engineering Company Limited' is misleading. It is relevant to note that the change in name has been done pursuant to the change in legal status. Further, the same is not analogous to a change in name of

the cause title of a company in a legal proceeding that does not alter the nature or character of the legal proceedings.

C. Conduct of the Appellant

6.22 In addition to the aforesaid, it is submitted that the Appellant in the present case has failed to comply with the mandatory requirement under law and is now seeking to bypass the said requirement.Respondent No. 2 would like to highlight certain important facts regarding the conduct of the Appellant:-

a) On 12.03.2019, Respondent No. 2 communicated to the Appellant (erstwhile M/s Simran Wind Project Limited) regarding submission of TDS Certificate for financial Year 2018-19 (upto 3rdquarter) as a part of the procedural requirement. In response to the email of Respondent No. 2, the Appellant submitted the copy of TDS Certificates on 12.03.2019.

b) On scrutiny of TDS Certificate provided by the Appellant, Respondent No. 2 observed the infirmity in name. While the entity registered with Respondent No. 2 was “Simran Wind Project Limited”, the TDS was deducted under the name of “Techno Electric & Engineering Company Limited”. Subsequently, by email dated 14.03.2019, Respondent No. 2 and sought clarification regarding name change observed in TDS certificate.

c) Appellant by its email dated 05.04.2019 communicated to Respondent No. 2 that name of the Company had been changed from Simran Wind Project Limited to Techno Electric & Engineering Company Limited.

d) In view thereof, Respondent No. 2by its email dated

08.04.2019, asked the Appellant to submit the requisite details regarding name change. Pending the requisite receipt of the information, the issuance of RECs of all nine projects of M/s Simran Wind Project Limited was kept on hold.

e) State Agency i.e. Tamil Nadu State Load Desptach Centre ("*TNSLDC/State Agency*") by its email dated 29.04.2019 communicated the name change of aforementioned projects to Respondent No. 2.This was on the basis of email dated 23.04.2019, wherein the Appellant applied to the State Agency for updation of name change. *It is relevant to note that till date no information about the NLCT Order dated 20.07.2018 approving the Scheme had been given by Appellant to Respondent No. 2 or to TNSLDC.*

f) In this context, Respondent No. 2again communicated to the Appellant *vide* email dated 01.05.2019 and sought clarification.

g) On 13.05.2019, the Appellant communicated to Respondent No. 2 regarding the alleged change in name.

h) Subsequently, Respondent No. 2 communicated to the Appellant *vide* email dated 08.07.2019 and rejected the request for aforementioned name change of project under REC mechanism.

6.23 On a perusal of the above, it is clear that the Appellant itself has acted in contravention of the Regulations of the CERC and did not update the State Agencyand the Central Agency i.e. Respondent No. 2about the change in its legal status. The Appellant did so only after the infirmity was pointed out by the Respondent No. 2. Having failed to fulfil a mandatory legal compliance, the Appellant

now offers an interpretation which seeks to dilute the very object of the said compliances.

6.24 In view thereof, it is submitted that the contentions raised by the Appellant are baseless and without any substance and the present Appeal therefore ought to be dismissed.

7. Shri S. Vallinayagam, learned counsel appearing for the Respondent No.3 has filed the following written submissions for our consideration:-

7.1 The issue raised in the Appeal involves interpretation of:

"The clause 4.1(j)CERC REC Procedure for Accreditation of Renewable Energy Generation Project by State Agency, dated 16.03.2018 read as below:

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

i) request for revocation of the project from the REC Mechanism
ii) request for re-accreditation/fresh accreditation and re-registration/ fresh registration of the project under REC, if desired
iii) request for transfer of RECs to the new entity".

Stating non-applicability of the above Regulation to the Appellant, it filed a Petition before CERC registered asPetition No. 242/MP/2019. The petition before CERC was only against NLDC. The SLDC of State of Tamil Nadu was not made a party before CERC by the Appellant.CERC vide its Order, dated 28.01.2020 had disposed with the following direction.

Para 52. *……. It is apparent from clause 4.1 (h) that in cases where there is a change in legal status, the entity is required to apply afresh for accreditation and registration. It has been already held by the Commission*

in Issue No. 1 that it is a case of "change of legal status". Therefore, it is mandatory for the Petitioner to comply with the Regulations and Procedures laid out by the Commission in order to take benefit of the Renewable Energy Certificates under REC mechanism. Accordingly, the Issue No. 2, is answered in favour of Respondent and against the Petitioner as the Petitioner is to get itself a fresh registration and without registration, the Petitioner is not entitled to the RECs.

It is against the above orders of CERC, the Appellant has filed the present Appeal.

7.2 Issues raised in the Appeal:

(i) Whether there exists a change in ownership and/or legal status of Simran (Transferee company) pursuant to merger of the holding company into its subsidiary company?

7.3 Questions of law raised in the Appeal:

(a) Whether CERC passed the Impugned Order contrary to the settled position of law that the legal status of the transferee company pursuant to a merger will remain intact?

(b) Whether CERC failed to appreciate that the shareholding pattern of the transferee company pre and post-merger was identicalresulting in no change in ownership?

(c) Whether CERC erred in directing the Appellant to apply for fresh registration with NLDC to avail legitimate REC benefits?

Change in legal status:

7.4 On the issue of whether there is a change in legal status of the transferee company pursuant to merger of the holding company

(transferor company) into the subsidiary company (transferee company) the following is submitted:

(a) In the present case, the holding company was into the business of Engineering Procurement and Construction in the name of Techno Electric Engineering Company Ltd.The assets of the holding company were separate and distinct from that of its subsidiary. The nature of business itself was separate. The only fact that connected the holding company and the subsidiary company was – the holding company held 11,26,82,400 Equity Shares of Rs.2/- each of the subsidiary company.

(b) The subsidiary company was exclusively into the business of wind energy generation using windmills installed and commissioned in the name of Simran Wind Projects.

(c) The objects and reasons extracted in the Scheme of Amalgamation, which is a part of the order passed by the Company Court recognising merger of the holding company into the subsidiary company @ page 64,65 and 66.

(d) The share holdings of the transferor company are as under:

Authorised Share Capital: 42,49,00,000 Equity shares of Rs. 2/- each 5,50,20,000 Preference Shares of Rs. 10/- each Total	 Rs. 84,98,00,000 Rs. 55,02,00,000 Rs.140,00,00,000
Issued, Subscribed and Paid up Share Capital: 11,26,82,400 Equity Shares of Rs.2/- each fully paid	 Rs. 22,53,64,800

(e) The share holdings of the transferee company are as under:

Authorised Share Capital: 139,99,00,000 Equity shares of Rs. 2/- each 8,00,20,000 Preference Shares of Rs. 10/- each Total	 Rs. 279,98,00,000 Rs. 80,02,00,000 Rs.360,00,00,000
Issued, Subscribed and Paid up Share Capital: 11,26,82,400 Equity Shares of Rs.2/- each fully paid	 Rs. 22,53,64,800

The relevant clauses of the scheme of amalgamation are as under:

"iv. In the circumstances it is considered desirable and expedient to amalgamate the transferor company with the transferee company with the resulting amalgamated entity adopting and succeeding to the more established name and goodwill of the transferor company in the manner and on the terms and conditions stated in the scheme of amalgamation.

v. The amalgamation will enable appropriate consolidation and integration of the operations and activities of the transferor company and the transferee company and ***result in the formation of a larger and more broad-based company****having greater capacity to raise and access funds for growth and expansion of its business, marketing and selling its products and services and conducting trade on more favourable terms.*

vi. The business of the amalgamated entity will be carried out on more efficiently and economically as a result, inter alia, of polling and more effective utilisation of the combined resources of the said companies and substantial reduction in cost and expenses which will be facilitated by and follow the amalgamation. As such the amalgamation of the transferee company and the transferor company will enable greater utilisation of the potential of the business of the transferor company and the transferee company ***in the merged entity*** *and have beneficial results for the said companies, they are shareholders and all concerned."****[Page 66]***

The above facts clearly establish that the transferor company as well as the transferee company [the amalgamating as well as

the amalgamated company] amalgamate to form a larger and more broad-based company which is the merged entity. The reference to creation of "merged entity" is stated in the scheme of amalgamation presented by the appellant before the Company Court and approved by the Company Court.

(f) It is under the above facts and circumstances, when the above said holding company merged with its subsidiary company, the legal status of the merged entity is a new one with the combined assets and liabilities of the holding company and the subsidiary company.

(g) The Company Court while approving the scheme of amalgamation sought by the transferor and transferee company specifically stated that:

> *"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 is applicable), taxes (including income tax, GST or any other charges, if any are applicable) and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law"*

It is evident from the above specific direction of the Company Court that the order granting/approving amalgamation of the companies does not in any way grants any exemption from compliance of the requirement of any other law.

(h) The order of amalgamation passed by the Company Court is in two parts.

- The first part permits the amalgamation of transferor company and transferee company, i.e. Techno Electric Engineering Co. Ltd. andSimran Wind Projects Ltd.

- The second part involves change in name of the newly formed amalgamated entity from Simran Wind Projects Ltd. to Techno Electric Engineering Co. Ltd.

In the facts of the present case, two companies merge together to form an amalgamated entity and subsequent to amalgamation also change the name of the amalgamated entity.

On the issue of inconsistency in law:

7.5 Under Regulation 5 of the REC Regulations, which specifies the eligibility for registration for Certificates**,** the primary requirement is the applicant should be a generating company. The subsidiary company was a generating company prior to amalgamation carrying out only generation of electricity using windmills. Post amalgamation, the amalgamated company [earlier subsidiary company] is carrying out the business of engineering, procurement and construction and generation of electricity using windmills.

7.6 The company after the process of amalgamation it is not exclusively in the business of generation of electricity from wind energy but it is also into the business of engineering, procurement and construction. This fact is evident from the order of Company Court which approved the amalgamation of the holding company into the subsidiary company. In other words, the nature of business of the subsidiary company post amalgamation is different from what it was carrying out prior to amalgamation.

7.7 It is pertinent to note that, in addition to the nature of business, the shareholding of the holding company and the shareholding of the

subsidiary company combinetogether and form a new shareholding pattern. The assets of the holding company become assets of the subsidiary company, in addition to the assets of the subsidiary company which it had prior to amalgamation. In effect, the assets of the amalgamated company change after the process of amalgamation. The intention of the amalgamating and amalgamated company is clearly set out in the Company Court order approving the amalgamation of two companies.

7.8 CERC REC Regulations, 2010 notified by CERC in exercise of its powers under subsection (1) of section 178 and section 66 read with clause (y) of subsection (2) of section 178 of Act, 2003 of is creature of a statute. The procedure for accreditation of RE generator is provided for under this REC Regulation. The provisions of Companies Act cannotbe read into to say that the specific requirement of the procedure set out under the RECRegulations are not applicable to the facts of the present case.

7.9 The Section 173 of the Act, 2003 deals with the issue relating to inconsistency in laws. It specifically states that:

> *"Nothing contained in this Act or any rule or regulation made there under or any instrument having effect by virtue of this Act, rule or regulation shall have effect insofar as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 of the Railways Act, 1989."*

Section 174 further states that:

> *"Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act ."*

7.10 Section 175 of the Act, 2003 states that the provisions of Act, 2003 are in addition to and not in derogation of other laws. However, when provision of another law is read into to say that the provisions of Regulations, Rules framed under this Act, 2003 are not applicable; provisions of Section 173 & Section 174 come into play.

It is in the above perspective, Clause 4.1(j)CERC REC Procedure for Accreditation of Renewable Energy Generation Project by State Agency, dated 16.03.2018Act, 2003 is required to be appreciated.

7.11 Law laid down by the Hon'ble Supreme Court on the issue of change in legal status of an amalgamated entity which comes into existence after amalgamation of the transferor company and the transferee company.The Hon'ble Supreme Court in Saraswati Industrial Syndicate Ltd. vs CIT, Haryana, Himachal Pradesh, Delhi [1990 SCR Supl. (1) 332] has specifically held that:

Headnotes:

"Two companies may join to form a new company, but the MMA absorption or blending of one by the other, both amount to amalgamation. When two companies merged and are so joined, as to form the third company or one is absorbed into the other or blended with another, the amalgamating company loses its entity.

After the amalgamation of two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets."

Relevant paragraph of the Judgment:

…."In M/s. General Radio and Appliances Co. Ltd. & Ors. v.M.A. Khader (dead) by Lrs., [1986] 2 S.C.C. 656, the effect of amalgamation of two

companies was considered. M/s. General Radio and Appliances Co. Ltd. was tenant of a premises under an agreement providing that the tenant shall not sub-let the premises or any portion thereof to anyone without the consent of the landlord. M/s. General Radio and Appliances Co. Ltd. was amalgamated with M/s. National Ekco Radio and Engineering Co. Ltd. under a scheme of amalgamation and order of the High Court under Sections 391 and 394 of Companies Act, 1956. Under the amalgamation scheme, the transferee company, namely, M/s. National Ekco Radio and Engineering Company had acquired all the interest, rights including leasehold and tenancy rights of the transferor company and the same vested in the transferee company. Pursuant to the amalgamation scheme the transferee company continued to occupy the premises which had been let out to the transferor company. The landlord initiated proceedings for the eviction on the ground of unauthorised sub-letting of the premises by the transferor company. The transferee company set up a defence that by amalgamation of the two companies under the order of the Bombay High Court all interest, rights including lease-hold and tenancy rights held by the transferor company blended with the transferee company, therefore the transferee company was legal tenant and there was no question of any sub-letting. The Rent Controller and the High Court both decreed the landlord's suit. This Court in appeal held that under the order of amalgamation made on the basis of the High Court's order, the transferor company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. This decision lays down that after the amalgamation of the two companies the transferor company ceased to have any entity and ***the amalgamated company acquired a new status*** *and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets."*

7.12 From the citation extracted above, it is clear that the transferor company alone was the tenant of M.A. Khader (dead) by Lrs. There was no landlord tenant relationship between the transferee company and M.A. Khader (dead) by Lrs. After amalgamation of the transferor company with the transferee company, the transferee company acquired the new status of a tenant. This clearly establishes the fact that most amalgamation the legal status of the transferee company changed. The transferee company, which earlier was not a tenant of M.A. Khader (dead) by Lrs. changed to be the tenant of M.A. Khader (dead) by Lrs.

7.13 In view of the ratio laid down by the above judgement, it is submitted that post amalgamation the transferor company and

transferee company from an amalgamated entity and acquires a new status. As such, when the amalgamated entity acquires a new legal status, it is mandatory on the part of the newly formed amalgamated entity to comply with clause 4.1(j)CERC REC Procedure for Accreditation of Renewable Energy Generation Project by State Agency, dated 16.03.2018.

7.14 The above clause of CERC RECs Procedure for Accreditation only gives certain examples and does not restrict the applicability of the procedure to the examples stated in the said clause. The said clause is extracted hereunder:

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

- *request for revocation of the project from the REC Mechanism*
- *request for re-accreditation/fresh accreditation and re-registration/ fresh registration of the project under REC, if desired*
- *request for transfer of RECs to the new entity".*

The clause only provides examples, it is not an exhaustive list. At the end of the parenthesis containing the examples the clause says "*other company, etc*."

7.15 In view of the above facts and submissions, the Appeal is liable to be dismissed.

8. We have heard learned senior counsel appearing for the Appellant and learned counsel(s) appearing for the Respondent Nos. 2 & 3 at considerable length of time and we have gone through carefully their written submissions/arguments and also taken note of the relevant material available on records during the proceedings. On the

basis of the pleadings and submissions available, the following issue emerges in the instant Appeal for our consideration:-

- Whether in the facts and circumstances of the case, the Respondent Central Commission was justified in passing the impugned order holding that on account of the merger of the holding company into its wholly owned subsidiary company results into change in legal status and the Appellant has to apply for fresh registration with NLDC to avail legitimate REC benefits?

OUR FINDINGS AND ANALYSIS: -

9. Learned senior counsel Mr. Sajan Poovayya, appearing for the Appellant at the outset submitted that in the impugned order, CERC failed to appreciate the impact of merger of a holding company (Techno) into its wholly owned subsidiary company (Simran) and has erroneously deprived the Appellant of its legitimate entitlement as a renewable energy generator. He further submitted that the order of the Central Commission is contrary to the settled position of law that the legal status of the transferee company (Siman, now Techno) remains intact pursuant to a merger of the holding company (old Techno) into its subsidiary company (Siman, now Techno). Further, CERC failed to appreciate that the shareholding pattern of the transferee company pre-and-post merger is identical and there is no change in ownership. In fact, the Central Commission erred in directing the Appellant to apply for fresh Registration with NLDC to avail REC benefits which is in contravention of the intent of regulation 4(I)(j) of the CERC REC Regulations, 2010.

9.1 Learned senior counsel further contended that there is no dispute regarding the eligibility of Techno to RECs or regarding Techno's renewal energy generation etc. The only short issue that is germane to the dispute is whether Techno (parent company) merging with Simran (subsidiary company) has any resultant impact on the legal status and ownership of Simran. In fact, it is only a change in name pursuant to the merger and there is no change in the legal status. He further submitted that the NCLT Order dtd. 20.07.2018 was issued under Section 232 of the Companies Act, 2013 in Petition No.168/ALD of 2018 which duly approved the scheme of Amalgamation of erstwhile Techno (transferor company) with its wholly owned subsidiary Simran (transferee company).Learned counsel vehemently submitted that pursuant to the merger, erstwhileTechno ceased to exist (disappeared without liquidation). The entity which vanished was erstwhileTechno, not Simran. Simran continued to exist, but with Techno's name.On 05.09.2018, Registrar of Companies ("*RoC*"), Kanpur recorded the change of name from Simran Wind Project Limited to Techno Electric & Engineering Company Limited.This was in terms of Section 13(3) of the Companies Act, 2013 which deals with Alteration of Memorandum.

9.2 Learned senior counsel for the Appellant submitted that as per clause 11.5 of the scheme of Amalgamation, the Appellant gave effect to the mandate of this clause by allotting the shares to the shareholders in the transferee company (Simrarn) in the same ratio in which they were holding shares in the Transferor company (Techno) without any consideration. Learned counsel was quick to point out that the contention of NLDC that ownership of a company

is not to be determined based on the shareholding of the company is erroneous and contrary to the law. To substantiate his contentions, learned counsel placed reliance on the judgment of Hon'ble Supreme Court in *Hindustan Lever vs. State of Maharashtra, (2004) 9 SCC 438* wherein, among other rulings, it was held that "*No individual living being owns the company. Each shareholder is the owner of the company to the extent of his shareholding".* In view of this ruling, learned counsel contended that the impugned order is perverse since it has erroneously held that post-merger, transferee company (Simran) ownership was changed when in fact there was no change in the ownership.

9.3 Learned counsel for the Appellant further submitted that as a matter of fact the transferee company (Simran, now Techno) has not undergone any change in legal status pursuant to merger of the holding company into its subsidiary. In this regard, learned counsel relied upon the judgment of the apex court dtd. 04.09.1990 in *Saraswati Industrial Syndicate Ltd*. vs. *Commissioner of Income Tax* 1990 (Supp) SCC 675, wherein the different types of mergers were explained in the following terms: -

"**5.** *…In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539).* ***Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation.*** *When two companies are merged and are so joined, as to*

form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity."

Learned counsel pointed out that the Respondents are reading the above judgment erroneously and selectively out of context which is impermissible. He also pointed out that in effect erstwhile Techno merged into an existing company i.e. Simran hence this is a case of merger by absorption and not merger by formation of a new company.

9.4 Learned senior counsel for the Appellant advancing his arguments further contended that it is a settled position of law that a legal status of a transferee company remains intact pursuant to a merger of a holding company into its subsidiary and to substantiate his contentions, he placed reliance on the following judgments:-

(a) *Speedline Agencies v. T. Stones & Co. Ltd.*, (2010) 6 SCC 257,

(b) *Simbhaoli Sugar Mills Limited*vs. *Hindustan Brown Boveri Limited* 1994 (23) ALR 259,

(c) Bihari Mills Ltd., In re, 1983 SCC OnLine Guj 177,

Citing the rulings in the above judgments of the Hon'ble Supreme Court, the learned senior counsel alleged that in the impugned order, the Commission has erroneously eroded the vested rights of Simran (now Techno) for eligibility towards RECs issuance. Further while considering the implications of a reverse merger, the Hon'ble Gujarat High Court's illustration quoted in *Bihari Mills Ltd., In re, 1983 SCC OnLine Guj 177*, clearly supports Techno's case to the extent it is held that arrangement of takeover by reverse bid (present case also involves a reverse merger) in the present case will not affect the right of control with the existing controllersof the

transferor company. Therefore, this settled the issue concerning ownership of Simran remaining unchanged pursuant to the merger.

9.5 Learned senior counsel for the Appellant further submitted that it is a settled position of law that if a company undergoes a change-in its legal status, then its fifth part of the identification no. (CIN) changes. Learned counsel in this regard placed reliance on the CERC's Order dated 09.10.2018 in *Tadus Wind Energy Private Limited* vs. *NLDC* 2018 SCC OnLine CERC 202 wherein it was held that in a case where CIN of the company does not change, the legal status of the company remains intact. It would be seen that pertinently, CIN of Simran pre-and post-merger has remained the same. Further, the PAN, TAN, GST numbers etc. of the Simran have not undergone any change pre-and post-merger. Further, it is evident from the provisions of section 232 (3) of the Companies Act, 2013, no existing property or right of the existing company i.e. Simran cease to exist. Accordingly, pursuant to the merger, transferee company's rights, under law are now a combination of pre-existing rights which previously belongs to the transferor company.

9.6 Learned counsel emphasised that Regulation 4.1 (j) of the REC Mechanism Guidelines, 2018 has no applicability in the instant case and Respondents are erroneously invoking the same to contend that there was a change in the legal status of transferee pursuant to the merger. Learned counsel pointed out that the pre-conditions for applicability of the said provision were not met in the facts & circumstances of the present case. In such a scenario, the submissions of Respondents are without proper footing. Learned

counsel further contended that in view of the above, the Central Commission ought to have directed NLDC to consider the Appellant as the eligible entity for issuance of RECs. He further submitted that in the amended REC Mechanism Guidelines, as approved by CERC dtd. 16.03.2018, three options are now given to the generating companies if they undergo a change in legal status. In fact, the underlying intent of the amendment was to secure smooth transfer of benefits of renewable energy generation including RECs. Therefore, following the same analogy, there must be even more easy transfer of the existing RECs by way of a mere change in the name of the Registered Entity in the book of records of NLDC. Learned counsel alleged that by not allowing the change in name after the legitimate merger, the impugned order fails to give effect to the regulatory consistency and certainty. Besides, it also violates the principle of legitimate expectation. To substantiate his contentions, learned counsel referred to the following judgments of the Hon'ble Apex Court and this Tribunal :-

(a) *Monnet Ispat & Energy Ltd.* vs*. Union of India*, (2012) 11 SCC 1

(b) *Gujarat Urja Vikas Nigam Limited* vs. *Gujarat Electricity Regulatory Commission*, 2014 SCC OnLine APTEL 168

9.7 ***Per contra*****,** learned counsel appearing for the second Respondent /NLDC submitted that the pertinent issue for consideration before the Tribunal is "*Whether the CERC was correct in holding that the amalgamation of two companies' amounts to change in legal status of the transferee company for the purposes of Clause 4(1)(h) of the Procedure for Registration of a Renewable Energy Generation or Distribution Licensee and therefore correct in directing the Appellant herein to get a fresh registration?*"

Learned counsel for the second Respondent vehemently submitted that the order of the Central Commission has been passed after detailed hearing and due consideration of the arguments placed by both parties. The impugned order is well-reasoned and does not suffer from any irregularity and ought to be held by this Tribunal.

9.8 Learned counsel for the second Respondent referred to various provisions of REC Regulations, 2010 and the assigned roles of NLDC in verification and issuance of RECs. Learned counsel pointed out that neither the REC Regulations nor the aforesaid provision vests any discretionary power on the second Respondent to relax and / or to exempt compliance with any of the provisions contained therein. Learned counsel was quick to submit that as per the Regulation 7(2) of the REC Regulations, the REC shall be issued only after the Central Agency i.e. 2nd Respondent has duly satisfied itself that all conditions for issuance of certificate are complied with by the eligible entity. Regulation 7(2) is extracted below:-

> ***"7. Denomination and issuance of Certificates***
>
> *(2) The Certificates shall be issued to the eligible entity after the Central Agency **duly satisfies itself** that all the conditions for issuance of Certificate as may be stipulated in the detailed procedure are complied with by the eligible entity:" (Emphasis supplied)*

Sub-clause (2) of Regulation 7 of the REC Regulations as well as para. 4.1 (h) of the REC Registration Procedure uses the word "shall" which denotes that a provision is imperative in nature and must be strictly complied with.

9.9 Learned counsel for the second Respondent submitted that as per clause 4 (1)(h) of the REC Registration Procedure, a generator undergoing any change in legal status is required for fresh registration. Learned counsel further contended that this is a mandatory regulatory compliance which cannot be foregone. Learned counsel also referred to Para XIII of the operative part of NCLT order to contend that approval of the Scheme of the Amalgamation ought not be construed as express or implied exemption from complying with requirements under any other law. The said para reads as below:-

> *XIII. 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 is 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.*
>
> *(emphasis added)*

9.10 Learned counsel for the second Respondent further submitted that the Scheme of Amalgamation was sanctioned by the NCLT Allahabad under Section 232 of the Companies Act, 2013 and the very fact that the Appellant resorted to the procedure under Section 232 of the Companies Act indicates that the Appellant acquired a new status. In this regard, learned counsel placed reliance on the judgment of Hon'ble Supreme Court in*Speedline Agencies* vs*. T. Stanes& Co. Ltd*. [2010]160CompCas33(SC)which followed the decision in *General Radio and Appliances Co. Ltd.* vs*. M.A. Khader*[1986 (2) SCC 656]. Citing the rulings and provisions of the Amalgamation Scheme, learned counsel for 2nd Respondent submitted that the entire shareholding of Simran stood cancelled. This amounts to change in ownership of the

company. Subsequent to the merger, in the eyes of law, old Techno is non-existent and naturally Simran is a different owner now. Therefore, undoubtedly, there has been a change in ownership of Simran. Learned counsel for the second Respondent was quick to point out that the Appellant's reliance on the case of *Saraswati Industrial Syndicate Ltd.* vs. *Commissioner of Income tax* [1990 (Supp) SCC 675] to conclude that there is no change in legal status of the transferee company is incorrect. In fact, the case law relied upon by the Appellant does not anywhere provide that the legal status of the transferee company remains unchanged and even the Scheme of Amalgamation does not provide for this.

9.11 Learned counsel for the second Respondent alleged that in addition to the aforesaid, the Appellant has failed to comply with the mandatory requirement under law and is now seeking to bypass the said requirement. Learned counsel in this regard referred to a matrix of various communications exchanged between the Second Respondent and the Appellant and also with TNSLDC. While summing up the arguments, the learned counsel for the second respondent alleged that the Appellant itself has acted in contravention of the CERC Regulations and did not update the state /central agency regarding the change in the legal status. In view of the above, learned counsel for the second respondent requested for the dismissal of the appeal.

9.12 Learned counsel appearing for the third respondent / TNTCL submitted that in the present case, the holding company was into the business of Engineering Procurement and Construction in the name of Techno Electric Engineering Company Ltd.The assets of the holding company were separate and distinct from that of its

subsidiary company and the nature of business was also different. The only fact that connected the holding company and the subsidiary company was that the holding company held 11,26,82,400 Equity Shares of Rs.2.00 each of the subsidiary company. It is pertinent to note that the subsidiary company was exclusively in the business of wind energy generation in the name of Simran Wind Projects. The objects and reasons extracted in the Scheme of Amalgamation which is a part of the order passed by the Company Court recognized merger of the holding company to the subsidiary company and indicated various shareholdings of the transferor company and the transferee company. Learned counsel was quick to point out that the Company Court while approving the Scheme of Amalgamation of the transferor and the transferee company, specifically stated that direction of the Company Court does not in any way grants any exemptions from compliance of the requirement of any other law.

9.13 Learned counsel contended that the order of the amalgamation passed by the Company Court has two parts. The first part permits the amalgamation of transferor company and the transferee company and the second part involves change in the name of newly formed amalgamated entity from Simran Wind Projects Ltd. to Techno Electric Engineering Co. Ltd. Hence, in the present case, two companies merged together to form amalgamated entity and subsequent to the amalgamation also change the name of amalgamated entity. Learned counsel for theTNTCL pointed out that in addition to the nature of business, the shareholding of the holding company and shareholding of the subsidiary company combined together and found a new pattern.

In effect, assets of the amalgamated company changed after the process of amalgamation. Further, the intention of the amalgamating and amalgamated company is clearly set out in the Company Court Order approving the merger of the two companies.

9.14 Learned counsel emphasized that REC Regulations 2010 framed by CERC have been notified in exercise of its powers, under sub-section 1 of Section 178 of the Electricity Act. The procedure of accreditation of RE generator is provided for under this REC Regulations and the provisions of Companies Act cannot be read into to say that the specific requirement of the procedure set out under the RECRegulations are not applicable in the present case. Further, Section 175 of the Act states that the provisions of the Act, 2003 are in addition to and not in derogation of other laws. Learned counsel for the third respondent also placed reliance on the judgment of the Hon'ble Supreme Court in Saraswati Industrial Syndicate Ltd. vs CIT, Haryana, Himachal Pradesh, Delhi [1990 SCR Supl. (1) 332] case to contend that subsequent to amalgamation, two companies have merged to form a third entity which is considered to be a change in legal status.

9.15 Learned counsel for the third Respondent further submitted that in view of the ratio laid down by the cited judgments of the Hon'ble Apex Court, the post- amalgamation, the transferor company and the transferee company form an amalgamated entity and acquire a new status. As such, the amalgamated entity has to comply with clause 4.1 (j) of CERC REC Procedure dtd. 16.03.2018 for Accreditation for Renewable Energy Generation Project. The learned counsel requested that in view of the above facts & submissions, the instant appeal is liable may be dismissed.

OUR FINDINGS:-

9.16 We have carefully considered the submissions of both the parties and also took note of the various judgments of the apex court and this Tribunal relied by the parties. It is not in dispute that the Appellant is a Wind Power Generator and has commissioned various wind power stations in the state of Tamilnadu. It is also not in dispute that the Appellant has generated renewable power from its wind power stations and injected the same into the state grid of Tamilnadu as duly acknowledged by the TNSLDC. The primary issue of dispute involves the amalgamation of the erstwhile Techno-Electric (transferor company) and Simran (transferee company) and after the said merger, the Simran adopts the name of Techno-Electric. This process of amalgamation and change of name is contended by the Appellant to be a change of name only whereas on the other hand, the second and third Respondents consider the same as change in legal status. The Central Commission in its impugned order has taken a stand that the instant case is a case of change in legal status and hence, the Appellant has to apply afresh for accreditation to obtain legitimate RECs.

9.17 The Appellant has contended that the transferee company (Simarn now Techno) has not undergone any change in ownership pursuant to merger of the holding company and simultaneously has also not undergone any change in legal status . Learned counsel for the Appellant referring to various provisions of the NCLT order dtd. 20.07.2018 approving the Scheme of Amalgamation emphasised that pursuant to merger, the erstwhile Techno disappeared without liquidation but Simran continued to

exist with the name of Techno. Accordingly, Registrar of Company, Kanpur recorded the change of name from Simran Wind Project Ltd. to Techno Electric & Engineering Company Limited on 05.09.2018. The Scheme of Amalgamation including change of name have been approved by the Company Court in accordance with various provisions of the Companies Act, 2013. It is the basic contention of the Appellant that subsequent to merger of holding company into its subsidiary company, no any third or new company has been created except that the amalgamated company has adopted the name of erstwhile holding company i.e. Techno-Electric. Therefore, this cannot be termed as change in legal status as being contested by the Respondents.

9.18 Learned senior counsel appearing for the Appellant, to substantiate his contentions that change of only name after merger of holding and its subsidiary company does not amount to change in legal status, has relied upon various authorities including judgments of the Hon'ble Apex Court as well as this Tribunal. He has also placed on record to show that subsequent to the merger of Techno into Simran and Simran adopting the name of Techno, the important identification number allotted to the company such as CIN, PAN, GST etc. have not at all changed pre-and post-merger. Learned counsel also submitted that the Section 175 of the Electricity Act stipulates that the provisions of the Act are in addition and not in derogation of other laws. Further, Section 232 (3) of the Companies Act, 2013 stipulates that when an order is passed under Section 232 (3) of the Companies Act, 2013 approving the scheme of amalgamation and where such orders provide for the transfer of any property then by virtue of the said

order that property shall be transferred to the transferee company. It is also evident from the provisions of Section 232(3) that no existing property or right of the existing company i.e. Simran is to exist. Accordingly, pursuant to the merger, transferee company rights under law are now a combination of its pre-existing rights and rights vested in it which previously belonged to the transferor company.

9.19 Stating all these facts, learned counsel for the Appellant contended that as such, Regulation 4.1(j) of the REC Mechanism Guidelines, 2018 has no applicability in the instant case. In such a scenario, when none of the grounds for change in legal status are met, as defined in the said Regulation of CERC, the Central Commission ought to have directed NLDC to consider the Appellant as the eligible entity for issuance of RECs.

9.20 On the other hand, learned counsel for the second and third Respondents have contended that subsequent to merger of holding and subsidiary companies, a third company has been formed which is considered as 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 Generator or distribution licensee. Accordingly, the Central Commission has rightly directed the Appellant herein to get a fresh registration. Learned counsel for second Respondent/NLDC explained in detail the verification procedure and submitted that neither the REC Regulations nor the aforesaid procedure vest any discretionary power on the second Respondent to relax and / or to exempt compliance with any of the provisions contained therein. Learned counsel referred to the Regulation 7 (2) of the REC Regulations to

highlight that RECs shall be issued only after the Central Agency i.e. NLDC duly satisfied itself that all the conditions for issuance of certificates are complied with by the eligible entity. Learned counsel for second Respondent also refers to Regulation 5 of the REC Regulations prescribing the eligibility criteria of the generating plant for registration, issuance and dealing with RECs. The Clause 4(1)(h) of the REC Registration Procedure provides that in case of a change in legal status of a registered entity, it has to apply for the fresh registration.

9.21 Learned counsel for Respondent Nos. 2 & 3 have also placed reliance on Para XIII of the operative part of the NCLT Order which clarified that approval of the Scheme of the Amalgamation ought not to be construed as express or implied exemptions from complying with requirements under any other law. Learned counsel for Respondent Nos. 2 & 3 further submittedthat the Appellant's reliance on the case of *Saraswati Industrial Syndicate Ltd.* vs. *Commissioner of Income tax* [1990 (Supp) SCC 675] is not relevant as the same nowhere envisages that the legal status of the transferee company remain unchanged after amalgamation. The Respondents in their support have also referred to Clauses 3(iii), 3(iv), 11.5 & 12 of the Scheme of Amalgamation to contend that the present case is not a mere change of name from Simran to Techno.

9.22 Learned counsel for the third respondent/TNTCL submitted that the REC Regulations 2010 have been notified by CERC in exercise of its power under sub-section (1) of section 178.Further, Section 175 of the Act states that provisions of the Act are in addition to it and not in derogation of other laws. Hence, all the

Rules, Regulation framed under the Act have to be interpreted in harmonious manner so as to not create judicial controversy. Learned counsel also placed reliance on the judgment of Hon'ble Supreme Court in Saraswati Industrial Syndicate Ltd. vs CIT, Haryana, Himachal Pradesh, Delhi [1990 SCR Supl. (1) 332] to contend that after amalgamation, the amalgamated entity undergoes change in legal status. In view of the ratio laid down by the above judgment, it becomes clear that the transferor company and the transferee company form a new entity having new legal status. Learned counsel for Respondent Nos. 2 & 3 while summing up their submissions reiterated that the impugned order passed by CERC is a well-reasoned order and any interference of this Tribunal is not required.

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 Tadus 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 applyto 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 dulygetting 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.

The impugned order passed by Central Electricity Regulatory Commission dated 28.01.2020 in Petition No. 242/MP/2019 is hereby set aside to the extent challenged in the Appeal and our findings, stated supra.

TNSLDC and NLDC are hereby directed to issue balance RECs in the name of Techno Electric & Engineering Company Limited as

early as possible within a period of four weeks from the date of pronouncement of this judgment/order.

No order as to costs.

Pronounced in the Virtual Court on this **01st day of September, 2020.**

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

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