

BEFORE THE ODISHA ELECTRICITY REGULATORY COMMISSION,

BHUBANESWAR

Case No. _____/2014

IN THE MATTER OF

An application filed by Petitioner / OREDA under Sec. 142 of the Electricity Act, 2003 for the non-compliance of OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010 framed under Section 61, 66, 86 (1) (e) and 181 of the Electricity Act, 2003.

AND

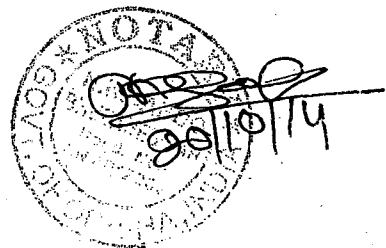
IN THE MATTER OF

The Chief Executive, OREDA, S-59, Mancheswar Industrial Estate, Bhubaneswar-751010.

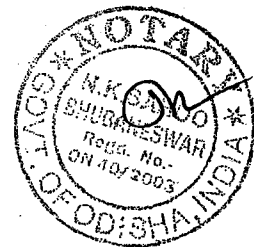
..... Petitioner

-Vrs.-

1. The Chairman-cum-Managing Director, GRIDCO, Janpath, Bhubaneswar-751022
2. Department of Energy, Govt. of Odisha
3. Office of the Chief Engineer (Project)- Cum-Chief Electrical Inspector (generation), Power House Square, Unit V, Odisha, Bhubaneswar-751001
4. Managing Director, Green Energy Development Corporation of Odisha Limited, OHPC Corporate Office, OSPH & W Corporate Building, Janpath, Bhoinagar, Bhubaneswar-751022
5. The Senior General Manager (PS), SLDC, Mancheswar Railway Colony, Bhubaneswar.
6. The CEO, CESU, 2nd Floor, IDCO Towers, Bhubaneswar-751022
7. The Managing Director, WESCO, At/P.O. Burla, Dist. Sambalpur-768017
8. The Managing Director, SOUTHCO At/P.O. Courtpetta, Berhampur-760004
9. The Managing Director, NESCO, At/P.O. Januganj, Dist. Balasore- 756019
10. Aarti Steel Ltd, Plot No. 1111B/41, Sector 11,C.D.A. Bidanasi, Cuttack-753014
11. ACC Cement, Bargarh, Cement Nagar, At/Po Bardol Dist. Bargarh- 768038
12. Action Ispat and Power Pvt. Ltd., HIG-32, BDA Colony, Gangadhar Meher Marg, Jaydev Vihar, Bhubaneswar-13
13. Adhunik Metaliks Ltd, 3rd floor, Annex building, IPICOL House, Janpath, Bhubaneswar-751022



14. Aryan Ispat & Power Pvt. Ltd., DGM (E & I) Vill-Bomaloi, Tehsil- Rengali, Dist- Sambalpur-768201
15. Bhaskar Steel & Ferro Alloy Ltd. KK-44, Civil Twonship, Rourkela, Odisha-769004
16. Bhusan Power & Steel, N-3/28, Nayapalli, IRC Village, Bhubaneswar-751015
17. Bhusan Steel & Strips Ltd. Post Kuspanga, Dist- Dhenkanal-759121
18. Bilt Sewa Ballarpur Industries Ltd, 64 Forest Park, Bhubaneswar, Odisha-751009
19. M/ S Bindal Sponge Ltd, Sunakhani, Talcher-759100
20. Birla Tyres, 112A, Surya Nagar, Bhubaneswar-751003
21. Deepak Steel & Power Ltd, Ispat Bhawan, Barbil, Keojhar-758035
22. Yazdani Steel & Power Ltd. (Formerly Dinabandhu Steel & Power Ltd.) Yazdani Steel & Power Ltd Nagar, Po- Arunodaya Market, Cuttack-753012
23. Eastern Steel & Power Ltd. Lahandabud, Jharsuguda, Pin-768203, Odisha
24. FACOR, D.P. Nagar, P.O. Randia-756135, Dist. Bhadrak, Odisha
25. IFFCO, Musadia, Paradeep, Jagatsinghpur-754142
26. IMFA Ltd, Bornikhal, Rasulgah, Bhubaneswar-10
27. J. K. Paper, Plot No. 1, Near Swosti Plaza, N 1, Nayapalli, Bhubaneswar-751013
28. Jindal Stainless Ltd, Kalinga Nagar Industrial Complex, Front of MESCO, Post- Danagari, Duburi-755026 Dist- Jajpur, Odisha
29. Jindal Steel & Power, Village- Nisha, SH-63, Chhendipada Road, Angul, Odisha- 759130
30. IDCOL Kalinga Iron Works Ltd. Regd. Office & Works, P.O. Matkambada-758036, Barbil, Keonjhar, Odisha
31. Maheswari Ispat Ltd., 85, Surya Nagar, Bhubaneswar, 751003
32. Maithan Ispat Ltd. G.M. Co-ordination, HIG-17, BDA Colony, Jayadev Vihar, Bhubaneswar-751013
33. MSP Metaliks (P) Ltd. Marakuta, Jharsuguda, Odisha-768202
34. National Alluminium Company (Angul), NALCO Bhawan, P/1, Nayapalli, Bhubaneswar-751061
35. National Alluminium Company (Damanjodi), NALCO Bhawan, P/1, Nayapalli, Bhubaneswar-751061
36. Nava Bharat Ventures Ltd. Kharagprasad Village, Dhenkanal, Odisha-759121
37. Narbheram Power & Steel Pvt. Ltd. (SCAW) 79, Surya Nagar Bhubaneswar- 751003
38. Neelachal Ispat Nigam Ltd (NINL), Kalinga Nagar Industrial Complex, Duburi-755026, Jajpur road
39. OCL Cement, Rajgangpur (Odisha) Cement Works, Rajgangpur-770017 Odisha
40. Orissa Sponge Iron Ltd., Cattarjee International Centre, Jawahar Lal Nehru Road, Calcutta-700071
41. Orissa sponge Iron and Steel, Vill- Lamloi, P.O. Garvene, Rajgangpur, Odisha-770017
42. Paradeep Phosphate Ltd, Bayan Bhawan, PT Jawaharlal Nehru Marg, Bhubaneswar- 751001



43. Pattnaik Steels & Alloys Ltd., A/22, First Floor, Falcon, House Cuttack Road, Bhubaneswar-751006
44. Rana Sponge Ltd. HIG-31, Gangadharmehar marg, Bhubaneswar
45. Rathi Steel & Power Ltd, B-107, Madhav Nilayam Apartment, Lewis Road, Bhubaneswar-14
46. Rourkela Steel Plant, Rourkela-769011, Odisha
47. Scan Steel Ltd, Main Road, Rajgangpur, Sundargarh, Odisha-770017
48. Shri Mahavir Ferro Alloys Pvt. Ltd, Main Road Rajgangpur, Odisha-770031
49. Shyam Metalicks & Energy Ltd. (Formerly Shyam DRI Power Ltd.), A-17/10, Surya Nagar, Bhubaneswar-751003
50. SMC Power Generation Pvt Ltd, 47, Madhusudan Nagar, Bhubaneswar-751001
51. Sri Ganesh Metalicks Ltd. A-1, 2nd Floor, Commercial Complex, Civil Township, Rourkela, Odisha-769004
52. Tata Sponge Iron Ltd. Gayatree Nivas, HIG, C-124, Baramunda Housing Board Colony, Bhubaneswar- 751003
53. Vedanta Alluminum Ltd., (Bhukhamunda, Jharsuguda) 1st Floor, City Mart Complex, Baramunda Bhubaneswar -751003
54. Vedanta Alluminum Ltd, (Langigarh, Kalahandi) 1st Floor, City Mart Complex, Baramunda Bhubaneswar, -751003
55. Viraj steel & Energy, Gurupali, Sambalpur, Odisha
56. Visa Steel Ltd. Nagar Industrial Complex, At/Post, Jakhapura-755026

..... Respondents

Name & Address of the Petitioner:

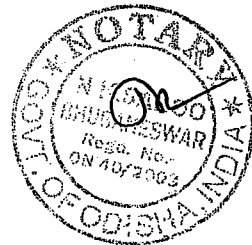
The Chief Executive, OREDA, S-59, Mancheswar Industrial Estate, Bhubaneswar-751010

1. Nature of Complaint:

Non-compliance to OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010

2. Documents on which the petitioner is relying upon:

- i. OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010 framed under Section 61, 66, 86 (1) (e) and 181 of the Electricity Act, 2003. (Annexure I)
- ii. OPTCL letter No 747(3) dated 28.9.2011 communicating the list of CGPs in Odisha. (Annexure II)



iii. Letter No 3938 dated 19.12.2011 of EIC-cum-PCEI communicating the list of Obligated Entities in the State. (Annexure III)

iv. Letters of Chief Engineer (Project)- cum- Chief Electrical Inspector (Generation) enlisted below communicating the details of self-consumption by obligated entities

- a) E. D. P.- 215/ 11/ 1757 (WE) /Dated.03.09.2012 (Annexure IV)
- b) E. D. P.- 215/ 11/ 1591 (WE)/ Dated 27.08.2013 (Annexure V) &
- c) E. D. P.- 215/ 11/ 1495 (WE)/ Dated 28.07.2014 (Annexure VI)

3. Commission's previous order/direction to OREDA, if any, in the matter:

- i. Letter No. 1046 dated 13.06.2011 (Annexure VII)
- ii. Letter No. 4593 dated 24.12.2012 (Annexure VIII)
- iii. Letter No. 1083 Dated 01.08.2014 (Annexure IX)

4. Communication from OREDA to the Hon'ble Commission Regarding RPO Compliance

- i. Letter No. 1 dated 01.01.2013 (Annexure X)
- ii. Letter No. 2875 dated 05.09.2013 (Annexure XI)
- iii. Letter No. 1232 dated 21.08.2014 (Annexure XII)

5. Communication of OREDA to All obligated entities

- i. Letter No. 743 dated 29.02.2012 (Annexure XIII)
- ii. Letter No. 2922 dated 22.08.2012 (Annexure XIV)
- iii. Letter No. 1126 dated 26.03.2013 (Annexure XV)
- iv. Letter No. 300 dated 18.03.2014 (Annexure XVI)

6. Is it a continuation of violation/ non-compliance?

Yes

7. A brief background

Section 86 of the Electricity Act 2003 which defines the various functions of the State Commission at 86 1 (e) mandates the state commissions to promote Co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with grid and sale of electricity to any



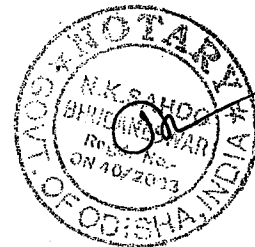
person and also specify, for purchase of electricity from such sources a percentage of the total consumption of in the area of the distribution licensee.

8. Actions by the OERC:

In compliance to the above mandate the OERC prepared a draft Renewable and Cogeneration Purchase Obligation and its Compliance Regulation-2010 in line with the draft Renewable Purchase Obligation circulated by the Forum of Regulators (FOR) and invited views of all stakeholders on the same by making a pre-publication of the draft. After conducting a public hearing in case No 59 of 2010 OERC finalized the Renewable and Cogeneration Purchase Obligation and its compliance Regulation - 2010 in its order dated 30.9.2010. The same was published in the extraordinary Odisha Gazette which came into force with effect from 14.12.2010.

Salient features of the Regulation:

- i) The Regulation defined **Obligated Entities** as *"Distribution Licensees (or any entity procuring power on their behalf) and also any other person consuming electricity generated from conventional captive generating plant having capacity of 5 MW and above for his own use and /or procure from conventional generation through open access and third party sale."*
- ii) The regulation also specified the quantum of obligation as under
"Every Obligated Entity shall purchase not less than 5% of its total annual consumption of energy from co-generation and renewable energy sources from 2011-12 onwards with 0.5 percentage increase every year thereafter, till 2015-16 or as reviewed by the Commission even earlier, if any".
- iii) The regulation further specified the quantum of power or equivalent quantity of Renewable Energy Certificates (RECs) to be purchased from solar and non-solar sources and also the quantum of power to be consumed/purchased from cogeneration sources each year till 2015-16 which has been tabulated below:



Quantum of Obligation as Specified by OERC

	Minimum quantum of purchase in percentage (in terms of energy consumption in state in KWH)			
	Renewable		Co-generation	Total
	Solar	Non Solar		
2010 -11		1.00	3.50	4.50
2011 -12	0.10	1.20	3.70	5.00
2012 -13	0.15	1.40	3.95	5.50
2013 -14	0.20	1.60	4.20	6.00
2014 -15	0.25	1.80	4.45	6.50
2015 -16	0.30	2.00	4.70	7.00

iv) The regulation inter-alia also dealt with the manner of connectivity with the licensee's system, manner of obtaining Renewable Energy certificate, designation of State Agency ,Compliance Audit, etc.

v) The Regulation also specified the effect of default as under

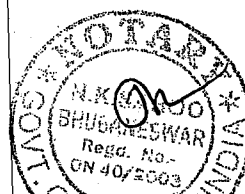
"If the obligated entity does not fulfill the RPO as provided in these regulations during any year and also does not purchase the certificates, the commission may direct the obligated entity to deposit in to a separate fund, to be created and maintained by such obligated entity, such amount as the commission may determine on the basis of shortfall in units of RPO and the forbearance price decided by the Central Commission"

The Effect of default further provided that

"the obligated entity shall be in breach of its license conditions if it fails to deposit the amount directed by the commission within 15 days of communication of such direction"

It further provided that

"where any obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable



energy certificates, it shall be liable for penalty as may be decided by the commission under section 142 of the Act.”

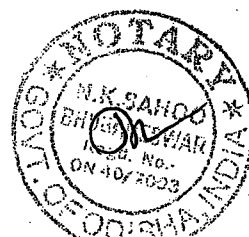
9. Designation of State Agency

As per regulation 6 (1) of the aforesaid Regulations, the Commission designated Odisha Renewable energy Development Agency (OREDA) as State Agency for accreditation and recommending the Renewable Energy Projects for registration and to undertake functions under the said Regulations which also formed a part of the above gazette notification.

10. Actions by OREDA

After being designated as the State Agency, OREDA took the following initiatives:

- a) It firmed up the list of obligated entities in the state based on the information received from GRIDCO, OPTCL and EIC (Elect)-cum-PCEI.
- b) On 13-14 July 2011 Letters were issued to all obligated entities making them aware of their obligations and requesting them to furnish the status of fulfillment of their obligations in a pre-designed format (Annexure XVII Series).
- c) In order to make the Obligated Entities further aware of the RCPO Regulation 2010 and their respective roles and responsibilities with regard to compliance of the same; OREDA on 28th October 2011 organized a Workshops at Bhubaneswar. The lists of participants of the Workshops are annexed as Annexure XVIII.
- d) Following the workshop for better and wider information of all obligated entities OREDA posted the RCPO and Its Compliance Regulation and other details on its website and intimated the same through Public Notice issued in 5 local News Papers during February 2012. Photocopy of the published item in the Newspaper is attached as Annexure XIX.
- e) OREDA had also requested all the obligated entities vide letter no. 743 dated 29.02.2012 (Annexure XIII) to designate a senior officer of their organization as nodal officer (RCPO) and provide their contact details in a prescribed format.



- f) In view of various developments in between OREDA organized another workshop at Bhubaneswar on 11. 09. 2012. The list of participants of the Workshops is annexed as Annexure XXI.
- g) As per the communication of OERC, OREDA submitted quarterly compliance report based on the self declaration for power consumption by different obligated entities.
- h) Based on the annual consumption figures reported by EIC (Elect)-cum-PCEI OREDA calculated the quantum of solar, non-solar and cogeneration obligations of different obligated entities and computed the status of fulfillment of their obligation based on the monthly reports provided by the respective obligated entities as well as the monthly trade reports provided by the power exchange. The trade report from power exchange annexed as Annexure XXII.
- i) OREDA also intimated the above status indicating the obligated entity-wise quantum of default in each category and the corresponding amount to be deposited by each entity in to a separate account as spelt out under the regulation to the OERC seeking necessary direction in the matter. Copies of such intimations are enclosed in Annexure X, XI & XII.

11. Status of compliance

- a) The status of compliance by different obligated entities as per the reports furnished by OREDA to OERC and also published in the website of OREDA are as under

FY	Total No. of obligated entities for the year	Status of compliance		
		No. of Fully compliant entities	No. of partly compliant entities	No. of non-compliant entities
2011-12	50	NIL	14	36
2012-13	50	NIL	17	33
2013-14	50	NIL	15	35



It may be mentioned here that though adequate solar and non-solar RECs were available in the power exchange (table below) the obligated entities did not care to take any initiatives to purchase the same and fulfill their respective obligations.

FY	Total demand of RECs from obligated entities of Odisha		Total No of RECs available in the power exchange	
	Solar	Non- solar	Solar	No-solar
2011-12	51657	619884	Not Available	1053819
2012-13	73826.	689049	14646	4352097
2013-14	108830	876640	207018	8197653

Further more excepting IFFCO no other Obligated Entity has reported to have created a separate account as per the OERC RCPO Regulation 7 (I) and deposited some amount provisionally, calculated on the basis of quantum of shortfall of respective obligation multiplied by the forbearance price of the respective REC. The letter of IFFCO in this regard is enclosed as Annexure XXIII.

Hindalco Industries Ltd. had filed a Writ Petition (C) No. 5243 of 2012 challenging the RCPO Regulation Notification dated 30.09.2010 issued by the Odisha Electricity Regulatory Commission whereby the commission has directed the captive generation plants to mandatorily purchase renewable energy certificates. Meanwhile the case is still pending at High Court of Odisha. The Hon'ble Commission in letter no. Law/HC-06/2012/4255 dated 18.10.2012 clarified OREDA that "the interim order has its application to M/s. Hindalco Industries only (Petitioner in the writ application) and has no application to any other industry (Annexure XXIV).

It may be further mentioned here that in view of OERC's Order dated 13.02.2012 in Sou-Motu Case No. 111 of 2011 (Annexure XXV) allowing fulfillment of cogeneration obligation through solar and non-solar sources and the subsequent order the ATE in case No 54 & 59 of 2012 (Annexure XXVI & XXVII respectively) stating that "The State Commission by the impugned order, in order to remove difficulties faced by the obligated entities, has clarified that the obligation in



respect of co-generation can be met from solar and non-solar sources but the solar and non-solar purchase obligation has to be met mandatorily by the obligated entities and consuming electricity only from co-generation sources shall not relieve any obligated entity. When such relaxation has been made, the same yardstick must be followed in respect of consumers meeting electricity consumption from the captive co-generation power plant in excess of the specified RCPO obligation" Which has been contested by the OERC in the apex court (Civil Appeal No. 5466 and 5467 of 2013) while the two of the obligated entities named Emami Paper Mills Ltd and Vedanta Aluminum Ltd. appellant in the ATE in case No 54 & 59 of 2012 had refrained from fulfilling their obligations altogether while others like NALCO have approached the Hon'ble commission in Case No. 21/2013 to treat them to be similarly situated as Emami Paper Mills Ltd and Vedanta Aluminum Ltd. and have stopped purchasing RECs. Though the Hon'ble commission has given an order in case No. 21/2013 dated 21.11.2013 (Annexure XXVIII) stating that the order of the ATE is applicable only to the applicant entities (Emami Paper Mills Ltd and Vedanta Aluminum Ltd) NALCO again resorted to file a review petition on the same which has also been heard by the Hon'ble Commission in Case No. 09/2014 dated 15.09.2014 was adjourned (Annexure XXIX) because the the Counsel for NALCO submitted that the latest judgment of Hon'ble ATE in Appeal No. 53/2012 dated 02.12.2013 in Lloyd Metals Ltd. vrs. MERC & others (Annexure XXX) is beyond their knowledge as the Hon'ble Commission has desired to know whether their claim is justified in view of the above case.

In view of the aforementioned facts it can be very clearly concluded that excepting those who have taken some initiatives to partially fulfill their obligations none of the other obligated entities have taken any effective step to fulfill their obligations which exhibits is clear contravention and absolute disregard to the RCPO and its compliance Regulation -2010 brought by this Hon'ble commission with noble intention of promoting cogeneration and generation of electricity from renewable energy in Odisha in the greater interest addressing issues like the energy crunch , climate change etc.



PRAYER

In view of the aforementioned facts and invoking all the provisions under Effect of Default the petitioner humbly prays that the Hon'ble Commission may graciously be pleased to

- 1) initiate proceedings against all defaulting obligated entities at para 11 and punish them for non-compliance of the direction of Hon'ble Commission under Section 142 of Electricity Act 2003 and levy penalty for an amount Rs.1,00,000.00 to each of them.
- 2) direct the defaulting obligated entities as per Annexure – IX to create a separate account and deposit the fund in the account as mentioned at Annexure-IX and give adequate control to Chief Executive, OREDA of the account so as to operate the Fund and procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfilment of the obligations, out of the amount in the fund on behalf of the obligated entities.
- 3) appoint the compliance auditor at the earliest as per the provision of Regulation (8) of OERC (RCPO and its Compliance) Regulations, 2010.
- 4) may take appropriate action against respondent obligated entities for non-compliance/violation of the provision of OERC (RCPO) Regulation, 2010.
- 5) pass such other order/orders as this Hon'ble Commission may deem fit and proper and for this act of kindness the Applicant Company shall as in duty bound ever pray.
- 6) Further, since the prayer by the Petitioner is for a public purpose the Commission may kindly refund the fees paid as per Para 5 of Notification dt. 31. 08. 2009.



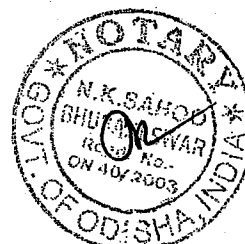
For Odisha Renewable Energy Development Agency

Chief Executive

PETITIONER

Place: *Bhubaneswar,*

Date: *20.10.2014.*



BEFORE THE ODISHA ELECTRICITY REGULATORY COMMISSION

Bidyut Niyamak Bhawan, Unit – VIII, Bhubaneswar

Case No. _____/2014

IN THE MATTER OF:

An application filed by Petitioner / OREDA under Sec. 142 of the Electricity Act, 2003 for the non-compliance of OERC (Renewable and Co-generation Purchase Obligation and its Compliance) Regulations, 2010 framed under Section 61, 66, 86 (1) (e) and 181 of the Electricity Act, 2003.

AND

IN THE MATTER OF

The Chief Executive, OREDA, S-59, Mancheswar Industrial Estate, Bhubaneswar-751010.

.....Petitioner

-Vrs.-

The Chairman-cum- Managing Director, GRIDCO, Janpath, Bhubaneswar and others

..... Respondents

Affidavit verifying the application

20 OCT 2014

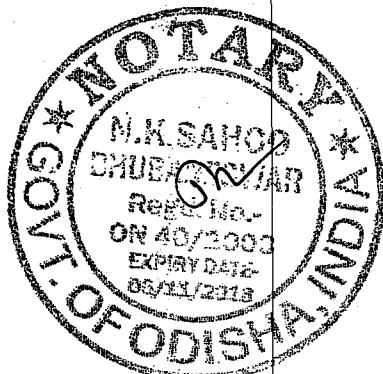
I, Mr. William Bilung, aged about 56 years, working as Chief Executive, OREDA, having registered office at S-59, Mancheswar Industrial Estate, Bhubaneswar-751010 do hereby solemnly affirm and state as follows: -

1. That I am the Chief Executive, OREDA and I am duly authorized to swear this affidavit on its behalf.
2. The statements made in the petitioner are based on information and I believe them to be true.

PLACE: Bhubaneswar

DATE: 20.10.2014

DEPONENT



SWORN BEFORE ME

NARENDRA KUMAR SAHOO
Notary, Bhubaneswar
(Govt. of Odisha)
Regd. No. ON-40/2003
Ph-664-2341006, 88811-24674(M)