

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 100(ND)/2015
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. S. K. MOHAPATRA
Hon'ble Member (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF SPECIAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 16.09.2016**

NAME OF THE COMPANY: M/s. PTC Energy Ltd.
V/s.
R.S. India Wind Energy Pvt Ltd.

**SECTION OF THE COMPANIES ACT: 397/398 of the Companies Act 1956 and 241/242 of the
Companies Act 2013.**

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

This is an application filed by the applicant Petitioner M/s PTC India Financial Services Limited in Company Petition No. 60 of 2015, seeking the following directions:-

- (a) direct Serious Fraud Investigation Office to investigate the financial irregularities and fraudulent conduct of the Controlling Shareholders in the affairs of RS India as also Respondent No.11(Power Wind Ltd) and submit a report this Hon'ble Board;*
- (b) appoint an independent auditor to conduct a forensic audit of RS India and Power Wind Ltd for Financial Years-2007-08, 2008-2009, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014- 15 and submit a report to this Hon'ble Board.*



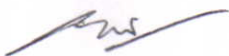
- (c) direct RS India to produce all statutory records, books of accounts including ledgers, bank statement and all other records of RS India for verification and authentication by the office of Company Law Board and pass appropriate order for safekeeping such records.;*
- (d) Pass any such further orders as this Hon'ble Board may deem fit and proper in the facts of the case.*

2. In the aforesaid application, the applicant precisely has contended that in terms of order dated 14/12/2015 of Company Law Board, the applicant had written to Respondent-I company to furnish information and documents as per details enumerated in para 9 of the Company Application 92/C-I/2016. It is alleged that despite having undertaken before the Company Laws Board, Respondent-I has failed to provide most of the requisitioned documents/information. The applicant further alleges that some minutes of the meeting provided by Respondent-I company on 1st Feb 2016 are at variance from the minutes of meetings which were provided to the nominee Directors of the applicant earlier. In a tabular statement the applicant has pointed out to various discrepancies/alterations in the minutes of the meetings held on 11/2/2008, 11/4/2008, 30/8/2008, 22/9/2008, 27/12/2008, 31/3/2009, 26/5/2009, 15/10/2009, 18/5/2010 and 30/6/2011. A comparison of the minutes reveals that there has been differences in signatures, differences in the presence of Directors in the meetings, differences in the agenda recordings, variations in the numbering of the agenda items, inclusion of some additional agendas and even there has been differences in the text of the meetings. The learned counsel for the applicant argued that there has been manifest discrepancies, fabrications and interpolation of the minutes of the Meetings of Respondent-I company. It is strenuously contended that Respondent-I company is keeping multiple versions of minutes books and perhaps also maintains different version of other records of the company. It is submitted that unless reliefs as prayed for are allowed, the applicant



apprehend that the company in complete control of Respondent-I may indulge in further fabrication of minutes and other statutory records.

3. Per Contra, Respondent-I has placed a chart based on allegations made in the application relating to the disputed ten minutes of the meetings. It was pointed out that in case of five disputed minutes, comparison has been made with unsigned copies of the minutes, which are not authentic. Learned Senior Counsel for Respondent-I contended that relations between the Petitioner and Respondent-I were very co-ordinal at the relevant time with their offices adjoined in the same building. Many a times draft minutes were given to the Petitioner who never asked for signed copies of the minutes. It is contended that the draft copies of minutes cannot be compared with the originals. As regards the minutes where signatures are different, it is contended that no advantage can be derived by Respondent-I company by giving two different set of minutes having the same content with varying signatures. It is reiterated that the draft minutes were given to the Petitioner which were sometimes signed. In connection with the inclusion of name of nominee Director Mr Arun Bhalla, it is contended that no advantage can be derived by Respondent I by adding the presence of Mr Bhalla in the minutes. As regards difference in number of agenda items including differences in the text of the agenda, it is contended that change in the agenda number cannot be of any significance as substance of the matter continues to be same. It is contended that there has been no *mala-fide* and no loss has been caused to the petitioner. Learned counsel for the respondent further pointed out that change of shareholding were duly recorded in the balance sheet and in the Auditor's report. Similarly the investment in R.S. India Wind Energy Private Ltd has also been duly recorded in the balance sheet and in the Auditors report. Learned Senior Counsel for Respondent-I emphasised that the decision making process was transparent and that the Petitioner was aware of the same. It is strenuously argued that there has



been no criminality or malafide in recording the minutes and that no harm and prejudice has been caused to the Petitioner.

4. We have heard learned counsel for the parties in detail and have perused the case records. There is no dispute that there are several discrepancies in the photocopy of the minutes of meetings placed on record. There are vital differences like changes in the agenda, in the presence of participants and in the text of the meetings. The two sets of photocopy of the minutes of meeting dated 31.03.2009, placed on record are not only different in its font size but the signatures appeared on the same are also different. Besides the text of Agenda 4 and Agenda 7 in one set of minutes has been differently numbered as Agenda 3 and Agenda 6 respectively, in the other set of minutes. Further several new agendas appeared in the recently supplied copies of the minutes which were missing in the earlier set of minutes of meeting dated 31.03.2009. In case of another minutes of meeting dated 27.12.2008, the name of Mr Arun Bhalla has been shown as present, whereas in the minutes of same meeting previously shared with applicant, presence of Mr. Arun Bhalla was not reflected. Similarly in the two sets of minutes of the meeting dated 11.04.2008, Mr. Ravinder Singh Yadav's name appears only in one set of the minutes. There are glaring differences in the two sets of various minutes provided by the company. There are even differences in the texts of the minutes. Such alterations in the minutes of meetings even if within the knowledge of Petitioner is of no excuse. It is also immaterial whether such alteration and improper recording of minutes has extended any advantage or not to the Respondent-I company. Once the minutes have been recorded in the Minute's Book and signed, the minutes attract the presumption contained in Section 195 of Companies Act, 1956. There is thus a prescribed procedure for correction of any factual error in the minute's book. However there cannot be two sets of minutes of a meeting. Prima facie, the minutes book of Respondent-I company has not been maintained as per the provisions of Section 193 of the Companies Act, 1956 (Section 118 of



Companies Act 2013). There appears to have been violations of provisions of law in the maintenance of the minutes of the proceedings of Respondent 1 Company. The Companies Act is designed to ensure the authenticity of the minutes of meetings of the company. Under section 193 of the Companies Act, 1956 (Section 118 of Companies Act 2013), a Company is bound to keep minutes of proceedings of all meetings in accordance with the requirements of the provisions of the Act. Keeping the minutes as per the provisions is company's mandatory obligation and penalty has been prescribed for default in Section 193 of Companies Act, 1956. There has been more stringent provisions in case of tempering of the minutes. Section 118 (12) of Companies Act, 2013 provides that *if a person is found guilty of tempering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees.* Legislative intent clearly is that the affairs of the company are ought to be fully transparent.

5. It is pertinent to note here that Company Law Board in its order dated 16th October 2015 inter-alia has also observed that there has been existence of prima facie alteration and fabrication in the minutes dated 30th June 2011 of Respondent No.-I company.

6. The Order dated 14.12.2015 passed by the CLB is also relevant wherein Respondent 1 company undertook to supply required documents to the applicant. The relevant portion of the order is reproduced below:

" Ld. Counsel of the Petitioner Mr. Sarkar has however pointed out that certain documents and information are required by the Petitioner which is necessary for adjudication of the matter. Mr. Vivek Singh, Ld. Counsel for Respondent No. 1 company states that let a communication be sent for the required information or documents and the same shall be furnished within two weeks from the date of receipt of the communication."



7. However despite assurance and statement given before the Company Law Board on 14.12.2015, the requisitioned documents have not been furnished to the applicant Petitioner by Respondent-I as per the order dated 14.12.2015 passed by CLB. Respondent lacks *bona fide* and we are constrained to draw an adverse inference against Respondent-I company. The applicant has made out a strong case that a deeper probe in the affairs of the Respondent No. 1 Company is necessary.

8. It is relevant to refer here Section 213 of the Companies Act which envisages that:-

"The Tribunal may:-

(a) on an application made by-

- (i) not less than one hundred members or members holding not less than one tenth of the total voting power, in the case of a company having a share capital; or*
- (ii) not less than one fifth of the persons on the company's register of members , in the case of a company having no share capital,*

and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that:-

- (i) the business of the company is being conducted with the intent to defraud its creditors , members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;*
- (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been*



guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

- (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager of the company.*

order after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an Inspector or Inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as Inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that:-

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or*
- (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447".*

9. Applying the aforesaid provisions to the facts of present case there is no dispute that the applicant's shareholding is 37% in the equity capital of Respondent-I M/s R.S. India Wind Energy Pvt Ltd. Therefore, the applicant fulfils the criteria



prescribed under Sub Clause (a) of Sec 213 and is entitled to move an application for conducting the investigation in to the affairs of Respondent 1 Company under Section 213 of Companies Act, 2013. The purpose of investigation is to discover something which is apparently not visible to the naked eyes. The petitioner has brought out some apparent malpractices in the working of Respondent 1 Company to show that deeper probe is necessary. There has been complaint of mismanagement in the affairs of Respondent-I company. The applicant has also made out a good case by showing that there has been *prima facie* violations of the provisions of Companies Act in the maintenance of the minutes of various proceedings of the Respondent-I company. Apparent misdeeds and dishonesty in the maintenance of minutes of the company in contravention of the provisions of the Act cannot be ruled out. Law makes the investigation comprehensive of all sorts of illegalities. Sub clause 1 clause (b) of section 213 is wide enough to include contravention of any law. There has been *prima facie* existence of malpractices in tampering of records, which cannot be overlooked. In the facts, it appears that deeper probe in the affairs of Respondent No.1 company is necessary.

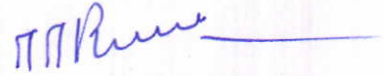
10. There is also a prayer in the company application for an investigation in to the affairs of Respondent 11 Power Wind Ltd. However it has not been explained in the application as to under what circumstances a probe is necessary against Respondent 11 Company. In the absence of sufficient material to show that affairs of Respondent 11 Company necessitates investigation, the same cannot be allowed.

11. In view of the above , CA 92/C-I/2016 is partly allowed by holding that it is a fit case to direct Central Government to take steps to investigate into the affairs of Respondent No. 1 company M/s R. S. India Wind Energy Pvt. Ltd.

12. The next date of hearing is fixed on 25.10.2016, In the meantime Registry to follow-up in the matter.



Order pronounced in open court on 22.9.2016



(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT



(S.K. MOHAPATRA)
MEMBER (T)

22.9.2016
(A.K. Arora)