

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 308/MP/2015**

- Subject : Petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulations 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.
- Date of hearing : 16.2.2016
- Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member
- Petitioners : Nu Power Renewables Pvt. Ltd  
Enchanda Urja Pvt. Ltd.
- Respondents : National Load Despatch Centre and others.
- Parties present : Shri M.G. Ramachandran, Advocate for the petitioner  
Ms. Swapna Seshadri, Advocate for the petitioner  
Ms Abiha Zaidi, NLDC  
Ms Minaxi Garg, , NLDC  
Shri Kailash Chand Saini, NLDC  
Shri S. Vallinayagam, Advocate, TNTCL

**Record of Proceedings**

Learned counsel of the petitioners submitted as under:

(a) The petitioner No. 1, NuPower Renewables Pvt Ltd ( NuPower) has set up 100.5 MW wind energy project in the State of Tamil Nadu. The Petitioner No. 1 has 100.5 MW wind farm, out of which 6 projects with a capacity of 61.5 MW has been registered by NLDC under REC Mechanism.

(b) On 1.4.2015, M/s NuPower and M/s Echanda Urja Pvt Ltd ( Echanda) entered into a Slump Sale Agreement for transfer of assets, liabilities, etc. of M/s NuPower to M/s.Echanda Urja Pvt Ltd. with the understanding that this transfer would include REC registration. This transition is under Section 2(42C) of the Income Tax Act, 1961. However, for the interim period i.e. from 24.4.2015 to 7.10.2015 when M/s NuPower entered into the Slump Sale Agreement and undertook de-registration of RECs and till Echanda was granted accreditation, NLDC did not issue any RECs either to Petitioner No. 1 or the Petitioner No.2. Therefore, the green attributes of the power generated are lost.

2. The representative of NLDC submitted that the petitioner did not comply with the REC procedures, namely intimating in advance to the State Agency and NLDC with regard to change in legal status of the company, applying for accreditation to the State Agency and registration of RECs with NLDC. The representative of NLDC further submitted that there has been no delay on the part of NLDC. The registered RE project which had transferred its machines to other entity, never requested the State/Central Agency and the registered entity requested the revocation of the project only after issue was highlighted by the Central Agency. She further submitted that RECs cannot be issued to NuPower since it does not have renewable energy plant to generate power after the transfer of the same to the new company. Therefore, from the date the transfer took place the old company ceases to have any claim.

3. The representative of NLDC referred to the case of Simran Wind Projects which is pending before the Hon`ble Supreme Court and submitted that pursuant to the Slump Sale Agreement, since the relevant assets of the Petitioner No. 1 were transferred to the Petitioner No. 2, RECs cannot be issued to the Petitioner No. 1. Moreover, REC Regulations/Procedures do not envisage retrospective issuance of RECs.

4. Learned counsel for SLDC, Tamil Nadu submitted that though the transfer of assets between both companies took place on 24.4.2015, the Petitioner No. 2 applied for accreditation only on 23.7.2015. Therefore, NLDC cannot be faulted for the delay.

5. In response to the Commission's query with regard to requirement of compliance under the Companies Act, 2013 and Income Tax Act, 1961, learned counsel for the petitioners submitted that there is no requirement of compliance under the Companies Act, 2013. However, the requirement under Income Tax Act, 1961 would arise only if a demand is raised by the Assessing Officer.

6. The Commission observed that the Slump Sale Agreement would be declared null and void if there is any liability on the part of the petitioner as on 31.3.2015 and therefore, the Slump Sale Agreement does not amount to absolute transfer of the assets. The Commission directed the petitioners to clarify whether consequent to the Slump Sale Agreement, the land of the RE Project is transferred to the transferee and if so, whether such transfer has been placed in this case.

7. Learned counsel for the petitioner clarified that in case any income tax liability arises, the same would be discharged within 30 days. He further submitted that even though the assets of the wind generator were transferred from the Petitioner No. 1 to the Petitioner No. 2, no separate treatment of the land is given in this regard as the land could be owned or leased. Learned counsel for the petitioner requested the Commission to direct NLDC to issue RECs for the period from 24.4.2015 to 7.10.2015 either to the Petitioner No. 1 or the Petitioner No. 2.

8. The representative of NLDC requested the Commission to clarify as to whether RECs can be issued retrospectively.

9 After hearing the learned counsels for the petitioners, SLDC, Tamil Nadu and the representative of NLDC, the Commission reserved the order in the petition.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Law)**