

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

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

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of Order: 2<sup>nd</sup> of March, 2017**

**In the matter of**

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.

**And**

**In the matter of**

1. Nu Power Renewables Private Limited  
407, The Capital,  
BandraKurla Complex,  
Mumbai-400051

2. Echanda Urja Private Limited  
618, Maker Chambers V,  
Nariman Point,  
Mumbai- 400021

**.....Petitioners**

**Vs.**

1. National Load Despatch Centre  
B-9, Qutub Institutional Area,  
Katwaria Sarai,  
New Delhi-110016

2. State Load Despatch Centre, Tamil Nadu  
Tamil Nadu Transmission Corporation Limited  
NPKRR Mligai, 144, Anna Salai,  
Chennai- 600002

**.....Respondents**



**Parties present:**

Shri M.G. Ramachandran, Advocate for the petitioner  
Ms. Swapna Seshadri, Advocate for the petitioner  
Shri S. Vallinayagam, Advocate, TNTCL  
Ms. Minaxi Garg, NLDC  
Ms. Abiha Zaidi, NLDC  
Shri Kailash Chand Saini, NLDC

**ORDER**

The petitioners, Nu Power Renewable Private Limited and Echanda Urja Private Limited have jointly filed the present petition seeking directions to NLDC to grant REC certificates to the petitioners for the period from 24.4.2015 to 7.10.2015.

**Facts of the Case:**

2. Accreditation and registration for and issuance of Renewable Energy Certificates (RECs) are governed by the provisions of Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificates) Regulations, 2010 as amended from time to time (hereinafter "REC Regulations"). NLDC has been designated as the Central Agency for registration for issuance of RECs and SLDC, Tamil Nadu is the designated State Agency in the State of Tamil Nadu for accreditation of the renewable energy generators under the REC Regulations.

3. The petitioners are engaged in the business of generation and sale of power from wind farms. Petitioner No.1, Nu Power Renewable Pvt. Ltd. hereinafter referred to as "NPRPL") has set up a 100.5 MW wind energy project at district Tirunelveli in the State of Tamil Nadu. Out of 100.5 MW, 6 projects with a total capacity of 61.5

MW were registered under the REC mechanism by NLDC. On 1.4.2015, Petitioner No. 1 entered into a Slump Sale Agreement with the second Petitioner, Echanda Urja Private Limited (hereinafter referred to as "EUPL") for transfer of rights, interests, assets and liabilities, which also included the REC Registration and accreditation, of NPRPL into EUPL. Pursuant to the transfer, EUPL on 24.4.2015 entered into Energy Wheeling Agreements with Tamil Nadu Generation and Distribution Co. (TANGEDCO) so that the effective date of 1.4.2015 could be maintained. EUPL did not avail any concessional/promotional benefits and complied with all the conditions laid down in Regulation 5 of the REC Regulations.

4. NPRPL and EUPL vide their letter dated 7.7.2015 intimated SLDC, Tamil Nadu regarding sale of the 100.5 MW wind project and requested SLDC, Tamil Nadu to allow NPRPL to obtain REC issued in its name on behalf of EUPL. Relevant portion of the said letter is extracted as under:

*"NRPL has sold its 100.5 MW wind power project along with its assets and liabilities to EUPL effective from April 01, 2015 and accordingly, EUPL has become the owner of all assets and assumed all liabilities (pertaining to the Project) from the said date.*

*Subsequently, EUPL has terminated its Energy Sale Agreement with TANGEDCO and has now started selling power under group captive scheme effective from April 24, 2015 after taking the necessary permissions/approvals from TNEB/TANGEDCO.*

*Out of the 100.5 MW Project capacity, NRPL had registered 61.5 MW capacity (6 REC projects in all) under REC scheme as per the details below.*

<b>Capacity (MW)</b>	<b>Accreditation No.</b>	<b>Registration No.</b>
7.5 MW	TNONSNUUPWR001A170212	TNONSNUUPWR001R160412
18 MW	TNONSNUUPWR002A300412	TNONSNUUPWR002R220512
12 MW	TNONSNUUPWR003A220512	TNONSNUUPWR003R130612
6 MW	TNONSNUUPWR005A300712	TNONSNUUPWR004R270712
13.5 MW	TNONSNUUPWR005A300712	TNONSNUUPWR005R090812
4.5 MW	TNONSNUUPWR006A040912	TNONSNUUPWR006R200912

*EUPL is in the process of obtaining the accreditation (from SLDC) and*

*registration (from NLDC) (under REC scheme for the said 61.5 MW capacity) so that it can get RECs in its name.*

*We request that until the aforementioned accreditation and registration (under REC scheme) is received in EUPL's name, NRPL should be allowed to get the RECs issued in its name on behalf of EUPL."*

5. On 20.7.2015, SLDC, Tamil Nadu informed the petitioners that the energy injection reports would be issued in the name of NPRPL only till 24.4.2015 and from 24.4.2015 onwards it would be issued to EUPL. EUPL made an application on 17.8.2015 to NLDC for registration under REC mechanism. On 23.7.2015, EUPL made an application to the SLDC, Tamil Nadu for accreditation of 61.5 MW of wind farms. SLDC vide its letters dated 12.8.2015 issued accreditation in respect of six wind projects. EUPL made an application on 17.8.2015 to NLDC for registration under REC Mechanism. NLDC vide its e-mail dated 14.9.2015 informed EUPL to revoke the accreditation certificates of the concerned projects as the same were registered in the name of NPRPL and subsequent to revocation, NPRPL would revoke the REC registered in its name and shall process the application for grant of REC registration in the name of EUPL. EUPL vide its letter dated 16.9.2016 requested SLDC and NLDC to revoke the accreditation in the name of NPRPL. Accordingly, SLDC vide its e-mail dated 19.9.2015 revoked the accreditation in the name of NPRPL. However, NLDC vide its e-mail dated 29.9.2015 informed EUPL to pay one time registration fee for 61.5 MW wind generation which was liquidated by EUPL on 30.9.2015. Subsequently, on 1.10.2015, NLDC de-registered NPRPL and EUPL was registered on 7.10.2015.

6. EUPL generated and sold the power under the group captive model for the period between 24.4.2015 and 7.10.2015 and did not avail any

concessional/promotional benefits. However, due to delay in completion of formalities, NLDC did not issue REC certificates to the petitioners for the period from 24.4.2015 to 7.10.2015 despite complying with all the provisions of the REC Regulations. EUPL vide its letters dated 23.10.2015 and 24.11.2015 requested NLDC for the issuance of RECs. However, no response was received from NLDC in this regard. The petitioners in support of their contention have relied upon the judgments of the Hon'ble Supreme Court in *Hindustan Steels Ltd. V. A.K. Roy* [(1969) 3SCC 513], Hon'ble Appellate Tribunal of Electricity in *NTPC Ltd. V Madhya Pradesh State Electricity Board* [ELR APTEL 7] and judgment dated 28.11.2014 in Appeal No. 156 of 2013 and 248 of 2013.

7. Against the above background, the petitioner has filed the present petition under Regulations 14 and 15 of the REC Regulations with the following prayers:

*“(a) Issue an order under Regulations 14 and 15 of the REC Regulations;*

*(b) Direct NLDC to issue the REC certificates to the Petitioner No.2 for the period from 24.4.2015 to 7.10.2015.*

*(c) In the alternative, direct NLDC to issue the REC certificates to the Petitioners No. 1 for the period from 24.4.2015 to 7.10.2015;*

*(d) Direct NLDC not to stand on formalities and as long as the substantive provisions of Regulation 5 of the REC Regulations have been complied with, proceed to issue the REC certificates.”*

8. Notices were issued to the respondents to file their replies. The petitioners, vide Record of Proceedings for the hearing dated 7.1.2016, were directed to submit the following clarification:

(a) Whether the proposal of Slump Sale Agreement has been approved under the Income Tax Act, 1961 and to submit relevant documents in this

regard;

(b) Copy of the order of the Commissioner of Income Tax;

(c) All documents and provisions of the Companies Act, 2013 with regard to Slump Sale Agreement and compliance thereof.

**Reply of the Respondents:**

9. SLDC, Tamil Nadu, vide its reply dated 20.1.2016, has submitted as under:

(a) NPRPL and EUPL vide their letter dated 7.7.2015 intimated to SLDC and NLDC that the wind energy projects had been sold along with all assets and liabilities by NPRPL to EUPL and EUPL executed new agreement dated 24.4.2015 with TANGEDCO after terminating the existing agreement in the name of NPRPL. In response, SLDC, Tamil Nadu vide its letter dated 20.7.2015, requested EUPL to furnish all relevant details and documents as per procedures specified in the REC Regulations.

(b) Energy injection report was issued in the name of NPRPL till 24.4.2015. Since the legal status of EUPL had changed after 24.4.2015, SLDC, Tamil Nadu informed EUPL that the issuance of RECs is not within its scope and EUPL can approach NLDC in this regard.

(c) EUPL has made an application to SLDC, Tamil Nadu for grant of fresh accreditation on 23.7.2015. SLDC vide its letter dated 11.8.2015 issued accreditation in respect of six projects. NLDC vide its letter dated 14.9.2015, requested SLDC, Tamil Nadu to revoke the accreditation of NPRPL as the projects were transferred to EUPL. Accordingly, SLDC, Tamil Nadu vide its letter dated 19.9.2015 revoked the accreditation of NPRPL. However, no

application was received from EUPL for issuance of energy injection report after registration of their projects under REC mechanism.

10. NLDC, vide its reply dated 22.1.2016, has submitted as under:

(a) On 24.8.2015, EUPL made an application for registration alongwith the commissioning certificate which was in the name of NPRPL. NLDC vide its e-mail dated 27.8.2015 sought clarification in this regard. EUPL vide its letter dated 31.8.2015 clarified that the projects registered under the REC mechanism were purchased from NPRPL which were registered under REC mechanism. As per the REC mechanism, the project cannot be registered under two entities.

(b) Since no response was received from NPRPL, NLDC vide its email dated 14.9.2015 requested SLDC to examine the case and revoke the accreditation of the project and remove the same from REC web registry to enable registration in the name of EUPL.

(c) NPRPL never informed NLDC regarding sale of projects registered under the REC mechanism and at same time, EUPL made an application for registration of the projects with NLDC. As per the REC Regulations and Procedure approved thereunder, NLDC is required to follow the due procedure for grant of RECs. NPRPL should have informed NLDC regarding sale of the projects to EUPL in order to initiate the registration process and to avoid the loss of RECs due to delay in registration of the projects.

(d) The transfer of project from NPRPL to EUPL entails a change in legal status of the company. Therefore, SLDC issued Energy Injection Report in the name of NPRPL upto 24.4.2015. Since the project was registered under REC mechanism, RECs could not be issued to EUPL. Subsequently, EUPL started the process of accreditation and registration and the project was registered on 7.10.2015. Therefore, EUPL is eligible for REC from 8.10.2015.

(e) As per Regulation 10 (1) of the REC Regulations, after registration, the renewable energy generation plant shall be eligible for issuance of REC from the date of commercial operation or from the date of registration of such plant by the Central Agency, whichever is later. EUPL requested for revocation of the project only after the issue of legal status of the company was highlighted by it. The sale had occurred in April 2015 and EUPL made an application for grant of new registration in the month of August, 2015. SLDC responded to all communication and only took as much time as is required to verify and register the project. EUPL is eligible for issuance of RECs only after the registration of the project.

(f) The petitioners can seek relaxation from the Commission in order to mitigate the error on their part. However, shifting the responsibility for non-issuance of RECs to NLDC, given that the petitioners did not inform NLDC regarding transfer amounts to mis-representation on the part of the petitioners.

11. The petitioners in their rejoinder dated 2.2.2016 have reiterated the submissions made in the petition and submitted that if parties have complied with



the substantial requirement stipulated in the Regulations, then the benefit flowing from the same cannot be taken away on account of technicalities and a purposive interpretation needs to be given to any Regulation.

12. With regard to the Slump Sale Agreement, the petitioners have submitted that the term “Slump Sale” has been defined under Section 2(42C) of the Income Tax Act, as under:

*“Slump Sale” means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without valued being assigned to the individual assets and liabilities in such sales.*

*Explanation 1: For the purpose of this clause “undertaking” shall have the meaning assigned to it in Explanation to clause (19AA).”*

The term “undertaking” is defined under Section 2(19AA) of the Act as under:

*“Explanation 1- For the purpose of this clause, “undertaking” shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.”*

13. The conditions which are required to be fulfilled for the categorization of sale as “slump sale” are as under:

- (a) Sale should be of an undertaking or part of an undertaking constituting a business activity;
- (b) Sale should not be of an individual assets; and
- (c) Sale should happen at a lump sum price.

As per the Slump Sale Agreement dated 1.4.2015, all the above conditions have been complied with. The business activity i.e. wind farm undertaking has been sold along with all the assets, liabilities, approval, licenses, employees, etc. at single lumpsum price. Therefore, the transaction is a slump sale. There is no requirement of obtaining any order from income tax authority for executing the Slump Sale

Agreement. The tax officer only has power to consider the transfer a null and void only in the circumstances when there is an outstanding tax demand from the transferor entity. The petitioner has submitted that since, there is no outstanding tax demand against it, the question of the tax authorities not accepting the slump sale does not arise. There is neither any requirement of a certificate/document to be issued by the Income Tax Department nor of any prior approval unless there is an outstanding demand. The petitioner has submitted that Slump sale being an agreement of sale between two companies, it is not required to be approved by the Hon'ble High Court in terms of Sections 391 to 394 of the Companies Act, 2013. As per the provisions of the Companies Act, 2013, there are only requirements of Board resolutions and General Meeting Resolutions and all these requirements have been complied with the by the petitioners. On the concept of "slump Sale", the petitioners have relied upon the judgments of the Hon'ble Supreme Court in various cases i.e. Commissioner of Income Tax v. Artex Manufacturing Co.(1977), Premier Automobiles Ltd. v. Income-Tax Officer and Another (2003), Commissioner of Income Tax, Mumbai v. M/s Polychem Ltd. (2012).

**Analysis and Decision:**

14. We have heard the learned counsels for the petitioners, SLDC (Tamil Nadu) and the representative of NLDC and perused the documents on record. The petitioners have filed the present petitions seeking directions to NLDC to grant RECs to the petitioners for the period from 24.4.2015 to 7.10.2015. The question that arises for our consideration is whether the petitioners fulfil the requirements of REC Regulations for grant of RECs. The petitioners, NPRPL and EUPL entered into a Slump Sale Agreement for transfer of assets, liabilities, etc. of NPRPL to EUPL with

the understanding that this transfer would include REC registration. According to the petitioners, this transition was under Section 2(42C) of the Income Tax Act, 1961. However, for the interim period i.e from 24.4.2014 to 7.10.2015, when NPRPL entered into the Slump Sale Agreement and undertook de-registration of RECs and till EUPL was granted accreditation, SLDC did not issue any REC either to NPRPL or EUPL. Therefore, green attributes of the power generated are lost.

15. The respondents have contended that as per the clause 4.1(h) of the REC Procedure approved under REC Regulations, the petitioners did not inform the respondents of the transfer of assets in furtherance to the Slump Sale Agreement between NPRPL and EUPL. NLDC has submitted that since the transfer of projects from NPRPL to EUPL entail a change in legal status of the company, Energy Injection Report was issued by SLDC in the name of NPRPL upto 24.4.2015. However, RECs could not be issued to EUPL as the project was not registered under REC mechanism. Since EUPL was registered for REC on 8.10.2015, it will become eligible for RECs from 8.10.2015 in terms of Regulation 10 (1) of the REC Regulations.

16. Clause 4.1(h) of the Detailed Procedure approved under REC Regulations provides as under:

*“4.1 (h) Whenever there is a change in the legal status of the eligible entity (e.g. change from partnership to company), the eligible entity shall immediately intimate the concerned State Agency and Central Agency about the said change and apply afresh for Accreditation by the concerned State Agency and Registration by the Central Agency. In all other cases involving a change in the name of the eligible entity, only the name of the entity shall be updated with the records of the State Agency and the Central Agency based on the intimation given by the eligible entity. In such cases eligible entity shall provide relevant documents in hard copy.”*

As per the above provision, the petitioners were required to inform the

respondents in advance regarding change in the legal status of NPRPL. However, the petitioners did not inform the respondents for change of legal status of the company and did not take permission from the respondents for revoking the RECs in the name of NPRPL and issuance of the same in the name of EUPL.

17. The petitioners entered into Slump Sale Agreement on the “going concern” basis and assumed that along with the assets, liabilities and REC registration would also get transferred to EUPL. Section 2 (42) of the Income Tax Act, 1961 defines “slump sale” as under:

*‘(42C) “slump sale” means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.*

*Explanation 1. For the purposes of this clause, “undertaking” shall have the meaning assigned to it in Explanation 1 to clause (19AA).’*

As per the above provisions, (i) sale should be of an undertaking or part of an undertaking constituting a business activity, (ii) sale should not be of an individual asset, and (iii) sale should happen at lump-sum price. The petitioner vide its affidavit dated 2.2.2016 has confirmed that it has complied with all the above conditions while executing the Slump Sale Agreement by effecting sale of all assets, liabilities, approvals, licenses, employees, etc, at a single lump sum price.

18. On our specific query whether there is any order of the Commissioner of Income Tax to execute Slump Sale Agreement, the petitioners have submitted that there is no such requirement under the Income Tax Act, 1961 unless there is outstanding tax demands from the transferor entity. Since there is no outstanding tax demand against NPRPL, any certificate/prior approval from the Income Tax

authorities is not required for entering into as a Slump Sale Agreement. Section 50B of the Income Tax Act, 1961 provides as under:

***“50B. Special provision for computation of capital gains in case of slump sale.- (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :***

*Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.”*

*(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the “net worth” of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.*

*(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.”*

As per the above provisions, any profit or gain arising from the slump sale affected in the previous year is required to be charged to income tax as capital gains and shall be deemed to be the income of the previous year in which the transfer took place. With regard to capital assets being an undertaking or division transferred by way of such sale, the “net worth” of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition.

19. With regard to the compliance of the Companies Act, 2013 and permission from the High court, the petitioners have submitted that since the agreement is for sale between two companies, there is no requirement of permissions/approvals

under the provisions of the Companies Act. The petitioners have submitted that under Sections 391 to 394 of the Companies Act, there is no requirement for approval of the Hon`ble High Court for entering into Slump Sale Agreement. The Companies Act only specifies the requirements of Board Resolution and General Body Meeting resolutions, which have been duly complied with by the petitioners. Sections 391 to 394 of the Companies Act, 1956 provide for making arrangements with creditors and members, power of tribunal to enforce the same and provisions to facilitate reconstruction and amalgamation of Companies. We have relied upon the contention of the petitioners who would comply with all relevant provisions of the Companies Act and Income Tax Act, if any, as required.

20. Now the question remains is whether the petitioners fulfil the conditions of REC Regulations for grant of RECs. As per the principle laid down for grant of RECs, if the petitioner is availing any benefits admissible to Captive Generating Plants (CGPs), then it would be required to forego the same for the purpose of availing RECs. The benefits admissible to a CGP are enumerated in fourth proviso to Regulation 5(1)(c) of the REC Regulations which is extracted as under:

*“Provided further that a Captive Generating Plant (CGP) based on renewable energy sources shall be eligible for the entire energy generated from such plant for self-consumption for participating in the REC scheme subject to the condition that such CGP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and for banking facility benefit.”*

21. It is noted that EUPL has generated and sold power under the group captive model for the period from 24.4.2015 to 7.10.2015 and also did not avail any concessional or promotional benefits. Since, EUPL has been granted RECs from 8.10.2015, all criteria as specified in the provisions of REC Regulations have been

complied with by it. The main objective of REC Regulations is to promote the generation of renewable energy and as there was generation of renewable energy for the period from 24.4.2015 to 7.10.2015, RECs need to be issued. However, both the petitioners should have intimated NLDC well in advance regarding the Slump Sale Agreement and the need to transfer RECs from NPRPL to EUPL.

22. As regards the question as to whether the RECs would be issued to NPRPL or to EUPL, it is evident from the facts that through the Slump Sale Agreement dated 1.4.2015, all assets, liabilities, etc. of NPRPL stand transferred to EUPL. However, since the Energy Wheeling Agreement was signed between EUPL and TANGEDCO on 24.4.2015 for sale of power under group captive model, the benefits of renewable energy generation, i.e., issuance of RECs should also stand transferred to EUPL from this date i.e. from 24.4.2015. Therefore, we direct NLDC to issue RECs to EUPL for the period from 24.4.2015 to 7.10.2015 within one month from the date of issue of the order.

23. In light of the above, Petition No. 308/MP/2015 stands disposed of.

**Sd/-**  
**(Dr. M.K. Iyer)**  
**Member**

**Sd/-**  
**(A.S. Bakshi)**  
**Member**

**Sd/-**  
**(A.K. Singhal)**  
**Member**

**Sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**