

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 141/MP/2017

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 9th of November, 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 seeking credit of Renewable Energy Certificates for generation of energy between 21.3.2016 and 8.11.2016.

AND

IN THE MATTER OF:

Rai Bahadur Seth Shreeram Narasingdas Private Limited
D. No. 1499.1,
PO Box 38, Kariganur Post,
Hospet,
Karnataka – 583201

... Petitioner

Versus

1. National Load Despatch Centre (NLDC)
1st Floor, Power System Operation Corporation Limited (POSOCO),
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi – 110016

2. Tamil Nadu Transmission Corporation Limited (TANTRANSCO)
NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002

... Respondents

Parties Present: Ms. Pritha Srikumar, Advocate, RBSSNDPL
Ms. Neha Mathen, Advocate, RBSSNDPL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Arjun Krishnan, Advocate, NLDC
Shri Sumit Srivastava, Advocate, NLDC
Shri Ankur Singh, Advocate, NLDC
Shri Pragya Singh, NLDC
Shri Alok Ranjan, NLDC

ORDER

The Petitioner, Rai Bahadur Seth Shreeram Narasingdas Private Limited, is a 4.00 MW wind power plant in the State of Tamil Nadu which was previously constituted as a partnership concern in the name and style of M/s R. B. Seth Shreeram Narasingdas. On 8.4.2015, under the Business Takeover Agreement, the Petitioner took over all the assets of the partnership concern and hence, there was a change of legal status of the concern. The entire quantum of electricity generated from the said power plant is offered for sale to Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO).

2. The Respondent No. 1 is National Load Despatch Center (hereinafter also referred as 'NLDC') and is designated as Central Agency as per notification dated 29.1.2010 under Regulation 3(1) of the REC Regulations.

3. The Respondent No. 2, Tamil Nadu Transmission Corporation Limited (hereinafter also referred as 'TANTRANSCO') is the State Load Dispatch Center/ State Agency designated by Tamil Nadu Electricity Regulatory Commission (TNERC) to act as the agency for accreditation and recommending the renewable energy projects for registration in compliance with Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

4. The Petitioner being aggrieved by the denial of the REC credit between 21.3.2016 and 8.11.2016 by the Respondents has filed the present petition with the following prayers:

“(a) Direct the TANTRANSCO to issue the necessary energy injection reports for the period between 21.3.2016 and 8.11.2016;

(b) Pass an order under Regulations 14 and 15 of the REC Regulations, directing NLDC to issue the necessary RECs in the name of the Petitioner for the period between 21.3.2016 and 8.11.2016;

(c) Consequently direct the NLDC to reckon the validity period of the RECs (for the period between 21.3.2016 and 8.11.2016) under Regulation 10(1) from the date of the eventual grant of the REC (pursuant to final order of this Hon'ble Commission);

(d) Grant the Petitioner costs incurred towards filing of the present petition;

(e) Pass such other and further order(s) and/or directions as this Hon'ble Commission may deem just, fit and proper in the facts and circumstances of the case and in the interest of justice.”

Brief Facts of the Petition

5. On 4.9.2012, R. B. Seth Shreeram Narasingdas (partnership concern) got the project of 4 MW (Wind) accredited under REC mechanism by Respondent No.2 and the same was registered under REC mechanism by Respondent No.1 on 22.10.2012.
6. On 29.12.2012, M/s Rai Bahadur Seth Shreeram Narasingdas Private Limited (RBSSNPL), the Petitioner, was constituted as Private Limited Company as per Certificate of Incorporation No. U14290KA2012PTC066475.
7. On 8.4.2015, RBSSNPL executed "Business Takeover Agreement" with R.B. Seth Shreeram Narasingdas (RBSSN), partnership concern, for taking over its assets including the wind power plant.
8. On 25.2.2016, the sale deeds were executed by R. B. Seth Shreeram Narasingdas (partnership concern) in favour of the Petitioner.
9. On 29.2.2016, RBSSNPL applied for change of name for the Wind Energy Generators (WEGs) to Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) which was approved by TANGEDCO on 16.3.2016.
10. On 21.3.2016 - 24.3.2016, RBSSNPL and TANGEDCO executed the Energy Purchase Agreements for WEG No. 4081 and WEG No. 190-193.
11. On 11.6.2016, RBSSNPL submitted request for name change from RBSSN (partnership concern) to RBSSNPL, to TANTRANSCO which forwarded the request of the Petitioner to NLDC on 28.6.2016. However, on 3.8.2016, NLDC informed RBSSNPL via

e-mail that the change of name of the registered project was not possible as it was the case of change of legal status of the registered RE Project and rejected the same. NLDC advised the revocation of already registered project in the name of the partnership concern and fresh accreditation of the project in the name of new entity i.e. private limited company.

12. On 1.9.2016, RBSSNPL applied for accreditation of project to TANTRANSCO and on 9.9.2016, RBSSNPL applied for revocation of project in name of the previous entity (partnership concern).

13. On 27.9.2016, accreditation of the project in the name of RBSSN (partnership concern) was revoked and on 05.10.2016, project in the name of new entity i.e. RBSSNPL was accredited by the TANTRANSCO.

14. On 8.11.2016, project was registered in the name of RBSSNPL by NLDC.

15. On 22.11.2016, RBSSNPL requested for issuance of Energy Injection Reports (EIRs) from 21.3.2016 to 8.11.2016. The TANTRANSCO rejected the request of the Petitioner on 29.11.2016 in view of Clause 4.2(b) of CERC approved Procedures for REC mechanism and the Petitioner was informed that the EIRs would only be issued from 9.11.2016 onwards i.e. after the project was registered under REC mechanism under the new name.

16. On 8.12.2016, RBSSNPL requested for issuance of EIRs for the period between 21.3.2016 and 8.11.2016 in the erstwhile name of R.B. Seth Shreeram Narasingdas which was again rejected by Respondent No.2 on 23.12.2016 stating that subsequent to

execution of energy purchase agreement in name of RBSSNPL, claim in name of other entity is not applicable. EIRs would be issued only to registered RE generators as per approved procedures.

17. On 6.2.2017, RBSSNPL issued legal Notice to NLDC and TANTRANSCO to issue necessary EIRs between 21.3.2016 and 8.11.2016. However, the Respondent No.2 on 18.2.2017 rejected the claim of the Petitioner in view of the Clause 2.1 and 4.2(b) of the REC Procedures.

18. On 17.7.2017, the Petitioner filed the Petition before the Commission.

Submissions of the Petitioner:

19. The Petitioner has submitted that it was previously constituted as a partnership concern and was duly registered under the provisions of the Partnership Act, 1932. The erstwhile partnership concern has been taken over by the Petitioner, constituted as a Private Limited Company incorporated under the provisions of the Companies Act, 1956. Therefore, all references to RBSSN, the erstwhile partnership concern, should be treated and read as the Petitioner i.e. RBSSNPL.

20. The Petitioner (while it was previously organized as a partnership concern) owned and operated a 4.00 MW wind power plant in the State of Tamil Nadu. The entire quantum of electricity generated from the said power plant was offered for sale to the Tamil Nadu Generation and Distribution Corporation Ltd. (hereinafter referred to as 'TANGEDCO'), and Energy Purchase Agreements were executed between the Petitioner

and TANGEDCO, in relation to the said power. The relevant details of the said wind power plant and the Energy Purchase Agreements are described in the table below:

S. No.	No. of Machines /Capacity in KW	WEG HTSC No and EDC	SF No. & Village	Date of Commissioning	Date of EPA/EWA
1	1 X 800 KW	190 of TTEDC	47/3A of K. Subramaniapuram Village	29.03.2012	29.03.2012
2	1 X 800 KW	191 of TTEDC	51/4 part of K. Subramaniapuram Village	29.03.2012	29.03.2012
3	1 X 800 KW	192 of TTEDC	60/2 of K. Subramaniapuram Village	29.03.2012	29.03.2012
4	1 X 800 KW	193 of TTEDC	29/2A of K. Subramaniapuram Village	29.03.2012	29.03.2012
5	1 X 800 KW	4081 of TEDC	226/6C3, 7C part & 228/1 part of Kalappalankulam village	29.03.2012	29.03.2012

21. The Petitioner (while it was a partnership concern) was duly registered under the REC Scheme. The previous Accreditation Number was TN0NSRBSSN001A040912, while the Registration Number was TN0NSRBSSN001R221012.

22. On 8th April 2015, the business of RBSSN (Partnership concern) was taken over by Rai Bahadur Seth Shreeram Narasingdas Private Limited (*i.e.* RBSSNPL, the Petitioner). Pursuant to the said change in constitution from partnership concern to private limited company, the Petitioner addressed letter dated 29th February 2016 to Chief Engineer, TANGEDCO seeking name change in respect of the Wind Purchase Agreements already executed with TANGEDCO. In response to the said letter, the office of TANGEDCO issued letter dated 16th March 2016 bearing Ref No. LR No. CE/NCES/SE/SOLAR/ EE

/WPP/AEE2/F.Name Transfer/D.279/16. Under the terms of the said letter, the Office of TANGEDCO accepted the request for name change and directed that fresh Energy Purchase Agreements be executed in respect of the wind turbines owned and operated by the Petitioner.

23. Subsequent to the receipt of the concurrence from the office of TANGEDCO, the Petitioner attended to the necessary formalities in connection with the execution of fresh Energy Purchase Agreements in relation to said power plants. Thereafter, from 21.3.2016 - 24.3.2016, fresh Energy Purchase Agreements were executed between the Petitioner and TANGEDCO.

24. Subsequent to the execution of the fresh Energy Purchase Agreements, the Petitioner addressed a letter No. RBSSNPL/2016-17/547 dated 11.6.2016 to TANTRANSCO (Respondent No.2) informing that it has changed its name from RBSSN (erstwhile partnership concern) to RBSSNPL (a private limited company), and requested that the records pertaining to its REC registration be suitably modified to reflect such change in name. The TANTRANSCO forwarded the request of the Petitioner to the NLDC by its letter dated 28.6.2016. However, NLDC vide its email dated 3.8.2016 took the view that change of name of the Petitioner in respect of registration and accreditation under the REC was not possible since the erstwhile partnership concern was distinct from the private limited company and further suggested that the registration in the name of the erstwhile partnership concern be revoked and a fresh application under the REC Scheme be preferred in the name of the Petitioner.

25. The Petitioner addressed Letter No. RBSSNPL/2016-17/1338 dated 1.9.2016 to TANTRANSCO with the request for fresh accreditation of the project under the REC Scheme in the name of the private limited company. Simultaneously, on 9.9.2016 the Petitioner sought revocation of the previous registration under the REC Scheme in the name of the partnership concern. Under the terms of the letter dated 9.9.2016, the Petitioner sought revocation from the date on which the accreditation would be conferred on the private limited company and also requested that the Petitioner be allowed to deal with the unsold REC Credit standing to the benefit of the erstwhile partnership concern, as per the applicable CERC guidelines.

26. During the pendency of the application for fresh accreditation under the REC Scheme, the Petitioner wrote a letter dated 17.9.2016 bearing Ref No. RBSSN/2016-2017/065 to the NLDC requesting, inter alia, that RECs for the generation from May 2016 till the eventual date of registration may be credited to the account of the Petitioner. However, Respondent No.1 did not reply to the said letter.

27. Vide email dated 6.10.2016 (bearing Ref No. E/LD&GO/EEG/AEE3/F.REC335/D 868/16), the TANTRANSCO informed the Petitioner that fresh accreditation had been granted in favour of the Petitioner. The Petitioner then sought registration of the new entity under the REC Scheme vide letter dated 7.10.2016. NLDC vide email dated 8.11.2016 informed the Petitioner that its project had been registered under the REC Scheme and that its previous registration under the REC Scheme in the name of the partnership concern stands revoked.

28. Subsequently, the Petitioner once again wrote a letter dated 22.11.2016 to Respondent No.2 (bearing Ref No. RBSSNPL/2016-17/2198) and requested for the approval to submit application for issuance of Energy Injection Reports from 21.3.2016 till 8.11.2016 based on the energy injected by the project during the aforesaid period so that the necessary RECs could be issued to the credit of the Petitioner.

29. However, the Respondent No.2 on 29.11.2016 rejected the request of the Petitioner and informed that the Energy Injection Report would only be issued from 9th November 2016 onwards and the Petitioner was informed that it would not have the benefit of the RECs for the power generated by it between 21.3.2016 and 8.11.2016.

30. The Petitioner again requested the Respondent No.2 vide letter dated 8.12.2016 (bearing Ref No. RBSSN/2016-2017/084) to issue necessary energy injection reports be issued in the name of the erstwhile partnership concern between 21.3.2016 and 8.11.2016 which was subsequently, rejected by the TANTRANSCO.

31. The Petitioner, through its legal counsel issued legal notice dated 6.2.2017 to the Respondent No.2 as well as the Respondent No.1 vide which the Respondents were called upon to issue the necessary energy injection report between 21.3.2016 and 8.11.2016, so as to enable the Petitioner to seek the necessary certificates under the REC Scheme. In response to the said legal notice, the TANTRANSCO vide letter dated 18.2.2017, informed the Petitioner that the internal procedure for the issuance of the Energy Injection Report (EIR) had been followed, and therefore EIRs for the period between 21.03.2016 and 8.11.2016 cannot be issued. It is pertinent to note that the

Petitioner has not received any reply from the Respondent No.1, in connection with the legal notice dated 6.2.2017.

32. The Petitioner has therefore been placed in a situation, where despite the generation of energy from its subject wind power project qualifying as a renewable source, and certification of the same by the concerned authority (TANGEDCO), and despite meeting all the conditions stipulated in the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations), it has been denied the benefit of RECs in relation to the said energy.

33. The Petitioner would be entitled to the credit of REC to a total extent of 4043.602 certificates for the period between 21.3.2016 and 8.11.2016 which has been denied without any valid reason by the Respondents. The Petitioner would be put to grave and significant financial hardship, should it be denied the credit of such a large quantum of REC.

34. The Petitioner has submitted that the entire basis of the REC scheme was intended to incentivize and reward the generation of energy from renewable sources. Accordingly, denial of benefit of the REC scheme to an entity that admittedly and unquestionably generated energy from a renewable resource is against the very purpose and aim of the REC scheme. The conduct of the Respondents in unilaterally denying the benefit of the REC Scheme to the Petitioner is therefore not only without just cause, but also acts as a disincentive to promotion of power generation from renewable sources such as wind.

35. The Petitioner has placed its reliance on the Commission's judgment in the case of *Nu Power Renewables Pvt. Ltd. v. National Load Dispatch Centre and anr.* (Petition No. 308/MP/2015) in which it was held that the retrospective issuance of the energy injection reports and consequent credit under the REC scheme is permissible where there has been change in the constitution of the entity registered under the REC Scheme. In past, the Commission has held as follows:

“Since, EUPL has been granted RECs from 8.10.2015, all criteria as specified in the provisions of the 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 24.04.2015 to 7.10.2015, REC's need to be issued.”

36. The Petitioner has submitted that the entire quantum of energy generated from the said wind power plants was intended for sale to the TANGEDCO, and the payment for such energy was split up into two components as per the scheme of payment under the Energy Purchase Agreement. Part of the electricity generated would be purchased in accordance with the prevailing average pooled cost at the time of the execution of the Power Purchase Agreement and the relevant tariff orders passed from time to time. The other component of payment for the energy generated under the Power Purchase Agreement was the issuance of the necessary Renewable Energy Certificates in respect of the energy generated by the Petitioner. Subsequent to the credit of the said certificates in favour of the Petitioner, it would be in a position to trade and otherwise deal with the said certificates and accordingly earn revenues from such trade. Illustratively, the average pooled power purchase cost at the time of the execution of the power purchase agreement was Rs. 2.37/- kWh (Rate fixed in PPA payable by TANGEDCO based on

Pooled Cost of Power Purchase determined by TNERC vide its MEMO No. TNERC/M.O.4/E/RPO dated 28th December 2010). Furthermore, the sale of the RECs through the relevant trading exchange would yield Rs. 1.50/- kWh. Accordingly, the revenue being generated by the Petitioner from its Wind Power Plant was Rs. 2.37/- kWh + Rs. 1.50/- kWh = Rs. 3.87/- kWh. Therefore, approximately 39% of the revenue to be earned from this combined revenue model was linked to and dependent on the requisite REC being given to the Petitioner for the energy generation from its power plant.

37. The Petitioner has submitted that as per Regulation 10(1) of the REC Regulations, REC credited to an entity registered under the REC Scheme shall remain valid and eligible for trading on the appropriate power exchange for a period of 1095 days from the date of issuance of the said certificates. If the period of validity is to be considered from the respective dates of generation (i.e. in 2016), then the Petitioner would be placed in a situation where it would not have enough time to trade the said REC's on the appropriate power exchanges and would accordingly face immense pressure in actually liquidating the RECs. The Petitioner would once again be placed in a situation, where for no fault of its own, it would be prevented from reaping the full benefits of the REC Scheme despite being validly registered under the said scheme as well as admittedly generating electricity from a renewable source of power.

38. In these circumstances, the Petitioner being aggrieved by the denial of the REC credit between 21.3.2016 and 8.11.2016 by the Respondents is constrained to file the present petition.

Submissions by Respondent No. 1 (NLDC):

39. The NLDC has submitted that the present petition is devoid of any merit as the non-issuance of Renewable Energy Certificates (RECs) for the period between 21.3.2016 and 8.11.2016 is solely due to the Petitioner's own default. The Petitioner has failed to notify, within a reasonable period of time, the change in its legal status i.e. from partnership to a company, as envisaged in the procedures approved by the Commission. Hence, the present petition is liable to be dismissed.

40. The Respondent has submitted that neither the REC Regulations nor the relevant procedure i.e. '*Procedure for Registration of a Renewable Energy Generator or Distribution Licensee, as the case may be by Central Agency*' vests any discretionary power on the Respondent to relax, extend or condone the delay insofar as the compliance with any of the provisions contained therein are concerned. Rather, the provisions contained are mandatory in nature and entail strict compliance on the part of an eligible entity as well as the 'Central Agency'.

41. Regulation 7(2) of the REC Regulation stipulates that RECs shall be issued only after the Central Agency i.e. the Respondent duly satisfies itself that all conditions for issuance of certificate are complied with by the eligible entity. The Regulation 7(2) stipulates that:

“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:

...”

42. The REC Registration Procedure prescribes for a mandatory intimation on the part of the eligible entity to the State Agency as well as the Central Agency immediately, in case the legal status thereof has changed.

43. The Clause 4.1 (h) of the procedure stipulates 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 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 the 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 the relevant documents like Board Resolution regarding name change, certificate of name change from Registrar of Companies, etc. in hard copy.”

44. Sub-clause (2) of Regulation 7 of the REC Regulations as well as paragraph 4.1 (h) of the REC Registration Procedure uses the word "shall" which generally denotes that a provision is imperative in nature and must be strictly complied with. The Respondent has placed its reliance on the judgment of the Hon'ble Supreme Court in the case titled *Commissioner of Central Excise, New Delhi v. Hari Chand & Ors.*, (2011) 1 SCC 236 which categorically lays down that for the purpose of claiming an exemption or concession, stipulated conditions which are mandatory in nature must be obeyed/fulfilled/complied within its entirety. Relevant paragraph of the aforesaid judgment is extracted below: -

“29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the noncompliance of which would not affect the essence or substance of the notification granting exemption.”

45. The Respondent No.1 has submitted that the Petitioner has admitted that w.e.f. 8.4.2015 (or before), the business of RBSSN (the partnership concern) which was accredited and registered under REC Regulation, was taken over by the Petitioner. However, it was only when the Petitioner found it convenient for its own business activities i.e. after the execution of fresh energy purchase agreements with TANGEDCO, that it intimated the TANTRANSCO about the change. However, even though it is now admitted that there was a change in legal status, the Petitioner informed TANTRANSCO by stating that this was a mere “name change”, vide letter dated 11.6.2016. It is pertinent to note that that the aforesaid letter was sent after more than 14 months had elapsed from the change in the legal status without giving any reason for such an inordinate delay.

46. Respondent No.1 vide e-mail dated 3.8.2016 had categorically informed the Petitioner that as the legal status of the registered project had changed, it will be required to apply afresh for the accreditation and registration in terms of the REC Regulation and procedures. Thereafter, the Petitioner preferred a fresh application and ultimately on 8.11.2016, it was registered under the REC scheme. The Petitioner subsequently applied to the TANTRANSCO for issuance of Energy Injection Reports for the period between

21.3.2016 to 8.11.2016, without comprehending that the aforesaid period was elapsed due to its own default while not notifying the change in the legal status and consequently, applying for a fresh accreditation and registration under the REC scheme.

47. The Respondent No.1 has submitted that in light of the above facts and circumstances, the present case ought not to be treated at par with the decision of the Hon'ble Commission in Nu Power Renewables vs. NLDC (Order dated 2.3.2017 in Petition No. 308/MP/2015).

48. The object of the REC scheme is to incentivise and reward the generation of energy from renewable sources of energy. However, this should not be construed to mean that even if an entity acts in complete disregard of the regulations or the procedure, they would be entitled to receive incentive/ benefit solely because it produces energy from a renewable source. Hence, in view of the facts of the present case, the Petitioner does not deserve any equitable relief from the Commission.

Submissions by Respondent No. 2 (TANTRANSCO):

49. The TANTRANSCO has submitted that it is governed by the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010 and REC procedures and Tamil Nadu Electricity Regulatory Commission (Renewable Purchase Obligation) Regulation, 2010 in the process of accreditation and issuance of Energy Injection Reports to the registered projects to Central Agency on a monthly basis. Clause 4.1(h) of the Detailed Procedure stipulates that:

“4.1h.

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 the 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 Procedure for Registration of Renewable Energy Generation Project By Central Agency Page 7 of 30 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 the relevant documents like Board Resolution regarding name change, certificate of name change from Registrar of Companies, approval of concerned authorities, State Agency, etc. in hard copy.”

50. The Respondent has submitted that RBSSN (partnership concern) project (Wind Energy Generator with a capacity of 4 MW) was accredited by State Agency on 4.9.2012 and the same was registered by Central Agency on 22.10.2012 under Renewable Energy Certificate (REC) Mechanism. RBSSNPL (the Petitioner) took over RBSSN (partnership concern) on 21.3.2016 and hence, there was a change in legal status of the entity. On 25.6.2016, the Petitioner requested the State Agency to change the name of the entity to RBSSNPL and filed relevant documents for the same i.e., after a delay of 3 months. The same has been communicated to Central Agency on 28.6.2016 along with copies of documents.

51. The petitioner entered into a fresh/revised PPA with the Distribution Licensee on 21.3.2016 itself for the sale of energy in the name of the new entity after change in legal status. However, it failed to intimate immediately about the change in legal status as mandated in the Detailed Procedure of this Hon'ble Commission. The entity cannot claim RECs for the period when there was no accredited legal entity in existence on the record of the State or Central Agency.

52. NLDC on 3.8.2016, intimated that the request for change in the name could not be entertained since the existing registration is required to be revoked and fresh accreditation and registration initiated in the name of petitioner to enable the petitioner to avail REC benefits in its name.

53. The Petitioner submitted its application for accreditation in its name to the TANTRANSCO (State Agency) on 6.9.2016. The accreditation in the name of RBSSN (partnership concern) was revoked by the State Agency on 27.9.2016 and fresh accreditation in the name of RBSSNPL was done on 5.10.2016. The same was registered by Central Agency on 8.11.2016 in the name of the petitioner.

54. The Petitioner vide letter dated 25.11.2016 requested the answering respondent to issue Energy Injection Report for the period from 21.3.2016 to 8.11.2016 in the name of the petitioner. In this regard, it was intimated to the Petitioner and the Central Agency that the Energy Injection Reports can be issued in the name of Petitioner only from 9.11.2016 i.e., from 00:00 hrs of next day of Petitioner's registration as envisaged in Clause 4.2 (b) of CERC approved procedures for REC mechanism and not for the period before its accreditation. The Clause 4.2 (b) stipulates as under:

“The energy injection by Registered RE Generator for the first month, for issuance of REC, shall be applicable from the date of commercial operation or from the 00:00 hrs of next day of registration of such plant by the Central Agency, whichever is later till last day of the same month.....”

55. On 14.12.2016, R.B. Seth Shreeram Narasingdas (Accreditation revoked partnership concern) requested the State Agency to issue Energy Injection Report for the period from 21.3.2016 to 8.11.2016. However, it was informed to the Petitioner that

RBSSN was not entitled to RECs for the period 21.3.2016 to 8.11.2016 because it was not at all a legal entity recognized under law.

56. The period from 15.9.2016 to 8.11.2016 is the period between revocation of accreditation in the name of RBSSN and fresh accreditation in the name of the Petitioner. There was no valid accreditation either in the name of RBSSN or in the name of RBSSNPL (Petitioner). As per the existing CERC REC Regulations & procedures, the petitioner is not entitled to the claim of RECs from 21.3.2016 to 8.11.2016. In view of the above facts and circumstances, the prayer made by the petition is liable to be dismissed.

Submissions by Petitioner through 'Rejoinder' dated 19.9.2017:

57. The Petitioner vide rejoinder dated 20.9.2017 has reiterated its stand taken in the Petition and has denied the averments made by the respondents. For the sake of brevity, the same is not reproduced again.

58. In addition, the Petitioner has submitted that the land on which generating stations were located was sold to the Petitioner by the erstwhile partnership concern on 25.2.2016. It then immediately approached TANGEDCO on 29.2.2016 to obtain generating statements in its name, in the bona-fide belief that on such substitution it would be entitled to seek updation of its name on records of Respondents and seek issuance of RECs in its name. At that stage, the Petitioner was informed that its request for transfer of the generating stations to its name, with permission to sell the energy under the REC Scheme was approved subject to execution of fresh Energy Purchase Agreements (EPAs) with TANGEDCO. The Petitioner immediately got executed fresh

EPAs from 21.3.2016 to 24.3.2016. However, the EPAs were issued by the respective Electricity Distribution Circles with delay, upto 21.5.2016. The generation statements for all WEGs (for the month of April-May 2016) were received in last week of May 2016. On this basis, vide letter dated 11.6.2016, the Petitioner sought for change of entity's name from TANTRANSCO. No objection, whatsoever, was raised by Respondent No.2 and the request of the Petitioner was forwarded to NLDC for further processing. The date of reference viz. 8.4.2015 considered by Respondent No.1 for noting the delay is incorrect since the sale deeds were executed on 25.2.2016. Petitioner has submitted that there was no undue delay in processing its request for change of legal status. The suggestion that the Petitioner failed to notify the Respondents within a reasonable period of time as regards the change in status, or that it informed the Respondents of the change in status only when it was convenient for its "own business purposes" are all entirely untenable and incorrect. The allegation that the Petitioner informed TANTRANSCO of a mere 'name change' on 11.6.2016 is misleading and incorrect.

59. The Petitioner has submitted that the reading of the Regulations and Procedure is unduly narrow and places far too much importance on the literal meaning of 'shall'. The language used in the Procedure must be read in the overall context and purpose of the Regulations under which it has been issued. Firstly, it must be noted that the REC Procedures itself stipulate that they are issued for the purpose of "providing guidance to entities" to implement the REC Mechanism. Document prescribing procedures cannot be construed in such a manner as to defeat the very purpose of the parent Regulations. That purpose is to incentivise and reward the generation of power from renewable sources of energy. An otherwise eligible entity, which has admittedly generated power from

renewable sources of energy from the generating station in question, cannot be deprived of its entitlement to REC certificates on such hyper-technical procedural grounds. Adopting a hyper-technical approach to interpreting the terms of the Procedure would completely defeat the purpose of the parent Regulations. The Petitioner has placed its reliance on the Hon'ble Supreme Court judgment in the case titled *Atlas Cycle Industries Ltd. & Anr. Vs State Of Haryana*, AIR 1979 SC 1149. It was held that merely because a provision uses the word 'shall' does not render it mandatory, and two indicators which point to a provision being only directory is the absence of any provision laying down the consequences of non-compliance and the prejudice that would be caused if an action was invalidated by strict compliance with the provision. The Petitioner has submitted that though the said decision was given in the context of delegated legislation, however, the underlying principle is applicable to the present case and both of these conditions are satisfied by the Procedure in question. *First*, the Procedure has been drafted as a set of guidelines for applying the Regulations and there is not a whisper of what non-compliance with Para 4(l)(h) entails. *Secondly*, the Petitioner will suffer grave hardship if the RECs are not issued, as this will render its revenue model completely unviable.

60. The Respondent's reliance on the Hon'ble Supreme Court's decision in *Commissioner of Central Excise, New Delhi v Hari Chand & Ors*, (2011) 1 SCC 236, is completely misplaced. The Petitioner is not claiming any concession, exception or exemption. Further, the decision of the Hon'ble Supreme Court endorsed the general principal of purposive construction i.e. the essence of the rules or regulations in question must be determined to decide whether a provision is mandatory or directory. Furthermore, any observations in favour of strict construction were made purely in the context of fiscal

statutes, and are not applicable to the present case.

61. The Petitioner has submitted that it has complied with all necessary procedural formalities prescribed and in respect to Para 4(1)(h), it has acted in good faith with all reasonable expedition. Business Transfer Agreement does not extinguish a Partnership Concern from existence and the Concern was not dissolved under the said agreement. Admittedly, the Partnership Concern continued to be accredited until the accreditation was revoked on 27th September 2016. However, in view of the transfer of the EPAs to the Petitioner, RECs were sought in the name of the Petitioner. That the Petitioner was not accredited during the period for which RECs are sought, cannot be a ground to reject its request in as much as admittedly, it was otherwise eligible for grant of RECs under the REC Regulations and power from renewable sources was admittedly generated in this period.

Submissions of Petitioner through Affidavit dated 14.10.2017:

62. The Petitioner has submitted that pursuant to the proceedings dated 28.9.2017, as directed by the Commission, it is placing on record the 'Business Transfer Agreement' and certain associated facts pertaining to transfer of the business of RBSSN (partnership concern) to the Petitioner.

63. The Petitioner has submitted that the partnership concern, RB Seth Shreeram Narasingdas sought to transfer its business, including iron ore mining operations, operation of beneficiation plants and wind power generation, including all the assets and

liabilities associated with the businesses, on a going-concern basis, to the Petitioner herein, vide a Business Transfer Agreement dated 8th April 2015 ('BTA').

64. The BTA provides for a framework under which various further actions would have to be taken, for effectuating the actual transfer of the businesses, assets and liabilities, to the Petitioner Company and contemplates the completion of the transfer of business over a time frame. Clause 4(a) of the BTA requires that consents be obtained from suppliers, customers and third parties if required under the pre-existing contracts with those parties. Clause 5.2(b) and (c) contemplated that as on the Closing Date or at the latest, the Long Stop Date defined in the BTA, moveable assets of the Firm would be transferred to the Company by delivery and that immoveable assets would be transferred by means of registered conveyance deeds. While the BTA contemplated that these transfers would take place by 31st December 2015, it was contemplated that if the transfers could not be completed in this time for any reason, the period of transaction could be further extended to a mutually agreeable date viz. the "Long Stop Date", within which time the conveyances of immoveable properties would have to be completed (clauses 5.1 and 5.2(c)).

65. The Petitioner submitted that the Partnership concern had entered into Power Purchase Agreements ("PPAs")/Wheeling and Banking Arrangements ("WBAs") with entities in Gujarat, Karnataka and Tamil Nadu. Some of these PPAs /WBAs required prior consent of the counter-party for any assignment of the rights and obligations under the PPA/WBA. In the circumstances, prior to concluding a transfer of the business to the Petitioner in entirety and pursuant to clause 4(a) of the BTA, the Partnership concern

addressed letters to the various entities, seeking their approval for assignment of rights and obligations under the respective PPAs/WBAs, in favour of the Petitioner. Since the PPAs with TANGEDCO were silent on the issue of assignment of rights and obligations thereunder to third parties, the Partnership concern issued letters dated 20th May 2015 to the TANGEDCO in this regard requesting for TANGEDCO's consent for execution of fresh PPAs in the name of the Petitioner. However, no response was received to these letters dated 20th May 2015.

66. The Partnership concern was also *inter alia* undertaking transfer of the land pertaining to the wind farms in Tamil Nadu in favour of the Petitioner. This required prior procedures regarding khathas (property tax records) in relation to these lands to be locally updated. As a result, after completion of these formalities, the execution and registration of sale deeds pertaining to these lands could be undertaken only on 25th February 2016. Following this, within 4 days from the execution of the sale deeds, on 29th February 2016 (Annexure P-5 to the Petition), the Petitioner again wrote to the TANGEDCO seeking approval and updation of its records and thereafter acted in terms of the directions issued by TANGEDCO, details of which have been provided in the Petition.

67. The Petitioner has submitted that Partnership concern continues to subsist, as on date and the Firm does not stand dissolved, merely by assigning its assets and liabilities. In the circumstances, the oral contention raised by the 1st Respondent, to the effect that REC certificates have been issued to a non-existent entity are totally false and misplaced.

Written Submissions of Petitioner dated 25.10.2017:

68. The Petitioner has submitted through the written submissions dated 25.10.2017 that *firstly*, the test laid down by the Commission in *Nu Power Renewables Pvt. Ltd. & Another v. National Load Despatch Centre & Ors.* is satisfied in the present case and requires that the Petitioner's prayers be granted and *secondly*, the present case is an appropriate case for exercise of the Commission's power of relaxation under Regulation 15 of the REC Regulations.

Analysis and Decision:

69. We have heard the learned counsels for the Petitioners and the Respondents and have perused the records. The brief facts of the case are that the petitioner, a Private Limited Company was previously constituted as a partnership concern under the provisions of the Partnership Act, 1932. The partnership concern owned and operated a 4.00 MW wind power plant in the State of Tamil Nadu which was accredited under REC mechanism by TANTRANSCO and the same was registered under REC mechanism by NLDC on 22.10.2012. The entire quantum of electricity generated from the said power plant was offered for sale to TANGEDCO and Energy Purchase Agreements were executed between the partnership concern and TANGEDCO. Pursuant to the said change in constitution from partnership concern to private limited company, the petitioner vide its letter dated 29.2.2016 to TANGEDCO sought name change in respect of the Wind Purchase Agreements already executed with TANGEDCO. After the receipt of the concurrence from TANGEDCO, a fresh Energy Purchase Agreement (EPA) was executed between the petitioner and TANGEDCO on 21.3.2016. The petitioner vide its

letter dated 11.6.2016 informed TANTRANSCO that its name had been changed from partnership concern to a private limited company and requested that the records pertaining to its REC registration be suitably modified to reflect such change in name. TANTRANSCO forwarded the Petitioner's request to NLDC for necessary action. However, NLDC vide its email dated 3.8.2016 took the view that change of name of the Petitioner in respect of registration and accreditation under the REC was not possible since the erstwhile partnership concern was distinct from the private limited company and further suggested that the registration in the name of the erstwhile partnership concern be revoked and a fresh application under the REC Scheme be preferred in the name of the Petitioner. The Petitioner vide its letter dated 1.9.2016 requested TANTRANSCO for fresh accreditation of the project under the REC Scheme in the name of the private limited company. Simultaneously, on 9.9.2016 the Petitioner sought revocation of the previous registration under the REC Scheme in the name of the partnership concern. During the pendency of the application for fresh accreditation under the REC Scheme, the Petitioner wrote a letter dated 17.9.2016 to the NLDC requesting, inter alia, that RECs for the generation from May 2016 till the eventual date of registration may be credited to the account of the Petitioner. Vide email dated 6.10.2016, the TANTRANSCO informed the Petitioner that fresh accreditation had been granted in favour of the Petitioner. The Petitioner then sought registration of the new entity under the REC Scheme vide letter dated 7.10.2016. On 9.11.2016, NLDC informed the petitioner that its previous registration under the REC scheme in the name of the partnership concern was revoked. On 22.11.2016, the petitioner requested TANTRANSCO for issuance of Energy Injection Reports from 21.3.2016 till 8.11.2016 based on the energy injected by the project during

the said period so that the necessary RECs could be issued to the petitioner. TANTRANSCO declined the said request of the petitioner and informed that the Energy Injection Report would only be issued from 9.11.2016 onwards and the petitioner would not have the benefit of the RECs for the power generated between 21.3.2016 and 8.11.2016 since as per the existing CERC REC Regulations & Procedures, the Petitioner is not at all a legal entity recognized under law in the period in reference.

70. In various hearings, on merits, the Petitioner submitted that firstly, the sale deed was executed by the erstwhile partnership concern in favour of Petitioner on 25.2.2016 and it immediately approached TANGEDCO for execution of fresh EPAs on 29.2.2016. The EPAs were executed and the generation statements for all WEGs for the month of April-May 2016 were received in last week of May 2016. On 11.6.2016, the Petitioner sought for change of entity's name from Respondent No.2. The State Agency forwarded the request of the Petitioner to Respondent No.1 for further processing. Therefore, there was no undue delay in prosecuting its request for change of legal status. The date of reference viz. 8.4.2015 considered by Respondent No.1 for noting the delay is incorrect since the sale deeds were executed on 25.2.2016. Secondly, Respondent No.2 has informed that the EIRs can be issued from 09.11.2016 onwards and the Petitioner cannot have the benefit of the RECs for the power generated between 21.3.2016 and 8.11.2016 in its name nor in the name of erstwhile entity. It is contrary to the Commission's order dated 2.3.2017 in *Petition No. 308/MP/2015 case titled "Nu Power Renewables Pvt. Ltd. V/s National Load Dispatch Centre and Another"*. Further, as per Regulation 10(1) of the REC Regulations, REC credited to an entity registered under the REC scheme shall remain valid and eligible for trading on the appropriate power exchange for a period of

1095 days from the date of issuance of the said certificates. Accordingly, NLDC may be directed to issue the necessary REC credit in favour of the petitioner for the period between 21.3.2016 & 8.11.2016 taking the period of validity reckoning from the date of the eventual grant of the REC and not from the date of generation.

71. Per Contra, the NLDC has submitted that firstly, the Petitioner has admitted that it has taken over the business of the partnership concern on 8.4.2015. Further, TANTRANSCO was informed that there was a change in legal status vide letter dated 11.6.2016. Therefore, there was a delay of 14 months in informing about the change of legal status without giving any reason for such an inordinate delay. Secondly, the period between 21.3.2016 to 8.11.2016 lapsed due to its own default while not notifying the change in the legal status and consequently, applying for a fresh accreditation and registration under the REC scheme. The Respondent No.2 also submitted that firstly, the Petitioner took over the partnership concern on 21.3.2016 but informed the same to TANTRANSCO on 25.6.2016. Hence, there was a delay of 3 months. Secondly, the period from 15.9.2016 to 8.11.2016 is the period between revocation of accreditation in the name of RBSSN and fresh accreditation in the name of the Petitioner. There was no valid accreditation either in the name of RBSSN or in the name of the Petitioner. As per the existing CERC REC Regulations & Procedures, the petitioner is not entitled to claim for RECs from 21.3.2016 to 8.11.2016 because it was not at all a legal entity recognized under law. In the above facts and circumstances, the Petition is liable to be dismissed.

72. From the submissions of the parties, the following issues arise before this Commission:

73. **Issue No. 1:** Whether the Petitioner filed the application with the Respondents regarding 'change of legal status from the partnership concern to the private limited company as per its business convenience and there was inordinate delay in prosecuting its request regarding change of legal status?

74. **Issue No. 2:** Whether RECs can be issued to the Petitioner for the period between 21.3.2016 and 08.11.2016. i.e. the date from which Energy Purchase agreement was executed by the Petitioner with the TANGEDCO till the date of registration of the Petitioner with the NLDC under the REC scheme?

75. No other issues were pressed or claimed.

76. We discuss the issues one by one:

77. Issue No. 1: Whether the Petitioner filed the application with the Respondents regarding 'change of legal status from the partnership concern to the private limited company as per its business convenience and there was inordinate delay in prosecuting its request regarding change of legal status?

78. The Petitioner has submitted that the Business Takeover Agreement (BTA) was executed between RBSSN (partnership concern) and the Petitioner on 8.4.2015. However, BTA contemplated several steps prior to conclusion of the transfer including obtaining NOCs from the various contracting parties (Cl.4(a)) and execution of sale deeds prior to a Long Stop Date(Cl.5.2). The contract between the Parties expressly granted time to complete all formalities. The sale deed was executed by the erstwhile partnership concern in favour of Petitioner on 25.2.2016 after which it immediately approached TANGEDCO for execution of fresh EPAs on 29.2.2016. The EPAs were executed on 21.3.2016 and the generation statements for all WEGs for the month of April-May 2016 were received in last week of May 2016. On 11.6.2016, the Petitioner sought for change of entity's name from Respondent No.2. The State Agency forwarded the request of the Petitioner to Respondent No.1 for further processing. It is pertinent to note that the SLDC

accepted and acted upon the Petitioner's request at that stage and did not raise any objection on the basis of Clause 4.1(h) of the Detailed Procedures. No objection was ever raised by the SLDC on the basis of Clause 4.1(j) of the Detailed Procedures. Therefore, there was no undue delay in prosecuting its request for change of legal status.

79. Per Contra, the NLDC has submitted that the Petitioner has taken over the business of the partnership concern on 8.4.2015 but informed about the same vide letter dated 11.6.2016. Hence, there was a delay of 14 months in informing about the change of legal status without giving any reason for such an inordinate delay. Whereas, the Respondent No.2 submitted that the Petitioner took over the partnership concern on 21.3.2016 however, informed the same to TANTRANSOCO on 25.6.2016. Hence, there was a delay of 3 months as per the existing CERC REC Regulations & procedures due to which the petitioner is not entitled to claim REC from 21.3.2016 to 8.11.2016. In the above facts and circumstances, the prayer made by the petition is liable to be dismissed.

80. In this regard, we analyze the provisions of the CERC REC Regulations and 'Detailed Procedures' for Issuance of Renewable Energy Certificates to Eligible Entity approved under REC Regulations.

81. Regulation 7(2) of the REC Regulation stipulates that RECs shall be issued only after the Central Agency i.e. the Respondent duly satisfies itself that all conditions for issuance of certificate are complied with by the eligible entity. The Regulation 7(2) stipulates that:

“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:

...”

82. Clause 2.1 of the ‘Detailed Procedure’ provides as under:

“2.1.This procedure shall be applicable to RE projects, who have received “Certificate of Registration” from the Central Agency, and shall be eligible to avail Renewable Energy Certificates from the date of commercial operation or from the 00:00 hrs of next day of Registration date of such plant by the Central Agency whichever is later.”

83. The Clause 4.1 (h) of the procedure stipulates as:

“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 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 the 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 the relevant documents like Board Resolution regarding name change, certificate of name change from Registrar of Companies, etc. in hard copy.”

84. From the above, the Commission observes that whenever there is a change in the legal status of the eligible entity, the entity shall immediately intimate the concerned State Agency and the Central Agency about the said change and apply afresh for Accreditation by the concerned State Agency and Registration by the Central Agency. The Central Agency shall issue Certificate of Registration only after satisfying itself that all the conditions are complied with by the eligible entity. The entity shall be eligible to avail Renewable Energy Certificates from the date of commercial operation or from the 00:00

hrs of next day of Registration date of such plant by the Central Agency whichever is later.

85. Now we analyze the various provisions of the Business Takeover Agreement executed between the Petitioner and the erstwhile partnership concern.

“4. CONDITIONS

The takeover of the Business hereunder is subject to fulfillment of the following conditions ("Conditions"), unless waived in writing by the Purchaser:

- a) the Vendor shall, as may be required under the contracts with suppliers, customers and third parties; obtain consent for the takeover of the Business by the Purchaser, from those suppliers, customers and third parties;
- b) the Vendor shall notify each Employee in writing of the proposed takeover of the Business by the Purchaser;
- c) the Vendor shall deliver any and all documents, papers, plans, designs, computer storage media, and other written, electronic or other materials in or on which any confidential information in relation to the Business is described, recorded or stored which is in the possession or control of the Vendor.

5. CLOSING

5.1 Closing shall take place on such a date as mutually agreed by the Parties (the "Closing Date"), being a date not later than December 31, 2015 or such other date as mutually agreed by the Parties ("Long Stop Date"). Closing shall take place at the offices of the Vendor or at such other place as mutually agreed between the Purchaser and the Vendor.

5.2 On the Closing Date:

- a) the Vendor shall deliver to the Purchaser a certificate, in the form attached in Schedule IV hereto, confirming and representing that the Conditions have been fulfilled;
- b) the Parties shall mutually agree on a date being not later than the Long Stop Date, when the Vendor shall deliver to the Purchaser and record the same under a delivery memo (form of which is contained in Schedule III hereto), all the movable assets which are capable of delivery to enable title to those movable assets to pass to the Purchaser;

c) the Parties shall mutually agree on a date being not later than the Long Stop Date when the Vendor shall execute deeds of conveyance in respect of the immovable properties set out in Schedule I *hereto in favour of the Purchaser.*”

86. From the above, the Commission observes that Business Takeover Agreement contemplates several steps prior to conclusion of the transfer including obtaining NOCs from the various contracting parties and execution of sale deeds prior to a Long Stop Date.

87. In the instant case, R. B. Seth Shreeram Narasingdas Private Limited (the Petitioner) was incorporated as private limited company on 29.12.2012, vide Certificate of Incorporation (No. U14290KA2012PTC066475). The Petitioner executed “Business Takeover Agreement” on 8.4.2015 and took over business of R.B. Seth Shreeram Narasingdas (partnership concern) including the wind power plant. The sale deeds regarding the assets were executed by erstwhile partnership concern in favour of the Petitioner on 25.2.2016. Hence, the closing date of the Business Takeover Agreement is 25.2.2016 and not 8.4.2015. The Petitioner applied for change of name for the Wind Energy Generators (WEGs) to Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) on 29.2.2016 and the same was approved by TANGEDCO on 16.3.2016. Between 21.3.2016 - 24.3.2016, RBSSNPL and TANGEDCO executed the Energy Purchase Agreements for WEG No. 4081 and WEG No. 190-193. On 11.6.2016, the Petitioner submitted its request for name change from RBSSN (partnership) to RBSSNPL, to TANTRANSCO (Respondent No. 2). TANTRANSCO forwarded the request of the Petitioner to NLDC on 28.6.2016. Therefore, the Commission observes that though the Petitioner filed the application for the change of name with the Respondent No.2 on 11.6.2016 i.e. after about 4 months, yet factually the Petitioner had started the process for

change of name for the WEGs with TANGEDCO on 29.2.2016 i.e. after 2 days of the closing of the Business Takeover Agreement. It is also to be considered that once the entire process of business takeover is complete only then will the Petitioner be permitted to apply for change of legal status in various forums. Hence, the Commission finds that there is no inordinate delay in filing of the application for the change of legal status with the Respondents and the delay has been reasonably explained alongwith documentary proofs.

88. Issue No. 2: Whether RECs can be issued to the Petitioner for the period between 21.3.2016 and 8.11.2016. i.e. the date from which Energy Purchase agreement was executed by the Petitioner with the TANGEDCO till the date of registration of the Petitioner with the NLDC under the REC scheme?

89. The Petitioner submitted that the TANTRANSCO has informed that the EIRs can be issued from 9.11.2016 onwards. Further, the Petitioner can neither have the benefit of the RECs for the power generated between 21.3.2016 and 8.11.2016 in its name nor in the name of erstwhile entity. This is contrary of the Commission's order dated 2.3.2017 in *Petition No. 308/MP/2015 case titled "Nu Power Renewables Pvt. Ltd. V/s National Load Dispatch Centre and Another"*. Further, as per Regulation 10(1) of the REC Regulations, REC credited to an entity registered under the REC scheme shall remain valid and eligible for trading on the appropriate power exchange for a period of 1095 days from the date of issuance of the said certificates. Accordingly, NLDC may be directed to issue the necessary REC credit in favour of the petitioner for the period between 21.3.2016 & 8.11.2016.

90. Per Contra, the NLDC has submitted that the period between 21.3.2016 to 8.11.2016 was elapsed due to its own default while not notifying the change in the legal status and consequently, applying for a fresh accreditation and registration under the REC scheme. The Respondent No.2 also submitted that the period from 15.9.2016 to 8.11.2016 is the period between revocation of accreditation in the name of RBSSN and fresh accreditation in the name of the Petitioner. There was no valid accreditation either in the name of RBSSN or in the name of the Petitioner. As per the existing CERC REC Regulations & Procedures, the petitioner is not entitled to claim for RECs from 21.3.2016 to 8.11.2016. In the above facts and circumstances, the Petition is liable to be dismissed.

91. The Commission observes that in its order dated 2.3.2017 in Petition No. 308/MP/2015 case titled "*Nu Power Renewables Pvt. Ltd. V/s National Load Dispatch Centre and Another*" it was held that:

"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.”

92. The Commission also observes that Regulation 5 of the REC Regulations stipulates that:

“5. Eligibility and Registration for Certificates:

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfills the following conditions:

(a) it has obtained accreditation from the State Agency;

(b) it does not have any power purchase agreement for the capacity related to such generation to sell electricity, with the obligated entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under Section 63 of the Act by the Appropriate Commission.

Provided that in case of renewable energy sources based co-generation plants, the connected load capacity as assessed or sanctioned by the concerned distribution licensee, shall be considered as the capacity for captive consumption for the purpose of issue of certificates, irrespective of the capacity of such plants covered under the power purchase agreement.

(c) it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase of such distribution licensee as determined by the appropriate commission (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

Explanation - for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be."

93. From the above, the Commission observes that as per the principle laid down for grant of RECs, if the Petitioner is engaged in generation of electricity from renewable energy sources, then it shall be eligible for dealing in RECs if it sells the electricity generated to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase of such distribution licensee as determined by the Appropriate Commission.

94. In the instant case, for the interim period i.e. from 21.3.2016 to 8.11.2016, when the Petitioner entered into the Energy Purchase Agreement with TANGEDCO and until it got registered with NLDC, NLDC did not issue any REC either to RBSSN or RBSSNPL. Therefore, green attributes of the power generated were lost. Undoubtedly, the Petitioner should have intimated NLDC well in advance regarding the process of change in legal status from partnership concern to private limited company vide Business Takeover Agreement executed on 8.4.2015. However, 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 21.3.2016 to 8.11.2016, therefore, RECs need to be issued. It is pertinent to mention here that it is also in consonance with the decision of the Commission given in Petition No. 308/MP/2015 in case of M/s Nu Power Renewables Private Limited, Petition No. 168/MP/2015 in case of M/s Porwal Auto Components Limited, Petition No. 105/MP/2016 in case of M/s Oudh Sugar Mills Ltd. and in Petition No. 177/MP/2016 in case of Indian Wind Power Association (IWPA).

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.

96. In light of the above, Petition No. 141/MP/2017 stands disposed of.

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

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson