



Chhattisgarh State Electricity Regulatory Commission
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Suo-Motu Petition No. 08 of 2018(M)

In the Matter of Generation and consumption of power plant in the state for the Financial Year 2016-17.

M/s NTPC Sail Power Company Ltd.
Bhilai, Durg (C.G.)

... Respondent

PRESENT : **Narayan Singh, Chairman**
Arun Kumar Sharma, Member

APPEARANCE : Shri Nilesh Dangayach for respondent.

ORDER
(Passed on 04th May, 2018)

This petition is initiated suo-motu by the Commission on the basis of the report submitted by the Chief Electrical Inspector (CEI in short) through letter No. 90 dated 05.06.2017 in relation to power generated from the power plants located in the State for the year 2016-17.

2. The respondent M/s NTPC Sail Power Company Pvt. Ltd. (a joint venture of NTPC and SAIL) is a company registered under the Companies Act. The company is operating a 250 MW Thermal Power Plant at Purena, Bhilai, Durg and Chhattisgarh.
3. A captive generating plant is a power plant setup by any person to generate electricity primarily for his own use. As provided in section 9 of the Electricity Act, 2003 a person may construct, maintain or operate a captive generating plant and dedicated transmission lines and no license is required for such construction, maintenance and operation of a captive generating plant.
4. The Electricity Rules-2005 in Rule-3 specifies as follows:-

"Requirement of Captive Generating Plant.-(1) No power plant shall qualify as a 'Captive Generating Plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant-

- (i) *not less than twenty six percent of the ownership is held by the captive user(s), and*
- (ii) *Not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:*

Provided that in case of power plant set up by registered co-operative society, the conditions mentioned under paragraphs (i) and (ii) above shall be satisfied collectively by the members of the co-operative society:

Provided further that in case of associations of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume, not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power within a variation not exceeding ten percent.;

- (b) *in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy(ies) the conditions contained in paragraphs (i) and (ii) of sub-clause(a) above including-*

Explanation- (1) *The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and*

- (2) *The equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six percent of the proportionate of the equity of the company related to the generating unit or units identified as per captive generating plant.*

Illustration

In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

- (2) *It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned in sub-clause (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.*

Explanation- (1) *For the purpose of this rule-*

- (a) *"annual basis" shall be determined based on a financial year;*

- (b) *"captive user" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "captive use" shall be construed accordingly;*
- (c) *"ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;*
- (d) *"Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."*

- 5.** According to the above provisions, a captive user is end user of electricity generated in a captive generating plant. The provisions prescribed that a power plant can qualify as captive generating plant, if not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use. There are certain other conditions also, which a power plant has to fulfill for qualifying as a captive generating plant.
- 6.** The CEI has been directed in an order to submit detailed information of generation and consumption of electricity of power generated from the power plant operating in this State. Based on the information submitted by CEI, it is examined, whether the power plant can be categorized as a captive generating plant or a generating plant for any financial year.
- 7.** According to the details submitted by the CEI in respect of the respondent company, it is observed that installed capacity of the respondent's plant at Purena, Bhilai is 250 MW and it generated 1669.94 MU Electricity (net) in the year 2016-17, out of which 79.67 MU Unit was consumed for captive purpose, which is 4.77% of the net generation. Prima facie, therefore, it appears that the respondent's power plant at Purena, Bhilai did not qualify as a Captive Generation Plant (CGP) in terms of definition given in section 2(8) of Electricity Act, 2003 read with Rule-3 of Electricity Rules-2005 for the period between 01st April 2016 to 31st March 2017 i.e. FY 2016-17.
- 8.** The respondent was served with notice No. 112 dated 17.01.2018 and was asked to justify its captive status for the relevant year. In reply dated 01.02.2018, the respondent

submitted that in the FY 2016-17, the Net electricity generation of unit-II of the plant was 1669.94 MUs out of which 258.161 MUs was scheduled/supplied to SAIL, BSP (i.e. 79.666 MUs to SAIL BSP and 178.495 MUs to SAIL-TEED). The unit-II consists of 30 MW allocation to SAIL and URS power of other beneficiaries of NSPCL supplied to SAIL. The respondent submits that data of unit-I of the plant has not been considered while calculating captive status, which is actually captive unit of SAIL BSP. Only data of unit-II is taken under consideration which is not captive, but supplying power to various other beneficiaries of NSPCL. An opportunity of hearing was also given on 06.04.2018 to the respondent.

9. According to the respondent, the power allocation from unit-II to various beneficiaries are as follows :-

Sr. No.	Name	quantity
1.	SAIL-BSP (including TEED) (Bifurcation of power of SAIL & TEED has been given above in para 8)	30 MW
2.	CSPDCL	50 MW
3.	UT of DNH	100 MW
4.	UT of DD	70 MW

10. Crux of the respondent submission is that for the purpose of considering captive status, data of both units has to be taken. Data taken from only unit-II is improper because unit-II is not captive.
11. Considering both the data submitted by CEI and submissions made by the respondent, it appears that unit-II of the respondent power plant is not captive of SAIL while unit-I is declared captive of SAIL. Hence, we conclude that unit-II of the respondent's power plant does not qualify for the captive generating plant for the year 2016-17. Therefore, SAIL-BSP who has consumed 79.666 MU from NSPCL unit-II is liable to pay cross subsidy surcharge.

Accordingly, we dispose off the petition. Copy of the order may be sent to the respondent, the Chief Electrical Inspector and the Chhattisgarh State Power Distribution Company Limited.

Sd/-
(Arun Kumar Sharma)
Member

Sd/-
(Narayan Singh)
Chairman