



Chhattisgarh State Electricity Regulatory Commission
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Suo-Motu Petition No. 12 of 2017(M)

In the Matter of Generation and consumption of power plant in the state for the Financial Year 2015-16.

M/s Devi Iron Power Pvt. Ltd.
Village: Tanda, Block-Dharsiva
District: Raipur (C.G.)

... Respondent

PRESENT : Narayan Singh, Chairman
Arun Kumar Sharma, Member

APPEARANCE : Shri Rajesh Agrawal for respondent.

ORDER

(Passed on 17th November 2017)

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. 383 dated 28.05.2016, in relation to power generated from the power plants located in the State, for the year 2015-16.

- 2.** The respondent M/s Devi Iron & Power Pvt. Ltd. is a company registered under the Companies Act. The company is operating a 08 MW Power Plant at Village-Tanda, Block-Dharsiva, District- Raipur, 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 plants 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 Tanda, Raipur is 08 MW and it generated 6.02 MU Electricity (net) in the year 2015-16, out of which 1.94 MU Unit was consumed for captive purpose, which is 32.3% of the net generation. Prima facie, therefore, it appears that the respondent's power plant at Tanda 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 2015 to 31st March 2016 i.e. FY 2015-16.
- 8.** The respondent was served with notice No. 683 dated 08.05.2017 and asked to justify it's captive status for the relevant year. In reply dated 10.07.2017, the respondent admitted that in the FY 2015-16 the Net electricity generation of the plant was 6.019 MU and captive consumption was 1.94 MU. However, the capacity of plant, according to the respondent, is 7.5 MW. It is also submitted that the power plant is Waste Heat Recovery Based (WHRB) and power generated by the plant is used as captive power in the co-located Induction Furnaces. The remaining surplus power i.e. 4.079 MU were injected into the CSPDCL Grid at no cost claimed basis.
- 9.** It is also submitted by the respondent that most of the time, during the relevant year the co-located Induction Furnaces were under maintenance and therefore, could not consume power at the level prescribed under the Act and Rules for captive status. The respondent was also not permitted to stop it's WHRB power plant.
- 10.** The respondent submitted that even after non-availability of captive load regularly the respondent continued to generate power from it's WHRB power plant in order to:

 - a. Utilize the waste heat from flue gases produced by Sponge Iron Kiln to protect the environment.

- b. Provide cheap power (practically at no-cost-claimed basis) to the State Distribution Company CSPDCL for the benefits of common man.
 - c. avoid National Loss which may be caused due to stoppage of such Waste Heat Recovery Generation.
- 11.** Referring section 2(8) of the Electricity Act and Rule 3 of the Electricity Rules 2005, the respondent suggested that since the respondent has not achieved any commercial gain out of surplus power, it should not be accounted in total generation of respondent and the power consumed by the respondent should only be considered as total generated power for purpose of deciding captive status.
 - 12.** We have called the Chhattisgarh State Power Distribution Company Limited (CSPDCL) to put their views on the matter, but CSPDCL has not put it's views in this case.
 - 13.** We considered the arguments submitted by the respondent. As per the law of interpretation, where words of a statute clearly express views of legislator, then no interpretation can be made. Interpretation is the act of making intelligible what was before not understood, ambiguous, or not obvious. It is the method by which the meaning of the language is ascertained. Resort of interpretation is never to be had where the meaning is free from doubt.
 - 14.** The words used in Rule 3 are quite clear and expresses clearly what the rule makers thought. We therefore, cannot interpret the Rule going beyond the words used in the Rule. We do not agree with the argument of the respondent that the power consumed by the respondent should only be considered as total power generated for the purpose of deciding captive status.
 - 15.** We also do not agree with the contention that the respondent is injecting surplus power after captive use into the Grid "Free of Cost". The power injected into the grid can be measured and paid if an agreement between the

generator and the licensee is executed for this purpose. This payment also depends upon certain circumstances and terms and conditions. The respondent could not prove such agreement between it and the licensee. Hence, we reject the plea of the respondent regarding injection of surplus power, free of cost, into the grid.

- 16.** On the basis of submission of data by the respondent company in its reply we arrive at the conclusion that the power plant of the respondent company could not fulfill the criteria as prescribed in Rule-3 of Electricity Rules, 2005 and the end user could not qualify as a captive user. Therefore, we declare that the power plant of the respondent has lost its captive status for FY 2015-16. The respondent is liable to pay cross subsidy surcharge to CSPDCL for his own captive load for the year 2015-16 at the rate half of the prevailing cross subsidy surcharge rate, as the power plant is run on waste heat of its iron plant.

Sd/-
(Arun Kumar Sharma)
Member

Sd/-
(Narayan Singh)
Chairman