



Chhattisgarh State Electricity Regulatory Commission
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Petition No. 63 of 2017 (M)

In the Matter of :

Petition under section 86 of the Electricity Act, 2003 read with section 2(8), 9, 38, 39, 40 and 42 of the Act and Rule 3 of the Electricity Rules, 2005 for directions in regards power generation by NSPCL and supplied to the petitioner.

M/s Steel Authority of India Limited
Through its Division Bhilai Steel Plant

.... Petitioner

Chhattisgarh State Power Distribution
Company Limited (CSPDCL)
Daganiya, Raipur – (C.G.)

.... Respondent No.1

NTPC - SAIL Power Company Ltd. (NSPCL)

.... Respondent No.2

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

ORDER

(passed on 02nd July, 2018)

The petitioner, Steel Authority of India Limited (herein after referred to as 'SAIL') is a Government of India Undertaking and a Company incorporated under the Companies Act, 1956 having its registered office at Ispat Bahawan, Lodhi Road, New Delhi -110003. The petitioner has filed this petition under section 86 of the Electricity Act, 2003 read with section 2(8), 9, 38, 39, 40 and 42 of the Act and Rule 3 of the Electricity Rules, 2005 for directions.

The Respondent No.1 is the distribution licensee in the state of Chhattisgarh (CSPDCL)

The Respondent No.2 NTPC - SAIL Power Company Ltd. (herein after referred to as 'NSPCL') is a joint venture company of SAIL and NTPC Limited, another Government of India Undertaking and a Company

incorporated under the provisions of the Companies Act, 1956 with registered office at NTPC Bhawan, SCOPE Complex, Institutional Area, Lodhi Road, New Delhi -110003.

Petitioner Submission

2. Petitioner has submitted the following in the petition:
 - a) Petitioner submitted that the Respondent NSPCL was established as a special purpose vehicle operating and managing the two power generating units of 250 MW each at Bhilai in the vicinity of the premises of Bhilai Steel Plant in the state of Chhattisgarh.
 - b) that in terms of Rule 3 of the Electricity Rules, 2005, since SAIL is holding more than 26% of the equity shareholding in NSPCL, SAIL is entitled to be a captive user in respect of the entire captive power plant of 2x250 MW or one of the two generating stations of 250MW each, as the case may be.
 - c) that SAIL fulfils the condition of minimum consumption of 51% of the electricity generated at the NSPCL's 2x250 MW each, either with reference to one generating unit of 250 MW or with reference to both the generating units of 2x250 MW each, SAIL will be entitled to the privileges of being a captive user of electricity generated at the said generating unit(s). These include the privileges specifically provided for in sections 9,38,39,40 and 42 of the Electricity Act, 2003. In regard to exemption from payment of Cross-subsidy surcharge namely SAIL will be entitled to consumed electricity generated and supplied to it by NSPCL without the consume electricity generated and supplied to it by NSPCL without the payment of Cross-subsidy surcharge provided for in sections 38,39,40 and 42 of the Act.
 - d) that despite the above clear position, Respondent No.1-CSPDCL has been recognizing the captive status of SAIL only in regard to Unit-1 (one unit of 250MW) and with regard to Unit-2, CSPDCL has been claiming and recovering cross subsidy on the power on monthly basis. This has been done allegedly on the basis that such use of electricity

supplied from Unit-2 is not a captive use but as a supply of electricity by a generating company to a consumer in terms of the proviso to Section 9(1) of the Electricity Act, 2003.

- e) that as per the PPA with NSPCL and for convenience of scheduling, out of its total allocation of 280 MW from the power plant the petitioner has been taking the entire electricity from Unit 1 (250 MW) and balance quantum (30 MW) from Unit 2, when both units are in operation, but under condition of outage of any of the two units petitioner allocations comes down to 50% of the actual allocation i.e. 140 MW. The allocation of power to petitioner as per PPA are mentioned in table below:

Condition of Operation	Allocation to SAIL in MW		
	From Unit-1	From Unit-2	Total
Both Units available	250	30	180
Only Unit-1 available	140	0	140
Only Unit-2 available	0	140	140

Thus, allocation to it from Unit-2 increases to the level of 140 MW when Unit-1 is not in operation. Such allocation from Unit-2 is firm and is based on the legitimate right of SAIL on account of its 50% equity stake in NSPCL. However, CSPDCL has been treating such drawl by the petitioner from Unit-2 as deemed drawl from CSPDCL in computation of maximum demand and has been claiming that SAIL will be required to pay the demand electricity charges to CSPDCL based on the said maximum demand.

- f) that the average drawl of power by BSP from CSPDCL remains in the range of 15-20 MW when both 250 MW units are available at NSPCL and the said drawl increases to the level of about 115-120 MW if only one unit is available. In case if only Unit-1 remaining in operation and Unit-2 down at NSPCL, drawl from NSPCL is treated by CSPDCL as captive power of BSP and therefore drawl from grid is accounted as actual drawl of 115-120 MW. Accordingly,

billing demand remains in the range of 125-130 MVA. However, in case of only Unit-2 in operation, drawl from Unit-2 is treated as deemed drawl from CSPDCL and drawl from CSPDCL is accounted as 230-245 MW (addition of drawl from CSPDCL and NSPCL Unit-2) and accordingly billing demand is calculated by CSPDCL and due to consideration as deemed drawl, SAIL is forced to keep a high contract demand of 200 MVA with CSPDCL and is forced to regulate its steel plant operation and shed power in the township to contain the billing demand within the limits of contract demand when only Unit-2 at NSPCL is in operation. Hence, BSP is forced to pay the penal demand charges to CSPDCL if it fails to contain the demand within the CD of 200 MVA.

- g) that NSPCL's generating unit at Bhilai are connected to the Bhilai Steel Plant of SAIL through two Double Circuit 220 kV Dedicated Transmission Lines, owned and maintained by SAIL. These Double Circuit Dedicated Transmission Lines were installed and are being used mainly for the purpose of transfer of power from NSPCL to SAIL to meet the requirements of electricity of SAIL at Bhilai Steel Plant for captive consumption. It is submitted that power availed from CSPDCL is through the 220 kV consumer line from Khedamara Sub-station to BSP. So both the drawls are mutually exclusive form each other. BSP, while availing power from Unit-2 of NSPCL, is not utilizing any resource of CSPDCL. Therefore, for such power neither CSPDCL is required to have any backup arrangement with any of the supplier nor has to maintain any transmission line. Thus, there is no chance that CSPDCL is incurring any fixed expenditure for arranging or supply of such power to SAIL/BSP. Payment of demand charge to CSPDCL for the power availed from NSPCL Unit-2, therefore, defies the basic premise of Demand Charge and has no justification. There can, therefore, be no implication whatsoever on the issue of the maximum demand or increase in contract demand or in any manner any impact on the activities of CSPDCL in undertaking the distribution and retail supply of

electricity to its consumer including SAIL against the contract demand of 220 kV presently maintained by SAIL.

3. Petitioner had prayed for the following relief from the circumstances mentioned above:-

a) To direct that SAIL will be entitled to:

- i. treated as a captive consumer for electricity generated and supplied by NSPCL as per the declaration to be filed by SAIL at the end of each financial year identifying either a single unit or both the units to be considered for supply of electricity for captive use of SAIL so long the condition of 51% of the consumption specified under Rule 3 is satisfied with regard to one unit or with regard to be generating station as a whole comprised of two units of 2x250 MW each.
- ii. Treat the supply of electricity by NSPCL to SAIL either from one unit or from both the units and irrespective of whether the supply qualifies for captive use by SAIL being through a Dedicated Transmission Line (two double circuit 220 KV Lines) without involvement of any of the power system of the transmission licensee or the distribution licensee in the area, and that the quantum of electricity drawn by SAIL should not be considered as deemed drawl from CSPDCL for the purpose of considering the maximum demand with SAIL is entitled to avail from CSPDCL;
- iii. Direct that to the extent of the consumption by SAIL, the electricity generated and supplied by NSPCL qualifying for captive use in terms of Rule 3 of the Electricity Rules, 2005, there shall not be any incidence of Cross Subsidy Surcharge under the provisions of the Electricity Act, 2003, the said charge being exempted as provided in Section 38,39,40 and 42 of the Act;
- iv. Direct that the CSPDCL should consider the maximum demand only in regard to the quantum of electricity actually supplied by CSPDCL to SAIL against the contract demand maintained by SAIL under the agreement with CSPDCL and not for any quantum of electricity taken by SAIL from NSPCL.

- v. Direct CSPDCL to return with interest the amount collected from SAIL for the period FY 2015-16, 2016-17 and 01.04.2017 onwards.
- b) To pass interim order restraining CSPDCL from charging cross subsidy surcharge on the quantum of supply made by NSPCL's Unit no.2 to Bhilai Steel Plant as well as treating such quantum as deemed supply from CSPDCL with immediate effect.

4. Respondent (CSPDCL) Submission:

- a) Respondent has submitted that the prayers submitted by the petitioner are centred on two points: (i) either a Unit-1 or both Units-1&2 of NSPCL should be considered as Captive Power Plant of SAIL on the basis of consumption of electricity as declared by the SAIL at the end of the financial year. That is to say, if only Unit-1 satisfies the condition of 51% then Unit-1 should be treated as CPP while Unit-2 will remain IPP. Whereas, in case consumption of electricity generated by both Unit-1 plus Unit-2 satisfy the condition of 51% consumption as a whole, Power plant comprises of both Unit-1 and Unit-2 should be treated as CPP. As per the petitioner's prayer, this should be done on the basis of the declaration filed by the SAIL at the end of each Financial Year identifying either single Unit or both the Units as the CPP. The purpose of petitioner's prayer is to avoid any incidence of Cross-Subsidy Surcharge payable on the drawl of energy from NSPCL's Unit-2. (ii) The maximum demand to be billed by CSPDCL should be set off by the quantum of electricity supplied by NSPCL.
- b) Respondent submitted that the prayers of the petitioner entirely contravene the Electricity Act 2003 and Electricity Rule 2005. As per Rule 3 of Electricity Rule 2005:

3. Requirement of Captive Generating Plant – *No power plant shall qualify as 'Captive Generating Plant' under section 9 read with clause (8) of section 2 of the Act unless-*
(b) in case of a generating station owned by a company formed as special purpose vehicle for 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 for generating station as whole.

- c) It is submitted thus, the generating station owned by a company formed as a special purpose vehicle for such generating station, a Unit or more Units can be declared as CPP but such Unit/Units should be identified for the captive use. BSP-SAIL vide letter dated 20-11-2009 have decided to identify only Unit-1 as captive as per section 3 clause 2(b) of the Electricity Rule 2005. This is recorded in the Minutes of 57th Commercial Committee Meeting held on 11-01-2011. Now, petitioner is praying against identification done by itself, as per law and moreover, from a retrospective date.

Further the Commission has undertaken the task of deciding the Captive status of CPP by an Order dated 29.09.2009 in P.No.16 of 2016(M). Accordingly, petitioner cannot be allowed to decide its own captive status as per its discretion and prevailing conditions. Therefore, the prayer of the petitioner is in complete, contravention to the legal framework provided by the Electricity Act and Electricity Rules. Similarly, prayer of the setting off the maximum demand is also not admissible in accordance with Clause 10.9 of the CSERC (Intra-state ABT & DSM) Regulations, 2016.

- d) Hence it is submitted that the present petition therefore deserves to be dismissed in limine and the prayer for interim relief(s) ought to be rejected as well.

5. Respondent has submitted followings on 17.04.18:

- a) that the instant petition has been filed with two prayers (i) On CPP Status on Unit-1 & Unit-2 and (ii) On set off of maximum demand.
- b) that in order to substantiate its pleading the petitioner has placed reliance on the order passed by the Hon'ble APTEL

vide Appeal No. 252/15 as Salasar Steel & Power vs. CSERC wherein it was held that for deciding the captive status of the appellant plant, the aggregate generation and consumption from both the units has to be considered. However, it is emphatically submitted the factum of the cited case is entirely different from than the factual scenario of the instant case. In the cited case, Hon'ble APTEL in paragraph 11 sub para 'g' and 'h' has observed and held as under;

'g) We have noted captive consumption from both the Units i.e. TG-1 (15MW) as well as TG-2 (65MW) during the period under consideration as it is evident from the Form "G" submitted by the Appellant regularly on monthly basis to the Chief Electrical Inspector. Though there has been significant consumption for TG-1 but there has been captive consumption for TG-2 also but the quantum is very less. Hence we are not in agreement with the submissions of the Appellant that only TG-1 (15MW) has been identified by the Appellant for captive use and TG-2 is an Independent Generating Unit.

h) Hence considering the provision of Rule 3(1)(b) of Electricity Rules, 2005 which prescribes that a generating station can identify a unit or units of such generating stations for captive use, it is clear that Appellant had identified both the Units, i.e. TG-1 (15MW) and TG-2 (65MW) for captive use during FY 2013-14. In view of the above for deciding the captive status of the Appellant plant, the aggregated generation and consumption from both the units, TG-1 (15MW) and TG-2 (65MW) has to be considered as per the provision of Rule 3(1)(b) of Electricity Rules 2005."

- c) that from the perusal of the above mentioned order it is clear that the appellant has identified two units i.e. TG-1 (15MW) and TG-2 (65MW) for captive use and therefore both the units have been considered for captive status of the appellant. However in the instant case the petitioner SAIL has identified only Unit-1 of NSPCL for captive use as

has been declared by it in the Minutes of Commercial Committee meeting held on 11.01.2011.

- d) that it is agreed that CPP status is to be decided on basis of energy generated and consumed as submitted by Chief Electrical Inspector in prescribed format. However, the power of deciding the CPP status has been exercised by the Commission in Chhattisgarh State. The petitioner intended to take over this power and its status by itself, which is not permissible under the law, the identification of Unit or Units of the CPP has to be done first and only the Unit identified by the generation station for captive use has to be considered for determining the captive status of the petitioner.
- e) that the incidence of Cross-Subsidy Surcharge under the provisions of the Electricity Act, 2003, is exempted only for captive use of energy and it is presently available for energy consumption from only identified Unit-1 of NSPCL subject to the condition for having captive status.
- f) that as regard the relief that the quantum of electricity drawn by SAIL from NSPCL either from one unit or both units should not be considered as deemed drawl from CSPDCL for the purpose of considering the maximum demand AND direct that the CSPDCL should consider the maximum demand only in regard to the quantum of electricity actually supplied by CSPDCL, cannot be accede to in terms of the order dated 06.02.06 passed by the Commission in P.No.17/05.

"6.5 In case a consumer avails simultaneous supply from the Board and also from a CPP, even for his 'own house', technically it is not possible to segregate these two sources of supply as has been pointed out by the CSEB. Therefore, in such cases set off on CD may be not be justified. As regards captive consumer, non-captive consumer and CPP holder firstly, power to the extent of contracted quantity is to be kept reserved by the distribution licensee for the consumer irrespective of whether he avails supply continuously or intermittently or

occasionally. It is incumbent on the licensee to have standby arrangement to supply electricity to a consumer who through open access receives supply from a generator, in case of outages of the generator (para 8.5.6 of NTP). The licensee is, therefore, required to maintain his supply lines to the consumer all the time. On these considerations the Commission is of the view that it may not be logical at this stage to give set off on CD."

- g) that from the close reading of the above order, it is unambiguous that in case a consumer avails simultaneous supply of power from CSEB (CSPDCL) in this case and CPP, it is not possible to segregate these two sources of supply and thus a set off on the contract demand is not justified.
- h) that the argument of the petitioner that it has 2x220 kV dedicated Transmission lines from NSPCL to BSP is not applicable here because power from NSPCL and CSPDCL is pooled as BSP's bus bar. Thus power from different sources is pooled in BSP's bus bar and it is not possible to segregate power from NSPCL and CSPDCL. And 2x220 kV lines of BSP do not fulfil the criteria for "point-to-point" transmission as laid down in section 2(16) under definition of "dedicated transmission lines".
- i) that in this regard clause 10.9 of the CSERC (Intra State ABT & DSM) Regulations, 2016, is relevant which clearly provides that the actual power drawn shall be first set off with contract demand of with distribution licensee and the drawal in excess of contracted demand with distribution licensee will be considered to be supplied through Open Access.

Prayer

- j) It is respectfully prayed that on the basis of the submissions, the Commission may be pleased to dismiss the instant petition in the interest of justice.

Reply of Respondent No.2 (NSPCL)

6. Respondent No.2 i.e. NTPC-SAIL power company has submitted following on 20.03.18
- a) that Respondent No.2 has been impleaded as pro forma respondent. The Respondent No.2 is neither joining any issue nor contesting the present petition filed, nor is there any dispute involving the Respondent No.2 in this petition
 - b) that the supply of electricity from the generating station of the Respondent No.2 to its procurers which includes the petitioner herein as well as other beneficiaries, the supply is at the bus- bar of the generating station. It is the responsibility of the procurers for onward transmission of electricity beyond the bus-bar. Respondent No.2 does not own, operate or maintain any transmission lines, nor does the Respondent No.2 obtain open access for onward transmission of electricity beyond its bus-bar. Therefore, the disputes in relation to the use of transmission line, the methodology for determination of contract demand, demand charges etc. as raised by the petitioner is exclusively between the petitioner and the Respondent No.1.
 - c) that, while the total capacity is allocated to the beneficiaries from the 2 units of 250 MW each, in case of any shut down of a single unit of the generating station, the available capacity from the other unit is scheduled and supplied to the beneficiaries in a proportionate manner to their allocation from the generating station. This has been the methodology followed by the Respondent No.2 over the years and also agreed to by all the beneficiaries of the Respondent No.2

Respondent (CSPDCL) Submission

Additional submission by Petitioner

7. Petitioner has also submitted their written submission on 18.04.18"
- a) that the subject matter relating to prayer of directing the CSPDCL for considering the maximum demand is fully

covered by the decision of the CERC in P.No.211/MP/2011 decided on 05.10.17. It is submitted that no part of the electricity procured by SAIL is supplied through Intra State or Inter State Transmission system or distribution system of CSPDCL for CSPDCL to include it in the determination of maximum demand. In this regard the following is relevant from the order dated 05.10.17 passed by the Central Commission:

"20. In view of the above, it cannot be said that SAIL-BSP uses the Inter State Transmission system of either the PGCIL or any other licensee or for that matter even the Intra State Transmission system of CSPTCL or any other distribution system for supply of power from NSPCL to SAIL-BSP. As regards the power supply by CSPDCL, the same is in pursuance to contract demand by SAIL-BSP, namely, as HT consumer. WRLDC does not dispute that till date there has been no claim for transmission charges against SAIL-BSP for any use of ISTS. The claim made by WRLDC is only for adjustment for transmission losses, while there has been no claim for transmission charges. Further, the HT consumer is not concerned with either the Inter or Intra State Transmission system through which the power is conveyed up to Khedamara substation from where CSPDCL as a distribution licensee supply electricity to SAIL-BSP. There is also no supply of power procured by SAIL-BSP from NSPCL to any third party including CSPDCL as the Khedamara sub-station of CSPTCL."

- b) that in the proceedings before the Central Commission a schematic diagram was placed in regard to different power flows connected to NSPCL's generating station. This has been taken note by the Central Commission in the order dated 05.10.17 at para 19.

"19. Let us consider the case of the petitioner in the light of the correct flow diagram submitted by WRLDC and relied upon by Chief (Engg) in his report. The said diagram is extracted below. NSPCL is delivering the electricity to SAIL-BSP through 4 nos. dedicated

line of BSP. The metering/accounting for same is done by WRLDC as point "A". NSPCL's energy is scheduled to BSP at point "A". At the same point A, the drawal of SAIL-BSP is scheduled which implies that the sale and purchase power takes place at the same time without using any ISTS.

.....

Further, SAIL-BSP may be taking power through Khedamara - BSP line during certain load-generation scenario and the same is same is accounted at point "B" as shown in the drawing above. There may be following possibilities of power flow:

- (a) Power flows from NSPCL to SAIL-BSP and NSPCL to Khedamara.
- (b) Power flows from NSPCL to SAIL-BSP and also from Khedamara to SAIL-BSP.
- (c) Power flows from Khedamara and not from NSPCL to SAIL-BSP in the event of all the four dedicated lines between NSPCL and SAIL-BSP being under shutdown/outage.

The electricity follows the law of physics and always takes the least resistance path. Hence the electricity from NSPCL scheduled to SAIL-BSP under most of the circumstances will flow through the dedicated lines between NSPCL and SAIL-BSP rather than through Raipur (PGCIL) and CSPTCL system. Only in case of outage of all dedicated lines, the SAIL-BSP may draw its share of NSPCL through Khedamara. However, there is no such arrangement between NSPCL and SAIL-BSP that in the event of outage of all dedicated transmission lines, SAIL BSP would draw its share of power from NSPCL through the CSPTCL line. According to the Petitioner, to meet such eventuality of tripping of NSPCL's unit of outage of the dedicated transmission lines, SAIL-BSP has a contract demand of 225 MVA from CSPDCL and pays

Rs.7.7 crore per month to CSPDCL. This is an important arrangement which SAIL-BSP has done for its security against any eventuality of non supply of power by NSPCL.”

Hence it is clear that no part of the electricity supplied by NSPCL to SAIL enters in the line other than the 2x220 kV Double circuit line as shown in the map contained in Para 19 of the order of the Central Commission. SAIL is not receiving any part of NSPCL's generated power through the 400 kV line going to Raipur or through any other line reaching 220 kV sub-station at Khedamara belonging to CSPTCL for onward supply to BSP. The supply of CSPDCL to BSP against the contract demand of 200 MVA is accounted for through Khedamara Sub-station. The electricity to BSP other than those supplied against the contact demand maintained by SAIL with CSPDCL flows through any other means except through the transmission lines from Khedamara Sub-station to the BSP. SAIL has never mixed up the two electricity available, namely, one available from NSPCL and the other one CSPDCL through Khedamara sub-station of CSPTCL.

- c) that subject matter related to prayer of captive generation and captive use need to be considered in the light of the provisions of section 2(8) read with sections 9,38,39,40 & 42 of the Electricity Act, 2003 and Rule 3 of the Electricity Rules, 2005.
- d) that NTPC and SAIL had duly agreed that SAIL will be the captive user of the electricity from the generating units established by NSPCL. In the present case, there is no other captive user of electricity generated by NSPCL. It was always intended that the two generating units established by NSPCL will be primarily and essentially provide electricity to SAIL in connection with the manufacture of steel etc. In this regard the following provisions of the PPA dated 1.2.2008 entered into between NSPCL and SAIL are relevant:

"AND WHEREAS NSPCL is setting up (2x250 MW) coal fired Captive generating plant at Bhilai in Durg district of Chhattisgarh State primarily for captive use of SAIL including its other units hereinafter referred to as Bhilai Captive Thermal Power Project ("Bhilai Project") and generally referred to as "Generating Station" to be owned and operated by NSPCL.

AND WHEREAS as the total capacity of Bhilai Project is proposed to be allocated to SAIL,(BSP) and other Bulk Power Beneficiaries in accordance with the allocation as mentioned in clause 2.1 and all the beneficiaries are collectively referred to as Bulk Power Beneficiaries."

- e) that section 2(8) of the Electricity Act, 2003 defines 'Captive Generating Plant' as a power plant set up by any person to generate electricity primarily for his own use. The first part of the definition deals with individual, captive user, the second part deals with group (more than one) captive user. There may be issues of group captive user such as proportionality of consumption, change of captive user from time to time et, which have no bearing what so ever in present case. SAIL is an individual captive user. Also Rule 3 of the Electricity Rules, 2005 provides for the requirements to be satisfied for captive generating plant and captive use. In this rule also the broad categorisation of individual user and the group captive user have been brought about. Again in so far as present case is concerned, there is only an individual captive user i.e. SAIL, which has been the captive user from the beginning.
- f) that Rule 3 (a)(ii) state that '*not less than 51% of the aggregate electricity generated in such plant determined on annual basis is consumed for captive use.*' Thus, the consumption has to be considered on annual basis. Also in terms of clause (b) of Rule 3(1) if a generating station has been established by a company as a special purpose vehicle (in the present case NSPCL is the special purpose vehicle), one unit or both the units can be identified for captive use. The option is given in the said rule for considering only one

unit and not the entire generating station to qualify as a captive power plant. In other words, one generating station of NSPCL can be considered as a captive power plant or both the units of 250 MW can be considered as a captive power plant.

- g) that neither the Commission in suo-motu P.No.27 Of 2015 in the matter of M/s Salasar Steel & Power Ltd., and Hon'ble APTEL in Appeal No. 252 of 2015 had proceeded the case on the basis that the captive generation units were required to be identified at the beginning of the year and, therefore, the two units of 15 MW and 65 MW should be considered together as a Captive power plant with reference to which requirements of Rule 3 are to be satisfied. If the Commission and the Hon'ble APTEL were to proceed on the basis of non-identification of the captive generating units in advance itself disqualifying Salasar from being a captive user, it would not have been necessary to consider the other aspects of the case. In this regard, there was absolutely no necessity to consider whether Salasar Steel and Power Ltd. had disclosed in Form G or Form 1 the captive consumption from each generating unit separately and has given aggregate consumption during the relevant financial year separately. The very fact that the Commission and the Hon'ble APTEL examined the issue of whether Salasar supply bifurcated and separate details of generation and consumption vide the forms prescribed and approved by the Commission to CEI, Chhattisgarh establish that the consideration of captive use with respect of one unit or both the unit was done at the end of the financial year and not at the beginning of the financial year.
- h) that it would be preposterous on the part of CSPDCL to claim that SAIL will be engaging in gaming if the generating unit/units are not identified for captive use at the beginning of the financial year. SAIL has the privilege of considering one generating unit or both the units as captive generating unit(s) based on consumption from year o year. It is the case of SAIL exercising its options or privilege vested under

the Electricity Rules. SAIL is not attempting to make any extra or windfall gain in the process of identifying the captive generating units. The exercise of option of treating either one generating unit or both the generating units based on the actual consumption of electricity by SAIL cannot be any stretch of imagination can be said to be gaming.

- i) that from the circumstance mentioned Commission may be pleased to:
 - i. Forthwith prohibit CSPDCL from including any part of the quantum of electricity sourced by SAIL from NSPCL and conveyed through the dedicated line without the use of the inter-state or intra-state lines of any licensees to be considered for determining the maximum demand. The Commission should declare that CSPDCL shall forthwith not be entitled to recover and SAIL will not be required to pay the demand charges.
 - ii. Decide on the captive generation and captive use of electricity considering the submissions.

Commission's View

8. The petitioner SAIL has pleaded that they are entitled to be treated as captive user for electricity generated and supplied by NSPCL as per declaration to be filed by SAIL at the end of each financial year identifying either a single unit or both the units to be considered for supply of electricity for captive use of SAIL so long the condition of 51% of the consumption specified under Rule 3 is satisfied with regard to one unit or with regard to the generating station as a whole comprised of two units of 2 X 250 MW each. The Electricity Rules, 2005 prescribe the requirements of captive generating plant. Para 3 of this Rule is reproduced below:

"3. Requirements 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 cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the co-operative society:

Provided further that in case of association 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 plant 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 (s) 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;*

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

- 9.** The Rules are very clear. The power plant owner has to identify in advance that it's which generating unit or units in aggregate shall be utilised for captive use. It is not open and there is no flexibility for power developer to declare their generating unit or units in aggregate as captive generating unit after the completion of financial year. Honourable Tribunal in their judgement dated 30/04/2013 in Review Petition No. 2 of 2013 in Appeal No. 137 of 2011 has observed that a captive consumer may indulge in gaming and identify any unit as captive depending upon its own consumption during the relevant year. Such an arrangement would frustrate the very purpose of issuance of Rule 3 of Electricity Rules 2005. Accordingly, the first prayer is rejected.
- 10.** The second prayer of petitioner is that power supply from NSPCL to SAIL either from one unit or from both units and irrespective of whether such supply qualifies for captive use or not shall not be considered as deemed drawl from CSPDCL for purpose of computing maximum demand. NSPCL is supplying power to SAIL BSP directly through its dedicated lines. A retail consumer requiring power approaches distribution licensee for its power requirement from licensee. Distribution licensee after completing all necessary formalities required under law sanctions load to its retail consumers. Such consumers, which have retail supply agreement with distribution licensee, are required to pay demand charge and energy charges as approved by the Commission for the power supplied to them by the licensee. 'Demand charge' for a billing month means a charge levied on the consumer based on the billing demand. In this case, CSPDCL is billing demand charges for power supplied by NSPCL to BSP which is being supplied through dedicated lines. It has to be noted that in case of power supply by NSPCL to BSP, the distribution system of

CSPDCL is not utilised. CSPDCL has referred to decision of this Commission in petition No. 17/2005. CSPDCL has stated that in case a consumer avails simultaneous supply of power from CSEB (CSPDCL) in this case and CPP, it is not possible to segregate these two sources of supply and thus a set off on the contract demand is not justified. The submission of CSPDCL cannot be agreed. The order passed in petition No. 17/2005 refers to a case where a consumer coexist as a retail consumer and also an open access consumer and the where the lines of distribution licensee is used for supplying power of both sources. One, from distribution licensee and second as an open access consumer (from power other than distribution licensee). In this case NSPCL is supplying power directly to BSP through its dedicated lines. BSP in fact has a separate retail supply arrangement from CSPDCL and they are availing power from this arrangement for which they are already paying demand charges. But the supply of power by NSPCL to BSP is not through CSPDCL distribution system. Also, CSPDCL is not supplying power to BSP by using NSPCL dedicated line. So the question of segregation of NSPCL power and CSPDCL power does not arise in this case. Both are different arrangements. In support of their arguments, CSPDCL has also quoted intra -state ABT regulations. In the ABT Regulations there is provision that actual power drawn shall be first set off with contract demand of with distribution licensee and the drawal in excess of contracted demand with distribution licensee will be considered to be supplied through Open Access. The ABT Regulations intends to consider demand charges for billing by distribution licensee firstly, for an arrangement where distribution lines and system is utilised for supply of power as retail supply and open access supply simultaneously. Here, in case of NSPCL, power supply to BSP is through dedicated lines of NSPCL and distribution licensee system is not used and also CSPDCL is not supply power from the dedicated lines of NSPCL to BSP. In light of above analysis, it is unambiguous that power supply from NSPCL to SAIL BSP should not be considered as deemed drawl from CSPDCL and accordingly demand charges should not be billed for supply of power by NSPCL to SAIL BSP. The second relief sought by petitioner is allowed.

- 11.** The third issue which has been brought up for consideration by petitioner is that cross subsidy surcharge should not be billed for consumption by SAIL BSP for power availed from NSPCL so far as the consumption qualifies as captive use under the Electricity Rules, 2005. NSPCL has two generating units. Unit 1 has been identified as captive generating unit and unit 2 is identified as generating unit. The power supply from unit 1 of NSPCL has to be considered as captive use if the captive generating unit and thereby its captive use meets the requirement of captive generating plant as prescribed in Rule 3 of the Electricity Rules, 2005. However, the power supply from unit 2 of NSPCL has to be considered as power supply to consumer and cross subsidy surcharge is applicable for the consumption by BSP from NSPCL second generating unit. Petitioner has submitted that CSPDCL is billing demand charges and cross subsidy surcharge both for power supply from NSPCL unit 2. Cross subsidy surcharge is compensatory charge to be recovered from consumer who avail supply from other than distribution licensee. When CSPDCL considers power supply from NSPCL unit 2 to BSP as power supply from other than distribution licensee and recovers cross subsidy surcharge on this consumption then treating this power supply as deemed drawl from CSPDCL for the purpose of billing demand charges is not permissible. Accordingly, demand charges should not be billed for power supply by NSPCL to SAIL BSP. However, cross subsidy surcharge shall be billed on consumption by BSP from NSPCL power generating unit 2.
- 12.** On the fourth issue, the petitioner seeks relief that CSPDCL should consider maximum demand only in regard to the quantum of power supplied by CSPDCL to BSP SAIL against sanctioned load by CSPDCL and not for any quantum of electricity availed by SAIL BSP from NSPCL. This issue has already been deliberated above in detail in **Para 10**. CSPDCL is entitled only to bill maximum demand charges to BSP only in respect to sanctioned load in retail supply arrangement and power supply from NSPCL to BSP SAIL should not be factored for computing maximum demand. The fourth relief sought by petitioner is allowed.

13. The petitioner has claimed interest on amount collected from SAIL BSP for period 2015-16, 2016-17 and 01/04/2017 onwards. The issue raised in this petition has arisen due to misinterpretation of applicable provisions of law by CSPDCL. Now as the issues has been deliberated and clarified it may not be proper to impose interest amount on CSPDCL. However, CSPDCL is directed to rectify the bills of SAIL BSP in accordance with this order within 45 days from issue of this order. Future billing should also be done in accordance with this order.

14. Conclusions:

- a) NSPCL has to identify in advance that its which unit has to be considered as captive generating unit.
- b) Demand charges should not be billed on power supplied by NSPCL to BSP SAIL. CSPDCL should consider the maximum demand only with regard to the quantum of electricity actually supplied by CSPDCL to BSP SAIL against the contract demand maintained by BSP under the agreement with CSPDCL and not for quantum taken by BSP from NSPCL. The demand charges should be billed as specified in the applicable retail tariff order
- c) Cross subsidy surcharge should be billed on consumption by BSP from NSPCL power generating unit which has not been identified as captive generating unit. Cross subsidy surcharge should not be billed on consumption from NSPCL unit identified as captive generating plant.
- d) The bills of BSP SAIL be rectified in accordance with this order within 45 days from issue of this order.

Sd/-
(ARUN KUMAR SHARMA)
MEMBER

Sd/-
(NARAYAN SINGH)
CHAIRMAN