



Chhattisgarh State Electricity Regulatory Commission

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Petition No. 37 of 2009 (M)

In the matter of declaration of generation plant as a captive generation plant – to review order dated 25.05.2009 passed in suo motu petition No. 17 of 2008 (M)

M/s Jayaswal Neco Industries Ltd. Petitioner
Siltara Growth Centre, Raipur

V/s

Chhattisgarh State Power Distribution Co. Ltd Respondent
Raipur. (successor to Chhattisgarh State
Electricity Board)

Present: Manoj Dey, Chairman
B.K. Sharma, Member

ORDER

(Passed on 05.12.09)

M/s Jayaswal Neco Industries Ltd (JNIL, for short) filed a review petition to review this Commission's order dated 25.05.09 passed in suo motu petition No. 17 of 2008 (M) on the ground that certain errors apparent on record are observed which necessitated them to approach this Commission for review of the said order. The history of the case is that the JNIL has a generating plant of 14 MW capacity (with 3 Gen sets, two of 4 MW each and one of 6 MW). The total generation of this plant during the year 2007-08 was 101.31 MU and the total consumption in the industry of the JNIL was only 38.34 MU. Even after auxiliary consumption of 10.13 MU is deducted from the total generation, the total self-use of the electricity generated by the CGP comes to only 41.68% of net generation, which is below the mandatory requirement of 51% to arrive the status of captive generating plant (CGP, for short). In their reply to petition No. 17 of 2007 (M) JNIL pleaded that it holds more than 31% of the paid up capital of another company namely, M/s Maa Usha Urja Ltd. (MUUL, for short). The total generation of the power plant of MUUL during the year 2007-08 was 54.23 MU and the use by the JNIL's industry was 53.53 MW (nearly 99%). The JNIL's plea was that if the electricity generated by these two generating plants i.e. JNIL and MUUL is combined, then the consumption of JNIL comes much more than 51% of combined generation. The JNIL therefore pleaded that the power plant of

JNIL should be treated as CGP on that basis. It was observed by this Commission that MUUL was a different company and while on the basis of shareholding of MUUL by JNIL (to the extent of 31.63%), the power plant of MUUL can be treated as a CGP for JNIL and the benefit of consumption of electricity generated by MUUL can go to JNIL, but it can not be combined with the consumption of electricity generated by another plant. Thus, JNIL's consumption of its own generating plant found admittedly far short of the requirement, reckoned on an annual basis, as required under Rule 3 of the Electricity Rules, 2005 (Rules, for short). The entire generation of the CGP of JNIL was therefore treated as supply of electricity by a generating company and not by a CGP.

2. The petitioner of this petition in its petition has mentioned that during the course of hearing in petition No. 17 of 2008 (M) it was requested that there was an error in submission of allocation of exported units by JNIL and the corrected allocation of units exported by JNIL was also submitted but the same was over-looked while deciding the case. Based on the revised allocation of exported units by JNIL the captive consumption of JNIL during the year 2007-08 comes out to 62.3% and hence the JNIL fulfills the condition of being CGP. It was further explained by the petitioner that 7.5 MW generator of MUUL is running in parallel with generators of aggregated capacity of 14 MW of JNIL and after self-consumption from the combined generation, balance units are exported to grid. Previously, while submitting the generation/consumption report, by error all the units generated by MUUL was shown as consumption in JNIL and all the exported units to grid was shown as exported from JNIL on account of which the captive consumption of JNIL was reported as 41.68% which resulted not fulfilling the criteria of 51% consumption by JNIL to be a CGP. Since, both the plants are running in parallel it is not logical to allocate all exported units from JNIL. The petitioner thus prayed that implementation of order dated 25.05.09 may be kept on hold till decision of this review petition, and based on revised data JNIL may be treated a CGP for the year 2007-08. In its additional submission dated 19.08.09 the petitioner has further stated that earlier they have considered auxiliary consumption of the power plant of JNIL as 10% and now they arrive the actual auxiliary consumption of the power plant of JNIL as 12.46%. It is further pleaded by the petitioner that since the power plant of MUUL is situated in the vicinity of JNIL they decided to lease out the power plant of MUUL to JNIL so that the generated power of MUUL may be captively consumed by JNIL. Subsequently, 31.63% share of MUUL was purchased by JNIL to reinforce the claim of captive user. It is further stated that the CSPDCL is charging parallel operation charges for MUUL power plant, it clearly indicates that CSPDCL has recognized the power plant of MUUL as CGP of JNIL. It is further stated that there was a lapse on their (this petitioner) part to bring the above factual position to the notice of this Commission in their submission under the proceedings of suo motu petition No. 17 of 2008 (M). This new fact has a major bearing on the decision of the Commission, and therefore is a sufficient ground to consider the review of this Commission's order dated 25.05.09 as per provisions of CSERC (Conduct of business) Regulations, 2004. The

petitioner in its rejoinder dated 09.09.09 has submitted the details of arriving 63.66% consumption by JNIL as follows (earlier reported 62.3%):

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|-------|--|--|
| (i) | Total captive generation capacity of JNIL :
(including MUUL) | 21.5 MW |
| (ii) | Total generation in the FY 2007-08
out of above capacity | : 162.53 MU |
| (iii) | Aux. consumption of all the generating units:
Including MUUL | 17.12 MU |
| (iv) | Net generation available for consumption :
(ii-iii) out of (ii) | 145.41 MU |
| (v) | Total export from JNIL to CSEB in the FY :
2007-08 | 52.84 MU |
| (vi) | Total captive consumption of available :
(iv-v) generation for consumption as given at (iv) | 92.57 MU (this was stated
88.07 MU earlier) |
| (vii) | % captive consumption of the net available :
Generation for consumption (92.57/145.41) | 63.66% (this was stated
62.3 earlier) |

It is further pleaded by the petitioner that the Commission unfortunately even after acknowledging the fact as mentioned above concluded that the generation of MUUL cannot be combined with JNIL despite qualifying as CGP, and no reason given in the order regarding arriving at such conclusion. Therefore, it is essential to re-examine the facts and consider to decide it judiciously.

3. The respondent in its reply stated that the petitioner has stated certain facts and brought some documents into the notice of the Commission to pursue their claim for revision of the impugned order. In fact these facts were already brought to the knowledge of the Commission and the Hon'ble Commission has considered all these facts while passing the order dated 25.05.09 under suo motu petition No. 17 of 2008(M). It has already been stated in para 2 (1) of the impugned order that "the power plant of MUUL can be treated as a CGP of JNIL and the benefit of consumption of electricity generated by MUUL can go to JNIL but it cannot be combined with the consumption of electricity generated by another plant." Therefore with such a finding there is no justified reason available to consider the same facts otherwise for modification of the original order under this review. It has been confirmed by the respondent that no power purchase has been undertaken from MUUL by CSPDCL. On inquiry by this Commission the respondent further submitted that the total 53.23 MU of electricity was purchased by CSEB (now CSPDCL) from JNIL during the year 2007-08.

4. The petitioner in its further rejoinder has pleaded that objection of the respondent regarding non-availability of any justified reason for modification of the original order is not correct. Earlier they could not brought the fact to the notice of the Commission about the leasing out of 7.5 MW power plant of MUUL to JNIL which is the key point having pivoted bearing on the case to decide the captive status of power plant of JNIL, and the Hon'ble Commission has jurisdiction and powers to undertake the review of its own orders in case certain new facts which

have bearing on the decision which were not noticed for any reason during the original proceedings. It is further stated in the rejoinder that they would like to clarify that MUUL is a company which has no concerned in the matter and it is the only JNIL whose captive status of power plants is under consideration and to be decided for the year 2007-08. MUUL is definitely a company in existence but has no direct relationship with the petitioner company JNIL, except having 31.63% share holding of the latter in the former. After leasing out the power plant of MUUL to the JNIL this share holding of 31.63% carries no meaning because MUUL at present having no asset and the only asset earlier available with the company i.e. power plant has been leased out to JNIL due to which the petitioner company JNIL is now having complete ownership on the power plant of MUUL. Therefore the consideration of limited share holding as of now by JNIL into MUUL is an erroneous consideration.

5. After completion of hearing and closing of the case for order, and before order was passed, the petitioner further submitted application for amendment in the petition stating that the case of Monnet Ispat and Energy Ltd. (MIEL, for short) in petition No. 06 of 2007 (M) is analogous to the facts of their case where ownership has been acquired through the lease deed. In para 7 of the order dated 28.11.07, this Commission has stated "MIEL which fully owns the CGP and has also taken over the manufacturing activity of MIL through a lease agreement is using the same. Thus the power being used is for the purpose of own use of MIEL only. Therefore, the question of application of the requirements laid down in Rule 3 does not arise in this case. The fact that MIEL is a separate company is of no consequence of the matter of the captive use by MIEL of the electricity generated by it." It is further pleaded by petitioner that conclusion derived by this Commission in the case of MIEL may be made applicable in their case also for deciding the captive status of JNIL for the year 2007-08. We have gone through our order dated 28.11.07 on the petition No. 06 of 2007 (M) referred by the petitioner which relates to the petition filed by MIEL, Mandir Hasaud for declaring the ferro alloys manufacturing unit in the premises of Monnet Industries Ltd. (MIL, for short), Urla Industrial Area, Raipur leased in their favour as a captive consumer in terms of provision of section 9 of the Electricity Act, 2003 (the Act) for the purpose of obtaining open access to the wires of Chhattisgarh State Electricity Board (CSEB or Board, for short) by taking power from its captive power plant at Mandir Hasaud to the premises of MIL in Urla Industrial Area, Raipur. The quoted reference by the petitioner of para 7 of our order dated 28.11.07 actually relates with the issue as to whether the qualifications laid down in Rule 3 of Rules for a captive generating plant should be applied in this case. The respondent in that petition contended that MIL is a separate company and does not hold 26% of ownership of the power plant and does not use 51% of aggregate electricity generated in such plant to qualify it as a captive user. The Rule 3 of the Rules states as follows "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 26% of the

ownership is held by the captive user(s) and (ii) not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.” Here the entire collocated load and the leased ferro alloy load and generating plant are owned by the MIEL hence total consumption of leased ferro alloy load including collocated load will be self-consumption and it appears that on this basis it has been contended in this order that the condition of 26% share holding and 51% consumption as per Rule 3 of the Rules will not be applicable. We have observed that the petition No. 06 of 2007 (M) is related with dispute of declaring a load owned by generating plant on leasing situated at a different location as a captive load of the generating plant, whereas the present petition relates with qualifying the criteria of CGP by a generating plant supplying power to its collocated load and part of its collocated load is also supplied by another leased generator i.e. the case of petition No.06 of 2007 (M) relates with status of CGP of a generator supplying two different loads, and the instant case relates with status of CGP of a generator feeding common load with another generator. In our order dated 25.05.09 we have mentioned that “MUUL is a different company and while on the basis of share holding of this company (to the extent of 31.63%) the power plant of MUUL can be treated as CGP for JNIL and the benefit of consumption of electricity generated by that company can go to the JNIL.” This situation does not change even the MUUL is leased out by JNIL, as the JNIL already have more than 26% share holding of MUUL and in both the cases (i.e. leasing of power plant of MUUL to JNIL and/or holding 31.63% share of MUUL by JNIL) benefit of consumption of electricity generated by MUUL can go to JNIL, which has already been accepted by this Commission in our order dated 25.05.09. We therefore concluded that both the cases are not analogous and thus decided to finalize the case based on proceedings already carried out before closing for order.

6. We have gone through the petition and the rejoinders submitted by the petitioner, the replies by the respondent and the arguments in length and have observed that the petitioner has requested for review of impugned order dated 25.05.09 on following grounds:

(1) While submitting generation/consumption report by error all the units generated by MUUL was shown as consumption in JNIL, and all the exported units to grid was shown as exported from JNIL. Subsequently the revised statement was submitted to the Commission but the same was over-looked while deciding the case.

(2) The auxiliary consumption of the power plant of JNIL was reported as 10% which is actually 12.46%, as per their record.

(3) Earlier they could not brought the fact to the notice of the Commission about leasing out of 7.5 MW power plant of MUUL to JNIL which is the key point to decide the captive status of power plant of JNIL.

We have observed on aforesaid points that as reported by respondent CSPDCL the JNIL has supplied 53.23 MU to CSEB (the predecessor of CSPDCL) during the year 2007-08 under the agreement

and no energy has been supplied by MUUL to CSEB so far including the period 2007-08. Since the generating plants of JNIL and MUUL are running in parallel combinely connected with the load of JNIL and the grid, and only JNIL had agreement with CSEB to supply energy, hence it concludes that net energy generated by power plant of JNIL after supply to the grid is consumed by the load of JNIL, so also total energy available from power plant of MULL is consumed by load of JNIL. It is to mention here that the flow of energy occurs by displacement method under the laws of physics and accounting of energy is based on metering as per agreement. As an example if a generator connected to a State grid supplies energy out side the State under inter-State open access, the energy supplied by the generator to the State grid would be consumed by near by loads and the energy transmitted out of State may be from any other generator, but such energy will be accounted under the credit of the generator supplying under inter-State open access. Here the energy generated by JNIL is reported as 101.31 MU and even after considering 12.46% auxiliary consumption the balance energy available for use comes out to 88.69 MU and accounting for supply of 53.23 MU to the CSEB by JNIL the balance 35.46 MU energy is considered to be used by the load of JNIL i.e. for self-consumption purposes. Accordingly, the self-consumption out of the energy generated by power plant of JNIL comes out to 39.98%. Thus, the power plant of JNIL does not fulfill the criteria of CGP. Therefore, the generation/consumption statement submitted earlier by the petitioner was considered in order and subsequent submission of the revised statement was not accepted by the Commission while deciding the case under petition No. 17 of 2008 (M). The reason of change in percentage of auxiliary consumption now from 10% to 12.46% of the generating plant of JNIL is also not convincing as it is only stated that 12.46% is actual auxiliary consumption. However, even by considering 12.46% auxiliary consumption the status of power plant of JNIL does not change as stated above. Regarding submission of the petitioner that they could not brought the fact to the notice of the Commission earlier about the leasing of 7.5 MW power plant of MUUL to JNIL, the fact is that this petitioner has submitted in reply to petition No. 17 of 2008 (M) that the JNIL is holding 31.63% of the share of MUUL. We have stated in previous para that since the JNIL already have more than 26% share holding of MUUL the benefit of consumption of electricity generated by MUUL can go to JNIL in both the cases, and non-bringing the fact of leasing out of power plant of MUUL to JNIL will have no effect as JNIL has already having 31.63% share holding of MUUL. The petitioner has alleged that unfortunately even after acknowledging the fact related to revised statement, the Commission concluded in its order dated 25.05.09 that the generation of MUUL cannot be combined with JNIL and no reason given in the order regarding arriving such conclusion. We further here clarify that after supply of 53.23MU energy by the power plant of JNIL to the CSEB the balance generated energy available from the power plant of JNIL was consumed for self by JNIL for its load, and hence it does not fulfill the criteria of more than 51% consumption as per Rule 3 of the Rules. In the revised statement of generation/consumption the petitioner had pleaded

that by combining the energy generated by power plants of JNIL and MUUL after deducting their auxiliary consumption and deducting the energy supplied to the CSEB from combined generation, the balance energy is consumed by the load of JNIL and thus by this calculation consumption of load of JNIL comes more than 51% of combined generation of both the generators. In case the generation of both the generating plants are combined after auxiliary consumption and deducting the total consumption by JNIL as pleaded by this petitioner, the part of 53.23 MU energy supplied to CSEB will also come out as supplied by MUUL which is not the fact as the entire 53.23MU energy was supplied by the power plant of JNIL to the CSEB under the contract and no energy was supplied from power plant of MUUL to CSEB and hence the consumption of both the generators cannot be combined to arrive the captive status of power plant of JNIL. We would also like to mention here that the petitioner in its subsequent rejoinder dated 29.09.09 has clearly stated that they would like to clarify that MUUL is a company which has no concerned in the matter and it is the only JNIL whose captive status of power plant is to be decided for the year 2007-08. We have also proceeded accordingly to arrive to the captive status of the power plant of JNIL independently by considering its captive consumption after deducting the energy supplied to the CSEB from its own generation i.e. generation from JNIL.

7. Looking to all above facts we are of the view that there is neither any mistake on the face of the record nor the petitioner has submitted any new fact which may affect the decision of the impugned petition and therefore we do not find any substance in the review petition for review of our order dated 25.05.09 passed in suo motu petition No. 17 of 2008 (M) and therefore we dismiss the petition. The petitioner have been found frequently changing its own submission without giving any proper justification of revision. The submission under affidavit is expected to be after proper verification and supposed to be true and based on the facts. We have considered all the submissions of petitioner only in order to provide the natural justice. We, therefore, would also like to direct the petitioner to verify the factual position before submission and refrain in future from such activities.

Sd/-
Member

Sd/-
Chairman

True Copy

(N.K.Rupwani)
Secretary