



Chhattisgarh State Electricity Regulatory Commission

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In the matter of treatment of generation by captive generating plants which fail to qualify as CGP in any year

Suo motu petition No. 17 of 2008(M)

M/s Jayaswal Neco Industries Ltd, Raipur ... Respondent No.1
M/s Corporate Ispat Alloys Ltd., Raipur ... Respondent No.2
M/s Ind Synergy Ltd., Raigarh ... Respondent No.3

**Present: S.K.Misra, Chairman
B.K.Sharma, Member**

ORDER

(Passed on 25.5.2009)

Rule 3 of the Electricity Rules, 2005 (hereinafter, 'the Rules') lays down the requirements of the captive generating plant (CGP). In order to qualify as a captive generating plant under section 9, read with clause (8) of section 2 of the Electricity Act, 2003 (hereinafter, 'the Act'), a power plant is required to have (i) not less than 26% of its ownership held by the captive users; and (ii) not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, consumed for the captive use. The Rules further provide that the captive users are obliged to ensure that the captive consumption criterion as 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.' Therefore, in order to ensure that a generating plant is a captive generating plant, the captive consumption needs to be monitored on an annual basis. The Commission has entrusted this task to the Chief Electrical Inspector (CEI), Government of Chhattisgarh. On the basis of information received from the CEI regarding self-consumption of electricity generated by the captive generating plants, for the year 2007-08, it came to the notice of the Commission that three CGPs, namely, M/s Jayaswal Neco Industries Ltd., Raipur, M/s Ind Synergy Ltd., Raigarh and M/s Corporate Ispat Alloys Ltd, Raipur, do not fulfill the self-consumption criterion as above and hence do not qualify to be CGPs. Notices were issued to the three respondents as to why they should not be proceeded against

under section 142 of the Act for violation of the provision of sections 10 and 12 of the Act and this joint case under section 142 of the Act was instituted against the three respondents on the basis of such notices.

2. We have heard the respondents and have considered the replies filed by them. The case of each of the respondent is discussed below:

(1) M/s Jayaswal Neco Industries Ltd., Raipur (JSNIL): This company has a CGP 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 company 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% which is below the mandatory requirement of 51%. In their reply JSNIL has pleaded that it holds more than 31% of the paid up capital of another company namely, Maa Usha Urja Ltd. The total generation of the CGP of the latter during the year was 54.23 MU and the use by the JSNIL's industry was 53.53 MW (nearly 99%). The company's plea is that if the self-consumption by JSNIL's industry, of the electricity generated by these two CGPs is combined, then the total consumption is much more than 51%. The respondent has therefore pleaded that the power plant of Jayaswal Neco Ltd. should be treated as a CGP on that basis. It is to be noted that Maa Usha Urja Ltd. is a different company and while on the basis of shareholding of this company (to the extent of 31.63%), the power plant of Maa Usha Urja Ltd can be treated as a CGP for JSNIL and the benefit of consumption of electricity generated by that company can go to JSNIL, it can not be combined with the consumption of electricity generated by another plant. JSNIL's consumption of its own CGP falls admittedly far short of the requirement, reckoned on an annual basis, as required under Rule 3 of the Rules. The entire generation of the CGP of JSNIL has, therefore, to be treated as supply of electricity by a generating company and not a CGP. We have held in our order passed on 27.11.08 in suo motu petition No. 14 and 15 of 2008 (M), in the case of M/s Salasar Steel and Power Ltd. and M/s Abhijeet Infrastructure Ltd., that 'supply of power to an industry of a company from its generating plant, not being a CGP, without a licence under section 12, or without availing open access under section 42 of the Act, constitutes a violation of the provisions of the Act. There is no provision in the Act for a generating plant being set up by a company for its own use except in the category of a CGP.' We have also held in that case that although there

is no provision for a generating company to supply electricity to an industry except through open access, in case of a CGP being rendered a generating plant in any year, on account of its non-fulfillment of the self-consumption criterion mentioned above, this should be regularized through payment of cross-subsidy to the distribution licensee in whose area of operation the industry is located. We have held thus: "We, therefore, hold that cross-subsidy as determined by this Commission in relevant tariff orders should be paid by the company for use of electricity generated by its power plant in all such cases as denial of use of electricity generated to the industry could not be appropriate, this should appear to be the logical solution to us". This above order applies to this case also and there is no ground for any deviation in this order in its application to this case. We, therefore, order that JSNIL shall pay cross-subsidy surcharge at rates prevailing in the year 2007-08 for its entire consumption in JSNIL's steel industry in that year to the distribution licensee being the Chhattisgarh State Power Distribution Company Ltd., the successor to the erstwhile Chhattisgarh State Electricity Board.

(2) M/s Corporate Ispat Alloys Ltd, Raipur: This company has a power plant of 15 MW capacity. The plant started commercial production in July' 07. The total generation from July' 07 to March' 08 was 29.17 MU. After taking into account the reported auxiliary consumption of 4.57 MU, the balance power available for use was 24.60 MU. Out of this only 5.85 MU i.e. 24% has been used in the company's industry while the remaining 76% has been sold to the then CSEB. Our order as above in respect of JSNIL shall therefore be applicable to this case also. The company shall pay cross-subsidy surcharge at rates prevailing in that year to the distribution company for the entire consumption during the year 2007-08 in its industry, on the grounds mentioned above.

(3) M/s Ind Synergy Ltd., Raigarh: M/s Ind Synergy Ltd. has a sponge iron plant (3X350 TPD), induction furnaces of 6 tonsX2 capacity, and a CGP of 24 MW capacity with 3X8 MW of waste heat recovery boilers. The total net generation reported by the CGP of this company during 2007-08 was 56.27 MU while the self-consumption in the industries of the company 27.82 MU, which comes to 49.44%, a shortfall of about 1.5% to be qualified as a CGP. The company has pleaded that there was a major breakdown in one of its steel units (the steel melting shop) during the period from Sep'07 to Feb'08. Due to prolonged technical problems the operation of the steel melting shop could not be restored quickly. It could be restored only in

the month of Feb'08. The company has produced documents in support of the breakdown of the plant and the efforts made to revive it. From the data of self-consumption provided by the company it is observed that the consumption was much more than 51% (ranging between 68.40 to 78.22% during the months of the year except from Sep'07 till Feb'08). In Jan' 08 it was as low as 2.13%. The low consumption during these months brought down the annual average consumption to below 51%. The company has made two submissions: the first that their self-consumption has always been more than 51% ever since the power plant was set up, but for the six months in the year 2007-08 and for the reason of closer of their steel plant. Secondly, it has been submitted that since the power plant is based on recovery of waste heat from the sponge iron plant, they could not have backed down the generating plant as the sponge iron plant continued its operation during the above period. Backing down the power plant would have been a national loss and would have also deprived the CSEB for additional power availed by it from this plant.

3. We have gone through the data submitted by the respondent, the self-consumption from this power plant during the year 2004-05 was 98.53%, in 2005-06, 96.16% and in 2006-07, 88.19% during the current year also the consumption has been only 70% up to Nov' 08. We also observed that during this period the auxiliary consumption of the plant was reported to be as high as 17.49%. Normally such consumption should be around 10%. The respondent has got a study conducted through a consultant and has now submitted under affidavit that his auxiliary consumption was 12.32% and not 17.49%. There was an error in calculation. With auxiliary consumption at 12.32% level, the captive consumption goes up to 52.42%. In view of the copious data submitted by the respondent, we have no reason to doubt these figures. We are convinced that this is a CGP and there has been a minor shortfall if at all, in its consumption during the year because of breakdown of in its industry. We therefore close the case against this respondent.

We order accordingly.

**Sd/-
Member**

**Sd/-
Chairman**