



Chhattisgarh State Electricity Regulatory Commission

Civil Lines, G.E. Road, Raipur – 492001

Tel: 0771-5073555, Fax-5073553

Petition No. 25/2005(M)

M/s Shri Bajrang Power and Ispat Ltd

..... Petitioner

V/s

Chhattisgarh State Electricity Board

..... Respondent

ORDER **(Passed on 14.10.05)**

M/s Shri Bajrang Power and Ispat Ltd (SBPIL, for short) has submitted a petition to the Commission for providing open access and wheeling of power through the transmission system of the Chhattisgarh State Electricity Board (CSEB, for short) for captive use by their sister concern M/s Shri Bajrang Metallics and Power Ltd (SBMPL, for short). SBPIL has a sponge iron plant in village Borjhara near Raipur. It is setting up a captive generation plant (CPP) of 18 MW capacity near the industry. The company had applied to the CSEB for permission to wheel 19 lakh units, corresponding to 13 MW, to SBMPL and the CSEB has agreed for such an arrangement vide their letter No. 02-02/SE-I/SBPIL/3040 dated 14th March, 2005. The company had then informed the CSEB that it holds leasehold rights of the plant and machinery of SBMPL. In its petition the company has now submitted that SBMPL holds 27.6% of the equity shares of SBPIL and that more than 51% of the electricity generated by the captive power plant would be consumed by them. The company has furnished the necessary details of the generation capacity of the CPP which shall be 103.68MU per annum considering 80% PLF and 300 working days. After deducting likely auxiliary consumption of 10.37MU (10%), the net units available would be 93.31MU. SBPIL which is already a consumer of the CSEB with contract demand of 2700KVA, would consume 13.22MU per annum in its sponge iron plant and would like to wheel about 54MU per annum to SBMPL through the CSEB grid; the balance energy of 26.09MU would be sold to the CSEB. As already mentioned the CSEB had already agreed to this.

2. This is an application under sec. 9(2) of the Electricity Act, 2003 (the Act) which reads as under: -

“(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility xxxxxx”

This provision confers a right on the petitioner to avail of open access subject to transmission capacity being available. That is not disputed in this case

since the CSEB had already granted permission. The only issue for consideration of this Commission is whether the consumption of CPP power by SBMPL qualifies to be 'own use' in terms of Sec.9 read with Sec. 2(8) of the Act and rule 3 of the Electricity Rules, 2005 (Rules, for short).

3. Rule 3, as above, provides that a power plant shall qualify to be a 'captive generating plant' under sec. 9 read with clause (8) of sec. 2 of the Act if -

- “(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”.

The term 'ownership' has been defined in the rules to mean equity share capital with voting rights in case of a company (Explanation 1(c) to rule 3).

SBPIL's case has to be examined in the light of the twin criteria laid down in the above rule. SBPIL has submitted a Chartered Accountant's certificate to the effect that the share capital of the company is about 9.45 crore of which SBMPL holds shares worth Rs.2.70 crore as on 30.09.05. This comes to 28.57% of the total share holding. The Chartered Accountant has also certified that SBMPL has voting rights in SBPIL. In the light of the above position there is no doubt about the ownership issue.

4. The CSEB in its return has raised the issue that since SBPIL holds leasehold right of SBMPL, the share-holding pattern now submitted raises doubts. The petitioner has clarified that the SBPIL is the leaseholder only in respect of plant and machinery of SBMPL, and not of the company as such. In any case, whether SBPIL is a leaseholder or SBMPL holds share capital in the former, the issue of ownership for the purpose of captive consumption is not open to doubt.

5. So far as consumption of CPP power is concerned, the actual consumption would be known only after the power plant has been commissioned. However, as per the planned consumption pattern indicated in the petition, the two companies would consume 67.22MU annually which almost 72% of the power generated by the captive plant. On this issue again the CSEB has contended that the consumption pattern indicated would not be in keeping with the provisions of rule 3 of the Rules. Their contention is that while SBPIL holds more than 72% of the shares of the company, its consumption would be limited to only 14.16% (13.22MU) while the consumption of SBMPL holding only 26.67% of the shares would be 57.87% (54MU). This would not be in proportion to the ownership of the power plant, within a variation of 10%, as provided in the rules. This contention is not correct as the use of power of a CPP in proportion to ownership is required only in case of a CPP of an 'association of persons' (Second proviso to sub-rule (1)(a) of rule 3 of the Rules).

6. In the light of the above discussion, the consumption of power of the CPP set up by SBPIL by their sister concern SBMPL qualifies to be treated as 'own consumption' and therefore this application falls within the ambit of sec. 9 read with sec. 2(8) of the Act and rule 3 of the Rules. The petition is accordingly accepted and the Commission allows open access to the petitioner to wheel power to SBMPL subject to the following conditions:-

- (i) The consumption of electricity by the captive users shall not be less than 51% over a financial year, and in case it is not so it would be treated as 'supply of electricity by a generating company' in terms of provision of rule 3(2) of the Rules.
- (ii) The CSEB is entitled to charge for wheeling of electricity and levy other charges as per their present rates which shall be subject to revision as per the provisions in regulations on the charges for open access to be notified by the Commission shortly.
- (iii) The company may enter into necessary agreement with the CSEB for the sale of balance power under the present terms and conditions of the CSEB, is subject to revision as per the directions of the Commission from time to time.

7. The orders as above may be communicated to the petitioner and the CSEB and the case closed.

Sd/-
Member

Sd/-
Chairman

True Copy

(N.K. Rupwani)
Secretary