



**Chhattisgarh State Electricity Regulatory Commission**  
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**Suo-Motu Petition No. 11 of 2017(M)**

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

M/s ACB (India) Ltd.  
30 MW Chakabura Power Plant,  
P.O. Jawali, Tehsil-Katghora,  
Distt. Korba (C.G.)

... Respondent

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

**APPEARANCE** : Shri M.N. Biswas for respondent.

**ORDER**

**(Passed on 17<sup>th</sup> 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 ACB (India) Ltd. is a company registered under the Companies Act. The company is operating a 30 MW Thermal Power Plant at Village-Chakabura, District- Korba, 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 plant 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 Chakabura, Korba is 30 MW and it generated 218.31 MU Electricity (net), in the year 2015-16, out of which 28.78 MU Unit was consumed for captive purpose, which is 13.18% of the net generation. Prima facie, therefore, it appears that the respondent's power plant at Chakabura 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 01<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016 i.e. FY 2015-16.
- 8.** The respondent was served with notice No. 684 dated 07.05.2017 and was asked to justify its captive status for the relevant year. In reply, dated 23.05.2017, the respondent submitted that in the FY 2015-16 the Net electricity generation of the plant was 218.31 MU and captive consumption was 29.72 MU. The Captive consumption was 13.61% of net generation. These figures mentioned in the reply were more or less the same as given by the CEI. It is submitted by the respondent that the captive consumption mentioned in the notice is less by 0.94 MU of actual captive consumption which was 29.72 MU. The respondent submits that they have been paying cross subsidy surcharge to the CSPDCL for the units consumed by their own captive load as per the CSERC Regulations. Respondent also referred Hon'ble Supreme Court's stay order dated 30.07.2010 in appeal No. 3607-3610 of 2008.
- 9.** During the course of hearing of the case on 20.07.2017, we asked CSPDCL to verify whether the respondent M/s ACB(India) Limited is paying cross subsidy surcharge? But no reply has been given by CSPDCL. Hence, we could not

find any ground on which the statement of the respondent can be disbelieved.

- 10.** On the basis of admission of the respondent, we arrive at the conclusion that the power plant of the respondent company at Chakabura 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 and the respondent paid the cross subsidy surcharge to the CSPDCL for his own captive load for the year 2015-16.

**Sd/-**  
**(Arun Kumar Sharma)**  
**Member**

**Sd/-**  
**(Narayan Singh)**  
**Chairman**