

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**Case No. 170 of 2018**

**Petition of Sai Wardha Power Generation Limited seeking declaration of Captive Status  
with respect to its 2 x 135 MW Generating Units No. 3 and 4 for FY 2017-18**

**AND**

**Miscellaneous Application Nos. 13, 14, 18, 20, 22, 24, 27, 28 of 2019 and 44 of 2020**

**Miscellaneous Application of Tata Power Company Ltd. (Distribution) seeking  
impleadment of all Captive Users in Case No. 170 of 2018 and Miscellaneous  
Applications of Eight Captive Users for impleadment in the matter**

**Coram**

**I. M. Bohari, Member  
Mukesh Khullar, Member**

Sai Wardha Power Generation Limited .....Petitioner

V/s

1. Maharashtra State Electricity Distribution Co. Ltd.
  2. Adani Electricity Mumbai Limited -Distribution
  3. The Tata Power Company Limited- Distribution
  4. Maharashtra State Load Despatch Centre .....Respondents
  5. Maharashtra State Electricity Transmission Co. Ltd. ....Impleaded Respondent
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1. Lupin Ltd.
  2. Mahindra Vehicle Manufacturers Ltd.
  3. Mahindra and Mahindra Ltd.
  4. Pudumjee Paper Products Ltd.
  5. Mahindra CIE Automotive Ltd.

6. Inox Air Products Pvt. Ltd.
  7. Mahinda Sanyo Special Steel Pvt. Ltd.
  8. Bebitz Flanges Works Pvt. Ltd.
  9. Viraj Industries
  10. Ramson Industries
  11. Ramson Casting Ltd.
  12. Asahi India Glass Ltd.
  13. ACG Associated Capsules Pvt. Ltd.
  14. Hindustan Petroleum Corporation Limited
  15. Graphite India Ltd,
  16. Facor Steel Ltd.
  17. Sona Alloys Pvt Ltd,
  18. R. L. Steel Pvt Ltd
  19. India Steel Works Ltd.
  20. Air Liquid India Holding Pvt. Ltd
  21. Orchid Chemicals and Pharmaceuticals Ltd.
  22. Spentex Industries Ltd.
  23. Hindalco Industries Ltd.
  24. Mahalaxmi TMT Private Ltd.
  25. Beakert Industries (P) Ltd.
  26. Owens Corning (I) Pvt. Ltd.
  27. AYM Syntex Ltd.
  28. Bharat Petroleum Corporation Limited
- ..... Impleaded Parties

Appearance:

- For the Petitioner : Shri Anand Ganesan (Adv.)
- For Maharashtra State Electricity Distribution Co. Ltd. : Shri Ashish Singh (Adv.)  
For Adani Electricity Mumbai Ltd. - Distribution : Shri Abaji Naralkar (Rep.)  
For Tata Power Co. Ltd. - Distribution : Smt Deepa Chawan (Adv.)  
For Maharashtra State Load Dispatch Centre : Shri E.T. Dhengale (Rep.)  
For Maharashtra State Electricity Transmission Co. Ltd. : Shri Prasad Narnaware (Rep.)
- For Inox Air Products Pvt. Ltd.  
Pudumjee Paper Products Ltd. and  
Mahindra CIE Automotive Ltd. and  
Mahinda Sanyo Special Steel Pvt. Ltd. and  
Bekaert Industries : Ms. Dipali Sheth (Adv.)
- For Viraj Industries and  
Bebitz Flanges Works Pvt. Ltd. : Shri Vijay Agarwal (Adv.)

For Mahindra & Mahindra and  
Mahindra Vehicle Manufacturers Ltd. : Shri Abhay Nevagi (Adv.)

For Lupin Ltd. : Ms. Neeta Jain (Adv.)

For Asahi India Glass : Shri T. N. Agarwal (Rep.)

For BPCL : Shri Maneesh Dixit (Adv.)

## ORDER

**Dated: 29 October 2020**

1. Sai Wardha Power Generation Limited (“**SWPGL**” or “**Sai Wardha**”) has filed a Case on 16 June 2018 under Sections 42 of the Electricity Act 2003 (**EA**) and Rule 3 of the Electricity Rules 2005 seeking declaration of Captive Status of its 2 x 135 MW Generating Units (Unit No. 3 and 4) for FY 2017-18.
2. **Petitioner’s main prayer are as follows:**
  - (a) *Hold and declare the captive generating units (2x 135 MW being Unit No. 3 and Unit No. 4) of the Petitioner have complied with the obligations attached to the captive generating units in terms of Rule 3 of the Electricity Rules, 2005 for the FY 2017-18*
  - (b) *Hold and declare that the Petitioner and its captive consumers are entitled to all benefits of CPP and captive consumption including exemption from payment of Cross Subsidy Surcharge and other related charges for the FY 2017-18*
3. **Petitioner has stated as follows:**
  - 3.1 SWPGL has established a 540 MW Generating plant at Warora, Dist. Chandrapur, Maharashtra, which comprises of four units of 135 MW each. Out of the above, 2 units of 135 MW each are designated as Captive Generating Units, primarily for supplying power to its Captive Users /Shareholders, being industrial consumer.
  - 3.2 For FY 2017-18, the Open Access (**OA**) applications of SWPGL for captive supply of electricity were once again rejected by MSEDCL. MSEDCL purported to grant the OA under Section 10 of EA as a non-captive generator, with the consequence of levy of Cross-Subsidy Surcharge (**CSS**) in the monthly bills. This was contrary to the specific directions of the Commission in the past in Case No. 62 of 2017 that the captive status can be decided only by the State Commission at the end of the year and it was not open to MSEDCL to presume the captive status at the beginning of the year.
  - 3.3 The Commission in the Order dated 17 January 2018 in Case No. 23 of 2017, laid down guidelines to be followed by the Distribution Licensees and the entities claiming to be Captive Generating Plants (**CGP**), which SWPGL has complied with for the FY 2017-2018.

- 3.4 In accordance with the Electricity Rules 2005, the two obligations are to be fulfilled by a captive generating plant, one being that the Captive Users / Shareholders should hold not less than 26% equity in the captive generating unit or units and other being that the Captive Users/Shareholders should consume not less than 51% of the electricity generated from the captive generating unit(s) to be determined on an annual basis.
- 3.5 On 19 April 2018 (i.e. after expiry of FY 2017-18), SWPGL had submitted the Generation and Outage details to Maharashtra State Load Dispatch Centre (**MSLDC**) for certification of same as per the previous directions of the Commission. On 22 May 2018, SWPGL has received certification of the “Energy Injection Report” for FY 2017-18. However, the “Outages details” were not certified. In view of the above, SWPGL has again requested MSLDC vide e-mail dated 23 May, 31 May and 6 June 2018 for certification of outages details and still awaiting the certification of same.
- 3.6 Vide its letter dated 28 April 2018, SWPGL submitted the details with regard to the compliance of captive status for FY 2017-18 to all the Distribution Companies in the State of Maharashtra (MSEDCL, TPC-D and AEML-D) with copy to MSLDC and the Commission
- 3.7 MSEDCL, vide letter dated 31 May 2018, informed that SWPGL’s captive status for FY 2017-18 cannot be established, however, while doing so, MSEDCL has relied on irrelevant issues which are beyond control of SWPGL.
- 3.8 Further, TPC-D, vide its letters dated 23 May and 31 May 2018, raised certain queries and sought additional details/data and stated that it had not, as yet, concluded on the eligibility of the Petitioner of being a captive entity and was still in the process of determining the same with the correspondence being exchanged between the parties.
- 3.9 The Commission in its Order dated 17 January 2018 in Case No. 23 of 2017 specifically held that a joint view ought to be taken by the Distribution Licensees. However, in view of the unilateral stand taken by MSEDCL, the present Petition is being filed seeking declaration of the captive status of SWPGL’s plant for FY 2017-18.
- 3.10 The Shareholding Certificate of SWPGL for FY 2017-18 and excel file showing the details of the change in Share Holding pattern, as per the CA certificate submitted to Respondents is annexed with the Petition.
- 3.11 The consumption of electricity by the captive consumers are summarized as under:
- Total Generation from Units 3 and 4 for FY 2017-18: 1129.54 MU
  - Total Consumption of Captive Users for FY 2017-18: 1148.14 MU
  - % of consumption by the Captive Consumers for FY 2017-18: 101.65%
- 3.12 The MSLDC Certified Generation details and Generation and consumption details of Unit 3 and 4 are submitted.
- 3.13 For FY 2017-18, the Captive Users / Shareholders held 15.31% shareholding for the generating units of SWPGL Company as a whole.
- 3.14 SWPGL has adopted the same methodology as had been adopted by the Commission for

the FY 2013-14 to FY 2015-16 for the purpose of calculation of the captive status of SWPGL.

3.15 SWPGL has fulfilled the captive status for FY 2017-18 for its generating units and for supply of electricity to its captive consumers. The Captive status fulfilled by SWPGL is as under:

**Table 1: SWPGL – Captive Consumption Criteria Calculations for FY 2017-18**

| S. No                     | Name of the Shareholder   | Date of Joining   | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Gross Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Auxiliary consumption and transmission/wheeling losses) | Whether actual consumption (d) is equal to or greater than lowest permissible range (b) |
|---------------------------|---|-------------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|---|
|                           |   |                   |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |   |
|                           |   |                   |                                   |  |  |  | MU (a)   | MU (b)               | MU (c)               |   |   |
|                           |   | DD/MM/YY          | Nos                               | %  | %  | MU   |  |                      |                      | MU (d)  | MU (e=d or > b)   |
| 1                         | Viraj Profiles Limited  | 26-03-07          | 23,298,938                        | 5.77%  | 19.21%   | 1,129.54                                     | 216.98   | 195.28               | 238.68               | 196.91  | Yes   |
| 2                         | Bebitz  | 18-09-10          | 265,346                           | 0.07%  | 0.22%  | 1,129.54                                     | 2.47   | 2.22                 | 2.72                 | 10.78   | Yes   |
| 3                         | Mahindra & Mahindra Limited   | 16-09-09          | 1,988,516                         | 0.49%  | 1.64%  | 1,129.54                                     | 18.52  | 16.67                | 20.37                | 80.63   | Yes   |
| 4                         | Mahindra CIE Automotive Limited   | 30-03-10          | 3,272,595                         | 0.81%  | 2.70%  | 1,129.54                                     | 30.48  | 27.43                | 33.53                | 83.17   | Yes   |
| 5                         | Mahindra Sanyo Special Steels Limited   | 23-07-12          | 6,191,395                         | 1.53%  | 5.10%  | 1,129.54                                     | 57.66  | 51.89                | 63.43                | 81.14   | Yes   |
| 6                         | Mahindra Vehicle Manufacturers Limited  | 16-09-09          | 1,238,279                         | 0.31%  | 1.02%  | 1,129.54                                     | 11.53  | 10.38                | 12.69                | 30.50   | Yes   |
| 7                         | Hindustan Petroleum Corporation Limited   | 31-10-15          | 7,783,468                         | 1.93%  | 6.42%  | 1,129.54                                     | 72.49  | 65.24                | 79.74                | 200.70  | Yes   |
| 8                         | Lupin Pharmaceuticals Limited   | 09-07-15          | 3,007,237                         | 0.74%  | 2.48%  | 1,129.54                                     | 28.01  | 25.21                | 30.81                | 106.84  | Yes   |
| 9                         | Pudumjee Pulp & Paper Products Limited  | 09-05-16          | 1,592,073                         | 0.39%  | 1.31%  | 1,129.54                                     | 14.83  | 13.34                | 16.31                | 41.43   | Yes   |
| 10                        | Hindalco Industries Limited   | 08-03-17          | 2,830,352                         | 0.70%  | 2.33%  | 1,129.54                                     | 26.36  | 23.72                | 28.99                | 82.23   | Yes   |
| 11                        | Inox Air Products Limited   | 08-01-17          | 1,768,970                         | 0.44%  | 1.46%  | 1,129.54                                     | 16.47  | 14.83                | 18.12                | 50.17   | Yes   |
| 12                        | Ashai India Glass Limited   | 03-01-17          | 715,585                           | 0.18%  | 0.59%  | 1,129.54                                     | 6.66   | 6.00                 | 7.33                 | 9.44  | Yes   |
| 13                        | ACG Associated Capsules Limited   | 08-01-17          | 1,243,610                         | 0.31%  | 1.03%  | 1,129.54                                     | 11.58  | 10.42                | 12.74                | 40.10   | Yes   |
| 14                        | Beakert Industries (P) Limited  | 08-06-17          | 1,795,177                         | 0.44%  | 1.48%  | 853.63                                       | 12.63  | 11.37                | 13.90                | 37.12   | Yes   |
| 15                        | Owens Corning (I) Pvt. Ltd.   | 08-06-17          | 1,857,418                         | 0.46%  | 1.53%  | 853.63                                       | 13.07  | 11.77                | 14.38                | 37.91   | Yes   |
| 16                        | AYM Syntex Limited  | 07-07-17          | 707,588                           | 0.18%  | 0.58%  | 761.16                                       | 4.44   | 4.00                 | 4.88                 | 11.69   | Yes   |
| 17                        | Bharat Petroleum Corporation Limited  | 06-09-17          | 2,299,661                         | 0.57%  | 1.90%  | 594.85                                       | 11.28  | 10.15                | 12.41                | 47.37   | Yes   |
| <b>Total</b>              |   |                   | <b>61,856,208</b>                 | <b>15.31%</b>  | <b>51.00%</b>  |  | <b>555.47</b>  | <b>499.92</b>        | <b>611.01</b>        | <b>1,148.14</b>   |   |
| <b>SWPGL Total Equity</b> |   |                   | <b>404,140,146</b>                |  |  |  |  |                      |                      |   |   |
| Note                      | 1. As per Hon'ble MERC Orders - the energy grossed up for auxiliary, transmission/wheeling losses considered for generation & consumption.      |                   |                                   |  |  |  |  |                      |                      |   |   |
|                           | 2. Bekaert -Generation considered from July'17 to March'18 as per discom Open access approval.  |                   |                                   |  |  |  |  |                      |                      |   |   |
|                           | 3. Owens -Generation considered from July'17 to March'18 as per discom Open access approval.  |                   |                                   |  |  |  |  |                      |                      |   |   |
|                           | 4. AYM-Generation considered from Aug'17 to March'18 as per discom Open access approval.  |                   |                                   |  |  |  |  |                      |                      |   |   |
|                           | 5. BPCL -Generation considered from Oct'17 to March'18.   |                   |                                   |  |  |  |  |                      |                      |   |   |
|                           | 6. For the following consumers, the weighted average equity has been considered for FY 17-18, as considered by Hon'ble MERC for previous years. |                   |                                   |  |  |  |  |                      |                      |   |   |
|                           | <b>Name of the customer</b>   | <b>No of Days</b> | <b>Equity Held</b>                | <b>No of Days</b>                                    | <b>Equity Held</b>   | <b>Wt Avg Equity</b>                         |  |                      |                      |   |   |
|                           | Mahindra and Mahindra   | 354               | 1,945,867                         | 11   | 3,361,043  | 1,988,516                                    |  |                      |                      |   |   |
|                           | Beakert Industries (P) Limited  | 286               | 1,768,970                         | 11   | 2,476,558  | 1,795,177                                    |  |                      |                      |   |   |
|                           | Ashai India Glass Limited   | 354               | 707,588                           | 11   | 972,934  | 715,585                                      |  |                      |                      |   |   |
|                           | ACG Associated Capsules Limited   | 354               | 1,238,279                         | 11   | 1,415,176  | 1,243,610                                    |  |                      |                      |   |   |

4. SWPGL has filed Interlocutory Applications on 18 January 2019 stating as under:

4.1 Vide Order dated 9 November 2018, the National Company Law Tribunal (NCLT), Hyderabad Bench in Petition No. CP (IB) No. 275//7/HDB/2018 has admitted the Petition of M/s. India Opportunity Pvt. Ltd. and Vistra ITEL (India) Ltd. and declared a Moratorium to SWPGL in terms of Section 13 and 14 of Insolvency and Bankruptcy Code 2016 (IBC Code) on all Petitions and proceedings against SWPGL. However, there is no moratorium on Petitions and proceedings that have been filed by SWPGL.

4.2 In these circumstances, no fresh authorization is required to proceed in the present matter. However, in view of the objections of the Respondents that the authorization of

Resolution Professional is required to proceed with the present Petition, SWPGL is filling the authorization of Resolution Professional confirming that the company is authorized to proceed in Petitions filed by the Petitioner Company before the Commission.

**5. On 20 May 2019, TPC-D filed Miscellaneous Application (MA 13 of 2019) seeking impleadment of all the Captive Users/ Shareholders.**

5.1 Following prayers are made in the above Application:

*(a) Implead all the 29 Captive Users (as set out in Annexure-1) as party Respondents in the instant Case No. 170 of 2018;*

*(b) Direct Sai Wardha to carry out the necessary amendments in the instant Petition*

5.2 TPC-D, in its Application stated that it has filed MA to avoid multicity of litigations wherein captive users of SWPGL may approach other adjudicating authorities as they are unaware of the proceedings before the Commission for declaration of captive status. Also, in absence of their impleadment, they do not get an opportunity of hearing.

**6. Subsequently, following eight Captive Users/Shareholders filed Miscellaneous Applications seeking their impleadment in the matter:**

- i. Lupin Ltd. (MA No. 14 of 2019)- filed on 20 May 2019
- ii. Mahindra CIE Automotive Ltd. (MA No. 18 of 2019) filed on 21 May 2019
- iii. Pudumjee Paper Products Ltd. (MA No. 20 of 2019) filed on 21 May 2019
- iv. Mahindra and Mahindra Ltd. (MA No. 22 of 2019)- filed on 21 May 2019
- v. Mahindra Vehicle Manufacturers Ltd. (MA No. 24 of 2019)- filed on 21 May 2019
- vi. Mahindra Sanyo Special Steel Pvt Ltd. (MA No. 27 of 2019) – filed on 21 June 2019
- vii. INOX Air products Pvt Ltd. (MA No. 28 of 2019)- filed on 21 June 2019
- viii. Bekaert Industries Pvt Ltd. (MA No. 44 of 2020)- filed on 18 March 2020

6.1 The main prayers of the above first seven Captive Users/Shareholders (except Bekaert Industries Pvt. Ltd.) are similar in nature and are as below:

- i. Allow the present Application and implead the Applicant as a party in the present Petition.*
- ii. Grant an opportunity to the Applicant to file further appropriate documents and make detailed submissions in the matter;*

6.2 The main prayers of Bekaert Industries Pvt. Ltd. are as below:

- i. Allow the present application and take on record the submissions made herein;*
- ii. Condone the delay in making these submissions;*

iii. *Hold and declare SWPGL's Unit 3 and Unit 4 as captive units for the FY 2017-18 and grant the Applicant with the entitled benefits of CPP including exemption from payment of cross subsidy surcharge and additional surcharge and other related charges for the Financial Year 2017-18;*

7. **MSEDCL, TPC-D, MSLDC and Captive Users / Shareholders have also filed their responses to the Petition which have been taken on record and discussed issue-wise in subsequent Paragraphs.**

**Details of Proceedings/ Hearings**

8. The hearing scheduled on 19 January 2019 was adjourned at the request of SWPGL.

9. At the hearing held on 21 May 2019, five captive consumers requested the Commission to grant their requests for impleadment in the matter. Advocate appearing on behalf of TPC-D stated that TPC-D has also filed its Application seeking impleadment of all captive users of SWPGL. The Commission directed SWPGL to file its Reply on MA filed by TPC-D and Impleadment Applications of five captive consumers within two weeks with copy to Parties in the matter.

10. At the hearing held on 8 August 2019, the Commission allowed the impleadment of all Captive users/Shareholders in the matter. The Commission further directed Petitioner, Respondents and Impleaded Parties to serve the copies of all their submissions along with annexures on all Captive users/Shareholders of SWPGL within a week and Captive users/Shareholders were directed to file their submissions, if any, within two weeks, thereafter with copy to all the Parties.

11. The hearing scheduled on 18 October 2019 was adjourned at the request of SWPGL.

12. **At the e-hearing through video conferencing held on 26 August 2020:**

12.1 Advocate for SWPGL re-iterated its submission as made out in the Petition and further stated that:

- i. As the IPP Units i.e. Unit 1 and 2 of SWPGL were under shutdown in FY 2017-18, there is no injection of power from these units for supplying to captive users. The shutdown of these IPP units has also been certified by the MSLDC. Hence, the issue of need of separate SEM meters for Units 3 and 4 will not arise for FY 2017-18.
- ii. For FY 2013-14, the Commission has allowed the CPP status for SWPGL and in line with that Order, SWPGL has submitted all the required details.
- iii. Unit-wise metering was always available and only after 2014, Joint Meter Reading was not taken by MSEDCL. The meter reading data post 2014 has been provided by SWPGL.
- iv. SWPGL has fulfilled the captive status criteria as per the Electricity Rules, 2005
- v. The NCLT, Hyderabad Bench in Petition No. CP (IB) No. 275//7/HDB/2018 has passed its final Order on 17 October 2019 accepting the Resolution Plan (RP), submitted by the Resolution Professionals.

- 12.2 Advocates appearing for Captive Users re-iterated the submissions as made out in their respective replies and stated that they have fulfilled the CPP criteria and these consumers cannot be penalized /punished for non-compliances of wrong doing of others such as MSEDCL/MSETCL/SWPGL. It was also highlighted that as per NCLT Order, all the claims against SWPGL have been waived off and MSEDCL had not objected during the NCLT proceedings.
- 12.3 Advocate of MSEDCL re-iterated its submission as made out in its reply and stated that
- i. There is no certified/authentic data available regarding energy generated from captive units (Unit No. 3 and 4) of SWPGL for FY 2017-18. Hence the condition as prescribed in Electricity Rules cannot be verified. In absence of certified SEM data for FY 2017-18, theoretically it is impossible to determine the CGP status.
  - ii. MSEDCL has OA contracts with the consumers and not with SWPGL. Accordingly, there are no dues which SWPGL is obligated to pay to MSEDCL for FY 2016-17 and FY 2017-18 under Rule 3 of the Electricity Rules. It is the Captive Users/ Shareholders who have sought OA from MSEDCL and hence they are obligated to pay MSEDCL for the liability towards CSS and ASC in the event of failure of CPP status. Therefore, the submission of SWPGL and its Captive Users based on the NCLT Order dated 17 October 2019 that past non-compliances of Corporate Debtor are waived off by “Government Authorities” and hence all non-compliance by SWPGL w.r.t Rule 3 of Electricity Rules stands waived off, is incorrect.
  - iii. SWPGL has relied upon the prayers made in the Resolution Plan (wherein MSEDCL was not party) to contend that all past non-compliances of Corporate Debtor are waived off by “Government Authorities” and hence all non-compliance by SWPGL w.r.t Rule 3 of Electricity Rules stands waived off. However, the prayers/exemptions granted in the Resolution Plan are subject to the provisions of Section 31(1) of the IBC Code as amended wherever applicable.
  - iv. The Prayer was made against all “Government Authorities” but what is granted finally is subject to the provisions of Section 31(1) of the IBC Code (Amendment) Act, 2019. So, the Prayer against “Government Authorities” stands modified as per Section 31 (1) of IBC Code.
  - v. Section 31 (1) of the IBC Code states that the Resolution Plan is binding on the Central Government, any State Government or any Local Authority to whom a debt in respect of the payment of due arising under any law for time being in force such as authorities to whom statutory dues are owed.
  - vi. MSEDCL is neither the Central Government nor the State Government. MSEDCL is also not a local authority. Hence, Section 31 (1) is not at all applicable to MSEDCL. Even if MSEDCL is considered to be a Local Authority, SWPGL needs to demonstrate that the outstanding dues are in the form of statutory dues which are payable to MSEDCL. This not being the case, the NCLT Order has not foreclosed MSEDCL’s rights to recover its dues from captive users. Further, as mentioned earlier, the dues are payable by the captive users of SWPGL and the NCLT Order does not



deal with their liabilities towards MSEDCL in any manner and hence the rulings of the NCLT Order are not relevant in the present matter.

- vii. The NCLT Order only deals with the past power purchase dues of SWPGL towards MSEDCL which were for the period prior to FY 2016-17. The outstanding dues payable to MSEDCL on account of the present proceedings are not addressed anywhere in the NCLT Order. Accordingly, the NCLT Order has not taken away the rights of the Commission regarding CPP status determination for the period FY 2017-18.

12.4 Representative of AEML-D stated that it has no submission on this issue and only one consumer is involved in the scheme of captive.

12.5 Representative of MSETCL stated that MSETCL has nothing more to add.

12.6 Representative of MSLDC stated that MSLDC had already filed its submission and have nothing more to add.

12.7 Advocate appearing on behalf of TPC-D stated that:

- i. SWPGL has not fulfilled the rule of proportionality. The rule of proportionality has to be adhered even by the consumer in TPC-D's License area that is HPCL. Various scenarios showing how SWPGL has not fulfilled the Captive Generating Plant (CGP) criteria for FY 2017-18 have been explained in the reply. Also, there are many discrepancies in the data submitted by SWPGL which have been elaborated in detail in its reply.
- ii. There are discrepancies in the Shareholding Certificates submitted by the SWPGL.
- iii. SWPGL has sought to demonstrate compliance of Rule 3 of the Electricity Rules (i.e. 26% equity holding and 51% consumption in proportion to such equity holding) by selective reliance on shareholding and consumption of a dynamic set of consumers throughout the year. SWPGL informed Distribution Licensees (at the start of the Financial Year) of the Equity Share Holders of the Company who propose to consume power through captive route and it is not open to SWPGL to pick and choose consumers (who have consumed power in proportion to their shareholding) to demonstrate 51% consumption, while altogether ignoring/ not disclosing those consumers who have failed to consume power in proportion to their shareholding.
- iv. In order to correctly calculate the rule of proportionality, the actual consumption of each Captive User needs to be pro-rated to 51% of the total generation. In this regard, the Hon'ble Appellate Tribunal for Electricity (ATE) in its Judgment dated 22 September 2009 in *Kadodara Power Pvt. Ltd. Vs. GERC & Ors.* has observed that the 51% of total generation only has to satisfy the rule of proportionality in consumption and ownership. The rest 49% of the generation could be sold to anyone including grid, Distribution Licensees and Captive Users themselves. Further such calculation has to be done on an annual basis.
- v. It is the responsibility of SWPGL to fulfil the requirement of captive status criteria. The consequent liability on account of non-compliance of the provisions of Rule 3 of

the Electricity Rules is to be borne by captive consumers and not by the Generator. Accordingly, the generator having gone through the resolution proceedings with the NCLT under IBC has no bearing on the present proceedings.

13. **The Commission notes that the Parties in present Petition i.e. MSEDCL, TPC-D and Captive Users/Shareholders (including Bekaert Industries Pvt Ltd.), have made multiple submissions in the form of Miscellaneous Applications, Reply to the Petition, additional submissions, Rejoinders, Written Submissions etc. The Commission has taken record of the following submissions of the parties:**

**Table 2: Details of submissions considered by the Commission**

| Sr. No. | Party                      | Details of submission  |
|---------|----------------------------|--|
| 1       | SWPGL                      | <ul style="list-style-type: none"> <li>a. Rejoinder to MSEDCL's Reply dated 18 February 2019</li> <li>b. Rejoinder to TPC-D's Reply dated 20 May 2019</li> <li>c. Interlocutory Application dated 18 January 2019</li> <li>d. Additional Written submission dated 1 September 2020</li> </ul>  |
| 2       | MSEDCL                     | <ul style="list-style-type: none"> <li>a. Reply dated 9 September 2018</li> <li>b. Additional submission dated 17 January 2019</li> <li>c. Additional submission dated 2 September 2020</li> </ul>   |
| 3       | TPC-D                      | <ul style="list-style-type: none"> <li>a. Reply dated 19 January 2019</li> <li>b. MA dated 21 May 2019 seeking impleadment of Sai Wardha's captive users</li> <li>c. Additional submission dated 1 September 2020</li> </ul>   |
| 4       | MSLDC                      | <ul style="list-style-type: none"> <li>a. Reply dated 29 November 2018</li> </ul>  |
| 5       | Captive Users/Shareholders | <ul style="list-style-type: none"> <li>a. MAs dated 21 May 2019 to 21 June 2019 filed by Seven Captive Users/Shareholders (Lupin Ltd., Mahindra Vehicle Manufacturers Ltd., Mahindra and Mahindra Ltd., Pudumjee Paper Products Ltd. , Mahindra CIE Automotive Ltd. , Inox Air Products Pvt. Ltd. and Mahinda Sanyo Special Steel Pvt. Ltd.) seeking impleadment</li> <li>b. MA dated 8 March 2020 filed by Bekaert Industries Private Limited</li> <li>c. Reply dated 8 August 2019 and additional submission dated 30 August 2019 filed by Asahi Glass Industries</li> <li>d. Written submission dated 11 October 2019 on behalf of Inox, Pudumjee, Mahindra Sanyo and Mahindra CIE</li> <li>e. Common Written Submissions dated 11 October 2019 on behalf of Mahindra &amp; Mahindra Ltd. and Mahindra Vehicle Manufactures Ltd.</li> <li>f. Additional Written submission dated 18 November 2019 on behalf of Inox, Pudumjee, Mahindra Sanyo and Mahindra CIE</li> </ul> |

| Sr. No. | Party | Details of submission   |
|---------|-------|---|
|         |       | g. Preliminary Submissions dated 21 November 2019 on behalf of Viraj and Bebitz<br>h. Reply dated 21 November 2019 filed by Lupin Ltd.<br>i. Written Notes of Arguments submitted by 17 August 2020 on behalf of Inox, Pudumjee, Mahindra Sanyo , Mahindra CIE, Bekaert<br>j. Written submission dated 18 August 2020 filed by HPCL<br>k. Written submission dated 25 August 2020 filed by ACG Associates<br>l. Written Notes of arguments dated 31 August 2020 filed by five captive users/ Shareholders (Inox, Pudumjee, Mahindra Sanyo, Mahindra CIE, Bekaert Industries<br>m. Written Notes of arguments dated 31 August 2020 filed by Mahindra & Mahindra and Mahindra Vehicle |

14. After going through the above submissions, the Commission notes that the contentions /arguments raised in present proceedings had also been raised in Case No. 175 of 2017 (i.e. Petition of SWPGL for seeking declaration of captive status for FY 2016-17). In light of the above, the Commission is of the view that the following two issues (which could be framed for analysis purpose for arriving at an appropriate decision) in the present proceeding had already been addressed by the Commission in its Order dated 22 October 2020 in Case No. 175 of 2017:

- i. Impact of the Order dated 17 October 2019 passed by Hon'ble National Company Law Tribunal (NCLT) on the present proceeding.
- ii. Deficiencies /shortcomings related to installation of Special Energy Meters (**SEM**) for each Generating Unit, Joint meter reading and certified 15 Minutes basis Generating Unit wise metering data.

15. As regards the issue related to impact of Order dated 17 October 2019 passed by NCLT on the present proceeding, the Commission in its Order dated 22 October 2020 in Case No. 175 of 2017 has held as under:

“

*19.45 In light of the aforesaid NCLT Order, the Commission is of the view that it is factually incorrect to state that there is blanket waiver for all non-compliances of SWPGL by all governmental authorities as the exemptions/reliefs sought in the Resolution Plan have been allowed subject to the provisions of Section 31(1) of the IBC Code as amended wherever applicable. As per the amendment of Section 31(1) IBC Code, the Resolution Plan is binding on the Central Government, any State Government or any Local Authority to whom a debt in respect of the payment of due arising*

*under any law for time being in force such as authorities to whom statutory dues are owed.*

19.46 *There are certain important points which need to be examined and which impact the decision pertaining to applicability of the NCLT Order in the present proceedings. It is not the case of any Party in the present proceeding that SWPGL itself owes any payment of dues to the Distribution Licensees (i.e. MSEDCL and TPC-D). Had there been any claims of dues by the Distribution Licensees payable from SWPGL under any contract, one could have considered for further legal vetting, the contention as to whether the present proceeding is relevant in light of the NCLT Order as same gets covered under the NCLT Order. The Distribution Licensees have claimed recovery of dues towards CSS from the Captive users on account of non-fulfilment of the CPP criteria (as per the stand of the Distribution Licensees) and not from SWPGL who is Corporate Debtor and who has gone under the NCLT proceedings.*

19.47 *Further, the scope of the present proceeding is to determine the captive status of SWPGL at the end of FY 2016-17 which was claimed by SWPGL at the commencement of FY 2016-17. The present proceeding involves verification of fulfilment of criteria laid down under Rule 3 of the Electricity Rules by SWPGL and its captive users for its CPP (identified as Unit 3 and 4) based on Petition filed by SWPGL. It is not a non-compliance proceeding on dues payable by SWPGL initiated against SWPGL. If it is the stand of SWPGL that the present proceeding is no more relevant in light of the NCLT Order, SWPGL could have either withdrawn the present Petition or could have amended its Petition seeking disposal of Petition as having become infructuous. However, SWPGL has not chosen to do so meaning thereby SWPGL itself is aware of the fact that present proceeding needs to be continued alongside the directions issued under the NCLT Order which have no bearing on its petition.*

19.48 *Further, as mentioned earlier, though not necessary, considering the fact that the exemption granted is limited to waiver of debt in respect of payment of dues arising under any law such as the statutory dues, it is to be noted that the Distribution Licensees are neither the Central Government nor State Government nor Local authority to whom any debt in respect of the payment of dues is arising under any law for the time being in force, such as authorities to whom statutory dues are owed. Even if MSEDCL is considered to be a "Local Authority", the dues towards the CSS are not in the nature of statutory dues and more importantly, these are not dues from SWPGL as mentioned earlier. **Hence, the Commission does not find any merit in the contention of SWPGL that the present proceeding may be terminated as the same is not relevant anymore in the light of the NCLT Order.***

19.49 *It is pertinent to note the prayer in the present Petition:*

- a. *Hold and declare the Captive generating units (2x135 MW being Unit No.3 and 4) of the Petitioner have complied with the obligations attached to captive generating units for the financial year 2016-17.*
- b. *Hold and declare that the Petitioner and its captive consumers are entitled to all the benefits of captive power plant and captive consumption including exemption from payment of Cross Subsidy Surcharge;*
- c. ***Restrain the Respondents from acting on unilateral decision regarding demanding cross subsidy surcharge from the captive consumers as without any authority under law;***
- d. ***Respondents be directed for immediate withdrawal of purported claim of CSS on the captive consumers;***
- e. *Direct that Respondents be estopped from any coercive action based on their unilateral demand, till finalisation of captive status of the Petitioner for FY 2016-17 by this Hon'ble Commission;*

19.50 *It is evident from the aforementioned prayers in the petition that the claims of CSS have been made by the Distribution Licensees against the captive consumers and not against SWPGL. SWPGL and its captive consumers are independent legal entities. Same is amply clear from the submissions made by HPCL which in fact initiated an arbitration proceeding against SWPGL. The Commission agrees with the contention of TPC-D that the NCLT Order is in respect of SWPGL and relief under NCLT Order is confined and limited to SWPGL and also agrees with the contention of MSEDCL that the recoveries are from the Open access consumers. Thus the captive consumers are not relieved from their liability towards the Distribution Licensees.*

19.51 *In the present case, the liability of payment of CSS, if any, is admittedly on the Captive Users/ consumers and not on SWPGL as the Corporate Debtor under NCLT proceedings. As regards the contention of HPCL that it is not a shareholder in SWPGL and it has no further role to play in the present proceedings nor in the liabilities arising out of adverse order(s), if any, which may be passed against SWPGL, the Commission doesn't agree with this contention and notes that it is the Captive user who is liable for all the compliances and the consequences as per provisions of the DOA Regulations 2016 and Electricity Rules. Accordingly, any contractual agreement between Generator and Consumer has no bearing on its responsibility to comply with all the requirements applicable to captive users under Electricity Rules and DOA Regulations.*

19.52 *In view of the above, the Commission is of the opinion that the NCLT Order shall have no impact on the present Petition or the liability of the Captive*

Users to pay CSS and ASC if it is concluded that captive compliance is not fulfilled.”

16. **The Commission is of the view that the above ruling is squarely applicable to the present case and therefore, the NCLT Order shall have no impact on the present Petition as well or the liability of the Captive Users to pay CSS and ASC if it is concluded that captive compliance is not fulfilled for FY 2017-18.**
17. Regarding the issue related to deficiencies /shortcomings related to installation of SEM for each Generating Unit, Joint meter reading and certified 15 Minutes basis Generating Unit wise metering data as raised by Respondents, the Commission in its Order dated 22 October 2020 in Case No. 175 of 2017 has held as under:

“

20.55 *From the above provisions, it is clear that the data was to be taken jointly by the Distribution Licensee along with the Generator if the Generating Station is connected to the distribution network. However, as SWPGL is connected to the transmission network, the joint meter reading has to be taken by the generator and the STU as mentioned by the Commission in its Order in Case No. 23 of 2017. The same has been reproduced at Para **Error! Reference source not found.** of this Order. Similarly, the sealing of meter, testing and certification of data should also be undertaken jointly by the licensee to whose network the generator is connected. The Commission notes that in order to claim exemptions under the captive route, it is the responsibility of the generator to adhere all the necessary compliance such as ensuring Joint Meter Reading (JMR). Further, it is noted that this issue of JMR not been undertaken was never raised by SWPGL and was agitated by SWPGL only when the issue raised by the Distribution Licensees at the time of determination of the captive status for SWPGL generating plant. The Commission further notes that it is the responsibility of the SWPGL to raise this issue at the appropriate time when JMR was stopped i.e. in the year 2014 itself. Inspite of the Commission having provided the necessary clarity in this matter in its Order in Case No. 23 of 2017 dated 17 January 2018, SWPGL has failed to take any concrete steps regarding JMR, test and certification of metered data as required.*

20.56 In view of the above the Commission is of the opinion that SWPGL has failed to raise the issue of JMR at appropriate time and it is a requirement as per the Regulations / Orders which in any case needs to be complied by the SWPGL.

.....

20.64 *From the above provisions of the Regulations, it is clear that for the purpose deviation settlement, there is requirement of the unit wise SEM at 15 minutes.*

20.65 *Further, the Commission also notes that in order to check whether the generation identified by SWPGL is from CPP Unit 3 and 4 and not from other*

*units IPP Units 1 and 2, there is a requirement for the unit wise SEM data for 15 minutes time interval.*

*20.66 Thus, the Commission is of the view that unit wise SEM metering on 15 minutes time block is the necessary and basic requirement for the OA and if the Captive Generator needs to enjoy the benefits of exemption from CSS, then these requirements as provided under the Regulations need to be complied with by the SWPGL.*

*20.67 Considering the glaring deficiencies and omissions in the data and analysis provided in determining the CGP Status criteria and the need to streamline the process for determination of captive status, the Commission had set out guidelines for the purpose in its Order dated 17 January 2018 in Case No. 23 of 2017.*

*20.68 In view of the above, the Commission is of the view that there are various deficiencies/ shortfalls from the SWPGL end on the issues of Joint Meter Reading, Unit wise SEM installation at Generator end and non-availability of unit wise 15 minutes MRI data etc. for many years. These were noticed by the Commission in FY 2014-15 and FY 2015-16 as well. SWPGL gave the clarifications on these issues during the proceedings before the Commission only when the issues raised by Distribution Licensees and the Commission and had not disclosed these by itself. The Commission expresses its displeasure in the manner in which SWPGL has handled these deficiencies /shortfalls over the years. It is the responsibility of SWPGL to come before the Commission with all the required information / data for the purpose of Captive status declaration if it intends to enjoy the benefits of exemption from CSS and ASC under the captive route. Any shortcomings on these or similar issues in the future will be addressed in a very stringent manner, as deemed appropriate, by the Commission.”*

**18. Considering the fact that the circumstances of the present proceeding on this issue are similar to those in Case No. 175 of 2017, the Commission is of the view that the above observations/rulings are squarely applicable to the present case also.**

19. The Commission in its Order dated 22 October 2020 in Case No. 175 of 2017, had also raised some concerns about working of the Distribution Licensees/STU/MSLDC while undertaking their respective obligations and accordingly has directed an internal enquiry by STU, MSEDCL, MSLDC, and TPC-D to find out as to whether there have been any lapses by the concerned, on the various issues highlighted above and whether the compliance of the Commission’s Orders / Regulations / Relevant Metering Code / CEA Regulations have been done in letter and spirit while dealing with SWPGL matter. The relevant extract is as under:

“.....

*20.69 Having said that, the Commission is also concerned about the working of the Distribution Licensees/STU/MSLDC while undertaking their respective*

obligations such as grant of OA permissions and activities related to metering, energy accounting/settlement, billing, monitoring real time generation etc. The arguments raised by SWPGL/Captive users indicate that there might have been some shortcomings on the part of Licensees as well. Same are shown as follows.

- i. TPC-D has highlighted contradictory statements made by MSLDC on different occasions. During the hearing held on 26 August 2020 (in Case No. 170 of 2018), it was stated by MSLDC that all the SWPGL's Units are visible in real time to MSLDC on the SCADA data. However, during the hearings in the previous financial years (Case Nos. 77 of 2015 and 159 of 2016), MSLDC had submitted that, each of SWPGL's Units was not visible on their system and they relied on the information submitted by SWPGL regarding tripping/ outage, generation, etc. Further, as recorded in **Para. 21.7** of this Order, information about monthly tripping/outages of SWPGL CPP Units 3 and 4 has been submitted by MSLDC as reported by SWPGL to MSLDC for FY 2016-17. It is necessary that as a System Operator for the State, MSLDC should have obtained necessary data/information for real time operations of the grid and also for certification purpose, at the end of year or as and when needed without having to rely solely on information/data submitted by the Generating Company.
- ii. As mentioned at **Para. 20.48** above, in its Order dated 9 February 2018 in Case No. 77 of 2015, following observations have been made by the Commission regarding joint meter reading for SWPGL's CPP Units:

*“ Thus, SWPL has itself admitted that, till April, 2014, the Unit-wise generation data was being downloaded and taken by MSLDC for each of the Generating Units. This practice was, however, discontinued from June, 2014. The Commission cannot understand why the established and proper practice of taking monthly metered data of every Unit was stopped from June, 2014. No explanation has been attempted by SWPL, MSLDC or the Distribution Licensees.”*

The question raised in aforesaid proceeding still remains unanswered by MSLDC or for that matter any of the other concerned parties.

- iii. As regards the issue of separate Generating Unit-wise Metering arrangement as raised by the Respondents, the Commission notes that SWPGL has stated that SWPGL is connected with MSETCL's Warora Sub-Station through 220 kV lines and it has signed connectivity agreement with MSETCL on 9 July 2007. SWPGL's injection point metering details have been stipulated in the connectivity agreement. However, the MERC (State Grid Code) Regulations, 2006 (the then prevailing Regulations) state that existing connectivity to grid may be modified as and when required. The relevant extract is given below:



*“ 13.1 Application for establishing new arrangement or modifying existing arrangement of connection to and/or use of the InSTS shall be submitted by the concerned Transmission Licensee or User to the State Transmission Utility: .....”*

- iv. *In light of the above Regulations, once two different modes of supply were envisaged (i.e. two Unit under Group Captive arrangement and rest to be under IPP mode) SWPGL needed to have taken necessary steps for modifying its existing arrangement to InSTS, i.e. Unit-wise SEM Meters could have been established in co-ordination with STU and Captive Unit-wise Meters could have been treated as Interface Meters. However, neither SWPGL has taken necessary action in this regards nor STU thought it necessary to ask SWPGL to initiate the required compliance and the existing arrangement has been continued since 2007.*
- v. *MSEDCL in its reply has stated that the SEM testing report for Unit-wise Meters mentions that the MD integration period of the SEM meters is 30 minutes and hence, the meters are not as per the requirements specified in the DOA Regulations 2016. However, it was MSEDCL only, that granted the OA permissions for years, that too under Section 9 of EA under Group Captive Route. Same is the case with TPC-D as well.*
- vi. *As per SWPGL’s submission in the present Petition, it is seen that there has been some correspondence with MSEDCL for the certification of the SEMs installed at Generator end in January 2018, SWPGL had been advised by SE (TQA) MSEDCL, Nagpur to replace the Generator Meter’s existing CTs/PTs from multi-core multi-ratio to single-core single-ratio of the meters. Subsequently on 13 January and 30 January 2018, SWPGL had requested MSEDCL to provide MSEDCL approved technical specifications for CTs /PTs for procurement of same and same is awaited inspite of lapse of more than two years. MSEDCL appears to have not taken necessary efforts for taking the issue to its conclusion.*
- vii. *The Commission notes that the Joint Meter Reading was being done till 2014. While it is true that SWPGL has not raised the issue of discontinuation of Joint Meter Reading at the appropriate times, approach of the Licensees on this important activity for energy accounting /settlement also needs to be examined. Also, the important point raised by the Captive users cannot be ignored wherein they stated that although MSEDCL is raising the issue of absence of certified Unit-wise generation from Captive Units 3 and 4, the bills have been duly raised on the Captive consumers alongwith the 15 minute generation reports. These bills mentioned the units injected by SWPGL as per OA permission and even indicated the over-injection by Captive Units. MSEDCL has not responded to these contentions as to whether such bills were based on some ad-hoc data or these were just provisional bills. This gives an impression that*

*MSEDCL was not serious enough towards the energy accounting activity which is very crucial for revenue recovery of any Distribution Licensee. While it is easy to raise sets of issues at the end of year, these Licensees also need to have complied with their respective obligations as laid down under respective Regulations/ Code/Procedures.*

- viii. *Importantly, as discussed earlier, the Regulation 14(3) of the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time, also clearly states that it shall be the responsibility of the generating company or licensee to record the metered data, maintain database of all the information associated with the energy accounting and audit meters and verify the correctness of metered data. The Commission in its Order in Case No. 23 of 2017 has also referred to the CEA Regulations and clearly reiterated that downloading of monthly data of all these meters shall be jointly undertaken by the Generator and Distribution Licensee(s), and STU (if relevant). However, there has not been any action either from SWPGL, Distribution Licensees, SLDC and the STU in this context. There is a clear lack of compliance regarding meeting these requirement from all the concerned utilities.*
- ix. *Accordingly, on account of various shortcomings, the Commission had to give various directions in its Case No. 23 of 2017 for installation of separate Unit-wise SEM, joint meter reading, joint activities for meter testing, meter sealing etc. There is no clarity as to whether the processes are now streamlined.*

20.70 *In light of the above, the Commission deems it appropriate to order an internal enquiry by these Licensees to find out whether there have been any lapses by the concerned officials, on the various issues highlighted above and why the compliance of the Commission's Orders / Regulations / Relevant Metering Code / CEA Regulations were not done in true letter and spirit while dealing with SWPGL matter. The said administrative enquiry shall be conducted by Senior Management of STU, MSLDC, MSEDCL and TPC-D, fixing the responsibility, if needed and report of the outcome of the enquiry along with the details of corrective actions taken shall be submitted to the Commission within six months of the Order. However, it would not be out of place to mention here that the enquiry ordered being an independent departmental proceeding with the sole purpose of verifying the relevant compliance by the Licensees and to fix responsibility on the concerned officials for the lapses if any found at the end of the enquiry, the outcome of the Enquiry Report does not absolve SWPGL of any of the shortcomings/failures/deficiencies on its part as recorded in this Order. Also, it will have no bearing whatsoever, on the liability of the Captive Users to pay CSS and ASC, if it is concluded in this Order that the captive compliance is not fulfilled."*

20. **The Commission is of the opinion that the aforesaid enquiry is likely to cover many aspects pertaining to generation and supply by SWPGL in FY 2017-18 as well and relevant actions taken/omissions by the Distribution Licensees/MSLDC/STU. However, if any aspect is solely attributable to FY 2017-18 and not part of FY 2016-17, the enquiry should also examine the said aspects and the enquiry report (separate for FY 2017-18) along with the details of corrective actions taken shall be submitted to the Commission within six months of the Order.**

21. Now the Commission proceeds with evaluation of captive status of SWPGL as per the Electricity Rules, 2005 as under:

22. **Evaluation of the Captive status criteria as per Electricity Rules 2005**

***SWPGL submission:***

22.1. The submissions of SWPGL relevant to this issue and forming part of its Petition have been captured at Para **Error! Reference source not found.** of this Order.

***MSEDCL submission:***

22.2. There is no certified / authentic data available regarding energy generated from captive units (Unit No. 3 and 4) of SWPGL for FY 2017-18. Hence the condition as prescribed in Electricity Rules cannot be verified. In absence of certified SEM data for FY 2017-18, theoretically it is impossible to determine the CGP status.

22.3. The Commission vide its Order dated 15 February 2019 passed in Case No. 116 of 2018 has clearly upheld the issue raised by MSEDCL with reference to metering arrangement of SWPGL.

22.4. Further, the Commission vide its Order dated 22 October 2018 in Case No. 133 of 2018 has held that there have been considerable shortcomings on the part of SWPGL in the process of determination of the CGP status. SWPGL, prima facie, has not discharged its responsibilities envisaged under Rules and Regulations prescribed /specified under EA 2003 to establish its CGP status.

***TPC-D submissions:***

22.5. There is anomaly in the quantum of power generated/ supplied by SWPGL and that consumed by the Captive Users during FY 2017-18. SWPGL submitted total Generation from Units 3 and 4 for FY 2017-18 as 1129.54 MU and total consumption by Captive Users for FY 2017-18 as 1148.14 MU. Therefore, the percentage of consumption by the Captive Users for FY 2017-18 was 101.65%.

22.6. MSLDC has provided the Energy Injection Report for FY 2017-18 in respect of SWPGL and certified that a total of 998.23 MUs of power was injected by Sai Wardha into the Grid at the 220 kV Warora Lines 1 and 2, as per the ABT Meter data.

22.7. Evidently, the Captive Consumption (i.e., 1148.14 MUs) as specified by SWPGL is way more than the Net Energy (998.23 MUs - which includes 14.50 MUs sold on IEX) injected into the Grid. SWPGL had not clarified this anomaly. The table below

demonstrates that, there is a difference of approx. 32.81 MUs between the gross generation as calculated from the data available and the gross generation as submitted by SWPGL.

**Table 3: Difference between Gross Generation calculated based on Data and Gross Generation as submitted by Sai Wardha**

| Sr. No. | Particulars  |   | Tata Power-D |  | As submitted Sai Wardha in the Petition |   | As per Sai Wardha's rejoinder |  |
|---------|--|---|--------------|--|---|---|-------------------------------|--|
|         |  |   | A            | Remark   | B                                       | Remark  | C                             | Remark   |
| 1       | Net Consumption of consumers                                 | a | 966.71       | Corrected Consumer end consumption for HPCL and BPCL in line with billing  | 964.92                                  | Page No. 180 of the Complilation of 170 of 2018 | 966.12                        | Page No. 950 of the Complilation of 170 of 2018      |
| 2       | Consumption at Injection Point considering losses            | b | 1017.52      | Corrected Consumer end consumption for HPCL and BPCL in line with billing, hence Consumption at injection point considering losses | 1015.62                                 | Page No. 179 of the Complilation of 170 of 2018 | 1016.26                       | Page No. 949 of the Complilation of 170 of 2018      |
| 3       | IEX Sale at injection pt.                                    | c | 14.05        | Page No. 694 of the Complilation of 170 of 2018  | 14.05                                   | Page No. 694 of the Complilation of 170 of 2018 | 14.78                         | c = d-b  |
| 4       | Total consumption at Injection pt.                           | d | 1031.57      | d=b+c  | 1029.67                                 | d=b+c   | 1031.04                       | Para 75, page 850 of the Complilation of 170 of 2018 |
| 5       | Aux Consumption  | e | 130.37       | Page No. 178 of the Complilation of 170 of 2018  | 130.37                                  | Page No. 178 of the Complilation of 170 of 2018 | 130.37                        | Page No. 948 of the Complilation of 170 of 2018      |
| 6       | Gross Generation Calculated                                  | f | 1161.94      | f = d + e  | 1160.04                                 | f = d + e                                       | 1161.41                       | f = d + e  |
| 7       | Net Generation injected (as submitted)                       | g | 999.17       | Page No. 178 of the Complilation of 170 of 2018  | 999.17                                  | Page No. 178 of the Complilation of 170 of 2018 | 998.23                        | Page No. 204 of the Complilation of 170 of 2018      |
| 8       | Gross Generation (as submitted)                              | h | 1129.54      | Page No. 178 of the Complilation of 170 of 2018  | 1129.54                                 | Page No. 178 of the Complilation of 170 of 2018 | 1128.60                       | h = g+e  |
| 9       | Difference Between Calculated and Submitted Gross Generation | i | 32.40        | i = f - h  | 30.50                                   | i = f - h                                       | 32.81                         | i = f - h  |

22.8. In light of the anomaly regarding Gross Generation data submitted by SWPGL and consumption by the Captive Users during FY 2017-18, which is much higher than the generation, it is imperative to assess the Monthly MRI data which has been submitted by SWPGL and ascertain the basis on which the same has been certified by MSLDC.

22.9. The actual power available for captive consumption at the Injection Point during FY 2017-18 was only 984.18 MUs against which, the Captive Users have allegedly consumed 1148.14 MUs. This is evident from the Table below.

**Table 4: Actual Power available for Captive Consumption at Injection Point based on MSLDC data and IEX sales data submitted by Sai Wardha**

| Month        | Line 1                | Line 2                | Total kWh             | IEX                  | Power available for Consumers at injection point |                     |
|--------------|-----------------------|-----------------------|-----------------------|----------------------|--|---------------------|
|              | kWh                   | kWh                   | kWh                   | kWh                  | kWh  | MU                  |
|              | a                     | b                     | c=a+b                 | d                    | e=c-d  | f=e/10 <sup>6</sup> |
| Apr-17       | 43,566,593.75         | 43,483,156.25         | 87,049,750.00         | -                    | 87,049,750.00                                    | 87.05               |
| May-17       | 31,314,632.81         | 31,180,164.06         | 62,494,796.87         | -                    | 62,494,796.87                                    | 62.49               |
| Jun-17       | 45,962,406.25         | 45,705,867.19         | 91,668,273.44         | 880,992.00           | 90,787,281.44                                    | 90.79               |
| Jul-17       | 40,587,125.00         | 40,861,773.44         | 81,448,898.44         | -                    | 81,448,898.44                                    | 81.45               |
| Aug-17       | 41,188,242.19         | 41,503,000.00         | 82,691,242.19         | 58,000.00            | 82,633,242.19                                    | 82.63               |
| Sep-17       | 31,550,720.00         | 32,302,398.44         | 63,853,118.44         | -                    | 63,853,118.44                                    | 63.85               |
| Oct-17       | 24,390,130.00         | 24,987,851.56         | 49,377,981.56         | -                    | 49,377,981.56                                    | 49.38               |
| Nov-17       | 19,751,820.00         | 18,896,789.06         | 38,648,609.06         | 5,055,248.00         | 33,593,361.06                                    | 33.59               |
| Dec-17       | 55,378,924.69         | 56,827,734.38         | 112,206,659.07        | 7,105,030.00         | 105,101,629.07                                   | 105.10              |
| Jan-18       | 56,173,062.50         | 56,601,773.44         | 112,774,835.94        | 433,500.00           | 112,341,335.94                                   | 112.34              |
| Feb-18       | 52,937,640.00         | 53,339,140.00         | 106,276,780.00        | 185,500.00           | 106,091,280.00                                   | 106.09              |
| Mar-18       | 54,652,540.00         | 55,083,610.00         | 109,736,150.00        | 326,751.00           | 109,409,399.00                                   | 109.41              |
| <b>Total</b> | <b>497,453,837.19</b> | <b>500,773,257.82</b> | <b>998,227,095.01</b> | <b>14,045,021.00</b> | <b>984,182,074.01</b>                            | <b>984.18</b>       |

22.10. For the purpose of ascertaining the differential units consumed by the Captive Users vis-à-vis actual power supplied by SWPGL during FY 2017-18, TPC-D has divided the consumer's consumption at injection point (as submitted by Sai Wardha) in proportion to 984.18 MUs in **Table** below:

*Table on next page....*

**Table 5: Difference between Actual Units consumed and proportionate consumption (minus sales through IEX)**

| S. No        | Name of the Shareholder                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) as submitted by Sai wardha | Proportionate consumption of consumers at injection point considering SLDC approved energy at injection - Sale through IEX | Differential Units to be billed |
|--------------|--|--|--|---------------------------------|
|              |  | MU   | MU   | MU                              |
| A            | B  | C  | $D = 984.18 * D / \sum D$  | E = C-D                         |
| 1            | Viraj Profiles Limited                       | 174.19   | 168.48   | 5.71                            |
| 2            | Bebitz Flanges Works Private Limited         | 9.54   | 9.23   | 0.31                            |
| 3            | Mahindra & Mahindra Limited                  | 71.24  | 68.91  | 2.33                            |
| 4            | Mahindra CIE Automotive Limited              | 73.57  | 71.16  | 2.41                            |
| 5            | Mahindra Sanyo Special Steel Private Limited | 71.77  | 69.42  | 2.35                            |
| 6            | Mahindra Vehicle Manufacturers Limited       | 26.98  | 26.10  | 0.88                            |
| 7            | Hindustan Petroleum Corporation Limited      | 177.63   | 171.81   | 5.82                            |
| 8            | Lupin Limited                                | 95.87  | 92.73  | 3.14                            |
| 9            | Pudumjee Paper Products Limited              | 36.65  | 35.45  | 1.20                            |
| 10           | Hindalco Industries Limited                  | 72.74  | 70.36  | 2.38                            |
| 11           | Inox Air Products Private Limited            | 44.38  | 42.92  | 1.45                            |
| 12           | Asahi India Glass Limited                    | 8.35   | 8.07   | 0.27                            |
| 13           | ACG Associated Capsules Private Limited      | 35.47  | 34.31  | 1.16                            |
| 14           | Bekaert Industries Private Limited           | 32.84  | 31.76  | 1.08                            |
| 15           | Owens Corning (India) Private Limited        | 33.53  | 32.43  | 1.10                            |
| 16           | AYM Syntex Limited                           | 10.34  | 10.00  | 0.34                            |
| 17           | Bharat Petroleum Corporation Limited         | 42.42  | 41.03  | 1.39                            |
| <b>Total</b> |  | <b>1,017.52</b>  | <b>984.18</b>  | <b>33.34</b>                    |

22.11. SWPGL has failed to duly notify change(s) in its equity shareholding pattern during FY 2017-18. SWPGL's contention that, the changes in shareholding were intimated to the Distribution Licensees at the time of submitting the Open Access (OA) Applications, is false and misleading. In this regard, it is pertinent to note that the Commission in its Order dated 20 August 2014 in Case No. 101 of 2014 (captive status for FY 2013-14 which is heavily relied upon by SWPGL and the Captive Users) has categorically held that if the change in shareholding during the year is not intimated/ declared, such shareholder shall not be considered as a Captive User for that financial year.

22.12. There are various discrepancies evident from the CA Certificates filed by SWPGL and the CA Certificates submitted by the Captive Users at the time of seeking OA during FY 2017-18. The exact date of change in shareholding of its Captive Users has not been provided by Sai Wardha. In this regard, the Commission in its Order dated 22 October 2018 in Case No. 132 of 2018 (reviewing Sai Wardha's captive status for FY 2014-15), has specifically directed Sai Wardha to provide the exact date when the shareholding of its Captive Users changed, as the same is essential for assessing compliance of Rule 3.

In this regard, it is submitted that weighted average of shareholding to verify 26% ownership annually cannot be considered without the exact date and extent of change in shareholding being intimated to the Distribution Licensee.

22.13. The summary of the CA certificates submitted by SWPGL and the Captive Users in the aforesaid Petition is as shown in **Table** below for ease of reference:

**Table 6: Summary of the CA Certificates submitted by Sai Wardha and Captive Users**

| CA Certificates submitted by Sai Wardha on 28.04.2018 | CA Certificates submitted by Captive Users while seeking OA | Remarks  |
|---|---|--|
| -   | 09.01.2017  | While seeking OA approval for April 2017 to August 2017, HPCL had submitted Auditors' Certificate as on 09.01.2017.      |
| 09.03.2017  | -   | Consumer had not submitted this CA certificate.  |
| 09.06.2017  | -   | Consumer had not submitted this CA certificate.  |
| 08.07.2017  | 08.07.2017  | While seeking OA approval for September 2017, HPCL had submitted Auditors Certificate as on 08.07.2017.                  |
| 06.09.2017  | 06.09.2017  | While seeking OA approval for October 2017 to March 2018, consumer had submitted Auditors' Certificate as on 06.09.2017. |
| 18.12.2017  | -   | Consumer had not submitted this CA certificate.  |
| 21.03.2018  | 21.03.2018  | Sai Wardha had submitted this CA certificate through email dated 03.04.2018 (i.e., at the end of the Financial Year).    |
| 31.03.2018  | -   | Consumer never submitted this CA certificate to TPC-D.   |

22.14. In terms of explanation (c) to Rule 3 of the Electricity Rules, the term "ownership" in relation to a generating station/ power plant setup by a company or a body corporate, denotes the Equity Share capital with voting rights. In all other cases, it means proprietary interest and control over the generating station/ power plant. In the present case, the CA Certificates demonstrate two classes of Shareholders (i.e., Class A and Class B), both of whom have the same voting rights percentage. The column on "Voting Rights Percentage" in the CA Certificates is a simple division of the number of shares held by a particular captive user/ shareholder by the total number of shares [both Class A and Class B]. On a bare perusal of the said Certificates, it can be inferred that both Class A and Class B shares have the same voting rights.

22.15.SWPGL/Captive Users have failed, in letter and spirit, to comply with the requirements of Rule 3 of the Electricity Rules, in as much as compliance is sought to be portrayed by selective reliance on shareholding and consumption of a dynamic set of consumers throughout the year.

22.16.During FY 2017-18, while seeking OA, SWPGL/ its Captive Users had, by way of the CA Certificates, portrayed a total of 29 Captive Users/ Shareholders of SWPGL, based on **which permission under Section 9 of the EA was granted. However, in the present Petition only 17 of the aforesaid 29 Captive Users have been selected for the purpose of demonstrating compliance of Rule 3.**

22.17.In the facts of the present case, **Table** below summarizes the 29 Captive Users/ Shareholders, identified by SWPGL during FY 2017-18 (as per the CA Certificates), along with their varying Shareholding pattern during the year. The last column demonstrates whether or not Sai Wardha has considered the said Captive User(s) at the end of the year to demonstrate compliance of captive consumption in proportion to their Equity Shareholding.

*Table on Next Page.....*



**Table 7: Details of Change in Shareholdings during FY 2017-18 & consideration for purpose of captive compliance at End of the Year**

| SAI WARDHA POWER GENERATION LIMITED - DETAILS OF CHANGE IN SHARE HOLDING FOR FY 2017-18 |   |                                       |                                       |                                       |                                       |                                       |                                       |                                       |                                       | dated 18/12/2017                      | Consideration of the consumer at the end of the year |
|---|---|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|--|
| Sl. No.   | DATE OF AUDITOR CERTIFICATES (D/M/YYYY)         | 09-01-17                              | 09-Mar-17                             | 09-Jun-17                             | 08-Jul-17                             | 06-Sep-17                             | 06-Sep-17                             | 21-Mar-18                             | 31-Mar-18                             |                                       |  |
|   | Name of the Shareholder                         | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each |  |
| <b>A) Class A Equity Share Holders</b>  |   |                                       |                                       |                                       |                                       |                                       |                                       |                                       |                                       |                                       |  |
| 1   | Viraj Profiles Limited                          | 23298938                              | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | Yes  |
| 2   | Graphite India Limited                          | 2,476,558                             | 2,476,558                             | 2,476,558                             | 2,476,558                             | 2,476,558                             | 2,476,558                             | 2,476,558                             | 2,476,558                             | 2,476,558                             | No   |
| 3   | Facor Steels Limited                            | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | No   |
| 4   | Sona Alloys Private Limited                     | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | No   |
| 5   | R.L. Steels & Energy Limited                    | 2,653,455                             | 2,653,455                             | 2,653,455                             | 2,653,455                             | 2,653,455                             | 2,653,455                             | 2,653,455                             | 2,653,455                             | 2,653,455                             | No   |
| 6   | Mahindra CIE Automotive Limited                 | 3272595                               | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | Yes  |
| 7   | Mahindra & Mahindra Limited                     | 1945867                               | 1,945,867                             | 1,945,867                             | 1,945,867                             | 1,945,867                             | 1,945,867                             | 1,945,867                             | 3,361,043                             | 3,361,043                             | Yes  |
| 8   | Mahindra Vehicle Manufacturers Limited          | 1238279                               | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | Yes  |
| 9   | Air Liquide India Holding Private Limited       | 1061382                               | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | No   |
| 10  | Mahindra Sanyo Special Steel Private Limited    | 6191395                               | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | Yes  |
| 11  | Bebitz Flanges Works Private Limited            | 265346                                | 265,346                               | 265,346                               | 265,346                               | 265,346                               | 265,346                               | 265,346                               | 265,346                               | 265,346                               | Yes  |
| 12  | Orchid Chemicals & Pharmaceuticals Limited      | 707588                                | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 707,588                               | No   |
| 13  | Mahalaxmi TMT Private Limited                   | 7887669                               | 7,887,669                             | 7,887,669                             | 7,887,669                             | 7,887,669                             | 7,887,669                             | 7,887,669                             | 7,887,669                             | 7,887,669                             | No   |
| 14  | India Steel Works Limited                       | 1061382                               | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | 1,061,382                             | No   |
| 15  | Spentex Industries Limited                      | 2983716                               | 2,983,716                             | 2,983,716                             | 2,983,716                             | 2,983,716                             | 2,983,716                             | 2,983,716                             | 2,983,716                             | 2,983,716                             | No   |
| 16  | Lupin Limited                                   | 3007237                               | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | Yes  |
| 17  | Hindustan Petroleum Corporation Limited         | 7783468                               | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | Yes  |
| 18  | Pudumjee Paper Products Limited                 | 1415176                               | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | 1,592,073                             | 1,592,073                             | 1,592,073                             | 1,592,073                             | Yes  |
| 19  | Ramsons Industries Limited                      | 1149830                               | 1,149,830                             | 1,149,830                             | 1,149,830                             | 1,149,830                             | 1,149,830                             | 1,149,830                             | 1,149,830                             | 1,149,830                             | No   |
| 20  | Ramsons Castings Private Limited                | 884485                                | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | 884,485                               | No   |
| 21  | Asahi India Glass Limited                       | 707588                                | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 972,934                               | 972,934                               | 972,934                               | Yes  |
| 22  | Inox Air Products Private Limited               | 1768970                               | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | Yes  |
| 23  | ACG Associated Capsules Private Limited         | 1238279                               | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,415,176                             | 1,415,176                             | 1,415,176                             | Yes  |
| 24  | Hindalco Industries Limited                     |                                       | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | Yes  |
| 25  | Owens Corning (India) Private Limited           |                                       | -                                     | 1,857,418                             | 1,857,418                             | 1,857,418                             | 1,857,418                             | 1,857,418                             | 1,857,418                             | 1,857,418                             | Yes  |
| 26  | Bekaert Industries Private Limited              |                                       | -                                     | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 2,476,558                             | 2,476,558                             | 2,476,558                             | Yes  |
| 27  | AYM Syntex Limited                              |                                       | -                                     | -                                     | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 707,588                               | Yes  |
| 28  | Bharat Petroleum Corporation Limited            |                                       | -                                     | -                                     | -                                     | 2,299,661                             | 2,299,661                             | 2,299,661                             | 2,299,661                             | 2,299,661                             | Yes  |
| 29  | KSK Energy Ventures Limited                     | 29777954                              | 26,947,602                            | 23,321,214                            | 22,613,626                            | 20,137,068                            | 20,137,068                            | 17,572,061                            | 17,572,061                            | 17,572,061                            | No   |
|   | <b>TOTAL-A</b>                                  | 105076818                             | 105,076,818                           | 105,076,818                           | 105,076,818                           | 105,076,818                           | 105,076,818                           | 105,076,818                           | 105,076,818                           | 105,076,818                           |  |
| <b>B) Class B Equity Share Holders</b>  |   |                                       |                                       |                                       |                                       |                                       |                                       |                                       |                                       |                                       |  |
| 1   | KSK Electricity Financing India Private Limited | 299063325                             | 299,063,325                           | 299,063,325                           | 299,063,325                           | 299,063,325                           | 92,951,850                            | 92,951,850                            | 92,951,850                            | 92,951,850                            |  |
| 3   | Mr. M Srirama Saran Prasad                      | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     |  |
| 5   | Mr. M.S.Phanisekhar                             | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     |  |
| 6   | Mr. B.Kalyan Chakravarthy                       | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     | 1                                     |  |
| 2   | IDBI Trusteeship Services Limited               |                                       | -                                     | -                                     | -                                     | -                                     | 206,111,475                           | 206,111,475                           | 206,111,475                           | 206,111,475                           |  |
| 4   | Mr. K Satya Prakash                             |                                       | -                                     | -                                     | -                                     | -                                     | -                                     | -                                     | -                                     | -                                     |  |
|   | <b>TOTAL-B</b>                                  | 299063328                             | 299,063,328                           | 299,063,328                           | 299,063,328                           | 299,063,328                           | 299,063,328                           | 299,063,328                           | 299,063,328                           | 299,063,328                           |  |
|   | <b>GRAND TOTAL (A+B)</b>                        | 404140146                             | 404,140,146                           | 404,140,146                           | 404,140,146                           | 404,140,146                           | 404,140,146                           | 404,140,146                           | 404,140,146                           | 404,140,146                           |  |

22.18. It is evident from the aforesaid Table, that 12 out of the 29 Captive Users/ Shareholders as demonstrated in the CA Certificates at the time of seeking grant of OA have not consumed power at all throughout the year and as such, their Consumption Requirement is not in accordance with their Equity Shareholding. On this ground alone, SWPGL and its Captive Users/ Shareholders fail to meet the captive criteria specified under Rule 3 of the Electricity Rules, as explained in the preceding paragraphs and the Hon'ble ATE's *Kadodara Power Judgment*.

22.19. SWPGL is seeking Captive Status for only 17 Captive Users/ Shareholders. All other Shareholders (except these 17) have not sought OA during FY 2017-18 and as such are not being tested for proportionality. As per SWPGL, the remaining Captive Users are to be excluded from the captive matrix while assessing the Captive Status in terms of Rule 3 (i.e., both 26% Equity Shareholding and 51% consumption).

- 22.20. The Rule of Proportionality qua 51% consumption as provided under Rule 3 is to be met by all consumers who have been demonstrated in the CA Certificates as Captive Users, for availing power through group captive route during a Financial Year, based on which the Distribution Licenses grant OA permission under Section 9 of the EA. The intent of submitting the CA Certificate as a pre-condition to grant of OA under Section 9, is to disclose to the Distribution Licensees the details of all the Captive Users who together hold Equity Shares to the extent of 26% in the Captive Generating Units/Plant, for the purpose of consuming electricity through group captive route.
- 22.21. The consequence of failure to comply with the requirements of Rule 3(1)(a) & (b) of the Electricity Rules is set out in Rule 3(2) of the Electricity Rules. As per Rule 3(2) of the Electricity Rules, if in any year, the Ownership and/ or Consumption Requirement, and/ or the Rule of Proportionality are not met, then the entire electricity generated by such CPP would be treated as if such electricity was supplied by a generating company, meaning thereby that, the entire electricity generated by the power plant would be liable to levy of all statutory charges, including CSS. The Hon'ble ATE in its Judgment in *Godavari Power & Ispat Limited v. CSERC & Ors.* reported as 2013 ELR (APTEL) 481 has held that if the requirements of Rule 3(1)(a) and (b) are not met by a power plant, then in terms of Rule 3(2), it shall lose its captive status and it will be treated as an independent power plant/ producer.
- 22.22. The Ownership Requirement is a qualification that is required to be fulfilled before a power plant can be termed as a CPP, meaning thereby that, it is a *condition precedent*. Whereas, the Consumption Requirement is a *condition subsequent* that is to be evaluated annually. This has been clearly held by the Hon'ble Madras High Court in its Judgment dated 8 December 2009 in *Madura Coats Pvt. Ltd. v. ARKAY Energy (Rameswaram) Ltd.* This has also been held by the Commission in its Order dated 17 January 2018 in Case No. 23 of 2017.
- 22.23. SWPGL has applied the proportionality test considering the Net Generation instead of the Gross Generation. Furthermore, SWPGL has considered the captive consumption measured at G<>T interface instead of such consumption grossed up with Auxiliary Consumption. The Commission in its Orders for FY 2012-13, 2013-14, 2014-15 and 2015-16 has continuously held that, the proportionality test is to be considered on Gross Generation at the Generation Terminal of the CPP Units 3 and 4 and compared with the captive consumption grossed up with the Auxiliary Consumption.
- 22.24. TPC-D has analysed the shareholding and proportionate consumption of the 17 Captive Users/ Shareholders based on various methods adopted by the Commission in different Orders. In each of these methods, the Captive User(s) fail to fulfil the captive criteria.
- 22.25. It is clarified that the below tests/ assessments are based on the limited data submitted by SWPGL and available on record of the Commission. TPC-D has not assumed or relied on any hypothetical figures for the purpose of carrying out the analysis.

#### **F-1 Assessment of Captive Status for FY 2017-18 considering 51% of gross generation**

**and compared with actual consumption in proportion to the shareholding percentage (as considered by the Commission in its Original Order dated 9 February 2018 in Case No. 77 of 2015 i.e CGP Status for FY 2014-15)**

22.26.The Commission in its Order dated 9 February 2018 in Case No.77 of 2015 (while determining SWPGL’s Captive Status for FY 2014-15) had analysed the CA Certificates at the Start and End of the Financial Year and the CA Certificates in which shareholding had changed (i.e., separately for the periods of maintaining the same share holding pattern by the captive users) to conclude whether or not captive criteria was fulfilled.

22.27.Accordingly, without prejudice to TPC-D’s stand that captive status is to be demonstrated only on the basis of the CA Certificates actually submitted to the Distribution Licensees during the year, TPC-D in **Table 8 to Table 14** below has considered all the 7 different Chartered Accountant’s Certificate issued on behalf of SWPGL during FY 2017-18 to assess whether or not SWPGL/ its Captive Users has fulfilled the captive criteria (i.e., 26% shareholding and 51% consumption in proportion to the shareholding held by each such captive user).

22.28.It is clarified that, for the purpose of this assessment TPC-D has considered the data as submitted by SWPGL in the said Petition and used the same methodology considered by the Commission. TPC-D has employed no assumptions or presumptions in this regard.

*Tables on Next Page.....*

**Table 8: Computation of Captive Status of SWPGL in FY 2017-18 considering Equity Share Holding as on 9 January 2017 (start of the year)**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                      |                      |   |  |  |   | 09-01-2017 |
|---|--|-----------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|--|--|---|------------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking - 10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |            |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |  |   |            |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                     | MU (a)   | MU (b)               | MU (c)               | MU (d)  | (d/(1-Aux Loss%))                            | M = if (I > L, L, MIN (K,L))   | N = if (M > I, YES, No)                                     |            |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M  | N   |            |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 44.69%   | 576.06                                 | 257.45   | 231.70               | 283.19               | 174.19  | 196.91                                       | 196.91   | No  |            |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.51%  | 576.06                                 | 2.93   | 2.64                 | 3.23                 | 9.54  | 10.78  | 3.23   | Yes   |            |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 19,45,867                         | 0.48%  | 3.73%  | 576.06                                 | 21.50  | 19.35                | 23.65                | 71.24   | 80.54  | 23.65  | Yes   |            |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 6.28%  | 576.06                                 | 36.16  | 32.55                | 39.78                | 73.57   | 83.17  | 39.78  | Yes   |            |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 11.88%   | 576.06                                 | 68.41  | 61.57                | 75.26                | 71.77   | 81.14  | 75.26  | Yes   |            |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 2.38%  | 576.06                                 | 13.68  | 12.31                | 15.05                | 26.98   | 30.50  | 15.05  | Yes   |            |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 14.93%   | 576.06                                 | 86.01  | 77.41                | 94.61                | 177.63  | 200.81                                       | 94.61  | Yes   |            |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 5.77%  | 576.06                                 | 33.23  | 29.91                | 36.55                | 95.87   | 108.38                                       | 36.55  | Yes   |            |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 14,15,176                         | 0.35%  | 2.71%  | 576.06                                 | 15.64  | 14.07                | 17.20                | 36.65   | 41.43  | 17.20  | Yes   |            |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 0                                 | 0.00%  | 0.00%  | 576.06                                 | -  | -                    | -                    | 72.74   | 82.23  | -  | No  |            |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 3.39%  | 576.06                                 | 19.55  | 17.59                | 21.50                | 44.38   | 50.17  | 21.50  | Yes   |            |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 7,07,588                          | 0.18%  | 1.36%  | 576.06                                 | 7.82   | 7.04                 | 8.60                 | 8.35  | 9.44   | 8.60   | Yes   |            |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 12,38,279                         | 0.31%  | 2.38%  | 576.06                                 | 13.68  | 12.31                | 15.05                | 35.47   | 40.10  | 15.05  | Yes   |            |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 0                                 | 0.00%  | 0.00%  | 435.35                                 | -  | -                    | -                    | 32.84   | 36.99  | -  | No  |            |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 0                                 | 0.00%  | 0.00%  | 435.35                                 | -  | -                    | -                    | 33.53   | 37.77  | -  | No  |            |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 0                                 | 0.00%  | 0.00%  | 388.19                                 | -  | -                    | -                    | 10.34   | 11.63  | -  | No  |            |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 0                                 | 0.00%  | 0.00%  | 303.37                                 | -  | -                    | -                    | 42.42   | 47.67  | -  | No  |            |
| <b>Total</b>  |  |                 | <b>5,21,33,138</b>                | <b>12.90%</b>  | <b>100.00%</b>   |  | <b>576.06</b>  | <b>518.46</b>        | <b>633.67</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |  |   |            |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                      |                      |   |  |  |   |            |

**Table 9: Computation of Captive Status of SWPGL in FY 2017-18 considering Equity Share Holding as on 9 March 2017**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                     |                     |   |  |   |   | 09-Mar-17 |
|---|--|-----------------|-----------------------------------|--|--|--|--|---------------------|---------------------|---|--|---|---|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                     |                     | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking -10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |           |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with -10% Variation | with +10% Variation |   |  |   |   |           |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                     | MU (a)   | MU (b)              | MU (c)              | MU (d)  | (d/(1-Aux Loss%))                            | M = if (I > L, L, MIN (K,L))  | N = if (M > I, YES, No)                                     |           |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9             | J=H*1.1             | K   | L  | M   | N   |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 42.39%   | 576.06                                 | 244.19   | 219.77              | 268.61              | 174.19  | 196.91                                       | 196.91  | No  |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.48%  | 576.06                                 | 2.78   | 2.50                | 3.06                | 9.54  | 10.78  | 3.06  | Yes   |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 19,45,867                         | 0.48%  | 3.54%  | 576.06                                 | 20.39  | 18.35               | 22.43               | 71.24   | 80.54  | 22.43   | Yes   |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5.95%  | 576.06                                 | 34.30  | 30.87               | 37.73               | 73.57   | 83.17  | 37.73   | Yes   |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 11.26%   | 576.06                                 | 64.89  | 58.40               | 71.38               | 71.77   | 81.14  | 71.38   | Yes   |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 2.25%  | 576.06                                 | 12.98  | 11.68               | 14.28               | 26.98   | 30.50  | 14.28   | Yes   |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 14.16%   | 576.06                                 | 81.58  | 73.42               | 89.73               | 177.63  | 200.81                                       | 89.73   | Yes   |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 5.47%  | 576.06                                 | 31.52  | 28.37               | 34.67               | 95.87   | 108.38                                       | 34.67   | Yes   |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 14,15,176                         | 0.35%  | 2.57%  | 576.06                                 | 14.83  | 13.35               | 16.32               | 36.65   | 41.43  | 16.32   | Yes   |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 5.15%  | 576.06                                 | 29.66  | 26.70               | 32.63               | 72.74   | 82.23  | 32.63   | Yes   |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 3.22%  | 576.06                                 | 18.54  | 16.69               | 20.39               | 44.38   | 50.17  | 20.39   | Yes   |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 7,07,588                          | 0.18%  | 1.29%  | 576.06                                 | 7.42   | 6.67                | 8.16                | 8.35  | 9.44   | 8.16  | Yes   |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 12,38,279                         | 0.31%  | 2.25%  | 576.06                                 | 12.98  | 11.68               | 14.28               | 35.47   | 40.10  | 14.28   | Yes   |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 0                                 | 0.00%  | 0.00%  | 435.35                                 | -  | -                   | -                   | 32.84   | 36.99  | -   | No  |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 0                                 | 0.00%  | 0.00%  | 435.35                                 | -  | -                   | -                   | 33.53   | 37.77  | -   | No  |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 0                                 | 0.00%  | 0.00%  | 388.19                                 | -  | -                   | -                   | 10.34   | 11.63  | -   | No  |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 0                                 | 0.00%  | 0.00%  | 303.37                                 | -  | -                   | -                   | 42.42   | 47.67  | -   | No  |           |
| <b>Total</b>  |  |                 | <b>5,49,63,490</b>                | <b>13.60%</b>  | <b>100.00%</b>   |  | <b>576.06</b>  | <b>518.46</b>       | <b>633.67</b>       | <b>1,017.52</b>   | <b>1,149.66</b>                              |   |   |           |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                     |                     |   |  |   |   |           |

**Table 10: Computation of Captive Status of SWPGL in FY 2017-18 considering Equity Share Holding as on 9 June 2017**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                      |                      |   |  |  |   | 09-Jun-17 |
|---|--|-----------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|--|--|---|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking - 10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |           |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |  |   |           |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                     | MU (a)   | MU (b)               | MU (c)               | MU (d)  | (d/(1-Aux Loss%))                            | M = if (I > L, L, MIN (K,L))   | N = if (M > I, YES, No)                                     |           |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M  | N   |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 39.77%   | 576.06                                 | 229.08   | 206.17               | 251.99               | 174.19  | 196.91                                       | 196.91   | No  |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.45%  | 576.06                                 | 2.61   | 2.35                 | 2.87                 | 9.54  | 10.78  | 2.87   | Yes   |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 19,45,867                         | 0.48%  | 3.32%  | 576.06                                 | 19.13  | 17.22                | 21.05                | 71.24   | 80.54  | 21.05  | Yes   |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5.59%  | 576.06                                 | 32.18  | 28.96                | 35.39                | 73.57   | 83.17  | 35.39  | Yes   |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 10.57%   | 576.06                                 | 60.87  | 54.79                | 66.96                | 71.77   | 81.14  | 66.96  | Yes   |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 2.11%  | 576.06                                 | 12.17  | 10.96                | 13.39                | 26.98   | 30.50  | 13.39  | Yes   |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 13.28%   | 576.06                                 | 76.53  | 68.88                | 84.18                | 177.63  | 200.81                                       | 84.18  | Yes   |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 5.13%  | 576.06                                 | 29.57  | 26.61                | 32.52                | 95.87   | 108.38                                       | 32.52  | Yes   |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 14,15,176                         | 0.35%  | 2.42%  | 576.06                                 | 13.91  | 12.52                | 15.31                | 36.65   | 41.43  | 15.31  | Yes   |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 4.83%  | 576.06                                 | 27.83  | 25.05                | 30.61                | 72.74   | 82.23  | 30.61  | Yes   |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 3.02%  | 576.06                                 | 17.39  | 15.65                | 19.13                | 44.38   | 50.17  | 19.13  | Yes   |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 7,07,588                          | 0.18%  | 1.21%  | 576.06                                 | 6.96   | 6.26                 | 7.65                 | 8.35  | 9.44   | 7.65   | Yes   |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 12,38,279                         | 0.31%  | 2.11%  | 576.06                                 | 12.17  | 10.96                | 13.39                | 35.47   | 40.10  | 13.39  | Yes   |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 17,68,970                         | 0.44%  | 3.02%  | 435.35                                 | 13.14  | 11.83                | 14.46                | 32.84   | 36.99  | 14.46  | Yes   |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 18,57,418                         | 0.46%  | 3.17%  | 435.35                                 | 13.80  | 12.42                | 15.18                | 33.53   | 37.77  | 15.18  | Yes   |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 0                                 | 0.00%  | 0.00%  | 388.19                                 | -  | -                    | -                    | 10.34   | 11.63  | -  | No  |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 0                                 | 0.00%  | 0.00%  | 303.37                                 | -  | -                    | -                    | 42.42   | 47.67  | -  | No  |           |
| <b>Total</b>  |  |                 | <b>5,85,89,878</b>                | <b>14.50%</b>  | <b>100.00%</b>   |  | <b>567.35</b>  | <b>510.62</b>        | <b>624.09</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |  |   |           |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                      |                      |   |  |  |   |           |

**Table 11: Computation of Captive Status of SWPGL in FY 2017-18 considering Equity Share Holding as on 8 July 2017**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                      |                      |   |  |  |   | 08-Jul-17 |
|---|--|-----------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|--|--|---|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking - 10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |           |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |  |   |           |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                     | MU (a)   | MU (b)               | MU (c)               | MU (d)  | (d/(1-Aux Loss%))                            | M = if (I > L, L, MIN (K,L))   | N = if (M > I, YES, No)                                     |           |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M  | N   |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 39.29%   | 576.06                                 | 226.34   | 203.71               | 248.98               | 174.19  | 196.91                                       | 196.91   | No  |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.45%  | 576.06                                 | 2.58   | 2.32                 | 2.84                 | 9.54  | 10.78  | 2.84   | Yes   |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 19,45,867                         | 0.48%  | 3.28%  | 576.06                                 | 18.90  | 17.01                | 20.79                | 71.24   | 80.54  | 20.79  | Yes   |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5.52%  | 576.06                                 | 31.79  | 28.61                | 34.97                | 73.57   | 83.17  | 34.97  | Yes   |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 10.44%   | 576.06                                 | 60.15  | 54.13                | 66.16                | 71.77   | 81.14  | 66.16  | Yes   |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 2.09%  | 576.06                                 | 12.03  | 10.83                | 13.23                | 26.98   | 30.50  | 13.23  | Yes   |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 13.13%   | 576.06                                 | 75.61  | 68.05                | 83.18                | 177.63  | 200.81                                       | 83.18  | Yes   |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 5.07%  | 576.06                                 | 29.21  | 26.29                | 32.14                | 95.87   | 108.38                                       | 32.14  | Yes   |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 14,15,176                         | 0.35%  | 2.39%  | 576.06                                 | 13.75  | 12.37                | 15.12                | 36.65   | 41.43  | 15.12  | Yes   |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 4.77%  | 576.06                                 | 27.50  | 24.75                | 30.25                | 72.74   | 82.23  | 30.25  | Yes   |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 2.98%  | 576.06                                 | 17.19  | 15.47                | 18.90                | 44.38   | 50.17  | 18.90  | Yes   |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 7,07,588                          | 0.18%  | 1.19%  | 576.06                                 | 6.87   | 6.19                 | 7.56                 | 8.35  | 9.44   | 7.56   | Yes   |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 12,38,279                         | 0.31%  | 2.09%  | 576.06                                 | 12.03  | 10.83                | 13.23                | 35.47   | 40.10  | 13.23  | Yes   |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 17,68,970                         | 0.44%  | 2.98%  | 435.35                                 | 12.99  | 11.69                | 14.29                | 32.84   | 36.99  | 14.29  | Yes   |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 18,57,418                         | 0.46%  | 3.13%  | 435.35                                 | 13.64  | 12.27                | 15.00                | 33.53   | 37.77  | 15.00  | Yes   |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 7,07,588                          | 0.18%  | 1.19%  | 388.19                                 | 4.63   | 4.17                 | 5.10                 | 10.34   | 11.63  | 5.10   | Yes   |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 0                                 | 0.00%  | 0.00%  | 303.37                                 | -  | -                    | -                    | 42.42   | 47.67  | -  | No  |           |
| <b>Total</b>  |  |                 | <b>5,92,97,466</b>                | <b>14.67%</b>  | <b>100.00%</b>   |  | <b>565.22</b>  | <b>508.69</b>        | <b>621.74</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |  |   |           |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                      |                      |   |  |  |   |           |

**Table 12: Computation of Captive Status of SWPGL in FY 2017-18 considering Equity Share Holding as on 6 September, 2017**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                      |                      |   |  |  |   | 06-Sep-17 |
|---|--|-----------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|--|--|---|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking - 10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |           |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |  |   |           |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                     | MU (a)   | MU (b)               | MU (c)               | MU (d)  | (d/(1-Aux Loss%))                            | M = if (I > L, L, MIN (K,L))   | N = if (M > I, YES, No)                                     |           |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M  | N   |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 37.72%   | 576.06                                 | 217.27   | 195.54               | 239.00               | 174.19  | 196.91                                       | 196.91   | Yes   |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.43%  | 576.06                                 | 2.47   | 2.23                 | 2.72                 | 9.54  | 10.78  | 2.72   | Yes   |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 19,45,867                         | 0.48%  | 3.15%  | 576.06                                 | 18.15  | 16.33                | 19.96                | 71.24   | 80.54  | 19.96  | Yes   |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5.30%  | 576.06                                 | 30.52  | 27.47                | 33.57                | 73.57   | 83.17  | 33.57  | Yes   |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 10.02%   | 576.06                                 | 57.74  | 51.96                | 63.51                | 71.77   | 81.14  | 63.51  | Yes   |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 2.00%  | 576.06                                 | 11.55  | 10.39                | 12.70                | 26.98   | 30.50  | 12.70  | Yes   |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 12.60%   | 576.06                                 | 72.58  | 65.33                | 79.84                | 177.63  | 200.81                                       | 79.84  | Yes   |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 4.87%  | 576.06                                 | 28.04  | 25.24                | 30.85                | 95.87   | 108.38                                       | 30.85  | Yes   |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 15,92,073                         | 0.39%  | 2.58%  | 576.06                                 | 14.85  | 13.36                | 16.33                | 36.65   | 41.43  | 16.33  | Yes   |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 4.58%  | 576.06                                 | 26.39  | 23.75                | 29.03                | 72.74   | 82.23  | 29.03  | Yes   |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 2.86%  | 576.06                                 | 16.50  | 14.85                | 18.15                | 44.38   | 50.17  | 18.15  | Yes   |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 7,07,588                          | 0.18%  | 1.15%  | 576.06                                 | 6.60   | 5.94                 | 7.26                 | 8.35  | 9.44   | 7.26   | Yes   |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 12,38,279                         | 0.31%  | 2.00%  | 576.06                                 | 11.55  | 10.39                | 12.70                | 35.47   | 40.10  | 12.70  | Yes   |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 17,68,970                         | 0.44%  | 2.86%  | 435.35                                 | 12.47  | 11.22                | 13.71                | 32.84   | 36.99  | 13.71  | Yes   |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 18,57,418                         | 0.46%  | 3.01%  | 435.35                                 | 13.09  | 11.78                | 14.40                | 33.53   | 37.77  | 14.40  | Yes   |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 7,07,588                          | 0.18%  | 1.15%  | 388.19                                 | 4.45   | 4.00                 | 4.89                 | 10.34   | 11.63  | 4.89   | Yes   |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 22,99,661                         | 0.57%  | 3.72%  | 303.37                                 | 11.29  | 10.16                | 12.42                | 42.42   | 47.67  | 12.42  | Yes   |           |
| <b>Total</b>  |  |                 | <b>6,17,74,024</b>                | <b>15.29%</b>  | <b>100.00%</b>   |  | <b>555.50</b>  | <b>499.95</b>        | <b>611.05</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |  |   |           |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                      |                      |   |  |  |   |           |



**Table 13: Computation of Captive Status of SWPGL in FY 2017-18 considering Equity Share Holding as on 21 March, 2018**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                      |                      |   |  |  | 21-Mar-18   |
|---|--|-----------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|--|--|---|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking - 10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |  |   |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                     | MU (a)   | MU (b)               | MU (c)               | MU (d)  | (d/(1-Aux Loss%))                            | M = if (I > L, L, MIN (K,L))   | N = if (M > I, YES, No)                                     |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M  | N   |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 36.21%   | 576.06                                 | 208.61   | 187.75               | 229.47               | 174.19  | 196.91                                       | 196.91   | Yes   |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.41%  | 576.06                                 | 2.38   | 2.14                 | 2.61                 | 9.54  | 10.78  | 2.61   | Yes   |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 33,61,043                         | 0.83%  | 5.22%  | 576.06                                 | 30.09  | 27.08                | 33.10                | 71.24   | 80.54  | 33.10  | Yes   |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5.09%  | 576.06                                 | 29.30  | 26.37                | 32.23                | 73.57   | 83.17  | 32.23  | Yes   |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 9.62%  | 576.06                                 | 55.44  | 49.89                | 60.98                | 71.77   | 81.14  | 60.98  | Yes   |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 1.92%  | 576.06                                 | 11.09  | 9.98                 | 12.20                | 26.98   | 30.50  | 12.20  | Yes   |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 12.10%   | 576.06                                 | 69.69  | 62.72                | 76.66                | 177.63  | 200.81                                       | 76.66  | Yes   |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 4.67%  | 576.06                                 | 26.93  | 24.23                | 29.62                | 95.87   | 108.38                                       | 29.62  | Yes   |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 15,92,073                         | 0.39%  | 2.47%  | 576.06                                 | 14.25  | 12.83                | 15.68                | 36.65   | 41.43  | 15.68  | Yes   |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 4.40%  | 576.06                                 | 25.34  | 22.81                | 27.88                | 72.74   | 82.23  | 27.88  | Yes   |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 2.75%  | 576.06                                 | 15.84  | 14.25                | 17.42                | 44.38   | 50.17  | 17.42  | Yes   |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 9,72,934                          | 0.24%  | 1.51%  | 576.06                                 | 8.71   | 7.84                 | 9.58                 | 8.35  | 9.44   | 9.44   | Yes   |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 14,15,176                         | 0.35%  | 2.20%  | 576.06                                 | 12.67  | 11.40                | 13.94                | 35.47   | 40.10  | 13.94  | Yes   |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 24,76,558                         | 0.61%  | 3.85%  | 435.35                                 | 16.76  | 15.08                | 18.43                | 32.84   | 36.99  | 18.43  | Yes   |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 18,57,418                         | 0.46%  | 2.89%  | 435.35                                 | 12.57  | 11.31                | 13.83                | 33.53   | 37.77  | 13.83  | Yes   |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 7,07,588                          | 0.18%  | 1.10%  | 388.19                                 | 4.27   | 3.84                 | 4.70                 | 10.34   | 11.63  | 4.70   | Yes   |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 22,99,661                         | 0.57%  | 3.57%  | 303.37                                 | 10.84  | 9.76                 | 11.93                | 42.42   | 47.67  | 11.93  | Yes   |
| <b>Total</b>  |  |                 | <b>6,43,39,031</b>                | <b>15.92%</b>  | <b>100.00%</b>   |  | <b>554.77</b>  | <b>499.29</b>        | <b>610.25</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |  |   |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                      |                      |   |  |  |   |

**Table 14: Computation of Captive Status of SWPGL in FY 2017-18 considering Equity Share Holding as on 31 March 2018 (End of the Year)**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                      |                      |   |  |   |   | 31-Mar-18 |
|---|--|-----------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|--|---|---|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking - 10%/+10% Variation Criteria | Whether the consumer is fulfilling the proportionality Test |           |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |   |   |           |
|   |  |                 |                                   |  |  |  | MU (a)   | MU (b)               | MU (c)               |   |  |   |   | MU (d)    |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M   | N   |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 36.21%   | 576.06                                 | 208.61   | 187.75               | 229.47               | 174.19  | 196.91                                       | 196.91  | Yes   |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.41%  | 576.06                                 | 2.38   | 2.14                 | 2.61                 | 9.54  | 10.78  | 2.61  | Yes   |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 33,61,043                         | 0.83%  | 5.22%  | 576.06                                 | 30.09  | 27.08                | 33.10                | 71.24   | 80.54  | 33.10   | Yes   |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5.09%  | 576.06                                 | 29.30  | 26.37                | 32.23                | 73.57   | 83.17  | 32.23   | Yes   |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 9.62%  | 576.06                                 | 55.44  | 49.89                | 60.98                | 71.77   | 81.14  | 60.98   | Yes   |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 1.92%  | 576.06                                 | 11.09  | 9.98                 | 12.20                | 26.98   | 30.50  | 12.20   | Yes   |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 12.10%   | 576.06                                 | 69.69  | 62.72                | 76.66                | 177.63  | 200.81                                       | 76.66   | Yes   |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 4.67%  | 576.06                                 | 26.93  | 24.23                | 29.62                | 95.87   | 108.38                                       | 29.62   | Yes   |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 15,92,073                         | 0.39%  | 2.47%  | 576.06                                 | 14.25  | 12.83                | 15.68                | 36.65   | 41.43  | 15.68   | Yes   |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 4.40%  | 576.06                                 | 25.34  | 22.81                | 27.88                | 72.74   | 82.23  | 27.88   | Yes   |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 2.75%  | 576.06                                 | 15.84  | 14.25                | 17.42                | 44.38   | 50.17  | 17.42   | Yes   |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 9,72,934                          | 0.24%  | 1.51%  | 576.06                                 | 8.71   | 7.84                 | 9.58                 | 8.35  | 9.44   | 9.44  | Yes   |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 14,15,176                         | 0.35%  | 2.20%  | 576.06                                 | 12.67  | 11.40                | 13.94                | 35.47   | 40.10  | 13.94   | Yes   |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 24,76,558                         | 0.61%  | 3.85%  | 435.35                                 | 16.76  | 15.08                | 18.43                | 32.84   | 36.99  | 18.43   | Yes   |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 18,57,418                         | 0.46%  | 2.89%  | 435.35                                 | 12.57  | 11.31                | 13.83                | 33.53   | 37.77  | 13.83   | Yes   |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 7,07,588                          | 0.18%  | 1.10%  | 388.19                                 | 4.27   | 3.84                 | 4.70                 | 10.34   | 11.63  | 4.70  | Yes   |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 22,99,661                         | 0.57%  | 3.57%  | 303.37                                 | 10.84  | 9.76                 | 11.93                | 42.42   | 47.67  | 11.93   | Yes   |           |
|   | <b>Total</b>                                 |                 | <b>6,43,39,031</b>                | <b>15.92%</b>  | <b>100.00%</b>   |  | <b>554.77</b>  | <b>499.29</b>        | <b>610.25</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |   |   |           |
|   | SWPGL Total Equity                           |                 | <b>40,41,40,146</b>               |  |  |  |  |                      |                      |   |  |   |   |           |

22.29.As is evident from the calculations in the above Tables :

- i. The percentage of Equity Ownership held by the 17 captive users at the Start of the Financial Year (i.e., as per CA Certificate dated 09 January 2017) was 12.90%, which is less than the required 13% (being proportionate to 26% equity in the Company as per Rule 3 of the Electricity Rules).
- ii. While Captive Users meets the criteria of at least 51% captive consumption during FY 2017-18, Viraj Profiles (one of the Captive Users of SWPGL) fails the test of proportionality (i.e., at least 51% consumption in proportion to its Shareholding within variation of  $\pm 10\%$ ).

22.30.As such, not only do the Captive Users fail the primary test of minimum equity holding at the start of the year, but they also fail to fulfil the 51% proportionality test as prescribed under Rule 3 of the Electricity Rules.

22.31.Table below demonstrates the periods during FY 2017-18 when the Captive User(s) have failed to hold minimum 13% equity shareholding and meet the 51% proportionality test:

**Table 15: Comparison of CA Certificates submitted by SWPGL and meeting criteria of 26% Shareholding and 51 % consumption**

| Sr. No. | CA Certificates | 13% Shareholding criteria                              |                                     | 51% Consumption Criteria - to Distribute 51% of total power amongst captive users | Proportionality Test - To Consume power in proportion to the shareholding |
|---------|-----------------|--|-------------------------------------|---|---|
|         |                 | Status   | Criteria fulfilling/ not fulfilling |   |   |
| 1       | 9 January 2017  | Total of 17 captive consumers - <b>12.90% &lt; 13%</b> | <u>Not fulfilling the Criteria</u>  | Fulfilling the Criteria   | <u>Viraj Profiles Ltd. fails the Proportionality Test</u>                 |
| 2       | 9 March 2017    | Total of 17 captive consumers - 13.60% > 13%           | Fulfilling the Criteria             | Fulfilling the Criteria   | Passed*   |
| 3       | 9 June 2017     | Total of 17 captive consumers - 14.50% > 13%           | Fulfilling the Criteria             | Fulfilling the Criteria   | Passed*   |
| 4       | 8 July 2017     | Total of 17 captive consumers -                        | Fulfilling the Criteria             | Fulfilling the Criteria   | Passed*   |

| Sr. No. | CA Certificates  | 13% Shareholding criteria                    |                                     | 51% Consumption Criteria - to Distribute 51% of total power amongst captive users | Proportionality Test - To Consume power in proportion to the shareholding |
|---------|------------------|--|-------------------------------------|---|---|
|         |                  | Status                                       | Criteria fulfilling/ not fulfilling |   |   |
|         |                  | 14.67% > 13%                                 |                                     |   |   |
| 5       | 6 September 2017 | Total of 17 captive consumers - 15.29% > 13% | Fulfilling the Criteria             | Fulfilling the Criteria   | Passed  |
| 6       | 21 March 2018    | Total of 17 captive consumers - 15.92% > 13% | Fulfilling the Criteria             | Fulfilling the Criteria   | Passed  |
| 7       | 31 March 2018    | Total of 17 captive consumers - 15.92% > 13% | Fulfilling the Criteria             | Fulfilling the Criteria   | Passed  |

*\*As per scenarios worked out by TPC-D in Tables 8, 9 and 10, the proportionality test is not fulfilled and therefore TPC-D appears to inadvertently mention that proportionality test is “passed”.*

**F-2. Assessment of captive status considering Weighted Average Equity Shareholding as on 31 March 2018 [as considered by the Commission in: (i) Order dated 20 August 2014 in Case No. 101 of 2014; and (ii) Corrigendum Order dated 12 March 2018 in Case No. 77 of 2015]**

22.32. The Commission in its following Orders has considered another method to ascertain captive compliance, in which the Weighted Average Shareholding of the Captive Users was considered:

- i. Order dated 20 August 2014 in Case No. 101 of 2014 (re. FY 2013-14); and
- ii. Corrigendum Order dated 12 March 2018 in Case No. 77 of 2015 (re. FY 2014-15).

22.33. It is pertinent to highlight that, the Commission in its Order dated 20 August 2014 in Case No. 101 of 2014 had considered 100% of total generation while assessing compliance with Rule 3. However, the Commission in its subsequent Corrigendum Order in Case Nos. 77 of 2015 has assessed compliance of Rule 3 by considering 51% of the total generation (in line with the Hon’ble ATE directions in *Kadodara Power*).

22.34. For assessing Captive Status by Weighted Average method, it is imperative to know the '*exact date of change*' in shareholding of the Captive User(s), which in the present case has not been provided by SWPGL in spite of repeated requests.

22.35. TPC-D has carried out analysis of captive compliance based on the aforesaid Weighted Average methodology applied by the Commission in the previous years (considering the data submitted by SWPGL). Even considering the aforesaid Weighted Average methods applied by the Commission in the previous years, Captive User(s) fail to meet the captive requirements, which is evident from Table 16 and Table 17 below.

*Tables on Next Page...*

**Table 16: Computation of Captive Status of SWPGL in FY 2017-18 considering Weighted Average Equity Share Holding as on 31 March 2018 (as per Order dated 20.08.2014 in Case No. 101 of 2014)**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                      |                      |   |  |  |   | 31-Mar-18 |
|---|--|-----------------|-----------------------------------|--|--|--|--|----------------------|----------------------|---|--|--|---|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generation Considered for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumption to be considered for checking - 10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |           |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |  |   |           |
|   |  |                 |                                   |  |  |  | MU (a)   | MU (b)               | MU (c)               |   |  |  |   |           |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                     | MU (a)   | MU (b)               | MU (c)               | MU (d)  | (d/(1-Aux Loss%))                            | M = if (I > L, L, MIN (K,L))   | N = if (M > I, YES, No)                                     |           |
| A   | B  | C               | D                                 | E  | F  | G                                      | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M  | N   |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 19.84%   | 1,129.54                               | 224.05   | 201.65               | 246.46               | 174.19  | 196.91                                       | 196.91   | No  |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0.23%  | 1,129.54                               | 2.55   | 2.30                 | 2.81                 | 9.54  | 10.78  | 2.81   | Yes   |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 19,88,516                         | 0.49%  | 1.69%  | 1,129.54                               | 19.12  | 17.21                | 21.03                | 71.24   | 80.54  | 21.03  | Yes   |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 2.79%  | 1,129.54                               | 31.47  | 28.32                | 34.62                | 73.57   | 83.17  | 34.62  | Yes   |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 5.27%  | 1,129.54                               | 59.54  | 53.59                | 65.49                | 71.77   | 81.14  | 65.49  | Yes   |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 1.05%  | 1,129.54                               | 11.91  | 10.72                | 13.10                | 26.98   | 30.50  | 13.10  | Yes   |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 6.63%  | 1,129.54                               | 74.85  | 67.36                | 82.33                | 177.63  | 200.81                                       | 82.33  | Yes   |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 2.56%  | 1,129.54                               | 28.92  | 26.03                | 31.81                | 95.87   | 108.38                                       | 31.81  | Yes   |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 15,15,498                         | 0.37%  | 1.29%  | 1,129.54                               | 14.57  | 13.12                | 16.03                | 36.65   | 41.43  | 16.03  | Yes   |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 2.41%  | 1,129.54                               | 27.22  | 24.50                | 29.94                | 72.74   | 82.23  | 29.94  | Yes   |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 1.51%  | 1,129.54                               | 17.01  | 15.31                | 18.71                | 44.38   | 50.17  | 18.71  | Yes   |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 7,15,585                          | 0.18%  | 0.61%  | 1,129.54                               | 6.88   | 6.19                 | 7.57                 | 8.35  | 9.44   | 7.57   | Yes   |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 12,43,610                         | 0.31%  | 1.06%  | 1,129.54                               | 11.96  | 10.76                | 13.16                | 35.47   | 40.10  | 13.16  | Yes   |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 14,55,887                         | 0.36%  | 1.24%  | 853.63                                 | 10.58  | 9.52                 | 11.64                | 32.84   | 36.99  | 11.64  | Yes   |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 15,06,290                         | 0.37%  | 1.28%  | 853.63                                 | 10.95  | 9.85                 | 12.04                | 33.53   | 37.77  | 12.04  | Yes   |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 5,17,605                          | 0.13%  | 0.44%  | 761.16                                 | 3.35   | 3.02                 | 3.69                 | 10.34   | 11.63  | 3.69   | Yes   |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 13,04,191                         | 0.32%  | 1.11%  | 594.85                                 | 6.60   | 5.94                 | 7.27                 | 42.42   | 47.67  | 7.27   | Yes   |           |
| <b>Total</b>  |  |                 | <b>5,99,03,762</b>                | <b>14.82%</b>  | <b>51.00%</b>  |  | <b>561.55</b>  | <b>505.39</b>        | <b>617.70</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |  |   |           |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                      |                      |   |  |  |   |           |

**Table 17: Computation of Captive Status of SWPGL in FY 2017-18 considering Weighted Average Equity Share Holding as on 31.03.2018 (as per Corrigendum Order dated 12.03.2018 in Case No. 77 of 2015)**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |  |  |  |                     |                     |   |   |   |  | 31-Mar-18 |
|---|--|-----------------|-----------------------------------|--|--|--|--|---------------------|---------------------|---|---|---|--|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion (0% Variation) | Generati on Consider ed for the customer | Permissible Range for shareholding pattern for 51% consumption criterion |                     |                     | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consump tion grossed up with auxiliary | Consump tion to be consider ed for checking - 10%/+1 0% Variation | Whether the consumer is fulfilling the proportionali ty Test |           |
|   |  |                 |                                   |  |  |  | with 0% Variation  | with - 10% Variatio | with + 10% Variatio |   |   |   |  |           |
|   |  | DD/MM/YY        | Nos                               | %  | %  | MU                                       | MU (a)   | MU (b)              | MU (c)              | MU (d)  | (d/(1-Aux Loss%))                             | M = if (I > L, L, MIN (K,L))                                      | N = if (M > I, YES, No)                                      |           |
| A   | B  | C               | D                                 | E  | F  | G  | H=G*F  | I=H*0.9             | J=H*1.1             | K   | L   | M   | N  |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 39%  | 576.06                                   | 224.05   | 201.65              | 246.46              | 174.19  | 196.91  | 196.91  | No   |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0%   | 576.06                                   | 2.55   | 2.30                | 2.81                | 9.54  | 10.78   | 2.81  | Yes  |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 19,88,516                         | 0.49%  | 3%   | 576.06                                   | 19.12  | 17.21               | 21.03               | 71.24   | 80.54   | 21.03   | Yes  |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5%   | 576.06                                   | 31.47  | 28.32               | 34.62               | 73.57   | 83.17   | 34.62   | Yes  |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 10%  | 576.06                                   | 59.54  | 53.59               | 65.49               | 71.77   | 81.14   | 65.49   | Yes  |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 2%   | 576.06                                   | 11.91  | 10.72               | 13.10               | 26.98   | 30.50   | 13.10   | Yes  |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 13%  | 576.06                                   | 74.85  | 67.36               | 82.33               | 177.63  | 200.81  | 82.33   | Yes  |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 5%   | 576.06                                   | 28.92  | 26.03               | 31.81               | 95.87   | 108.38  | 31.81   | Yes  |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 15,15,498                         | 0.37%  | 3%   | 576.06                                   | 14.57  | 13.12               | 16.03               | 36.65   | 41.43   | 16.03   | Yes  |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 5%   | 576.06                                   | 27.22  | 24.50               | 29.94               | 72.74   | 82.23   | 29.94   | Yes  |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 3%   | 576.06                                   | 17.01  | 15.31               | 18.71               | 44.38   | 50.17   | 18.71   | Yes  |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 7,15,585                          | 0.18%  | 1%   | 576.06                                   | 6.88   | 6.19                | 7.57                | 8.35  | 9.44  | 7.57  | Yes  |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 12,43,610                         | 0.31%  | 2%   | 576.06                                   | 11.96  | 10.76               | 13.16               | 35.47   | 40.10   | 13.16   | Yes  |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 14,55,887                         | 0.36%  | 2%   | 435.35                                   | 10.58  | 9.52                | 11.64               | 32.84   | 36.99   | 11.64   | Yes  |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 15,06,290                         | 0.37%  | 3%   | 435.35                                   | 10.95  | 9.85                | 12.04               | 33.53   | 37.77   | 12.04   | Yes  |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 5,17,605                          | 0.13%  | 1%   | 388.19                                   | 3.35   | 3.02                | 3.69                | 10.34   | 11.63   | 3.69  | Yes  |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 13,04,191                         | 0.32%  | 2%   | 303.37                                   | 6.60   | 5.94                | 7.27                | 42.42   | 47.67   | 7.27  | Yes  |           |
| <b>Total</b>  |  |                 | <b>5,99,03,762</b>                | <b>14.82%</b>  | <b>100.00%</b>   |  | <b>561.55</b>  | <b>505.39</b>       | <b>617.70</b>       | <b>1,017.52</b>   | <b>1,149.66</b>                               |   |  |           |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |  |  |  |                     |                     |   |   |   |  |           |

**F-3. Assessment of captive status in terms of principles set out in Kadodara Power (as on 31 March 2018)**

22.36. Without prejudice to the above, it is the TPC-D's opinion that the aforesaid methodologies adopted by the Commission does not give a correct picture of each Captive User's consumption in the context of 51% generation ( $\pm 10\%$ ).

22.37. In order to correctly calculate the rule of proportionality, the actual consumption of each Captive User needs to be pro-rated to 51% of the total generation. In this regard, it is pertinent to note that, the Hon'ble ATE in its Judgment dated 22 September 2009 in *Kadodara Power Pvt. Ltd. Vs. GERC & Ors.* reported as 2009 ELR (APTEL) 1037 has observed that, 51% of total generation only has to satisfy the rule of proportionality in consumption and ownership. The rest 49% of the generation could be sold to anyone including grid, Distribution Licensees and Captive Users themselves. Further such calculation has to be done on an annual basis.

22.38. Based on the aforesaid principle, **Table** below shows the test of proportionality considering the required consumption in proportion to 51% of the generation.

*Table on Next Page...*



**Table 18: Computation of Captive Status of SWPGCL in FY 2017-18 in terms of principles set out in Kadodara Power (as on 31.03.2018)**

| SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2017-18 |  |                 |                                   |  |   |   |  |                      |                      |   |  |  |  |   | 31-Mar-18 |
|---|--|-----------------|-----------------------------------|--|---|---|--|----------------------|----------------------|---|--|--|--|---|-----------|
| S. No   | Name of the Shareholder                      | Date of Joining | No of Equity Shares of 10 Rs each | Percentage of Equity Held / Ownership of the Company | % of consumption to be done by Captive User for meeting 51% Consumption Criterion | Generation Considered - 51% of Gross Generation | Permissible Range for shareholding pattern for 51% consumption criterion |                      |                      | Actual Units Consumed (AS per OA credit units grossed up with Losses) | Actual consumption grossed up with auxiliary | Consumer Wise consumption to be considered for fulfilling 51% consumption criteria | Consumption to be considered for checking - 10%/+10% Variation Cariteria | Whether the consumer is fulfilling the proportionality Test |           |
|   |  |                 |                                   |  |   |   | with 0% Variation  | with - 10% Variation | with + 10% Variation |   |  |  |  |   |           |
| A   | B  | C               | D                                 | E  | F   | G   | H=G*F  | I=H*0.9              | J=H*1.1              | K   | L  | M = G*L/Σ L  | N = if (I > M, MIN (J,M))  | O = if (N > I, YES, No)                                     |           |
| 1   | Viraj Profiles Limited                       | 26-03-2007      | 2,32,98,938                       | 5.77%  | 36%   | 576.06  | 208.61   | 187.75               | 229.47               | 174.19  | 196.91                                       | 98.67  | 98.67  | No  |           |
| 2   | Bebitz Flanges Works Private Limited         | 18-09-2010      | 2,65,346                          | 0.07%  | 0%  | 576.06  | 2.38   | 2.14                 | 2.61                 | 9.54  | 10.78  | 5.40   | 2.61   | Yes   |           |
| 3   | Mahindra & Mahindra Limited                  | 16-09-2009      | 33,61,043                         | 0.83%  | 5%  | 576.06  | 30.09  | 27.08                | 33.10                | 71.24   | 80.54  | 40.35  | 33.10  | Yes   |           |
| 4   | Mahindra CIE Automotive Limited              | 30-03-2010      | 32,72,595                         | 0.81%  | 5%  | 576.06  | 29.30  | 26.37                | 32.23                | 73.57   | 83.17  | 41.68  | 32.23  | Yes   |           |
| 5   | Mahindra Sanyo Special Steel Private Limited | 23-07-2012      | 61,91,395                         | 1.53%  | 10%   | 576.06  | 55.44  | 49.89                | 60.98                | 71.77   | 81.14  | 40.66  | 40.66  | No  |           |
| 6   | Mahindra Vehicle Manufacturers Limited       | 16-09-2009      | 12,38,279                         | 0.31%  | 2%  | 576.06  | 11.09  | 9.98                 | 12.20                | 26.98   | 30.50  | 15.28  | 12.20  | Yes   |           |
| 7   | Hindustan Petroleum Corporation Limited      | 31-10-2015      | 77,83,468                         | 1.93%  | 12%   | 576.06  | 69.69  | 62.72                | 76.66                | 177.63  | 200.81                                       | 100.62   | 76.66  | Yes   |           |
| 8   | Lupin Limited                                | 09-07-2015      | 30,07,237                         | 0.74%  | 5%  | 576.06  | 26.93  | 24.23                | 29.62                | 95.87   | 108.38                                       | 54.31  | 29.62  | Yes   |           |
| 9   | Pudumjee Paper Products Limited              | 09-05-2016      | 15,92,073                         | 0.39%  | 2%  | 576.06  | 14.25  | 12.83                | 15.68                | 36.65   | 41.43  | 20.76  | 15.68  | Yes   |           |
| 10  | Hindalco Industries Limited                  | 08-03-2017      | 28,30,352                         | 0.70%  | 4%  | 576.06  | 25.34  | 22.81                | 27.88                | 72.74   | 82.23  | 41.20  | 27.88  | Yes   |           |
| 11  | Inox Air Products Private Limited            | 08-01-2017      | 17,68,970                         | 0.44%  | 3%  | 576.06  | 15.84  | 14.25                | 17.42                | 44.38   | 50.17  | 25.14  | 17.42  | Yes   |           |
| 12  | Asahi India Glass Limited                    | 03-01-2017      | 9,72,934                          | 0.24%  | 2%  | 576.06  | 8.71   | 7.84                 | 9.58                 | 8.35  | 9.44   | 4.73   | 4.73   | No  |           |
| 13  | ACG Associated Capsules Private Limited      | 08-01-2017      | 14,15,176                         | 0.35%  | 2%  | 576.06  | 12.67  | 11.40                | 13.94                | 35.47   | 40.10  | 20.09  | 13.94  | Yes   |           |
| 14  | Bekaert Industries Private Limited           | 08-06-2017      | 24,76,558                         | 0.61%  | 4%  | 435.35  | 16.76  | 15.08                | 18.43                | 32.84   | 36.99  | 14.01  | 14.01  | No  |           |
| 15  | Owens Corning (India) Private Limited        | 08-06-2017      | 18,57,418                         | 0.46%  | 3%  | 435.35  | 12.57  | 11.31                | 13.83                | 33.53   | 37.77  | 14.30  | 13.83  | Yes   |           |
| 16  | AYM Syntex Limited                           | 07-07-2017      | 7,07,588                          | 0.18%  | 1%  | 388.19  | 4.27   | 3.84                 | 4.70                 | 10.34   | 11.63  | 3.93   | 3.93   | Yes   |           |
| 17  | Bharat Petroleum Corporation Limited         | 06-09-2017      | 22,99,661                         | 0.57%  | 4%  | 303.37  | 10.84  | 9.76                 | 11.93                | 42.42   | 47.67  | 12.58  | 11.93  | Yes   |           |
| <b>Total</b>  |  |                 | <b>6,43,39,031</b>                | <b>15.92%</b>  | <b>100.00%</b>  |   | <b>554.77</b>  | <b>499.29</b>        | <b>610.25</b>        | <b>1,017.52</b>   | <b>1,149.66</b>                              |  |  |   |           |
| SWPGL Total Equity  |  |                 | <b>40,41,40,146</b>               |  |   |   |  |                      |                      |   |  |  |  |   |           |

22.39. As is evident from the aforesaid analysis in above Table, **4 out of 17** of the Captive Users fail to satisfy the criteria of captive consumption of at least 51% in proportion to their shareholding in the Captive Units, within a variation of  $\pm 10\%$ .

22.40. Facts in the Commission's Order dated 20 August 2014 in Case No. 101 of 201 are different and distinct from facts of the present case. SWPGL and the Captive Users have relied upon the Commission's Order dated 20 August 2014 in Case No. 101 of 2014 to contend that:

- i. Only minimum of 26% equity shareholding and 51% consumption on an aggregate basis as specified under Rule 3 is to be met by the captive users collectively. The Rule of Proportionality is to be applied on individual users.
- ii. So long as the minimum criteria of 26% and 51% are met by the Captive Users collectively, then even if some other captive users do not meet the said criteria, they have to be ignored.
- iii. The Commission in Case No. 101 of 2014 had not considered those consumers who had failed to meet the aforesaid criteria. Therefore, the same analogy and treatment ought to be applied in the present facts of the case as well.
- iv. All the principles laid down by the Commission in Case No. 101 of 2014 and the dispensation provide therein shall also apply to the present proceedings.

22.41. Reliance on the Commission's Order in Case No. 101 of 2014 to contend the foregoing is erroneous and misplaced on account of the following:

- i. The facts of Case No. 101 of 2014 were entirely different from those in the present case, even with respect to the criteria of 26% equity shareholding and 51% proportionate consumption.
- ii. Furthermore, the issues raised by TPC-D in the present Petition were neither raised nor considered by the Commission in Case No. 101 of 2014. Therefore, it is imperative for the Commission to adjudicate upon all the issues that have been raised by TPC-D without being influenced by its earlier Order, which itself is admittedly sub-judice before the Hon'ble Supreme Court.
- iii. Contrary to the facts of the present case, in Case No. 101 of 2014:
  - a. There were no multiple CA Certificates with varying shareholding submitted during the Financial Year.
  - b. The Captive Users who had consumed power were held to have done so in proportion to their equity shareholding.

22.42. The doctrines of precedent and *stare decisis*, that is being bound by a previous decision and should stand by precedents, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that the Commission is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required". In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone binding as a precedent. The

ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. In this regard, the following Judgments of the Hon'ble Supreme Court are noteworthy:-

*Krishena Kumar vs. Union of India & Ors., (1990) 4 SCC 207:*

*Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234*

22.43.SWPGL's reliance on the Karnataka Electricity Regulatory Commission (**KERC**)'s Order dated 7 July 2011 in Case No. OP 33 of 2010 (JSW Steel Ltd. vs. CEI & Batch) to demonstrate how the rule of proportionality is to be considered is wrong and misleading. At the outset, it is pertinent to highlight that:-

- i. KERC's Order dated 7 July 2011 was challenged before the Hon'ble ATE in Appeal Nos. 136, 137, 162, 163 and 167 of 2011. The Hon'ble ATE vide its Judgment dated 21 December 2012 in Appeal Nos. 136 of 2011 & Batch partly allowed KERC's Order dated 7 July 2011 to the extent of consumption of M/s Bellary Oxygen Company Pvt. Ltd., M/s Bhuvalka Pipes Pvt. Ltd., M/s Jamshedpur Injection Power Ltd. and M/s Padmavathi Ferro Alloys Ltd. It was held that, non-consumption of 51% power in proportion to their shareholding had no consequence because consumption of JSW Steels exceeded 51% of the total power generated and this being the position in the peculiar facts and circumstances of that case, the Rule of Proportionality was not applicable
- ii. Thereafter, the Hon'ble ATE vide its Order on 30 April 2013 in Review Petition No. 2 of 2013, reviewed its Judgment in Appeal No. 137 of 2011 (JSW vs. CEI) and held that, since JSW Steel had not identified any of the two units as captive generator at the time of infusion of equity, they were not entitled to invoke provisions of Explanation to Rule 3 to their benefit. While passing the said finding, the Hon'ble ATE also held that, a captive consumer may indulge in gaming and identify any unit as captive depending upon its own consumption during the relevant year.

22.44.The JSW Steel case was based on totally different facts and legal propositions and is not of much help in the present facts of the case qua Rule of Proportionality. Therefore, reliance on the same is highly misplaced.

22.45.Undisputedly SWPGL is Special Purpose Vehicle. JSW Steel on the other hand, held more than 26% equity shares and itself consumed more than 51% of the generation. As such, JSW itself qualified to be a captive user and non-consumption of 51% according to the respective shares by the other companies therein did not matter.

**MSLDC Submission:**

22.46.Monthly Energy injection MRI data (in MUs) from ABT meters installed at MSETCL Warora Sub-Station on 220 kV Warora WPCL I & II lines as SWPGL injection (998.22 MUs) into grid for FY 2017-18 is given in the following table:

**Table 19: Details of monthly energy injection MRI data from ABT Meters installed at MSETCL Warora Sub-Station**

| Month        | 220KV Warora-I (kWh) | 220KV Warora-II (kWh) | Total (kWh)         |
|--------------|----------------------|-----------------------|---------------------|
| April-17     | 43566593.75          | 43483156.25           | 87049750.00         |
| May-17       | 31314632.81          | 31180164.06           | 62494796.87         |
| June-17      | 45962406.25          | 45705867.19           | 91668273.44         |
| July-17      | 40587125.00          | 40861773.44           | 81448898.44         |
| Aug-17       | 41188242.19          | 41503000              | 82691242.19         |
| Sept-17      | 31550720.00          | 32302398.44           | 63853118.44         |
| Oct-17       | 24390130.00          | 24987851.56           | 49377981.56         |
| Nov-17       | 19751820.00          | 18896789.06           | 38648609.06         |
| Dec-17       | 55378924.69          | 56827734.38           | 112206659.07        |
| Jan-18       | 56173062.50          | 56601773.44           | 112774835.94        |
| Feb-18       | 52937640.00          | 53339140              | 106276780.00        |
| Mar-18       | 54652540.00          | 55083610              | 109736150.00        |
| <b>Total</b> | <b>497453837.2</b>   | <b>500773257.8</b>    | <b>998227095.01</b> |

22.47.Monthly tripping/outages of SWPGL Unit 3 and 4 as reported by SWPGL to MSLDC for financial FY 2017-18 is given below:

**Table 20: SWPGL Unit 3 Outage Details for FY 2017-18**

| Sr. No. | Date of Tripping | Tripped time | Syn. Date | Syn. Date | Reasons for Outage             |
|---------|------------------|--------------|-----------|-----------|--------------------------------|
| 1       | 16-Apr-17        | 0.01         | 23-Apr-17 | 21.01     | Ash Handling Problem.          |
| 2       | 25-Apr-17        | 0.01         | 09-May-17 | 23.21     | ESP.                           |
| 3       | 15-May-17        | 2.43         | 05-Jun-17 | 21.05     | ID Fan Problem                 |
| 4       | 28-Jun-17        | 18.07        | 03-Jul-17 | 6.12      | Coal Shortage                  |
| 5       | 07-Jul-17        | 12.11        | 18-Jul-17 | 23.49     | ID Fan Problem                 |
| 6       | 20-Jul-17        | 2.03         | 20-Jul-17 | 4.49      | wet coal.                      |
| 7       | 20-Jul-17        | 23.15        | 21-Jul-17 | 0.07      | wet coal.                      |
| 8       | 21-Jul-17        | 3.51         | 21-Jul-17 | 4.07      | Wet Coal                       |
| 9       | 27-Jul-17        | 13           | 01-Aug-17 | 15.12     | ID Fan Problem                 |
| 10      | 06-Aug-17        | 6.57         | 10-Aug-17 | 18.39     | Flame Failure                  |
| 11      | 11-Aug-17        | 23.23        | 12-Aug-17 | 3.43      | Y ph ct of bhugaoan ckt burst. |
| 12      | 13-Aug-17        | 11.05        | 13-Aug-17 | 12.41     | Tripped                        |
| 13      | 26-Aug-17        | 17.4         | 20-Nov-17 | 1.52      | Boiler Tube Leakage            |
| 14      | 20-Nov-17        | 7.35         | 20-Nov-17 | 8.45      | Coal mill problem              |
| 15      | 23-Nov-17        | 0            | 24-Nov-17 | 11.19     | Unit withdrawn for no schedule |
| 16      | 22-Dec-17        | 10.45        | 22-Dec-17 | 12.33     | Flame Failure                  |

| Sr. No. | Date of Tripping | Tripped time | Syn. Date | Syn. Date | Reasons for Outage               |
|---------|------------------|--------------|-----------|-----------|----------------------------------|
| 17      | 02-Jan-18        | 1.24         | 02-Jan-18 | 14.15     | Bus fault at Warora sub-station. |

**Table 21: SWPGL Unit 4 Outage Details for FY 2017-18**

| Sr. No. | TRIPPED DATE | TRIPPED TIME | SYN DATE  | SYN TIME | REASON FOR OUTAGE                          |
|---------|--------------|--------------|-----------|----------|--|
| 1       | NA           | NA           | 01-Apr-17 | 0.39     | Unit Syn. after tripping on dtd. 22/Mar/17 |
| 2       | 05-Apr-17    | 15           | 06-Apr-17 | 10.43    | SSP Conveyor Belt Problem.                 |
| 3       | 19-Apr-17    | 5.4          | 19-Apr-17 | 12.38    | Flame loss.                                |
| 4       | 21-Apr-17    | 10.55        | 21-Apr-17 | 18.31    | Islanded from Grid                         |
| 5       | 09-May-17    | 5.1          | 14-May-17 | 22.36    | ESP PROBLEM.                               |
| 6       | 15-May-17    | 16           | 15-May-17 | 18.03    | ID fan problem                             |
| 7       | 23-Jun-17    | 12.01        | 28-Jun-17 | 13.49    | Coal Shortage                              |
| 8       | 19-Jul-17    | 3.5          | 23-Jul-17 | 4.37     | Turbine Problem.                           |
| 9       | 24-Jul-17    | 10.26        | 24-Jul-17 | 11.17    | Turbine Problem.                           |
| 10      | 09-Aug-17    | 11.25        | 09-Aug-17 | 13.02    | ID Fan Problem                             |
| 11      | 11-Aug-17    | 23.23        | 23-Aug-17 | 1.41     | Y ph ct of bhugoan ckt burst.              |
| 12      | 17-Sep-17    | 22.17        | 18-Sep-17 | 0.28     | Flame Failure                              |
| 13      | 20-Sep-17    | 0            | 22-Sep-17 | 1.35     | ID Fan Vibration High                      |
| 14      | 01-Nov-17    | 0.02         | 22-Nov-17 | 0.17     | Boiler Tube Leakage                        |
| 15      | 19-Dec-17    | 11.37        | 19-Dec-17 | 13.42    | Generator Protection operated              |
| 16      | 02-Jan-18    | 1.24         | 02-Jan-18 | 8.37     | Bus fault at Warora sub-station.           |
| 17      | 22-Jan-18    | 8.57         | 22-Jan-18 | 10.53    | PA Fan problem                             |
| 18      | 26-Jan-18    | 6            | 27-Jan-18 | 7.12     | Low Schedule                               |
| 19      | 01-Mar-18    | 18.3         | 04-Mar-18 | 21.42    | ID Fan Problem                             |
| 20      | 24-Mar-18    | 21.09        | 27-Mar-18 | 16.45    | ID Fan Problem                             |

**Submissions /Reply/ Additional Submission of Captive Users/ Shareholders**

22.48.5 captive users/ Shareholders (Inox, Pudumjee, Mahindra Sanyo, Mahindra CIE and Bekaert) have filed their written submissions and additional written submissions. The submissions and additional submissions of these 5 captive users /shareholders are similar in nature which state as under:

- i. The Captive Users have fulfilled the criterion of consumption of 51% of the aggregate energy generated. The CA certificates annexed to the Petition by SWPGL indicate that only two units being unit 3 and unit 4 have been identified as captive

units. Thus, SWPGL has fulfilled the captive criteria as specified in Section 9 of EA read with Rule 3 of the Electricity Rules. The billing was done by MSEDCL on 15 minutes time slot basis after giving adjustment of power from SWPGL source therefore MSEDCL should be put to strict proof on what basis such adjustment was undertaken.

- ii. The test of proportionately of consumption has to be considered from the date from which the Shareholding Agreement has been entered into as settled by the Commission in its Orders wherein the Commission, for determining the captive status, had taken into consideration the power consumed on a pro rata basis from the date of shareholding for fulfilment of the 51% consumption as per Rule 3 of the Rules, 2005.
- iii. Therefore, the Applicant has fulfilled their prescribed required consumption as required and successfully fulfilled the proportionality requirements. SWPGL has been providing CA certificate in same format since FY 2012-13 and same has been duly accepted by the Commission.
- iv. There is no requirement that all the CGP consumers are required to apply for OA as far as the requirement under Rule 3 of the Rules 2005 for the minimum shareholding is complied. Further, the issue of proportionality as regards the consumption and shareholding of the captive users of SWPGL is misinterpreted by MSEDCL. The Commission in its Order dated 9 February 2018 in Case No. 77 of 2015 held that irrespective of the change in the shareholding of the company during the year, the consumption of the captive users should be minimum of 51%, which is the case in the present scenario.
- v. The calculation provided by SWPGL is in the line with the decision of Hon'ble ATE dated 22 September, 2009 in Appeal No. 171 of 2008 of *Kadodara Power Private Limited vs. Gujarat Electricity Regulatory Commission & Ors.*
- vi. Further, the objections raised regarding non-providing of data by SWPGL for the past years is in no way relevant to the present proceedings.
- vii. An opinion of an independent Chartered Accountant can be obtained to audit the shareholding pattern of SWPGL for FY 2017-18 and basis past methodology whether captive criteria is complied. The captive consumers cannot be punished for incorrect interpretation of Company Law or Electricity Laws by the Distribution Licensees.
- viii. TPC-D has submitted certain tables which are hypothetical and not based on approved methodology. TPC-D and MSEDCL should permit inspection of all documents submitted whilst seeking OA, the steps adopted by MSEDCL and TPC-D while approving OA under Section 9 of EA.

22.49. Viraj Industries, Bebitz Flanges Works Pvt. Ltd. (Bebitz), Mahindra & Mahindra Ltd. and Mahindra Vehicle Manufactures Ltd. submitted as follows:

- i. There is no duty placed on consumers in the entire mechanism either by the

Commission or by law in respect of quantum of power generated, transmission of power, reading of meters, and distribution of power from any particular generator. The only responsibility placed on consumer is to consume electricity in proportion to their respective shareholding totalling to more than 51 % of the entire power generated by the CGP.

- ii. The Commission in Case No.101 of 2014 held as under:
  - a. The responsibility of informing regarding change in the shareholding pattern of captive users at the start of Financial Year and any subsequent changes during the year, along with the OA Application is that of the Captive Power Generator i.e. the SWPGL. Distribution and Transmission Licensees are required to gather data and monitor generation/ consumption and utilization of power.
  - b. Therefore, if there is any lacuna on the part of any of the stakeholders who have the mandate to ascertain the GGP status, the liability cannot be foisted upon equity holders who are Captive Users by virtue of their equity in the captive generation company.
  - c. The equity together constitutes 26 % but said equity is distributed amongst various investors who may or may not take the power.
  - d. The right of equity holder to draw power from generating company can always be objected and rejected by Distribution Licensee.
  - e. To summarise the legal position, the role of equity holder is to invest into captive generation company and draw power as per the Electricity Rules in proportion to shareholding.
  - f. Therefore, if there is any negligence/lacuna/failure/non-compliance on the part of any of the stakeholders namely power generation company/ distribution licensee/transmission company/ MSLDC, other captive users, no liability can be imposed on the consumers who have complied with the Rules.
- iii. The Hon'ble ATE in Judgment dated 3 June 2016 in Appeal No. 252 of 2014 has held that even consumers who ask for OA and did not consume energy under OA cannot be penalized to ensure that in future, few equity-holders cannot jeopardize the Agreement with others. The Hon'ble APTEL has refused to penalize such shareholders.
- iv. The Hon'ble Bombay High Court in Writ Petition No.10764 of 2011, had opined that the Distribution Licensee could not take advantage of its own wrong.
- v. In the present Petitions, it is evident that SWPGL, MSEDCL, TPC-D, MSLDC are alleging each other to be negligent/ irresponsible in respect of collecting and furnishing of necessary information and data from time to time for the purpose of ascertaining Captive Status. However, by their own admission, the Distribution Licensees seem to have admitted that the captive users have complied with the provisions of Electricity Rules. Therefore, the Distribution Licensees cannot foist

the liability of payment of CSS, Additional Surcharge, Electricity Duty at least on the captive users.

- vi. The accounts for the captive consumers for FY 2017-18 are already closed by leaving no room to make provision for any liability as to CSS, additional surcharge and/or electricity duty etc. Such cost, if imposed, cannot be recovered by SWPGL from its consumers as it cannot be imposed on products sold during the relevant financial year in question.
- vii. It appears that there is a dispute amongst SWPGL and the Distribution Licensees, as a result of which the Distribution Licensees have declined to accord Captive Status to SWPGL. It is clearly not within the powers of captive consumers to verify/ rectify/ submit/ re-submit/ collect/ retain the required information sought by Distribution Licensees for grant of Captive Status. Therefore, under no circumstances, captive consumers can be foisted with the liability of paying CSS, Additional Surcharge and Electricity Duties.
- viii. Even by virtue of provisions of Companies Act, 1956, no such liability can be incurred by an equity holder. In the event of default on the part of the power generating company, the liabilities arising thereof are to be solely to be borne by such power generating company and not by its equity shareholders.
- ix. In the event SWPGL is found to be non-captive for FY 2017-18, MSEDCL ought to recover CSS, Additional surcharge, electricity duties as may become payable, only from the SWPGL and the same may be recovered from the monies payable by the MSEDCL to SWPGL, since the consumers are admittedly in compliance with all provisions of the Electricity Rules, 2005 and that there is no allegation against the consumers as to breach of any term and condition and/or obligation on their part.
- x. The act of showing liabilities as outstanding bills only in order to get advantage of the provision u/s 56 (2) of the EA is also against the law. In the present case however, the liability is being claimed and shown in bills issued after impleading the consumers. Therefore, on this count also, captive users cannot be made to pay CSS, Additional Surcharge and Electricity Duties.

22.50. Lupin has complied with the requirements under Rule 3 of the Electricity Rules, 2005.

Lupin is not in a position to comment on the consumption by the other group captive users in proportion to their respective shareholding in the CGPs. However, the Commission in its Order dated 20 August 2014 passed in Case No. 101 of 2014 has observed that because of the default of a few shareholders in meeting the “Captive Criterion”, the other captive users should not be penalized.

22.51. Asahi India Glass Limited stated that it would be put to irreparable loss and prejudice if the supply of SWPGL is treated as non-captive at this stage. The industry is passing through very hard time due to recession in manufacturing sector, hence if any additional burden of CSS is imposed on Asahi, it will be difficult to survive in the market.



22.52.ACG Associates submitted that the Captive Users have fulfilled the requirement as per Electricity Rules 2005 and liable to pay CSS and other applicable charges as Distribution Licensees cannot take advantages of its own wrong. The contentions of MSEDCL of non-availability of data and denial of Captive status is incorrect as IPP (Units 1 and 2 ) were shut down for FY 2017-18 and no injection of power from these IPP units.

**SWPGL Rejoinder to MSEDCL and TPC-D Reply / Additional Submission**

22.53.SWPGL has placed all requisite data on record which conclusively demonstrates the Petitioner's compliance with Rule 3 of the Electricity Rules, 2005. The information sought for by TPC-D has already been provided in the Petition. The said information has also been shared by the Petitioner with the Distribution Licensees and MSLDC on 28 April 2019. The Petitioner has placed on record the MSLDC certified injection and consumption data along with the instant Petition.

22.54.The methodology adopted by the Commission for captive status determination of SWPGL for FY 2013-14 has been upheld by the Hon'ble ATE. While MSEDCL has filed an Appeal against the ATE Judgment, the same is currently pending without there being any stay of the Judgment. In the circumstance, it is not open to TPC-D to seek any separate methodology to be applied for the subsequent years.

22.55.As regards to issues raised by TPC-D of class of equity shares, it is submitted that the equity shares held by each shareholder in the company has been clearly depicted in the CA certificates submitted by the Petitioner. There is no need to file any further CA certificate showing the same data. The issue with regard to class of shares is not at all relevant for the purpose of this Petition. The requirement in terms of Rule 3 in this regard, is 26% shareholding, which the CA certificate establishes beyond doubt.

22.56.It is clarified that SWPGL is seeking Captive Status for only 17 Captive Users against which the OA has been applied and received the NOC from Discom. As long as SWPGL can demonstrate the shareholding and consumption criteria under Rule 3 for these 17 consumers, it is entitled to claim the benefits provided under the EA, for these consumers. It is wrong and denied that all captive consumers have to participate each year.

22.57.For FY 2017-18, SWPGL has demonstrated the compliance of 26% shareholding in the Captive Units, and at least 51% proportionate consumption by the 17 Captive Users.

22.58.Further, the contention of TPC-D that the Rule of Proportionality qua 51% consumption is to be met by all consumers as in the CA certificate is misconceived. The CA certificate as submitted by SWPGL provides for the shareholding of each shareholder in the company and not only the shareholding of the captive users for whom captive status is being claimed.

22.59.This contention of TPC-D has already been rejected by the Commission in past years, wherein Captive Status has been claimed for only certain Captive Users who constituted the requisite 26% of the equity of the generations station and not all. This was also the specific objection of MSEDCL in Appeal No. 252 of 2014, wherein it was contended that certain consumers who were shareholders did not consume electricity and therefore

the captive status is not met. The Hon'ble ATE by the Judgment dated 3 June 2016 held that so long 26% shareholders consumed electricity, the non-consumption by other shareholders is irrelevant and captive status cannot be challenged on this ground.

22.60. Further the contention of TPC-D that even for the 17 Captive Users, SWPGL fails to comply with the Captive criteria is without any basis. The contentions raised by TPC-D that one consumer, namely, Viraj Profiles has not met the proportionality test for FY 2017-18 is wholly misconceived. It is not understandable as to what methodology has been adopted by TPC-D.

22.61. The Commission has devised a methodology for testing the proportionality criteria for the year 2013-14, which has also been upheld by the Hon'ble ATE. The very same methodology has been followed by SWPGL for the year in question.

22.62. TPC-D has relied on a CA certificate dated 9 January 2017 to contend that the proportionality test is not fulfilled. It is firstly not understandable as to how this conclusion is arrived at by TPC-D.

22.63. Further, the year in question for FY 2017-18, commences from 1 April 2017. Even as per the claim of TPC-D, the CA certificate dated 9 March 2017 denoting the shareholding is in compliance with the proportionality test.

22.64. The proportionality test is to be considered for the annual consumption of the consumers and not for consumption during a particular month. TPC-D appears to have taken the proportionality test based on each time there is change in shareholding, whereas the proportionality test is to be taken on prorata basis. This is the specific criteria considered by the Commission for FY 2013-14 and the same applies to the present case also.

22.65. Further, TPC-D's contention that the Auditors Certificates dated 9 March 2017 and 9 June 2017 as filed by SWPGL were never provided to TPC-D is misconceived. The captive consumer of SWPGL in the distribution area of TPC-D i.e. HPCL, had sought for STOA directly from TPC-D, and SWPGL is not aware about the CA certificate used for OA application and assumes that HPCL might have not provided the CA certificate dated 9 March 2017. However, the Petitioner has enclosed the details of CA Certificate dated 9 January 2017, 9 March 2017 and 9 June 2017, which has not been disputed by TPC-D. The Petitioner would further like to submit the following:

- i. The only change between the 9 January 2017 and 9 June 2017 certificate was the inclusion of M/s Hindalco Industries (MSEDCL's Licence area) on 9 March 2017 against which OA was sought for April 2017 and inclusion of M/s. Owens Corning and M/s. Bekaert Industries (MSEDCL's Licence areas) on 9 June 2017 against which OA was sought for July 2017.
- ii. The CA certificate dated 9 March 2017 was already filed with the Commission while filing the details of captive generation for respective years.

22.66. Moreover, SWPGL along with the Petition has placed on record the relevant CA certificates which leave no doubt with regard to the compliance with Captive criteria.

- 22.67. The change in date of shareholding is not relevant for computation of captive status, as the consumers would only consume from the date on which OA is granted.
- 22.68. SWPGL has placed on record the monthly auxiliary consumption in each 15-minute time block along with its letter dated 28 April 2018 which is annexed with Petition. Since none of the IPP units had been run in the relevant period, the auxiliary consumption provided only relates to the CPP units.
- 22.69. On 22 May 2018, MSLDC has certified 998.23 MUs as Net Energy Injection into the Grid at 220 KV Line-I and Line-II from the SWPGL captive Units. During the year in issue, only the captive units were in operation and the other IPP units were not operating at all.
- 22.70. The gross consumption of 1016.99 MUs by the captive consumers is based upon the OA credit given by Discom's grossed up with applicable Transmission and Wheeling Losses.
- 22.71. MSLDC has certified 998.23 MUs on 22 May 2018 as Net Energy Injection into the Grid which includes the IEX sale also as it is the total net injection from the plant. There is only a typographical error in as much as the figure of 1028 MUs is to be read as 1031.04 MUs. There is however no impact whatsoever in the captive status based on this.
- 22.72. The data related with IEX month-wise sale which actually is the available surplus power in the system after scheduling to the captive consumers. MSLDC has provided the month-wise NOC to SWPGL for sale of power to IEX.
- 22.73. The auxiliary consumption is to be notionally included in the captive consumption also, and therefore would make no difference at the end. This is precisely what the Commission had done in its Order dated 28 August 2013. Even if Gross Generation was to be considered by notionally including auxiliary consumption in the total captive consumption, it would have the same result.
- 22.74. The Commission vide Order dated 20 August 2014 in Case No. 101 of 2014 had decided on the principles for determination of captive status of the generating units as per the provisions of the Electricity Rules, 2005 for FY 2013-14 and the same Order has been upheld by Hon'ble ATE in its Judgment dated 3 June 2016 in Appeal No. 252 of 2014 filed by MSEDCL.
- 22.75. The same approach was also adopted by the Commission while determining captive status of the Petitioner for FY 2014-15. The Commission also passed a corrigendum Order in the above matter for FY 2014-15, as in the original Order, the table computing weighted average shareholding was inadvertently missed out. With regard to the above Order for FY 2014-15, while the Commission has entertained a review Petition on certain limited aspects filed by MSEDCL, the above principles held were not reviewed, and therefore are still applicable and have not been reviewed.
- 22.76. The same methodology applied in the previous years has now been adopted by SWPGL for FY 2017-18 in the present Petition as well, by which the captive status has been calculated and satisfied.

- 22.77. The Hon'ble ATE in its Judgment dated 22 September 2009 in Kadodara Power Pvt. Ltd. & Ors. V. GERC & Anr. has ruled on the aspect of how proportionality is to be calculated.
- 22.78. Further, on the aspect of consumption above 51%, KERC in its Order dated 7 July 2011 in OP No. 33/2010 held that merely because some of the shareholders are not consuming electricity generated in proportion to their shareholding in any year, it cannot take away the benefit available under the EA to other shareholders who are consuming electricity in proportion to their equity holding when the total captive consumption is more than 51 per cent of the electricity generated. Sections 9 and 10 of the EA and Rule 3(2) of the Electricity Rules, 2005 have to be read harmoniously and shall be interpreted keeping in view the broad objective of the EA. As held by the Hon'ble ATE in Malwa Industries Ltd. [{2007}ELR (APTEL)1631] the Proviso to Rule 3(a)(ii) is in the nature of a qualification or an exception and it does not nullify, subsume or swallow the general Rule of captive consumption which shall be a minimum of 51 per cent of aggregate power generated on an annual basis. Rule 3(2) on which heavy reliance is placed by the respondent does not lay down that if any of the captive consumers does not consume power in proportion to the shareholding, all other stakeholders shall forfeit their benefit which is otherwise available to individual captive consumers even when the consumption by captive users exceeds 51 per cent. If it is held otherwise, it may defeat the very object of the EA in respect of facilitating captive generation and may discourage combined investments which may help only large industries.
- 22.79. The above principle was not set aside by the Hon'ble ATE in Appeal by the Distribution Licensees, but on the Appeal by the generator, the principle was further expanded and the principle of proportionality itself was held not to be applicable to operating companies, not being special purpose vehicles. [Order dated December 21, 2012 in *Appeal Nos.136 of 2011, 162 of 2011, 167 of 2011, 137 of 2011 and 163 of 2011 JSW Steel Limited vs Karnataka Electricity Regulatory Commission and Another.*]
- 22.80. SWPGL inadvertently had mentioned that HPCL had not taken any supply in the month of September 2017. This was later on clarified to TPC-D, that supply was made, and that there was an inadvertent mistake in the earlier communication. SWPGL clearly includes the supply made to HPCL and the same is included in the captive consumption of the Petitioner. This is duly verified, metered, credit given and accounted for. Merely because one communication does not reflect this, does not mean that captive criteria would fail.
- 22.81. The objection has been raised both by MSEDCL as well as TPC, that while the certified net generation is 998.22 MUs, the consumption based on the OA credits, grossed up with losses is 1013.99 MUs. In this regard, it is submitted that the daily schedule is based upon the requirement given by consumers to SWPGL and SWPGL allocation to consumer. This is then sent to MSLDC and MSEDCL and the consumers accordingly, for the purpose of final scheduling and billing. However, the actual generation for the purposes of energy accounting, is on the basis of metering recorded on a monthly basis. Any difference in the actual generation vis-a-vis schedule is separately settled through FBSM/UI charges on the differential energy. In the present case, the actual generation

recorded on the meters, shows under-injection vis-à-vis the schedule. The consequence for such under-injection has already been dealt with in the form of FBSM.

22.82. The proportionality test has been applied considering the Net Generation instead of Gross Generation. The Captive Consumption considered has been measured at G<>T interface instead of such consumption grossed up with Auxiliary Consumption. The contention of TPC-D that gross generation is to be used is misconceived. The auxiliary consumption is used by the plant itself and cannot be used for computation. For previous years also, the auxiliary consumption was notionally included in the captive consumption and therefore it makes no difference in the end. This was precisely what the Commission had done in the Order dated 28 August 2013 for FY 2012-13.

***Commission's Analysis and Ruling:***

23. The Commission vide its Order dated 17 January, 2018 in Case No. 23 of 2017 laid down guidelines to be followed by the Distribution Licensees and the entities claiming to be Captive Generating Plant for the purpose of assessing compliance to the requirements specified in Rule 3 of the Electricity Rules 2005.
24. In accordance with these guidelines, SWPGL has filed the details with regard to the captive status for FY 2017-18 with the relevant Distribution Companies in the State of Maharashtra (MSEDCL, TPC-D and AEML-D). In reply to this submission, MSEDCL concluded that SWPGL's captive status for FY 2017-18 cannot be established due to discrepancies in the metering data. Further, TPC-D has raised certain queries and sought additional details/data and has not concluded regarding the eligibility of SWPGL of being a captive generating plant. There was no reference to response from AEML-D in SWPGL's submissions. Accordingly, SWPGL has filed the instant Case for determination of CGP status for FY 2017-18.
25. SWPGL has claimed that Unit 3 and 4 of SWPGL's Power Plant meet the requirement of Captive Generating Units for FY 2017-18. SWPGL and the respondents like MSEDCL, TPC-D, AEML-D, MSETCL, MSLDC and the Captive users / shareholders have made their submissions in the matter of compliance of SWPGL with the captive status criteria set out in Rule 3 of the Electricity Rules, 2005. The Commission has noted the submissions and its analysis of the compliance of SWPGL with the requirements is elaborated in the subsequent paragraphs.
26. The Rule 3 of the Electricity Rules, 2005 notified under EA specifies the following requirements:

***“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 cooperative 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; and*

*(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.*

*(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-clauses (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.*

27. Accordingly, the conditions to be examined are as follows:

- a. Whether the Captive Users of SWPGL held 26% equity shares with voting rights in the identified CGP Units 3 and 4 in FY 2017-18?
- b. Whether the Captive Users of SWPGL satisfied the following in FY 2017-18:

- i. Consumption of not less than 51% of the aggregate electricity generated by the Units identified for captive use, on an annual basis; and
  - ii. If so, whether such consumption is in proportion to their shares in the ownership of the Plant, within a range of 10%.
28. It is evident from the above identified conditions that amongst the two primary conditions prescribed under the Rule 3 of the Electricity Rules, the first condition pertaining to the Captive users holding at least 26% equity shares with voting rights is the ***condition precedent*** and is also required to be met throughout the Financial year and the second condition pertaining to the minimum consumption and the related proportionality in the consumption is the ***condition subsequent*** which has to be evaluated annually.
29. As submitted by TPC-D, the above-mentioned fact has also been corroborated by the Hon'ble Madras High Court in its Judgment dated 8 December 2009 in Madura Coats Pvt. Ltd. v. ARKAY Energy (Rameswaram) Ltd. The relevant paragraph from the Order is reproduced below for reference:

*“33. As a matter of fact, it is actually a misconception to equate the two requirements prescribed in Rule 3 to qualifications. While what is prescribed in Rule 3(1) is a qualification, what is prescribed in Rule 3(2) is an obligation. The prescription that the ownership or shareholding of the captive consumers should be not less than 26%, is actually a qualification to be fulfilled, before a plant could be termed as a captive generating plant. In other words, it is a condition precedent. But the prescription that at least 51% of the energy generated should be consumed by the captive users, is not and cannot be a condition precedent, but a condition subsequent. It comes into operation only after the plant commences production. This is why, Rule 3(2) speaks of it as an "obligation", while Rule 3(1) speaks of "qualification". A reading of Rule 3(2) would show that the obligation imposed upon the captive users to consume at least 51% of the energy generated, is a "continuing obligation". Rule 3(2) makes it clear that the captive users are obliged to ensure that the quantity of consumption is maintained every year at a minimum of 51%.”*
30. Accordingly, it will be important to first establish if SWPGL is meeting the qualification requirements for the plant to be termed as a “Captive Generating Plant” and once the qualification is established, it needs to be examined if captive users comply with the consumption and proportionality requirements specified in the Rule 3 of the Electricity Rules, 2005.
31. In support of its claim that it is meeting the qualification requirement, SWPGL has furnished the following certifications regarding the extent of ownership of the Captive Users in the CGP:
  - i. Auditor’s Certificate as on 9 January 2017 certifying the shareholding pattern (Not considered for analysis as it pertains for FY 2016-17).

- ii. Auditor's Certificate as on 9 March 2017 certifying the shareholding pattern (Considered for establishing the shareholding pattern at the beginning of FY 2017-18)
- iii. Auditor's Certificate as on 9 June 2017 certifying the shareholding pattern (added Owing Corning's and Bekaert Industries in the matrix).
- iv. Auditor's Certificate as on 8 July 2017 certifying the shareholding pattern (added AYM syntax)
- v. Auditor's Certificate as on 6 September 2017 the shareholding pattern dated 6 September 2017  
(Added Bharat Petroleum Corporation Ltd., changes in shareholding of Pudumjee)
- vi. Auditor's Certificate dated 12 December 2017 certifying the shareholding pattern as on 6 September 2017 (similar certificates as above and no changes in Shareholding)
- vii. Auditor's Certificate as on 21 March 2018 certifying the shareholding pattern (changes in shareholding of Mahindra & Mahindra, Asahi, ACG associates and Bekaert Industries).

The shareholding details of the Captive Users as per these certificates are outlined in the table below:

***Table on Next Page.....***



**Table 22: Details of Shares as per Shareholding certificates submitted by SWPGL**

| Sr. No. | Captive Users                                     | Certificate 1      | Certificate 2      | Certificate 3      | Certificate 4      | Certificate 5      |
|---------|---|--------------------|--------------------|--------------------|--------------------|--------------------|
|         |   | Nos.               | Nos.               | Nos.               | Nos.               | Nos.               |
|         |   | 09-03-17           | 09-06-17           | 08-07-17           | 06-09-17           | 21-03-18           |
| 1       | Viraj Profiles Limited                            | 23,298,938         | 23,298,938         | 23,298,938         | 23,298,938         | 23,298,938         |
| 2       | Bebilz Flanges Works private Limited              | 265,346            | 265,346            | 265,346            | 265,346            | 265,346            |
| 3       | Mahindra & Mahindra Limited (05 Connections)      | 1,945,867          | 1,945,867          | 1,945,867          | 1,945,867          | <b>3,361,043</b>   |
| 4       | Mahindra Vehicle Manufacturers Limited            | 1,238,279          | 1,238,279          | 1,238,279          | 1,238,279          | 1,238,279          |
| 5       | Mahindra CIE Automotive Limited                   | 3,272,595          | 3,272,595          | 3,272,595          | 3,272,595          | 3,272,595          |
| 6       | Mahindra Sanyo Special Steel private Limited      | 6,191,395          | 6,191,395          | 6,191,395          | 6,191,395          | 6,191,395          |
| 7       | R L Steel & Energy Limited                        | 2,653,455          | 2,653,455          | 2,653,455          | 2,653,455          | 2,653,455          |
| 8       | India Steel Works Lilniled                        | 1,061,382          | 1,061,382          | 1,061,382          | 1,061,382          | 1,061,382          |
| 9       | Sona Alloys Private Limited                       | 1,415,176          | 1,415,176          | 1,415,176          | 1,415,176          | 1,415,176          |
| 10      | Mahalaxmi TMT private Limited                     | 7,887,669          | 7,887,669          | 7,887,669          | 7,887,669          | 7,887,669          |
| 11      | Hindustan Petroleum Corporation Limited           | 7,783,468          | 7,783,468          | 7,783,468          | 7,783,468          | 7,783,468          |
| 12      | Lupin Limited                                     | 3,007,237          | 3,007,237          | 3,007,237          | 3,007,237          | 3,007,237          |
| 13      | Graphite India Ltd                                | 2,476,558          | 2,476,558          | 2,476,558          | 2,476,558          | 2,476,558          |
| 14      | Facor Steels Ltd                                  | 884,485            | 884,485            | 884,485            | 884,485            | 884,485            |
| 15      | Air Liquide India Holding Pvt Ltd                 | 1,061,382          | 1,061,382          | 1,061,382          | 1,061,382          | 1,061,382          |
| 16      | Orchid Chemicals and Pharmaceuticals Ltd          | 707,588            | 707,588            | 707,588            | 707,588            | 707,588            |
| 17      | Spentex Industries Ltd                            | 2,983,716          | 2,983,716          | 2,983,716          | 2,983,716          | 2,983,716          |
| 18      | Pudumjee Paper Products Ltd                       | 1,415,176          | 1,415,176          | 1,415,176          | <b>1,592,073</b>   | 1,592,073          |
| 19      | KSK Energy Ventures Ltd                           | 26,947,602         | 23,321,214         | 22,613,626         | 20,137,068         | 17,572,061         |
| 20      | Ramsons Industries Ltd                            | 1,149,830          | 1,149,830          | 1,149,830          | 1,149,830          | 1,149,830          |
| 21      | Ramsons Castings Pvt Ltd                          | 884,485            | 884,485            | 884,485            | 884,485            | 884,485            |
| 22      | ACG Associated Capsules Pvt Ltd                   | 1,238,279          | 1,238,279          | 1,238,279          | 1,238,279          | <b>1,415,176</b>   |
| 23      | Inox Air Products Pvt Ltd                         | 1,768,970          | 1,768,970          | 1,768,970          | 1,768,970          | 1,768,970          |
| 24      | Asahi India Glass Ltd                             | 707,588            | 707,588            | 707,588            | 707,588            | <b>972,934</b>     |
| 25      | Hindalco Industries Limited                       | 2,830,352          | 2,830,352          | 2,830,352          | 2,830,352          | 2,830,352          |
| 26      | Owens Corning                                     |                    | 1,857,418          | 1,857,418          | 1,857,418          | 1,857,418          |
| 27      | Bekaert Industries Pvt. Ltd.                      |                    | 1,768,970          | 1,768,970          | 1,768,970          | <b>2,476,558</b>   |
| 28      | AYM syntex  |                    |                    | 707,588            | 707,588            | 707,588            |
| 29      | Bharat Petroleum Corporation Ltd.                 |                    |                    |                    | 2,299,661          | 2,299,661          |
|         | <b>Total equity shares [nos]</b>                  | <b>105,076,818</b> | <b>105,076,818</b> | <b>105,076,818</b> | <b>105,076,818</b> | <b>105,076,818</b> |
|         | <b>Total equity shares at company level [nos]</b> | <b>404,140,146</b> | <b>404,140,146</b> | <b>404,140,146</b> | <b>404,140,146</b> | <b>404,140,146</b> |
|         | Share Holding of Captive Consumers                | 26.00%             | 26.00%             | 26.00%             | 26.00%             | 26.00%             |

32. As is evident from the above Table outlining the shareholding details, the Commission notes following changes in the shareholding pattern during the FY 2017-18:

- i. There are total 5 Shareholding Certificates submitted by SWPGL along with the Petition.
- ii. There have been changes in the shareholding pattern during the entire year as evident from the above Shareholding certificates i.e. new captive users have been added during the year and the shareholding of few captive users have undergone a change during the year.

- iii. The number of equity shares held by Captive Users of SWPGL at Sr. Nos. 1 to 17 (excluding Mahindra & Mahindra at Sr. No. 3) has remained constant throughout the year.
33. The respondents have contended that SWPGL has not intimated all the changes in the shareholding pattern that took place during the year and also the exact dates of changes in shareholding pattern have also not been intimated despite several reminders. This is required for the purpose of computing the weighted average shareholding pattern during the year considering that there have been changes in the shareholding of certain captive users during the year.
34. Considering that maintaining shareholding of at least 26% by the captive users is a qualification requirement for the plant to be declared as a captive generating plant, it is the duty of the captive generating plant to communicate any change in the shareholding pattern to the licensees as soon as it takes place.
35. In this regard, it is important to note that the MERC (Distribution Open Access) Regulations, 2016 (which is the applicable Regulation for FY 2017-18) clearly state the following requirements while seeking OA from the Distribution Licensee:
- At the time of making the application, copy of Memorandum of Association and Chartered Accountant's certificate of shareholding pattern needs to be submitted, if power is sought under captive mode.
  - In case OA is approved in respect of power from a Captive Generating Plant, the Consumer, Generating Station or Trading Licensee, as the case may be, shall inform the Nodal Agency, within ten days, of any change in the captive status resulting in levy of CSS becoming applicable.
36. Further, the Commission in its Order in Case No. 101 of 2014 has stated the following:
- “30. The Commission would further like to clarify that the responsibility of informing/declaring regarding change in the shareholding pattern of Captive Users rests with the CGP (i.e., WPCL in this case) at the start of financial year and any subsequent changes during the year, along with the Open Access application to be submitted for seeking Open Access to the Distribution Licensee; and in absence of such declaration, such shareholder shall not be considered as Captive Users for that financial year.”*
37. Considering that it is the responsibility of the CGP to demonstrate the compliance of the shareholding pattern with the requirements specified in Electricity Rules, it is important for the CGP to intimate the changes in shareholding, as and when such changes occur, to all the Distribution Licensees in whose licence area the captive users are located. The Distribution Licensee is required to examine the information submitted by the Captive Users and determine if the requirements specified under Rule 3 of the Electricity Rules, are met or not and accordingly, if the generating plant can be recognized as a CGP or if there is a change in the captive status resulting in levy of CSS. So it is imperative for the Captive Users to submit the information related to the shareholding pattern at the time of

seeking OA and also any subsequent changes in the same need to be communicated to the Distribution Licensees as soon as the changes occur to enable the Distribution Licensee to examine the compliance with the requirements for CGP status.

38. The Commission has observed similar issues relating to change in the shareholding pattern during the year in the past proceedings related to captive status determination in Case Nos. 117 of 2012 and 101 of 2014 and had accordingly set out guidelines through its Order in Case No. 23 of 2017 wherein it was directed that in the event of any change in the shareholding pattern during the financial year, the revised shareholding should be intimated to the concerned Distribution Licensee(s) within 10 days, with CA certification. The CA's Certificate should contain details of all shareholders, including the Captive Users, and their voting rights. In case there is no change in the shareholding pattern during the financial year, the Generators should provide an undertaking to that effect along with the CA Certificate as at the end of the year.
39. This requirement has also been reaffirmed recently by the Tamil Nadu Electricity Regulatory Commission (**TNERC**) and Delhi Electricity Regulatory Commission (**DERC**) through their relevant orders / procedures related to assessing compliance of the generating plant with the requirements under Rule 3 of the Electricity Rules.
40. The relevant paragraphs from the Order issued by the TNERC in R.A. No.7 of 2019 dated 28 January, 2020 in the matter of "Procedure for verification of status of Captive Generating Plants and Captive users as directed by the Hon'ble High Court of Madras in W.A.(M.D.) No.930 and 931 of 2017 and C.M.P. No. 5958 and 5959 of 2019 in W.A. (M.D.) No. 930 and 931 of 2017" are reproduced below for reference.

*"6.4.9 Regarding the suggestion to consider weighted average of shareholding to verify 26% ownership annually when there is change in ownership structure, the proposition is accepted subject to the condition that change in extent of shareholding of a captive user is intimated within ten days of such change. Failure to intimate the change within the specified period will render the determination of captive status without considering weighted average of shareholdings, by the Licensee.....*

.....

*7.5.5 For any change in shareholding of existing captive users, the proof of documents shall be furnished within 10 days of such change."*

41. Similarly, the DERC has also reiterated the requirements regarding the timely intimation of any change in the shareholding pattern to the Distribution Licensee as is envisaged in spirit in the matter of the qualification requirements for the captive generating plant as provided in the Electricity Rules. The relevant provisions of the "Procedure for verification of Captive Generating Plant (CGP) status in accordance with requirements in Rule 3 of the Electricity Rules, 2005" notified by DERC vide Order dated 25 August, 2020 are reproduced below:

*"3. General Conditions*

.....

*(iii) The CGP users/owners shall ensure that at any point of time in a financial year not less than 26% of the ownership with voting rights of the generating plant/station or the units identified for captive use, as the case maybe, is held by the captive users and they consume not less than 51% of the electricity generated on annual basis as per this procedure.....*

.....

*(xii) Weighted average of shareholding to verify 26% ownership annually when there is change in ownership structure, shall be considered subject to the condition that change in extent of shareholding of a captive user is intimated to the Distribution Licensee and the Verifying Authority within 10 days of such change. Failure to intimate the change within the specified period will render the Verifying Authority to conduct verifications without considering weighted average of shareholding.”*

42. The Commission is of the opinion that SWPGL should have communicated the changes in the shareholding pattern to all the Distribution Licensees irrespective of the fact that the shareholding of a particular captive user may not have changed. As submitted by TPC-D, the consumers have not submitted the CA certificates dated 9 March, 2017, 9 June, 2017 and 18 December, 2017. It is pertinent to note that the shareholding had changed as per the CA Certificate dated 9 June, 2017.
43. The Commission is of the opinion that the requirements for meeting the captive status have to be met by all the captive users together and also individually. Hence, change of shareholding of any captive user amongst the group of captive users can impact the captive status of the CGP and also the minimum consumption requirements of individual captive users. Communicating all the changes in the equity shareholding pattern to all the licensees who have granted OA permissions under Section 9 to the captive users is also important as it has bearing on the computation of minimum consumption requirements of individual captive users determined at the end of the year as a proportion of the captive user's shareholdings of the CGP. **Accordingly, it is important that SWPGL/Captive Users/Shareholders should have communicated all the changes in the shareholding to all the Distribution Licensees concerned which had granted OA permissions to the captive users. SWPGL should have also confirmed the dates on which such changes in shareholding took place during the year. The Commission notes the shortcomings of SWPGL as highlighted by the Distribution Licensees with regard to compliance with these requirements in the present case. It is pertinent to note that these shortcomings were also highlighted by the Commission in its Order in Case No. 175 of 2017. The Commission has also given directions in this regard in its Order in Case No. 23 of 2017 and which have to be strictly adhered by the captive users/shareholders while seeking to establish the captive status for the generating station.**
44. TPC-D has also submitted that 12 out of the 29 Captive Users/Shareholders as demonstrated in the CA Certificates submitted at the time of seeking grant of OA have not consumed power at all throughout the year and as such, their consumption requirement is not in accordance with their Equity Shareholding. On this ground alone,

SWPGL and its Captive Users/ Shareholders fail to meet the captive criteria specified under Rule 3 of the Electricity Rules and the Hon'ble Tribunal's *Kadodara Power Judgment*.

45. Similar issue has been addressed by the Commission in its Order in Case No. 175 of 2017 wherein the Commission has considered only those captive users who have sought OA and consumed energy during the year for the purpose of evaluating compliance with the requirements prescribed under Rule 3 of the Electricity Rules, 2005 pertaining to minimum shareholding and the consumption requirement, both aggregate by all captive users and proportionate consumption by individual captive users/shareholders. Considering other captive users/shareholders who have not sought OA during the year nor have consumed any energy during the year would not serve any purpose as they are bound to fail the proportional consumption requirement. Accordingly, it would be prudent to consider only those captive users/shareholders who have sought OA and consumed energy during the year for the purpose of assessing compliance to captive status requirements in line with the approach adopted by the Commission in its past Orders.
46. Notwithstanding the conclusion above, the Commission has also stated the following in its Order in Case No. 175 of 2017:

*“60 This stand of the Commission was upheld by the Hon'ble ATE in its Order in the matter of Appeal No. 252 of 2014 and IA No.426 of 2014 dated 3 June 2016. However, that does not give the liberty to the CGP to pick and choose captive consumers as per its convenience to demonstrate compliance to the Captive status requirements. Such approach impacts the sanctity of the entire process of seeking OA approval by the captive consumers under section 9 from the Distribution Licensees by submitting a list of captive consumers who may or may not in reality consume energy during the year. Further, some captive consumers may consume energy for some part of the year and enjoy the benefit of not paying the CSS to Distribution Licensees and at the end of the year does not meet the proportionate consumption requirements. This also puts the entire captive structure at risk of disqualification and thus impacting the genuine captive consumers who adhere with to the requirements prescribed in the Electricity Rules, 2005.”*

47. Accordingly, the Captive Users should also be prudent in their approach towards complying with the requirements for establishing the captive status of generating plant.
48. Proceeding with the examination of compliance with the captive status requirements, it is observed that SWPGL in its submission has considered 17 Captive Users for demonstrating compliance with the requirements under Rule 3 of the Electricity Rules, 2005. The shareholding details of these 17 consumers is given in the table below:

**Table 23: Shareholding details for the entire year of 17 shareholders for the purpose of determination of captive status**

| Sr. No. | Captive Users                                     | No. of Equity Shares of Rs. 10/- each and % Shareholding |               | No. of Equity Shares of Rs. 10/- each and % Shareholding |               | No. of Equity Shares of Rs. 10/- each and % Shareholding |               | No. of Equity Shares of Rs. 10/- each and % Shareholding |               | No. of Equity Shares of Rs. 10/- each and % Shareholding |               |
|---------|---|--|---------------|--|---------------|--|---------------|--|---------------|--|---------------|
|         |   | As on 9 March 2017                                       |               | As on 9 June 2017  |               | As on 8 July 2017  |               | As on 6 September 2017                                   |               | As on 21 March 2018                                      |               |
| 1       | Viraj Profiles Limited                            | 23,298,938   | 5.77          | 23,298,938   | 5.77          | 23,298,938   | 5.77          | 23,298,938   | 5.77          | 23,298,938   | 5.77          |
| 2       | Bebilz Flanges Works private Limited              | 265,346  | 0.07          | 265,346  | 0.07          | 265,346  | 0.07          | 265,346  | 0.07          | 265,346  | 0.07          |
| 3       | Mahindra & Mahindra Limited (05                   | 1,945,867  | 0.48          | 1,945,867  | 0.48          | 1,945,867  | 0.48          | 1,945,867  | 0.48          | <b>3,361,043</b>   | 0.83          |
| 4       | Mahindra Vehicle Manufacturers Limited            | 1,238,279  | 0.31          | 1,238,279  | 0.31          | 1,238,279  | 0.31          | 1,238,279  | 0.31          | 1,238,279  | 0.31          |
| 5       | Mahindra CIE Automotive Limited                   | 3,272,595  | 0.81          | 3,272,595  | 0.81          | 3,272,595  | 0.81          | 3,272,595  | 0.81          | 3,272,595  | 0.81          |
| 6       | Mahindra Sanyo Special Steel private Limited      | 6,191,395  | 1.53          | 6,191,395  | 1.53          | 6,191,395  | 1.53          | 6,191,395  | 1.53          | 6,191,395  | 1.53          |
| 7       | Hindustan Petroleum Corporation Limited           | 7,783,468  | 1.93          | 7,783,468  | 1.93          | 7,783,468  | 1.93          | 7,783,468  | 1.93          | 7,783,468  | 1.93          |
| 8       | Lupin Limited                                     | 3,007,237  | 0.74          | 3,007,237  | 0.74          | 3,007,237  | 0.74          | 3,007,237  | 0.74          | 3,007,237  | 0.74          |
| 9       | Pudumjee Paper Products Ltd                       | 1,415,176  | 0.35          | 1,415,176  | 0.35          | 1,415,176  | 0.35          | <b>1,592,073</b>   | 0.39          | <b>1,592,073</b>   | 0.39          |
| 10      | ACG Associated Capsules Pvt Ltd                   | 1,238,279  | 0.31          | 1,238,279  | 0.31          | 1,238,279  | 0.31          | 1,238,279  | 0.31          | <b>1,415,176</b>   | 0.35          |
| 11      | Inox Air Products Pvt Ltd                         | 1,768,970  | 0.44          | 1,768,970  | 0.44          | 1,768,970  | 0.44          | 1,768,970  | 0.44          | 1,768,970  | 0.44          |
| 12      | Asahi India Glass Ltd                             | 707,588  | 0.18          | 707,588  | 0.18          | 707,588  | 0.18          | 707,588  | 0.18          | <b>972,934</b>   | 0.24          |
| 13      | Hindalco Industries Limited                       | 2,830,352  | 0.70          | 2,830,352  | 0.70          | 2,830,352  | 0.70          | 2,830,352  | 0.70          | 2,830,352  | 0.70          |
| 14      | Owens Corning                                     | -  | -             | <b>1,857,418</b>   | 0.46          | <b>1,857,418</b>   | 0.46          | <b>1,857,418</b>   | 0.46          | <b>1,857,418</b>   | 0.46          |
| 15      | Bekaert Industries Pvt. Ltd.                      | -  | -             | <b>1,768,970</b>   | 0.44          | <b>1,768,970</b>   | 0.44          | <b>1,768,970</b>   | 0.44          | <b>2,476,558</b>   | 0.61          |
| 16      | AYM syntex  | -  | -             | -  | -             | 707,588  | 0.18          | 707,588  | 0.18          | 707,588  | 0.18          |
| 17      | Bharat Petroleum Corporation Ltd.                 | -  | -             | -  | -             | -  | -             | 2,299,661  | 0.57          | 2,299,661  | 0.57          |
|         | <b>Total equity shares [nos]</b>                  | <b>54,963,490</b>  | <b>13.60</b>  | <b>58,589,878</b>  | <b>14.50</b>  | <b>59,297,466</b>  | <b>14.67</b>  | <b>61,774,024</b>  | <b>15.29</b>  | <b>64,339,031</b>  | <b>15.92</b>  |
|         | <b>Total equity shares at company level [nos]</b> | <b>404,140,146</b>                                       | <b>100.00</b> | <b>404,140,146</b>                                       | <b>100.00</b> | <b>404,140,146</b>                                       | <b>100.00</b> | <b>404,140,146</b>                                       | <b>100.00</b> | <b>404,140,146</b>                                       | <b>100.00</b> |

Note: The % of Total equity is a computed number based on the information available regarding the number of shares.

\* The 13% shareholding at the company level (2 IPP & 2 CPP units) translated to 26% equity shareholding for the 2 CPP units (Unit 3 and 4).

49. It is evident from the above table that the captive shareholding **considering 17 captive consumers** is above the threshold limit over the entire year and hence based on the available information, the **Commission concludes that the aggregate equity shareholding of the Captive Users meets the first requirement of the Electricity Rules, 2005 inasmuch as they held more than 26% equity shareholding in the CGP Units 3 and 4 (i.e. more than 13% at the overall company level consider 4 units).**
50. TPC-D has also worked out multiple scenarios considering details available in the various shareholding certificates made available by SWPGL and also considering the weighted average shareholding methodology as adopted by the Commission in the previous Orders (Table 8 to Table 14, Table 16 and Table 17 of the Order). In all these scenarios, it is evident that the shareholding of the CGP is above the threshold limit of 13% and thus SWPGL is meeting the shareholding requirement considering 17 numbers of consumers.
51. In view of the above, the next issue to be examined is whether the Captive Users of SWPGL satisfied the following in FY 2017-18:
- Consumption of not less than 51% of the aggregate electricity generated by the Units identified for captive use, on an annual basis; and
  - If so, whether such consumption is in proportion to their shares in the ownership of the Plant, within a range of  $\pm 10\%$  to comply with Electricity Rules, 2005?
52. The Commission notes that as per Electricity Rules 2005, gross generation should be the basis for calculation of threshold consumption requirement for the captive users. Accordingly, the proportionality test needs to be verified by considering the gross generation at the generation terminal of Captive Units 3 and 4. Hence, the Commission has considered 51% of the total gross generation during FY 2017-18 for the purpose of assessing compliance to the consumption and proportionality requirements which is 576.06 MUs. As against this, the aggregate consumption of the 17 captive consumers is 1129.54 MUs and **accordingly, SWPGL is meeting the overall consumption requirements specified in the Rule 3 of the Electricity Rules, 2005.**
53. The next step would be to assess the compliance with the proportionate consumption requirement. The Commission in the previous Order in Case No. 77 of 2015 and its corrigendum has already established a methodology to compute the weighted average shareholding considering the changes in the shareholding pattern of various captive users over the year.
54. TPC-D, in its submission has stated that it has analysed the shareholding and proportionate consumption of the aforesaid 17 Captive Users/ Shareholders based on various methods employed by this Commission over-time in different orders. In each of these methods, Sai Wardha/ its Captive User(s) failed to fulfil the captive criteria.
55. In the first method, TPC-D has undertaken the assessment of Captive Status for FY 2017-18 considering 51% of gross generation and compared with actual consumption in proportion to the shareholding percentage (as considered by the Commission in its Order dated 9 February 2018 in Case No. 77 of 2015 for FY 2014-15). As submitted by TPC-

D, the Commission in the said Order, TPC-D has analysed the CA Certificates at the Start and End of the Financial Year and the CA Certificates in which shareholding had changed (i.e., separately for the periods of maintaining the same share holding pattern by the captive users) to conclude whether or not captive criteria was fulfilled. Similar approach has been adopted by TPC-D to work out seven different scenarios (**Table 8 to Table 14** of this Order) considering the seven different CA's Certificate issued on behalf of SWPGL during FY 2017-18 to assess whether or not the Captive Users have fulfilled the captive criteria (i.e., 26% shareholding and 51% consumption in proportion to the shareholding held by each such Captive User). The results of this evaluation suggests that some of the captive users are not meeting the condition of 51% consumption in proportion to the shareholding held by each such Captive User in some of the scenarios and thus SWPGL is failing the test of establishing captive status.

56. The Commission has examined the above outlined approach adopted by TPC-D and states that the approach adopted by the Commission in its Order in Case No. 77 of 2015 was based on the facts of the particular case. In that case, SWPGL had submitted 3 CA certificates outlining the shareholding at different points in time. The second and the third CA certificates submitted by SWPGL were similar except for inclusion of Cosmo Films Ltd. in the third certificate. However, considering that Cosmo Films had not consumed any energy during the year, the Commission had excluded it from the evaluation matrix. Accordingly, there were two certificates which were available with the Commission for evaluation of the shareholding and consumption requirement. The compliance of the requirements for declaring the CGP status was examined using these certificates on standalone basis under the premise that if SWPGL meets the requirements in both the cases, it will also meet the requirement if the weighted average shareholding was worked out considering change in shareholding of one captive user i.e. Sona Alloys during the year. In the Order in Case No. 77 of 2015 dated 9 February, 2020, the Commission concluded that SWPGL meets the requirement in both the scenarios mentioned before and hence the third scenario of working out the weighted average shareholding was not considered in the Order. However, the Commission discovered certain discrepancy in its findings in the Order based on which it was established that SWPGL was not meeting the proportionality requirement in Scenario one worked out considering the CA certificate as on 1 April, 2014. Accordingly, there was a need to work out the weighted average scenario to establish if SWPGL met the scenario considering the varying shareholding pattern during the year. This scenario was worked out and the findings were issued by the Commission as part of the corrigendum issued to the Order in Case No. 77 of 2015 dated 12 March, 2018. SWPGL was found to be meeting the proportionality requirement under this scenario based on which the Commission declared the CGP status for SWPGL for FY 2014-15. Accordingly, the weighted average scenario was considered as the basis for determining the CGP for the FY 2014-15 in the case of SWPGL.
57. TPC-D has also assessed the captive status considering the weighted average shareholding of SWPGL for the FY 2017-18 (**Table 16 and Table 17**) in line with the approach adopted by the Commission in its Order in Case No. 101 of 2014 dated 20



August 2014 and Corrigendum Order in Case No. 77 of 2015 dated 12 March 2018. Accordingly, there may not have been a need for TPC-D to work out the eight scenarios as the weighted average scenario provides the necessary clarity regarding the compliance of SWPGL against requirements specified in Rule 3 of Electricity Rules, 2005 for declaring the captive status for the FY 2017-18. It is further observed, that in the scenario worked out in line with the approach adopted by the Commission in its Corrigendum Order in Case No. 77 of 2015 dated 12 March 2018, TPC-D has worked out the weighted average shareholding pattern for the captive users for the entire FY 2017-18 taking cognizance of the time period for which the captive user held shares in the CGP during the year. Accordingly, the weighted average shareholding already factors in the impact of the period for which the captive user held shares in the CGP. However, TPC-D has also considered lower threshold level of generation (generation equivalent to 51% of the gross generation) for some of the captive users who joined the CGP shareholding structure during the latter part of the year. This appears to be a case of double accounting of the impact of deferred joining of the shareholding structure on the weighted average shareholding and the consumption threshold levels in the process of assessing the compliance with the captive status requirements prescribed in Rule 3 relating to overall consumption and proportionate consumption. Hence, it is felt that there was no need to adjust the generation threshold levels in the computation. It is however stated that there is no change in the final outcome in the present case even if either of the approach is adopted. Accordingly, the Commission has appropriately addressed this issue while computing the compliance with the requirements under Rule 3 in subsequent paras of this Order.

58. TPC-D has also assessed the captive status in terms of principles set out in Hon'ble ATE Order in the matter of Kadodara Power (as on 31.03.2017) (**Table 18** of this Order). TPC-D has also submitted that the methodologies adopted by the Commission do not give a correct picture of each Captive User's consumption in the context of 51% generation ( $\pm 10\%$ ). As per TPC-D, in order to correctly calculate the rule of proportionality, the actual consumption of each Captive User needs to be pro-rated to 51% of the total generation. TPC-D has also suggested that there is no bar on the Commission to consider a new methodology, so long as it is in line with the Rules and meets the ends of justice.
59. The Commission has examined the approach suggested by TPC-D and the rulings of the Hon'ble ATE in the matter of Kadodara Power in A. No. 171 of 2008, A. No. 172 of 2008 & IA Nos. 233/08 and 234/08, A. No. 10 of 2008 and A. No. 117 of 2009 dated 22 September 2009. The relevant para from the aforementioned order of the Hon'ble ATE is reproduced below for reference.

*“How proportionality of consumption has to be assessed:*

*17) The Electricity Rules 2005 have set down that not less than 51% of the aggregate electricity generated by a CGP, determined on an annual basis is consumed for captive use. However, in case there are more than one owner then there is a further rule of proportionality in consumption. In case the power plant is set up by a cooperative*

*society the condition of use of 51% can be satisfied collectively by the members of the cooperative society. However, if it is an 'association of persons' then the captive users are required to hold not less than 26% of the ownership of the plant and such captive users are required to consume not less than 51% of electricity generated determined on an annual basis in proportion to the share of the ownership of the power plant within a variation not exceeding + 10%. For example, if a CGP produces 10,000 kWh of electricity, 5100 kWh need to be consumed by the owners of CGP. In case there are three owners holding equal share, each one must consume 1/3rd of the 5100 kWh within a variation of + 10% i.e. between 1530 kWh to 1870 kWh. It will not be proper to assess the proportionality of the consumption on 100% of the generation. The Commission, however, appears to have calculated the proportion of use to 100% of the total consumption which may be more than 51% of generation. For example, M/s. Surabhi Infrastructure Services Ltd. has eight owners namely, M/s. Kusum Dying and Printing Mills Ltd., M/s. Suman Dying and Printing Mills Ltd., M/s. High Choice Processor Ltd., M/s. Vardhaman Dying & Printing Mills Ltd, M/s. Sachin Infrastructure Environment Ltd., M/s. Vimlon Dying & Printing Mills Ltd, M/s. Vividh Syntex Pvt. Ltd. and M/s. Sachin Private Water Supply Ltd. They hold shares in the ratio of 9.10%, 4.91%, 9.10%, 9.10%, 10.92%, 9.10%, 4.55% and 7.28% respectively. The total consumption figure against each of these owners has been given in a chart. Thereafter the percentage of their consumption during 01.04.06 to 10.10.06 has been calculated. On analysis of such calculation it has been found that M/s. Kusum Dying & Printing Mills Ltd. consumed 13.49% of the total consumption whereas the consumption should have been between 8.19% to 10.01%. It may be recalled that consumption could be within + 10% of the same proportion as ownership. There is no column in the tabular statement given in page 77 of the impugned order showing what was the total production of the CGP at the relevant period. Nor is there any column showing what 51% of the total production would have been. The 51% of total generation only has to satisfy the rule of proportionality in consumption and ownership. The rest 49% of the generation could be sold to anyone including grid, Distribution Company and the CGP owners themselves. Further such calculation has to be done on an annual basis i.e. for a financial year. The calculation for the other co-sharers of the CGP owned by M/s. Surabhi Infrastructure Services Ltd. is also equally flawed. It will not be fair to disqualify M/s. Surabhi Infrastructure Services Ltd. or the co-sharers of this special purpose vehicle as a CGP on the basis of such calculation relied upon by the Commission. The proportion of consumption of the special purpose vehicles namely M/s. Kadodara Power Pvt. Ltd., M/s. Shahlon Industrial Infrastructure Pvt. Ltd. and M/s. Nangalia Group of Association, the appellants in appeal No. 171 of 2008 have also been assessed in the same manner. The Commission has clearly gone on a wrong path and the orders issued on such calculations of proportionality certainly cannot be sustained."*

60. From the reading of the above ruling, it is evident that the rule of proportionality in consumption has to be satisfied considering 51% of the total generation. Nowhere has it been suggested that to calculate the rule of proportionality, the actual consumption of

each Captive User needs to be pro-rated to 51% of the total generation. The provisions of the Electricity Rules, 2005 are very clear and prescribe that the 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. Accordingly, the comparison of the actual consumption by the captive user has to be done with 51% of the electricity generated, in proportion to its shareholding. This methodology has been consistently adopted by the Commission in the past and the Commission does not see sufficient justification to propose any change in the methodology consistently followed by the Commission in the past Order.

61. Accordingly, the Commission has proceeded to assess the captive status considering the weighted average shareholding of SWPGL for FY 2017-18 for 17 captive users / shareholders. The table below outlines the weighted average shareholding of SWPGL for the FY 2017-18.

**Table 24: Weighted average shareholding for SWPL for the FY 2017-18 considering 17 consumers**

| Sr. No. | Captive Users                                     | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | No. of Equity Shares of Rs. 10/- each | Weighted Average No. of Equity Shares of Rs. 10/- each | % Shareholding (Weighted Average) |
|---------|---|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|--|-----------------------------------|
|         |   | As on 9 March 2017 #                  | As on 9 June 2017                     | As on 8 July 2017                     | As on 6 September 2017                | As on 21 March 2018                   | As on 31 March 2018 @                 | FY 2017-18   | FY 2017-18                        |
| 1       | Viraj Profiles Limited                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938                            | 23,298,938   | 5.77%                             |
| 2       | Bebilz Flanges Works private Limited              | 265,346                               | 265,346                               | 265,346                               | 265,346                               | 265,346                               | 265,346                               | 265,346  | 0.07%                             |
| 3       | Mahindra & Mahindra Limited (05                   | 1,945,867                             | 1,945,867                             | 1,945,867                             | 1,945,867                             | <b>3,361,043</b>                      | <b>3,361,043</b>                      | 1,988,516  | 0.49%                             |
| 4       | Mahindra Vehicle Manufacturers Limited            | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279  | 0.31%                             |
| 5       | Mahindra CIE Automotive Limited                   | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595                             | 3,272,595  | 0.81%                             |
| 6       | Mahindra Sanyo Special Steel private Limited      | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395                             | 6,191,395  | 1.53%                             |
| 7       | Hindustan Petroleum Corporation Limited           | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468                             | 7,783,468  | 1.93%                             |
| 8       | Lupin Limited                                     | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237                             | 3,007,237  | 0.74%                             |
| 9       | Pudumjee Paper Products Ltd                       | 1,415,176                             | 1,415,176                             | 1,415,176                             | <b>1,592,073</b>                      | 1,592,073                             | <b>1,592,073</b>                      | 1,515,498  | 0.37%                             |
| 10      | ACG Associated Capsules Pvt Ltd                   | 1,238,279                             | 1,238,279                             | 1,238,279                             | 1,238,279                             | <b>1,415,176</b>                      | <b>1,415,176</b>                      | 1,243,610  | 0.31%                             |
| 11      | Inox Air Products Pvt Ltd                         | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970                             | 1,768,970  | 0.44%                             |
| 12      | Asahi India Glass Ltd                             | 707,588                               | 707,588                               | 707,588                               | 707,588                               | <b>972,934</b>                        | <b>972,934</b>                        | 715,585  | 0.18%                             |
| 13      | Hindalco Industries Limited                       | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352                             | 2,830,352  | 0.70%                             |
| 14      | Owens Corning                                     |                                       | 1,857,418                             | 1,857,418                             | 1,857,418                             | 1,857,418                             | 1,857,418                             | 1,506,290  | 0.37%                             |
| 15      | Bekaert Industries Pvt. Ltd.                      |                                       | 1,768,970                             | 1,768,970                             | 1,768,970                             | <b>2,476,558</b>                      | <b>2,476,558</b>                      | 1,455,887  | 0.36%                             |
| 16      | AYM syntex  |                                       |                                       | 707,588                               | 707,588                               | 707,588                               | 707,588                               | 517,605  | 0.13%                             |
| 17      | Bharat Petroleum Corporation Ltd.                 |                                       |                                       |                                       | 2,299,661                             | 2,299,661                             | 2,299,661                             | 1,304,191  | 0.32%                             |
|         | <b>Total equity shares [nos]</b>                  | <b>54,963,490</b>                     | <b>58,589,878</b>                     | <b>59,297,466</b>                     | <b>61,774,024</b>                     | <b>64,339,031</b>                     | <b>64,339,031</b>                     | <b>59,903,762</b>                                      | <b>14.82%</b>                     |
|         | <b>Total equity shares at company level [nos]</b> | <b>404,140,146</b>                    | <b>404,140,146</b>                    | <b>404,140,146</b>                    | <b>404,140,146</b>                    | <b>404,140,146</b>                    | <b>404,140,146</b>                    | <b>404,140,146</b>                                     | <b>100.00%</b>                    |
|         | Share Holding of Captive Consumers                | 13.60%                                | 14.50%                                | 14.67%                                | 15.29%                                | 15.92%                                | 15.92%                                | 14.82%   |                                   |

# - The shareholding pattern available in the CA certificate dated 9 March, 2017 has been considered as the shareholding of SWPGL as on 1 April, 2017.

@ - The shareholding pattern available in the CA certificate dated 21 March, 2018 has been considered as the shareholding of SWPGL as on 31 March, 2018.

62. Considering the above weighted average equity shareholding, annual gross generation, and the consumption figures grossed up with the Auxiliary Consumption for FY 2017-18 pertaining to CGP Units 3 and 4, the Commission has computed the relevant parameters against the CGP criteria of the Electricity Rules, 2005 as set out in Table below:

**Table 25: Computation of Captive Status of SWPGL in FY 2017-18 considering weighted average equity shareholding**

| Sr. No.                              | Name of the Shareholder  | No. of Equity Shares of Rs. 10/- each        |   | % of consumption to be done by Captive User for meeting 51% consumption criterion | Gross Generation considered for 51% Calculation | Permissible Range for shareholding pattern for 51% consumption criterion |                    |                   | Actual Consumption | Whether actual consumption (d) is equal to or greater than lowest permissible range (b) |
|--------------------------------------|--|--|---|---|---|--|--------------------|-------------------|--------------------|---|
|                                      |  | Weighted Average Shareholding for FY 2017-18 | % of shares in Ownership in the company |   |   | with 0% variation  | variation of - 10% | variation of +10% |                    |   |
|                                      |  |  |   |   |   | MU   | MU                 | MU                |                    |   |
|                                      |  |  |   |   |   | a  | b                  | c                 |                    |   |
|                                      |  |  |   |   |   |  |                    |                   |                    |   |
| 1                                    | Viraj Profiles Limited   | 23,298,938                                   | 5.77%                                   | 38.89%  | 576.06  | 224.05   | 201.65             | 246.46            | 196.91             | No  |
| 2                                    | Bebilz Flanges Works private Limited                                       | 265,346                                      | 0.07%                                   | 0.44%   | 576.06  | 2.55   | 2.30               | 2.81              | 10.78              | Yes   |
| 3                                    | Mahindra & Mahindra Limited (05 Connections)                               | 1,988,516                                    | 0.49%                                   | 3.32%   | 576.06  | 19.12  | 17.21              | 21.03             | 80.63              | Yes   |
| 4                                    | Mahindra Vehicle Manufacturers Limited                                     | 1,238,279                                    | 0.31%                                   | 2.07%   | 576.06  | 11.91  | 10.72              | 13.10             | 30.50              | Yes   |
| 5                                    | Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.) | 3,272,595                                    | 0.81%                                   | 5.46%   | 576.06  | 31.47  | 28.32              | 34.62             | 83.17              | Yes   |
| 6                                    | Mahindra Sanyo Special Steel private Limited                               | 6,191,395                                    | 1.53%                                   | 10.34%  | 576.06  | 59.54  | 53.59              | 65.49             | 81.14              | Yes   |
| 7                                    | Hindustan Petroleum Corporation Limited                                    | 7,783,468                                    | 1.93%                                   | 12.99%  | 576.06  | 74.85  | 67.36              | 82.33             | 200.70             | Yes   |
| 8                                    | Lupin Limited  | 3,007,237                                    | 0.74%                                   | 5.02%   | 576.06  | 28.92  | 26.03              | 31.81             | 106.84             | Yes   |
| 9                                    | Pudumjee Paper Products Ltd  | 1,515,498                                    | 0.37%                                   | 2.53%   | 576.06  | 14.57  | 13.12              | 16.03             | 41.43              | Yes   |
| 10                                   | ACG Associated Capsules Pvt Ltd  | 1,243,610                                    | 0.31%                                   | 2.08%   | 576.06  | 11.96  | 10.76              | 13.16             | 40.10              | Yes   |
| 11                                   | Inox Air Products Pvt Ltd  | 1,768,970                                    | 0.44%                                   | 2.95%   | 576.06  | 17.01  | 15.31              | 18.71             | 50.17              | Yes   |
| 12                                   | Asahi India Glass Ltd  | 715,585                                      | 0.18%                                   | 1.19%   | 576.06  | 6.88   | 6.19               | 7.57              | 9.44               | Yes   |
| 13                                   | Hindalco Industries Limited  | 2,830,352                                    | 0.70%                                   | 4.72%   | 576.06  | 27.22  | 24.50              | 29.94             | 82.23              | Yes   |
| 14                                   | Owens Corning  | 1,506,290                                    | 0.37%                                   | 2.51%   | 576.06  | 14.49  | 13.04              | 15.93             | 37.91              | Yes   |
| 15                                   | Bekaert Industries Pvt. Ltd.   | 1,455,887                                    | 0.36%                                   | 2.43%   | 576.06  | 14.00  | 12.60              | 15.40             | 37.12              | Yes   |
| 16                                   | AYM syntex   | 517,605                                      | 0.13%                                   | 0.86%   | 576.06  | 4.98   | 4.48               | 5.48              | 11.69              | Yes   |
| 17                                   | Bharat Petroleum Corporation Ltd.  | 1,304,191                                    | 0.32%                                   | 2.18%   | 576.06  | 12.54  | 11.29              | 13.80             | 47.37              | Yes   |
| <b>Total - Captive Users</b>         |  | <b>59,903,762</b>                            | <b>14.82%</b>                           | <b>100%</b>   |   | <b>576.06</b>  | <b>518.46</b>      | <b>633.67</b>     | <b>1,148.13</b>    | <b>No</b>   |
| <b>Total shares at company level</b> |  | <b>404,140,146</b>                           | <b>100.00%</b>                          |   |   |  |                    |                   |                    |   |

63. The generation and consumption details are based on the information made available by SWPGL. TPC-D in its submissions had contended that the consumption of the captive users is more than the generation by SWPGL. However, SWPGL in its additional submission has clarified that the daily schedule is based upon the requirement given by consumers to SWPGL and SWPGL allocation to consumer. This is then sent to MSLDC and MSEDCL and Consumers accordingly, for the purpose of final scheduling and billing. However, the actual generation for the purposes of energy accounting, is on the basis of metering recorded on a monthly basis. Any difference in the actual generation vis-a-vis schedule is separately settled through FBSM/UI charges on the differential energy. The Commission has noted SWPGL's submission in this matter.
64. The weighted average shareholding computation has been undertaken considering the details available in the shareholding certificates provided by SWPGL and the date of the certificate has been considered as the date of change of the shareholding or date of addition of new captive user/shareholders in the captive structure.
65. As discussed in preceding para of this Order, the average shareholding pattern appropriately factors in the impact of the time when either the shareholding of any captive user has undergone a change or new captive users have been added to the captive structure. Consequently, no adjustment is done in the generation threshold levels (Gross generation considered for 51% calculation) considered for the purpose of undertaking the proportionality test. Nevertheless, there is no change in the final outcome in the present case even if either of the approach is adopted.
66. **Based on the above computation, it is evident that one of the 17 Captive Users, i.e. M/s. Viraj Profiles Ltd. fails the proportionality test.**
67. As regards the compliance with the proportionality requirement by all the captive users, SWPGL has quoted the KERC Order in the case of JSW Steel Limited v. Chief Electricity Inspector, OP No. 33 of 2010 dated 7 July, 2011 wherein the Commission has held that merely because some of the shareholders are not consuming electricity generated in proportion to their shareholding in any year, it cannot take away the benefit available under the Act to the other shareholders who are consuming electricity in proportion to their equity holding when the total captive consumption is more than 51 per cent of the electricity generated. It was further specified that Rule 3(2) on which heavy reliance is placed by the respondent in that case does not lay down that if any of the captive consumers does not consume power in proportion to the shareholding, all other stakeholders shall forfeit their benefit which is otherwise available to individual captive consumers even when the consumption by captive users exceeds 51 per cent. However, SWPGL also further stated that the above principle was not set aside by the Hon'ble ATE in Appeal by the Distribution Licensees, but on the Appeal by the generator, the principle was further expanded and the principle of proportionality itself was held not to be applicable to operating companies, not being special purpose vehicles.
68. As against this, the TPC-D has submitted that SWPGL's reliance on the KERC's Order dated 7 July 2011 in Case No. OP 33 of 2010 (JSW Steel Ltd. vs. CEI & Batch) to demonstrate how the rule of proportionality is to be considered is wrong and misleading.

It further stated that KERC's Order dated 7 July 2011 was challenged before the Hon'ble ATE which held that non-consumption of 51% power in proportion to their shareholding by M/s Bellary Oxygen Company Pvt. Ltd., M/s Bhuvalka Pipes Pvt. Ltd., M/s Jamshedpur Injection Power Ltd. and M/s Padmavathi Ferro Alloys Ltd. had no consequence because consumption of JSW Steels exceeded 51% of the total power generated and this being the position in the peculiar facts and circumstances of that case, the Rule of Proportionality was not applicable. TPC-D submitted that the JSW Steel case was based on totally different facts and legal propositions and is not of much help in the present facts of the case qua Rule of Proportionality. Further, SWPGL is Special Purpose Vehicle while JSW Steel on the other hand, held more than 26% equity shares and itself consumed more than 51% of the generation. As such, JSW itself qualified to be a captive user and non-consumption of 51% according to the respective shares by the other users therein did not matter.

69. TPC-D has also stated that the Rule of Proportionality qua 51% consumption as provided under Rule 3 is to be met by all consumers who have been demonstrated in the CA Certificates as Captive Users, for availing power through group captive route during a Financial Year, based on which the Distribution Licenses grant OA permission under Section 9 of the EA. The intent of submitting the CA Certificate as a pre-condition to grant of OA under Section 9, it to disclose to the Distribution Licensees the details of all the Captive Users who together hold Equity Shares to the extent of 26% in the Captive Generating Units/Plant, for the purpose of consuming electricity through group captive route. TPC-D has analysed the shareholding and proportionate consumption of the 17 Captive Users/ Shareholders based on various methods employed by the Commission over-time in different Orders and in each of these methods, the Captive User(s) fail to fulfil the captive criteria.
70. TPC-D further stated that the consequence of failure to comply with the requirements of Rule 3(1)(a) & (b) of the Electricity Rules is set out in Rule 3(2) of the Electricity Rules. As per Rule 3(2) of the Electricity Rules, if in any year, the Ownership and/ or Consumption Requirement, and/ or the Rule of Proportionality are not met, then the entire electricity generated by such CPP would be treated as if such electricity was supplied by a generating company, meaning thereby that, the entire electricity generated by the power plant would be liable to levy of all statutory charges, including CSS. The Hon'ble ATE by its Judgment in Godavari Power & Ispat Limited v. CSERC & Ors. reported as 2013 ELR (APTEL) 481 has held that if the requirements of Rule 3(1)(a) and (b) are not met by a power plant, then in terms of Rule 3(2), it shall lose its captive status and it will be treated as an independent power plant/ producer.
71. The Rule 3 of Electricity Rules, 2005 specifically prescribes that two prescribed conditions are to be satisfied by the Power Plant to be qualified as a Captive Power Plant. If any one of those conditions is not fulfilled, the Captive Power Plant will lose its status and become an Independent Power Producer (IPP) Generating Power Plant.
72. The Commission in its Order in Case No. 117 of 2012 has also ruled on the same lines as evident from the following paragraphs:

- “146. As shown in the above table, the permissible power utilisation as per the shareholding pattern by the Captive Users of the Petitioner, are not proportionate to their shareholding during FY 2012-13 since as against required range of consumption between 762.30 to 890.53 MU, permissible consumption as per shareholding works out to 683.85 MU (which is less than the required consumption of 809.58 MU). Therefore, for this period, it is not in accordance with the provisions of Electricity Rules, 2005 and therefore does not meet the requirement that Captive Users should have consumed not less than 51% of electricity generated determined on an annual basis in proportion to the share of the ownership of the Power Plant within a variation not exceeding + 10%.*
- 147. The Commission further notes that out of the 15 Captive Users, three of them have not availed Open Access and has not drawn any power from the Power Plant. Therefore this aspect also conform that it has not met the proportionate consumption clause as stipulated in the Rule 3 of Electricity Rules, 2005.*
- 148. Rule 3 of Electricity Rules, 2005 specifically prescribes that two conditions are to be satisfied by the Power Plant to be qualified as a Captive Power Plant. If any one of those conditions is not fulfilled, the Captive Power Plant will lose its status and become an Independent Power Producer (IPP) Generating Power Plant as determined for FY 2012-13.*
- 149. In the present case, the Petitioner could not satisfy the conditions of Rule 3, viz., consumption of 51% of the annual aggregate electricity generated by its Power Plant for captive use during FY 2012-13 and Captive Users have not consumed required 51% of the electricity generated, determined on an annual basis, in proportion to their shares in ownership within a variation not exceeding 10%. Therefore, for FY 2012-13, the power generation from its Power Plant shall be treated as if it is a supply of electricity by a generating Company as per Rule 3(2) of the Electricity Rules, 2005 to the consumers identified by the Petitioner.*
73. The Hon’ble ATE in its order in the matter of M/s. Godavari Power & Ispat Ltd vs The Chhattisgarh State Electricity Regulatory Commission in Appeal No. 33 of 2012, had ruled the following:
- “30. To Sum Up*
- (a) Rule 3 of Electricity Rules 2005 specifically prescribes that two conditions are to be satisfied by the power plant to be qualified as a captive power plant. If any one of those conditions is not fulfilled, the captive power plant will lose its status and become a generating plant. Hence, the State Commission does not have any powers to relax the provisions of the Electricity Act, 2005.*
- (b) In the present case, the Appellant could not satisfy one of the conditions of Rule 3 viz consumption of 51% of the annual aggregate electricity generated by its power plant for captive use during the year 2009-10 due to breakdown in its Steel Plant. Therefore, the power generation from its power plant shall be treated as if it is a supply of electricity by a generating company as per Rule 3(2) of the Electricity Rules, 2005. The*



*State Appeal No.33 of 2012 Commission does not have any power to relax the requirement of consumption of not less than 51% of the electricity generated from the Appellant's power plant for captive use."*

74. Further, as submitted by SWPGL, the Hon'ble ATE in the Appeal filed by JSW Steel Limited has ruled that the proportionality itself would not be applied since the appellant JSW Steel Limited was an operating company and not an SPV. However, in its Order in Case No. 117 of 2012, the Commission has already ruled that in view Hon'ble ATE's Judgment in Appeal Nos. A. No. 171 of 2008, A. No. 172 of 2008 & IA Nos. 233/08 and 234/08, A. No. 10 of 2008 and A. No. 117 of 2009, SWPGL being an SPV is also an Association of Persons and accordingly is subject to the rule of proportionate consumption as specified in the Electricity Rules 2005 for Association of Persons. Further in this case, JSW Steel itself held more than 26% equity shares and itself consumed more than 51% of the generation and JSW itself qualified to be a captive user and non-consumption of 51% according to the respective shares by the other consumers therein did not matter.
75. The Delhi Electricity Regulatory Commission recently in its Order dated 25 August, 2020 regarding "Procedure for verification of Captive Generating Plant (CGP) status in accordance with requirements in Rule 3 of the Electricity Rules, 2005" has ruled the following:
- "4.5 Default by a shareholder(s):*
- 4.5.1 When a shareholder(s) defaults in fulfilling criteria of consumption in Rule 3, and when other captive users together comply with ownership criteria of not less than 26%, the defaulting shareholder(s) alone shall forgo the concessions available to a captive user. The other captive users together who comply with criteria of not less than 26% ownership and consumption of not less than 51% of aggregate electricity generated +/- 10% in proportion to their individual shareholdings shall retain the captive status.*
- 4.5.2 When a shareholder(s) defaults in fulfilling the consumption criteria of Rule 3, and when other captive users together do not comply with ownership criteria of not less than 26%, the CGP will lose its captive status, and all captive users shall forgo the concessions available to a captive user.*
76. From the above provisions, it is clear that if any of the shareholder defaults in fulfilling criteria of consumption in Rule 3 (consumption rule covers consumption of not less than 51% of aggregate electricity generated +/- 10% in proportion to their individual shareholdings), then the other captive users together need to comply with ownership criteria of not less than 26%. In such a situation, the defaulting shareholder(s) alone shall forgo the concessions available to a captive user. **However, in the present case, if the one defaulting Captive User i.e. Viraj Profiles Limited, is excluded, then the remaining 16 captive do not meet the requirement of holding at least 26% equity shareholding in the CGP throughout the year (Viraj Profiles Limited holds 5.77% shareholding in SWPGL which is the largest block of shares held by all the captive**

users). Accordingly, in the present case the CGP will lose its captive status, and all captive users shall forgo the concessions available to a captive user. Similar stand has been taken by the Commission in its Order in Case No. 175 of 2017.

77. Accordingly, the Commission holds that SWPGL does not fulfil the captive status criteria for FY 2017-18 in the test of proportionality. Therefore, for FY 2017-18, the power generation from its Power Plant shall be treated as if it is a supply of electricity by a generating Company as per Rule 3(2) of the Electricity Rules, 2005 to the consumers identified by the Petitioner. The Distribution Licensees are directed to levy CSS and other applicable charges on the captive users / shareholders of SWPGL who have consumed electricity during FY 2017-18 as per the provisions of Electricity Rules 2005 and EA.

### **ORDER**

1. Case No. 170 of 2018 is dismissed along with Miscellaneous Application Nos. 13, 14, 18, 20, 22, 24, 27, 28 of 2019 and 44 of 2020.
2. The Commission holds that Sai Wardha Power Generation Ltd. does not fulfil the captive status criteria for FY 2017-18. Distribution Licensees are directed to levy Cross Subsidy Surcharge and other applicable charges on the captive users / shareholders of Sai Wardha Power Generation Ltd. for FY 2017-18 as per the provisions of Electricity Rules, 2005 and the Electricity Act, 2003.

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

  
(Abhijit Deshpande)  
Secretary

  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
॥ आदित्य हृदयम् ॥