

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 175 of 2017

**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 2016-17**

AND

Miscellaneous Application Nos. 12, 15, 17, 19, 21, 23, 29 and 30 of 2019

**Miscellaneous Application of Tata Power Company Ltd. (Distribution) seeking
impleadment of all Captive Users in Case No. 175 of 2017 and Miscellaneous
Applications of Seven 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
-Respondents

4. Maharashtra State Load Despatch Centre
5. Maharashtra State Electricity Transmission Co. Ltd.Impleaded Respondents

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.

..... 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. Dhengle (Rep.) |
| For Maharashtra State Electricity Transmission Co. Ltd. | : Shri Prasad Narnaware (Rep.) |
| For Inox Air Products Pvt. Ltd. | : Shri Sanjay Sen (Adv.) |
| For Pudumjee Paper Products Ltd. and
Mahindra CIE Automotive Ltd. and
Mahinda Sanyo Special Steel Pvt. Ltd. and
Ramson Industries and
Ramson castings | : 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 ACG Associated	: Shri R.R. Nair (Adv.)
For Lupin Ltd.	: Ms. Neeta Jain (Adv.)
For Asahi India Glass	: Shri T. N. Agarwal (Rep.)
For HPCL	: Shri Varun Pathak (Adv.)

ORDER

Dated: 22 October 2020

1. Sai Wardha Power Generation Limited (“SWPGL” or “Sai Wardha”) has filed a Case under Sections 42 of the Electricity Act 2003 (EA) and Rule 3 of the Electricity Rules, 2005 (Electricity Rules) seeking declaration of Captive Status of its 2 x135 MW Generating Units (Unit No. 3 and 4) for FY 2016-17.
2. **Petitioner’s main prayers are as follows:**
 - 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.*
3. **Petitioner has stated as follows:**
 - 3.1 SWPGL has established 540 MW Generating plant at Warora, District Chandrapur, Maharashtra, comprising of four units of 135 MW each. Out of four Units, 2 units of 135 MW each (Unit 3 and 4) are identified/designated as Captive Generating Units, primarily for supplying power to its Captive Users /Shareholders, being industrial consumers.
 - 3.2 Rule 3 of Electricity Rules provides the criteria for fulfilment of Captive Power Plant

(CPP) status. The two obligations to be fulfilled by a CPP are as below:

- i. The captive consumers should hold not less than 26% equity in the captive generating unit or units.
- ii. The captive consumers should consume not less than 51% of the electricity generated from the captive generating unit(s), to be determined on an annual basis.

3.3 For FY 2016-17, the shareholding of SWPGL (*Ref: Shareholding certificate dated 9 March 2017*) with regard to its Captive Users/ Shareholders as on 1 April 2016 and the consumption of electricity is summarized as under:

- i. Total Generation from Unit 3 and 4 for FY 2016-17 : 1229 MU
- ii. Total Consumption of the Captive Users for FY 2016-17 : 1183 MU
- iii. Percentage Consumption by the Captive Consumers for FY 2016-17 : 96.25 %
- iv. Equity shareholding held by captive user/consumers : 26 %

3.4 SWPGL has submitted following documents /certificates with the Petition:

- i. The shareholding certificate for FY 2016-17.
- ii. The Generation and consumption details of Unit 3 and 4 of SWPGL.
- iii. The day wise Gross Generation, Net Generation, Injection schedule details.
- iv. The month-wise Meter Reading Instrument (MRI) summary and slot-wise MRI is copied to Compact Disc.
- v. The Outages details of Unit 3 and 4 of SWPGL.
- vi. Open Access (OA) capacity for FY 2016-17.
- vii. The Single Line Diagram of SWPGL's plant.
- viii. SEM Meter Testing report of Unit-3 (Sr. No -APMB 0609) issued by Executive Engineer (Testing Division), MSEDCL (Nagpur- Urban) on 25 October 2017.
- ix. SEM Meter Testing report of Unit-4 (Sr. No -APMB 0610) issued by Executive Engineer (Testing Division), MSEDCL (Nagpur- Urban) on 10 November 2017.

3.5 For FY 2016-17, SWPGL has fulfilled the criteria for captive status for its generating units as laid down under Rule 3 of the Electricity Rules. The compliance with regard to proportionality is within the permissible limit of $\pm 10\%$. The status of captive criteria fulfilment is as under:

Table 1: Generation and consumption by Captive Users in FY 2016-17 considering 13% of shares in ownership as submitted by SWPGL

Sr. No.	Name of the Shareholder	No. of Shares	Percentage of Equity Held in SWPGL	Percentage of 51% consumption to be consumed by Shareholder	Percentage of 51% consumption -10% Variation	Percentage of 51% consumption +10% Variation	Generation (Considered after considering impact of delay in granting Open Access)	Permissible Range of Share Holding Pattern for 51% Consumption Criterion			Actual Consumption	Consumption permissible as per Shareholding
								With 0% Variation	Variation of -10%	Variation of +10%		
								MU a	MU b	MU c		
1	Bebitz	2,65,346	0.07%	0.22%	0.20%	0.24%	1,229.00	2.68	2.41	2.95	10.25	2.95
2	Viraj Profiles Limited	2,32,98,938	5.77%	19.15%	17.23%	21.06%	1,229.00	235.42	211.88	258.97	297.68	258.97
3	Mahindra & Mahindra Limited	19,45,867	0.48%	1.60%	1.44%	1.76%	1,229.00	19.66	17.70	21.63	88.07	21.63
4	Mahindra CIE Automotive Limited	32,72,595	0.81%	2.69%	2.42%	2.96%	1,229.00	33.07	29.76	36.37	68.33	36.37
5	Mahindra Vehicle Manufacturers Limited	12,38,279	0.31%	1.02%	0.92%	1.12%	1,229.00	12.51	11.26	13.76	33.88	13.76
6	Mahindra Sanyo Special Steels Limited	61,91,395	1.53%	5.09%	4.58%	5.60%	1,229.00	62.56	56.30	68.82	82.08	68.82
7	Lupin Pharmaceuticals Limited	30,07,237	0.74%	2.47%	2.22%	2.72%	1,229.00	30.39	27.35	33.43	103.63	33.43
8	Hindustan Petroleum Corporation Limited	77,83,468	1.93%	6.40%	5.76%	7.04%	1,229.00	78.65	70.78	86.51	294.37	86.51
9	Mahalaxmi TMT Limited	78,87,669	1.95%	6.48%	5.83%	7.13%	1,229.00	79.70	71.73	87.67	111.03	87.67
10	Pudumjee Pulp & Paper Products Limited	14,15,176	0.35%	1.16%	1.05%	1.28%	1,032.00	12.00	10.80	13.20	37.34	13.20
11	Ramson Industries Limited	11,49,830	0.28%	0.94%	0.85%	1.04%	839.00	7.93	7.13	8.72	21.46	8.72
12	Ramson Castings Private Limited	8,84,485	0.22%	0.73%	0.65%	0.80%	839.00	6.10	5.49	6.71	12.44	6.71
13	Inox Air Products Limited	17,68,970	0.44%	1.45%	1.31%	1.60%	179.00	2.60	2.34	2.86	7.87	2.86
14	Ashai India Glass Limited	7,07,588	0.18%	0.58%	0.52%	0.64%	179.00	1.04	0.94	1.14	1.64	1.14
15	ACG Associated Capsules Limited	12,38,279	0.31%	1.02%	0.92%	1.12%	179.00	1.82	1.64	2.00	6.17	2.00
	Total	6,20,55,122	15.35%	51.00%	45.90%	56.10%		586.13	527.51	644.74	1,176.24	644.74

3.6 For the purpose of the present Petition, SWPGL has adopted the same methodology as has been adopted by the Commission in its Order dated 20 August 2014 for FY 2013-14. This methodology has also been upheld by the Hon'ble Appellate Tribunal for Electricity (ATE).

3.7 The provisions of Rule 3 and particularly the provision with regard to the proportionate consumption is only to be met by the minimum shareholders and on the minimum consumption. The Hon'ble ATE in its Judgment dated 22 September 2009 in Appeal No. 171 of 2008 (*Kadodara Power Private Ltd v/s. GERC*) has interpreted the Electricity Rules and laid down the requirement of Captive Users/Shareholders of a Special Purpose Vehicle (SPV). In the same Judgment, it has also been held that the proportionality is to be reckoned only on the minimum criteria provided in the Electricity Rules (i.e. 51% consumption and 26% shareholding) and not on the total

consumption and/or total shareholding.

- 3.8 Thus, while proportionality is applicable to SWPGL, the same can only be applied to the minimum 51% consumption and minimum 26% shareholding. The shareholding over and above 26% or the consumption over and above 51% is irrelevant for application of the proportionality principle.
- 3.9 In this regard, the Electricity Rules, inter-alia, provide that 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) of Electricity Rules 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.
- 3.10 The Electricity Rule does not provide that if the criteria of proportionality consumption is not fulfilled then entire electricity generated shall be treated as supply by a generating company. This principle has also been accepted by the Commission while determining the captive status for FY 2013-14.
- 3.11 The consequences of non-fulfilment of proportionality is that the consumer(s) who do not fulfil the proportional consumption would be treated as non-captive consumers and not the consumers who have fulfilled the proportional consumption criteria. Otherwise, it would result in a situation wherein the default in compliance by one consumer would prejudice all the other consumers, which is not correct. While the minimum percentages of consumption and ownership is a collective responsibility of the captive consumers and therefore default in the same would result in the entire consumption by all consumers being termed non-captive. The proportionality to be maintained is the responsibility of individual consumers. It may be possible in a given year that some consumers maintain proportionality while one or more may not. The default of one or more consumers in maintaining proportionality cannot affect the consumers who maintain proportionality, when the collective responsibility of maintaining the minimum percentages as per clauses (a) and (b) of Sub-Rule (1) is fulfilled.
- 3.12 The above position has been accepted and held by the Karnataka Electricity Regulatory Commission in the case of *JSW Steel Limited v. Chief Electricity Inspector, OP No. 33 of 2010* dated 7 July 2011.
- 3.13 The Appeal filed by the Distribution Licensees against the above Order was dismissed by the Hon'ble ATE holding that the proportionality itself would not be applied since it was an operating company and not an SPV.
- 3.14 Notwithstanding the above, it is pertinent to note that in the present case, all the consumers have fulfilled the consumption in proportion to their shareholding. In any event, even if in a particular year if one or more consumers do not fulfil the proportionate consumption criteria while the 51% consumption and 26% ownership criteria is fulfilled, only the consumers who do not fulfil the proportionate consumption criteria can be held to be non-captive and not the consumers who fulfil the proportionate consumption criteria.

- 3.15 Under the provisions of the EA, the Commission is vested with the jurisdiction for the determination of the captive status and for ancillary issues in regard to the compliance of the obligations by a captive generator. The Hon'ble ATE in the case of *Chhattisgarh Power Distribution Company Limited v. Hira Ferro Alloys Limited and Others*, 2010 ELR (ATE) 759 has held that it is only the State Regulatory Commission which has the exclusive jurisdiction to determine the captive status of a generating station.
- 3.16 During FY 2016-17, there were changes in shareholding of SWPGL and the same was duly intimated to the Respondents at the time of submitting the Open Access (OA) applications. The calculation of equity ownership of the captive consumers has been made taking into account such change in shareholding for part of the year.
- 3.17 In the circumstances, SWPGL and its Captive Users/ Shareholders are entitled to all the benefits available including exemption from payment of Cross Subsidy Surcharge (CSS) and Additional Surcharge (ASC) for the consumption of electricity as captive consumers.
- 3.18 In fact, as observed by the Commission in the hearings held in SWPGL for determination of captive status for the previous years, the Petitioner had sent the consumption and shareholding pattern to the Respondents after FY2016-17 was over. The Commission also observed that only in event of any dispute on the information submitted to the Respondents on the details provided by the Petitioner, then the Petitioner may approach the Commission for determination of the captive status for FY 2016-17.
- 3.19 SWPGL has not received any response from any of the Respondents, on the submissions made by SWPGL regarding the captive compliance. It is only vide letter dated 10 October, 2017 addressed to one of the captive consumers namely Hindustan Petroleum Corporation Limited (HPCL), Tata Power Co. Ltd.- Distribution (TPC-D) sought certain additional information. Even the said communication dated 10 October, 2017 was not with reference to the communication dated 19 June, 2017 of SWPGL, but independently sought certain information from the Petitioner.
- 3.20 As such, SWPGL communicated to HPCL vide letter dated 20 October, 2017 that the information as requested by TPC-D vide their letter dated 10 October, 2017 was already available with them. SWPGL further forwarded the required details and also stated that as sought for by TPC-D, Petitioner would obtain certification from MSLDC, for submission to TPC-D, which HPCL had kept informed TPC-D vide letter dated 24 October, 2017. Accordingly, the Petitioner vide letter dated 10 November, 2017 requested the MSLDC to validate following details for FY 2016-17 so as to submit the same to the Commission along with Petition:
- i. Gross/net generation from captive and non-captive units;
 - ii. Month-wise and day-wise meter reading data at Warora S/s;
 - iii. Outage details of captive & non-captive units of the Petitioner.
- 3.21 Despite sitting over the communication dated 19 June 2017 sent by the Petitioner for a

considerable time and even without waiting for submission of additional information as sought for by TPC-D , TPC-D suddenly sought to unilaterally assess the captive status of Petitioner for FY 2016-17 and came to the conclusion that the consumption by various Captive Users/Shareholders does not amount to captive consumption and issued notices of CSS vide communications dated 28 November 2017 and 23 November 2017 respectively.

- 3.22 MSLDC vide communication dated 28 November 2017 certified the energy injection from the Petitioner for the FY 2016-17.
- 3.23 In line with the direction of the Commission in the Daily Order dated 14 September 2017 (in Case No. 62 of 2017), the Petitioner has been forwarding the generation data on 15 minute time block basis for each of the generating units of the Petitioner to the MSLDC and is also made available to the Distribution Licensees.
- 3.24 Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) and TPC-D have till date not objected to the data submitted by the Petitioner as far back as in June, 2017. Further, the Respondents are well aware that it is only the Commission that has the jurisdiction to determine the captive status. In fact, MSEDCL every year seeks to determine the captive status unilaterally, which has been set aside by the Commission on more than one occasion.
- 3.25 One of the captive consumers namely HPCL had filed a Miscellaneous Application before the Commission against TPC-D's illegal claim of the CSS and sought directions to set aside the said levy immediately praying for restraining TPC-D from taking any coercive action on the said demand till decision from the Commission.
- 3.26 In fact, the present Petition would have been filed by the Petitioner much earlier, had the Respondents raised any objections to the communications of the Petitioner in June, 2017. Even now, the Respondents have not raised any objection specifically to the data provided by the Petitioner.

4. Along with its Petition, SWPGL has filed an Application on 5 December 2017 seeking interim directions against the bills for CSS and additional surcharge raised by MSEDCL and TPC-D for the financial year 2016-17.

4.1 Following prayers are made in the above Application:

“a. Stay the invoices raised by the Respondents for cross-subsidy surcharge and additional surcharge for the supply made by the Applicant to its consumers for the financial year 2016-17;

b. Restrain the Respondents from taking any coercive action in relation to the bills for cross-subsidy surcharge and additional surcharge for the supply made by the Applicant to its consumers for the financial year 2016-17;

c. Pass ad-interim ex-parte orders in terms of prayer (a) and (b) above and confirm the same after notice to the Respondents;”

5. On 18 January 2019, SWPGL filed Interlocutory Application and stated that:

5.1. 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 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.

5.2. In the 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 filing the authorization of Resolution Professional confirming that the company is authorized to proceed in Petitions filed by the Petitioner Company before the Commission.

6. On 16 May 2019, TPC-D filed Miscellaneous Application (MA 12 of 2019) to implead all the Captive Users/ Shareholders.

6.1. Following prayers are made in the above Application:

a) Implead all the 25 Captive Users (as set out in Annexure-1) as party Respondents in the instant Case No. 175 of 2017;

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

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

7. Subsequently, following seven Captive Users/Shareholders filed Miscellaneous Applications seeking their impleadment in the matter:

- i. Lupin Limited (MA No 15 of 2019)- filed on 20 May 2019
- ii. Mahindra CIE Automotive Limited (MA No 17 of 2019) filed on 21 May 2019
- iii. Pudumjee Paper Products Limited (MA No 19 of 2019) filed on 21 May 2019
- iv. Mahindra and Mahindra Limited (MA No 21 of 2019)- filed on 21 May 2019
- v. Mahindra vehicle Manufacturers Limited (MA No 23 of 2019)- filed on 21 May 2019
- vi. INOX Air products Pvt Ltd (MA No 29 of 2019)- filed on 21 June 2019
- vii. Mahindra Sanyo Special Steel Pvt Ltd (MA No 30 of 2019) – filed on 21 June 2019

- 7.1 The prayers of these seven Captive Users/Shareholders are similar in nature and are as below:
- a) *Allow the present Application and implead the Applicant as a party in the present Petition;*
 - b) *Grant an opportunity to the Applicant to file further appropriate documents and make detailed submissions in the matter;*
- 7.2 Captive Users stated that it will be prejudicial to their interests in the event any decision (which might affect the Applicants adversely) is passed by the Commission without even giving the Applicants an opportunity to present their case and hence their impleadment should be allowed.
8. **MSEDCL, TPC-D, MSLDC and Captive Users /Shareholders have filed their responses to the Petition which have been taken on record and discussed issue-wise in subsequent Paragraphs.**

Details of Proceedings/ Hearings

9. The hearings scheduled on 18 January 2018 and 19 January 2019 were adjourned at the request of SWPGL.
10. At the hearing held on 21 May 2019, five captive consumers requested the Commission to grant their request for impleadment in the matter. Advocate appearing on behalf of TPC-D stated that TPC-D has also filed its Application seeking impleadment of 25 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.
11. 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.
12. The hearing scheduled on 18 October 2019 was adjourned at the request of SWPGL.
13. **At the e-hearing through video conferencing held on 18 August 2020:**
 - 13.1 Advocate for SWPGL re-iterated its submission as made out in the Petition and further stated that:
 - i. As IPP Units i.e. Unit 1 and 2 of SWPGL were shut down in FY 2016-17, hence there is no injection of power from these units to captive users. The shutdown of these IPP units has also been certified by the SLDC. Hence, the issue of need of separate SEM meters for Units 3 and 4 will not arise in case of FY 2016-17.

- 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. In line with the stand taken by the Commission in the past, the captive consumers who have not consumed any energy during the year may be ignored. It is important that the remaining consumers should hold at least 26% equity and consume at least 51% energy/generation.
- 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.
- vi. The approved RP has a provision that all the Governmental authorities have to waive all the past non-compliances of the corporate debtor under applicable laws and the corporate debtor and the Resolution Applicant shall not be liable for any non-compliance under applicable laws for the period prior to the Effective date. Accordingly, as the Petitioner has gone through the Resolution Process, hence there may not be any requirement for going ahead with the present proceedings for establishing the compliance with the requirement of CPP status for SWPGL as all these requirements shall be deemed to be condoned considering the rulings in the NCLT Order under IBC Code. Whether SWPGL has complied with requirements for the CPP status in the past, cannot be held against it and hence the present proceedings can be terminated. SWPGL will file its pleadings on this issue of NCLT Order.

13.2 Advocate for MSEDCL stated that:

- i. NCLT Order dated 17 October 2019 is the prime issue in these proceedings and SWPGL has not submitted its submission/pleadings on this legal issue on affidavit.
- 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. Hence, 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 clearly 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 as MSEDCL does not fall in any of the above three (3) scenarios/entities. Even in case 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 same, 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 2016-17.
- 13.3 Representative of AEML-D stated that it has no submission on this issue and only one consumer is involved in the scheme of captive.
- 13.4 Advocate appearing on behalf of TPC-D stated that:
- i. SWPGL has not submitted its legal submission on NCLT Order and without submission it is making arguments. It is Petitioner who has to justify its Case of CPP status determination /compliance as NCLT Order has not taken out the compliance and if that is the stand taken by the Petitioner, it should have withdrawn the Petition.
 - ii. For CPP status of FY 2016-17, there are many discrepancies in the data submitted by SWPGL which have been elaborated in detail in its reply.

- iii. There are discrepancies in the Shareholding Certificates submitted by the SWPGL. E.g. In case of HPCL, which is one of the captive users, the equity shareholding as per CA Certificate dated 8 July 2016 shows equity share holding of 1.92%, however, as per CA Certificate dated 7 July 2016, the equity share holding is shown as 0.96%. This highlights the significant change in the shareholding of HPCL within a period of one day substantially which needs to be examined. There have also been variations between the CA certificates submitted by the captive consumers while applying for OA and those provided by SWPGL as part of its submissions. Some of the CA certificates provided to MSEDCL have not been submitted to TPC-D at all. Onus of complying with the CPP criteria is on SWPGL and hence it needs to explain the discrepancies pointed out by MSEDCL and TPC-D.
- iv. SWPGL has further not fulfilled the rule of proportionality criteria as stipulated in the Electricity Rules. 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.
- v. 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 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.
- vi. 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.

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

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

- 13.7 Advocate appearing for Inox Air Products Pvt. Ltd. stated that it has fulfilled the CPP criteria as per Electricity Rules in terms of shareholding and consumption. The issue of metering lies between the Distribution Licensees and SWPGL and captive users should not be held responsible for the same. Also, these requirements should have been verified at time grant of OA. The users have been regularly issued the credit for the power consumed from the CPP by the licensees and have also been paying the charges towards deviation settlements. Accordingly, issues pertaining to metering arrangements are not attributable to the consumers. Participating in the group captive arrangement was a commercial decision and such issues pertaining to determination of the captive status of the generator adversely impacts the consumers.
- 13.8 Advocates of other Captive users stated that they will require more time to plead their matter and also required to file additional submission on the issue of NCLT Order. Hence the Commission scheduled next date of hearing for further arguments of SWPGL, MSEDCL, TPC-D and remaining Captive Users on 21 August 2020.

14. At the e-hearing through video conferencing held on 21 August 2020:

- 14.1 Advocate for TPC-D re-iterated its submissions from the additional Notes of Arguments and stated that SWPGL has not fulfilled the rule of proportionality. The rule of proportionality has to be adhered even by the consumer in TPC-D's Licence area that is HPCL. Various scenarios showing how SWPGL has not fulfilled the Captive Generating Plant (CGP) criteria for FY 2016-17 have been explained in the reply.
- 14.2 Advocates appearing for Captive consumers 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.
- 14.3 Advocate appearing on behalf of MSEDCL re-iterated its submissions as made out in the reply and stated that there are various discrepancies in the shareholding certificates and SWPGL has not fulfilled the CGP status for FY 2016-17.
- 15. The Commission notes that the Parties in the present Petition i.e. SWPGL, MSEDCL, TPC-D, MSLDC and Captive Users/Shareholders have made multiple submissions in the form of Petition, Miscellaneous Application, Interlocutory Application, Reply to the Main Petition, Additional submission, Rejoinders, Written Submissions etc. The Commission has taken on record the following submissions of the parties:**

Table 2: Details of submissions considered by the Commission

Sr. No.	Party	Details of submission
1	SWPGL	a.Reply to clarification of queries raised by the Commission dated 6 February 2018 b.Common Rejoinder to MSEDCL and TPC-D's Reply dated 8 February 2018 c.Written submission dated 19 August 2020 d.Additional Written submission dated 1 September 2020
2	MSEDCL	a.Reply dated 11 January 2018 b.Additional submission dated 2 September 2020
3	TPC-D	a.Reply dated 17 January 2018 b.MA filed by Tata Power-D seeking impleadment of Sai Wardha's captive users dated 16 May 2019 c.Additional submission dated 1 September 2020
4	MSLDC	a.Reply dated 17 January 2018
5	Captive Users/ Shareholders	a. 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.) have filed Miscellaneous Applications seeking impleadment dated 21 May 2019 b.Submission and additional submission filed by Captive Users (Asahi Glass Industries) dated 8 August and 30 August 2019 c. Written submission on behalf of Inox, Pudumjee, Mahindra Sanyo and Mahindra CIE dated 10 October 2019 d.Common Written Submissions filed on behalf of Mahindra & Mahindra Ltd. and Mahindra Vehicle Manufactures Ltd. dated 11 October 2019 e. Additional Written submission on behalf of Inox, Pudumjee, Mahindra Sanyo and Mahindra CIE dated 15 November 2019 f. Written Submissions on behalf of Ramson Industries and Ramson castings dated 20 November 2019 g.Preliminary Submissions on behalf of Viraj and Bebitz dated 21 November 2019 h.Reply filed by Lupin Ltd. dated 22 November 2019 i. Written note of Arguments on behalf of Inox, Pudumjee, Mahindra Sanyo , Mahindra CIE, Ramson and Ramson castings submitted by 17 August 2020 j. Written submission filed by HPCL dated 18 August 2020 k. Written submission filed by ACG Associates dated 25 August

Sr. No.	Party	Details of submission
		2020 1. 6 captive users/ Shareholders (Inox, Pudumjee, Mahindra Sanyo, Mahindra CIE, Ramson Industries and Ramson Castings) have filed their written Notes of arguments dated 31 August 2020.

16. The Commission now deals with the issues raised in the aforesaid submissions of the Parties so as to arrive at decision regarding granting/ rejection of the prayer as sought by SWPGL. **The Commission notes that three main issues have been identified for consideration of the Commission and accordingly, for the sake of brevity, the Commission has undertaken an issue-wise analysis in the following para.**

17. The key issues raised by the Parties are as follows:

- 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 SEM for each Generating Unit, Joint meter reading and certified 15 Minutes basis Generating Unit wise metering data.
- iii. Evaluation of the Captive status criteria as per Electricity Rules.

18. Accordingly, the Commission is dealing with the issues as under:

19. **Issue 1: Impact of the Order dated 17 October 2019 passed by Hon'ble National Company Law Tribunal (NCLT) on the present proceeding**

SWPGL's submission

19.1 While there are certain objections raised by the Respondents in the matter which are in any case misconceived, the issue in the present Petition for declaration of captive status of the generating units 3 & 4 of the Petitioner for FY 2016-17 may not even be relevant anymore.

19.2 Vide Order dated 17 October 2019, Hon'ble the NCLT, Hyderabad Bench has passed an Order (**NCLT Order**) approving the Resolution Plan under Section 31 of the IBC Code, in terms of which all past non-compliances of the Corporate Debtor under applicable laws have been waived. Therefore, even if assumed without admission, that the objections raised by the Respondents have any merit, any non-compliance of captive criteria under Electricity Rules would be covered under the NCLT Order and would therefore be deemed to be waived.

19.3 The provisions of the IBC Code have an overriding effect on other laws, which would include EA and Regulations framed thereunder. It would then not be open to the Distribution Licensees to take any action on the basis of non-compliance with the provisions of Rule 3 of the Electricity Rules.

Captive Users/ Shareholders submission:

(PPPL, Inox, Mahindra CIE, Mahindra Sanyo, Ramson Industries, Ramson Casting):

- 19.4 One of the reliefs sought by the Resolution Applicant in the Resolution Plan (enumerated under para. 3(f)(j)(e) of the NCLT Order) is waiver of all past non-compliances of SWPGL under applicable laws. Some of the other reliefs sought by the Resolution Applicant are enumerated under para. 3(f)(j)(g) and 3(f)(j)(i) of the NCLT Order and these reliefs have been granted by the Hon'ble NCLT for the effective implementation of the Resolution Plan.
- 19.5 As per Section 31(1) of the IBC Code, the Resolution Plan, once approved by Hon'ble NCLT is binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.
- 19.6 The Distribution Licensees, more particularly, MSEDCL being controlled by the State Government of Maharashtra, is deemed to be a State in view of provisions of Article 12 of the Constitution of India. Thus, the Resolution Plan shall be binding on MSEDCL as per Section 31 (1) read with Section 238 of IBC.
- 19.7 On account of approval of the Resolution Plan, all Power Purchase Agreements (PPAs) between SWPGL and the Captive users stand terminated without any obligations or liabilities or penalties on SWPGL or the Resolution Applicant. Also, the Power Delivery Agreements executed between the Captive users and SWPGL stand terminated and all obligations, whether past, present, future or accruing, of SWPGL or the Resolution Applicant also stand cancelled.
- 19.8 Further, vide the NCLT Order, all Government Authorities are directed to waive all past non-compliances of SWPGL as well as the Resolution Applicant. SWPGL or the Resolution Applicant have no more liabilities towards MSEDCL as it is assumed that SWPGL has fulfilled its obligations in lieu of the Order. If the past non-compliances of SWPGL are condoned on account of the NCLT Order, then there should not be any recovery of CSS + ASC from consumers which is a consequence of the non-compliances of SWPGL which have been waived off.
- 19.9 In view of the fact that the Captive user(s) have already fulfilled their obligations as required under EA read with the Electricity Rules, they cannot be held liable for any alleged past non-compliance of SWPGL which has now been waived off by the Hon'ble NCLT and hence assumed as fulfilled.
- 19.10 Therefore, assuming but not admitting that there were any lapses such as absence of Unit-wise metering, absence of joint meter reading etc. as alleged by the Distribution Licensees utilities, when SWPGL itself is no longer liable for those non-compliances, the captive consumers cannot be held liable in any manner.

HPCL submission

- 19.11 HPCL was Open Access consumer sourcing power from SWPGL from 6 December 2015 to 30 September 2017 and stated that SWPGL has failed to fulfil the proportionality criteria of captive status as specified in the Electricity Rules 2005. He further stated that there was no unit wise metering at generator end.
- 19.12 HPCL is no longer shareholder of SWPGL and the agreement between the parties was terminated on 30 September 2017 due to contractual disputes inter-se between HPCL and SWPGL.
- 19.13 Thereafter arbitration proceedings were commenced between HPCL and SWPGL wherein SWPGL has put forth total claim of approximately Rs. 174 Crores. HPCL has also raised its counter claim of approximately Rs. 21.76 Crores and prayed the Arbitral Tribunal to direct SWPGL to submit additional bank guarantees towards cross subsidy surcharge of approximately Rs. 20.66 Crores as per the terms of the PPA, which SWPGL had failed to provide to HPCL during contractual period.
- 19.14 During the pendency of the arbitration proceedings, the NCLT – Hyderabad Bench admitted a Petition under the provisions of the Insolvency and Bankruptcy Code, 2016 (“Code”), and declared a “moratorium” under the provisions of the Code vide order dated 11 November 2018. The Interim Resolution Professional (IRP) appointed under the Code, submitted a notice dated 14 November 2018 for submission of HPCL’s claims against SWPGL. HPCL filed its claims before the IRP vide communications dated 19 December 2018 and 25 July 2019 seeking a total claim of Rs. 44,32,67,964/- consisting of the following:
- (i) Rs. 19,08,68,312/- towards energy charges payable under the PPA inclusive of interest until the insolvency commencement date.
 - (ii) Rs. 20,66,17,911/- towards additional bank guarantees pertaining to cross subsidy surcharge.
 - (iii) Rs. 4,57,81,741/- as per MERC Order in Case No. 159 of 2016, towards supply of unscheduled power for the months of December 2015, January 2016, February 2016 and March 2016 for 3.80 MUs by SWPGL to HPCL.
- 19.15 In subsequent communications and the list of operational creditors put up regularly on the website of SWPGL, the IRP has stated that claims of HPCL are contingent on outcome of legal proceedings and the same will be referred to and included as such in any Resolution Plan. The Resolution Plan for SWPGL submitted by resolution applicant (i.e. consortium of Sri City Private Limited and KCR Enterprises LLP) was approved by the NCLT – Hyderabad Bench vide order dated 17 October 2019. Consequently, the moratorium under the IBC ceased to have effect from the date of the said order.
- 19.16 As on date the arbitration proceedings between HPCL and SWPGL are not complete and the time period provided for completion of the proceedings has lapsed.
- 19.17 HPCL has submitted the breakup of power taken from SWPGL as per HPCL records.

19.18 As per the terms of the PPA, the tariff per unit of power supplied by SWPGL included any and all charges as applicable. Hence, it is pertinent to point out that under the PPA the obligation to pay any CSS which may be levied rested solely with SWPGL for the entire duration of the contractual period.

19.19 As HPCL is not a shareholder in SWPGL, 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.

MSEDCL submission

19.20 SWPGL and its Captive Users have contended that in view of NCLT Order, all past non-compliances of Corporate Debtor including non-compliance by SWPGL vis-a-vis Rule 3 of Electricity Rules, are waived off by Government Authorities. However, this contention is fallacious and incorrect.

19.21 A harmonious reading of the Prayers/exemptions as sought by the Resolution Applicant and the Final Relief granted by NCLT leads to following conclusion:

- i. The Prayer was made against all “Government Authorities” but what is granted finally is as per Section 31(1) IBC (Amendment) Act 2019. Hence, the prayer against “Government Authorities” stands modified as per Section 31(1) of the IBC Code.
- ii. Section 31(1) of 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.

19.22 There is no due which SWPGL owes to MSEDCL for FY 2016-17 and FY 2017-18. This is on account of the fact that under Rule 3 of the Electricity Rules, it is the CPP Users who are fastened with the liability to pay applicable CSS and ASC in the event of failure to meet criteria of CPP. It is for this very fact that MSEDCL never filed its claim before the Insolvency Resolution Professional for FY 2016-17 and FY 2017-18.

19.23 MSEDCL was only concerned with payment of amounts which is due and payable by SWPGL as per Order dated 1 February 2018 in Case No. 206 of 2014 (related to PPA issue between SWPGL and MSEDCL) and for that limited purpose, MSEDCL had filed its claim before the Insolvency Resolution Professional. This is clear from the “List of Operational Creditors” mentioned in the NCLT Order which includes name of MSEDCL.

19.24 Barring this limited purpose, MSEDCL was never involved in the Resolution Plan for any claim pertaining to any other financial year as MSEDCL has always

maintained that any CSS and ASC claim in the event of failure of CPP criteria is from the CPP Users as per mandate of law.

- 19.25 Further, MSEDCL has challenged NCLT Order before the Hon'ble NCLAT, Delhi in appeal, which is pending at present.
- 19.26 As far as the similar objections raised by Captive Users are concerned, MSEDCL submits that Captive Users have probably forfeited their rights to claim any consequential remedy/damages from SWPGL which they were entitled to claim from SWPGL under their PPAs or connected arrangements in the event liability of CSS and ASC is fastened upon them. MSEDCL was neither a party to the PPA nor any connected arrangements to the PPA (between SWPGL and consumers) and hence nothing can bar MSEDCL from claiming its legitimate dues arising out of non-fulfilment of the CPP criteria by the Captive Users.
- 19.27 MSEDCL is neither the Central Government nor the State Government. MSEDCL is also not a local authority. Hence, Section 31(1) of IBC Code is not at all applicable to MSEDCL.
- 19.28 Assuming without admitting for a moment that MSEDCL is a statutory authority, still as per the provisions of Section 31(1) of IBC Code, it is only applicable w.r.t. statutory authority against whom statutory dues are owed. The dues owed towards MSEDCL cannot be claimed to be termed as statutory dues. The NCLAT, vide its Judgment dated 20 March 2019 passed in Company Appeal (AT) (Insolvency) No. 205 of 2017 has clearly explained what all could be called "Statutory Dues/liability".

TPC-D submission

- 19.29 SWPGL has not amended its Petition/ prayers to seek discharge of its (or its Captive Users) liability to demonstrate captive compliance for FY2016-17 in terms of the Hon'ble NCLT's Order. It is settled law as laid down by the Hon'ble Supreme Court in its Judgment (*in the matter of Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi, (2010) and in the matter of Om Prakash v. Ram Kumar, (1991)*) that a party cannot be granted a relief which is not prayed for/claimed in the Petition.
- 19.30 There is no contractual relationship between SWPGL and TPC-D. The contractual relationship is only between TPC-D and SWPGL's Captive consumer.
- 19.31 There is no debt which is due and payable by SWPGL to TPC-D. The NCLT Order is only applicable to SWPGL and its Financial/ Operational Creditors and not to TPC-D. The claim of the Captive Users from SWPGL (i.e., the liability of the Captive Users to pay CSS to their Distribution Licensee, in the event of failure to demonstrate captive compliance by SWPGL which was to be borne by SWPGL) may be impacted on account of the NCLT Order, but not of TPC-D's claim from the Captive Users. The Captive Users with whom the Distribution Licensees have a contractual obligation, have not gone into insolvency.

- 19.32 Failure of SWPGL to demonstrate captive criteria entails the Captive Users (and not SWPGL) to pay CSS and other statutory charges to the Distribution Licensees. It has always been the obligation of the Captive Users to ensure that the consumption by them at the percentages mentioned in Rule 3(1)(a) and (b).
- 19.33 Further, as per 4th Proviso to Section 42(2) of the EA, captive users are exempted from the payment of CSS. Therefore, Rule 3 clearly provides that a Captive User is to ensure captive compliance for seeking such CSS exemption and non-compliance entails the Captive User to pay for CSS which otherwise would be exempted.
- 19.34 There is no “Phenomena of Osmosis” whereby SWPGL being the Corporate Debtor who had been subjected to Insolvency Resolution Process under the provisions of IBC Code permeates the NCLT Order to confer the said status of Corporate Debtor on its Captive User(s) with whom it has Share Purchase Agreements and Energy Sale Agreements. No provisions in the IBC Code allows for such osmosis. The relief under NCLT Order is confined and is limited to SWPGL.
- 19.35 In order to appreciate the true intent and impact of the Hon’ble NCLT’s Order on the instant Petition, the Sections 3(8), 3(10), 3(11), 3(12), 4, 5(5), 5(8), 5(21), 30 & 31 of the IBC Code (amended as on 5 June 2020) are noteworthy. On a perusal of these provisions, it is clear that the NCLT Order has no impact on the present proceedings or the Captive Users’ liability to pay CSS to the Distribution Licensees in the event of non-compliance of the captive requirements in terms of Rule 3 and the regulatory framework laid down by the Commission.
- 19.36 The concept of ‘clean slate’ provided under the IBC Code, wherein past dues of the Corporate Debtor are waived off and not passed on to the successful Resolution Applicant has been dealt with by the Hon’ble Supreme Court of India in the matter of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta C.A. No.8766-67 of 2019 dated 15 November 2019*). The Hon’ble Supreme Court clarified that re-agitation of undecided claims cannot be permitted and that all claims must be submitted to and decided by the resolution professional so that the prospective Resolution Applicant knows exactly what needs to be paid to take over and run the business. This provision ensures that the successful Resolution Applicant starts running the business of the Corporate Debtor with a “clean slate”.
- 19.37 In the present case before the Commission, the liability of payment of CSS, if any, is admittedly on the Captive Users/ consumers and not on SWPGL as the Corporate Debtor or on the successful Resolution Applicant (i.e., a Consortium of Sri City Pvt. Ltd. and KCR Enterprise LLP). As such, the Hon’ble NCLT’s Order shall have no bearing on the present Petition or the liability of the Captive Users to pay CSS if captive compliance is not fulfilled.
- 19.38 As regards the reliefs sought by the Resolution Applicant in the Resolution Plan and mentioned in Paras 3(e)(g)(i) of the Hon’ble NCLT’s Order regarding waiver of past non-compliances and binding nature of the Resolution Plan, it is submitted that:-
- i. These reliefs/ concessions were sought qua “all Governmental Authorities”.

TPC-D does not fall under any of these categories. Even otherwise, the prayers as granted finally by the Hon'ble NCLT are in terms of Section 31(1) of the IBC (Amendment) Act, 2019). As such, the prayer as much as against "Government Authorities" stands modified to the extent provided in Section 31(1) of IBC Code i.e., the reliefs sought and granted they are applicable to the Central Government, State Governments and Local Authorities.

- ii. Section 31(1) of the IBC Code under which the reliefs sought by the Resolution Applicant have been granted, refers to 'statutory dues' owed to authorities.
- iii. As regards Paras 3(j)(s) of the NCLT Order, PPAs between the Corporate Debtor and the Captive Users which stands terminated without any obligation on SWPGL or the Resolution Applicant, it is submitted that:
 - Entering into an agreement with SWPGL to procure power at cheaper rates was a commercial decision taken by these Captive Users, which comes at a risk.
 - Under Rule 3 of the Electricity Rules, the liability to pay CSS to the Distribution Licensees is that of the Captive User(s). Any Order passed under IBC Code concerning SWPGL has nothing to do with the liability of the Captive Users (who are solvent) with the Distribution Licensees.
- iv. The Distribution Licensees are pursuing the instant matter, for and on behalf of its other direct (subsidized) consumers who ought not be put to financial prejudice due to a commercial decision taken by these Captive Users solely for their own personal gain/ financial savings.

SWPGL Rejoinder/ Additional submission

- 19.39 MSEDCL has stated that it was not part of the NCLT proceedings. This is factually incorrect. MSEDCL has duly participated in the proceedings before the NCLT but did not raise any issue regarding the compliance or non-compliance of captive status for FY 2016-17. Moreover, MSEDCL at this stage, and more particularly before the Commission cannot raise an issue of not being heard before the NCLT in a separate matter. This is an issue that MSEDCL ought to have raised before the NCLT if at all.
- 19.40 MSEDCL has contended that the extent of involvement of MSEDCL in the NCLT proceedings was only limited to its own claim against the Petitioner relating to FY 2012-13. This is completely misconceived. MSEDCL is aware that, in terms of the IBC Code, the proceedings before NCLT was in the nature of Corporate Insolvency Resolution Process and as such the claimants are required to lodge all the claims in the proceedings and limiting the claim to any specific claim is of their own volition without any recourse. As a claimant, making its claim to the Resolution Professional, it is for MSEDCL to decide the extent of its involvement. Having

forgone this right before the NCLT, MSEDCL can certainly not challenge the NCLT Order before the Commission now.

- 19.41 Further, MSEDCL has placed reliance on Para 15 of the NCLT Order to suggest that the direction to exempt SWPGL for all non-compliances is not binding on MSEDCL, as the said exemptions are in terms of Section 31(1) of IBC Code. MSEDCL contended that Section 31(1) only binds Central Government, State Government and 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. This interpretation sought to be made by MSEDCL is completely misconceived. As stated above, the NCLT Order directs all governmental authorities to waive past non-compliances.
- 19.42 Further, MSEDCL has contended that the Order cannot apply to MSEDCL because there is no statutory due owed by SWPGL to MSEDCL. Again, the Order is expressly clear, in so far as it directs for waiver of all non-compliances and not only in relation to dues owed by SWPGL.

Commission's Analysis and Rulings

- 19.43 The Parties have differently interpreted the NCLT Order and therefore it is imperative to examine the NCLT Order for arriving at a conclusion regarding its impact on the present proceeding. The relevant extract of the NCLT Order is as under:

“j. Relief and Concessions in the Resolution Plan sought by the Resolution Applicant:

The following are the reliefs and concessions sought for from the Adjudicating Authority for timely implementation of this Plan.

(e) All governmental authorities to waive all past non-compliances of the Corporate Debtor under the applicable laws, and the Corporate Debtor and the Resolution Applicant shall not be liable for any non-compliances under applicable laws for the period prior to the effective date.

....

(g) The relevant Government Authorities to waive all past non-compliance of Corporate Debtor under any applicable law, including but not limited to provisions of the Industries Disputes Act 1947, the Factories Act, 1948 and the relevant Shops and Establishment Acts and any rules, circulars and regulations framed thereunder.

....

(i) All Government Authorities too grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions. ”

19.44 The Commission notes that NCLT has dealt with the aforesaid reliefs sought by the Resolution Applicant at Para. 15 and 17 of its Order. The relevant extract reads as under:

“15. The Learned Counsel for the Applicant further stated the Resolution Applicant sought certain exemptions/or reliefs in the Resolution Plan which is essentially required for effective implementation of Resolution Plan. In the connection, we are of the view that these exemptions can be granted in view of Insolvency & Bankruptcy Code (Amendment) Act, 2019 which came into effect from 06.08.2019. As per the amendment of Section 31 (1), 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. So, the exemptions sought in the Resolution Plan are subject to the provisions of Section 31 (1) of the Code as amended wherever applicable.

17Accordingly, the Resolution Plan stands approved and the same is binding on Corporate Debtor, its Employees, Members, Creditors including the Central Government, any State Government, or any Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.

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.**
20. **Issue 2: Deficiencies /shortcomings related to installation of SEM for each Generating Unit, Joint Meter Reading and certified 15 Minutes basis Generating Unit-wise metering data**
- MSEDCL Submission*
- 20.1 One of the major requirements for the determination of CPP status for SWPGL is availability of generating unit-wise 15-minute basis data through Special Energy Meters (SEM), which is not available. In the absence of separate metering for CPP units, SWPGL during previous years, had supplied power from non-CPP units to its captive OA consumers without approval of MSLDC and without intimating the MSEDCL. This fact was also not disclosed voluntarily by the SWPGL in the proceedings of previous years. In such event, even with the payment of CSS towards the supply of power from IPP Units 1 and 2 as agreed by Petitioner, it has no legal authenticity without permission of the Distribution Licensees and MSLDC and

hence those units injected from Unit 1 and 2 should be treated separately under FBSM mechanism as such units were drawn from the Grid.

- 20.2 SWPGL also does not have 15 minute MRI generation data for each of the four units (i.e. 2 IPP Units and 2 CPP Units) separately, which has been admitted by it on affidavit filed in Case No. 62 of 2017. Hence, it has failed to download and maintain a record of the Unit-wise generation for period May 2014 to 28 July, 2017 (i.e. a period of approximately 3 years).
- 20.3 SWPGL is the ultimate beneficiary of declaration of CPP status. Hence, it is the sole responsibility of the SWPGL to arrange for all statutory and technical arrangements such as keeping record of certified captive generation, installing and testing of meters and also arranging for joint meter reading of captive unit generation.
- 20.4 As there is no certified/authentic data available regarding energy generated from captive units (Unit No. 3 and 4) of SWPGL, the prerequisite as prescribed in the Electricity Rules remain unfulfilled.
- 20.5 In the absence of unit-wise certified SEM metering data for FY 2016-17, the generation from captive and non-captive units cannot be segregated. There is a high possibility that all or most of the power generated from Unit 1 and 2 (i.e. non-captive units) might have been wheeled to OA consumers. Under such circumstances, the CPP status of SWPGL cannot be established.
- 20.6 It is apparent from the conduct of Petitioner that, it wilfully and deliberately has not followed the procedure for Joint Meter Reading and keeping record of certified captive generation data so that, the electricity generated from IPP Units may also be wheeled as electricity generated from CPP Units thereby gaining unfair monetary benefits through exemption from payment of CSS and ASC.
- 20.7 On 28 November 2017, MSEDCL issued a letter to SWPGL stating that SWPGL had failed to submit MSLDC certified generation data from Captive Units, required to assess SWPGL's Group Captive Status for FY 2016-17, and as such had failed to conclusively demonstrate that SWPGL has complied with Rule 3 of the Electricity Rules.
- 20.8 As regards testing of SEM meters of their Generating Units and its report submitted by SWPGL, it is noted that SWPGL has not followed the due procedure before carrying out meter testing. The SEM testing report 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 MERC (Distribution Open Access) Regulations 2016 ("DOA Regulations 2016"). SWPGL fails as a captive generating unit on this single issue itself.
- 20.9 Even though the meters are installed in Year 2013 but SWPGL in the past has provided SEM testing report for line meters and it has not submitted testing report for generation meters.

20.10 As regards single line diagram (SLD) submitted by SWPGL, it is submitted that same is not certified by Electrical Inspector or licensee. Hence the same cannot be relied upon and SWPGL should be directed to submit the duly certified copy of SLD. Further, just for the sake of argument, even if the same is considered, then it is observed that, two nos. of meters are installed at generation end. It is mentioned in the SLD that, one of the meters installed at generation end records gross generation while the other records the net generation. The gross generation meter records, all the energy generated including auxiliary generation. While the net generation records the energy that is injected into grid without auxiliary consumption. It is pertinent to note that, when as per Petitioner's own submission, there is net meter installed; the Petitioner has also argued to exclude the auxiliary consumption from its generation, so that it can fulfil the 51% self-consumption criterion.

MSLDC submission:

20.11 The interface points identified for SWPGL in respect of the FBSM are the outgoing feeders, i.e. 220 KV Warora –I and 220 KV Warora –II Lines. MSLDC has MRI data of SWPGL of these Lines meters only and the unit-wise ABT data is not available with MSLDC.

20.12 SWPGL used to apply for STOA of its consumers through Unit 3 and 4 in a combined manner.

20.13 MSLDC is receiving the total generation availability from SWPGL for its generating units of Unit 3 and 4 and consumer-wise drawl schedule from SWPGL. Accordingly, SLDC issues day ahead injection schedule to SWPGL by summing up consumer drawl in totality for unit 3 and 4.

20.14 MSLDC schedules the total STOA power to SWPGL unit 3 and 4 in a combined manner as per its application.

TPC-D submission

20.15 To assess the captive status for previous years (i.e. FY 2013-14 , 2014-15 and 2015-16), the Commission has sought details such as schedule of shareholding certificates and its changes, month-wise gross generation, auxiliary consumption and net generation duly certified by MSLDC, month-wise consumption of each consumer along with the copy of electricity bills issued by MSEDCL and the re-conciliation statement, month-wise applicable transmission and distribution losses considered for each of the captive user, details of outages (forced and planned outages). These details are essential for assessing/ verifying Group Captive Status year on year. In the absence of such crucial data/ information, it would not be prudent for TPC-D and/ or the Commission to validate and ascertain SWPGL's CPP status for FY 2016-17. SWPGL has categorically failed to submit such critical data under the present Petition (i.e. FY 2016-17). However, that does not preclude SWPGL from providing the same while seeking declaration of its group captive status for FY 2016-17.

- 20.16 SWPGL in the proceeding of Case No. 62 of 2017 admitted that it does not have details of the Net generation of power from each of the 4 Units of its Power Plant, since it failed to download and maintain a record of the Unit-wise generation for period May 2014 to 28 July 2017 (i.e. a period of approximately 3 years) which also includes CGP determination of FY 2016-17 and same is under question in the present Petition.
- 20.17 The Commission had sought the aforesaid 15-minute data for all 4 generating Units of SWPGL clearly emphasizing that, the said details duly certified by MSLDC were crucial to ascertain SWPGL's group captive status.
- 20.18 Therefore, it is not possible for the Commission and/ or the Distribution Licensees to conclude that SWPGL has in letter and spirit fulfilled the criteria specified in Rule 3 of the Electricity Rules. In fact, it is for the Commission to draw an adverse inference on SWPGL's conduct of continuously failing to produce data/ details (which statutorily ought to have been maintained by it), despite repeated directions by the Commission.
- 20.19 The Commission in its Order dated 17 January 2018 in Case No. 23 of 2017 has provided the guidelines for Captive status determination.
- 20.20 Meters installed by SWPGL on each of its Generating Units (i.e. IPP Units 1 and 2 and CPP Units 3 and 4) are not in accordance with applicable Regulations. These are explained as below:
- i. The gross generation meters are not SEM meters.
 - ii. Net generation meters are SEM meters, but these SEMs are connected in series with some Chinese made meters. Furthermore, the Installation Reports for the SEM Meters are not available with SWPGL.
 - iii. These SEM meters have been installed by SWPGL itself without the presence of the STU and local Distribution Licensee and the installation is not as per MSETCL/ STU/ MSEDCL's standards.
 - iv. The said Meters are not sealed and have not been certified by any authority. As such, these Meters are reprogrammable, where the CT-PT ratio can easily be changed in the meter with software by the Original Equipment Manufacturer.
 - v. The said Meters have not yet been tested, which as per SWPGL will be done while commissioning of the SEM meters.
 - vi. The existing meters are installed in the Control Room by laying cable of around 500 metres, which are not visible throughout the said length. Ideally the meters should be installed near the CT-PT. The concerned authorities had advised SWPGL to rectify the same, but SWPGL has till date not done the same.
 - vii. Metering at SWPGL's Plant is neither installed nor tested by the testing division of MSEDCL or the STU. The Meter terminal covers of generating

transformer and station transformer are open and the sealing is not done. Also, CT-PT secondary links are easily accessible as the panel is not sealed.

- viii. The metering drawings are of Chinese make and the ABT meters and adopted ratio are not shown therein. The links and ferruling are not identical as they have been modified later.
- 20.21 As regards SWPGL's failure to maintain proper meters and metering data qua all its Generating Units, it is submitted that the Commission in its Order dated 15 February 2019 in Case No. 116 of 2018 has taken into cognizance the lack of metering data, while holding that MSEDCL had rightly denied OA under Section 9 of EA to SWPGL's Captive Users and that, SWPGL has failed to demonstrate captive compliance for FY 2018-19. Accordingly, SWPGL's captive users were held liable to pay CSS to the Distribution Licensees. Evidently, the issue of lack of appropriate meters at SWPGL generating plant has already been dealt with by the Commission, which ought to be factored in the present Petition as well.
- 20.22 The Commission may also consider ordering an investigation and request CEA to conduct an audit of SWPGL's power station to ascertain whether the metering arrangement is in accordance with applicable law.
- 20.23 Further, Regulation 14(3) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 (**CEA Regulations**) mandates Generating Company to record the metered data, maintain a database of all the information associated with energy accounting and audit meters and verify the correctness of the metered data. It also mandates the generating company to prepare quarterly, half-yearly and yearly energy account for its system. Neither SWPGL nor the Captive Users have taken into consideration SWPGL's aforesaid obligation in terms of the CEA Metering Regulations, which is independent and de hors any circular that may have been issued by a Distribution Licensee regarding jointly downloading meter data.
- 20.24 While SWPGL has asserted that appropriate metering has been available on the generating units since 2013 and it was in 2014 that the practice of joint meter reading was abruptly discontinued. SWPGL has failed to make any statement whatsoever on whether during the period 2014-2017 it had in terms of the CEA Metering Regulations downloaded the meter data and maintained a database of the same for energy accounting purposes. MSEDCL/MSLDC's failure to carry out joint meter reading, if any, itself does not exempt SWPGL from discharging its obligations under the CEA Metering Regulations. If SWPGL has indeed diligently complied with the said Regulations, SWPGL be called upon to produce all such data for the consideration of all parties and the Commission. It is settled law that:
- i. When any fact is within the knowledge of any person, the burden of proving such fact is upon such person [Section 106 of the Evidence Act, 1872].
 - ii. Adverse inference has to be drawn against, for non-production of vital and

important details/documents [Section 114 of the Evidence Act, 1872].

20.25 In this regard, the following judgments are noteworthy:

- a. *Ramdas Oil Mills v. Union of India* reported as 1977 1 SCC 592
- b. *Union of India v. Sugauli Sugar Works Pvt. Ltd.* reported as 1976 3 SCC 32
- c. *Pradip Buragaohain v. Pranati Phukan*, reported as 2010 11 SSC 108
- d. *Sahara India Real Estate Corporation Ltd. v. SEBI & Anr.* reported as 2013 1 SCC 1

20.26 It is for the foregoing reasons that, the Commission vide its email dated 19 January 2018 sought details of “*consumer wise actual/schedule consumption for all 25 consumers as mentioned in Auditors Certificate and Unit-wise generation on 15 minute time block basis separately for Captive and IPP Units along with details of scheduling of power to consumers and date wise revision of schedules on 15 minute time block basis*”, since the same “*are absolutely critical/ essential for assessing/ determining the captive status of a generator*”.

20.27 Furthermore, MSLDC has certified the Monthly Energy Injection (MEI) data in MUs from the ABT meters installed at MSETCL Warora Sub-station on the 220 kV Warora-WPCL Lines 1 and 2. Admittedly, MSLDC does not have the MEI data separately for the CPP Units 3 and 4.

20.28 As regards MSLDC’s submission during the hearing held on 26 August 2020 (in Case No. 170 of 2018) that each of SWPGL’s Units are visible in real time to MSLDC on the SCADA data, it is submitted that:

- i. The said oral statement has been made by MSLDC for the very first time since 2014. No such statement has been made by MSLDC on affidavit till date.
- ii. Per contra, 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 were not visible on their system and they relied on the information submitted by SWPGL regarding tripping/ outage, generation, etc.

20.29 Each of the Affidavits filed by MSLDC regarding SWPGL’s captive status only provides data from the meters installed on the outgoing feeders i.e. Warora Lines 1 and 2. In fact, MSLDC has stated on oath that it does not have unit-wise metering data.

20.30 MSLDC has not stated whether each of SWPGL’s Units were visible in real time to MSLDC during FY 2016-17 and FY 2017-18.

Captive Users/ Shareholders’ submissions

20.31 The allegation against SWPGL of not taking Joint Meter Reading is not correct as it was joint obligations and cannot be undertaken by SWPGL alone. MSEDCL takes readings of all consumers without any invitation. The SE (O&M) has been designated as Nodal Officer vide MSEDCL’s Circular under Regulation 17.5 of the

DOA Regulations 2016. Proper action should be initiated against the defaulting officers of MSEDCL, if any, for non-compliance of aforesaid as well as billing to the captive consumers on the basis of such imaginary data. The Commission should also consider revoking licence in case of irregularities as these are offences of serious nature. Further MSEDCL vide its circular dated 13 June, 2012 had put the onus on Superintending Engineer (O&M) as the nodal officer for meter reading.

- 20.32 SEM metering is non-issue as this is mainly related with OA permissions and not for captive status determination. The metering is in place and pre-requisite of OA cannot be raised in present proceedings. Proper action should be initiated against the defaulting officers of MSEDCL, if any, for non-compliance of aforesaid. Under Regulation 17.9 of DOA Regulations 2016, the Distribution Licensee is required to provide energy meter data to SLDC for the purpose of energy accounting. The captive users have been provided with TSC and TSR reports with each bill and hence, it seems such metering was in place and data was available as without it the billing and generation report could not have been provided to the Applicant.
- 20.33 IPP Units of SWPGL have been under continuous shutdown since 16 February, 2016 and 29 February, 2016 respectively. OA Permission clearly mentions the Injection Point of the Power. Monthly bills were raised by MSEDCL clearly mentioning the units injected by SWPGL as per OA permission and even showing the over-injection. Therefore, the allegation of power may have been supplied from IPP units is untenable. The status of the plants can be viewed by MSLDC through SCADA. Moreover, it is not possible to bring coal fired thermal power plant into operation immediately as it takes very long time for boiler light up, steam generation, turbine rolling, etc. which takes minimum three to four days and is not possible to synchronize the power plant with grid without SLDC permission.

SWPGL's Rejoinder/ additional submission

- 20.34 SWPGL is connected with Warora Sub-Station through 220 kV line and signed connectivity agreement with MSETCL on 9 July 2007. SWPGL injection point metering details mentioned in Page 27 of the connectivity agreement and joint meter reading is being taken every month in presence of MSETCL officials. ABT Meters are present for each Generating Unit to record Net Generation on 15 minutes basis (SLD with Metering details enclosed as Annexure- E) and pursuant to the direction from the Commission vide its Order dated 14 September 2017 in Case No. 62 of 2017, monthly Unit wise Net Generation data on 15 minute time slot basis is being submitted to the Discoms from August 2017 onwards.
- 20.35 SWPGL also stated that MSETCL can install their own meters, if necessary, as recorded in the Order dated 14 September 2017 in Case No. 62 of 2017. SWPGL have also been in correspondence with MSEDCL for the certification of the SEMs installed at Generator end for Net Generation. Presently, the meter data is being

downloaded by SWPGL and forwarded to the DISCOMs and there is no joint reading.

- 20.36 SWPGL have been advised by SE (TQA) MSEDCL, Nagpur vide letter dated 5 January 2018 to replace the Generator Meter's existing CTs/PTs from multi-core multi-ratio to single-core single-ratio of the meters. SWPGL have requested MSEDCL vide letter dated 13 January and 30 January 2018 to provide the MSETCL approved technical specifications for CTs /PTs for procurement of same and same is awaited.
- 20.37 As regards Joint Meter Reading, there is no joint meter reading done. Unit wise MRI data is not available for FY 2016-17. MSLDC has certified that Units 1 and 2 have been under shutdown since February 2016, therefore in any case there could not have been any supply from IPP Units.
- 20.38 SEM Metering is a requirement under the OA Regulations, and not a criteria for CPP status. The OA was duly granted for the years. The meters were always available, and it is the Respondents who did not come forward for the meter readings, which were to be done jointly. For some reason, the Respondents stopped coming forward for meter reading since the year 2014.
- 20.39 The SEM meters have always been in place, but it was for the Respondents to come forward for Joint Meter Reading. Regulation 17.5 of MERC DOA Regulations, 2016 categorically imposes such obligation on Distribution Licensees.
- 20.40 All the relevant information has been made available by the Petitioner. However non-availability of electricity injection data on 15 minutes time block basis at this stage to deny captive status is misconceived.
- 20.41 The captive status is dependent on the total quantum of electricity supplied to the captive users from units 3 and 4 for the year. The said information is available and has been certified by MSLDC and submitted to the Commission.
- 20.42 The metering equipment for recording unit-wise generation on 15-minute time block-wise basis was always available at the generating stations. The Distribution Licensees however have not sought or recorded the data in the past. In fact, even for the year 2013-14, the Commission vide Order dated 21 August 2014 in Case No. 101 of 2014 declared the CGP status. The same information has been filed by the SWPGL in the instant case.
- 20.43 The SEM meter data stores data for 35 days and it is not possible to retrieve the information for past period. The Commission has passed the Order on 14 July 2017 for providing the meter reading on 15 minutes time block basis for the past 35 days and continue providing the said information which has been complied with by the Petitioner. However, the said requirements cannot be now sought by the Respondents retrospectively.

- 20.44 SWPGL has called upon MSEDCL to test and certify the meters at the generating stations on numerous occasions. MSEDCL has also provided certain inputs which are being implemented.
- 20.45 The Commission vide Order dated 17 January 2018 in Case No. 23 of 2017 provided methodology for meter reading and testing which would be applicable henceforth.
- 20.46 As regards contention of Respondent that Petitioner has not provided 15-minute SEM metering data, and therefore there is an apprehension that there may have been supply from the IPP units and absence of joint metering, SWPGL submits as under:
- i. The issue has already been decided in Case No. 101 of 2014 while deciding CPP status for FY 2013-14.
 - ii. MSLDC has certified that Units 1 and 2 have been under shut down since February 2016, therefore in any case, there could not have been any supply from IPP Units.
 - iii. SEM Metering is a requirement under the OA Regulations, and not a criterion or relevant for CPP status. The OA was duly granted for the years.
 - iv. The meters were always available, and it is the Respondents who did not come forward for the meter readings, which were to be done jointly. For some reason, the Respondents stopped coming forward for meter reading since the year 2014.
 - v. The Metering for the Units No. 3 and 4 is available on 15-minute time block basis, at the sub-station. When the other 2 units were under total shut-down, the entire supply is only from Units No. 3 and 4.
 - vi. Without prejudice to the above, Non-compliance of metering requirement is deemed to have been waived by virtue of NCLT Order.
 - vii. Regulation 17.5 of DOA Regulations 2016 categorically imposes such obligation on Distribution Licensee.
 - viii. SE (O&M) is nodal officer required to take such meter reading as per MSEDCL's own circular dated 13 June, 2012.

Commission's Analysis and Ruling

- 20.47 The Commission notes that TPC-D and MSEDCL have mainly raised three key issues where there are flaws / irregularities observed on the part of SWPGL. These issues are as under:
- i. Not taking Joint Meter reading
 - ii. Non-availability of Unit wise SEM Metering
 - iii. Non-availability of 15 minutes MRI data

20.48 As regards the issue of Joint Meter Reading, the Commission in its Order dated 9 February 2018 in Case No. 77 of 2015 regarding determination of Captive Status for FY 2014-15 observed as under:

*“23. TPC-D has also contended that, in its affidavit in Case No. 62 of 2017, SWPL has also admitted that it does not have details of the Net Generation from each of its 4 Units (CGP and non-CGP) since it had not downloaded and maintained a record of the Unitwise generation for the period May, 2014 to 28 July, 2017 (i.e. around 3 years). 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.***

.....

34. Considering the glaring deficiencies and omissions in the data and analysis provided in such Cases by all concerned and the need for streamlining the process for determination of Captive status, the Commission has had to set out guidelines for the purpose in its recent Order dated 17 January, 2018 in Case No. 23 of 2017.....”

20.49 Similarly, the Commission in its Order in Case No. 159 of 2016 dated 19 March, 2018 has observed the following:

*“19.7 To a query of the Commission, SWPGL stated that SEMs have been installed at each of its Generating Units. The Commission also notes that MSLDC has ABT data for meters installed on the 220 kV Warora I and II Lines, but not at the Generator Transformer of each Unit. Hence, the Commission asked SWPGL to provide Unit-wise ABT generation data to MSLDC and the Distribution Licensees for FY 2015-16 along with the other data sought. TPC-D also referred to SWPGL’s affidavit in Case No. 62 of 2017 in which it had stated that it did not have details of the Net Generation from each of its 4 Units since it had not downloaded and maintained a record of the Unit-wise generation for more than 3 years from May, 2014 to July, 2017. **Thus, 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 the monthly metered data of every Unit was stopped from June, 2014. No explanation has been given by SWPGL, MSLDC or the Distribution Licensees.***

19.8 As the Commission has observed during these proceedings, SWPGL, MSLDC and the Distribution Licensees seem not to have been concerned in FY

2015-16 with the basic discipline to be followed for such transactions, which would also provide the details relevant for determining captive status, and the omissions in terms of the following:

- a) *Absence of 15 minute time block recording through SEMs at each Generating Unit;*
- b) *Data collection only in respect of the two 220 kV outgoing Transmission Lines inspite of there being four independent Generating Units;*
- c) ***Absence of regular downloading of meter readings and maintaining that record;***
- d) *Scheduling of partial OA consumers directly to MSLDC instead of through the Distribution Licensees; and*
- e) *Change of injection source without appropriate approvals.*

In these circumstances, the Commission has proceeded with the available data to assess the CGP status of SWPGL's Units 3 and 4 in FY 2015-16."

- 20.50 Taking cognizance of various issues / discrepancies observed in the process adopted during the assessment of the captive status, the Commission in its Order dated 17 January 2018 in Case No. 23 of 2017 has outlined modalities to be followed by the Distribution Licensees and the entities claiming to be CPPs as under :

*"b) Each CPP Generating Unit shall have a separate Special Energy Meter (SEM) as per the specifications in the Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. The monthly reading data at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption should be submitted to the Distribution Licensee(s) and to MSLDC in hard and soft versions. **Downloading of monthly data of all these meters shall be jointly undertaken by the Generator and Distribution Licensee(s), and the State Transmission Utility (STU) (if relevant).** Similarly, the sealing of the respective meters, their testing, etc. should also be jointly undertaken by the Generator, Distribution Licensee(s) and the STU (if relevant), and appropriately certified. The general practice adopted for any HT consumer monthly meter reading should be followed."*

- 20.51 The Commission in its Order dated 15 February 2019 in Case No. 116 of 2018 along with Corrigendum dated 20 February 2019 observed as under:

"20. Further, the Commission notes that MSEDCL has contended that SWPGL has to comply with the CGP requirements laid out by the Commission in its Order dated 17 January, 2018 in Case No. 23 of 2017. SWPGL on the other hand has contended that the meters are in place / installed unit wise in the generating station and since August, 2017 the unit wise data has also been available with the licensees including the SLDC and therefore there is no issue for the year 2018-19. The Commission in its Order dated 17 January 2018 in Case No. 23 of 2017 has ruled regarding the metering and accounting arrangement for CGP to be in place. The relevant ruling is stated as under:

“ 19..... b) Each CPP Generating Unit shall have a separate Special Energy Meter (SEM) as per the specifications in the Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. The monthly reading data at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption should be submitted to the Distribution Licensee(s) and to MSLDC in hard and soft versions. Downloading of monthly data of all these meters shall be jointly undertaken by the Generator and Distribution Licensee(s), and the State Transmission Utility (STU) (if relevant). Similarly, the sealing of the respective meters, their testing, etc. should also be jointly undertaken by the Generator, Distribution Licensee(s) and the STU (if relevant), and appropriately certified. The general practice adopted for any HT consumer monthly meter reading should be followed. ”

In order to ascertain the above arrangement for establishing SWPGL's CGP status, SWPGL was duty bound to obtain its certification/validation from STU/SLDC that such arrangement of its CGP Unit-3 is in place which would facilitate ascertaining of CGP status at the end of financial year. It has chosen not to comply with this mandatory requirement and instead is putting the blame across SLDC and MSEDCL that the unit wise data was not taken despite its availability. As mentioned earlier, the data was to be taken jointly with the Generator. There is nothing brought on record by Petitioner that it had asked for joint meter reading which was not responded by the respondent.

21. In view of the foregoing regarding fulfillment of criteria of CGP qualification when CGP Open Access is sought, the Commission holds that the Petitioner is not CGP for the FY 2018- 19. The action of MSEDCL in allowing open access as a IPP under Section 10 of EA is justified. MSEDCL is directed to levy CSS and other applicable charges on the alleged captive users of SWPGL from April, 2018 onwards.

20.52 As can be seen from the above excerpts from various past Orders of the Commission, the issue of joint meter reading, certification of Unit-wise metering arrangement and availability of certified data has been continuing for a long time. The Commission further notes that in order to ascertain the captive status of SWPGL, it is the responsibility of SWPGL to do the needful for providing all the required details. Further, there is nothing brought on record by SWPGL that it had asked for joint meter reading which was not responded by the respondent. Instead of complying with the mandatory requirements, SWPGL has blamed MSEDCL for not coming forward to undertake the joint meter reading and that the unit wise data was not taken despite its availability. It has also replied to the issues only when specifically raised by MSEDCL. The Commission is of the view that aforesaid issues raised in the proceeding for grant of OA for SWPGL for FY 2018-19 are also observed in present Petition and therefore the ruling of the Commission justifying

MSEDCL's action for allowing OA as a IPP under Section 10 of EA is equally relevant in the present case.

- 20.53 The Commission further notes that the SWPGL's Generating Plant/Units (i.e. Captive and Non-Captive combined) are connected with the Intra-State transmission network and in its reply to clarification dated 6 February 2018, SWPGL clarified that Joint Meter Reading was taken in presence of the MSETCL officials. The relevant reply is reproduced below:

"8. Is joint meter reading data for CPP and IPP Generator is available for FY 2016-17. Whether joint meter reading is now being taken.

SWPGL Reply: *SWPGL is connected with Warora Sub Station through 220 kV line and signed connectivity agreement with MSETCL on 09.07.2007. SWPGL injection point metering details mentioned in Page 27 of the connectivity agreement and joint meter reading is being taken every month in presence of MSETCL officials.*

ABT Meters are present for each Generating Unit to record Net Generation on 15 minutes time slot basis (SLD with Metering details enclosed as Annexure- E) and pursuant to the direction from Hon'ble MERC dated 14th September 2017 in Case No.62 of 2017, monthly Unit wise Net Generation data on 15 minute time slot basis is being submitted to the discoms from Aug'17 onwards. We have also stated that MSETCL can install their own meters if necessary, as recorded in the order dated 14th Sept 2017 in Case No. 62 of 2017.

We have also been in correspondence with MSEDCL on the certification of the SEMs installed at Generator end for Net Generation. Presently, the meter data is being downloaded by us and forwarded to the DISCOMs and there is no joint reading. We have been advised by SE (TQA) MSEDCL, Nagpur vide letter dated 05.01.2018 to replace the Generator Meters existing CTs/PTs from multi-core multi-ratio to single-core single ratio of the meters. We have requested MSEDCL vide letter dated 13.01.2018 & 30.01.2018 to provide the MSETCL approved technical specifications for CTs /PTs for procurement of same and same is awaited. Copy of letter dated 30.01 .2018 enclosed as Annexure- F."

- 20.54 In this context, it is imperative to look into the relevant provisions of MERC DOA Regulations, 2016 which are reproduced as under:

"17.5. The Distribution Licensee shall be responsible for reading the SEM at least once in every month:

Provided that the authorized representative of the Consumer, Generating Station or Licensee, as the case may be, shall be entitled to be present at the time of meter reading.

.....

*17.9 The Distribution Licensee to whom the **Consumer or Generating Station is connected** shall be responsible for providing the energy meter data to the MSLDC for the purpose of energy accounting”*

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 20.50 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. **In spite 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.**

20.57 Regarding the issue of non-availability of unit wise metering at SWPGL generator end, the Commission notes TPC-D's contention that SWPGL's captive generating plant is not complying with metering requirement prescribed under Regulation 14(3) of CEA Metering Regulations 2006. In this context, it is imperative to look at the relevant provisions of CEA Metering Regulations 2006 which are reproduced as under:

“14.

.....

(3) Energy accounting and audit meters 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. Each generating company or licensee shall prepare quarterly, half-yearly and yearly energy account for its system for taking appropriate action for efficient operation and system development.”

- 20.58 The above provisions of CEA Regulations clearly states that it is the responsibility of the generator i.e. SWPGL in the present context to record its metered data for captive units and maintain database of all the information associated with the energy accounting and audit meters and verify the correctness of metered data. Hence, the requirements under these provisions cannot be relaxed for SWPGL as a Generating Company and non-compliance with these requirements cannot be condoned. Therefore, in order to help establish SWPGL's CGP status, SWPGL was duty bound to obtain its certification/validation from STU/MSETCL/SLDC that such metering arrangement of its CGP meets the relevant requirements laid down under the CEA Regulations/Applicable Metering Code of State Grid Code Regulations. It has chosen not to comply with these CEA and Metering Code requirements.
- 20.59 The Commission further notes that SWPGL, during proceeding of CGP Status declaration for FY 2015-16, had accepted that it had supplied the power from IPP units 1 and 2 to Captive Users during the outage of Units 3 and 4. The relevant para of the Order is reproduced as below:

“19.6 At the hearing held on 29 June, 2017, SWPGL acknowledged that it had supplied power from its IPP Units 1 and 2 to its Captive Users during outages of the CGP Units 3 and 4 but that, to that extent, no captive status is claimed and CSS and other applicable charges would be paid for such supply through OA. However, SWPGL has not stated how many units were supplied by its IPP Units to Captive Users during such outages of CGP Units and no supporting data has been provided.

.....

_____ : As the Commission has observed during these proceedings, SWPGL, MSLDC and the Distribution Licensees seem not to have been concerned in FY 2015-16 with the basic discipline to be followed for such transactions, which would also provide the details relevant for determining captive status, and the omissions in terms of the following

- a) Absence of 15 minute time block recording through SEMs at each Generating Unit;*
- b) Data collection only in respect of the two 220 kV outgoing Transmission Lines inspite of there being four independent Generating Units;*
- c) Absence of regular downloading of meter readings and maintaining that record;*
- d) Scheduling of partial OA consumers directly to MSLDC instead of through the Distribution Licensees; and*
- e) Change of injection source without appropriate approvals.*

In these circumstances, the Commission has proceeded with the available data to assess the CGP status of SWPGL's Units 3 and 4 in FY 2015-16.

- 20.60 The Commission notes that the deficiencies that were observed during CPP status determination in the past have continued in FY 2016-17 as well.
- 20.61 The Commission further notes SWPGL's contention that since IPP Units were under shutdown since February 2016, entire generation has been supplied from Captive Units 3 and 4 and hence issue of availability of certified separate gross generation metered data on 15 minute basis for captive units becomes irrelevant. In this context, the Commission is of the view that even though the IPP units were under shutdown, it was necessary to record the gross generation of captive units with appropriate metering arrangement (sealed, tested and authenticated reading) as the determination of captive status of 51% generated units are based on gross generation of captive units and hence SWPGL was obligated to maintain the proper metering record of captive units. **Shutdown of the IPP units does not absolve SWPGL of the responsibility to ensure proper metering system as per the requirements specified in applicable rules and Regulations.**
- 20.62 As regards the issue of non-availability of 15 minutes MRI data, the Commission notes the submission of MSEDCL and TPC-D that SEM meters installed at MSETCL Warora Sub-station on the 220 kV Warora-WPCL Lines 1 & 2 and there is no unit wise SEM meters installed. The Commission further notes the submission of MSLDC wherein it has admitted that MSLDC does not have the MRI data separately for the CPP Units 3 & 4 as identified by SWPGL.
- 20.63 In this context, it is imperative to note following provisions of MERC DOA Regulations 2016 as under:

“19.3 Settlement of deviations from schedule: Deviations between the schedule and the actual injection in respect of Open Access taken by a Generating Company, or a Trading Licensee on behalf of a Generating Company, shall be settled as follows:

19.3.1. Over-injection a) In case injection exceeding that scheduled by the Generating Company results in benefit to the grid, such over injection shall be settled either at the UI charge applicable under the Inter-state ABT mechanism, or the SMP plus other incidental charges (Net UI charges, additional UI charges) or any other intra-State ABT settlement charges under the mechanism operating in Maharashtra, or at the weighted average cost of long-term power purchase sources including meeting Renewable Purchase Obligation, excluding liquid fuel-based generation, of the Distribution Licensee, whichever is lower. b) If such over-injection is detrimental to the grid, the Open Access Generating Company shall pay to the State Pool either the UI charge applicable under the Inter-state ABT mechanism or the SMP plus other Incidental charges (Net UI charges, additional UI charges), or any other intra-State ABT settlement charges under the mechanism operating in Maharashtra, whichever is higher: Provided that the Distribution Licensee shall levy and collect such charge from the Open Access Generating Company

and credit it to the State Pool account stipulated under the intra-State ABT mechanism.

19.3.2. Under-injection

Any injection below that schedule by the Open Access Generating Company shall be met from the grid and will be paid for by that entity to the Distribution Licensee at the UI charge applicable under the Inter-state ABT mechanism or the SMP plus other Incidental charges (Net UI charges, additional UI charges) or any other intra-State ABT settlement charges stipulated under the mechanism operating in Maharashtra, whichever is higher; and also any congestion charge stipulated by RLDC and/or MSLDC as payable to the Distribution Licensee to fulfil the obligations of the Open Access Generating Station:

Provided that the distribution loss shall not be loaded on any Generating Station if it is connected directly to the intra-State Transmission System;

Provided further that, if the under-injection persists for a continuous period of two days, the MSLDC shall give notice to the Generating Station to revise its schedule;

Provided also that, if the Generating Station fails to inject according to the Open Access schedule and does not immediately revise its schedule, it shall be liable to a penalty equivalent to two times the SMP plus other incidental charges (Net UI charges, additional UI charges) or any other intra-State ABT settlement charges stipulated under the intra-State ABT mechanism operating in Maharashtra; notwithstanding which it shall be liable to pay the Open Access charges for the full reserved capacity for the entire period.”

- 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.**

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 MSETCL 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.

21. **Issue 3: Evaluation of the Captive status criteria as per Electricity Rules 2005**

SWPGL submission

21.1 The submissions of SWPGL relevant to this issue and forming part of its Petition have been captured at Para 3 of this Order.

MSEDCL submission

21.2 Data submitted by SWPGL is incomplete regarding Chartered Accountant (CA) Certificate:

- i. The CA Certificate submitted by SWPGL does not mention which of the two nos. of Units, out of four, are declared as captive. As such, the CA certificate is lacking the necessary details.
- ii. Not all the equity shareholders applied for OA or availed OA. Even if the effective equity shareholders are considered by SWPGL in CGP matrix, the following facts are observed:

Table 3: Details of equity shareholding pattern based on certificates shared by SWPGL

Sr. No.	Name of Consumer	Equity Shareholding (%)			
		CA Cert dtd. 31.10.15 (Effective on 01.04.2016)	CA Cert dtd. 10.05.16	CA Cert dtd. 07.07.16	CA Cert dtd. 09.01.17
1	Bebitz	0.07	0.07	0.06	0.06
2	Viraj Profiles Limited	5.77	5.77	5.76	5.77
3	Mahindra & Mahindra Limited	0.48	0.48	0.48	0.48
4	Mahindra CIE Automotive Ltd. (Formerly Mahindra Forging)	0.22	0.22	0.22	0.81
5	Mahindra Hinoday Ind. Ltd.	0.44	0.44	0.44	

Sr. No.	Name of Consumer	Equity Shareholding (%)			
		CA Cert dtd. 31.10.15 (Effective on 01.04.2016)	CA Cert dtd. 10.05.16	CA Cert dtd. 07.07.16	CA Cert dtd. 09.01.17
6	Mahindra Vehicles Manufacture Limited	0.31	0.31	0.31	0.31
7	Mahindra Sanyo Special Steel Ltd.	1.53	1.53	1.53	1.53
8	Lupin Limited	0.74	0.74	0.74	0.74
9	Hindustan Petroleum Corporation Limited	0.96	0.96	0.96	1.93
10	Mahalaxmi TMT Limited	1.95	1.95	1.95	1.95
11	Pudumjee Pulp & Paper Products Ltd.	Became equity shareholders at latter date of Financial Year.	0.35	0.35	0.35
12	Ramson Industries Limited		Became equity shareholders at latter date of Financial Year.	0.24	0.28
13	Ramson Castings Pvt. Limited			0.18	0.22
14	Inox Air Products Limited		Became equity shareholders at latter date of Financial Year.	0.44	0.18
15	Asahi India Glass Limited				
16	ACG Associated Capsules Limited				
	Total	12.47	12.82	13.22	15.36
	Considering equity in two units out of four	24.94%	25.64%	26.44%	30.72%

iii. It can be seen from the above table that the equity held by effective Captive Users was less than 26% right from start of financial year i.e. 1 April 2016. The Commission in its Order dated 28 August 2013 in Case No. 117 of 2012 has specifically ruled that the CPP shareholding structure will have to be identified in advance.

iv. As SWPGL has failed to identify the ownership structure (of equity of more than 26%) in advance, the mandatory requirement as prescribed 3(1)(a)(i) has not been fulfilled. Hence SWPGL is not entitled to claim any relief as per section 9(2) of the EA.

21.3 Analysis of data referred with fulfilment of eligibility criteria for FY 2016-17 i.e. 13% equity share holding vis-à-vis 51% self-consumption:

i. On considering the generation from Unit 3 and 4 for the sake of consideration, prima facie analysis of data reveals the following:

- a. The CGP matrix of SWPGL has not fulfilled the mandatory requirement of 26% equity shareholding at the beginning of financial year i.e. April 2016. Further the CPP matrix was dynamic in nature throughout the financial year with regard to equity shareholding. The CGP matrix underwent changes three times in the financial year in terms of addition of new members.
- b. SWPGL has also changed the equity shareholding of the consumers viz. HPCL, M/s Ramson Casting Limited., M/s Ramson Industries Limited and Mahindra CIE Automobile Limited. It only leads to the conclusion shows the mala fide of intention of the Petitioner to retrofit himself in the CGP criterion. In this situation, there are various sets of equations available regarding 51% self-consumption criterion.
- c. Further as per the Electricity Rules, not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is to be consumed for the captive use. In case of an SPV, the 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%.
- d. Prima facie it is observed from the data and calculations submitted by SWPGL that following four Captive users, who have availed OA, has failed to meet the proportionality consumption criteria.
 - i. M/s India Steel Works Ltd.
 - ii. M/s Asahi India Glass Ltd.
 - iii. M/s Inox Air Products Ltd.
 - iv. M/s ACG Associates Ltd.
- e. SWPGL has sought OA for the above consumers as per section 9 of the EA.
- f. Thus, the onus lies on SWPGL to comply with the provisions of EA. SWPGL could have applied permission for these consumers as per Section 10 of the EA.
- g. SWPGL has not considered the annual generation for calculation of proportionate consumption in respect of four nos. of entities stating that there was delay in grant of OA which is completely mala fide. There was no delay from MSEDCL for issuing OA permission. The said four members were not part of the group captive structure at the start of financial year i.e. April 2016. This is evident from the STOA application applied by SWPGL for the month of April 2016 whereby the CA certificate dated 31.10.2015 is attached.
- h. SWPGL has frequently changed the group captive structure during the financial year by adding new equity shareholders. The details are as follows:

Table 4: Details of OA applications submitted by SWPGL and OA granted by MSEDCL

Sr. No.	CA Certificate	New group member	First time applied for OA from SWPGL	OA granted by MSEDCL
1	10.05.16	Pudumjee Paper Products Ltd.	June 16	June 16
2	07.07.16	1. Ramson Industries Ltd. 2. Ramson Casting Pvt. Ltd.	August 16	August 16
3	09.01.17	1. Asahi India Glass Limited 2. Inox Air Products 3. ACG Associated Capsules Pvt Ltd. (Applied for nos. of industrial Units)	February 17	February 17

- i. Hence, the proportionate consumption of the said six nos. of members has to be done considering annual generation.
- j. The Commission in Case No. 117 of 2012 has already ruled that, the calculation of consumption has to be done on actual consumption and generation on annual basis.
- k. India steel one of the Captive User of SWPGL has not been reflected in the statement produced by SWPGL at Annex. K of Petition filed by SWPGL. However, India Steel has availed OA under section 9 of EA and has not paid CSS and ASC even after end of the financial year under consideration.
- l. The Electricity Rules mention that, not less than twenty six percent of the ownership is held by the captive users (13% of ownership in case of SWPGL). From the above statement, it is clear that, if the SWPGL wanted the Units 3 and 4 to be operationalized as CGP, it could have declared equity share, limited to 13% only. The remaining consumers of SWPGL could have been treated as OA consumers through IPPs.
- m. SWPGL has identified the 13% equity shareholders at the end of financial year. Even in the present Petition, SWPGL has declared 15.63% shareholding against the minimum requirement of 13%. Thus, the onus to meet the proportionality test from all the 16 consumers lie totally on the Petitioner.
- n. The CGP criterion laid down under section 3(1)(b) of the Electricity Rules has to be made applicable to the entire CPP matrix as submitted by SWPGL. SWPGL can't now restrict his equity to 13% as per his choice to fulfil the eligibility criteria. SWPGL has exercised its choice by availing OA under Section 9 for all its equity holders and also vide the instant Petition.
- o. It is evident from above that, the Petitioner has failed to meet the criteria for proportionality for 51% consumption.

21.4 In light of the above, CPP matrix submitted by SWPGL does not meet the captive criterion for FY 2016-17 as laid down in Electricity Rules 2005.

MSLDC Submission

21.5 As per daily scheduling records available with MSLDC, the Day-wise total schedule has been issued by MSLDC to SWPGL unit 3 and 4 for FY 2016-17. The total 1230.39 MUs energy was scheduled to SWPGL in FY 2016-17.

21.6 Monthly Energy injection MRI data (in MUs) from ABT meters installed at MSETCL Warora S/s on 220 kV Warora WPCL I & II lines as SWPGL injection (1229.47 MUs) into grid for FY 2016-17 is given in the following table:

Table 5: Details of monthly energy injection MRI data from ABT Meters installed at MSETCL Warora S/s

Month	220kV Waroraline-I (MAR10000)	220kV Waroraline-II (MAR10001)	Total in kWh
	Import in kWh	Import in kWh	
April-16	5,91,86,750.00	6,04,75,562.50	11,96,62,312.50
May-16	3,86,99,625.00	3,90,85,570.31	7,77,85,195.31
Jun-16	5,24,16,992.19	5,22,54,656.25	10,46,71,648.44
July-16	4,40,81,968.75	4,43,80,257.81	8,84,62,226.56
August-16	6,09,61,515.63	6,11,82,890.63	12,21,44,406.26
September-16	5,35,22,171.88	5,39,18,570.31	10,74,40,742.19
October-16	5,77,10,125.00	5,75,06,132.81	11,52,16,257.81
November-16	5,36,54,406.25	5,33,78,359.38	10,70,32,765.63
December-16	5,26,95,203.13	5,22,58,468.75	10,49,53,671.88
January-17	5,17,59,773.44	5,16,50,398.44	10,34,10,171.88
February-17	4,92,22,242.19	4,94,88,343.75	9,87,10,585.94
March-17	4,00,44,593.75	3,99,34,382.81	7,99,78,976.56
Total	61,39,55,367.21	61,55,13,593.75	1,22,94,68,960.96

21.7 Monthly tripping/outages of SWPGL Unit 3 and 4 as reported by SWPGL to MSLDC for financial FY 2016-17 is given below:

Table 6: Details of monthly tripping/outages of SWPGL Unit 3 & 4 as reported by SWPGL to MSLDC

SWPGL UNIT-3 OUTAGE DETAILS FOR 2016-17.				
TRIPPING		SYNCHRONIZATION		REASON FOR OUTAGE
DATE	TRIP TIME	DATE	SYNCHRONIZATION TIME	
08/Jun/2016	02.00	12/Jun/2016	23.16	ESP Bag Filter Problem
08/Jul/2016	15.30	11/Jul/2016	11.12	flame loss
12/Jul/2016	06.40	12/Jul/2016	08.57	Flame Failure
12/Jul/2016	15.25	15/Jul/2016	22.05	Wet Coal
21/Jul/2016	00.02	29/Jul/2016	22.33	Boiler Tube Leakage
03/Aug/2016	15.31	04/Aug/2016	22.41	ID Fan Problem
03/Sep/2016	06.01	04/Sep/2016	16.32	Turbine Governor Valve Problem.
26/Sep/2016	23.49	28/Sep/2016	14.09	Wet Coal.
30/Sep/2016	23.21	01/Oct/2016	22.02	Wet Coal
05/Oct/2016	07.26	06/Oct/2016	06.35	Wet Coal Problem
07/Oct/2016	21.00	10/Oct/2016	03.05	ID Fan Problem
30/Oct/2016	06.55	02/Nov/2016	22.11	ID Fan Problem
03/Nov/2016	01.26	03/Nov/2016	05.00	Turbine Vibration
14/Dec/2016	07.17	14/Dec/2016	14.44	Voltage Fuction.
16/Dec/2016	17.12	19/Dec/2016	05.30	Electrical Problem.
07/Jan/2017	04.50	07/Jan/2017	22.51	CHP coal feeding problem
10/Jan/2017	02.22	11/Jan/2017	01.03	ID Fan Problem
01/Mar/2017	16.51	04/Mar/2017	12.00	Flame Failure
08/Mar/2017	15.00	20/Mar/2017	08.45	Coal Shortage

SWPGL UNIT-4 OUTAGE DETAILS FOR 2016-17.				
TRIPPING		SYNCHRONIZATION		REASON FOR OUTAGE
DATE	TRIP TIME	DATE	SYNCHRONIZATION TIME	
03/May/2016	00.00	03/Jun/2016	01.28	ESP Back Filter DP High
08/Jul/2016	14.45	09/Jul/2016	20.35	Coal Chocking.
12/Jul/2016	12.53	13/Jul/2016	16.11	Wet Coal
15/Aug/2016	16.11	16/Aug/2016	15.50	ID Fan Problem
28/Aug/2016	09.30	28/Aug/2016	22.38	ID Fan Problem
26/Sep/2016	23.49	30/Sep/2016	07.01	Wet Coal.
30/Sep/2016	22.30	01/Oct/2016	10.42	Wet Coal
05/Oct/2016	3.00	05/Oct/2016	16.04	Esp Back Filter Problem.
22/Oct/2016	07.27	23/Oct/2016	00.51	Esp Back Filter Problem.
14/Dec/2016	05.50	15/Dec/2016	01.42	ID Fan Problem
15/Dec/2016	03.00	15/Dec/2016	05.13	Turbine bearing Vabration high
07/Jan/2017	04.45	07/Jan/2017	11.25	Generator Protection operated
21/Jan/2017	06.01	23/Jan/2017	06.07	Drag chain conveyer problem.
08/Feb/2017	12.35	11/Feb/2017	23.23	ID FAN VIBRATION HIGH.
22/Mar/2017	00.01	01/Apr/2017	00.39	SSC Chain Broken.

TPC-D submission

21.8 Captive Compliance cannot be portrayed by selective reliance on shareholding and consumption of a dynamic set of consumers during the year

- i. An analysis of the CA Certificates submitted by HPCL and Mahindra & Mahindra (TPC-D's Partial OA consumers) during FY 2016-17 while seeking OA read with the CA Certificates filed by SWPGL before the Commission, evidences that 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.
- ii. During FY 2016-17, while seeking OA, SWPGL / its consumers had by way of the CA Certificates portrayed a total of 27 Captive Users, based on which permission under Section 9 of the EA was granted. However, in the present Petition, only 15 of the aforesaid 27 Captive Users have been selected for the purpose of demonstrating compliance of Rule 3. While doing so, SWPGL has excluded those Captive Users who were not only granted OA under Section 9, but have also consumed power during the year, *albeit* not in proportion to their equity shareholding (i.e., failed the test of proportionality). These Captive Users (viz., RL Steel and India Steel) have enjoyed the benefit of not having paid CSS and other applicable charges to the Distribution Licensee.
- iii. It is not TPC-D's case that there cannot be change in shareholding of Captive Users in the middle of the year. However, it is TPC-D's case that:-
 - a. In the event there is change in shareholding in the middle of the financial year, then the same has to be forthwith intimated to the Distribution Licensees along with appropriate CA Certificate depicting the extent of change. This is in line with the Commission's Order in Case No. 101 of 2014.
 - b. The Captive Users identified for captive consumption at the beginning of the year (while seeking OA under Section 9 of EA) have to consume electricity in proportion to their shareholding during the year.
 - c. Captive Users identified at the beginning of the year cannot be kept out of the captive mix to demonstrate compliance of group captive status at the end of the year. It is pertinent to note that as per Rule 3, the pre-condition for grant of OA under Section 9 of EA is that at the beginning of the year the Captive Users have to be identified and they collectively need to hold more that 26% of equity in the SPV (the Rule does not require the CPP/users to submit the entire shareholding to the Distribution Licensee). The intent is that the group of captive users and the units from where power is to be supplied is identified at the beginning of the year.
 - d. At the end of the Financial Year all these Captive Users need to

demonstrate that they have consumed power in proportion to their shareholding in the CPP. Compliance of Rule of Proportionality selectively by the Captive Users (some of the entire list identified at the beginning of the year) at the end of the year cannot be permitted.

e. If at the end of the year one Captive User (of the entire identified group) has consumed power disproportionately to their shareholding, then the entire group captive structure fails and is not merely failure by that individual captive user to demonstrate captive status.

iv. In the facts of the present case, **Table 7** below summarizes the 27 Captive Users/ Shareholders identified by SWPGL during FY 2016-17 (as per the Chartered Accountant's Certificates), along with their varying Shareholdings during the year. The last column demonstrates whether SWPGL has considered the said consumer(s) at the end of the year (Annexure L @ Pg. 370 of the Compilation) to demonstrate compliance of captive consumption in proportion to their Equity Shareholding.

Table 7: Summary of 27 Captive Users/ Shareholders indicated by Sai Wardha during FY 2016-17 (as per the Chartered Accountant's Certificates)

Sr.No.	Consumers	No. of equity shares held								Consumers Considered by Sai Wardha in final
		Certificate 1	Certificate 2	Certificate 3	Certificate 4	Certificate 5	Certificate 6	Certificate 7	Certificate 8	
		Nos 31-10-15	Nos 31-03-16	Nos 01-04-16	Nos 10-05-16	Nos 08-07-16	Nos 09-01-17	Nos 09-03-17	Nos 31-03-17	
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	23,298,938	Yes
2	Bebilz Flanges Works private Limited	265,346	265,346	265,346	265,346	265,346	265,346	265,346	265,346	Yes
3	Mahindra & Mahindra Limited (05 Connections)	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	Yes
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	1,238,279	Yes
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	884,485	884,485	884,485	884,485	884,485	3,272,595	3,272,595	3,272,595	Yes
6	Mahindra Hinoday Industries Limited (Amalgamated with Mahindra CIE Automotive Limited)	1,768,970	1,768,970	1,768,970	1,768,970	1,768,970	-	-	-	Yes
7	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	6,191,395	Yes
8	R L Steel & 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	No
9	India Steel Works Limited	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	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	No
11	Cosmo Films Limited	2,299,661	2,299,661	2,299,661	2,299,661	2,299,661	-	-	-	No
12	Mahalaxmi TMT private Limited	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	Yes
13	Hindustan Petroleum Corporation Limited	3,891,734	3,891,734	3,891,734	3,891,734	7,783,468	7,783,468	7,783,468	7,783,468	Yes
14	Lupin Limited	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
15	Graphite India Ltd			2,476,558	2,476,558	2,476,558	2,476,558	2,476,558	2,476,558	No
16	Facor Steels Ltd			884,485	884,485	884,485	884,485	884,485	884,485	No
17	Air Liquide India Holding Pvt Ltd			1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	No
18	Orchid Chemicals and Pharmaceuticals Ltd			707,588	707,588	707,588	707,588	707,588	707,588	No
19	Spentex Industries Ltd	2,983,716		2,983,716	2,983,716	2,983,716	2,983,716	2,983,716	2,983,716	No
20	Pudumjee Paper Products Ltd			1,415,176	1,415,176	1,415,176	1,415,176	1,415,176	1,415,176	Yes
21	KSK Energy Ventures Ltd			39,153,495	37,738,319	32,166,064	29,777,954	26,947,602	26,947,602	No
22	Ramsons Industries Ltd					972,933	1,149,830	1,149,830	1,149,830	Yes
23	Ramsons Castings Pvt Ltd					707,588	884,485	884,485	884,485	Yes
24	ACG Associated Capsules Pvt Ltd						1,238,279	1,238,279	1,238,279	Yes
25	Inox Air Products Pvt Ltd						1,768,970	1,768,970	1,768,970	Yes
26	Asahi India Glass Ltd						707,588	707,588	707,588	Yes
27	Hindalco Industries Limited							2,830,352	2,830,352	No
	Total equity shares [nos]	60,793,310	57,809,594	105,076,818	105,076,818	105,076,818	105,076,818	105,076,818	105,076,818	
		15.04%	14.30%	26.00%	26.00%	26.00%	26.00%	26.00%	26.00%	

- v. SWPGL is trying to go around the system by demonstrating a set of consumers at the start of the year who hold 26% equity shares in the company, for grant of OA under Section 9 of the EA. As seen over the year, some of these Captive Users are only shown as equity shares holders, but in reality, they have never consumed any power during the financial year. Moreover, these Captive Users are conveniently excluded at the end of the year while demonstrating captive compliance. This is not the intent of Rule 3 of the Electricity Rules.
- vi. When an entity is identified as a Captive User to demonstrate the minimum requirement of holding 26% equity in the company by depicting them in the CA Certificates while seeking OA under Rule 3, then such entity should be considered for meeting the Rule of Proportionality as well. Rule 3 specifies minimum equity shareholding of 26% to be eligible for being identified as captive users. Therefore, if there are Captive Users having more than 26% of the equity shareholding, then all the captive users and not only the minimum 26% of the equity shareholders have to consume minimum 51% of the power generated during the year in the ratio of their shareholding.
- vii. Even for complying with rule of proportionality, if all these consumers are not to be included, at least those consumers who have sought OA under Section 9 of EA and consumed power during the financial year, should be considered for deriving the ratio for evaluating rule of proportionality. If a captive user fails to meet the rule of proportionality, then the entire group captive structure fails in terms of Rule 3(2) of the Electricity Rules.
- viii. It cannot be permitted that out of a larger set of consumers identified as Captive Users at the beginning of the year, SWPGL is permitted to demonstrate compliance under Rule 3 by selectively shortlisting those set of consumers who at the end of the year allegedly meet rule of proportionality, while excluding/ ignoring the other consumers who have either not met the rule of proportionality or even sought OA despite having been considered as Captive Users at the relevant time for demonstrating 26% equity shareholding for grant of OA under Section 9 of EA.
- ix. Without prejudice to the fact that SWPGL's methodology to demonstrate captive compliance is not in accordance with the letter and intent of Rule 3, it is submitted even if the shareholding of the consumers, selectively relied upon by SWPGL for entire FY 2016-17 is considered, then the *equity shares/ rights held by these consumers would be less than 26% (13% in the present case) not only at the start of the year, i.e., on 01.04.2016 but also on 10.05.2016* (as per the Chartered Accountant Certificates provided by Sai Wardha itself). In this regard, **Table 8** below is noteworthy:-

Table 8: Details of equity shareholding for 15 Captive users considered SWPGL for FY 2016-17

Sr. No.	Consumers	No. of equity shares held							
		Certificate 1	Certificate 2	Certificate 3	Certificate 4	Certificate 5	Certificate 6	Certificate 7	Certificate 8
		Nos	Nos	Nos	Nos	Nos	Nos	Nos	Nos
		31-10-15	31-03-16	01-04-16	10-05-16	08-07-16	09-01-17	09-03-17	31-03-17
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	23,298,938
2	Bebitz Flanges Works private Limited	265,346	265,346	265,346	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	1,945,867	1,945,867	1,945,867	1,945,867
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	1,238,279
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	884,485	884,485	884,485	884,485	884,485	3,272,595	3,272,595	3,272,595
6	Mahindra Hinoday Industries Limited (Amalgamated with Mahindra CIE Automotive Limited)	1,768,970	1,768,970	1,768,970	1,768,970	1,768,970	-	-	-
7	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	6,191,395
8	R L Steel & Energy Limited								
9	India Steel Works Limited								
10	Sona Alloys Private Limited								
11	Cosmo Films Limited								
12	Mahalaxmi TMT private Limited	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669
13	Hindustan Petroleum Corporation Limited	3,891,734	3,891,734	3,891,734	3,891,734	7,783,468	7,783,468	7,783,468	7,783,468
14	Lupin Limited	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237
15	Graphite India Ltd								
16	Facor Steels Ltd								
17	Air Liquide India Holding Pvt Ltd								
18	Orchid Chemicals and Pharmaceuticals Ltd								
19	Spentex Industries Ltd								
20	Pudumjee Paper Products Ltd				1,415,176	1,415,176	1,415,176	1,415,176	1,415,176
21	KSK Energy Ventures Ltd								
22	Ramsons Industries Ltd					972,933	1,149,830	1,149,830	1,149,830
23	Ramsons Castings Pvt Ltd					707,588	884,485	884,485	884,485
24	ACG Associated Capsules Pvt Ltd						1,238,279	1,238,279	1,238,279
25	Inox Air Products Pvt Ltd						1,768,970	1,768,970	1,768,970
26	Asahi India Glass Ltd						707,588	707,588	707,588
27	Hindalco Industries Limited								
	Total equity shares [nos]	50,379,920	50,379,920	50,379,920	51,795,096	57,367,351	62,055,122	62,055,122	62,055,122
		12.47%	12.47%	12.47%	12.82%	14.19%	15.35%	15.35%	15.35%

- x. Having failed the primary test of holding not less than 26% equity shares (13% in the present case) in the company (which is to be met at the Start of the year), the Captive Users are not entitled to claim any exemption from payment of CSS and other applicable charges.
- xi. The group captive consumers considered by SWPGL to demonstrate captive compliance have to maintain their minimum equity shareholding (26% in aggregate) throughout the year and not only for certain periods or at the end of the Financial Year, as sought to be done by SWPGL in the present case. SWPGL's attempt to retrofit its shareholding to match the captive consumption of selected few of the entire identified group of captive users is illegal and contrary to the provisions of Rule 3.
- xii. The Commission in its Order dated 28 August 2013 in Case No.117 of 2012 has held that the shareholding structure and identification of Units for captive use

has to be provided in advance.

- xiii. On perusal of the generation and consumption data provided by SWPGL, it is observed that the entire generation from Units 3 & 4 (CPP units) has been consumed by: (i) 17 Captive Users (which includes R L Steel and India Steels); (ii) Indian Energy Exchange (IEX); and (iii) UPPCL.
- xiv. Evidently, there has been no consumption of power from Units 3 or 4 (CPP Units) by the other captive consumers/ shareholders, upon whom reliance was placed in the CA Certificates to demonstrate minimum shareholding, for grant of OA under Section 9 of the EA . While these consumers were shown as captive consumers to meet 26% criteria during the year, they are ignored/ not considered by SWPGL while demonstrating compliance of captive status at the end of the year.
- xv. In Annexure L of the Petition, SWPGL has in the eighth column (H) provided details of Generation after considering the impact of delay in granting OA. However, the figures mentioned in the said column do not match with the figures mentioned by SWPGL while providing similar details vide its letter dated 19 June 2017. Further, MSEDCL in its Reply has demonstrated that there was no delay in granting OA to the consumers. Therefore, the authenticity and veracity of the said data itself is questionable and hence cannot be relied upon by TPC-D and/ or the Commission to assess Group Captive Status for FY 2016-17.
- xvi. The Proportionate self-consumption has to be done by the consumers considering annual generation, and not in terms of the methodology adopted by SWPGL. The Commission in its Order dated 28 August 2013 in Case No. 117 of 2012 has held that, the Electricity Rules stipulates that actual energy consumption by the Captive Users and actual generation from the Units identified for captive use shall be considered for ascertaining captive status on an annual basis. Accordingly, the Commission had not considered SWPGL's contention to consider the hypothetical consumption on account of any alleged delay in OA towards compliance to the Electricity Rules towards consumption norm.

21.9 Sai Wardha has suppressed that few Captive Users have failed to meet Rule of Proportionality :

- i. In the present case, certain captive users/ shareholders of SWPGL namely, (i) R.L. Steel & Energy Ltd.; and (ii) India Steel Works Ltd., who were granted OA (under Section 9 by MSEDCL) and had consumed power from SWPGL during FY 2016-17, do not feature in the calculation of shareholding and consumption being relied upon by SWPGL to demonstrate compliance of Rule 3 of the Electricity Rules.
- ii. This fact has been deliberately suppressed by SWPGL in all its filings before

the Commission. Furthermore, SWPGL has excluded these captive users (i.e., R.L. Steel and India Steel Works Ltd.) from the list of 15 Users, selected at the end of the year to demonstrate captive compliance during FY 2016-17. SWPGL has misrepresented on Affidavit that all the consumers have fulfilled the consumption in proportion to their shareholding.

- iii. These consumers have failed to consume power in proportion to their equity share holding during FY 2016-17, as mandated under Rule 3 of the Electricity Rules. It is TPC-D's case that once a consumer is identified as a Captive User in terms of the CA Certificate submitted for grant of OA under Section 9 and once such Captive User consumes power, then it has to meet the Rule of Proportionality at the end of the year. Neither its shareholding nor its consumption can be ignored for the purpose of meeting the group captive requirements, including the Rule of Proportionality. Further, if one of the Captive User fails to meet the Rule of Proportionality then the entire group captive status fails and none of the group captive users can avail the exemptions as captive consumers.
- iv. 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.*
- v. In terms of Rule 3(1)(a) of the Electricity Rules, in the event a power plant is set up by an 'association of persons', in addition to meeting the Ownership and Consumption Requirements, the Captive Users are required to consume electricity in proportion to their ownership in the CPP, within a variation of $\pm 10\%$ (*Rule of Proportionality*). By its Judgment in *Kadodara Power Pvt. Ltd. v. GERC*, the Hon'ble ATE has held that a SPV is nothing but an Association of Persons. Therefore, in addition to meeting the ownership and consumption requirement, an SPV is required to meet the Rule of Proportionality as well.
- vi. The consequence of failure to comply with the requirements of Rule 3(1)(a) and (b) of the Electricity Rules is set out in Rule 3(2) of the Electricity Rules, which provides that 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 IPP.
- vii. The language of Rule 3(2) of the Electricity Rules makes it clear that Captive

Users are under an obligation to meet the requirements of Rule 3(1) of the Electricity Rules. The said obligation is a collective obligation of all the Captive Users in a group captive setup.

- viii. Being an SPV, the Captive Users of SWPGL in addition to meeting the Ownership and Consumption Requirement, are required to meet the Rule of Proportionality as well i.e., each Captive User/ Shareholder is obligated to consume in proportion to its shareholding. It is not the intent of Rule 3 that the shareholding be averaged out in order to meet the consumption.
- ix. Evidently, all the shareholders depicted in the CA Certificates have to consume power generated by SWPGL in proportion to their equity shares in the plant. In the event any of the Captive Users fails to meet any of the above requirements, then the Captive Users shall lose their captive status and the entire electricity generated from SWPGL shall be treated as generation of electricity by an IPP.
- x. As regards SWPGL and the Captive Users contention that Captive Users (such as RL Steels & India Steel – who have not met the captive requirements) should not be considered as part of the captive mix demonstrating 26% equity and 51% consumption, as was done in Case No. 101 of 2014 is fallacious and misleading. It is submitted that, the Commission's Order in Case No. 101 of 2014 and the subsequent Judgment in Appeal No. 252 of 2014 have been challenged by MSEDCL and is pending adjudication before the Hon'ble Supreme Court. Without prejudice to the above, it is submitted that:
 - a. In Case No. 101 of 2014, certain users had sought OA under Section 9, however not consumed any energy from captive source.
 - b. Per contra, RL Steel and India Steel have not only sought OA under Section 9 of the EA but also have consumed power from SWPGL.
 - c. The facts of Case No. 101 of 2014 and the instant case are on a totally different footing and cannot be simply adopted in the present matter.
 - d. Having consumed power from SWPGL during FY 2016-17, these Captive Users have to be considered as part of the captive matrix for the purpose of meeting the Rule of Proportionality. SWPGL cannot exclude them as per their convenience.

21.10 Sai Wardha's Captive Users fail to meet captive criteria for FY 2016-17

- i. Even on assessing the shareholding and proportionate consumption of the 17 Captive Users/ Shareholders (15 captive users relied upon by SWPGL and 2 captive users viz., RL Steels and India Steels), in terms of Rule 3 of the EA, certain Captive User(s) fail to comply with the captive criteria during FY 2016-17.
- ii. TPC-D has analysed the shareholding and proportionate consumption of the aforesaid 17 Captive Users/ Shareholders based on various methods employed

by the Commission over time in different Orders. In each of these methods, SWPGL/ its Captive User(s) fail to fulfil the captive criteria.

- D-1. Assessment of Captive Status for FY 2016-17 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 re. FY 2014-15)
- i. 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.
 - ii. 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 9 to Table 16** below has considered all the 8 different CA's Certificate issued on behalf of Sai Wardha during FY 2016-17 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).
 - iii. TPC-D has considered the data as submitted by SWPGL in the present Petition and used the same methodology considered by the Commission. TPC-D has employed no assumptions or presumptions in this regard.

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Table 9: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 31.10.2015 (start of the year)

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17														31-10-2015
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			Actual Units Consumed (AS per OA credit units grossed up with Losses)	Actual consumption grossed up with auxiliary	Minimum to be the consumption for CPP	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)					MU (d)
1	Viraj profiles Limited	26-03-2007	23298938	5.77%	43.07%	711.39	306.40	275.76	337.04	297.68	337.73	337.04	Yes	
2	Bebilz Flanges Works private Limited	18-09-2010	265346	0.07%	0.49%	711.39	3.49	3.14	3.84	10.25	11.63	3.84	Yes	
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	1945867	0.48%	3.60%	711.39	25.59	23.03	28.15	88.07	99.92	28.15	Yes	
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	1238279	0.31%	2.29%	711.39	16.28	14.66	17.91	33.88	38.44	17.91	Yes	
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	30-03-2010	2653455	0.66%	4.91%	711.39	34.90	31.41	38.38	68.33	77.52	38.38	Yes	
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	6191395	1.53%	11.45%	711.39	81.42	73.28	89.56	82.08	93.13	89.56	Yes	
7	Mahalaxmi TMT private Limited	31-10-2015	7887669	1.95%	14.58%	711.39	103.73	93.36	114.10	111.03	125.97	114.10	Yes	
8	Hindustan Petroleum Corporation Limited	31-10-2015	3891734	0.96%	7.19%	711.39	51.18	46.06	56.30	294.37	333.97	56.30	Yes	
9	Lupin Limited	09-07-2015	3007237	0.74%	5.56%	711.39	39.55	35.59	43.50	103.63	117.57	43.50	Yes	
10	Pudumjee Paper Products Ltd	09-05-2016	0	0.00%	0.00%	597.81	-	-	-	37.34	42.37	-	No	
11	Ramsons Industries Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	21.46	24.35	-	No	
12	Ramsons Castings Pvt Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	12.44	14.12	-	No	
13	ACG Associated Capsules Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	6.17	7.00	-	No	
14	Inox Air Products Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	7.87	8.92	-	No	
15	Asahi India Glass Ltd	09-03-2017	0	0.00%	0.00%	103.38	-	-	-	1.64	1.86	-	No	
16	R L Steel & Energy Limited	31-10-2015	2653455	0.66%	4.91%	711.39	34.90	31.41	38.38	5.36	6.08	6.08	No	
17	India Steel Works Limited	31-10-2015	1061382	0.26%	1.96%	597.81	11.73	10.56	12.90	3.87	4.39	4.39	No	
Total			5,40,94,757	13.39%	100.00%		709.16	638.25	780.08	1,185.47	1,344.95			
SWPGL Total Equity			40,41,40,146											

Table 10: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 31.03.2016

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17														31-Mar-16
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			Actual Units Consumed (AS per OA credit units grossed up with Losses)	Actual consumption grossed up with auxiliary	Minimum to be the consumption for CPP	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 (a)	MU (b)	MU (c)	MU (d)	MU	MU	MU (e=d or > b)	
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	43.07%	711.39	306.40	275.76	337.04	297.68	337.73	337.04	Yes	
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0.49%	711.39	3.49	3.14	3.84	10.25	11.63	3.84	Yes	
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	3.60%	711.39	25.59	23.03	28.15	88.07	99.92	28.15	Yes	
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	2.29%	711.39	16.28	14.66	17.91	33.88	38.44	17.91	Yes	
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	30-03-2010	26,53,455	0.66%	4.91%	711.39	34.90	31.41	38.38	68.33	77.52	38.38	Yes	
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	11.45%	711.39	81.42	73.28	89.56	82.08	93.13	89.56	Yes	
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	14.58%	711.39	103.73	93.36	114.10	111.03	125.97	114.10	Yes	
8	Hindustan Petroleum Corporation Limited	31-10-2015	38,91,734	0.96%	7.19%	711.39	51.18	46.06	56.30	294.37	333.97	56.30	Yes	
9	Lupin Limited	09-07-2015	30,07,237	0.74%	5.56%	711.39	39.55	35.59	43.50	103.63	117.57	43.50	Yes	
10	Pudumjee Paper Products Ltd	09-05-2016	0	0.00%	0.00%	597.81	-	-	-	37.34	42.37	0.00	No	
11	Ramsons Industries Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	21.46	24.35	0.00	No	
12	Ramsons Castings Pvt Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	12.44	14.12	0.00	No	
13	ACG Associated Capsules Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	6.17	7.00	0.00	No	
14	Inox Air Products Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	7.87	8.92	0.00	No	
15	Asahi India Glass Ltd	09-03-2017	0	0.00%	0.00%	103.38	-	-	-	1.64	1.86	0.00	No	
16	R L Steel & Energy Limited	31-10-2015	26,53,455	0.66%	4.91%	711.39	34.90	31.41	38.38	5.36	6.08	6.08	No	
17	India Steel Works Lihiled	31-10-2015	10,61,382	0.26%	1.96%	711.39	13.96	12.56	15.35	3.87	4.39	4.39	No	
Total			5,40,94,757	13.39%	100.00%		711.39	640.25	782.53	1,185.47	1,344.95			
SWPGL Total Equity			40,41,40,146											

Table 11: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 01.04.2016

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17														01-Apr-16
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			Actual Units Consumed (AS per OA credit units grossed)	Actual consumption grossed up with auxiliary	Minimum to be the consumption for CPP	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)	
							with 0% Variation	with - 10% Variation	with + 10% Variation					
		DD/MM/YY	Nos	%	%	MU	MU (a)	MU (b)	MU (c)	MU (d)	MU	MU	MU (e=d or > b)	
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	43.07%	711.39	306.40	275.76	337.04	297.68	337.73	337.04	Yes	
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0.49%	711.39	3.49	3.14	3.84	10.25	11.63	3.84	Yes	
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	3.60%	711.39	25.59	23.03	28.15	88.07	99.92	28.15	Yes	
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	2.29%	711.39	16.28	14.66	17.91	33.88	38.44	17.91	Yes	
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	30-03-2010	26,53,455	0.66%	4.91%	711.39	34.90	31.41	38.38	68.33	77.52	38.38	Yes	
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	11.45%	711.39	81.42	73.28	89.56	82.08	93.13	89.56	Yes	
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	14.58%	711.39	103.73	93.36	114.10	111.03	125.97	114.10	Yes	
8	Hindustan Petroleum Corporation Limited	31-10-2015	38,91,734	0.96%	7.19%	711.39	51.18	46.06	56.30	294.37	333.97	56.30	Yes	
9	Lupin Limited	09-07-2015	30,07,237	0.74%	5.56%	711.39	39.55	35.59	43.50	103.63	117.57	43.50	Yes	
10	Pudumjee Paper Products Ltd	09-05-2016	0	0.00%	0.00%	597.81	-	-	-	37.34	42.37	0.00	No	
11	Ramsons Industries Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	21.46	24.35	0.00	No	
12	Ramsons Castings Pvt Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	12.44	14.12	0.00	No	
13	ACG Associated Capsules Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	6.17	7.00	0.00	No	
14	Inox Air Products Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	7.87	8.92	0.00	No	
15	Asahi India Glass Ltd	09-03-2017	0	0.00%	0.00%	103.38	-	-	-	1.64	1.86	0.00	No	
16	R L Steel & Energy Limited	31-10-2015	26,53,455	0.66%	4.91%	711.39	34.90	31.41	38.38	5.36	6.08	6.08	No	
17	India Steel Works Limited	31-10-2015	10,61,382	0.26%	1.96%	711.39	13.96	12.56	15.35	3.87	4.39	4.39	No	
Total			5,40,94,757	13.39%	100.00%		711.39	640.25	782.53	1,185.47	1,344.95			
SWPGL Total Equity			40,41,40,146											

Table 12: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 10.05.2016

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17													
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			Actual Units Consumed (AS per OA credit units grossed up with Losses)	Actual consumption grossed up with auxiliary	Minimum to be the consumption for CPP	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 (a)	MU (b)	MU (c)	MU (d)	MU	MU	MU (e=d or > b)
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	41.97%	711.39	298.59	268.73	328.45	297.68	337.73	328.45	Yes
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0.48%	711.39	3.40	3.06	3.74	10.25	11.63	3.74	Yes
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	3.51%	711.39	24.94	22.44	27.43	88.07	99.92	27.43	Yes
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	2.23%	711.39	15.87	14.28	17.46	33.88	38.44	17.46	Yes
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	30-03-2010	26,53,455	0.66%	4.78%	711.39	34.01	30.61	37.41	68.33	77.52	37.41	Yes
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	11.15%	711.39	79.35	71.41	87.28	82.08	93.13	87.28	Yes
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	14.21%	711.39	101.09	90.98	111.19	111.03	125.97	111.19	Yes
8	Hindustan Petroleum Corporation Limited	31-10-2015	38,91,734	0.96%	7.01%	711.39	49.87	44.89	54.86	294.37	333.97	54.86	Yes
9	Lupin Limited	09-07-2015	30,07,237	0.74%	5.42%	711.39	38.54	34.69	42.39	103.63	117.57	42.39	Yes
10	Pudumjee Paper Products Ltd	09-05-2016	14,15,176	0.35%	2.55%	597.81	15.24	13.72	16.76	37.34	42.37	16.76	Yes
11	Ramsons Industries Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	21.46	24.35	-	No
12	Ramsons Castings Pvt Ltd	09-01-2017	0	0.00%	0.00%	486.04	-	-	-	12.44	14.12	-	No
13	ACG Associated Capsules Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	6.17	7.00	-	No
14	Inox Air Products Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	7.87	8.92	-	No
15	Asahi India Glass Ltd	09-03-2017	0	0.00%	0.00%	103.38	-	-	-	1.64	1.86	-	No
16	R L Steel & Energy Limited	31-10-2015	26,53,455	0.66%	4.78%	711.39	34.01	30.61	37.41	5.36	6.08	6.08	No
17	India Steel Works Limited	31-10-2015	10,61,382	0.26%	1.91%	711.39	13.60	12.24	14.96	3.87	4.39	4.39	No
Total			5,55,09,933	13.74%	100.00%		708.50	637.65	779.35	1,185.47	1,344.95		
SWPGL Total Equity			40,41,40,146										

Table 13: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 08.07.2016

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17													
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	Mini to be consumption for CPP	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
							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%))		MU (e=d or > b)
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	39.28%	711.39	279.44	251.50	307.39	297.68	337.73	307.39	Yes
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0.45%	711.39	3.18	2.86	3.50	10.25	11.63	3.50	Yes
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	3.28%	711.39	23.34	21.00	25.67	88.07	99.92	25.67	Yes
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	2.09%	711.39	14.85	13.37	16.34	33.88	38.44	16.34	Yes
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	30-03-2010	8,84,485	0.22%	1.49%	711.39	10.61	9.55	11.67	68.33	77.52	11.67	Yes
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	10.44%	711.39	74.26	66.83	81.68	82.08	93.13	81.68	Yes
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	13.30%	711.39	94.60	85.14	104.06	111.03	125.97	104.06	Yes
8	Hindustan Petroleum Corporation Limited	31-10-2015	77,83,468	1.93%	13.12%	711.39	93.35	84.02	102.69	294.37	333.97	102.69	Yes
9	Lupin Limited	09-07-2015	30,07,237	0.74%	5.07%	711.39	36.07	32.46	39.68	103.63	117.57	39.68	Yes
10	Pudumjee Paper Products Ltd	09-05-2016	14,15,176	0.35%	2.39%	597.81	14.26	12.84	15.69	37.34	42.37	15.69	Yes
11	Ramsons Industries Ltd	09-01-2017	9,72,933	0.24%	1.64%	486.04	7.97	7.18	8.77	21.46	24.35	8.77	Yes
12	Ramsons Castings Pvt Ltd	09-01-2017	7,07,588	0.18%	1.19%	486.04	5.80	5.22	6.38	12.44	14.12	6.38	Yes
13	ACG Associated Capsules Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	6.17	7.00	-	No
14	Inox Air Products Pvt Ltd	08-01-2017	0	0.00%	0.00%	103.38	-	-	-	7.87	8.92	-	No
15	Asahi India Glass Ltd	09-03-2017	0	0.00%	0.00%	103.38	-	-	-	1.64	1.86	-	No
16	R L Steel & Energy Limited	31-10-2015	26,53,455	0.66%	4.47%	711.39	31.83	28.64	35.01	5.36	6.08	6.08	No
17	India Steel Works Lilniled	31-10-2015	10,61,382	0.26%	1.79%	711.39	12.73	11.46	14.00	3.87	4.39	4.39	No
Total			5,93,13,218	14.68%	100.00%		702.30	632.07	772.53	1,185.47	1,344.95		
SWPGL Total Equity			40,41,40,146										

Table 14: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 09.01.2017

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17													09-Jan-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%			Actual Units Consumed (AS per OA credit units grossed up with Losses)	Actual consumption grossed up with auxiliary	Mini to be consumption for CPP	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
							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%)		MU (e=d or > b)
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	35.42%	711.39	252.01	226.81	277.21	297.68	337.73	277.21	Yes
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0.40%	711.39	2.87	2.58	3.16	10.25	11.63	3.16	Yes
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	2.96%	711.39	21.05	18.94	23.15	88.07	99.92	23.15	Yes
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	1.88%	711.39	13.39	12.05	14.73	33.88	38.44	14.73	Yes
5	Mahindra CIE Automotive Limited (Formerly known as Mahindra Forgings Ltd.)	30-03-2010	32,72,595	0.81%	4.98%	711.39	35.40	31.86	38.94	68.33	77.52	38.94	Yes
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	9.41%	711.39	66.97	60.27	73.67	82.08	93.13	73.67	Yes
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	11.99%	711.39	85.32	76.78	93.85	111.03	125.97	93.85	Yes
8	Hindustan Petroleum Corporation Limited	31-10-2015	77,83,468	1.93%	11.83%	711.39	84.19	75.77	92.61	294.37	333.97	92.61	Yes
9	Lupin Limited	09-07-2015	30,07,237	0.74%	4.57%	711.39	32.53	29.27	35.78	103.63	117.57	35.78	Yes
10	Pudumjee Paper Products Ltd	09-05-2016	14,15,176	0.35%	2.15%	597.81	12.86	11.58	14.15	37.34	42.37	14.15	Yes
11	Ramsons Industries Ltd	09-01-2017	11,49,830	0.28%	1.75%	486.04	8.50	7.65	9.35	21.46	24.35	9.35	Yes
12	Ramsons Castings Pvt Ltd	09-01-2017	8,84,485	0.22%	1.34%	486.04	6.54	5.88	7.19	12.44	14.12	7.19	Yes
13	ACG Associated Capsules Pvt Ltd	08-01-2017	12,38,279	0.31%	1.88%	103.38	1.95	1.75	2.14	6.17	7.00	2.14	Yes
14	Inox Air Products Pvt Ltd	08-01-2017	17,68,970	0.44%	2.69%	103.38	2.78	2.50	3.06	7.87	8.92	3.06	Yes
15	Asahi India Glass Ltd	09-03-2017	7,07,588	0.18%	1.08%	103.38	1.11	1.00	1.22	1.64	1.86	1.22	Yes
16	R L Steel & Energy Limited	31-10-2015	26,53,455	0.66%	4.03%	711.39	28.70	25.83	31.57	5.36	6.08	6.08	No
17	India Steel Works Lilniled	31-10-2015	10,61,382	0.26%	1.61%	711.39	11.48	10.33	12.63	3.87	4.39	4.39	No
Total			6,57,69,959	16.27%	100.00%		667.64	600.87	734.40	1,185.47	1,344.95		
SWPGL Total Equity			40,41,40,146										

Table 15: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 09.03.2017

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17													
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			Actual Units Consumed (AS per OA credit units grossed up with Losses)	Actual consumption grossed up with auxiliary	Mini to be consumption for CPP	Whether actual consumption (d) is equal to or greater than lowest permissible range (h) MU (e=d or > b)
							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%)		
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	35.42%	711.39	252.01	226.81	277.21	297.68	337.73	277.21	Yes
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0.40%	711.39	2.87	2.58	3.16	10.25	11.63	3.16	Yes
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	2.96%	711.39	21.05	18.94	23.15	88.07	99.92	23.15	Yes
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	1.88%	711.39	13.39	12.05	14.73	33.88	38.44	14.73	Yes
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	30-03-2010	32,72,595	0.81%	4.98%	711.39	35.40	31.86	38.94	68.33	77.52	38.94	Yes
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	9.41%	711.39	66.97	60.27	73.67	82.08	93.13	73.67	Yes
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	11.99%	711.39	85.32	76.78	93.85	111.03	125.97	93.85	Yes
8	Hindustan Petroleum Corporation Limited	31-10-2015	77,83,468	1.93%	11.83%	711.39	84.19	75.77	92.61	294.37	333.97	92.61	Yes
9	Lupin Limited	09-07-2015	30,07,237	0.74%	4.57%	711.39	32.53	29.27	35.78	103.63	117.57	35.78	Yes
10	Pudumjee Paper Products Ltd	09-05-2016	14,15,176	0.35%	2.15%	597.81	12.86	11.58	14.15	37.34	42.37	14.15	Yes
11	Ramsons Industries Ltd	09-01-2017	11,49,830	0.28%	1.75%	486.04	8.50	7.65	9.35	21.46	24.35	9.35	Yes
12	Ramsons Castings Pvt Ltd	09-01-2017	8,84,485	0.22%	1.34%	486.04	6.54	5.88	7.19	12.44	14.12	7.19	Yes
13	ACG Associated Capsules Pvt Ltd	08-01-2017	12,38,279	0.31%	1.88%	103.38	1.95	1.75	2.14	6.17	7.00	2.14	Yes
14	Inox Air Products Pvt Ltd	08-01-2017	17,68,970	0.44%	2.69%	103.38	2.78	2.50	3.06	7.87	8.92	3.06	Yes
15	Asahi India Glass Ltd	09-03-2017	7,07,588	0.18%	1.08%	103.38	1.11	1.00	1.22	1.64	1.86	1.22	Yes
16	R L Steel & Energy Limited	31-10-2015	26,53,455	0.66%	4.03%	711.39	28.70	25.83	31.57	5.36	6.08	6.08	No
17	India Steel Works Lilniled	31-10-2015	10,61,382	0.26%	1.61%	711.39	11.48	10.33	12.63	3.87	4.39	4.39	No
Total			6,57,69,959	16.27%	100.00%		667.64	600.87	734.40	1,185.47	1,344.95		
SWPGL Total Equity			40,41,40,146										

Table 16: Computation of Captive Status of SWPGL in FY 2016-17 considering Equity Share Holding as on 31.03.2017

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17													31-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	Mini to be consumption for CPP	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
							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%))		MU (e=d or > b)
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	35.42%	711.39	252.01	226.81	277.21	297.68	337.73	277.21	Yes
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0.40%	711.39	2.87	2.58	3.16	10.25	11.63	3.16	Yes
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	2.96%	711.39	21.05	18.94	23.15	88.07	99.92	23.15	Yes
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	1.88%	711.39	13.39	12.05	14.73	33.88	38.44	14.73	Yes
5	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd.)	30-03-2010	32,72,595	0.81%	4.98%	711.39	35.40	31.86	38.94	68.33	77.52	38.94	Yes
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	9.41%	711.39	66.97	60.27	73.67	82.08	93.13	73.67	Yes
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	11.99%	711.39	85.32	76.78	93.85	111.03	125.97	93.85	Yes
8	Hindustan Petroleum Corporation Limited	31-10-2015	77,83,468	1.93%	11.83%	711.39	84.19	75.77	92.61	294.37	333.97	92.61	Yes
9	Lupin Limited	09-07-2015	30,07,237	0.74%	4.57%	711.39	32.53	29.27	35.78	103.63	117.57	35.78	Yes
10	Pudumjee Paper Products Ltd	09-05-2016	14,15,176	0.35%	2.15%	597.81	12.86	11.58	14.15	37.34	42.37	14.15	Yes
11	Ramsons Industries Ltd	09-01-2017	11,49,830	0.28%	1.75%	486.04	8.50	7.65	9.35	21.46	24.35	9.35	Yes
12	Ramsons Castings Pvt Ltd	09-01-2017	8,84,485	0.22%	1.34%	486.04	6.54	5.88	7.19	12.44	14.12	7.19	Yes
13	ACG Associated Capsules Pvt Ltd	08-01-2017	12,38,279	0.31%	1.88%	103.38	1.95	1.75	2.14	6.17	7.00	2.14	Yes
14	Inox Air Products Pvt Ltd	08-01-2017	17,68,970	0.44%	2.69%	103.38	2.78	2.50	3.06	7.87	8.92	3.06	Yes
15	Asahi India Glass Ltd	09-03-2017	7,07,588	0.18%	1.08%	103.38	1.11	1.00	1.22	1.64	1.86	1.22	Yes
16	R L Steel & Energy Limited	31-10-2015	26,53,455	0.66%	4.03%	711.39	28.70	25.83	31.57	5.36	6.08	6.08	No
17	India Steel Works Linlited	31-10-2015	10,61,382	0.26%	1.61%	711.39	11.48	10.33	12.63	3.87	4.39	4.39	No
Total			6,57,69,959	16.27%	100.00%		667.64	600.87	734.40	1,185.47	1,344.95		
SWPGL Total Equity			40,41,40,146										

- iv. It is observed that, numerous Captive Users (2 to 8 out of 17) fail the test of proportionality (i.e., at least 51% consumption in proportion to its Shareholding within variation of $\pm 10\%$) during each period of a particular shareholding pattern of the company, as considered by the Commission in Case No. 77 of 2015.
- v. Following Table summarizes the periods during FY 2016-17 when the Captive User(s) have failed to meet the 51% proportionality test:

Table 17: Results of the proportionality test for different period in FY 2016-17

Sr. No.	CA Certificates	13% Shareholding criteria		51% Consumption Criteria - To Distribute 51% of total power among the captive consumers	Proportionality Test - To Consume power in proportion to the share holding
		Status	Criteria fulfilling/ not fulfilling		
1	31-10-2015	Total 17 consumers - 13.39% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	8 out of 17 captive users fail the Proportionality Test
2	31-03-2016	Total 17 consumers - 13.39% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	8 out of 17 captive users fail the Proportionality Test
3	01-04-2016	Total 17 consumers - 13.39% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	8 out of 17 captive users fail the Proportionality Test
4	10-05-2016	Total 17 consumers - 13.74% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	7 out of 17 captive users fail the Proportionality Test
5	08-07-2016	Total 17 consumers - 14.68% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	5 out of 17 captive users fail the Proportionality Test
6	09-01-2017	Total 17 consumers 16.27% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	2 out of 17 captive users fail the Proportionality Test
7	09-03-2017	Total 17 consumers - 16.27% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	2 out of 17 captive users fail the Proportionality Test
8	31-03-2017	Total 17 consumers - 16.27% > 13%	Fulfilling the Criteria	Fulfilling the Criteria	2 out of 17 captive users fail the Proportionality Test

D-2. Assessment of captive status considering Weighted Average Equity Shareholding as on 31.03.2017 [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]

- i. In Case No. 101 of 2014 and 77 of 2015, the Commission has considered another method to ascertain captive compliance, in which the Weighted Average Shareholding of the Captive Users was considered:
- ii. The Commission in its Order dated 20 August 2014 in Case No. 101 of 2014 had considered 100% of total generation (1,394.89 MUs in the present case) while assessing compliance with Rule 3. However the Commission in its subsequent Corrigendum Order dated 12 March 2018 in Case Nos. 77 of 2015 has assessed compliance of Rule 3 by considering 51% of the total generation (i.e., 711.39 MUs in the present case) (in line with the Hon'ble AT 's directions in *Kadodara Power*). Neither SWPGL nor the captive users have raised any issue qua the said methodology employed by the Commission, although the said Orders have been reviewed by the Commission and are also pending challenge before the Hon'ble ATE.
- iii. 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. Even for the previous years including FY 2014-15 the Commission has directed SWPGL (in its Order dated 22 October 2018 in Review Case No. 132 of 2018) to provide the exact date when the shareholding of the consumer changed.
- iv. Since investment and shareholding by a Captive User in a company is a strategic call, the same has to be considered on actuals (i.e., as actually done by the Captive User) and cannot be based on any assumptions. It is therefore necessary for the Commission to direct SWPGL to provide the exact date of change in shareholding of each Captive User during FY 2016-17 before the weighted average methodology can be applied.
- v. Without prejudice to the foregoing, for the purpose of the Written Submission 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). It is observed that as per the said analysis, the Captive User(s) fail to meet the captive requirements, which is evident from the following tables.

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Table 18: Computation of Captive Status of SWPGL in FY 2016-17 considering Weighted Average Equity Share Holding as on 31.03.2017 (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-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	MU	MU	MU	(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	I	J	K	L	M	N	
1	Viraj profiles Limited	26-03-2007	23298938.00	5.77%	19.94%	1,394.89	278.14	250.33	305.95	297.68	337.73	305.95	Yes	
2	Bebilz Flanges Works private Limited	18-09-2010	265346.00	0.07%	0.23%	1,394.89	3.17	2.85	3.48	10.25	11.63	3.48	Yes	
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	1945867.00	0.48%	1.67%	1,394.89	23.23	20.91	25.55	88.07	99.92	25.55	Yes	
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	1238279.00	0.31%	1.06%	1,394.89	14.78	13.30	16.26	33.88	38.44	16.26	Yes	
5	Mahindra CIE Automotive Limited (formerly kn	30-03-2010	1895948.23	0.47%	1.62%	1,394.89	22.63	20.37	24.90	68.33	77.52	24.90	Yes	
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	6191395.00	1.53%	5.30%	1,394.89	73.91	66.52	81.30	82.08	93.13	81.30	Yes	
7	Mahalaxmi TMT private Limited	31-10-2015	7887669.00	1.95%	6.75%	1,394.89	94.16	84.75	103.58	111.03	125.97	103.58	Yes	
8	Hindustan Petroleum Corporation Limited	31-10-2015	6738564.08	1.67%	5.77%	1,394.89	80.44	72.40	88.49	294.37	333.97	88.49	Yes	
9	Lupin Limited	09-07-2015	3007237.00	0.74%	2.57%	1,394.89	35.90	32.31	39.49	103.63	117.57	39.49	Yes	
10	Pudumjee Paper Products Ltd	09-05-2016	1263965.41	0.31%	1.08%	1,172.17	12.68	11.41	13.95	37.34	42.37	13.95	Yes	
11	Ramsons Industries Ltd	08-07-2016	751448.40	0.19%	0.64%	953.02	6.13	5.52	6.74	21.46	24.35	6.74	Yes	
12	Ramsons Castings Pvt Ltd	08-07-2016	557346.71	0.14%	0.48%	953.02	4.55	4.09	5.00	12.44	14.12	5.00	Yes	
13	ACG Associated Capsules Pvt Ltd	08-01-2017	278188.71	0.07%	0.24%	202.70	0.48	0.43	0.53	6.17	7.00	0.53	Yes	
14	Inox Air Products Pvt Ltd	08-01-2017	397412.44	0.10%	0.34%	202.70	0.69	0.62	0.76	7.87	8.92	0.76	Yes	
15	Asahi India Glass Ltd	09-01-2017	158964.98	0.04%	0.14%	202.70	0.28	0.25	0.30	1.64	1.86	0.30	Yes	
16	RL Steels	31-10-2015	2653455.00	0.66%	2.27%	1,394.89	31.68	28.51	34.84	5.36	6.08	6.08	No	
17	India Steels	31-10-2015	1061382.00	0.26%	0.91%	1,394.89	12.67	11.40	13.94	3.87	4.39	4.39	No	
Total			5,95,91,407	14.75%	51.00%		695.52	625.97	765.07	1,185.47	1,344.95			
SWPGL Total Equity			40,41,40,146											

Table 19: Computation of Captive Status of SWPGL in FY 2016-17 considering Weighted Average Equity Share Holding as on 31.03.2017 (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-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	Mini to be consumption for CPP	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)	
							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%)		MU (e=d or > b)	
1	Viraj profiles Limited	26-03-2007	23298938.00	5.77%	39.10%	711.39	278.14	250.33	305.95	297.68	337.73	305.95	Yes	
2	Bebilz Flanges Works private Limited	18-09-2010	265346.00	0.07%	0.45%	711.39	3.17	2.85	3.48	10.25	11.63	3.48	Yes	
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	1945867.00	0.48%	3.27%	711.39	23.23	20.91	25.55	88.07	99.92	25.55	Yes	
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	1238279.00	0.31%	2.08%	711.39	14.78	13.30	16.26	33.88	38.44	16.26	Yes	
5	Mahindra CIE Automotive Limited (formerly kn	30-03-2010	1895948.23	0.47%	3.18%	711.39	22.63	20.37	24.90	68.33	77.52	24.90	Yes	
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	6191395.00	1.53%	10.39%	711.39	73.91	66.52	81.30	82.08	93.13	81.30	Yes	
7	Mahalaxmi TMT private Limited	31-10-2015	7887669.00	1.95%	13.24%	711.39	94.16	84.75	103.58	111.03	125.97	103.58	Yes	
8	Hindustan Petroleum Corporation Limited	31-10-2015	6738564.08	1.67%	11.31%	711.39	80.44	72.40	88.49	294.37	333.97	88.49	Yes	
9	Lupin Limited	09-07-2015	3007237.00	0.74%	5.05%	711.39	35.90	32.31	39.49	103.63	117.57	39.49	Yes	
10	Pudumjee Paper Products Ltd	09-05-2016	1263965.41	0.31%	2.12%	597.81	12.68	11.41	13.95	37.34	42.37	13.95	Yes	
11	Ramsons Industries Ltd	08-07-2016	751448.40	0.19%	1.26%	486.04	6.13	5.52	6.74	21.46	24.35	6.74	Yes	
12	Ramsons Castings Pvt Ltd	08-07-2016	557346.71	0.14%	0.94%	486.04	4.55	4.09	5.00	12.44	14.12	5.00	Yes	
13	ACG Associated Capsules Pvt Ltd	08-01-2017	278188.71	0.07%	0.47%	103.38	0.48	0.43	0.53	6.17	7.00	0.53	Yes	
14	Inox Air Products Pvt Ltd	08-01-2017	397412.44	0.10%	0.67%	103.38	0.69	0.62	0.76	7.87	8.92	0.76	Yes	
15	Asahi India Glass Ltd	09-01-2017	158964.98	0.04%	0.27%	103.38	0.28	0.25	0.30	1.64	1.86	0.30	Yes	
16	RL Steels	31-10-2015	2653455.00	0.66%	4.45%	711.39	31.68	28.51	34.84	5.36	6.08	6.08	No	
17	India Steels	31-10-2015	1061382.00	0.26%	1.78%	711.39	12.67	11.40	13.94	3.87	4.39	4.39	No	
Total			5,95,91,407	14.75%	100.00%		695.52	625.97	765.07	1,185.47	1,344.95			
SWPGL Total Equity			40,41,40,146											

D-3. Assessment of captive status in terms of principles set out in Kadodara Power (as on 31 March 2017)

- i. Without prejudice to the above, it is 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 ($\pm 10\%$).
- ii. 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.
- iii. 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. This is evident from the fact that the Commission had suo-moto applied a different methodology in its Order dated 9 February 2018 in Case No. 77 of 2015.
- iv. Based on the aforesaid principle, the following table shows the test of proportionality considering the required consumption in proportion to 51% of the generation.
- v. It is observed that 9 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 $\pm 10\%$.

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Table 20: Computation of Captive Status of SWPGL in FY 2016-17 in terms of principles set out in Kadodara Power (as on 31.03.2017)

SAI WARDHA POWER GENERATION LIMITED - CAPTIVE CONSUMPTION CRITERIA CALCULATION FOR FY 2016-17														31-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			Actual Units Consumed (AS per OA credit units grossed up with Losses)	Actual consumption grossed up with auxiliary	Adjusted Actual consumption further adjusted to 51 % Generation	Minimum to be consumption for CPP	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
							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%))			
1	Viraj profiles Limited	26-03-2007	2,32,98,938	5.77%	35%	711.39	252.01	226.81	277.21	297.68	337.73	178.64	178.64	No
2	Bebilz Flanges Works private Limited	18-09-2010	2,65,346	0.07%	0%	711.39	2.87	2.58	3.16	10.25	11.63	6.15	3.16	Yes
3	Mahindra & Mahindra Limited (05 Connections)	16-09-2009	19,45,867	0.48%	3%	711.39	21.05	18.94	23.15	88.07	99.92	52.85	23.15	Yes
4	Mahindra Vehicle Manufacturers Limited	16-09-2009	12,38,279	0.31%	2%	711.39	13.39	12.05	14.73	33.88	38.44	20.33	14.73	Yes
5	Mahindra CIE Automotive Limited (formerly kn)	30-03-2010	32,72,595	0.81%	5%	711.39	35.40	31.86	38.94	68.33	77.52	41.00	38.94	Yes
6	Mahindra Sanyo Special Steel private Limited	23-07-2012	61,91,395	1.53%	9%	711.39	66.97	60.27	73.67	82.08	93.13	49.26	49.26	No
7	Mahalaxmi TMT private Limited	31-10-2015	78,87,669	1.95%	12%	711.39	85.32	76.78	93.85	111.03	125.97	66.63	66.63	No
8	Hindustan Petroleum Corporation Limited	31-10-2015	77,83,468	1.93%	12%	711.39	84.19	75.77	92.61	294.37	333.97	176.65	92.61	Yes
9	Lupin Limited	09-07-2015	30,07,237	0.74%	5%	711.39	32.53	29.27	35.78	103.63	117.57	62.19	35.78	Yes
10	Pudumjee Paper Products Ltd	09-05-2016	14,15,176	0.35%	2%	597.81	12.86	11.58	14.15	37.34	42.37	18.83	14.15	Yes
11	Ramsons Industries Ltd	08-07-2016	11,49,830	0.28%	2%	486.04	8.50	7.65	9.35	21.46	24.35	8.80	8.80	Yes
12	Ramsons Castings Pvt Ltd	08-07-2016	8,84,485	0.22%	1%	486.04	6.54	5.88	7.19	12.44	14.12	5.10	5.10	No
13	ACG Associated Capsules Pvt Ltd	08-01-2017	12,38,279	0.31%	2%	103.38	1.95	1.75	2.14	6.17	7.00	0.54	0.54	No
14	Inox Air Products Pvt Ltd	08-01-2017	17,68,970	0.44%	3%	103.38	2.78	2.50	3.06	7.87	8.92	0.69	0.69	No
15	Asahi India Glass Ltd	09-01-2017	7,07,588	0.18%	1%	103.38	1.11	1.00	1.22	1.64	1.86	0.14	0.14	No
16	RL Steels	31-10-2015	26,53,455	0.66%	4%	711.39	28.70	25.83	31.57	5.36	6.08	3.22	3.22	No
17	India Steels	31-10-2015	10,61,382	0.26%	2%	711.39	11.48	10.33	12.63	5.36	4.39	2.32	2.32	No
Total			6,57,69,959	16.27%	100.00%		667.64	600.87	734.40	1,186.95	1,344.95	687.79		
SWPGL Total Equity			40,41,40,146									51.14%		

21.11 Facts in the Commission's Order dated 20 August 2014 in Case No. 101 of 2014 (SWPGL's captive status for FY 2013-14) are different and distinct from facts of the present case):

- i. 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 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. 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.
- ii. 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.
- iii. 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.
- iv. As regards the Captive Users reliance on the principles of precedent and stare decisis and the Commission's Order in Case No. 101 of 2014 to contend that there has to be certainty and consistency in judicial decisions, it is submitted that 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.
- v. Compliance of captive status has to be seen in the facts and circumstance of the particular Financial Year in question whereby certain aspect for evaluating captive compliance has been developed over a period of time.
- vi. It cannot be the case that, once particular attributes have been identified by the Commission for evaluation of the captive status, the same is cast in stone and cannot be modified or bettered for the purpose of evaluation, in light of changed facts of a particular Financial Year. It is an undisputed fact that the Commission has introduced various parameters for evaluation over a period of time (through different Orders) owing to the factual positions for a particular financial year, which is also evident from the Commission's various Orders such as Case No. 77 of 2015, Corrigendum Order dated 12.03.2018 in Case No. 77 of 2015, Case No. 159 of 2018 and Case No. 23 of 2017.
- vii. 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.
- viii. 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. There was no instance where certain Captive Users had consumed power disproportionate to their Equity Shareholding and that they had been excluded by Sai Wardha while demonstrating captive compliance.
 - c. The Captive Users who had consumed power were held to have done so in proportion to their equity shareholding.
- ix. In Case No. 101 of 2014, two captive users namely, Facor Steels Ltd. and Spentex Industries Ltd. who had availed OA did not consume any energy. Three other Shareholders of SWPGL had neither sought OA nor consumed any energy. As such, the Commission had excluded them while assessing captive status.
- x. With respect to the Commission holding that, if minimum criteria of 26% shareholding and 51% consumption is met, then even if some of the consumers do not meet the criteria, the CPP status cannot be disturbed, it is submitted that, in that case, the Commission had sought to penalize those captive users who were reflected in the CA Certificates and sought OA but did not consume any power. In the present case at hand, there are Captive Users (namely RL Steels and India Steels) who have not only sought OA but consumed power disproportionate to their Equity Shareholding, thereby falling foul of the Rule of Proportionality mandated under Rule 3.
- xi. Parliamentary enactment such as the EA and Rules are at a higher pedestal. All subordinate legislations and Orders passed by courts/ quasi-judicial authorities have to be in conformity with such enactment. As such, Rule 3 has to be interpreted and upheld by the Commission in its letter and spirit, which will have an over-riding effect over past Orders.
- xii. It is settled law that, each case has to be decided on the facts of that case alone and the *ratio decidendi* is fact oriented. Furthermore, the doctrine of *stare decisis* does not preclude a court from taking a different view in a subsequent matter, depending on the specific facts of that case. Therefore, SWPGL's reliance on the Commission's Order in Case No. 101 of 2014 is erroneous, as the facts of that case were distinct.
- xiii. Even otherwise, it is neither SWPGL's nor the Captive Users' case that the Equity Shareholding as was during FY 2013-14 and considered by the Commission in Case No. 101 of 2014 is the exact same for FY 2016-17 as well.
- xiv. 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 this Court 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 is the underlying principle*, namely, the general reasons or the general grounds upon

which the *decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. 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. These principles have been highlighted in the Judgments passed by the Hon'ble Supreme Court in *Krishena Kumar vs. Union of India & Ors.* and *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*

- xv. In light of the foregoing, the rule of precedent and stare decisis cannot be applied in the present facts of the case, as the factual basis on which the earlier orders were passed were completely different and the issues raised in the present proceedings were neither raised nor considered by this Hon'ble Commission in Case No. 101 of 2014.

Submissions /Reply/ Additional Submission of Captive Users/ Shareholders

- 21.12 Lupin Limited stated that MSEDCL had raised supplementary bill dated 5 December, 2017 levying CSS and ASC on the OA consumption of Lupin Ltd. for FY 2016-17. Lupin Ltd. had approached the Commission vide Case No. 179 of 2019 on such arbitrary demand of MSEDCL and the Commission vide its Order dated 21 December, 2017 directed MSEDCL to not levy CSS and ASC till final outcome of Case No. 175 of 2017.
- 21.13 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.
- 21.14 4 captive users/ Shareholders (Inox, Pudumjee, Mahindra Sanyo and Mahindra CIE) have filed their written submissions and additional written submissions. The submissions and additional submissions of these 4 captive users /shareholders are similar in nature which are stated as under:
- i. The captive consumers have fulfilled the criterion of consumption of 51% of the aggregate energy generated. The CA certificates annexed to the Petition by SWPGL indicates 16.88% shareholding for the CGP Units of the Petitioner, as 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, 2003 read with Rule 3 of the Electricity Rules. The billing was done by MSEDCL on 15 minutes time slot basis after give adjustment of power from SWPGL source therefore MSEDCL should be put to strict proof on what basis such adjustment was undertaken.

- ii. There is a specific objection regarding the Applicant's shareholding vis-à-vis their proportionality of consumption, it is to be noted that the Applicant had signed the PDA on 2 May, 2016 and thus the test of proportionately of consumption has to be considered in accordance 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 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. It is incorrect on the part of the MSEDCL to contend that all the shareholders of the SWPGL have to fulfil the captive criteria. There is no obligation in regard to the balance shareholders or the balance consumption after fulfilment of the criteria as laid down in section 9 of EA, 2003 read with Rule 3 of Rules, 2005.
- vi. The Applicant states that the said calculation as provided by SWPGL is in line with the decision of Hon'ble APTEL dated September 22, 2009 in Appeal No. 171 of 2008 of *Kadodara Power Private Limited vs. Gujarat Electricity Regulatory Commission & Ors.*
- vii. SWPGL, in its clarificatory Reply, has provided the necessary data that TPC-D had asked and therefore, the contention of TPC-D that the requisite data is not provided is untenable. Further, the objections raised regarding non-providing of data by SWPGL for the past years is in no way relevant to the present proceedings.
- viii. The contention of TPC-D on the failure to comply with shareholding is untenable as no weighted average is considered by TPC-D and MSEDCL for the consumers who joined the captive arrangement in the middle of the financial year 2016-17. Such methodology has been approved by the Commission in various Orders including Order dated 9 February, 2018 in Case No. 77 of 2015.
- ix. An opinion of an independent Chartered Accountant can be obtained to audit the

shareholding pattern of SWPGL for FY 2016-17 and on the basis of the past methodology to determine whether captive criteria is complied. The captive consumers cannot be punished for incorrect interpretation of Company Law or Electricity Laws by the Distribution Licensees.

- x. 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.

21.15 2 captive consumers/ shareholders i.e. Ramson Industries and Ramson castings have made the similar submissions.

21.16 ***Viraj Industries, Bebitz Flanges Works Pvt. Ltd. (Bebitz), Mahindra & Mahindra Ltd. and Mahindra Vehicle Manufactures Ltd.***

- 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, 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.
 - b. Distribution and Transmission Licensees are required to gather data and monitor generation/ consumption and utilization of power.
 - c. Therefore, if there is any lacuna on the part of any of the stakeholders who have the mandate to ascertain the Group Captive Power Producer status, the liability cannot be foisted upon equity holders who are Captive power users by virtue of their equity in the captive generation company.
 - d. The equity together constitutes 26 % but said equity is distributed amongst various investors who may or may not take the power.
 - e. The right of equity holder to draw power from generating company can always be objected and rejected by Distribution Licensee.
 - f. 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.
 - g. 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/ SLDC, 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 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 2016-17 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 2016-17, 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 is 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.

21.17 *Lupin Ltd.'s submissions:*

Lupin has met the requirement of proportionality consumption. Lupin is not in position to comment on the consumption by the other captive users in proportion to their respective shareholding in the CGPs. However, the Commission in its Order dated 20 August 2014 in Case No. 101 of 2014 has observed that because of the default of the few shareholders in meeting the captive criteria, the other consumers should not be penalized. The Order in Case No.101 of 2014 was challenged before the Hon'ble ATE in the Appeal No. 252 of 2014 which has also upheld the same stand.

21.18 *SWPGL's Rejoinder/ Reply to clarifications and additional submission:*

- i. The Gross and Net generation details are already submitted with the Petition and now enclosed is the summary of Gross, Auxiliary and Net generation with the Reply.
- ii. As regards change in the shareholding pattern, the details are as under:
 - a. SWPGL has signed PDA with Pudumjee on 9 May 2016 and filed applications to grant OA from June 2016 and MSEDCL granted the same on 27 May 2016
 - b. SWPGL has signed revised PPA with HPCL on 8 July 2016 and HPCL has submitted application to TPC-D for grant of OA from August 2016 which was granted on 27 July 2016.
 - c. SWPGL has signed PPA with Ramson Industries and Ramson castings on 1 July 2016 and filed application to grant OA from August 2016 which was approved on 29 July 2016.
 - d. SWPGL has signed PDA with Asahi, Inox and ACG on 3 January 2017 and 7 January 2017 and filed application to grant OA from February 2017, which was granted on 25 January 2017.
 - e. As and when new captive users signed PPA/PDA, the change in the shareholding along with OA applications for such new captive consumer and revised Auditor certificate has been furnished to Distribution Licensees.
 - f. Initial shareholding certificate as on 1 April 2016 and shareholding certificate at the end of year (31 March 2017) duly certified by Auditor are enclosed with the reply.

- iii. As regards Tripping of units, the details are as under:
 - a. Tripping was related to CPP units as IPP units were not running and there is no generation from IPP units and no power has been scheduled to captive users from IPP units.
 - b. SWPGL has informed to MSLDC at the time of tripping of CGP units and also sent revised schedule to MSLDC. However, final implemented schedule (after incorporating all revisions of the previous day) has been sent to MSEDCL on next day on regular basis.
 - c. As per directives of the Order dated 14 September 2017 in Case No. 62 of 2017, SWPGL is providing revised schedule to Distribution Licensees along with intimation to SLDC.
 - d. The Daily System report published on MSLDC website dated 25 January 2018 certified that Unit I and II were shut-down since February 2016.
- iv. As regards difference in actual consumption of captive users of Unit 3 and 4 in the Petition and in the calculations, it is submitted that:
 - a. SWPGL's total Net Generation from Unit 3 and 4: 1229 MU
 - b. SWPGL has supplied 29.154 MU to third party (IEX and UPPCL) for FY 2016-17.
 - c. Total consumption for captive consumers for FY 2016-17 is 1185.47 MU (instead of 1183 MU submitted in the Petition) as Viraaj-1500 consumers April 2016 data was not captured in the main Petition and submitted with the revised annexure. The consumption/ open access energy credit has been grossed up with applicable losses to calculate the consumption at SWPGL injection point.
 - d. SWPGL has also submitted the consumer-wise month-wise implemented schedule.
 - e. Generation, Net generation and implemented schedule will not match due to short/excess generation.
 - f. Implemented schedule and open access credit units will not match due to over injection energy
- v. The basis for the apportionment of the consumption for four units (Asahi, ACG, Inox and India Steel), SWPGL has considered the apportionment of the consumption from the date of OA obtained and followed the same methodology as approved by the Commission for FY 2013-14.
- vi. As regards the clarification on the calculations on net generation, as MSLDC certification was on net generation, the calculations filed was based on Net injection and SWPGL has also computed the same on the gross generation basis. Since the gross generation was also proportionated to all consumers, there would not be any difference for the computation of captive status.

- vii. The details of generation and fulfilment of captive status criteria for FY 2016-17 was communicated by SWPGL vide letter dated 19 June 2017 to the MSEDCL and on 8 November 2017, MSEDCL unilaterally concluded that captive status was not complied and raised the bills for CSS and other charges. TPC-D has also responded only on 10 October 2017 seeking additional information and vide letter dated 23 November 2017 demanded payment of CSS from captive users. The details submitted by SWPGL vide letter dated 19 June 2017 were not denied or contested by MSEDCL and TPC-D. They have not responded for the five months to the communication of SWPGL and unilaterally decided the captive status.
- viii. On 1 April 2016, SWPGL has communicated to Respondents the shareholding pattern of the captive users which was more than 26 % of the along with the applications of OA for FY 2016-17.
- ix. It is settled by the various decisions of the Commission and the Hon'ble ATE that shareholding, consumption and proportionality has to be considered on the minimum criteria namely 26 % shareholding and 51 % consumption.
- x. Further, it is incorrect on the part of Respondents to contend that all the shareholders of SWPGL have to fulfil the captive criteria. As per Electricity Rules 2005, only minimum 26% shareholding and minimum 51% consumption have to be fulfilled and the proportionality is applicable only to minimum 26% shareholding and minimum 51% consumption. In the instant case, SWPGL has satisfied the proportionality criteria qua the minimum 26% shareholding and minimum 51% consumption. There is no obligation in regard to balance shareholders or balance consumption.
- xi. Further the proportionality has to be from the date of consumption of the relevant shareholder and to the extent of shareholding.
- xii. The basic misconception in the contention of the Respondents is that the captive criteria needs to be satisfied by all the consumers/shareholders. This contention was rejected by the Commission in case No. 101 of 2014 as well as Hon'ble ATE in Appeal No. 252 of 2014.
- xiii. While it is the positive case of the Petitioner that it has complied with captive criteria conditions, even assuming the best case of the Respondents, that the Petitioner has not complied with the criteria, the same has to be waived.
- xiv. The Commission vide order dated 20.08.2014 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.
- xv. The same methodology has been adopted by SWPGL for FY 2016-17 in the present Petition, by which the captive status has been calculated and satisfied.
- xvi. Response of SWPGL on the issues on Merits raised by the Respondents:
 - a. Respondents have contended that not all shareholders have applied for OA and consumed power and hence, shareholding criteria is not fulfilled. Also,

the proportionality Criteria is not met. SWPGL states that it is incorrect that all consumers have to fulfil captive criteria. So long as 26% shareholders consume power, the non-consumption by other shareholders is irrelevant. This has already been settled for FY 2013-14, as upheld by the Hon'ble ATE. TPC-D has wrongly calculated proportionality by taking consumption of each consumer for the entire year. Proportionality needs to be considered from date of consumption of relevant shareholder. Orders of Commission in Case No. 101 of 2014 and APTEL's Order in Appeal 252 of 2014 clarify this issue unambiguously.

- b. The Respondents have also contended that SWPGL has not met the conditions as imposed by the Commission in Case No. 23 of 2017 for determination of a plant as CGP. SWPGL submits that the modalities of Order dated January 17, 2018 in Case No. 23 of 2017 will be applied prospectively. The order itself recognizes the prospective application at Paragraph 9.
- c. The Respondents have further argued that there are discrepancies in the Shareholding certificates submitted by SWPGL. TPC-D has stated that CA certificate dated 09.03.2017 has never been submitted to TPC-D by any open access consumer. SWPGL submits that the CA certificate dated 09.03.2017 has not been submitted to TPC-D because there was no change in the shareholding of HPCL, who is the only consumer in the distribution area of TPC-D. Submission of the CA certificate dated 09.03.2017 does not bring any material change in so far as the status of HPCL is concerned. Further, the OA is applied by HPCL and not by SWPGL. Therefore, if at all the wrong CA certificate has been submitted to TPC-D, SWPGL was never intimated regarding the same.
- d. It has been also contended that CA certificate dated 09.03.2017 does not specify which of the two units are identified as captive. SWPGL submits that TPC-D is seeking to mislead the Commission by stating that it was not aware of which units had been identified as captive. TPC-D has all along been aware of Units No. 3 and 4 being identified as captive. In any case, MSLDC has already certified that Units 1 and 2 were under shut down during the entire period. Therefore, there cannot be any apprehension as to the units been used for captive supply.
- e. TPC-D has stated that CA certificates submitted to MSEDCL on 7 July 2016 and CA certificates submitted to TPC-D on 8 July 2016 show varying shareholdings. SWPGL submits that there had been a change in the shareholding of HPCL on 7 July 2016. The said change is reflected in the CA certificate dated 8 July 2016 which is issued the next day by the CA after verifying from the ROC records. The fact of change in shareholding has also been transparently disclosed to the Commission in the Petitioners submission dated 6 February 2018.

Commission's Analysis and Ruling:

- 22 SWPGL has claimed that Units 3 and 4 of SWPGL's Power Plant meet the requirement of Captive Generating Units for FY 2016-17. 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.
- 23 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.

- 24 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 2016-17?
 - b. Whether the Captive Users of SWPGL satisfied the following in FY 2016-17:
 - 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%.
- 25 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.
- 26 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%."

- 27 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.
- 28 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 1 April 2016 certifying the shareholding pattern, i.e. at the beginning of FY 2016-17.
 - ii. Auditor's Certificate as on 10 May 2016 certifying the shareholding pattern (added Pudumjee Paper Products Ltd. in the matrix).
 - iii. Auditor's Certificate as on 8 July 2016 certifying the shareholding pattern (added Ramson Industries and Ramson Casting in the matrix).
 - iv. Auditor's Certificate as on 10 November 2016 certifying the shareholding pattern (Changes in the Equity Share capital of Mahindra CIE, Ramson industries and Ramson Casting).
 - v. Auditor's Certificate as on 9 December 2016 certifying the shareholding pattern.
 - vi. Auditor's Certificate as on 9 January 2017 certifying the shareholding pattern (added Inox, ACG and Asahi in the matrix).
 - vii. Auditor's Certificate as on 9 March 2017 certifying the shareholding pattern (added Hindalco Industries Limited in the matrix).
 - viii. Auditor's Certificate as on 31 March 2017 certifying the shareholding pattern at the end of the FY 2016-17.

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

Table 21: Details of Shares as per Shareholding certificates submitted by SWPGL

Sr. No.	Captive Users	Certificate 1	Certificate 2	Certificate 3	Certificate 4	Certificate 5	Certificate 6	Certificate 7	Certificate 8
		Nos.	Nos.	Nos.	Nos.	Nos.	Nos.	Nos.	Nos.
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	23,298,938
2	Bebilz Flanges Works private Limited	265,346	265,346	265,346	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	1,945,867	1,945,867	1,945,867	1,945,867
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	1,238,279
5	Mahindra CIE Automotive Limited	884,485	884,485	884,485	2,653,455	3,272,595	3,272,595	3,272,595	3,272,595
6	Mahindra Hinoday Industries Limited	1,768,970	1,768,970	1,768,970	-	-	-	-	-
7	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	6,191,395
8	RL Steel & 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
9	India Steel Works Linniled	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382
10	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
11	Cosmo Films Limited	2,299,661	2,299,661	2,299,661	-	-	-	-	-
12	Mahalaxmi TMT private Limited	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669
13	Hindustan Petroleum Corporation Limited	3,891,734	3,891,734	7,783,468	7,783,468	7,783,468	7,783,468	7,783,468	7,783,468
14	Lupin Limited	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237
15	Graphite India Ltd	2,476,558	2,476,558	2,476,558	2,476,558	2,476,558	2,476,558	2,476,558	2,476,558
16	Facor Steels Ltd	884,485	884,485	884,485	884,485	884,485	884,485	884,485	884,485
17	Air Liquide India Holding Pvt Ltd	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382
18	Orchid Chemicals and Pharmaceuticals Ltd	707,588	707,588	707,588	707,588	707,588	707,588	707,588	707,588
19	Spentex Industries Ltd	2,983,716	2,983,716	2,983,716	2,983,716	2,983,716	2,983,716	2,983,716	2,983,716
20	Pudumjee Paper Products Ltd	-	1,415,176	1,415,176	1,415,176	1,415,176	1,415,176	1,415,176	1,415,176
21	KSK Energy Ventures Ltd	39,153,495	37,738,319	32,166,064	34,111,931	33,492,791	29,777,954	26,947,602	26,947,602
22	Ramsons Industries Ltd	-	-	972,933	1,149,830	1,149,830	1,149,830	1,149,830	1,149,830
23	Ramsons Castings Pvt Ltd	-	-	707,588	884,485	884,485	884,485	884,485	884,485
24	ACG Associated Capsules Pvt Ltd	-	-	-	-	-	1,238,279	1,238,279	1,238,279
25	Inox Air Products Pvt Ltd	-	-	-	-	-	1,768,970	1,768,970	1,768,970
26	Asahi India Glass Ltd	-	-	-	-	-	707,588	707,588	707,588
27	Hindalco Industries Limited	-	-	-	-	-	-	2,830,352	2,830,352
	Total equity shares [nos]	105,076,818	105,076,818	105,076,818	105,076,818	105,076,818	105,076,818	105,076,818	105,076,818
	Total equity shares at company level [nos]	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146
	Share Holding of Captive Consumers	26.00%	26.00%	26.00%	26.00%	26.00%	26.00%	26.00%	26.00%

29 As is evident from the above Table outlining the shareholding details, the Commission notes following changes in the shareholding pattern during the FY 2016-17:

- i. There are total 8 Shareholding Certificates submitted by SWPGL (1 Shareholding certificates as on 1 April 2016 was submitted along with the Petition; 7 other Shareholding certificates were submitted in response to clarification sought by the Commission from SWPGL)
- 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 7 (excluding Mahindra Sanyo at Sr. No. 5) has remained constant throughout the year.

30 As regards the changes in the shareholding pattern during the year and the consumption requirements, the respondents have raised the following key issues:

- i. Timely intimation of the changes in the shareholding pattern during the year to the Distribution Licensees including the actual date of change of shareholding.
- ii. Selective consideration of shareholders while demonstrating compliance to the shareholding and consumption requirements.
- iii. Non-compliance with the shareholding requirement at the beginning of the year.

Timely intimation of the changes in the shareholding pattern during the year to the Distribution Licensees

- 31 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.
- 32 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.
- 33 In this regard, it is important to note that the MERC (Distribution Open Access) Regulations, 2016 (which is the applicable Regulation for FY 2016-17) 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.
- 34 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.**”*
- 35 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.

- 36 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.
- 37 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.
- 38 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."

- 39 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 to 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.”

- 40 SWPGL, as part of its rejoinder / reply to clarifications, has indicated the dates on which the Power Delivery Agreement (PDA) / Power Purchase Agreements (PPA) were signed with the captive users and the date on which the OA was granted by the Distribution Licensees. It has also mentioned that as and when new captive users signed PPA/PDA, the change in the shareholding along with OA applications for such new captive consumer and revised Auditor certificate has been furnished to Distribution Licensees. 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. (e.g. in case of HPCL, SWPGL has submitted that the reason why the CA certificate dated 9 March 2017 has not been submitted to TPC-D was because there was no change in the shareholding of HPCL, who is the only consumer in the distribution area of TPC-D and hence the submission of the CA certificate dated 9 March 2017 does not bring any material change in so far as the status of HPCL is concerned.)
- 41 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 and hence, change in 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 been granted open access permissions under Section 9 to the captive users is also important as it has the 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. 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.

Selective consideration of Shareholders and non-compliance with the shareholding requirement at the beginning of the year

- 42 The next issue raised by the Respondents is related to selective consideration of shareholders while demonstrating compliance with the shareholding and consumption requirements. The Respondents have contended that while seeking OA, SWPGL/ its consumers had by way of the CA Certificates portrayed a total of 27 Captive Users, based on which permission under Section 9 of the EA was granted. However, in the present Petition, only 15 of the aforesaid 27 Captive Users have been selected for the purpose of demonstrating compliance of Rule 3. While doing so, SWPGL has excluded those Captive Users who were not only granted OA under Section 9, but have also consumed energy during the year, albeit not in proportion to their equity shareholding (i.e., failed the test of proportionality). These Captive Users (viz., RL Steel and India Steel) have enjoyed the benefit of not having paid CSS and other applicable charges to the Distribution Licensee.
- 43 The Commission has examined the above stated issue and notes that SWPGL submitted multiple shareholding certificates during the FY 2016-17. At the start of FY 2016-17, as per the shareholding certificates submitted by SWPGL, there were a total of 20 Captive Users/ Shareholders having the equity share capital of 26%. Based on this certificate, the Captive Users/Shareholders applied for OA from the Respondents/Distribution Licensees. During the year, the Captive Users/ Shareholders were added and in some cases, the shareholding of some of the Captive users/Shareholders underwent change and accordingly, at the end of the year, there were 25 Captive Users/ Shareholders having the equity share capital of 26%. However, on scrutiny of the Petition, it was observed that for the purpose of the captive status determination, SWPGL, in the present Petition, has considered the equity shares details and consumption details for only 15 Captive Users/ Shareholders.
- 44 Furthermore, in addition to 15 captive users, there are two Captive Consumers viz. RL Steel and India Steel who have sought OA under Section 9 of the EA and have also consumed energy for a few months during the FY 2016-17, however, they have not been considered by SWPGL for the purpose of determination of captive status. Rest of the captive users/shareholders have not sought OA during the year nor have they consumed any energy during the FY 2016-17.
- 45 Accordingly, SWPGL's submission at the beginning of the year for seeking OA from the Distribution Licensees based on shareholding certificate with 20 captive consumers is

mis-leading. While the Distribution Licensees provided permission for OA under Section 9 of the EA considering the certificate with higher number of captive consumers/ shareholders, it will be prudent to consider either 15 or 17 captive consumers who have actually consumed energy during the year and more so after seeking OA permission under Section 9. Considering the captive users mentioned in the shareholding certificate who have not consumed energy during the year will not serve any purpose as they will anyways not meet the proportionality condition for consumption during the year. This is also similar to the approach taken by the Commission in its Order in Case No. 101 of 2014 and Case No. 77 of 2015 wherein consumers who had not consumed any energy during year were not considered for the purpose of examining compliance with the captive status requirements. Accordingly, the Commission deemed it appropriate to proceed with examination of two scenarios in this context i.e. examining compliance considering 15 captive users and 17 captive users.

- TABLE ON NEXT PAGE –

Scenario 1 – Analysis considering 15 captive users

46 The table below outlines the details of shareholding across the year considering the 15 number of consumers considered by SWPGL in its submission for the purpose of establishing captive status.

Table 22: Shareholding details for the entire year of 15 shareholders considered by SWPGL for the purpose of determination of captive status

Sr. No.	Name of 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	
		(As on 1 April 2016)		(As on 10 May 2016)		(As on 8 July 2016)		(As on 10 November 2016)		(As on 9 December 2016)		(As on 9 January 2017)		(As on 9 March 2017)		(As on 31 March 2017)	
		No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity
1	Viraj Profiles Ltd	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	23,298,938	5.77	23,298,938	5.77	23,298,938	5.77
2	Bebitz Flanges Works Private Limited	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07
3	Mahindra & Mahindra Limited	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48
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	1,238,279	0.31	1,238,279	0.31	1,238,279	0.31
5	Mahindra Sanyo Special Steel 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	6,191,395	1.53	6,191,395	1.53	6,191,395	1.53
6	Mahalaxmi TMT Pvt. Ltd.	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95
7	Lupin Ltd.	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	3,007,237	0.74	3,007,237	0.74	3,007,237	0.74
8	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd)	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	3,272,595	0.81	3,272,595	0.81	3,272,595	0.81	3,272,595	0.81
9	Hindustan Petroleum Corporation Ltd.	3,891,734	0.96	3,891,734	0.96	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	7,783,468	1.93
10	Pudumji Paper Product Ltd.	-	-	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35
11	Ramson Industries Ltd.	-	-	-	-	972,933	0.24	1,149,830	0.28	1,149,830	0.28	1,149,830	0.28	1,149,830	0.28	1,149,830	0.28
12	Ramson Castings Ltd.	-	-	-	-	707,588	0.18	884,485	0.22	884,485	0.22	884,485	0.22	884,485	0.22	884,485	0.22
13	ACG Associated Capsules Pvt Ltd.	-	-	-	-	-	-	-	-	-	-	1,238,279	0.31	1,238,279	0.31	1,238,279	0.31
14	Inox Air Products Pvt Ltd.	-	-	-	-	-	-	-	-	-	-	1,768,970	0.44	1,768,970	0.44	1,768,970	0.44
15	Asahi India Glass Ltd.	-	-	-	-	-	-	-	-	-	-	707,588	0.18	707,588	0.18	707,588	0.18
Total shareholding of Captive Users		50,379,920	12.47	51,795,096	12.82	57,367,351	14.19	57,721,145	14.28	58,340,285	14.44	62,055,122	15.35	62,055,122	15.35	62,055,122	15.35
Total shares at company level		404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00

Note: The shareholding of Mahindra CIE Automotive Limited also includes the Shareholding of Mahindra Hinoday Ltd. which was subsequently merged. The % of Total equity is a computed number based on the information available regarding the number of shares.

- 47 It is evident from the above table that the percentage equity held by Captive Users at the start of year is below 13% (equivalent to below 26%) which subsequently increased after new Captive Users/ Shareholders were added during the year. Thus, the aggregate equity holding of the Captive Users in the earlier months of the FY 2016-17 (upto 7 July, 2016) would be less than 13% which is the minimum threshold requirements at the overall Company level (i.e. less than 26% of the Captive Units 3 and 4).
- 48 As discussed in preceding part of this Order, the first condition pertaining to the captive users holding at least 26% equity shares with voting rights is the ***condition precedent*** and is **qualification requirement** which has to be fulfilled before the generation plant is to be termed as a CGP. Accordingly, this requirement of maintaining a shareholding of atleast 26% in the captive generating plant by the captive users / shareholders is the primary qualification requirement for declaring a generating plant as a CGP and hence it is mandatory that this qualification requirement has to be complied with by the CGP at any point of time during the year. This is also the spirit of the Rule 3 (1) (a) (i) of the Electricity Rules, 2005.
- 49 The Commission in its Order in Case No. 77 of 2015 had also clearly stated that the requirement of at least 26% shareholding has to be met throughout the financial year i.e. the shareholding by the captive users in the CGP should not fall below 26% at any point of time during the financial year. The relevant paragraph from the Order is reproduced below for reference.
- “18.6. The Commission also notes that, while in Table 5 of its Petition SWPL has shown the shareholding of India Steel Works Ltd. as 0.15%, it actually works out to 0.29% as per the Audited Shareholding Certificates as on 1 April, 11 December and 15 December, 2014. Hence, the Commission considers 0.29% to be its shareholding for assessment against the captive status criteria for FY 2014-15. This information is important to establish that the equity shareholding of the Captive Users in Units 3 and 4 of the Plant did not fall below 26% at any time during the financial year.”*
- 50 Recently this requirement has been clearly identified as a mandatory requirement by the DERC also in its “Procedure for verification of Captive Generating Plant (CGP) status in accordance to requirements in Rule 3 of the Electricity Rules, 2005” notified vide Order dated 25 August, 2020. The relevant para has been reproduced at preceding part of this Order.
- 51 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” has upheld the requirement for ensuring the minimum shareholding of at least 26% by the Captive Users / shareholders at any point of time during the year. The relevant paragraphs from the Order is reproduced below:

“7.6.2 The CGP users/owners shall ensure that at any point of time in a financial year not less than twenty six per cent of the ownership in the generating station/unit or units identified for captive use in the generating station is held by the captive users and they consume not less than 51% of the electricity generated on annual basis.

7.6.3 If there is one captive user, the user shall hold not less than 26% of the equity share capital with voting rights throughout the year and shall consume not less than 51% of the electricity generated on an annual basis for captive use. In case of AoP, the captive users shall hold in aggregate not less than 26% of the ownership/paid up equity share capital with voting rights throughout the year and consume not less than 51% of the electricity generated on annual basis for captive use in proportion to their share of the power plant within the variation not exceeding 10%. In other words, proportionality test shall be calculated for 51% of aggregate generation and not for consumption beyond 51% by captive consumers.

....

7.6.6 In the case of SPV under Rule 3(1)(b), the captive user(s) shall hold in aggregate not less than 26% of the proportionate paid up equity share capital with voting rights of the units identified for captive use (i.e. the proportionate of the Equity of the company related to the generating unit or units identified as the CGP) throughout the year and shall consume not less than 51% of the aggregate electricity generated on annual basis in proportion to their shares in the units identified for captive use and not with reference to the generating station/company, as a whole.”

- 52 It is also to be noted that in the past, in Case No. 77 of 2015, when the Commission had considered the weighted average shareholding for some of the captive users whose shareholding had changed during the year, the consolidated shareholding of the captive users / shareholders during year did not go below the threshold limit of 13% and thus the requirements under the Electricity Rules were complied. Similarly, in Case No. 159 of 2016, the shareholding of the CGP was above the minimum threshold limit of 13% throughout the year.
- 53 **Accordingly, based on the available information, the Commission concludes that the aggregate equity shareholding of the Captive Users (15 numbers) does not meet the first requirement of the Electricity Rules inasmuch they held less than 26% equity shareholding in the CGP Units 3 and 4 at the beginning of the year and till 7 July, 2016 when the shareholding increased to 14.19% which is higher than the minimum requirement of 13%. Accordingly, SWPGL fails to qualify as a CGP under the first scenario considering 15 numbers of captive users which were considered by SWPGL’s in its own submission.**
- 54 **Based on the available information, the Commission concludes that the aggregate equity shareholding of the Captive Users does not meet the first requirement of the Electricity Rules, 2005 inasmuch as they held less than 26% equity shareholding in the CGP Units 3 and 4 during part of the year.**

- 55 Considering that all the conditions prescribed in Rule 3 of the Electricity Rules, 2005 are mandatory for qualifying as a CGP, non-compliance with one of the conditions translates into the generating stations being denied the CGP status and the captive consumers are not eligible to get the consequent benefits of the plant being declared as a CGP. **Accordingly, under the present scenario 1, the evaluation of the compliance with the annual 51% minimum consumption requirements and the proportionality of consumption by the 15 captive users / shareholders will not be required.**

Scenario 2: Analysis considering 17 Captive Users

- 56 Proceeding with the examination of compliance with the captive status requirements under the second scenario i.e. considering 17 captive users, it is observed that SWPGL in its submission has considered only 15 captive users for demonstrating compliance with the requirements under Rule 3 of the Electricity Rules, 2005. TPC-D has contended that SWPGL and Captive Users contention that the Captive Users (such as RL Steels & India Steel – who have not met the captive requirements) should not be considered as part of the captive mix demonstrating 26% equity and 51% consumption, as was done in Case No. 101 of 2014 is fallacious and misleading. While highlighting that the Commission's Order in Case No. 101 of 2014 and the subsequent Judgment in Appeal No.252 of 2014 have been challenged by MSEDCL and is pending adjudication before the Hon'ble Supreme Court, the facts of the Case No. 101 of 2014 and the present case are on a totally different footing.
- 57 The key difference in the two cases highlighted by TPC-D pertain to the fact that in Case No. 101 of 2014, certain users had sought OA under Section 9 of the EA, however they did not consume any energy from captive source. However, in the present case, RL Steel and India Steel have not only sought OA under Section 9 of the EA but also have consumed power from SWPGL. They have also enjoyed the benefit of not having paid CSS and other applicable charges to the Distribution Licensee. Accordingly, in the present case, these captive users should be considered as part of the captive matrix for the purpose of meeting the Rule of Proportionality and SWPGL cannot exclude them as per its convenience.
- 58 The Commission has examined the differences in the two cases highlighted by the Respondents and acknowledges the same. Apart from the difference in the consumption aspect, in the present case, the two captive users have also enjoyed the benefit of not having paid the CSS to the Distribution Licensees for the energy consumed. Accordingly, the intent of these consumers was to consume the energy from CGP and avail the benefits thereof. However, while these captive consumers continued to be shareholders in the CGP throughout the year, they stopped consuming energy during the year.
- 59 The intent of the Commission in the Case No. 101 of 2014 behind allowing exclusion of the two captive users while examining the compliance with the CGP requirements was to ensure that other captive consumers who are complying with the requirements are not

unduly penalized on account of irresponsible behaviour of some of the consumers. However, it is also important to note that the remaining captive consumers met all the requirements for captive status and thus the CGP status was declared by the Commission for FY 2013-14.

- 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 do 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 to the requirements prescribed in the Electricity Rules, 2005.
- 61 Such approach by the CGP has also been observed in the present case as well wherein the OA was obtained under section 9 by submitting a shareholding certificate which has captive consumers who never consumed energy from the CGP during the year. Further, non-inclusion of the two captive users viz. RL Steels & India Steel further led to the captive holding falling below the threshold limit of 13% after considering the shareholding of only 15 captive consumers as discussed in preceding paras of the Order.
- 62 Further, SWPGL has also not provided any strong justification for exclusion of these two captive users other than referring to the Commission's stand in Case No. 101 of 2014 inspite of specific objections raised by TPC-D and MSEDCL on such exclusion.
- 63 Accordingly, considering the difference in the facts of the present case and those in Case No. 101 of 2014, and also the concerns highlighted in the preceding para regarding the sanctity of the OA approval process for captive consumers under Section 9 of the EA, the **Commission is of the view that the two consumers, viz. RL Steels & India Steel, should be considered as part of the matrix considered by SWPGL for the purpose of establishing compliance to the requirements specified in Rule 3 of the Electricity Rules, 2005.**

TABLE ON NEXT PAGE....

64 Accordingly, the shareholding details considering 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.	Name of 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	
		(As on 1 April 2016)	(As on 10 May 2016)	(As on 8 July 2016)	(As on 10 November 2016)	(As on 9 December 2016)	(As on 9 January 2017)	(As on 9 March 2017)	(As on 31 March 2017)								
1	Viraj Profiles Ltd	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	23,298,938	5.77	23,298,938	5.77	23,298,938	5.77
2	Bebitz Flanges Works Private Limited	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07	265,346	0.07
3	Mahindra & Mahindra Limited	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48	1,945,867	0.48
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	1,238,279	0.31	1,238,279	0.31	1,238,279	0.31
5	Mahindra Sanyo Special Steel 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	6,191,395	1.53	6,191,395	1.53	6,191,395	1.53
6	Mahalaxmi TMT Pvt. Ltd.	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95	7,887,669	1.95
7	Lupin Ltd.	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	3,007,237	0.74	3,007,237	0.74	3,007,237	0.74
8	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd)	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	3,272,595	0.81	3,272,595	0.81	3,272,595	0.81	3,272,595	0.81
9	Hindustan Petroleum Corporation Ltd.	3,891,734	0.96	3,891,734	0.96	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	7,783,468	1.93
10	Pudumji Paper Product Ltd.	-	-	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35	1,415,176	0.35
11	Ramson Industries Ltd.	-	-	-	-	972,933	0.24	1,149,830	0.28	1,149,830	0.28	1,149,830	0.28	1,149,830	0.28	1,149,830	0.28
12	Ramson Castings Ltd.	-	-	-	-	707,588	0.18	884,485	0.22	884,485	0.22	884,485	0.22	884,485	0.22	884,485	0.22
13	ACG Associated Capsules Pvt Ltd.	-	-	-	-	-	-	-	-	-	-	1,238,279	0.31	1,238,279	0.31	1,238,279	0.31
14	Inox Air Products Pvt Ltd.	-	-	-	-	-	-	-	-	-	-	1,768,970	0.44	1,768,970	0.44	1,768,970	0.44
15	Asahi India Glass Ltd.	-	-	-	-	-	-	-	-	-	-	707,588	0.18	707,588	0.18	707,588	0.18
16	R.L.Steel and Energy Ltd	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66	2,653,455	0.66
17	India Steel Works Ltd	1,061,382	0.26	1,061,382	0.26	1,061,382	0.26	1,061,382	0.26	1,061,382	0.26	1,061,382	0.26	1,061,382	0.26	1,061,382	0.26
Total shareholding of Captive Users		54,094,757	13.39	55,509,933	13.74	61,082,188	15.11	61,435,982	15.20	62,055,122	15.35	65,769,959	16.27	65,769,959	16.27	65,769,959	16.27
Total shares at company level		404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00	404,140,146	100.00

Note: The shareholding of Mahindra CIE Automotive Limited also includes the Shareholding of Mahindra Hinoday Ltd. which was subsequently merged. 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).

- 65 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, under the Scenario 2 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).**
- 66 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 9 to Table 16, Table 18 and Table 19** 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.
- 67 In view of the above, the next issue to be examined is whether the Captive Users of SWPGL satisfied the following in FY 2016-17:
- 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?
- 68 The Commission notes that SWPGL has considered net generation while demonstrating compliance to the consumption requirement. However, as laid down under the 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 2016-17 for the purpose of assessing compliance to the consumption and proportionality requirements which is 711.39 MUs. As against this, the aggregate consumption of the 17 captive consumers is 1,344.95 MUs and **accordingly, SWPGL is meeting the overall consumption requirements specified in the Rule 3 of the Electricity Rules, 2005.**
- 69 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.
- 70 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) fail to fulfil the captive criteria.

- 71 In the first method, TPC-D has undertaken the assessment of Captive Status for FY 2016-17 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 eight different scenarios (**Table 9** to **Table 16** of this Order) considering the 8 different CA's Certificate issued on behalf of SWPGL during FY 2016-17 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 all the scenarios and thus SWPGL is failing the test of establishing captive status.
- 72 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.

- 73 TPC-D has also assessed the captive status considering the weighted average shareholding of SWPGL for the FY 2016-17 (**Table 18** and **Table 19**) in line with the approach adopted by the Commission in its Corrigendum Order in Case No. 77 of 2015 dated 12 March 2018 and Order in Case No. 101 of 2014 dated 20 August 2014. 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 2016-17. 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 2016-17 taking cognizance of the time period for which the captive user held shares in the CPG 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 CPG. 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 CPG 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.
- 74 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 20** 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.
- 75 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.”

- 76 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.
- 77 MSEDCL in its submission had also stated that prima facie it is observed from the data and calculations submitted by SWPGL that four Captive users (viz. M/s India Steel Works Ltd., M/s Asahi India Glass Ltd., M/s Inox Air Products Ltd. and M/s ACG Associates Ltd.) who have availed OA have failed to meet the proportionality consumption criteria. However, MSEDCL has not substantiated its submission with any supporting documents or computation. Accordingly, the Commission cannot examine the validity of these claims.
- 78 MSEDCL has also contested the claim of SWPGL that it has not considered the annual generation for calculation of proportionate consumption in respect of four nos. of entities on account of delay in grant of OA and stated that such claim is completely malafide. MSEDCL has provided information regarding the months in which the OA permissions were first sought by the SWPGL and the month in which the permissions were granted by MSEDCL. It is evident from the information submitted by MSEDCL that the claims made by SWPGL are not correct and the permissions have been granted by MSEDCL without any delay as claimed by SWPGL.
- 79 Accordingly, the Commission has proceeded to assess the captive status considering the weighted average shareholding of SWPGL for FY 2016-17 for 17 captive users / shareholders. The table below outlines the weighted average shareholding of SWPGL for the FY 2016-17.

Table 24: Weighted average shareholding for SWPL for the FY 2016-17 considering 17 consumers

Sr. No.	Name of 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	Weighted Average No. of Equity Shares of Rs. 10/- each	% Shareholding (Weighted Average)
		(As on 1 April 2016)	(As on 10 May 2016)	(As on 8 July 2016)	(As on 10 November 2016)	(As on 9 December 2016)	(As on 9 January 2017)	(As on 9 March 2017)	(As on 31 March 2017)	FY 2016-17	FY 2016-17
1	Viraj Profiles Ltd	23,298,938	23,298,938	23,298,938	23,298,938	23,298,938	23,298,938	23,298,938	23,298,938	23,298,938	5.77%
2	Bebitz Flanges Works Private Limited	265,346	265,346	265,346	265,346	265,346	265,346	265,346	265,346	265,346	0.07%
3	Mahindra & Mahindra Limited	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	1,945,867	0.48%
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	1,238,279	1,238,279	0.31%
5	Mahindra Sanyo Special Steel Limited	6,191,395	6,191,395	6,191,395	6,191,395	6,191,395	6,191,395	6,191,395	6,191,395	6,191,395	1.53%
6	Mahalaxmi TMT Pvt. Ltd.	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	7,887,669	1.95%
7	Lupin Ltd.	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	3,007,237	0.74%
8	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd)	2,653,455	2,653,455	2,653,455	2,653,455	3,272,595	3,272,595	3,272,595	3,272,595	2,845,134	0.70%
9	Hindustan Petroleum Corporation Ltd.	3,891,734	3,891,734	7,783,468	7,783,468	7,783,468	7,783,468	7,783,468	7,783,468	6,738,564	1.67%
10	Pudumji Paper Product Ltd.	-	1,415,176	1,415,176	1,415,176	1,415,176	1,415,176	1,415,176	1,415,176	1,263,965	0.31%
11	Ramson Industries Ltd.	-	-	972,933	1,149,830	1,149,830	1,149,830	1,149,830	1,149,830	780,527	0.19%
12	Ramson Castings Ltd.	-	-	707,588	884,485	884,485	884,485	884,485	884,485	586,426	0.15%
13	ACG Associated Capsules Pvt Ltd.	-	-	-	-	-	1,238,279	1,238,279	1,238,279	278,189	0.07%
14	Inox Air Products Pvt Ltd.	-	-	-	-	-	1,768,970	1,768,970	1,768,970	397,412	0.10%
15	Asahi India Glass Ltd.	-	-	-	-	-	707,588	707,588	707,588	158,965	0.04%
16	R.L.Steel and Energy Ltd	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	0.66%
17	India Steel Works Ltd	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	1,061,382	0.26%
Total shareholding of Captive Users		54,094,757	55,509,933	61,082,188	61,435,982	62,055,122	65,769,959	65,769,959	65,769,959	60,598,751	14.99%
Total shares at company level		404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	404,140,146	100.00%
Shareholding % - Captive Users		13.39%	13.74%	15.11%	15.20%	15.35%	16.27%	16.27%	16.27%	14.99%	14.99%

80 Considering the above weighted average equity shareholding, annual gross generation, and the **consumption figures grossed up with the Auxiliary Consumption** for FY 2016-17 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 2016-17 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 2016-17	% 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 Ltd	23,298,938	5.77%	38.45%	711.39	273.52	246.16	300.87	337.73	Yes
2	Bebitz Flanges Works Private Limited	265,346	0.07%	0.44%	711.39	3.12	2.80	3.43	11.63	Yes
3	Mahindra & Mahindra Limited	1,945,867	0.48%	3.21%	711.39	22.84	20.56	25.13	99.92	Yes
4	Mahindra Vehicle Manufacturers Limited	1,238,279	0.31%	2.04%	711.39	14.54	13.08	15.99	38.44	Yes
5	Mahindra Sanyo Special Steel Limited	6,191,395	1.53%	10.22%	711.39	72.68	65.41	79.95	93.13	Yes
6	Mahalaxmi TMT Pvt. Ltd.	7,887,669	1.95%	13.02%	711.39	92.60	83.34	101.86	125.97	Yes
7	Lupin Ltd.	3,007,237	0.74%	4.96%	711.39	35.30	31.77	38.83	117.57	Yes
8	Mahindra CIE Automotive Limited (formerly known as Mahindra Forgings Ltd)	2,845,134	0.70%	4.70%	711.39	33.40	30.06	36.74	77.52	Yes
9	Hindustan Petroleum Corporation Ltd.	6,738,564	1.67%	11.12%	711.39	79.11	71.20	87.02	333.97	Yes
10	Pudumji Paper Product Ltd.	1,263,965	0.31%	2.09%	711.39	14.84	13.35	16.32	42.37	Yes
11	Ramson Industries Ltd.	780,527	0.19%	1.29%	711.39	9.16	8.25	10.08	24.35	Yes
12	Ramson Castings Ltd.	586,426	0.15%	0.97%	711.39	6.88	6.20	7.57	14.12	Yes
13	ACG Associated Capsules Pvt Ltd.	278,189	0.07%	0.46%	711.39	3.27	2.94	3.59	7.00	Yes
14	Inox Air Products Pvt Ltd.	397,412	0.10%	0.66%	711.39	4.67	4.20	5.13	8.92	Yes
15	Asahi India Glass Ltd.	158,965	0.04%	0.26%	711.39	1.87	1.68	2.05	1.86	Yes
16	R.L.Steel and Energy Ltd	2,653,455	0.66%	4.38%	711.39	31.15	28.03	34.26	6.08	No
17	India Steel Works Ltd	1,061,382	0.26%	1.75%	711.39	12.46	11.21	13.71	4.39	No
Total - Captive Users		60,598,751	14.99%	100%		711.39	640.25	782.53	1,344.95	No
Total shares at company level		404,140,146	100.00%							

- 81 The generation and consumption details are based on the information made available by SWPGL. 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.
- 82 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.
- 83 Based on the above computation, it is evident that two of the 17 captive users fail the proportionality test.**
- 84 SWPGL in its Petition has submitted that the consequences of non-fulfilment of proportionality are that the consumer or consumers who do not fulfil the proportional consumption would be treated as non-captive consumers and not the consumers who have fulfilled the proportional consumption criteria. Otherwise, it would result in a situation wherein the default of compliance by one consumer would prejudice all the other the other consumers, which is not correct. While the minimum percentages of consumption and ownership is a collective responsibility of the captive consumers and therefore default in the same would result in the entire consumption by all consumers being termed non-captive, the proportionality to be maintained is the responsibility of individual consumers. It may be possible in a given year that some consumers maintain proportionality while one or more may not. The default of one or more consumers in maintaining proportionality cannot affect the consumers who maintain proportionality, when the collective responsibility of maintaining the minimum percentages as per clauses (a) and (b) of Sub-Rule (1) is fulfilled.
- 85 SWPGL has also submitted that the above position has been accepted and held by the KERC in the case of JSW Steel Limited v. Chief Electricity Inspector, OP No. 33 of 2010 dated 7 July, 2011. Further, the Appeal filed by the Distribution Licensees against the above Order was dismissed by the Hon'ble ATE, further holding that in the facts of the said case, the proportionality itself would not be applied since it was an operating company and not an SPV.
- 86 As against this, the TPC-D has submitted 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, which provides that 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. Being an SPV, the Captive Users of SWPGL in addition to meeting the Ownership and Consumption Requirement, are required to meet the Rule of Proportionality as well i.e.,

each Captive User/ Shareholder is obligated to consume in proportion to its shareholding. It is not the intent of Rule 3 that the shareholding be averaged out in order to meet the consumption.

- 87 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.
- 88 The Commission in the past 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.

- 89 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.”

90 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 Rule 3, 2005 for Association of Persons shall also be applicable for SPV.

91 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 to 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.

92 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 two defaulting captive consumers are excluded, then the remaining 15 captive consumers do not meet the requirement of holding at least 26% equity shareholding in the CGP throughout the year. This was already concluded by the Commission in **Paras 53 and 54** of this Order. 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.

- 93 Hence, in the present case in scenario 2, the SWPGL could not satisfy the condition of Rule 3, viz., 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%.
- 94 **Accordingly, the Commission holds that SWPGL does not fulfil the captive status criteria for FY 2016-17 in either of the scenarios i.e. Scenario 1 with 15 Captive Users or Scenario 2 with 17 Captive Users. Therefore, for FY 2016-17, 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 shareholders of SWPGL who have consumed electricity during FY 2016-17 as per the provisions of Electricity Rules 2005 and EA.**

ORDER

1. **Case No. 175 of 2017 dismissed along with Miscellaneous Application Nos. 12, 15, 17, 19, 21, 23, 29 and 30 of 2019.**
2. **The Commission holds that Sai Wardha Power Generation Ltd. does not fulfil the captive status criteria for FY 2016-17. 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 2016-17 as per the provisions of Electricity Rules, 2005 and the Electricity Act, 2003.**

Sd/
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

