

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005  
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**Case No. 76 of 2017**

**Dated: 16 May, 2017**

**CORAM: Shri Azeez M. Khan, Member  
Shri Deepak Lad, Member**

**In the matter of  
Petition of M/s. Sai Wardha Power Generation Limited for directions to Maharashtra  
State Electricity Distribution Co. Ltd. in regard to the terms of Open Access granted for  
the period after 01.04.2017 and in regard to retrospective cancellation of Short Term  
Open Access for the month of March, 2017.**

M/s Sai Wardha Power Generation Limited

.....Petitioner

V/s

- (1) Maharashtra State Electricity Distribution Co. Ltd.
- (2) M/s Ramsons Industries Ltd.
- (3) M/s Ramsons Castings Private Ltd.
- (4) M/s Pudumji Paper Product Ltd.
- (5) M/s Inox Air Products Private Ltd.
- (6) M/s Mahindra CIE Automotive Ltd.
- (7) M/s ACG Associated Capsules Pvt. Ltd.
- (8) M/s Asahi India Glass Ltd.
- (9) M/s Hindalco Industries Ltd.

.....Respondents

**Appearance:**

For the Petitioner

- : 1) Ms. Swapna Seshadri (Adv)  
2) Ms. Dipali Sheth (Adv)

For the Respondents

- : 1) Shri. Ashish Singh (Adv)  
2) Shri. Amit Bute (Rep)  
3) Shri. V.K. Tumane (Rep)  
4) Shri. Dattatraya D. (Rep)  
5) Shri Gopal Panigrahi (Rep)

Authorized Consumer Representative:

Dr. Ashok Pendse, TBIA

## Daily Order

Heard the Advocates/ Representatives of the Petitioner, Respondents and Authorized Consumer Representative.

1. Advocate of the Petitioner stated that:

(i) Retrospective Cancellation of Short Term Open Access (STOA):

- (a) On 20 February, 2017, MSEDCL granted STOA to the Petitioner's captive consumers for the period of 1 March, 2017 to 31 March, 2017, and this was operationalised from 1 March.
- (b) The Petitioner has been declaring availability and scheduling the power for its captive consumers. MSEDCL, vide its letter dated 31 March, 2017, informed the Petitioner that, as power was not sourced by some of its consumers for a period of more than 3 days, there is a violation of Regulation 11.10 of the Distribution Open Access Regulations, 2016 (DOA Regulations, 2016) and that, therefore, that the Open Access permission for the said period is cancelled retrospectively w. e. f. 23 March, 2017.
- (c) Regulations 11.9 and 11.10 of DOA Regulations, 2016 provides that cancellation of the allocated capacity can only be done after giving Notice to the parties. MSEDCL has not issued any Notice regarding the alleged non - utilization of the allocated capacity. Further, the provisions of Regulations 11.9, 11.10 and 11.11 of DOA Regulations, 2016 would apply only when there are pending applications from other consumers for STOA. In the event of the allotted Open Access quantum getting cancelled for non utilization, it can be allotted to other STOA applicants in queue.
- (d) Vide letter dated 4 April, 2017, Petitioner requested MSEDCL to withdraw the letter dated 31 March, 2017 regarding retrospective cancellation of STOA. Vide letter dated 19 April, 2017, MSEDCL replied that the electricity supplied as per schedule to the consumers would not be re-accounted for STOA consumers and asked the Petitioner to provide the details of the consumers availing MTOA during the period from 23.03.2017 to 31.03.2017 so that the power scheduled from 23.03.2017 shown against STOA can be considered for giving credit to MTOA captive consumers of the Petitioner for the month of March, 2017.
- (e) Petitioner is a Group Captive Generating Plant and required to maintain proportionate supply of electricity to its consumers. Retrospective cancellation and appropriating STOA power to MTOA would adversely affect the proportionate consumption by the captive consumers. This action of MSEDCL is only to ensure that the captive criteria are not achieved at the end of the year,

and to benefit by levy of Cross subsidy Surcharge (CSS), Additional surcharge and other charges from the captive consumers of the Petitioner as a result.

(ii) Wrongful curtailment of Open Access capacity on account of alleged system constraint issues:

- (a) For the month of May, 2017 the Petitioner had applied for STOA for supply to its consumers, including the Respondents No. 3 to 9. STOA was applied for based on the power requirements of the individual consumers. The consumers have also maintained their sanctioned Contract Demand with MSEDCL. The total drawal of power of the consumers from MSEDCL and also from the Petitioner was to the extent of Contract Demand. Undertaking to that effect was also given to MSEDCL.
- (b) The purpose of obtaining Open Access for total drawal within the Contract Demand was to ensure that there are no issues with system constraints. The Distribution Licensee, while sanctioning Contract Demand, ensures that the system is available for supply of electricity to the extent of such Contract Demand.
- (c) The consumers have the option of taking Open Access over and above the Contract Demand. The consumers can be given Open Access with the stipulation and undertaking that the total drawal at no point of time from Open Access as well as from MSEDCL would not exceed the Contract Demand capacity.
- (d) From the STOA approval letters dated 25 April and 26 April, 2017, of MSEDCL, it is observed that MSEDCL has reduced the quantum of Open Access applied for in case of 4 consumers on its own. Moreover, MSEDCL has not granted Open Access to ACG Associated Capsules Private Ltd, Hindalco Industries Ltd, Mahindra CIE Automotive Limited and Asahi India Glass Limited.
- (e) Reduction of Contract Demand in respect of some consumers was on the ground of inadequate system capacity, including that of metering equipment. Inadequacy of the system was determined presuming that the Open Access applied for by these consumers is over and above the Contract Demand, thereby increasing the resultant power flow in the system.
- (f) The Open Access in respect of these consumers was in operation for the capacity applied for in the immediate preceding months. Thus, there was no case of system constraints.
- (g) The Petitioner requested ad-interim relief for grant of STOA for the full quantum applied for by the Petitioner for supply to its consumers subject to the total drawal

by the consumers from all sources not exceeding the Contract Demand and the metering system capacity.

2. Advocate of MSEDCL stated that:
  - a) In case of retrospective cancellation of STOA, MSEDCL admitted that it has not issued any Notice as required under the Regulations to the OA consumers before cancellation of capacity on account of non utilization of the capacity granted.
  - b) The Commission has issued Practice Directions in which the consumers have the option of taking Open Access over and above the Contract Demand. The consumers can draw power from Open Access as well as from MSEDCL, which may exceed the Contract Demand with MSEDCL. Hence, from the system constraints point of view, MSEDCL reduced the Open Access quantum.
3. To a query of the Commission, the Petitioner stated that it has given an undertaking to MSEDCL that the total drawal of the consumers from MSEDCL and from Open Access would be within the limit of Contract Demand. However, MSEDCL stated that it has not received any undertaking to that effect.
4. The Commission asked the Petitioner how MSEDCL would know that the Open Access quantum applied for by the consumer is over and above the Contract Demand or otherwise. The Petitioner replied that the previous conduct of MSEDCL in granting Open Access reveals that the quantum of Open Access applied for by the consumer is not treated as over and above the Contract Demand, and hence no case of system constraints as such has ever been cited.
5. Dr. Ashok Pendse, for Thane - Belapur Industries Association (TBIA, an Authorised Consumer Representative) stated that the interpretation and view taken by MSEDCL regarding the Contract Demand is not tenable.
6. As regards the prayer of the Petitioner for interim relief, the Commission observed that the issue has wide ramifications and there could be many other similar cases, and that hence it is not inclined to grant ad-interim relief to the Petitioner. However, the Commission directs MSEDCL to have the issues clarified before grant of Open Access to avoid future complications, by way of separate suitable undertaking or otherwise instead of unilaterally deciding the issue at its level.
7. The Commission directs MSEDCL to file its Reply within three weeks and the Petitioner to file its Rejoinder, if any, within a week, thereafter.

**The Secretariat of the Commission will communicate next date of hearing.**

Sd/-  
**(Deepak Lad)**  
**Member**

Sd/-  
**(Azeez M. Khan)**  
**Member**