

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Miscellaneous Application No. 9 of 2017 in Case No. 62 of 2017

Dated: 16 May, 2017

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

In the matter of

Miscellaneous Application of M/s Sai Wardha Power Generation Limited for Interim relief for directions to the Maharashtra State Electricity Distribution Co. Ltd in regard to the terms of Open Access granted by it for the period from 01.04.2017 to 30.04.2017.

M/s Sai Wardha Power Generation LimitedPetitioner

V/s.

Maharashtra State Electricity Distribution Co. LtdRespondent

Appearance:

For the Petitioner : 1) Ms. Swapna Seshadri (Adv)
2) Ms. Dipali Sheth (Adv)

For the Respondent : 1) Shri. Ashish Singh (Adv)
2) Shri. Amit Bute (Rep)

Authorized Consumer Representative: Dr. Ashok Pendse, TBIA

Daily Order

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

1. The Petitioner stated that:

- (a) MSEDCL has granted Short Term Open Access (STOA) for April, 2017 under Section 10 of Electricity Act, 2003 as an Independent Power Producer (IPP) on the assumption that the captive criterion would not be met by the Petitioner for the

year 2017-18 despite the fact that the Petitioner applied for OA under that as a Group CPP.

- (b) In addition, the Petitioner applied for Medium Term Open Access (MTOA) which was approved as a CPP under Section 9 of the Electricity Act, 2003. Vide letter dated 26 April, 2017, MSEDCL has revised this approval treating the Petitioner as IPP under Section 10 of the Act, for the reason that some companies mentioned in the Chartered Accountant's (CA) certificate as having equity share holding of SWPGL had not applied for Open Access for the month of April, 2017 and that the combined equity share holding of the companies availing Open Access for April, 2017 is less than 26% and that, therefore, SWPGL is not meeting the eligibility criterion for CPP for 2017-18.
- (c) The Commission, vide Order dated 28 August, 2013 in Case No. 117 of 2012, had ruled that the captive criterion could be determined only at the end of the year and on an annual basis.
- (d) Rule 3 of the Electricity Rules, 2005 provides that the captive criteria have to be decided only on annual basis. There is no requirement for all the consumers to consume electricity all the time. Further, some of the captive consumers are not within the area of operation of MSEDCL. MSEDCL is taking the position that all the 26% shareholders who are captive consumers should be located within the area of MSEDCL itself. Further, the question of retrospective revision of an approval already granted does not arise.
- (e) The Petitioner, vide letter dated 22 March, 2017, submitted the clarification to MSEDCL giving the details of the shareholders. It was also clarified that one shareholder, namely, Hindustan Petroleum Corporation Limited (HPCL) is within the area of supply of another Distribution Licensee (i.e. Tata Power Co. Ltd (TPC-D)), and together with HPCL the total shareholding is 13.60 % for the CPP Units.
- (f) Petitioner sought urgent interim orders restraining MSEDCL from the revision of Open Access permissions and levy of consequential charges by MSEDCL in the monthly bills.

2. Advocate of MSEDCL stated that:

- (a) The Petitions regarding the Group CPP status of the Petitioner for FY 2014-15 to 2015-16 are pending before the Commission.
- (b) In the past, the Petitioner had supplied power to its Open Access consumers through its IPP Unit.

- (c) Grant of interim relief would make the main Petition infructuous as the prayers in the main Petition and the Interim Application are the same. Therefore, the Commission may grant short time to MSEDCL to file its submission in the matter. Till that time, interim relief may not be granted.
3. The Advocate of the Petitioner stated that the main Petition has other prayers also. She urged the Commission to grant interim relief.
 4. The Advocate of TPC-D stated that, as some of the consumers of the Petitioner are located in the area of TPC-D, it may be impleaded in the matter, which was accepted by the Commission.
 5. The Commission directs Petitioner to implead TPC-D and R Infra-D also and serve the Petition to them immediately.
 6. The Commission directs MSEDCL, TPC-D, and R Infra - D to file their Replies within three weeks and the Petitioner to file its Rejoinder, if any, within a week thereafter, with copy to the other parties.
 7. The Commission is of the prima facie view that on both the issues of STOA and MTOA, the action on the part of MSEDCL are ad-hoc and arbitrary, and not in consonance with the provisions of the Electricity Rules and its earlier Orders with regard to determination of captive status on an annual basis at the end of the financial year, and therefore warrants the Commission's intervention for grant of interim relief. MSEDCL is, therefore, directed to treat the STOA as under CPP for April, 2017 and future months for the present set up of the CPP matrix. Similarly, MTOA for FY 2017-18 may also be treated as in respect of CPP. Hence CSS may not be levied in the monthly invoices to the Petitioner or Consumers till further orders of the Commission in this matter.

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

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member