

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005  
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**Date: 21 January 2022**

**CORAM: Sanjay Kumar, Chairperson  
I. M. Bohari, Member  
Mukesh Khullar, Member**

**Case No. 70 of 2021**

**Petition of Seeking Approval for Purchase of Over Injected Units above Contracted (Export) Capacity from Bagasse Based Co-Generation Projects.**

**MA No.23 of 2021 in Case No.70 of 2021**

**Application of Shri Datta Sakhar Karkhana (A unit of Dalmia Bharat Sugar and Industries Ltd.) seeking Impleadment of the Applicant as a Party Respondent in Case No 70 of 2021.**

**IA No.36 of 2021 in Case No.70 of 2021**

**Application of Cogeneration Association of India (CAI) seeking Impleadment of the Applicant as a Party Respondent in Case No 70 of 2021.**

**&**

**IA No.38 of 2021 in Case No.70 of 2021**

**Application of Maharashtra State Electricity Distribution Co. Ltd filed by amended Petition in Case No. 70 of 2021.**

Maharashtra State Electricity Distribution Co. Ltd (MSEDCL)	: Petitioner & Applicant No.3
M/s Shri Datta Sakhar Karkhana (SDSK)	: Applicant No.1
Cogeneration Association of India (CAI)	: Applicant No.2

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| <ol style="list-style-type: none"><li>1. M/s. Baliraja Sakhar Karkhana Ltd.</li><li>2. M/s. Shree Dudhganga Vedganga Sahakari Sakhar Karkhana Ltd.</li><li>3. M/s. Green Power Sugar Ltd.</li><li>4. M/s. Jai Hind Sugar Pvt. Ltd.</li><li>5. M/s. Krantiagrani Dr. G. D. Bapu Lad</li><li>6. M/s. Rajaram Bapu Patil Sahakari Sakhar Karkhana Ltd.</li></ol> | } : Proposed Respondents<br>in Amended Petition |
|---|---|

7. M/s. Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd.
8. M/s. Shri Datta Sakhar Karkhana
9. M/s. Someshwar Sahakari Sakhar Karkhana Ltd
10. M/s. Urjankur Shree Datta Power Co. Ltd.
11. M/s. Vithalrao Shinde Sahakari Sakhar Karkhana Ltd.
12. M/s. Daund Sugar Ltd.
13. M/s. Purna Sahakari Sakhar Karkhana Ltd.
14. M/s. Baramati Agro Ltd.
15. M/s. Sahakar Maharshi Shankarrao Mohite-Patil Sahakari Sakhar Karkhana Ltd.
16. M/s. Lokmangal Sugar Ethanol & Co-generation Industries Ltd.
17. M/s. Lokmangal Mauli Industries Ltd.
18. M/s. Jaishriram Sugar & Agro Products Ltd
19. M/s. Swaraj India Agro Ltd.
20. M/s. Shri Chhatrapati Sahakari Sakhar Karkhana Ltd.
21. M/s. Sadguru Sri Sri Sakhar Karkhana Ltd
22. M/s. Olam Agro India Pvt. Ltd

: Proposed Respondents  
in Amended Petition

**Appearance:**

For the Petitioner & Applicant No.3

: Shri. Ravi Prakash (Adv.)

For the Applicant No.1

: Shri. Avijeet Lala (Adv)

For the Applicant No.2

: Shri. Sakya Singha Chaudhuri (Adv)

For proposed Respondents (Sr.No. 3,5,9,14 &18)

: Shri. S.R.Nargolkar (Adv)

**Daily Order**

Heard Advocates of Petitioner, Applicants and Respondents.

Advocate of MSEDCL submitted that it has filed an application for amendment of the Petition for making all affected co-generators as Respondents in the main matter. He also pointed out that, two (2) other applications are also on record seeking intervention in the matter. MSEDCL has already proposed to made Shri Datta Sakhar Karkhana as respondent. Further, it does not have objection to allow intervention application of Co-generation Association of India. After disposal of all these Applications, the main matter can be heard on merits. He pointed out that there exists a regulatory gap in respect of payment to be made for excess generation of Co-Generation plants. RE Tariff Regulations, 2010 and 2015 are silent on these issues. Therefore, the present petition.

Advocate appearing on behalf of Applicant No.1 mentioned that he has been made party Respondent in Amendment Petition. Hence, the purpose of his application has been served and may be considered as settled. Advocate of Applicant 3 highlighted that it represents the interest

of Co-Generation industry. Hence, for broader perspective it needs to be impleaded in Case No.70 of 2021.

Out of twenty-two (22) Respondents proposed to be added through amendment Application of MSEDCL, five (5) Respondents appeared before the Commission through their Advocate. Advocate appearing on behalf of Respondent (Sr.No.3,5,9,14 &18) submitted that he has filed submission on MSEDCL's Petition. He pointed out that MSEDCL is citing pendency of present Petition as reason for non-payment of its invoices for injected energy. He pleaded for an interim arrangement for outstanding payments. He also pointed out that each EPA entered between the Co-generator and MSEDCL is different and hence, for proper adjudication, MSEDCL be directed to bring on record each of such EPAs. Applicant No.1 and 2 agreed with this submission and further, urged the Commission to decide the maintainability of the Petition first. Advocate of MSEDCL submitted that Respondents cannot seek prayer related to payment in the Petition filed by MSEDCL, if required they shall initiate a separate proceeding.

The Commission notes that in accordance with directives of the Commission during first hearing held on 16 July 2021, MSEDCL has amended the Petition to include affected co-generating plant and filed IA No.38 of 2021. The Commission takes on record this application and allows amendment in Petition. IA No.38 of 2021 is disposed of accordingly.

Further, MSEDCL in its amendment Petition has impleaded Shri Datta Sakhar Karkhana (SDSK) as a Respondent No.8. Accordingly, purpose of MA No.23 of 2021 seeking impleadment got addressed and hence becomes infructuous. Further, impleadment application of CIA is also allowed and MSEDCL is directed to serve the copy of its Petition to CAI.

With regards to objections of deciding maintainability of matter first, the Commission notes that Hon'ble Supreme Court in its judgment dated 18 October 2012 in Civil Appeal No. 7524 of 2012 has clearly held that State Commissions and Tribunals can hear the maintainability and the main matter in a common hearing and should not waste their time in dealing with objections of different hues at different times (avoid multiple hearings). Extracts of the said judgment of the Hon'ble Supreme Court is reproduced below:

*"We have considered the argument of the learned senior counsel but have not felt impressed. Since, one of the objectives of the new enactment is to ensure expeditious adjudication of the disputes raised by the parties, there is no warrant for entertaining preliminary/interlocutory objections raised by either party and decide the same by long-drawn hearing and by recording lengthy orders. The State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter. Any attempt by the parties to delay adjudication of the dispute deserves to be deprecated and the State Commission and the Tribunal are not expected to waste their time in dealing with objections of different hues."*

Accordingly, CAI and other respondents, who have not filed their replies may file their Reply (including of merits of matter and maintainability) within one (1) week from the date of the Order. MSEDCL shall file Reply to each Respondents with one (1) week thereafter. For completing the pleadings, MSEDCL shall file copy of necessary EPAs within two (2) weeks

from the date of the Order.

**Subsequent to receipt of above submissions, next date of hearing will be intimated by the Secretariat of the Commission.**

Sd/-  
**(Mukesh Khullar)**  
Member

Sd/-  
**(I. M. Bohari)**  
Member

Sd/-  
**(Sanjay Kumar)**  
Chairperson