

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in/ www.merc.gov.in

CASE No. 132 of 2018

In the matter of

Petition of Maharashtra State Electricity Distribution Co. Ltd. seeking Review of Order dated 09.02.2018 and Corrigendum Order dated 12.03.2018 in Case No. 77 of 2015

Coram

Anand B. Kulkarni, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Petitioner

Vs

- 1) Sai Wardha Power Limited (SWPL)**
- 2) Tata Power Company Limited (TPC)**
- 3) Reliance Infrastructure Limited (RInfra-D) (Now Adani Electricity Mumbai Ltd.)**
- 4) Maharashtra State Load Dispatch Centre (MSLDC) Respondents**

Appearance:

For the Petitioner : Shri. Ashish Singh (Adv.)

For the Respondents : Shri Anand K Ganesan (Adv.), SWPL
: Shri Abhaji Naralkar(Rep.), RInfra-D
(Now Adani Electricity Mumbai Ltd)
: Shri Abhishek Munot (Adv.), TPC-D
: Shri Nikhil Chavan (Rep), MSLDC

ORDER

Dated: 22 October, 2018

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed a Petition on 23 April, 2018, seeking Review of Order dated 09.02.2018 and Corrigendum Order dated

12.03.2018 in Case No. 77 of 2015 (Impugned Order) citing Section 94 (1) (f) of the Electricity Act (EA), 2003 and Regulation 85 of MERC (Conduct of Business) Regulations, 2004.

2. MSEDCL's main prayers are as follows:

- "a. Review the order dated 09.02.2018 and corrigendum order dated 12.03.2018 in case no. 77 of 2015 by allowing the present review petition.*
- b. Declare the quantum of units injected from IPP units.*
- c. Hold and declare that SWPL has failed to prove that he is a CPP for the financial year- 2014-2015."*

3. The Petitioner states as follows:

3.1 MSEDCL has filed the Petition for review of Order dated 09.02.2018 and Corrigendum Order dated 12.03.2018 in Case No. 77 of 2015. MSEDCL raised following issues in the review Petition:

- (a) Erroneously considering/forming basis on the data provided by MSLDC vide email dated 17.01.2018 which was never part of the proceeding and till date is not made available to the Petitioner.
- (b) Basing an Order on probability when law mandates clear establishment of ownership vis a vis shareholding. The onus of proof is on the (Captive Power Plant) CPP holder as per law.
- (c) No Special Energy Meter (SEM) data for 15 minutes time block available as per admission of Sai Wardha Power Limited (SWPL) and MSLDC.
- (d) Error apparent as the Commission has taken computation of energy on monthly basis and not on 15 minute block basis.
- (e) Reduction of Independent Power Producer (IPP) units in proportionality incorrect as 15 minute settlement data may reveal an absolutely contrary case.
- (f) Admission of SWPL for injection of power from Unit 1 & 2 (Non CPP Units) in CPP unit 3 & 4.
- (g) Even after accepting that SWPL has injected power from IPP units, the Commission has erroneously let it non-penalized without even holding as to how many units were injected from IPP units.

- (h) Error apparent as Order against the established principles/mandate of CPP and the mandate put under the Act on the CPP for its fulfillment. It cannot inject from IPP in CPP matrix without valid permission.
- (i) Error apparent as a Petition has to stand on its own legs and not on presumptions and assumptions. (Case No. 117 of 2012)
- (j) Error apparent as power injected from IPP units in CPP matrix against the mandate of law and without a valid Open Access permission.
- (k) Error apparent as MSLDC vide its own admission stated that it does not have GT wise data to ascertain GT wise generation. (Para 21).
- (l) Data and analysis based on glaring deficiencies cannot form the basis of ascertaining the CPP status. (Para 34) (Case No. 117 of 2012)
- (m) Corrigendum Order clearly establishes that Sona Alloys has failed to meet the proportionate consumption criteria till 10.12.2014. Hence in view of Sona Alloys failing the whole CPP status fails. (Para 30).
- (n) When generation and consumption is considered on actual basis for CPP fulfillment then why shareholding considered on weighted average. (Case No. 117 of 2012)
- (o) Non-inclusion/Exclusion of Cosmo Films from CPP matrix against the mandate of EA.
- (p) Failing of one consumer vitiates/fails the entire CPP matrix, hence same cannot be ignored once a consumer is given equity.

3.2 Following are the grounds for review of the Order:

- (a) The Commission's Order is vitiated by error apparent as the Commission has based its entire Order on the data provided by MSLDC vide its email dated 17 January, 2018 without appreciating that such data was neither a part of the proceeding nor was ever shared with any of the parties. The whole basis of determination of CPP status is based on analysis of data and the Respondents had all the right to analyze the data and make appropriate submissions which were never allowed by the Commission.
- (b) The Commission's Order is vitiated by error apparent as the Commission has failed to appreciate that under the law, a mandatory obligation is cast upon the SWPL to

prove that it is a CPP which SWPL has failed to demonstrate in view of the anomalies and data gaps.

- (c) The Commission's Order is vitiated by error apparent as the Commission even after appreciating that there are no 15 Minute time blocks SEM available to establish the generation as well as commensurate consumption, has held that SWPL is a CPP. Having a 15 Minute time block SEM is a precondition to establish the generation and consumption. Moreover SEM is vital to establish real time generation and consumption which is missing.
- (d) The Commission's Order is vitiated by error apparent as the Commission even after appreciating that SWPL admittedly has injected power from IPP Units has failed to hold that in view of no valid permission to inject power from IPP Units into CPP Units, the whole CPP matrix falls.
- (e) The Commission's Order is vitiated by error apparent as the Commission even after appreciating that SWPL admittedly has injected power from IPP Units has failed to quantify the quantum of such units injected from IPP Units. SWPL admittedly has injected power from IPP Units has not considered the binding dictum of law that CPP Units have to be identified well in advance meaning thereby that any willing deviation from the same has to be accordingly penalized.
- (f) The Commission's Order is vitiated by error apparent as the Commission even after holding that the data provided by SWPL was clearly deficient, still held that SWPL is a CPP that too after the establishment of fact that SWPL injected power from its IPP Units without valid permission/intimation or knowledge to any of the parties.
- (g) The Commission's Order is vitiated by error apparent as the Commission has failed to appreciate that non-availability of 15 minute SEM, no data available generating station wise and the fact of injection of IPP units into CPP matrix makes it impossible to ascertain the CPP matrix. All these facts have erroneously not been considered by the Commission.
- (h) The Commission's Order is vitiated by error apparent as the Commission has put the onus of defaults on all the parties without appreciating that the mandate of law puts the onus entirely on the CPP holder to prove that he is a CPP and not on any other party.
- (i) The Commission's Order is vitiated by error apparent as the Commission has erroneously computed the energy (consumption & generation) on monthly basis and not on 15 minute time block settlement. When energy settlement happens on

15 minute time block basis then there can be no question of considering the same on monthly basis.

- (j) The Commission's Order is vitiated by error apparent as the Commission has erroneously reduced the IPP units from the CPP matrix in uniform proportionality against each equity holder. Such an analogy is contrary to real time scenario, consumption via a vis generation as in real time it may happen that one entity can consume more and other may consumer less or consumer not at all.
- (k) The Commission's Order is vitiated by error apparent as the Commission has failed to appreciate that a Petition has to stand on its own legs that too a Petition which is mandated by law to prove on its own. However the Commission has erroneously allowed the Petition even after glaring deficiencies. By no means SWPL has established actual generation vis a vis actual consumption.
- (l) The Commission's Order is vitiated by error apparent as the Commission has based its entire Order on presumptions and assumptions which is contrary to the law governing CPP establishment.
- (m) The Commission's Order is vitiated by error apparent as the Commission has not appreciated that one of the equity holder namely Sona Alloys failed till 10.12.2014 as is evident from the corrigendum Order. Hence failing of Sona Alloys brings down the equity of the entire CPP below 26% meaning thereby that the whole CPP fails for the entire period.
- (n) The Commission's Order is vitiated by error apparent as the Commission ignored its earlier Order and has erroneously considered the shareholding on weighted average basis for the entire year while the consumption and generation is considered on actual basis. The Commissions has erroneously neither considered the uniformity in approach that needs to be adopted in matter of CPP establishment nor has it provided any reasonable reasons for taking the weighted average of shareholding for the entire year.
- (o) The Commission's Order is based entirely on assumptions/presumptions that cannot be allowed. Moreover the Commission's Order leads to absurdity as it is against the mandate set by the Commission vide its earlier Order.

4. In its submissions dated 25 June, 2018, SWPL stated that:

4.1 The basic premise of the Review Petition is misconceived. It does not satisfy the basic criteria for a review and therefore not maintainable and liable to be dismissed.

4.2 The power to review an Order is as provided under Section 94(1) (f) of the EA, 2003, which is the same power as provided in the Civil Procedure Code (CPC). This is as provided for, in Order 47 Rule 1 of the CPC, which are limited to error apparent on the face of the record, new evidence not available later or reasons analogous thereto. Review is not to correct an error (even assuming) which is to be found out by detailed arguments and which does not strike on the face of the record. Review cannot be an appeal in disguise.

4.3 The extremely limited scope of Review has been settled by the Supreme Court of India as follows:

i) N. Anantha Reddy V. Anshu Kathuria & Others (2013) 15 SCC 534

‘6. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the applicant could be impleaded in the suit filed by Respondent 1 and, in the light of the view which it took, it recalled its earlier order dated 8-6-2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merit of the Order dated 8-6-2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order / judgment does not call for review. The mistake apparent on the record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.’

ii) Parsion Devi & Others V. Sumitri Devi & Others (1997) 8 SCC 715:

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of record. An error which is not self – evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

4.4 In the light of the above Judgments, the present review Petition does not even mention the error apparent on the face of the record, apart from only making bald allegations that there are errors apparent on the face of the record. There is no error apparent on the face of the record and the present review Petition is liable to be dismissed.

4.5 The review Petition is only a means to overcome the settled principles adopted by the Commission in the previous financial year 2013-14, which has been fully accepted by the Review Petitioner.

- 4.6 The Commission vide its Order dated 20 August, 2014 had declared the captive status of SWPL for the year 2013-14. The Commission through this Order settled the principles for determination of captive status, the methodology to be applied etc. This Order includes the principles and manner of apportionment of generation from Units No.1 and 2 during the period when Units No. 3 and 4 were under outage. These principles were in fact fully accepted by MSEDCL. Though MSEDCL had challenged the Order dated 20 August, 2014 in Appeal No. 252 of 2014 before the APTEL, these issues are not challenged.
- 4.7 The APTEL further dismissed the Appeal No. 252 of 2014 filed by MSEDCL. Therefore, there is no occasion for MSEDCL to seek to reopen the same issues by way of this Petition. In these facts and circumstances the present review Petition is not maintainable and the same is liable to be dismissed in limine.
- 4.8 The Commission in the Order dated 9 February, 2018 had considered each issue now being raised and has passed a reasoned Order on the said issues. There is no any new fact or evidence that has now emerged which was not available earlier despite due diligence.
- 4.9 The Review Petitioner wants to once again seek a rehearing on each of the issues, which is not permissible in review proceedings.
- 4.10 In fact, the Commission had dismissed the review Petition filed by the Petitioner in Case No. 145 of 2013 against the decision of the Commission in Case No. 117 of 2012 for the year 2012-13 on the specific ground that there are no errors apparent on the face of record.
- 4.11 The non availability of the generating Unit wise data is not a precondition for the declaration of the captive status. SWPGL had provided full details of the generation of electricity for the year in issue.
- 4.12 The contentions of MSEDCL with regard to the email of MSLDC dated 17 January, 2018 and the Commission's reliance on it, are completely misconceived. The data provided by the statutory authority, and MSEDCL has not indicated any discrepancy in the said data whatsoever.
- 4.13 The Commission is not merely adjudicating upon the disputes between two parties, but is exercising its statutory jurisdiction to consider the captive status. In such circumstances, it is for the Commission to seek data from such a person as necessary.

4.14 The contentions at paragraph 4 (iii) are wrong and misleading as SWPL has provided sufficient data with regard to its fulfillment of captive status, based on which the Commission has given its ruling in the Order.

4.15 The Unit wise SEM is not a precondition for declaration of captive status. The Commission has also dealt with the issue in detail.

4.16 For the year 2013-14, there is in fact no supply of electricity from Unit No. 1 and 2 to the captive consumers, as specifically recorded in the impugned Order. Even otherwise, in the year 2013-14, the Commission specifically and consciously dealt with the issue of generation from Unit 1 and 2 during outages of Unit No. 3 and 4 and provided the mechanism for treatment of such energy, which methodology is also to be applied for the future years if the occasion arises.

4.17 The contentions of MSEDCL with regard to shareholding of one of the consumers of SWPL i.e. Sona Alloys are wrong. The Commission in the impugned Order clearly records that the weighted average shareholding of Sona Alloys conforms to the CGP requirement.

5. At the hearing, MSEDCL and SWPL reiterated their submissions. MSEDCL stated that it has not received SWPL's reply, which is handed over by SWPL during the hearing. The Commission granted liberty to MSEDCL to file their Rejoinder submission within two weeks, if any.

Commission's Analysis and Ruling:

6. In its impugned Order dated 09.02.2018 and its corrigendum dated 12.03.2018, the Commission had concluded that SWPL qualifies as a Group CGP in FY 2014-15 in respect of Units 3 and 4 and accordingly, its Captive Users are entitled to the consequential dispensation, including exemption from payment of CSS. The Petition seeks review of that Order (including corrigendum) on following main grounds:

- i) The impugned Order is based on the data provided by MSLDC vide its email dated 17 January, 2018 without appreciating that such data was neither a part of the proceeding nor was ever shared with any of the parties;
- ii) SWPL admittedly has injected power from IPP units. The Commission has failed to hold that in view of no valid permission to inject power from IPP units into CPP units, the whole CPP matrix falls;
- iii) The Onus of proof on the (Captive Power Plant) CPP holder as per law

- iv) The Commission has not appreciated that one of the equity holder namely Sona Alloys failed till 10.12.2014 as is evident from the corrigendum order. Hence failing of Sona Alloys brings down the equity of the entire CPP below 26% meaning thereby that the whole CPP fails for the entire period;
- v) There is no SEM available for 15 Minute time blocks to establish the generation as well as commensurate consumption which is required to establish that SWPL is a CPP. Having a 15 Minute time block SEM is a precondition to establish the generation and consumption. Moreover SEM is vital to establish real time generation and consumption which is missing.

7. Regulation 85 (a) of the Commission's Conduct of Business Regulations, 2004 governing review of its orders specifies as follows:

“Review of decisions, directions, and orders:

85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission...”

Thus, this Petition has to be evaluated accordingly.

8. Issue wise Commission's analysis and the findings on the grounds raised by MSEDCL in its Review Petition are as follows:

8.1 *Ground for Review I: The entire Order is based on the data provided by MSLDC vide its email dated 17 January, 2018 without appreciating that such data was neither a part of the proceeding nor was ever shared with any of the parties.*

8.1.1 The Commission has addressed this issue in the impugned Order are as follows:

“
25. The Commission finds it surprising that, although issues regarding the Group Captive status of Generators have been regularly raised for some years now, none of those concerned - SWPL, MSLDC or the Distribution Licensees – could provide the data necessary for determining the captive status of Units 3 and 4 of SWPL for FY 2014-15. Hence, the Commission sought data on the generation schedules of these Units and the data on trippings in respect of all four Units from MSLDC. Based on the data provided by MSDLC vide its e-mail dated 17 January, 2018 and the submissions made by SWPL, the

Commission notes the following, which is of relevance to the determination of the CGP status of Units 3 and 4 in FY 204-15:”

- 8.1.2 MSEDCL stated that the Commission’s impugned Order is vitiated by error apparent as data provided by MSLDC vide its email dated 17 January, 2018 which was the basis for determination of the CGP status was neither a part of the proceeding nor was shared with any of the parties. Having examined the contentions of the Respondent, the Commission appreciated the fact that the Respondents can have concerns regarding the data provided by MSLDC which was considered as the basis for the Commission’s Order regarding the determination of CGP status and accordingly, the Respondents may have the right to analyze the data and make appropriate submissions in the matter.
- 8.1.3 Admittedly, the parties were not served the copies of the document received from MSLDC, based on which the impugned Order was passed. In view of the principle of natural justice, the Commission accepts the submission of MSEDCL on this ground and allows to make submission on the data provided by MSLDC vide email dated 17 January, 2018.

8.2 Ground for Review II: SWPL admittedly has injected power from IPP units. Commission has failed to hold that in view of no valid permission to inject power from IPP units into CPP units, the whole CPP matrix falls.

- 8.2.1 The Commission has addressed this issue in the impugned Order are as follows:

“

22. In a belated submission dated 16 October, 2017, TPC-D has stated that, in another Case, SWPL had admitted that it had supplied power from its Non-CGP Units 1 and 2 during forced outage of Units 3 and 4. However, no quantification has been provided.

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 Unit-wise 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.

.....

25. *The Commission finds it surprising that, although issues regarding the Group Captive status of Generators have been regularly raised for some years now, none of those concerned - SWPL, MSLDC or the Distribution Licensees – could provide the data necessary for determining the captive status of Units 3 and 4 of SWPL for FY 2014-15. Hence, the Commission sought data on the generation schedules of these Units and the data on trippings in respect of all four Units from MSLDC. Based on the data provided by MSDLC vide its e-mail dated 17 January, 2018 and the submissions made by SWPL, the Commission notes the following, which is of relevance to the determination of the CGP status of Units 3 and 4 in FY 204-15.*

.....

(v) Thus, CGP Units 3 and 4 were also under outage for some time in October, 2014, while Unit 1 was in operation during a part of that month. The Commission has sought to correlate the period during which the CGP Units 3 and/or 4 were under outage and the non-CGP Unit 1 was in operation.

(vi) The Commission notes that, even after considering the outage periods of CGP Units 3 and 4 during October, 2014, their generation as submitted by SWPL was much higher than the captive consumption in that month (and thus there might have been no need to provide them power from non-CGP Unit 1 during its days of operation in October). This is also evident from the CGP generation and captive consumption data for that month shown in Table 4 earlier in this Order.

(vii) MSLDC has provided the month-wise daily schedule which shows that the total energy scheduled in FY 2014-15 was 1041.33 MUs. As against this, the net energy exported (SWPL has also imported 1.52 MUs from the grid) as submitted by SWPL in Table 7 is 1045.82 MUs. This net energy exported also nearly matches the power injected by SWPL at the inter-connection point (1045.84 MUs) as certified by MSLDC (Table 7 of this Order).

8.2.2 The Commission in the above paragraph of the impugned Order has provided its rationale on this issue, however, the Commission has relied on the data provided by MSDLC vide its e-mail dated 17 January, 2018 which was not shared with the Parties. Accordingly, as specified in its ruling in the matter of Ground for Review I in para 8.1.3 of this Order, the Commission accepts the review of MSEDCL on this ground and permits it to make its submission on the issue.

8.3 Ground for Review III: Onus of proof on the (Captive Power Plant) CPP holder as per law

8.3.1 The Commission itself in the impugned Order noted that there is considerable shortcomings on the part of the Distribution Licensees as well as SWPL in the process of determination of CPP status for FY 2014-15 and the same is reproduced in following para as given below:

“

20. *The Respondents have also raised the issue of availability of certified data of generation from all the SWPL Units from MSLDC and other relevant data mentioned earlier in this Order. This data is critical for establishing compliance with the CGP requirements of the Electricity Rules, 2005 by SWPL.*
21. *Hence, the Commission had directed MSLDC vide its Daily Order dated 23 February, 2017 to provide the certified data, but TPC-D submitted on 29 May, 2017 that MSLDC had not provided it. Subsequently, MSLDC submitted the energy injection data at the 220 KV Warora Lines I and II for FY 2014-15 as per ABT meter data. However, the GT wise ABT data was not available.*
22. *In a belated submission dated 16 October, 2017, TPC-D has stated that, in another Case, SWPL had admitted that it had supplied power from its Non-CGP Units 1 and 2 during forced outage of Units 3 and 4. However, no quantification has been provided.*
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 Unit-wise 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.*
24. *At the hearing held on 23 February, 2017, SWPL stated that it had supplied power from its non-CGP Units 1 and 2 to the Captive Users during outages of the CGP Units and, to that extent, no captive status is claimed. It had already excluded the energy supplied to Captive Users from these Units. SWPL or its Captive Users would pay the CSS for this consumption. However, for best reasons known to it, SWPL has not provided the quantum of such power or details of tripping of its CGP Units. Moreover, as explained subsequently in this Order, this statement of SWPL appears to be without basis.*

[Emphasis added]

8.3.2 Considering the submissions of MSEDCL and also as is evident from the observations of the Commission reproduced in the para above, the Commission reiterates that there have been considerable shortcoming on the part of SWPL in the process of determination of the CGP status as stated in the above para. The Commission further notes that SWPL has not provided the quantum of power

from IPP or details of tripping of its CGP Units and this data was critical for establishing compliance with the CGP requirements of the Electricity Rules, 2005. In view of the same, the Commission accepts the contention of MSEDCL on this ground and considers the matter for Review.

8.4 Ground for Review IV: The Commission has not appreciated that one of the equity holder namely Sona Alloys failed till 10.12.2014 as is evident from the corrigendum order. Hence failing of Sona Alloys brings down the equity of the entire CPP below 26% meaning thereby that the whole CPP fails for the entire period

8.4.1 The Commission in its impugned Order has noted that:

“18.5 As is evident from Table 9 above, the number of equity shares held by Captive Users of SWPL at Sr. Nos. 1 to 11 (excluding Sona Alloys at Sr. No. 2) has remained constant throughout the year. The change in the equity shareholding of Sona Alloys is recorded in the Auditor’s Certificate as on 11 December, 2014 and has remained constant thereafter. Other than these Captive Users, Cosmo Films (Sr. No. 12) was added as a shareholder in December, 2014 (most likely between 11 December and 15 December, 2014 considering the Auditor’s Certificates). SWPL has stated that changes in the equity shareholding have been intimated to the concerned Licensees as and when they took place. However, the exact date when Cosmo Films was added is not specifically mentioned in the Petition. Further, while the exact date when the shareholding of Sona Alloys changed has also not been expressly stated in the Petition, it can be inferred from the weighted average shareholding computation submitted in Table 6 that the change took place on 11 December, 2014.”

8.4.2 The Commission further in its corrigendum Order noted that:

1.....

*Note: * Sona Alloys does not meet the CGP criterion of captive consumption of at least 51% (\pm 10%) in proportion to its shareholding, considering its equity shareholding as on 1.4.2014 (Scenario (i)). However, Sona Alloys does meet this criterion considering its equity shareholding as on 11.12.2014 (Scenario (ii)), as reflected in Table 14.”*

2. As stated in the Order, the shareholding of Sona Alloys reduced from 2,653,455 shares as on 1 April, 2014 to 1,415,176 shares as on 11 December, 2014, as per the Auditor’s Certificates. However, the shareholding of all other Captive Users remained unchanged throughout the financial year.

8.4.3 The Commission in the impugned Order notes that the exact date when the shareholding of Sona Alloys changed has also not been expressly stated in the Petition and hence the commission inferred this date from the weighted average

shareholding computation submitted in Table 6 that the change took place on 11 December, 2014.

8.4.4 The Commission in the corrigendum Order has noted that the Sona Alloys does not meet the CGP criterion of captive consumption of at least 51% ($\pm 10\%$) in proportion to its shareholding, considering its equity shareholding as on 1.4.2014 (Scenario (i)). However, Sona Alloys does meet this criterion considering its equity shareholding as on 11.12.2014 (Scenario (ii)), as reflected in Table 14 of impugned Order. The shareholding of Sona Alloys reduced from 2,653,455 shares as on 1 April, 2014 to 1,415,176 shares as on 11 December, 2014, as per the Auditor's Certificates. However, the shareholding of all other Captive Users remained unchanged throughout the financial year. Hence the Commission has considered the Computation of Captive Status of SWPL in FY 2014-15 considering equity shareholding weighted average Scenario.

8.4.5 While the Commission has already outlined the basis considered by it for the purpose of checking compliance with the shareholding requirements, in Order to address the concerns raised by MSEDCL, the Commission directs SWPL to submit the details regarding the exact date when the shareholding of Sona Alloys changed.

8.5 Ground for Review V: There are no 15 Minute time block SEM available to establish the generation as well as commensurate consumption, has held that SWPL is a CPP. Having a 15 Minute time block SEM is a precondition to establish the generation and consumption. Moreover SEM is vital to establish real time generation and consumption which is missing.

8.5.1 The Commission in its impugned Order has noted that:

“ 19.1. SWPL has stated that the total generation from the two identified CGP Units in FY 2014-15 was 991.93 MUs, of which consumption by the Captive Users was 768.82 MUs, i.e. 77.51% of the total generation. Hence, it claims that the requirement of the Electricity Rules, 2005 that Captive Users consume at least 51% of the aggregate electricity generated by the CGP Units was satisfied. The details are given in Tables 5 and 6 and para 3.7 of this Order.”

8.5.2 Thus, the Commission has followed the same methodology as adopted earlier years. It was considered decision, and therefore, the Commission does not find error apparent on the face of records on this issue.

9. In order to address the issues mentioned above, the Commission in its Order dated 17.01.2018 in Case No. 23 of 2017 has set out the modalities to be followed by the

Distribution Licensees and the entities claiming to be CGPs. The Commission in that Order also stated that this is necessary in order to systematise the process and bring in greater clarity which would provide comfort to all the parties involved. The Commission had also observed in its earlier Orders in Case No. 117 of 2012 and Case No. 101 of 2014, and considering the provisions of the Electricity Rules, 2005, that the Group CPP must declare any change in the shareholding pattern of Captive Users at the start of the financial year and any subsequent changes during the year, along with the applications for Open Access from the Licensee, without which the concerned entity would not be considered as a Captive User.

10. With this background, the Commission finds merit in MSEDCL's argument on the ground of error apparent on the issue of the data provided by MSLDC vide its email dated 17 January, 2018 being not shared with the Respondents and other relevant issues of determining Group CGP status in respect of Units 3 and 4 of SWPL for FY 2014-15. Hence the following Order:

ORDER

1. **The Petition of Maharashtra State Electricity Distribution Co. Ltd. in Case No. 132 of 2018 is partially allowed.**
2. **MSLDC is directed to submit the copy of the (E-mail) submission dated 17 January, 2018 to MSEDCL and TPC-D. SWPL shall submit the details regarding the exact date when the shareholding of Sona Alloys changed.**
3. **The Commission directs MSLDC and SWPL to submit all the details as required by MSEDCL within 10 days from the date of this Order for re-examining the CGP status for FY 2014-15.**
4. **The Commission directs MSEDCL to re-examine the status of SWPL as CGP or otherwise based on guidelines issued in Case No. 23 of 2017 and the issues raised by MSEDCL in this Case. TPC-D should also be actively involved by MSEDCL in such re-examination process.**
5. **MSEDCL should complete the above exercise within two months and inform SWPL about its findings in a clear and lucid manner.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson


(Abhijit Deshpande)
Secretary

