

Order), citing Section 94 (1) (f) of the Electricity Act, 2003 (EA, 2003) and Regulation 85 of MERC (Conduct of Business) Regulations, 2004 .

2. MSEDCL's main prayers are as follows:

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- a) *Review the order dated 19.03.2018 in case no. 159 of 2016 by allowing the present review petition.*
- b) *Hold and declare that SWPGL has failed to prove that he is a CPP for the financial year- 2015-2016.*
- c) *Rectify the quantum of units injected from IPP units to 118 MU's instead of 56.63 MU's.*

3. MSEDCL states as follows:

3.1 MSEDCL has filed the Petition to Review the Order dated 19 March, 2018 in Case No. 159 of 2016. MSEDCL raised following issues in the review Petition:

- (a) No Special Energy Meter (SEM) data for 15 minutes time block available as per admission of M/s Sai Wardha Power Generation Limited (SWPGL) and Maharashtra State Load Despatch Center (MSLDC).
- (b) Basing an Order on probability when law mandates clear establishment of ownership vis a vis shareholding.
- (c) Error apparent as MSLDC vide its own admission stated that it does not have Generator Terminals (GT) wise data to ascertain GT wise generation.
- (d) Irrespective of the date of creation of equity, generation vis a vis consumption has to be considered for the entire financial year as per Order in Case No. 117 of 2012.
- (e) Error apparent as the Commission has taken computation of energy on monthly basis and not on 15 minute block basis (The data for day wise generation has been provided by SWPGL).
- (f) Admission of SWPGL for injection of power from Units 1 & 2 (Non CPP Units) in Captive Power Plant (CPP) Units 3 & 4.
- (g) Data of Independent Power Producer (IPP) injection contrary to submissions made by SWPGL for day wise basis.
- (h) IPP units to the tune of 56.63 MU's allowed instead of 118 MU's as is evident from SWPGL data.

- (i) Even after accepting that SWPGL has injected power from IPP units, the Commission has erroneously considered 56.63 MU's (Based on assumptions) instead of 118 MU's (as per day wise IPP and CPP generation data submitted by SWPGL and Final Balancing and Settlement Mechanism (FBSM) data finalized by SLDC).
- (j) Reduction of IPP units in proportionality incorrect as 15 minute settlement data may reveal an absolutely contrary case.
- (k) Error apparent as a Petition has to stand on its own legs and not on presumptions and assumptions.
- (l) Error apparent as power injected from IPP units in CPP matrix against the mandate of law and without a valid Open Access permission.
- (m) Data and analysis based on glaring deficiencies cannot form the basis of ascertaining the CPP status.

3.2 The ground raised by the MSEDCL for review of the Order are as follows:

- (a) The Order dated 19 March, 2018 in Case No. 159 of 2016 is vitiated by error apparent as the Commission even after appreciating that there are no 15 Minute SEM available to establish the generation as well as commensurate consumption, has held that SWPGL is a CPP.
- (b) The Impugned Order is vitiated by error apparent as the Commission has failed to appreciate that under the law, a mandatory obligation is cast upon the SWPGL to prove that he is a CPP which SWPGL has failed to demonstrate in view of the anomalies and data gaps. However the Commission has erroneously not considered the said fact and still held that SWPGL is a CPP.
- (c) The Impugned Order is vitiated by error apparent as the Commission has erroneously failed to appreciate its Order in Case No. 117 of 2012 and has considered the date of creation of equity/shareholding to be the date of calculation of generation and consumption which in fact has to be done for the entire financial year irrespective of the date of creation of shareholding/equity.
- (d) The Impugned Order is vitiated by error apparent as the Commission even after holding that the data provided by SWPGL was glaringly deficient, still held that SWPGL is a CPP that too after the establishment of fact that SWPGL injected

power from its IPP units without valid permission/intimation or knowledge to any of the parties.

- (e) The Impugned 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.
- (f) The Impugned 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. Moreover injection of power from IPP units on 15 minute time block completely defeats the CPP matrix.
- (g) Even if the data as submitted by SWPGL and MSLDC is considered, still Impugned Order is vitiated by error apparent as the Commission has erroneously not considered the daily data provided by SWPGL which establishes injection of IPP units to the tune of 118 MUs instead of 56.63 MUs. Hence there is a mistake apparent on the face of record.
- (h) The Impugned Order is vitiated by error apparent as the Commission has erroneously formed its opinion on the preliminary submissions made by MSEDCL and TPC to demonstrate the injection of IPP units without considering the later submission of daily data filed by SWPGL which clearly demonstrates injection of IPP units to the tune of 118 MUs instead of 56.63 MUs.
- (i) MSEDCL in its preliminary submission dated 9 May, 2017 has submitted that, SWPGL has scheduled for their captive consumers from IPP Units. Further as SWPGL's generation Unit-wise data was not available at that point of time, to substantiate the argument of IPP injection some assumptions were made. It was submitted earlier that, when one of the captive generation Unit was under breakdown/tripped (as per SLDC data) the captive power scheduled by SWPGL was more than what could have been maximum generated by other captive Unit.
- (j) In absence of Unit-wise generation data, it was assumed that the maximum generation possible from one captive Unit was 2.9 MUs per day. This assumption is purely theoretical and was made in order only to prove the point that, captive power scheduled could not be generated from one unit alone even if considering the maximum possible capacity of such generating set.

- (k) Subsequently, SWPGL on 24 July, 2017 has submitted consolidated day-wise generation and consumption data for FY 2015-16.
- (l) The SLDC has also finalized FBSM settlement for FY 2015-16. It can be calculated from the generation data as submitted by SWPGL and FBSM as finalized by MSLDC that, 118 MUs were injected from IPP Units of SWPGL against captive schedule for FY 2015-16.
- (m) The Impugned Order is vitiated by error apparent as the Commission, even after appreciating that SWPGL 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.
- (n) 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 vis-a-vis generation as in real time it may happen that one entity can consume more and other may consume less or consume none at all.
- (o) 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.
- (p) 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, SWPGL stated that:

- 4.1 The basic premise of the Review Petition is misconceived. The Review Petition 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 Electricity Act, 2003, which is the same power as provided in the Civil Procedure Code. This is as provided for, in Order 47 Rule 1 of the Civil Procedure Code, 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 making only 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 A bare perusal of the review Petition clearly establishes that the review Petition is an appeal in disguise, which is not permissible. 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 had vide its Order dated 20 August, 2014 declared the captive status of SWPGL 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 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 19 March, 2018 had considered each issue now being raised and had 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 entire basis of the review Petition is alleged non consideration of issues, which basis is erroneous. The Review Petitioner wants to once again seek a rehearing on each of the issues, which is not permissible in review proceedings.

4.10 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 Most of the issues raised by the Petitioner were already settled by the Commission while declaring the captive status for the year 2013-14 and the present Petition is only seeking to reopen the same issues. 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. In fact the Commission dealt with the same vide para 19 of the impugned Order and the present review Petition which is nothing but an appeal in disguise is not maintainable. In fact, in the year 2013-14, in Order dated 20 August, 2014 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. SWPGL has in fact filed an appeal against that Order in Appeal No. 106 of 2018 on the said issue of treatment of generation from Unit No. 1 and 2, which the Commission opined to be treated as supply from Distribution Licensee is pending before the APTEL. Further, the injection from Units No. 1 and 2 do not in any manner affect the Captive Status of Unit No. 3 and 4, which fulfill the captive status independently.

4.12 The Unit wise SEM is not a precondition for declaration of captive status. The Commission has also dealt with the issue in detail and there is no error apparent as sought to be raised by the Petitioner.

- 4.13 The contentions at paragraph 4 (iii) are wrong and misleading as SWPGL has provided sufficient data with regard to its fulfillment of captive status, based on which the Commission has given its ruling in the Order.
- 4.14 SWPGL has provided full details of the generation of electricity for the year 2015-16. The Commission has considered the situation in detail and given its reasoning for the same.
- 4.15 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 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.
- 4.16 MSEDCL by taking undue advantage of the view of this Commission on the energy supplied from non-captive Units during the financial year 2015-16 raised bills on the captive consumers on the basis of same and now taking a complete divergent view on the factual position to suit their needs.
- 4.17 The Commission has given a reasoned analysis and ruling in the Impugned Order after due consideration to all available data, the averments made by the parties in question and in accordance with the mandate of law.
- 4.18 MSEDCL has failed to establish a Case for the review of the impugned Order under Regulations 85 of the MERC (Conduct of Business) Regulations, 2004 read with Section 94 (1) (f) of the Electricity Act, 2003 and has not provided evidence to back up its claims under the Petition, thereby making this Review Petition unsustainable under the law.
- 4.19 The quantifications of 118 MUs by MSEDCL is misconceived and without any basis on the part of MSEDCL to now change the computations is also erroneous.
- 4.20 Based on the data provided by MSEDCL and by Tata power in the present case the quantum of supply from IPP units, Commission has accepted the same while passing its order.. This was also filed based on data from MSLDC as admitted by MSEDCL itself. In the circumstances there can be no question of seeking a review at this stage and the contentions of MSEDCL is completely misconceived and baseless.

Commission's Analysis and Ruling

5. In the impugned Order dated 19 March, 2018, the Commission has concluded that SWPGL qualifies as a Group CGP in FY 2015-16 in respect of its Units 3 and 4 and that, accordingly, its Captive Users are entitled to the consequential dispensations, including exemption from payment of CSS. The Petition seeks review of that Order on following main grounds :
- (i) A mandatory obligation is cast upon the SWPGL to prove that he is a CGP which SWPGL has failed to demonstrate in view of the anomalies and data gaps.
 - (ii) Non-availability of 15 minute supply data from SEM, no data available showing generating unit wise injection of power and the fact of injection of IPP units into CGP
 - (iii) Consideration of the energy (consumption & generation) data on monthly basis instead of mandated 15-minute time block settlement.
 - (iv) SWPGL injected power from its IPP units without valid permission/intimation or knowledge to any of the parties.
 - (v) The preliminary submissions made by MSEDCL and TPC demonstrated the injection of IPP units but these submissions are at variance with the later submission of daily data filed by SWPGL showing injection of IPP units to the tune of 118 MUs instead of 56.63 MUs. The SLDC has also finalized FBSM settlement for FY 2015-16 and it can be calculated from the generation data as submitted by SWPGL and FBSM as finalized by MSLDC that, 118 MUs were injected from IPP Units of SWPGL against captive schedule for FY 2015-16.
6. The issues raised by MSEDCL and its claims for review of the impugned Order for Captive status needs to be assessed considering the limited scope of review specified in Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004, which reads 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.

7. Issue wise Commission’s analysis and the findings on the contentions raised by MSEDCL in its Review Petition are as follows:

7.1 Ground for Review I: A mandatory obligation is cast upon the SWPGL to prove that it is a CGP which SWPGL has failed to demonstrate in view of the anomalies and data gaps.

7.1.1 The Commission itself in the impugned Order noted that there are considerable shortcomings on the part of the Distribution Licensees as well as SWPGL in the process of determination of CPP status for FY 2015-16 and the relevant paras from the Order are reproduced 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.

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.

19.9 Pursuant to the directions given by the Commission on 29 June, 2017, SWPGL provided certain additional details, but not the certified Unit-wise generation data for FY 2015-16.”

[Emphasis Added]

7.1.2 Considering the submissions of MSEDCL and also as is evident from the observations of the Commission in the impugned order as reproduced in the para above, the Commission reiterates that there have been considerable shortcomings on the part of SWPGL in the process of determination of the CGP status as stated in the above para. SWPGL prima facie has not discharged the part of its responsibilities envisaged under Rules and Regulations of EA 2003 to establish clearly its CGP status. In view of the same, the Commission accepts the contention of MSEDCL on this ground and considers the matter for Review.

7.2 Ground for Review II: There are no SEM available for 15 Minute time block to establish the generation as well as commensurate consumption, to determine the status of SWPGL as a CPP.

7.2.1 The Commission has addressed this issue in the impugned Order and the relevant part of the Order is reproduced below:

“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."

7.2.2 The Commission notes that the Commission has taken a conscious decision noting all these facts in the Impugned Order. No new fact is brought by MSEDCL in this Review Petition. Therefore review on this ground is not tenable.

7.3 Ground for Review III: Injection of IPP units to the tune of 118 MUs instead of 56.63 MUs.

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

19.9 Pursuant to the directions given by the Commission on 29 June, 2017, SWPGL provided certain additional details, but not the certified Unit-wise generation data for FY 2015-16.

19.10 As regards the supply of power from the IPP Units 1 and 2 to Captive Users, the data submitted by TPC-D on 21 February, 2017 and by MSEDCL on 9 May, 2017, which is based on details available from MSLDC, is summarised in Table 8 below:

Table 1: Summary of month-wise power supplied from SWPGL IPP Units to Captive Users in FY 2015-16, as submitted by TPC-D and MSEDCL (in MUs)

Instance of CGP Sale from IPP Units	Apr-15	May-15	Jul-15	Aug-15	Oct-15	Dec-15	Jan-16	Feb-16
1	0.00	0.20	1.09	0.48	0.00	0.18	1.25	0.00
2	2.53	0.64	0.54	1.82	0.18	0.89	1.23	1.39
3	2.64	0.60		0.89	0.80	0.93	1.25	1.63
4	2.64	0.00			0.96		1.49	1.28
5	2.61				0.90		1.42	1.04
6	2.53				0.77		0.51	0.73
7	2.49				0.83			0.00
8	2.38				0.73			1.62
9	1.15				0.60			1.55
10					0.90			1.45
11					1.05			1.43
12					0.99			1.42
13					0.00			
Total	18.97	1.44	1.63	3.19	8.71	2.00	7.15	13.54
Grand Total	56.63							

Thus, a total of 56.63 MUs was supplied from the IPP (non-CGP) Units 1 and 2 to Captive Users during FY 2015-16.

19.11 The Commission has also compared the Net Generation of the CGP Units with the actual consumption of the Captive Consumers as submitted by SWPGL to derive the excess consumption supplied from the IPP Units, as shown in the Table below:

Table 2: CGP Units – Net Generation and Captive Consumption Summary, as submitted SWPGL

Month	FY 2015-16 Net Generation (kWh)		Total Net Generation (kWh)	Captive Consumption (kWh)	Excess consumption (kWh)
	Unit 3	Unit 4			
Apr-15	60,041,283	16,705,232	76,746,516	76,843,840	97,324
May-15	63,948,625	70,920,136	134,868,761	91,013,395	-
Jun-15	40,235,159	72,915,509	113,150,668	79,668,224	-
Jul-15	44,709,169	35,036,601	79,745,770	82,914,583	3,168,813

Month	FY 2015-16 Net Generation (kWh)		Total Net Generation (kWh)	Captive Consumption (kWh)	Excess consumption (kWh)
	Unit 3	Unit 4			
Aug-15	57,236,950	12,441,632	69,678,582	98,541,804	28,863,222
Sep-15	58,041,182	62,476,768	120,517,950	101,351,469	-
Oct-15	74,761,016	40,548,388	115,309,404	103,571,197	-
Nov-15	65,696,456	63,965,294	129,661,750	94,005,091	-
Dec-15	68,454,393	75,313,043	143,767,435	117,400,497	-
Jan-16	50,025,135	63,359,649	113,384,784	118,532,420	5,147,636
Feb-16	45,215,815	47,465,736	92,681,551	111,136,143	18,454,592
Mar-16	50,276,014	56,785,866	107,061,880	102,731,449	-
Total	678,641,197	617,933,854	1,296,575,051	1,177,710,112	55,731,587
Total (MUs)	678.64	617.93	1,296.58	1,177.71	55.73

19.12 Table 9 shows that, in April, July, August, January and February, the actual captive consumption, as submitted by SWPGL, was more than the total Net Generation from the CGP Units 3 and 4 in those months, amounting to 55.73 MUs over FY 2015-16. Hence, it can be inferred that this excess consumption was supplied to the Captive Users from the IPP Units 1 and 2, and cannot qualify as their captive consumption.

19.13 The quantum of supply to Captive Users from the IPP Units shown in Table 8 is based on data from the MSLDC website, while the quantum shown in Table 9 is based on metering data provided by SWPGL. The Commission has considered the figure of 56.63 MUs shown in Table 8, which is marginally higher than that derived from SWPGL's data. The Commission, therefore, disallows this quantum of 56.63 MUs from the total sales to Captive Users of 1177.71 MUs in FY 2015-16. In the absence of consumer-wise allocation, that quantum has been allocated across the Captive Consumers in proportion to their respective consumption during the year.

19.14 Moreover, consequently, since the injection of 56.63 MUs from the IPP Units 1 and 2 is unscheduled and cannot be accounted for as CGP power, the power drawn by the Captive Consumers to that extent is deemed to have been drawn from the respective Distribution Licensees. Hence, the Distribution Licensees shall treat this unscheduled power in accordance with the applicable provisions of the EA, 2003 and the relevant Rules and Regulations.

19.15 As discussed earlier, the Commission has assessed compliance with the proportionality rule based on the Gross Generation and captive consumption (grossed up with Auxiliary Consumption), instead of the Net Generation and captive consumption at G <> T interface considered by SWPGL. Accordingly, the disallowed units (56.63 MUs) are adjusted from the actual captive consumption as shown in Table 10 below.

Table 3: Adjustment of disallowed consumption against actual consumption

Sr. No	Shareholder	No. of Equity Shares of Rs. 10/- each		% of Consumption for pro rata MUs	Actual Consumption (MU)	Pro-rata deduction of 56.63 MU from Actual Consumption	Actual Consumption after adjustment of disallowed consumption (MU)
		As per share certificate as on 31.03.2016	% of shares in Ownership				
		A	b	c	d	$e = d \times c$	$f = d - e$
1	Viraj Profiles Ltd.	2,32,98,938	5.77%	40.32%	346.28	22.83	323.45
2	Bebitz Flanges Works Private Ltd.	2,65,346	0.07%	0.49%	9.6	0.28	9.32
3	Mahindra & Mahindra Ltd.	19,45,867	0.48%	3.35%	90.36	1.90	88.46
4	Mahindra Vehicle Manufacturers Ltd.	12,38,279	0.31%	2.17%	43.68	1.23	42.45
5	Mahindra CIE Automotive Ltd. (Formerly Mahindra Forgings Ltd.)	8,84,485	0.22%	1.54%	23.35	0.87	22.48
6	Mahindra Hinoday Industries Ltd.	17,68,970	0.44%	3.07%	45.56	1.74	43.82
7	Mahindra Sanyo Special Steels Ltd.	61,91,395	1.53%	10.69%	98.85	6.05	92.80
8	RL Steels & Energy Ltd.	26,53,455	0.66%	4.61%	50.9	2.61	48.29
9	India Steel Works Ltd.	10,61,382	0.26%	1.82%	32.3	1.03	31.27
10	Sona Alloys Private Ltd.	14,15,176	0.35%	2.45%	30.44	1.39	29.05
11	Cosmo Films Ltd	22,99,661	0.57%	3.98%	82.35	2.26	80.09
12	Mahalaxmi TMT Private Ltd.	78,87,669	1.95%	13.63%	200.69	7.72	192.97
13	Hindustan Petroleum Corporation Ltd.	38,91,734	0.96%	6.71%	58.26	3.80	54.46
14	Lupin Ltd.	30,07,237	0.74%	5.17%	65.08	2.93	62.15
Total		5,78,09,594	14.31%	100.00%	1177.7	56.63	1,121.07

19.16 The consumer-wise actual consumption after adjusting the disallowed consumption computed in Table 10 has been grossed up with the actual average Auxiliary Consumption (in %) for FY 2015-16 for the CGP Units 3 and 4, excluding Cosmo, HPCL and Lupin. In respect of these 3 consumers, the actual average Auxiliary Consumption (in %) in the period during which they consumed power has been considered. Accordingly, the gross actual consumption is 1,256.97 MUs, which is considered for determination of compliance with the proportionality rule as shown in Table 11 below

- 7.3.2 MSEDCL stated that the Commission's impugned Order is vitiated by error apparent as the Commission has erroneously formed its opinion on the assumptions and preliminary submissions made by MSEDCL and TPC to demonstrate the injection of IPP units without considering the later submission of daily data filed by SWPGL which demonstrates injection of generation from IPP units to the tune of 118 MUs instead of 56.63 MUs. Subsequently, SWPGL on 24 July, 2017 has submitted consolidated day-wise generation and consumption data for FY 2015-16. The SLDC has also finalized FBSM settlement for FY 2015-16 and it can be calculated from the generation data as submitted by SWPGL and FBSM as finalized by MSLDC that, 118 MUs were injected from IPP Units of SWPGL against schedule of captive generating units for FY 2015-16.
- 7.3.3 In response to the contention of MSEDCL, SWPGL has contended that the quantification of 118 MUs by MSEDCL is misconceived and without any basis on the part of MSEDCL to now change the computations is also erroneous. It has further contended that the data considered by the Commission was based on the submission of MSEDCL and Tata power in the present Case, which was based on data from MSLDC as admitted by MSEDCL itself.
- 7.3.4 Having examined the contentions of the Respondent, the Commission has noted that MSEDCL has issues pertaining to the data considered by the Commission for the purpose of establishing the quantum of units injected from the IPP unit in the event of tripping of captive generating units. In this regards, MSEDCL has submitted data relating to supply from IPPs which is double the quantum considered by the Commission. MSEDCL has brought on record such gap by submitting data pertaining to the 118 MUs which has not been examined by the Commission earlier. MSEDCL has apparently derived this number from FBSM data of SLDC.
- 7.3.5 The Commission further notes that MSLDC (one of the Respondents in this matter) has neither made any comments on the data provided by MSEDCL nor has made any submission on this issue. It is expected from MSLDC that it shall verify the data provided by MSEDCL or give its comments on that.
- 7.3.6 In view of the new facts / information brought before the Commission by MSEDCL and further non –verification of the same data by MSLDC, the Commission accepts the submission of MSEDCL on this ground and allows the parties to make submission on this issue. The Commission directs MSLDC to verify and certify the data provided by MSEDCL within 10 days from this Order.

8. 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.
9. With this background, the Commission finds merit in MSEDCL's argument on the ground of bringing forward data/information which was not available for the review of the Commission for the purpose of establishing the quantum of injection from IPP units. Further, the Commission also acknowledges the issues highlighted by MSEDCL with regards to the shortcomings in the compliance on the part of SWPGL which were also highlighted by the Commission in its Order and accordingly, considers the matter for the purpose of review. Hence the following Order:

ORDER

1. **The Petition of Maharashtra State Electricity Distribution Co. Ltd. in Case No. 133 of 2018 is partially allowed.**
2. **The Commission directs MSEDCL to re-examine the status of SWPGL 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.**
3. **MSEDCL should get certified data from MSLDC as regards quantum of supply injected by IPP units and the proxy of G<>T ABT metering considered in the impugned Order to cover the data gaps in terms of non availability of unit wise Joint Meter Reading in order to re-examine the status of SWPGL as CGP.**
4. **MSEDCL should complete the above exercise within two months and inform SWPGL about its findings in a clear and lucid manner.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson

