

COURT-II

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

A.No. 288 of 2014

Dated: 08th March, 2016

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of:-

**Sai Wardha Power Company Ltd. ... Appellant(s)
Versus
Maharashtra State Electricity Distribution Co. Ltd.& Anr. ... Respondent(s)**

Counsel for the Appellant(s) : Mr. Anand K. Ganesan and
Mr. Sandeep

Counsel for the Respondent(s) : Mr. G.Sai Kumar, Ms. Pooja Nuwal and
Ms. Soumyua Saikumar for R.1

ORDER

The instant appeal, being Appeal No.288 of 2014, captioned as *Sai Wardha Power Company Ltd. Vs. Maharashtra State Electricity Distribution Co. Ltd. & Anr.*, has been filed by the appellant, a captive power generating company, namely Sai Wardha Power Company Ltd, against the order dated 20.08.2014 (Impugned Order) passed by the Maharashtra Electricity Regulatory Commission (the State Commission) challenging Paragraphs 31, 32, 33 & 34 of the Impugned Order.

- 2) We have heard Mr. Anand K. Ganesan learned counsel for the appellant and Mr.Sai Kumar, learned counsel for the respondent, distribution licensee, in this appeal.
- 3) Learned counsel for both the parties agree to the fact that the instant appeal be allowed and the Impugned Order, to the extent challenged in this appeal, should be set aside.
- 4) We quote below the paragraphs 31, 32, 33 and 34 of the Impugned Order here as under:

- “31. The Commission further noted that two shareholders i.e., M/s. Facor Steels Ltd. and M/s Spentex Industries Ltd., after seeking open access under Section 9 of the EA, 2003 (i.e. for self use), have not consumed any energy from the CGP. The Commission notes that in the present case, principle of natural justice arises, where there are multiple users of varied industries/ usage catering the requirements at different geographic locations who have come together to fulfill the Captive criterion and do not have control over the usage of each other. The Commission is of the opinion that because of default to Captive Criterion by said two shareholders, the other consumers adhering to the conditions of the Electricity Rules, 2005, should not be penalised for willful default or otherwise by two shareholders.
32. Further, the Commission is of the view that such consumers who have defaulted by asking for open access and not consuming energy under open access, have been irresponsible in their roles as shareholders in a Group Captive Generating Plant and should be penalized to ensure that in future a few shareholder cannot jeopardize the agreement beneficial to many. The Commission therefore is of the opinion that such shareholder should be asked to pay a penalty. Accordingly, MSEDCL should submit a proposal for penalty to the Commission for approval.
33. The Commission is of the view that there is not enough clarity with regards to issues elaborated in Paragraph 31 and 32 of this Order, in interpretation of Electricity Rules, 2005 required for implementation of Captive Generation Plant having multiple shareholders and accordingly the Commission directs MSEDCL to take up this issue and approach the Government of India for seeking clarifications regarding criteria laid down in the Electricity Rules, 2005, separately.
34. The Commission shall revisit the above matter based on the clarifications received in the matter, if required, and till such time the bills raised by MSEDCL shall be live and will be kept in abeyance. Further, upon receipt of clarifications, if the Cross Subsidy Surcharge is payable by Captive Users of WPCL, the Commission rules that MSEDCL shall be eligible to recover the same along with interest.”
- 5) A copy of the Order dated 17.03.2015, passed by Court-I of this Appellate Tribunal, in Appeal No.27 of 2015, captioned as *Spentex Industries Ltd. Vs. Maharashtra Electricity Regulatory Commission & Anr.*, in which the same Impugned Order dated 20.08.2014 and the same paragraphs were under

challenge. Court-I in its order dated 17.03.2015, had allowed the appeal, to the extent setting aside the direction issued in the Impugned Order. The Court-I in the said order has stated as under:

“Counsel for the 2nd Respondent, on instructions, states that the 2nd respondent is not submitting any proposal for penalty to the 1st respondent and accordingly the 2nd respondent has written to the 1st respondent. Apart from this, on merits also we are of the opinion that the above order imposing penalty on consumers is not sustainable in law because the 1st respondent cannot impose any penalty on the consumers for not consuming energy corresponding to their share as shareholders in the group Captive Generating Plant.”

- 6) After considering the matter before us, challenged in the instant appeal and also the consent of the learned counsel for the rival parties, the same situation and further considering the observations made by Court-I in the order dated 17.03.2015 in Appeal No.27 of 2015, **we allow the instant appeal, being Appeal No.288 of 2014, and set aside the Impugned Order, to the extent challenged in the appeal. Consequently, the observations made in Paragraphs 31, 32 and consequential paragraphs being paragraph Nos. 33 & 34 are hereby set aside and the instant appeal is hereby allowed.**

No order as to costs.

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

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